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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

THE NATIONAL DEFENCE ACT

EXPLANATORY MATERIAL

JUNE 1950

ARCHIVES NDA - The National defence act : explanatory material,1950

c.3 and c.4 can be found under this record in the catalgoue

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NATIONAL DEFENCE ACT

TABLE OF CONCORDANCE

for the years 1950, 1952, 1970, 1985

Abbreviations: R/Rp - Repealed & Replaced
NC/NR - Not consolidated, not repealed
bf - Before
af - After
* - Amended since last consolidation

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
Sec. 1	1	1	1
2	2(1)-(6), (8-10), (14), (18), (20) (22), (24-27), (29)-(33), (35), (36), (37)-(39)	2	*2
	2(7), (11), (15)-(17), (19), (21) (23), (34)	Repealed & Replaced (R/Rp)	
	2(28)	Omitted	
3	3	3	3
4	4	4	R/Rp with 4
5	5	5	5
6	6	R/Rp with 6	6
7(1)	7(1)	7	7
7(2)	7(2)	Repealed	
8	8(1)	8(1)	8(1)
8	8(2)	Repealed	
8	8(3)	8(2)	8(2)
9, 10	9, 10	9, 10	9, 10
11	11(1)	R/Rp with 11(1)	*11(1)
11	11(2)-(4)	11(2)-(4)	11(2)-(4)
12	12	Repealed	
13	13(1)(2)	12(1)(2)	12(1)(2)
		12(3)	12(3)
14	14	R/Rp with 13	13
15	15	R/Rp with 14	14
16(1)-(4)	16(1)-(4)	R/Rp with 15(1)-(4)	15(1)-(4)
16(5)	R/Rp with 16(5)	R/Rp with 16(1)	16(1)
16(6)	16(6)	R/Rp with 16(2)	16(2)

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
17	17	Repealed	
18	18	R/Rp with 17	17
19	19	R/Rp with 18	18
20	20	19	19
21(1)	21(1)	R/Rp with 20(1)	20(1)
21(2)	21(2)	R/Rp with 20(2)	20(2)
21(3)	21(3)	20(3)	20(3)
22	22	R/Rp with 21(1)(2)	21
23	23	22	22
24	24	23(1)	23(1)
25	25	23(2)	23(2)
26	26	R/Rp with 24	24
27(1)	27(1)	R/Rp with 25	25
27(2)	27(2)	R/Rp with 26(1)	26(1)
27(3)	R/Rp with 27(3)	26(2)	26(2)
27(4)	27(4)	26(3)	26(3)
28	28	R/Rp with 27	27
29	29	28	28
30	30	29	29
31(1)	R/Rp with 31(1)	30(1)	30(1)
31(2)	31(2)	30(2)	30(2)
31(3)	R/Rp with 31(3)	30(3)	30(3)
		30(4)	30(4)
32(1)	R/Rp with 32(1)	R/Rp with 31(1)	31(1)
32(2)	32(2)	R/Rp with 31(2)	31(2)
32(3)	32(3)	Repealed	
33	33	R/Rp with 32	32
34	34	R/Rp with 33	33

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
35	35	R/Rp with 34	34
36	36(1)(2)(3)	R/Rp with 35	35
37	37	36	36
38	38	37	37
39	39(1)-(4)	R/Rp with 38(1)-(4)	38(1)-(3), 39(1)
	39(5)	38(5)	39(2)
	39(6)	R/Rp with 38(6)	39(3)
	39(7)	38(7)	40
	39(8)	R/Rp with 38(8)	41(1)
	39(9)(10)	38(9)(10)	41(2)(3)
40	40(1)	39(1)	42(1)
	40(2)(before a)	R/Rp with 39(2) (before a)	42(2) (before a)
	40(2)(a)-(d)	39(2)(a)-(d)	42(2)(a)-(d)
		39(2)(e)	42(2)(e)
41	41	40	43
42	42	41	44
43	43	42(1)	45(1)
		42(2)	45(2)
44	44(1)	R/Rp with 43(1)	46(1)
	44(2)(3)	43(2)(3)	46(2)(3)
45	45	44	47
46	46	45	48
47	47	46	49
48	48	47	50
49	49(1)	48(1)	51(1)
	49(2)	R/Rp with 48(2)	51(2)
	49(3)	48(3)	51(3)

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
50	50	49	52
51	51	50	53
52	52	51	54
53	53(1) 53(2) 53(3)-(7) 53(8)	52(1) R/Rp with 52(2) 52(3)-(7) Repealed	s.55-59 (Part III R/Rp in entirety 1976-77 c.24, s.63.)
54	54	53	
55	55	54	
56	56(1)(a)(b)	R/Rp with 55(1)(a)(b)	60(1)(a), (b)
	56(1)(c)(bf i)	R/Rp with 55(1)(c) (bf i)	60(1)(c)
	56(1)(c)(i-(viii)	55(1)(c)(i)-(viii)	
	56(1)(c)(ix)	R/Rp with 55(1)(c)(ix)	
	56(1)(c)(x)	55(1)(c)(x)	
	56(1)(d)	R/Rp with 55(1)(d)	60(1)(d)
	56(1)(e)-(h)	55(1)(e)-(h)	60(1)(e)-(h)
	56(1)(i)	R/Rp with 55(1)(i)	60(1)(i)
	56(1)(j)	R/Rp with 56(1)(j)	60(1)(j)
	56(2)(3)	55(2)(3)	60(2)(3)
	56(4)-(7)	Repealed	
	56(8)-(13)	R/Rp with 55(4),(5)	61(1)(2)
		(6)-(9)	62(1)-63(1)
		(10)	63(3)
	56(14)	55(11)	64
		55(12)	65
57	57(1)	56(1)	66(1)
	57(2)	R/Rp with 56(2)	66(2)
	57(3)	56(3)	66(3)
58	58	57	67
59	59	58	68

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
60	60	59(1)(2) 59(3)	69(1)(2) 69(3)
61	61	60	*70
62	62	61	71
63	63	62(1)(2) 62(3)	72(1)(2) 72(3)
64	64	63	73
65	65	64	74
66	66	65	75
67	67	66	76
68	68	67(a)-(f) 67(g)-(i)	77(a)-(f) 77(g)-(i)
69	69	68	78
70	70	69	79
71	71	70	80
72	72	71	81
73	73	72	82
74	74	73	83
75	75	74	84
76	76	75	85
77	77	76	86
78	78	77	87
79	79(1) 79(2)(3)	78(1) R/Rp with 78(2)(3)	88(1) 88(2)(3)
80	80(a) 80(b)	79(a) R/Rp with 79(b)	89(a) 89(b)

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
81	81(1) 81(2)	80(1) R/Rp with 80(2)	90(1) 90(2)
82	82	81	91
83	83	82	92
84	84	83	93
85	85	84	94
86	86	85	95
87	87	86	96
88	88	R/Rp with 87	97
89	89	88	98
90	90	89	99
91	91	90	100
92	92	91	101
93	93	92	102
94	94	93	103
95	95	94	104
96	96	95	105
		96	106
97	97	97	107
98	98	98	108
99	99	99	109
100	100	100	110
101	101	R/Rp with 101	111

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
102	102	102	112
103	103	103	113
104	104	104	114
105	105	105	115
106	106	106	116
107	107(a)-(e) 107(f)	107(a)-(e) R/Rp with 107(f)	117(a)-(e) 117(f)
108	108(1) 108(2)	R/Rp with 108(1) 108(2)	118(1) 118(2)(3)
109	109	109	119
110	110	110	120
111	111	111	121
112	112	R/Rp with 112	122
113	113	113	123
114	114	114	124
115	115	115	125
116	116	116	126
117	117	117	127
		118	128
118	118(1) 118(2) 118(3) 118(4) 118(5)	119(1) 119(2) R/Rp with 119(3) R/Rp with 119(4) 119(5)	129(1) 129(5) 129(2) 129(3) 129(4) 129(6)

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
119	119	120(1)	*130(1)
	119(2)(a)	R/Rp with 120 (2)(a)	R/Rp with 120(2)(a)
	119(2)(b),(3),(4)	120(2)(b),(3),(4)	130(2)(b), (3),(4)
		120(5)	131
		121	132
120	120	122(1)(2)	133(1)(2)
		122(3)(4)	134(1)(2)
		122(5)	135
		122(6)	136
		123	137
		124	138
121	121(1)(a)-(h)	125(1)(a)-(h)	139(1) (a)-(h)
	121(1)(i)	Repealed	
	121(1)(j)-(n)	R/Rp with 125(1) (i)-(l)	139(1) (i)-(l)
	121(2)	125(2)	139(2)
	121(3)	Repealed	
	121(4)(a)-(e)	125(3)(a)-(e)	140(a)-(e)
	121(4)(f)	R/Rp with 121(3)(f)	140(f)
	121(4)(g)	125(3)(g)	140(g)
	121(5)(6)	125(4)(5)	141(1)(2)
	121(7)(a)(b)	125(6)(a)(b)	142(a)(b)
	121(7)(c)	R/Rp with 125(6)(c)	142(c)
	121(8)	R/Rp with 125(7)	143(1)
	121(9)(a)(b)	125(8)	143(2)
	121(9)(c)	Repealed	
	121(10)	125(9)	144
	121(11)	Repealed	
	121(12)	R/Rp with 125(10)	145
	121(13)(14)	125(11)(12)	146, 147
122	122	126	148
123	123	127	149
124	124	128	150

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
153	153	159	182
154	154	160	183
155	155(1) 155(2)(3) 155(4) 155(5)(6)	R/Rp with 161(1) 161(2)(3) Repealed 161(4)(5)	184(1) 184(2)(3) 184(4), 185
156	156	162	186
157	157	163	187
158	158(1)(a)(b) 158(1)(c) 158(1)(d)-(f) 158(2)	164(1)(a)(b) Repealed 164(1)(c)-(e) 164(2)	188(1)(a)(b) 188(1)(c)-(e) 188(2)
159	159	165	189
160	160	166	190
161	161	167	191
162	162(1) 162(2)(3)	R/Rp with 168(1) 168(2)(3) 168(4) 168(5)(6)	192(1) 192(2)(3) 192(4) 193(1)(2)
163	163	169	194
164	164	170	195
165	165	171	196
166	166	172(1)(2) 172(3)(4) 172(5)	197(1)(2) 198(1)(2) 198(3)(4) 199
167	167	173(1)(2) 173(3)	200(1)(2) 201(1)(2)(3)
168	168	174	202

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
		175	203
169	169	176	204
		177	205
170	170	178(1)(2) 178(3) 178(4)	206(1)-(3) 206(4) 207
171	171	179	208
172	172(1) 172(2)	R/Rp with 180(1) 180(2)	209(1) 209(2)
		181	210
173	173	182	211
174	174	183	212
175	175	184	213
176	176	185	214
177	177(1)(2) 177(3)-(5)	186(1)(2) 186(3)-(5)	215(1)-(3) 216(1)-(3)
	(Eng) 177(6) (Fre) 177(6) 177(7) 177(8) 177(9)	186(6) R/Rp with 186(6) R/Rp with 186(7) 186(8) 186(9) 186(10)	217(1) 217(1) 217(2) 218(1) 218(2) 217(3)
178	178(1) 178(2) 178(3)-(5) 178(6)-(8)	187(1) Repealed 187(2)-(4) 187(5)-(7)	219(1) 219(2)-(4) 219(1)-(4)
179	179	188	221
180	180	R/Rp with 189	222
181	181	190	223
182	182	191	224

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
183	183	192	225
		193(1)	226(1)(2)
		193(2)	226(3)
		194	227
184	184	195	228
185	185	196	229
186	186	197	230
187	187	198	231
188	188	199	232
189	189	R/Rp with 200	233
190	190(1)-(3)	R/Rp with 201(1)-(3)	R/Rp with 234(1)-(4)
	190(4)-(6)	R/Rp with 201(4)-(6)	R/Rp with 235(1)-(3)
	190(7)	201(7)	*236(1)
		R/Rp with 201(8)	236(2)
		201(9)(10)	236(3)(4)
	190(8)	R/Rp with 201(11)	*237
191	191(1)	R/Rp with 202(1)	238(1)
	191(2)	R/Rp with 202(2)	238(2)
	191(3)	R/Rp with 202(3)	238(3)
		202(4)	239(1)(2)
		202(5)	239(3)
192	192	R/Rp with 203	240
193	193	R/Rp with 204	241
194	194	R/Rp with 205	242
		206	243
195	195	R/Rp with 207	*244
196	196(1)-(3)	R/Rp with 208(1)-(4)	245(1)-(4)

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
197	197	209	246
198	198	R/Rp with 210	247
199	199(1)(2) 199(3) 199(4)	211(1)(2) R/Rp with 211(3) Repealed	248(1)(2) 248(3) 248(4)
200	200(1) 200(2) 200(3)(4) 200(5) 200(6)	R/Rp with 212(1) R/Rp with 212(2) 212(3)(4) 212(5) R/Rp with 212(6)	249(1) 249(2) 249(3)(4) 250(1)(2) 250(3)
201	201	R/Rp with 213	251
202	202	214(1)-(4) 214(5)-(8) 214(9)	252(1)-(4) 253(1)-(4) 254(1)(2)
203	203	215	255
204	204	216	256
205	205	217	257
206	206	218	258
207	207	219	259
208	208	220	260
209	209(1) 209(2)	R/Rp with 221(1) 221(2)	261(1) 261(2)
210	210	222	262
211	211	223(1) 223(2)-(4) 223(5)(6) 223(7)	263 264 265 266
212	212	R/Rp with 224	NC/NR
213	213	R/Rp with 225	267

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
214	214	R/Rp with 226	268
215	215	227	269
216	216	228	270
	217	229	271
		230	272
		231	273
217	218	R/Rp with 232	274
218	219	233	275
219	220	R/Rp with 234	276
220	221	R/Rp with 235	277
221	222(1)-(3)	R/Rp with 236	278
222	223	R/Rp with 237	279
223	224(1)-(3) 224(4) 224(5)	238(1)-(3) 224(4) R/Rp with 224(5)	280(1)-(3) 281 280(4)
224	225	239	282
225	226	R/Rp with 240	283
226	227	R/Rp with 241	284
227	228	242	285
228	229	243	286
229	230	244	287
230	231	245	288
231	232	246	289
232	233	247	290

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ORIGINAL 1950	REVISED 1952	REVISED 1970	REVISED 1985
CHAPT. 43	CHAPT. 184	CHAPT. N-4	CHAPT. N-5
		248	291
233	234	249	292
234	235	250	293
235	236	R/Rp with 251	294
236	237	R/Rp with 252	295
237	238	R/Rp with 253	296
238	239	R/Rp with 254	297
239	240(1)(a)-(c)	255(1)(a)-(c)	298(1)(a)-(c)
	240(1)(after c)	R/Rp with 255(1)(af c)	298(1)(af c)
	240(2)	255(2)	298(2)
240	241	256	299
241	242	257	300
242	243	258	301
243	244	259	302
244	245	R/Rp with 260	303
245	246	R/Rp with 261	304
246	247	262	305
247	248	R/Rp with 263	306
248	NC/NR		
249, 250	Spent		
251	NC/NR		

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

The National Defence Act

Explanatory Material

This book contains all sections of The National Defence Act (marked by double side lines), quotations from statutes replaced by The National Defence Act and explanatory comments. It is not to be treated as a text but merely as background material assembled for ready reference.

NDHQ,
1 Nov 50

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

THE NATIONAL DEFENCE ACT

Statutes of Canada, 1950,
Chapter 43

(NOTE: Provisions of the new Act are side-lined)

INTERPRETATION

1. This Act may be cited as The National Defence Act.

COMMENTS

The title "National Defence Act" is considered appropriate as all of the existing legislation and proposed new provisions embodied in the Act relate directly to the defence of Canada.

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2. In this Act and in regulations made hereunder, unless the contex t otherwise requires,

(a) "aircraft" means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite;

COMMENTS

"aircraft" is at present defined in the Army Act (UK), as follows:-

"190. (42) The expression "aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying;"

The Air Force Act (UK) contains a similar provision.

The new definition was made more comprehensive because of modern scientific developments. It is based upon definitions contained in the British Standard Glossary of Aeronautical Terms, published by the British Standards Institution.

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2. (b) "aircraft material" means engines, fittings, armament, ammunition, bombs, missiles, gear, instruments and apparatus, used or intended for use in connection with aircraft or the operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or the operation thereof;

COMMENTS

"aircraft material" remains substantially the same as the definition in the Army Act (UK) which reads:

"190. (43) The expression "aircraft material" includes a ny engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any components and accessories of aircraft, and petrol and any other substance used for providing motive power for aircraft, and lubricating oil".

The Air Force Act (UK) contains a similar provision.

- -

2. (c) "Civil court" means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction;

COMMENTS

"civil court" corresponds to the following definition in the Army Act (UK):

"190. (31) The expression "civil court" means, with respect to any crime or offence, a court of orindary criminal jurisdiction, and includes a court of summary jurisdiction:"

The Air Force Act (UK) contains a similar provision.

The words "with respect to any crime or offence" have been omitted because they were regarded as unnecessarily restric tive.

- -

2. (d) "civil custody" means the holding under arrest or in confinement of a person by the police or other competent civil authority, and includes confinement in a penitentiary or a civil prison;

COMMENTS

"civil custody" is substantially the same as the following definition in the Army Act (UK):

"68(2)(c). The expression "civil custody" means the

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custody of the police or other lawful civil authority authorized to retain in custody civil prisoners, and includes confinement in a civil prison:"

Custody may be of two kinds -- "civil custody" or "service custody". For definition of "service custody", see 2.(ee).

- -

2. (e) "Civil prison" means any prison, gaol or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined, and, if sentenced out of Canada, any prison, gaol or other place in which a person,

COMMENTS

"civil prison" is intended to cover prisons but to exclude penitentiaries. Only terms of two years or more are served in a penitentiary and this definition is phrased so as to apply only to institutions where sentences for terms less than two years are served. The following definition is contained in the Army Act (UK):

"68. (2)(f) The expression 'civil prison' means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined, and any prison in a colony in which European offenders so sentenced can for the time being be confined".

- -

2. (f) "Code of Service Discipline" means the provisions of Parts IV,V,VI,VII,VIII and IX;

COMMENTS

"Code of Service Discipline" is adopted as a convenient reference to those Parts of the Act which relate to service offences and the arrest, trial and punishment of offenders.

- -

2. (g) "court martial" includes a General Court Martial, a Disciplinary Court Martial and a Standing Court Martial;

COMMENTS

"court martial" is adopted as a convenient reference to all types of courts martial which may be convened under this Act.

- -

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2. (h) "defence establishment" means any area or structure under the control of the Minister, and the materiel and other things situate in or on any such area or structure;

COMMENTS

"defence establishment" is a new phrase. It is partly derived from the following definition of "naval establishment" contained in the Naval Service Act:

"2(i). 'naval establishment' includes officers' quarters, barracks, dockyards, victualling yards, naval yards, factories, rifle and gun ranges, naval colleges, and all other buildings, works and premises under the control of the Minister, constructed or set apart for the Naval Service".

- -

2. (i) "Department" means the Department of National Defence;

COMMENTS

"Department" is defined in the same terms as in section 2(a) of the Department of National Defence Act and section 2(c) of the Naval Service Act.

- -

2. (j) "Deputy Minister" means the Deputy Minister of National Defence;

COMMENTS

"Deputy Minister" is in the same terms as section 2(b) of the Department of National Defence Act.

- -

2. (k) "detention barrack" means a place designated as such under subsection two of section one hundred and seventy-eight;

COMMENTS

"detention barrack" should be read in conjunction with section 178(2). It is derived from the Army Act (UK):

"68. (2)(e) The expression 'detention barrack' means a building or part of a building set apart as such under this Act, and includes (unless the Secretary of State otherwise directs) an air force detention barrack or air force corrective establishment".

- -

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2. (ℓ) "emergency" means war, invasion, riot or insurrection, real or apprehended;

COMMENTS

"emergency" is defined in the same terms as in section 2(c) of the Militia Act and section 2(c) of the RCAF Act. Section 2(e) of the Naval Service Act defines it similarly with the exception that the word "riot" is omitted.

The word "riot" was omitted from the Naval Service Act definition of "emergency" because the navy has not heretofore been liable to be called out in aid of the civil power. As the navy will have certain responsibilities in respect of aid of the civil power under section 221(3), it is considered that the word "riot" is now appropriate for all three Services as constituting an "emergency".

Attention is directed to Part XI, section 218, which provides for calling out of the Canadian Forces in aid of the civil power in cases where a riot or disturbance of the peace has taken place or is likely to take place. If a riot were of very serious proportions it would also constitute an emergency and under section 32 the Governor in Council could place the necessary troops on active service for the purpose of dealing with the emergency. This latter measure could be in lieu of or in addition to the normal procedure prescribed for action in aid of the civil power.

- -

2. (m) "enemy" includes armed mutineers, armed rebels, armed rioters and pirates;

COMMENTS

"enemy" is defined in the same terms as in section 190(20) of the Army Act (UK) and the Air Force Act (UK). Reference is also made to the following section of the Naval Service Act:

"94. All armed rebels, armed mutineers, and pirates shall be deemed to be enemies within the meaning of this Part".

- -

2. (n) "enrol" means to cause any person to become a member of the Canadian Forces;

COMMENTS

"enrol" is a commonly used expression not formerly defined. For service convenience it was thought desirable to adopt a generic term to cover appointment, enlistment and engagement. It should be read in conjunction with section 21.

- -

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2. (o) "His Majesty's Canadian Ship" means any vessel of the Royal Canadian Navy commissioned as a vessel of war;

COMMENTS

"His Majesty's Canadian Ship" is new. It was derived from King's Regulations for the navy.

- -

2. (p) "His Majesty's Forces" means the naval, army and air forces of His Majesty wheresoever raised, and includes the Canadian Forces;

COMMENTS

"His Majesty's Forces" is new. The new definition is necessary for this Act. Compare with the following definitions in the Army Act (UK):

"190. (7A) The expressions 'the forces' and 'His Majesty's forces' do not include 'His Majesty's Dominion Forces'".

- -

2. (q) "man" 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 Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;

COMMENTS

"man" was derived from the following definitions:

Militia Act:-

"2. (e) 'man includes a warrant officer and non-commissioned officer as well as a private".

Naval Service Act:-

"2. (g) 'man' means a person in the Naval Forces holding a rating of or below chief petty officer".

RCAF Act:-

"2. (b) 'airman' means a person who is liable under this Act or the regulations to perform air force duty otherwise than as an officer".

Army Act (UK):-

"190. (6) The expression 'soldier' does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer and a non-commissioned officer, and every person subject to military law during the time that he is so subject".

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The word "airman" is defined in identical terms in section 190(6) of the Air Force Act (UK).

- -

2. (r) "materiel" means all movable public property other than money, provided for the Canadian Forces or the Defence Research Board or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;

COMMENTS

"materiel" is a commonly used term not formerly defined.

- -

2. (s) "military" shall be construed as relating to all or any of the Services of the Canadian Forces;

COMMENTS

For the purposes of the Act, it was considered desirable to define the word "military" as relating to any matter or thing pertaining to the navy, army and air force, singly or collectively.

The Department of Justice has ruled that the word "military" has in the legal sense a much broader meaning than is popularly ascribed to it so that there is precedent in Canada for the word as here defined. The word "military" in the United States is given a broad meaning encompassing all three Services.

- -

2. (t) "Minister" means the Minister of National Defence;

COMMENTS

This definition should be compared with the following in the Department of National Defence Act:

> "2. (c) 'Minister' means the Minister of National Defence, unless under the provisions of this Act one or more additional Ministers of National Defence have been appointed, in which case 'Minister' in this or any other Act relating to the military, naval and air services, means the Minister of National Defence or one of the additional Ministers of National Defence acting as in this Act provided".

The new definition, in the opinion of the Department of Justice, is all that is legally necessary notwithstanding the provision for additional Ministers in section 6.

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2. (u) "mutiny" means collective insubordination or a combination of two or more persons in the resistance of lawful naval, army or air force authority in any of His Majesty's Forces or in any forces co-operating therewith;

COMMENTS

The term "mutiny" does not appear to have been previously defined in a statute. The definition has been drafted to include a mutiny in any forces co-operating with His Majesty's Forces so that, under the offence sections 70, 71 and 72, persons subject to the Code of Service Discipline could be dealt with for joining in mutinies occuring in any of His Majesty's forces or in any allied forces.

- -

2. (v) "non-public property" means,
(i) all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces;
(ii) all money and property contributed to or by officers, men, units or other elements of the Canadian Forces for the collective benefit and welfare of such officers, men, units or other elements;
(iii) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under sub-section five of sectin thirty-nine; and
(iv) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in sub-paragraphs (i), (ii) and (iii);

COMMENTS

"non-public property" is new. It defines that type of property which is not held for the benefit of the Crown or any individual, but rather for the benefit of officers and men collectively. The proposed definition should be read in conjunction with section 39 which contains provisions relating to the management of non-public property.

- -

2. (w) "officer" means,
(i) a person who holds His Majesty's commission in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
(ii) a subordinate officer in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force; or

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(iii) any person who pursuant to law is attached or seconded as an officer to the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;

COMMENTS

"officer" is derived from the following definitions:

Naval Service Act:-

"2. (1) 'officer' includes commissioned, warrant and subordinate officers serving in the Naval Service of Canada, but not chief petty and petty officers so serving".

RCAF Act:-

"2. (e) 'officer' means a person commissioned by His Majesty as an officer in the air force and includes a person commissioned by His Majesty in any other of His Majesty's forces who, by virtue of this Act or the regulations, is entitled to exercise the functions of an officer of the air force".

Army Act (UK):-

"190. (4) The expression 'officer' means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof and includes also --

(a) a person who, by virtue of his commission, is appointed to any department, or corps of His Majesty's forces, or of any arm, branch, or part thereof;
(b) a person, whether retired or not, who by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof;
(c) any officer of His Majesty's naval or air forces who is for the time being subject to military law; and
(d) any officer of a Dominion force who is for the time being subject to military law:

Officers holding honorary commissions are officers within the meaning of this Act".

The Air Force Act (UK) contains a similar provision.

It will be noted that the proposed definition will provide for "subordinate officers" in the army and air force. The air force has already appointed subordinate officers in the rank of "flight cadet". The provision for subordinate officers in the new statute will provide a convenient framework for further development along these lines. In the navy, acting sub-lieutenants and midshipmen are "subordinate officers".

- -

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2. (x) "penitentiary" means a penitentiary established under the Penitentiary Act, 1939, and includes, in respect of any punishment of imprisonment for two years or more imposed out of Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for two years or more by a civil court having jurisdiction in the place where the sentence is imposed, can for the time being be confined; and if in any such place out of Canada there is no prison or place for the confinement of persons sentenced to imprisonment for two years or more, then in that case "penitentiary" means a civil prison;

COMMENTS

"penitentiary" is new. It does not include civil prisons defined in (e) above but relates solely to penitentiaries as defined in the Penitentiary Act.

- -

2. (y) "personal equipment" means all materiel issued to an officer or man for his personal wear or other personal use;

COMMENTS

"personal equipment" is new. The expression occurs in various offence sections and therefore requires definition.

- -

2. (z) "possession" by any person, for the purpose of the Code of Service Discipline and Part XII, includes,
(i) having in his own personal possession;
(ii) knowingly having in the actual possession or custody of any other person; or
(iii) knowingly having in any place, whether belonging to or occupied by himself or not, for the use or benefit of himself or any other person;

COMMENTS

"possession" is new in military statutes. The definition is derived from the Criminal Code:

5(1)(b) "In this Act, unless the context otherwise requires,

(b) having in one's possession includes not only having in one's own personal possession, but also knowingly,

(i) having in the actual possession or custody of any other person, and
(ii) having in any place, whether belonging to or occupied by one's self or not, for the use or benefit of one's self or of any other person".

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The term appears in several of the offence sections and it was considered desirable to define it.

- -

2. (aa) "public property" means all money and property of His Majesty in right of Canada;

COMMENTS

"public property" is new. It appears in several substantive sections and therefore requires definition. This should be read in conjunction with the definition of "non-public property" and the comments to section 39.

- -

2. (bb) "regulations" means regulations made under this Act;

COMMENTS

This was based on:

Militia Act:-

"2. (j) 'regulations' means regulations made by the Governor in Council or the Minister under this Act;"

RCAF Act:-

"2. (i) "regulation" means a regulation made by the Governor in Council under the authority of this Act;"

Reference is made to section 13 which gives power to the Governor in Council and the Minister to make regulations.

- -

2. (cc) "release" means the termination of the service of an officer or man in any manner whatsoever;

COMMENTS

"release" is new. For service convenience, it was thought desirable to adopt a gene ric term for all forms of severance of personnel from the Services, whether by sentence of court martial or administrative action.

- -

2. (dd) "service convict" means a person who is under a sentence that includes a punishment of imprisonment for two years or more imposed upon him pursuant to the Code of Service Discipline.

COMMENTS

"service convict" is new. It denotes a person sentenced to a term of imprisonment for two years or more which

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normally must be served in a penitentiary. See also (ff) and (ii), defining "service detainee" and "service prisoner". It is derived from "military convict" which is defined in the Army Act (UK) as follows:

> "68. (2)(a) The expression 'military convict' means a person under sentence of penal servitude passed by a court martial".

2. (ee) "service custody" means the holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barrack;

COMMENTS

"service custody" was based on:

Army Act (UK):-

"45. (2) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement".

Air Force Act (UK):-

> "45. (2) Air force custody means the putting the offender under arrest or the putting him in confinement and includes naval and military custody".

Custody may be of two kinds -- "service custody" or "civil custody". For definition of "civil custody" see section 2(d).

- -

2. (ff) "service detainee" means a person who is under a sentence that includes a punishment of detention imposed upon him pursuant to the Code of Service Discipline;

COMMENTS

"service detainee" is new. It denotes a person sentenced to a term of detention which must be served in a detention barrack or other service custody but not in a penitentiary, civil prison or service prison.

- -

2. (gg) "service offence" means an offence under this Act, the Criminal Code, or any other Act of the Parliament of Canada, committed by a person while subject to the Code of Service Discipline;

COMMENTS

"service offence" is new. It was inserted for convenience of reference.

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2. (hh) "service prison" means a place designated as such under subsection two of section one hundred and seventy-eight;

COMMENTS

"service prison" is new and should be read in conjunction with section 178(2) which provides for the designation of service prisons and detention barracks by the Minister.

- -

2. (ii) "service prisoner" means a person who is under a sentence that includes a punishment of imprisonment for less than two years imposed upon him pursuant to the Code of Service Discipline;

COMMENTS

"service prisoner" is new. It denotes a person sentenced to a term of imprisonment for less than two years which is normally served in a civil prison, but may also be served in a service prison or detention barrack.

- -

2. (jj) "service tribunal" means a court martial or a person presiding at a summary trial;

COMMENTS

"service tribunal" was adopted as a convenient reference to all types of trials, whether by way of court martial or summary trial, which may be held under the Code of Service Discipline.

- -

2. (kk) "summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section one hundred and thirty-six and a trial by a superior commander pursuant to section one hundred and thirty-seven;

COMMENTS

"summary trial" is adopted as a convenient reference to the two types of summary trials (i.e. all service trials other than trials by court martial) that may be held under the Code of Service Discipline.

- -

2. (ll) "superior officer" means any officer or man who, in relation to any other officer or man, is by this Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man;

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COMMENTS

"superior officer" occurs, for example, in the offence clauses relating to insubordintion and disobedience of orders (sections 74, 75 and 76) and therefore requires definition. The definition in the Army Act (UK) reads:

> "190. (7) The expression 'superior officer', when used in relation to a soldier, includes a warrant officer, and also includes a non-commissioned officer as above defined".

The Air Force Act (UK) contains a similar provision in relation to airmen.

The new definition contains a broader indication of who is a superior officer.

- -

> 2. (mm) "unit" means an individual body of the Canadian Forces that is organized as such pursuant to section eighteen, with the personnel and materiel thereof.

COMMENTS

"unit", according to the custom and practice of the Services, generally means a ship or shore establishment in the case of the navy, a battalion or regiment in the case of the army and a squadron in the case of the air force, but this is by no means a complete list of the various elements of the Services which are categorized as "units". Many types of functional bodies such as radar units, signal stations, topographical survey bodies, etc., are designated as units. This term is essential for operational, administrative and disciplinary purposes. It is derived from the following:

Militia Act:-

> "2. (k) 'unit' means a military body organized on a separate establishment as an individual military organization and which has been named as a unit of the Canadian Army".

Royal Canadian Air Force Act:-

> "2. (j) 'unit' means any body of the air force constituted for the purpose of administration or command and to which officers or airmen may be attached for duty".

Reference is made to section 18 which provides for the creation and embodiment of units.

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PART I

Part I provides for the organization of the Department of National Defence. The general functions of the Minister are prescribed and provision is made for the appointment of additional or Associate Ministers in an emergency. The appointment of a Deputy Minister, Associate Deputy Minister, civilian staff and a Judge Advocate General is authorized. The Governor in Council and the Minister are empowered under section 13 to make regulations in respect of the Canadian Forces and other subjects related to the defence of Canada.

> 3. There shall be a department of the Government of Canada which shall be called the Department of National Defence, over which the Minister of National Defence for the time being appointed by the Governor General by commission under the Great Seal shall preside.

COMMENTS

There is no substantial change from the following section of the Department of National Defence Act:

> "3. There shall be a Department of the Government of Canada which shall be called the Department of National Defence, over which a minister of the Crown shall preside, who shall be the Minister of National Defence".

The changes in terminology in the new section were adopted on the advice of the Department of Justice as being in conformity with present practice in statutes creating Departments.

- -

> 4. The Minister shall have the control and management of the Canadian Forces, the Defence Research Board and of all matters relating to national defence including preparation for civil defence against enemy action, and shall be responsible for the construction and maintenance of all defence establishments and works for the defence of Canada.

COMMENTS

This section is based on:

Department of National Defence Act:

> "4. The Minister shall be charged with all matters relating to defence, including the Militia, the Military, Naval and Air Services of Canada".

Militia Act:

> "6. The Minister shall have the control and management including charge of the maintenance and repair, of all military buildings, and also of the construction, maintenance and repair of all forts and fortifications and other works for defence in Canada".

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Naval Service Act:

"5. The Minister shall have the control and management of the Naval Service and of all matters appertaining thereto".

This section delineates the matters coming within the purview of the Department of National Defence. It describes that portion of the government's business which falls to the Department. In the opinion of the Department of Justice the effect of this section is:

A. The Minister has the control and management of the Canadian Forces and the Defence Research Board, i.e., he can issue appropriate orders and instructions to those organizations.

B. Defence property, which otherwise would come under the overall control of the Minister of Public Works or some other minister, is under the overall control of the Minister of National Defence.

C. In respect of any other matters pertaining to national defence or preparation for civil defence against enemy action, the section has two effects:

(1) it establishes that the Minister of National Defence is the responsible Minister of the Dominion Government to exercise executive authority in respect of those matters, in so far as provision is made for the exercise of that authority in other sections of this Act, other legislation or in regulations; and

(2) it makes it clear that the Minister of National Defence is the appropriate Minister of the Crown to take such action, in relation to those matters, as would come under the inherent executive power of the Government in relation to its internal management.

It will be realized however, that any authority which the Minister might wish to exercise in respect of national defence, including civil defence, would be subject to constitutional limitations.

At the present time, it is considered that the only matters over which the Minister has authority in respect of civil defence are matters in the field of the inherent executive power of Government, e.g., appointment of a civil defence co-ordinator, planning for civil defence with the provinces on a voluntary basis, etc.

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5. The Governor in Council, upon the recommendation of the Minister, may from time to time designate any other person in addition to the Minister to exercise any power or perform any duty or function that is vested in or that may be exercised or performed by the Minister under this Act.

COMMENTS

This is new. The purpose is to enable the Governor in Council to authorize the Minister to have certain of his routine duties carried out by other authorities; for example, the Parliamentary Assistants.

- -

6. (1) The Governor General may, during an emergency, by commission under the Great Seal appoint

(a) not more than three additional Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be prescribed by the Governor in Council; or

(b) not more than three Associate Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be assigned to him by the Governor in Council or the Minister.

(2) Each additional or Associate Minister appointed under this section may be continued in office for not more than six months after the termination of the emergency during which he is appointed.

COMMENTS

Sub-section (1) covers the possibility that it may be found necessary in an emergency to appoint additional or Associate Ministers. Under (1)(a) there could be as many as four Ministers, each having specific powers and all having equal status. The alternative, set out in (1)(b), envisages one minister in a paramount position and a maximum of three associates with such powers as he may assign to them. It will be observed that any appointment made under this section would be of a temporary nature only, as sub-section (2) provides that any additional minister or associate minister may continue in office for not more than six months after the termination of the emergency.

This section should be compared with the following provision in the Department of National Defence Act:

"4A. (1) When such a proclamation as is first mentioned in section two of the War Measures Act has been issued under the said section, additional Ministers of National Defence may be appointed as follows:

(a) an Associate Minister of National Defence;

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(b) a Minister or National Defence for Naval Services; and

(c) a Minister of National Defence for Air.

(2) During the tenure of office of any such additional Minister of National Defence the powers exercisable by him shall be as follows:

(a) an Associate Minister of National Defence shall, unless the Governor in Council otherwise directs, be entitled to exercise all the powers of the Minister of National Defence, including those defined by this Act;

(b) a Minister of National Defence for Naval Services shall be entitled to exercise all the powers of the Minister of National Defence in respect of any matter relating exclusively to the naval services;

(c) a Minister of National Defence for Air shall be entitled to exercise all the powers of the Minister of National Defence in respect of any matter relating exclusively to the air service.

(3) In respect of any matter affecting both the naval service and any other service, the powers of the Minister of National Defence shall be exercisable by him in consultation with the Minister of National Defence for Naval Services, if any, and in respect of any matter affecting both the air service and any other service, such powers shall be exercisable by the Minister of National Defence in consultation with the Minister of National Defence for Air, if any.

(4) In order to ensure the co-ordination of the defence services and the continuity of the administration of the Department, and subject to such direction as may be given by the Governor in Council, all the powers of the Minister of National Defence for Naval Services or of the Minister of National Defence for Air shall, in the absence of such Minister, be exercisable by the Minister of National Defence, and all the powers of the Minister of National Defence shall in the absence both of such Minister and of the Associate Minister of National Defence be exercisable by the Minister of National Defence for Naval Services, and in theabsence also of the Minister of National Defence for Naval Services shall be exercisable by the Minister of National Defence for Air.

(5) Any additional Minister of National Defence appointed under this section shall be entitled to receive the same salary as the Minister of National Defence and may continue to hold office until the expiration of a period not exceeding six months after the issue of the second of the two proclamations specified in section two of the War Measures Act".

It was considered that the provision quoted above is too restrictive in its terms and that the new section provides the element of flexibility necessary to meet the unpredictable requirements of an emergency.

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7. (1) There shall be a Deputy Minister of National Defence who shall be appointed by the Governor in Council.

(2) Where one or more additional Ministers or Associate Ministers are appointed under section six, the Governor in Council may appoint an additional Deputy Minister for each such additional Minister or Associate Minister.

COMMENTS

Sub-section (1) is identical with section 5(1) of the Department of National Defence Act. Sub-section (2) is new.

- -

8. (1) The Governor in Council may appoint not more than three persons to be Associate Deputy Ministers of National Defence.

(2) During an emergency, the Governor in Council may appoint additional Associate Deputy Ministers.

(3) Each Associate Deputy Minister shall have the rank and status of a deputy head of a department and as such shall, under the direction of the Minister and of the Deputy Minister, perform such duties and exercise such authority as deputy of the Minister and otherwise, as may be assigned to him by the Minister.

COMMENTS

Sub-sections (1) and (3) are similar to section 5(2) and (3) of the Department of National Defence Act. Sub-section (2) is new.

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9. Such officers, clerks and employees as are necessary for carrying on the business of the Department may be appointed in the manner authorized by law.

COMMENTS

This is identical with section 5(4) of the Department of National Defence Act.

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10. (1) The Governor in Council may appoint a barrister or advocate of not less than ten years standing to be the Judge Advocate General of the Canadian Forces.

(2) The powers, duties and functions of the Judge Advocate General may be exercised by such other person as the Minister may authorize to act for the Judge Advocate General for that purpose.

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COMMENTS

This is new. Heretofore the duties with which the Judge Advocate General was charged were dealt with by regulations.

Under this Act, in addition to the duties specified in regulations, the Judge Advocate General will have the following statutory duties.

SECTION	SUBJECT
155	-- Appointment of commissioners to take evidence.
188(3)	-- Receiving Statements of Appeal.
189(2) and (3)	-- Preliminary disposition of appeals respecting legaility.
197	-- Review of courts martial proceedings.
198	-- Certification of illegality upon review.
199(3)	-- Receiving petitions for new trials.
240(2)	-- Certification of desertion in cases of civil prosecution for harbouring.

In view of the above statutory functions, it was considered that provision for the appointment of a Judge Advocate General should be specifically made in the Act.

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11. (1) The Governor in Council may authorize the Minister to deliver to any department or agency of the Government of Canada any materiel that has not been declared surplus and that is not immediately required for the use of the Canadian Forces or the Defence Research Board or for any other purpose under this Act, for sale to such countries on such terms as the Governor in Council may determine.

(2) The proceeds of a sale of materiel delivered under subsection one shall be paid into a special account in the Consolidated Revenue Fund and, subject to the approval of the Governor in Council, shall be used for the procurement of materiel; and payments out of the special account shall be made by the Minister of Finance on the requisition of the Minister.

(3) The Minister shall within three months after the termination of each fiscal year prepare a statement of the moneys received and disbursed under this section during that year, indicating the balance, if any, remaining at the end of that year in the special account mentioned in sub-section two.

(4) The Minister shall forthwith lay the statement mentioned in subsection three before Parliament or, if Parliament is not then in

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session, within fifteen days after the commencement of the next ensuing session thereof.

COMMENTS

This section is new. It provides for the disposal of stores and equipment held in reserve and not immediately required. The nature of the type of transaction contemplated is indicated by the following example.

Some time ago Canadian Commercial Corporation was awarded a contract by the U. S. Government covering the sale to the latter of quantities of uniforms of types in use in the Canadian Army and Royal Canadian Air Force. The U. S. Government advised that the clothing was urgently required for delivery to the Government of Greece. It was not possible to obtain all the clothing through Canadian manufacturers in time to meet U. S. requirements. It was found that clothing which could not immediately be obtained from Canadian manufacturers was available in reserve stocks of the Canadian Army and the Royal Canadian Air Force and that this could be spared for the relatively short period which would elapse before replacement could be effected from Canadian manufacturers. Accordingly, Order in Council PC 1887 of April, 1948, was passed authorizing Canadian Commercial Corporation to procure the requisite uniforms from the Department of National Defence on condition that the clothing be replaced with new-style battle dress in accordance with specifications to be provided by the Department to the amount of funds derived by Canadian Commercial Corporation from the sale to the U. S. Government. The transaction was completed accordingly.

Some of the direct benefits derived from transactions of this kind are the following:

A. Canada would be able to obtain United States funds through contracts which, were arrangements of this type not made, could not be secured.

B. The armed forces would be able to dispose of equipment in reserve and receive by way of replacement new equipment up-to-date in pattern.

C. The fact that replacement stores would be in process in the manufacturers' hands would make possible certain economies in the use of storage space.

D. Canadian manufacturers would be awarded contracts for new equipment thereby enabling them to keep "tooled up" for military production.

While the transaction described above unquestionably lay within the powers of the Canadian Government, certain technical difficulties arose in respect of the financial implications. It was suggested that the proceeds of the sale to the United States would fall into the Consolidated Revenue Fund and that, before replacement of the equipment could be arranged, another Parliamentary

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appropriation would have to be obtained by the Department of National Defence. If this result had followed, it would have caused considerable delay in the re-procurement of essential stores.

This section is designed to provide specific authority for types of transactions that are in all respects desirable, and to cure the technical difficulty mentioned above.

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12. (1) Every discovery, invention or improvement in any art, process, apparatus, machine, manufacture or composition of matter made
(a) by an officer or man acting within the scope of his duties or employment;
(b) by an officer, servant, clerk or employee of the Department or of the Defence Research Board acting within the scope of his duties or employment; or
(c) as a result of or in the course of research conducted by any person under a grant in aid furnished with the approval of the Minister in connection with that research,
and all rights with respect thereto are vested in His Majesty.

(2) Notwithstanding subsection one, the Minister, on behalf of His Majesty, may authorize agreements to be made with any person mentioned in paragraph (c) of that subsection whereby that person shall have and enjoy, exclusively or with limitations, any rights accruing to or that may accrue to or be vested in His Majesty in respect of the matters mentioned in that subsection.

(3) The Minister may, in any particular case, abandon any or all of the rights of His Majesty under subsections one and two upon such terms and conditions as the Minister may determine.

(4) Subject to regulations made by the Governor in Council and notwithstanding the Civil Service Act, the Minister may authorize payment of such bonuses or gratuities as in his opinion may be warranted to any person mentioned in subsection one who has made a discovery, invention or improvement that by virtue of this section is vested in His Majesty.

COMMENTS

This is new. Its primary purpose is to define clearly and unequivocally the entitlement of the Crown to a vested right in any inventions produced by Service or other personnel acting within the scope of duties or employment, or arising from research sponsored by the Crown. This section resulted from an opinion by the Department of Justice that a "member of the Forces" who invents an instrument or munition of war in the course of his duties might not be considered to be "an officer, servant or em-

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ployee of the Crown" as that expression is used in Section 19A of the Patent Act and thus would not be required to make a compulsory assignment to the Crown. Section 19A(1) and (2) of the Patent Act reads:

> "19A. (1) Any officer, servant or employee of the Crown or of a corporation which is an agent or servant of the Crown, who, acting within the scope of his duties and employment as such, invents any invention in instruments or munitions of war, shall, if so required by the Minister of National Defence, assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obta ined or to be obtained for the invention; and any other person who invents any such invention may so assign to such minister on behalf of His Majesty all the benefits of the invention and of any patent obtained or to be obtained for the invention.
>
> (2) An inventor, other than an officer, servant or employee of the Crown or of a corporation which is an agent or servant of the Crown, acting within the scope of his duties and employment as such, shall be entitled to compensation for an assignment to the Minister of National Defence under this Act. In the event that the consideration to be paid for such assignment is not agreed upon it shall be the duty of the Commissioner to determine the amount of such consideration, provided that his decision shall be subject to appeal to the Exchequer Court. Proceedings before the Exchequer Court under this subsection shall be held in camera upon the request made to the court by any party to the proceedings".

Section 12 should be compared with the following section of the National Research Council Act as amended in 1950:

> "11. (1) Every discovery, invention or improvement in any art, process, apparatus, machine, manufacture or composition of matter made by a member or any number of members of the scientific and technical staff of the Council or a company and all rights with respect thereto are vested in the Council.
>
> (2) The Council, with the approval of the Governor in Council, may pay to its scientific and technical officers and to others working under its auspices who have made any valuable discovery, invention or improvement in any art, process, apparatus, machine, manufacture or composition or matter, such bonuses or royalties as in its opinion may be warranted."

Section 12 embodies the appraoch contained in section 11 of the National Research Council Act above quoted rather tnan that contemplated by section 19A of the Patent Act. Both Acts accomplish the same result but it appears that section 19A of the Patent Act is somewhat unrealistic in that the Crown requires the assignment to it of a patent which in the first instance was granted by the Crown.

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Section 12 does not deal with a member of the Forces or a civilian employed by the Crown who, acting otherwise than in the scope of his employment, produces an invention of military value. In such cases, the provisions of section 19A of the Patent Act apply and the inventor is entitled to compensation which, if not mutually agreed upon, would be determined by the Exchequer Court.

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13. (1) The Governor in Council may make regulations not inconsistent with this Act for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

(2) Subject to section fourteen, the Minister may make regulations, not inconsistent with this Act or regulations made by the Governor in Council, for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

COMMENTS

Section 13 is the only section in the Act which authorizes the making of regulations. This follows the principle embodied in the Royal Canadian Air Force Act, 1940, where all of the regulation-making power is found in one section, which reads:

> "16. (1) The Governor in Council may make regulations not inconsistent with the provisions of this Act relating to
>
> (a) the organization, discipline, training and good government of the air force;
> (b) the pay and allowances of officers and airmen;
> (c) air force works, equipment and supplies and the custody, supervision, use and issue thereof;
> (d) the provision of the transport of officers and airmen and the compensation payable therefor;
> (e) the ascertainment of the compensation payable for damage suffered by members of the public by reason of air force training or by reason of the entering upon, taking or destruction or property in an emergency; and
> (f) the organization, maintenance, training, administration and efficiency of Royal Canadian Air Cadet Squadrons and the pay and allowances of instructors and members thereof".

In the Militia Act, regulation-making powers are set out in a general section and also, in the case of numerous subjects, in other sections which relate to those subjects. The same approach was employed in the Naval Service Act, 1944. It is considered that such an approach is not conducive to the orderly making of regulations, the authority in

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respect of some matters being found in two places - in the general section and in another section relating specifically to the matter involved. A further objection is that the intended effect of the general regulation-making section in the Militia Act and The Naval Service Act, 1944, may, from the legal standpoint, be said to be impaired by the inclusion elsewhere in the Act of authority to make regulations in respect of specific matters that might also be said to fall within the ambit of the general regulation-making section. For these reasons it was considered advisable to provide for these powers in one section only.

"Regulations" are mentioned in many sections throughout the Act but it is not intended that such sections should in themselves confer regulation-making power. Mention of "regulations" in all sections other than 13 is intended to be a reference to regulations made under the authority of section 13.

In addition to Section 16(1) of the Royal Canadian Air Force Act, quoted above, section 13 should be compared with:

Department of National Defence Act:-

"6. The Governor in Council may make such orders and regulations as are deemed necessary or advisable for the proper and efficient administration and organization of the Department."

Militia Act:-

"14. The organization of the Canadian Army shall be as from time to time prescribed by the Governor in Council."

"139. The Governor in Council may make regulations for carrying this Act into effect, for the organization, discipline, efficiency and good government generally of the Canadian Army, and for anything requiring to be done in connection with the military defence of Canada.

Provided that the Governor in Council may empower the Minister to make regulations in respect of any matter relating to the organization, discipline and efficiency of the Canadian Army for which specific provision is not made elsewhere in this Act."

Naval Service Act:-

"38. Except where by this Act the Governor in Council is empowered to make regulations, the Minister may make regulations for carrying out this Act, and for the organization, training, discipline, efficiency, administration, and good government generally of the Naval Service."

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14. Where in any section of this Act, other than section thirteen and this section, there is express reference to regulations made or prescribed by the Governor in Council in respect of any matter, the Minister shall not have power to make regulations pertaining to that matter.

COMMENTS

Under section 13, the Governor in Council has authority to make regulations in respect of all matters capable of being dealt with in regulations. The Minister may also make regulations in the same field but, by virtue of section 14, not in relation to subjects which in specific sections are reserved for the Governor in Council alone. For example, section 22, which provides for the respective ranks of officers and men of the Forces, refers to "regulations made by the Governor in Council". The effect of this is that only the Governor in Council may make regulations in this field; the Minister cannot do so.

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PART II

Part II constitutes the naval, army and air forces of Canada as the "Canadian Forces" and provides for their organization and administration. The provisions of the Militia Act, The Naval Service Act, 1944, and the Royal Canadian Air Force Act have been adapted for that purpose.

15. The Canadian Forces are the naval, army and air forces of His Majesty raised by Canada and consist of three Services, namely, the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force.

COMMENTS

This section is new.

It is to be noted that the subject-matter of this section and of section 16 and 17 fall under the heading of "constitution".

The concept of "constitution" is to be distinguished from that of "organization". To "constitute" is to make a thing what it is, or should be; to "organize" relates to greater detail in the structure of that thing. (Derived from Oxford Dictionary). It may be taken that the distinction between "constitute" and "organize" is that the former is more fundamental in its meaning.

The division of the Canadian Forces into three Services and each Service into regular forces, reserve forces and active service forces is a matter of "constitution". On the other hand, the detailed structure of each of the three Services within its constituent elements is a matter of "organization". This is provided for as follows:

(1) by the creation of units with the authority of the Minister (section 18);

(2) by the substantive provision for chiefs of staff who exercise, under the direction of the Minister, control and administration of their respective Services (section 19);

(3) by prescription of powers of command (section 20);

(4) by the provision for enrolment (section 21);

(5) by provision for pay and allowances (section 36);

(6) by provision for equipment under ministerial or other authority (section 37); and

(7) finally by authority over "organization" given to the Governor in Council and the Minister by section 13(1) and (2).

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An example of the type of matter falling under "organization" as distinguished from "constitution" would be the designation of commands, either geographical or functional, or partly both. Likewise the sub-divisions of the reserves of the several Services into active and non-active groups is purely organizational.

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16. (1) There shall be a component of each Service of the Canadian Forces consisting of officers and men who are enrolled for continuing, full-time military service; and those components are referred to in this Act as the regular forces.

(2) The maximum numbers of officers and men in the regular forces shall be as from time to time authorized by the Governor in Council, and the regular forces shall include such units and other elements as are embodied therein.

(3) There shall be components of each Service of the Canadian Forces consisting of officers and men who are enrolled for other than continuing, full-time military service when not on active service; and those components are referred to in this Act as the reserve forces.

(4) The maximum numbers of officers and men in the reserve forces shall be as from time to time authorized by the Governor in Council, and the reserve forces shall include such units and other elements as are embodied therein.

(5) In an emergency or if considered desirable in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada, the Governor in Council may establish and authorize the maintenance of components of the Services of the Canadian Forces, referred to in this Act as the active service forces, consisting of

(a) officers and men of the regular forces and the reserve forces who are placed in the active service forces under conditions prescribed in regulations; and

(b) officers and men, not of the regular forces or the reserve forces, who are enrolled in the active service forces for continuing, full-time military service.

(6) The maximum numbers of officers and men in the active service forces shall be as from time to time authorized by the Governor in Council, and the active service forces shall include such units and other elements as are embodied therein.

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COMMENTS

This section has two objects. The first is the division of each Service of the Canadian Forces into two components, with the possible addition of a third component, the "active service forces". The second object is the authorization of maximum numbers of officers and men for each of the three components. For convenience, the two objects are dealt with separately hereunder.

1. CONSTITUTION OF REGULAR FORCES, RESERVE FORCES AND ACTIVE SERVICE FORCES:-

In the case of the navy, the authority for subdivision into components has been found in the following sections of the Naval Service Act:

> "8. The Governor in Council may organize and maintain a permanent naval force".
>
> "21. The Governor in Council may organize and maintain a naval volunteer reserve".
>
> "23. The naval volunteer reserve shall comprise one force or more, as the Governor in Council may from time to time prescribe".

The above provisions of The Naval Service Act, have no counterpart in army or air force legislation, although many provisions of the Militia Act and of the Royal Canadian Air Force Act imply that separate components exist. Those components have been provided for in regulations for the army and air force respectively.

Subsection (5) of section 16, which provides a component known as the active service forces, is new.

It is designed to make it possible for a single force to be created for each Service in an emergency or in support of Canada's international obligations. That force may consist of all or any personnel on active service, i.e., members of the regular forces and the reserve forces who are placed on active service and those persons who enlist for the hostilities only.

Members of the regular forces and reserve forces who are placed in the active service forces will not lose their original status and, at the same time, the persons who enrol for the hostilities will not acquire any status in either the regular forces or the reserve forces.

In addition to the advantages outlined above, the structure of this component would greatly facilitate the whole process of demobilization in that the three categories of its members could be returned promptly to their original status, i.e., that of members of the regular or reserve forces or civilians.

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Sub-division of Components

The proposal, embodied in section 16, to effect the sub-division of each Service into three components, the regular forces, the reserve forces and the active service forces is an adequate framework in so far as legislative authority is concerned. Any further sub-division within each component is a matter of organization under section 13. Action can be taken by way of regulation in conformity with the special requirements of each Service in the light of changing conditions. It will be noted, however, that while provision is made for only one regular force component and one active service force component in each Service, there may be more than one reserve force component in a particular Service.

2. MAXIMUM NUMBERS OF OFFICERS AND MEN:

The provision for the Governor in Council to fix ceilings of numbers of officers and men contained in section 16 should be compared with the following amendment to the Militia Act passed by Parliament in 1947:

> "22. (1) There shall continue to be a portion of the Canadian Army on continuous full-time military service which shall be called the Active Force and which shall consist of such officers and men voluntarily enrolled for continuous full-time service, not exceeding thirty thousand, as are from time to time authorized by the Governor in Council".

The ceiling of 30,000 referred to in the above provision is not applicable to the reserve forces of the army.

There has been no statutory ceiling of any kind applicable to the navy or air force.

In view of present world conditions, it was considered most inadvisable that Parliament should place a ceiling on the regular forces of the three Services. In the forseeable future the defence of Canada may require that part or all of the forces be capable of expansion at a moment's notice and as secretly as possible. These essential elements of flexibility and secrecy would be lost to a large extent if a ceiling had been placed by Parliament on any one of the Services or on the regular forces as a whole.

It will also be realized that an expansion of the reserves might need to be preceded by a substantial increase in the regular forces, which would be responsible for their training. The need for such an expansion might require immediate action, not necessarily involving active freedom of action of the Government by a statutory provision not capable of rapid amendment.

Another objection to the fixing by Parliament of a maximum figure would be that any such figure, if it is to take into account all possible expansion requirements, would have to be so large as to be completely unrealistic and misleading.

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17. (1) Subject to this Act, the Naval Service, including the Naval Forces, and the Canadian Army and the Royal Canadian Air Force shall continue as constituted immediately prior to the coming into force of this Part.

(2) On and after the coming into force of this Part, the Naval Service, including the Naval Forces, shall be designated as the Royal Canadian Navy.

COMMENTS

Sub-section (1) is new and was designed to ensure that, subject to the provisions of the Act, the Services will remain as previously constituted, thereby avoiding any break in their continuity.

Sub-section (1) might be compared with the following section of the Militia Act:

> "16. Every unit, duly authorized previously to, and existing on, the first day of January, in the year one thousand nine hundred and forty-seven, including the officers commissioned thereto, shall, for the purposes of this Act, be held to be existing, and shall be continued as such, subject to the provisions of this Act".

Sub-section (2) is new and authorizes a change in the name of the Naval Forces. "Royal Canadian Navy", which has referred only to the regular or permanent force, will, under the Act, be the general term indicating all components of the Naval Forces.

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18. (1) The Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall consist of such units and other elements as are from time to time organized by or under the authority of the Minister.

(2) A unit or other element organized under subsection one shall from time to time be embodied in such component of the Service of which it forms a part as the Minister may direct.

COMMENTS

This should be read in conjunction with the definition of "unit" in section 2(mm).

It was derived from the following provision of the Militia Act:

> "20 (2). Subject to the provisions of subsection one of this section
>
> (a) the Canadian Army shall consist of such units as are from time to time named by the Minister, which units shall be organized on

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such establishments as are from time to time authorized by him;

(b) the Minister may at any time disband or re-designate any unit or revoke, amend or restrict any establishment if he considers it advisable so to do".

The subject matter of subsection one, referred to in the above provision, relates to the maximum numbers of personnel in ranks and trade groups, which subject is dealt with in section 23. Although in the Militia Act a cross-reference was made, it was considered unnecessary in the new Act.

Paragraph (a) of the above-quoted Militia Act provision provides for units to be "named" by the Minister and for them to be "organized" on establishments authorized by him. It was considered that the expression "organized by or under the authority of the Minister" in the new section 18 covers both the naming of units and their organization on specific establishments.

The provision for disbandment and re-designation of units contained in section 2(b) quoted above is considered unnecessary because included in the authority to organize is the power to create, re-designate and disband.

In the result, there has been no alteration of the substance of section 20(2) of the Militia Act. The new section covers the ground in more concise terms.

In the case of the navy, the authority to authorize units, i.e., to commission ships and naval establishments, has been exercised by the Minister under the following provisions of the Naval Service Act:

"5. The Minister shall have the control and management of the Naval Service and of all matters appertaining thereto".

"38. Except where by this Act the Governor in Council is empowered to make regulations, the Minister may make regulations for carrying out this Act, and for the organization, training, discipline, efficiency, administration, and good government generally of the Naval Service".

In the case of the air force, the authority to create new units has been exercisable by the CAS under the following provisions:

RCAF Act:-

"16. (1) The Governor in Council may make regulations not inconsistent with the provisions of this Act relating to

(a) the organization, discipline, training and good government of the air force".

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For purposes of decentralization from the CAS, air force shall be divided into such commands, commands into such formations, units and detachnts as may be prescribed from time to time.....".

The power to "prescribe" under KR (Air) paragraph has been vested in the CAS by the following paragraph KR (Air)

"10 (1)...the Chief of the Air Staff may from time to time issue orders, in implementation of these regulations and not inconsistent with them or with any policy prescribed by the Minister, relating to:

(a) the organization, discipline, training and good government of the air force";

The expression "other elements" is used in the foregoing section and throughout the new Act in order to indicate portions of the forces which technically speaking are not units, e.g., corps, echelons, small bodies and detachments not organized as units, etc.

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19. (1) The Governor in Council may appoint an officer to be Chief of the Naval Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Navy.

(2) The Governor in Council may appoint an officer to be Chief of the General Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Army.

(3) The Governor in Council may appoint an officer to be Chief of the Air Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Air Force.

(4) Unless the Governor in Council otherwise directs, all orders and instructions to th Royal Canadian Navy, the Canadian Army, and th Royal Canadian Air Force that are required to give effect to the decisions and to carry ou directions of the Government of Canada, or Minister, shall be issued by or through th of the Naval Staff, the Chief of the Gene Staff or the Chief of the Air Staff, as may be.

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COMMENTS

Sub-sections (1), (2) and (3) were derived from:

Naval Service Act:-

"7. (1) There shall be appointed an officer, not lower in rank than Rear Admiral, to be called Chief of the Naval Staff.

(2) The Chief of the Naval Staff shall, subject to the regulations and under the instructions of the Minister, be charged with the direction of the Naval Service".

Militia Act:-

"30. The Governor in Council may establish a general s taff, headquarters staff, and Command staff, and may appoint a chief of the general staff, and such officers to the respective staffs as are deemed necessary, and shall define their duties and authority".

Sub-section (4) of the new Act is new. Its purpose is to provide a single authority in each Service for promulgation of instructions issued by the government or by the Minister.

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20. The authority and powers of command of officers and men shall be as prescribed in regulations.

COMMENTS

This is derived from the following section of the Naval Service Act:

"10. The rank and authority of officers in the Naval Service shall be as prescribed by the Minister".

Section 10 of the Naval Service Act should be compared with the following section of the Militia Act, the provisions of which were considered to be too detailed and therefore too restrictive:

"40. The Governor in Council may make regulations applying to officers and others belonging to His Majesty's regular forces and to officers of any military force of any part of His Majesty's dominions, when serving in Canada, and to officers of the Canadian Army, as to the persons to be invested as officers or otherwise with command over the Canadian Army or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised: Provided that command shall not be given to any person over a person superior in rank to himself".

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21. (1) Commissions of officers in the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall be granted by His Majesty during pleasure

(2) Persons shall be enrolled as subordinate officers and men for such term of service as may be prescribed in regulations made by the Governor in Council.

(3) A person under the age of eighteen years shall not be enrolled without the consent of one of his parents or of his guardian.

COMMENTS

This was derived from:

Militia Act:-

"33. Commissions of officers in the Canadian Army shall be granted by His Majesty during pleasure, and all warrant and non-commissioned officers shall be appointed in such manner and shall hold such rank as are prescribed by the regulations".

"15. (1) Men may be enlisted for continuous service in the Active Force for such period as the Governor in Council may prescribe but not exceeding a period of five years and may be enlisted for service in the Canadian Army other than for service in the Active Force for such period as the Governor in Council may prescribe but not exceeding a period of three years".

Naval Service Act:-

"9. (1) The Governor in Council may authorize the engagement of officers and men in the Naval Service upon such terms and conditions as may be prescribed by the Minister, and may from time to time fix the maximum number that may be so engaged".

"11. The commissions of officers in the Naval Service shall be granted by His Majesty during pleasure, and all warrant, subordinate, chief petty and petty officers shall be appointed in such manner and shall hold such rank or rating and perform such duties as may be prescribed by the Minister".

RCAF Act:-

"7. (1) Airmen may be enlisted for continuous service in pay for any period not longer than five years and may be enlisted for non-continuous service, while remaining free to engage in a civil occupation, for any period not longer than three years".

It will be observed that both the Militia Act and the Royal Canadian Air Force Act prescribe the maximum period of engagement for soldiers and airmen. It has been found in practice, however, that flexibility in planning is greatly hampered by statutory provisions limiting the period for which personnel may be enlisted for service. For this reason, it was considered that the question of length of service should

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be left to be provided for in regulations, as has been the case in the navy. This does not, of course, mean that it will be possible to hold men in peacetime beyond the term for which they signed on. Section 31(1) of the new Act provides that, except during an emergency, an officer or man is entitled to be released at the expiration of the term of service for which he is engaged.

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22. The respective ranks that may be held by officers and men of the Canadian Forces shall be as from time to time prescribed in regulations made by the Governor in Council.

COMMENTS

This section should be compared with the following section of the Naval Service Act:

"10. The rank and authority of officers in the Naval Service shall be as prescibed by the Minister".

There has been no similar legislation applicable to the army and air force.

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23. The maximum number of persons in each rank and trade group of the Canadian Forces shall be determined as prescribed in regulations made by the Governor in Council.

COMMENTS

This was derived from the following provision of the Militia Act:

"20. (1) Subject to section twenty-two of this Act the maximum number of personnel of the Canadian Army and of each rank or trade group therein shall be as from time to time authorized by the Governor in Council".

The reference to section 22 in the above provision relates to the ceiling of 30,000 prescribed in the Militia Act. For the reasons given in the comments to section 16, no statutory ceiling has been provided for in the new Act.

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24. The enrolment of a person binds that person to serve in the Canadian Forces until he is, in accordance with regulations, lawfully released.

COMMENTS

This section should be read in conjunction with the definition of "enrol" in section 2(n) and with section 31 which prescribes conditions of release. It is derived in principle from the following section of the Militia Act:

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"21. (2) Such oath shall have the effect of a written engagement with the King, binding the person subscribing it to serve in the Canadian Army until he is legally discharged, dismissed or removed, or until his resignation is accepted".

- -

25. Oaths and declarations required upon enrolment shall be taken and subscribed before commissioned officers or justices of the peace nad shall be in such forms as may be prescribed in regulations.

COMMENTS

This clause should be compared with the Following:

Militia Act:-

"21. (1) The following oath shall be taken, and subscribed before one of such commissioned officers of the Canadian Army as are authorized for that purpose by any general order or by regulation, or before a justice of the peace, by every person upon engaging to serve in the Canadian Army:

> "I, A.B., do sincerely promise ans swear (or solemnly declare) that I will be faithful and bear true allegiance to His Majesty".

Naval Service Act:-

"9. (2) Every officer and man shall take and subscribe the following oath upon engaging to serve in the Naval Service:

> "I, A.B., do sincerely promise and swear (or solemnly declare) that I will be faithful and bear true allegiance to His Majesty".

(3) Such oath may be administered by any commissioned officer in the Naval Service".

The Royal Canadian Air Force Act contains no corresponding provision.

Having in mind the difficulties which arose during the Second World War in respect of the enlistment of foreign nationals, e.g. Americans, it was not considered advisable to prescribe the form of oath by statute.

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26. Subject to subsection three of section thirty-two, no officer or man shall without his consent be transferred from the regular forces to the reserve forces or from the reserve forces to the regular forces or from the Service of the Canadian Forces in which he has been enrolled to another Service of the Canadian Forces.

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COMMENTS

This is new. In the past it has always been recognized that persons serving on a voluntary basis shall have a right to select the Service and component in which they will serve. They could not, subsequent to their enrolment, be transferred to any other Service or component, even with their consent. In any case where it has been desired to take a person out of one Service and place him in another, it has been necessary to effect his release from the first Service and re-appoint or re-enlist him in the new Service. This section contemplates the possibility, for administrative convenience, of effecting transfers from one Service to another and from one component to another with the consant of the officer or man. On active service, however, it is thought to be proper that transfers should be possible without consent as provided for in section 32(3). This section, however, does not prevent attachment or secondment to another Service at any time, as to which see section 28.

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27. (1) Where, although not enrolled or re-engaged for service, a person has received pay as an officer or man, he is, until he claims his release and is released, deemed to be an officer or man, as the case may be of the Service and component of the Canadian Forces through which he received pay and to be subject to this Act as if he were such an officer or man duly enrolled or re-engaged for service.

(2) Where, although there has been an error or irregularity in his enrolment or re-engagement, a person has received pay as an officer or man of that Service and component of the Canadian Forces in which he was erroneously or irregularly enrolled or re-engaged, that person is deemed to be an officer or man, as the case may be, regularly enrolled or re-engaged, and is not, except as provided in subsection three, entitled to be released on the ground of the error or irregularity.

(3) Where a person who, by virtue of subsection two, is deemed to be an officer or man, claims to be released within three months, reckoned from the date on which his pay commenced, and establishes the error or irregularity in his enrolment or re-engagement, he shall, except during an emergency or when he is on active service, be released.

(4) Where a person claims his release on the ground that he has not been enrolled or re-engaged or has not been regularly enrolled or re-engaged, his commanding officer shall forthwith forward his claim to the authority having power to release him and, if he is entitled to be released, he shall be released with all convenient speed.

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COMMENTS

This clause is based on the following section of the Army Act (UK):

> "100. (1) Where a person after his attestation on his enlistment or the making of his declaration or re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorized by this Act, and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not, until such person is discharged in pursuance of his claim, affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.
>
> (2) Where a person is in pay as a soldier of the regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim, he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.
>
> (3) Where a person claims his discharge on the ground that he has not been attested or re-engaged, or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to the Army Council, and if the claim appears well grounded the claimant shall be discharged with all convenient speed."

The navy and the air force have no similar legislation.

This section has been found to be of considerable value in establishing jurisdiction in respect of trials of army personnel where the enrolment was defective but pay has been received. The clause is based on the application of the historical principle of law involved in acceptance of "the King's shilling".

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> 28. (1) An officer or man may be attached or seconded to another component of the Service of the Canadian Forces in which he is enrolled or to any component of any Service of the Canadian Forces, other than that in which he is enrolled, in such manner and under such conditions as are prescribed in regulations; and he shall have like powers of command and

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punishment over officers and men of the component and Service of the Canadian Forces to which he is attached or seconded as if he were an officer or man of that component and Service of equivalent rank, relative to the rank he holds.

(2) An officer or man may be attached or seconded to any of His Majesty's Forces, any department or agency of government, any public or private institution, private industry or any other body in such manner and under such conditions as are prescribed in any other Act or in regulations.

(3) No officer or man of the reserve forces who is not serving on active service shall without his consent be attached or seconded pursuant to this section.

COMMENTS

The principle involved in the first half of subsection (1) is derived from the following provision of the Army Act (UK):

"179A. (1) The Army Council may direct from time to time that any officers or soldiers of the regular forces shall, under such conditions as may be prescribed by regulations made by the Army Council and Air Council, be temporarily attached to the air force".

The Air Force Act (UK) contains a corresponding provision.

It will be noted that section 179A quoted above applies only to members of the regular forces. It has been considered expedient to make the proposed "attachment" and "secondment" provision applicable to all three components; for example, it might be expedient at some time to attach certain army personnel, whether regular or reserve, to a regular or reserve air force squadron.

The three Services have reached an understanding with respect to the meaning of the terms "attachment" and "secondment", and similar definitions of the terms have been placed in King's Regulations for the navy, army and air force. The following provisions are typical of the provisions in effect in the three Services:

Paragraphs 2(x) and (li) of KR (Air):

"2(x). "attachment" means:

(a) the assignment of an officer or an airman for continuous duty or training outside the air force where the duty or training is of advantage primarily to the air force, or

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(b) the assignment of an officer or an airman away from his formation, station or unit, to another formation, station or unit within the air force, for a temporary period of time while he continues to cover off a vacancy within his formation, station or unit";

"2(1i). "secondment" means the assignment of an officer or an airman for continuous duty outside the air force where the duty is not of advantage primarily to the air force";

The consequences of "attachment" as described in the new section have long been recognized and the final part of sub-section (1), relating to command and discipline in cases of attachment, have been adopted from the following:

Visiting Forces (British Commonwealth) Act, 1933:

"6. (3) Whilst a member of another force is by virtue of this section attached temporarily to a home force, he shall be subject to the law relating to the Naval Service, the Militia, or the Air Force, as the case may be, in like manner as if he were a member of the home force, and shall be treated and have the like powers of command and punishment over members of the home force to which he is attached as if he were a member of that force of relative rank:

Provided that the Governor in Council may direct that in relation to members of a force of any part of the Commonwealth specified the statutes relating to the home forces shall apply with such exceptions and subject to such adaptations and modifications as may be so specified".

Naval Service Act:

"42. (1) Where any officer or man belonging to the Naval Forces is borne on the books of a ship or establishment of another Navy, he shall for all purposes of command and discipline be subject to the laws, regulations and customs applicable to that ship or establishment.

(2) Where an officer or man is a member of a body of the Naval Forces acting with, or is attached to, any body of His Majesty's Canadian military or air forces, he shall exercise and be subject to command and discipline as the Governor in Council prescribes.

(3) Where members of His Majesty's Canadian military and air forces, or of either of those forces, are acting in a body with, or are attached to, any body of the Naval Forces, those members shall exercise and be subject to command and discipline as the Governor in Council prescribed".

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This sub-section is new. It was considered necessary in view of modern requirements and is consistent with existing service regulations. The reference to "any other Act" is directed to attachment of persons from other parts of the Commonwealth which is governed by The Visiting Forces (British Commonwealth) Act, 1933, a Canadian statute.

Sub-section (3) is new. It was considered that an officer or man of the Reserves who is not on active service should not be liable to be compelled to serve through the device of attachment without his consent, with the regular forces, or be compelled to serve, either on a continuing or non-continuing full-time basis, in any Service other than his own.

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29. Subject to section twenty-three and to regulations, officers and men may be promoted by the Minister or by such authorities of the Canadian Forces as are prescribed in regulations made by the Governor in Council.

COMMENTS

This is new.

Authority for promotions has been founded on the following:

NAVY - Promotions are made under the authority of the Minister, derived from the following provision of the Naval Service Act:

"5. The Minister shall have the control and management of the Naval Service and of all matters appertaining thereto".

ARMY - All promotions of officers have been approved by the Governor in Council. Promotion to Warrant Officer, Class I has been approved by the Minister. Promotions in lower ranks have been approved by service authorities under regulations made by the Governor in Counil.

AIR FORCE - The approval required for promotion in the RCAF has been prescribed in regulations passed by the Governor in Council, contained in KR (Air). Under these regulations, promotion to the rank of Air Commodore and above has required the approval of the Governor in Council. Promotion to the rank of Group Captain and to any lower rank down to and including Warrant Officer, Class I, has required theapproval of the Minister, but the requisite authority has been down-graded when the air force is on active service. Promotions in lower ranks have been approved by service authorities.

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30. Except in respect of a matter that would properly be the subject of an appeal or petition under Part IX, an officer or man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance, may as a matter of right seek redress from such superior authorities in such manner and under such conditions as shall be prescribed in regulations made by the Governor in Council.

COMMENTS

Previous legislation relating to redress of grievance is contained in the following sections of the Army Act (UK):

"42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby required to examine into such complaint, and (if so required by the officer) through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon".

"43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to such officer, being either a general officer or brigadier or an air officer, as may be prescribed; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of".

Similiar provisions appear in the Air Force Act (UK).

The above provisions have been amplified, in the case of the army, and largely superseded, in the case of the air force, by King's Regulations.

The navy has had no corresponding legislation but naval regulations contained detailed provisions to the same effect as those prescribed in army and air force regulations.

As this subject has been dealt with substantially in regulations for all three Services, it was considered

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appropriate that the new section should simply establish the right to seek redress from superior authorities and leave the method to be dealt with in regulations.

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31. (1) Except during an emergency or when he is on on active service, an officer or man is entitled to be released at the expiration of the term of service for which he is enrolled or re-engaged.

(2) Except as may be prescribed in regulations made by the Governor in Council, any period during which an officer or man is in a state of desertion or is absent without leave shall not be reckoned toward the completion of the term of service for which that officer or man was enrolled or re-engaged.

(3)Where the term of service for which an officer or man is enrolled or re-engaged expires during an emergency or when he is on active service or within one year after the expiration of an emergency or after he has ceased to be on active service, he is liable to serve until the expiration of one year after the emergency has ceased to exist or after he has ceased to be on active service, as the case may be.

COMMENTS

Sub-section (1) should be read in conjunction with the definition of "release" contained in section 2(cc).

Sub-sections (1) and (3) should be compared with the following:

Militia Act:

"15. (2) The term of service of any man which expires during an emergency shall be subject to extension with his consent until the emergency comes to an end and for not more than one year thereafter, and shall be subject to extension without his consent until the emergency comes to an end or for one year, whichever is the shorter period.

(3) Notwithstanding anything in this section contained, a man who is enlisted in, or in anticipation of an emergency may be enlisted to serve for the duration of the emergency and the period of demobilization thereafter and required to serve in accordance with the terms of his engagement".

"18. Any person who has voluntarily enlisted, or has been called upon to serve in the Canadian Army, shall be entitled to be discharged at the expiration of the term of service for which he engaged, unless such expiration occurs in time of emergency, in which case he shall be liable to serve for the duration of the emergency".

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Naval Service Act:

"13. Any person who has voluntarily engaged in the Naval Service shall be entitled to be discharged at the expiration of the time of service for which he engaged, unless such expiration occurs in time of emergency, in which case he shall be liable to continue in the Naval Service for whatever length of time the Governor in Council prescribes".

RCAF Act:

"7. (2) The term of service of any airman which expires during an emergency shall be subject to extension with his consent until the emergency comes to an end and for not more than one year thereafter, and shall be subject to extension without his consent until the emergency comes to an end or for one year, whichever is the shorter period.

(3) Notwithstanding anything in this section contained, an airman who, on his enlistment in, or in anticpation of an emergency, has engaged to serve on active service during such emergency, may be required to serve in accordance with the terms of his engagement".

It is considered that the above provisions relating to the air force and army, to the extent that they permit voluntary retirement as of right during an emergency, are unpractical, and that the naval provision, which permits the Governor in Council to extend an engagement for any length of time even after the expiration of the emergency, is unreasonable. The new sub-sections (1) and (3) have been adopted as a realistic and reasonable compromise.

Sub-section (2) is new in legislation applicable in Canada but the principle has long been recognized in army and air force practice.

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32. (1) The Governor in Council may place the Canadian Forces or any Service, component, unit or other element thereof or any officer or man thereof on active service anywhere in or beyond Canada at any time when it appears advisable so to do

(a) by reason of an emergency, for the defence of Canada; or

(b) in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence that may be entered into by Canada.

(2) An officer or man of His Majesty's Forces who is a member of, serving with, or attached or seconded to a Service, component or unit of the Canadian Forces that has been placed on active service, or who has been placed on active service, or who pursuant to law has been attached or seconded to a portion of a force that has been placed on active service, shall be deemed to be on active service for all purposes.

(3) An officer or man on active service may for the period of such service, be transferred

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from the component of the Service of the Canadian Forces in which he has been enrolled to the same component of another Service of the Canadian Forces or from the reserve forces to the regular forces.

COMMENTS

Subsection (1), which should be read in conjunction with the definition of "emergency in section 2(1), is derived from the following:

Militia Act:

"64. The Governor in Council may place the Canadian Army, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency".

Naval Service Act:

"17. The Governor in Council may place the Naval Forces or any part thereof, on active service at any time when it appears advisable so to do by reason of an emergency".

RCAF Act:

"8. (in part) The Governor in Council may at any time call out any unit of the air force or any officer or airman of such force..... on active service in an emergency".

Under legislation which has been in effect the force may be placed on active service either by the Governor in Council or as a result of being called out in aid of the civil power. Under the new Act the forces may be placed on active service only by the Governor in Council. Aid of the civil power, which is dealt with in Part IX of the Act, will not be "active service". The reason for the proposed change is that "active service" has far-reaching implications in respect of pay, discipline, pensions and conditions of service generally, which are inappropriate to service in aid of the civil power because of the essential temporary nature of that duty. Moreover, the temporary change in status of every officer and man involved would result in a large amount of administrative detail.

See section 33 for the provisions requiring Parliament to meet if the forces are called out on active service.

In view of the proposed substantive provisions relating to active service in section 32, it has been considered unnecessary to incorporate in the definition section of this Act, the present definitions of "active service", which read:

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Militia Act:

"2. (g) 'on active service' as applied to a person subject to military service, means whenever he is enrolled, enlisted, drafted or warned for service or duty during an emergency, or when he is on duty, or has been warned for duty in aid of the civil power".

Naval Service Act:

"2. (a) 'active service' as applied to a person in the Naval Forces, means service or duty during an emergency".

RCAF Act:

"2. (f) 'on active service' as defining any period means, in respect to any officer or airman, the period beginning when such officer or airman is ordered for duty by reason of an emergency and ending when he is released from such duty".

The purpose of the new sub-section (2) is to eliminate any possible doubt concerning the status of individuals serving in or with a force that is on active service.

Sub-section (3) is new. It is considered a proper exception to the general rule relating to transfers contained in section 26. It will be noted that provision has been made for transfers on a compulsory basis from one Service to another and from the reserve forces to the regular forces. The whole intent is to ensure maximum flexibility in mobilization for and conduct of a war. Provision is not made for compulsory transfer from the regular forces to the reserve forces as that would endanger to a most unfair degree the basic status of a full-time officer or man, having regard to his career, pension rights, ætc.

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33. Whenever the Governor in Council places the Canadian Forces or any Service, component or unit thereof on active service, if Parliament is then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed for such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

COMMENTS

Section 33 is to the same effect as the following:

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Militia Act:

"66. Whenever the Governor in Council places the Canadian Army, or any part thereof, on active service, if Parliament is then separated by such adjournment or prorogation as will not expire within ten days, a proclamantion shall be issued for the meeting of Parliament within fifteen days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day".

Naval Service Act:

"19. Whenever the Governor in Council places the Naval Service or any part thereof on active service, as provided in the last two preceding sections, if Parliament is then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall issue for a meeting of Parliament within fifteen days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit in like manner as if it had stood adjourned or prorogued to the same day".

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34. (1) The regular forces, all units and other elements thereof and all officers and men thereof are at all times liable to perform any lawful duty.

(2) The reserve forces, all units and other elements thereof and all officers and men thereof

(a) may be ordered to drill or train for such periods as are prescribed in regulations made by the Governor in Council; and

(b) may be called out on service to perform any naval, army or air force duty, as the case may be, other than drill or training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council.

(3) Nothing in subsection two shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

COMMENTS

This is based on the following:

Militia Act:

"22. (2) The Active Force shall be available at all

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times for general service".

"47. The Governor in Council may order the Canadian Army or any units thereof to drill or train for such period in each year as he may prescribe".

"51. When units of the Canadian Army are ordered to assemble in a camp of exercise for drill and training they shall be considered to be on service during the whole of the period for which they were called out, and when so assembled all ranks shall receive rations and shelter at the public expense in addition to their daily pay".

"63. The Canadian Army or any part thereof may be called out for any military purpose other than drill or training and any officer or man of the Canadian Army may be called out for any military purpose at such times and in such manner as is prescribed by the Governor in Council".

"2(h). 'on service' means when called upon for the performance of any military duties other than those specified as active service";

RCAF Act:

"8. The Governor in Council may at any time call out any unit of the air force or any officer or airman of such force on service when required for duty.....".

"2(g). 'on service' as defining any period means, in respect to any officer or airman, the period beginning when he is ordered for duty otherwise than by reason of an emergency, and ending when he is released from such duty";

Naval Service Act:

"2(m). 'on service' means when called upon for the performance of any duties other than those specified as active service";

The new section contains all of the elements now found in the above legislation and no new principle has been added. Subsection (3) specially excepts certain reserves such as the Supplementary Reserve in the case of the army.

Attention is directed to the following points involved in the new section:

A. Officers and men of the <u>regular forces</u> may be required to perform "any lawful duty". This is similar in effect to the provision contained in the RCAF Act quoted above. It means that regular force personnel may be called upon to perform any duty which tends to advance military interests and is not contrary to the ordinary civil law, and in addition any other duty that the Dominion Government requires to be performed in the exercise of its inherent executive power. Several instances of the calling out of the regular forces for duties other than purely military duties

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exist. One of these occurred in 1934, when a portion of the regular forces was called out to suppress a riot in a federal penitentiary. This was not a case of aid to the civil power contemplated by Part XI which provides for such aid in the case of a provincial disturbance. The question of the legality of calling out the regular forces in that situation was referred in June, 1934, to the Department of Justice. In the reply of the Deputy Minister of Justice, dated 21 June 1934 (their file 1618/32), the following passage occurs:

"The permanent Militia are merely a branch of the public service of Canada and subject, as such, to the direction and control of the executive Government. Hence, if the Warden or other principal officer of a penitentiary, upon reasonable grounds, apprehends that a serious disturbance which may be beyond the power of the penitentiary officials to prevent or deal with is likely to occur, I can see no reason why the Government, in the exercise of its inherent executive power, may not competently require the local military authorities, upon the request of the Warden, or other principal officer of the penitentiary, to furnish a sufficient number of officers and men to be employed upon the duty of preventing and suppressing the anticipated disturbance. If required to act upon such a request, the District Officer Commanding would, I think, be justified in despatching the necessary military force to the penitentiary, and the members of the Force so despatched would be regularly employed there in the course of their duty. In such a case the action of the members of the military force so employed must, of course, be limited to what is reasonably needed to prevent a disturbance".

B. The obligation of officers and men of the reserve forces when not on active service is limited to the performance of "naval, army and air force duty". It is therefore a considerably narrower obligation than exists in the case of the regular forces. In other words, the obligation of the reserve forces is restricted to purely military duty, ie. any duty which tends to advance military interests and is not contrary to the civil law. Officers and men of the reserve forces, when not on active service, may be called upon to perform duties over and above military duties only under section 35 (a disaster of national concern) and under Part XI (Aid of the Civil power).

C. This section is not designed to cover the 'aid of the civil power' situation which is provided for in Part XI of the Act, nor does it cover the 'active service' situation, which is dealt with in section 32.

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35. (1) Where the Governor in Council has declared that a disaster exists or is imminent that is, or is likely to be, so serious as to be of national concern, the regular forces or any unit or other element thereof or any officer or man thereof shall be liable to perform such services in respect of the disaster, existing or imminent, as the Minister may authorize, and the performance of such services shall be deemed to be naval, army or air force duty, as the case may be.

(2) Where the Governor in Council declares that a disaster as mentioned in subsection one exists or is imminent and that the services of the reserve forces are required for the purpose of rendering assistance in respect of the disaster, existing or imminent, the Governor in Council may authorize the reserve forces or any unit or other element thereof or any officer or man thereof to be called out on service for that purpose and all officers and men while so called out shall be deemed to be performing naval, army or air force duty, as the case may be.

(3) Nothing in subsection two shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

COMMENTS

This is new. It was designed to provide for situations such as the recent British Columbia and Manitoba floods. The point of distinction between this section and section 34 is that under this section regular force personnel may be required to perform duties which do not lie within the executive authority of the Dominion and reserve personnel may be required to perform duties not of a military character.

The reference to naval, army or air force duty in each subsection is for the purpose of ensuring that no doubt will arise in respect of status and powers of command.

The distinction between subsections (1) and (2) is that, in the first case, the Governor in Council need only declare the existence of a national disaster and regular force personnel will automatically be liable to perform duty in connection therewith; under the second subsection the Governor in Council must declare the disaster and, in addition, must, before the reserves can actually be called out, declare that the services of the reserves are required.

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36. (1) The pay and allowances of officers and men shall be at such rates and issued under such conditions as are prescribed in regulations made by the Governor in Council.

(2) The pay and allowances of officers and men shall be subject to such forfeitures and deductions as are prescribed in regulations made by the Governor in Council.

(3) Unless made in accordance with regulations prescribed by the Governor in Council, an assignment of pay and allowances is void.

COMMENTS

Subsection (1) should be compared with the following legislation:

Militia Act:

"48. (1) Officers, warrant officers and non-commissioned officers of the Active Force shall be entitled to daily pay and allowances at rates to be prescribed by the Governor in Council.

(2) The Governor in Council may, from time to time, fix the sums to be paid to privates of the Active Force, regard being had to length of service, good conduct and efficiency.

(3) Time served in His Majesty's regular forces may be counted for the purposes of any regulations with regard to pay and allowances in the case of non-commissioned officers and men transferred to the Active Force in connection with the taking over by the Government of Canada of the garrisons of Halifax and Esquimalt".

"49. When on active service, during the period of annual drill and training, and when otherwise on duty, the pay and allowances of officers and men of the Canadian Army other than the Active Force, shall be at such rates as may be prescribed by the Governor in Council".

Naval Service Act:

"6. Rates of pay and allowances of officers and men of the Naval Service shall be as prescribed by the Governor in Council".

RCAF Act:

"16. (1) The Governor in Council may make regulations not inconsistent with the provisions of this Act relating to

(b) the pay and allowances of officers and airmen";

"18. All sums of money payable under this Act by way of compensation for damage arising from acts

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done in case of emergency or for the pay, allowance and other expenses incurred by reason of the calling out of officers or airmen on active service during such emergency may be paid out of the Consolidated Revenue Fund upon warrant directed by the Governor General to the Minister of Finance".

It will be seen that the naval and air force approach has been adopted.

Subsections (2) and (3), which refer to forfeitures, deductions and assignments, are new. In Canadian legislation there has been no previous provision for forfeiture, deduction or assignment of pay and allowances. These subjects have been dealt with in service regulations passed under the Militia Act, the Naval Service Act and the RCAF Act. There are extensive provisions in the Army Act (UK) and the Air Force Act (UK) but these were largely superseded by the Canadian regulations mentioned above. From the legal standpoint, it was considered desirable to have specific parliamentary authority for forfeitures, deductions and assignments.

It was likewise thought desirable from the administrative standpoint to prescribe the type of assignments which may be made by regulations.

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37. The materiel supplied to or used by the Canadian Forces shall be of such type, pattern and design and shall be issued on such scales and in such manner as the Minister or such authorities of the Canadian Forces as are designated by him for that purpose, may approve.

COMMENTS

This was based on the following legislation:

Naval Service Act:

"14. The uniform, arms, clothing and equipment of the Naval Service shall be of such patterns and designs as are prescribed by the Minister and where supplied at the public cost, shall be issued as may be prescribed by the Minister",

and should be compared with:

Militia Act:

"42. The uniform, arms, clothing and equipment of the Canadian Army shall be of such pattern and design and shall be issued and worn, as prescribed by such regulations as the Governor in Council or the Minister with the authority of the Governor in Council, may make from time to time".

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RCAF Act:

"16. (1) The Governor in Council may make regulations not inconsistent with the provisions of this Act relating to

(c) air force works, equipment and supplies and the custody, supervision, use and issue thereof";

This appeared to be a matter as to which the Minister, rather than the Governor in Council, should have the basic authority, in view of the variety of and constant changes in service equipment. Control by Governor in Council and Parliament is always assured under the Annual Estimates.

Provision for delegation of the Minister's power to service authorities was considered essential having regard to the number of minor matters which need to be dealt with constantly; for example, the numbers and types of nuts and bolts which should be carried in a ship, spare parts for vehicles, tools, etc.

Attention is directed to the fact that the Chief of the Air Staff, under the air force provision quoted above and KR (Air), has had power to promulgate scales of issue for many types of equipment in circumstances which would not involve financial approval by other authorities. In this respect, the authority of the air force has been much broader than that of the army. In the result, the new section provides substantially the authority which exists in the case of the navy.

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38. The conditions under which and the extent to which an officer or man shall be liable to His Majesty in respect of loss or damage to public property shall be as prescribed in regulations.

COMMENTS

This is new. It should be compared with the following section of the Militia Act:

"44. (1) The value of all such articles of public property as have become deficient or damaged, while in possession of any unit, otherwise than through fair wear and tear or unavoidable accident, may be recovered by the Minister or by any other person authorized by him, from the officer in command of such unit.

(2) The officer commanding any unit may recover the value of such articles of public property, or property of the unit, as have become deficient or damaged, or damaged while in possession of his unit, otherwise than through fair wear and tear or unavoidable accident, from the officer, man or men responsible therefor".

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It will be observed that under the above-quoted provision, responsibility has rested with the commanding officer, whether or not there was any negligence on his part. He has been given the authority to collect in turn from the person directly responsible but, if recovery from that source could not be made, the commanding officer was none the less accountable. This principle was considered unjust. If the commanding officer is at fault, he should of course be accountable but, if he has not been personally negligent, no recovery should be made from him. The new section leaves the matter to be appropriately dealt with by regulations which will prescribe the various conditions under which there should be liability, having regard to service practices.

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39. (1) The non-public property of a unit or other element of the Canadian Forces shall vest in the officer from time to time in command of that unit or other element, and shall be used for the benefit of officers and men or for any other purpose approved by the chief of staff of the Service of the Canadian Forces in which that unit or other element is comprised, in the manner and to the extent authorized by that chief of staff.

(2) The non-public property of every disbanded unit or other disbanded element of the Canadian Forces, vested in the officer in command of that unit or other element, shall pass to and vest in the chief of staff of the Service of the Canadian Forces in which that unit or other element was comprised, and may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependents, of the Service of the Canadian Forces in which that unit or other element was comprised.

(3) Where, by reason of a substantial reduction in the number of officers and men serving in a unit or other element of the Canadian Forces or by reason of a change in the location or other conditions of service of a unit or other element, the chief of staff of the Service of the Canadian Forces in which the unit or other element is comprised considers it desirable so to do, he may direct that the non-public property or any part thereof that is vested in the officer in command of that unit or other element shall pass to and be vested in the chief of staff upon the terms set out in subsection two.

(4) Non-public property acquired by contribution but not contributed to any specific unit or other element of the Canadian Forces shall vest in the chief of staff of the Service of the Canadian Forces to which that non-public

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property is contributed and, subject to any specific directions by the contributor as to its disposal, may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependents, of that Service of the Canadian Forces.

(5) By-products and refuse derived from rations and other consumable stores issued to the Canadian Forces for use in service kitchens, and the proceeds of the sale thereof, shall, to the extent that the Governor in Council may prescribe, be non-public property.

(6) Except as authorized by the appropriate chief of staff, no gift, sale or other alienation or attempted alienation of non-public property is effectual to pass the property therein.

(7) The conditions under which and the extent to which an officer or man shall be liable to make restitution or reimbursement in respect of loss or damage to non-public property resulting from his negligence or misconduct shall be as prescribed by the Minister.

(8) A chief of staff shall exercise his authority under subsections one, two and four subject to any directions that may be given to him by the Minister for carrying the purposes and provisions of this section into effect.

(9) Non-public property accounts shall be audited as the Minister may from time to time direct.

(10) The Consolidated Revenue and Audit Act shall not apply to non-public property.

COMMENTS

This is new and should be read in conjunction with the definition of "non-public property" in section 2(v). It relates to property, other than public property, held by units and other elements of the armed forces for the collective benefit and welfare of officers and men. Reference is made to:

Militia Act:

"129. For the purpose of legal proceedings, all moneys subscribed by or for, or otherwise appropriated to the use of any unit, and all arms, ammunition, clothing, equipment, musical instruments, or other things belonging to, or used by, any unit, shall be deemed to be the property of His Majesty".

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"142. No gift, sale or other alienation, or attempted alienation, by any person, of any money subscribed by or for, or otherwise appropriated to the use of any unit, or of any arms, ammunition, clothing, equipment, musical instruments or other things belonging to, or used by any unit, shall be effectual to pass the property therein without the consent of His Majesty".

Naval Service Act:

"30. For the purpose of legal proceedings, all moneys subscribed by or for or otherwise appropriated to the use of the Naval Service, and all vessels, arms, ammunition, clothing, equipment, musical instruments, or other things belonging to or used by the Naval Service, shall be deemed to be the property of His Majesty; and no gift, sale or other alienation of any such thing by any person shall be effectual to pass the property therein without the consent of the Governor in Council".

RCAF Act:

"15. The property in any money or other chattel held by any person for the use or benefit of the air force or any unit thereof shall, for the purposes of any legal proceedings, be deemed to be in His Majesty".

The effect of the above legislation upon unit property has been somewhat obscure. It is arguable that, having regard to the terms of that legislation, such property would fall within the definition of "public moneys" for the purposes of the Consolidated Revenue and Audit Act. If this is the legal effect, the intention of the donors or contributors of the property has been defeated. In effect, the new section is a clarification of a confusing situation.

Another advantage of the new section is that actions taken in respect of non-public property may be taken by oragainst the commanding officer or the Chief of Staff, as applicable. Under former legislation it was open to doubt whether actions of debt or damage might be maintained in all cases.

As to subsection (5), waste and by-products in a unit or other formation will normally consist partly of material derived from stores purchased from public funds and partly from stores purchased from non-public funds. Because of the impossibility of segregating waste and by-products derived from these separate sources, and because the bulk of it originates from public funds, it was considered desirable that the Governor in Council prescribe an arbitrary basis on which a ratio of division of the proceeds of such waste and by-products can be determined. This ratio may vary from time to time and in accordance with the circumstances of particular units. A fair division tends to stimulate the salvage of garbage, etc.

Subsection (6) was considered necessary to preserve the ownership of non-public property as created by this section.

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This subsection (7) should be compared with section 38 wherein personal liability in respect of public property is based upon regulations. In the case of non-public property, i.e. property in which the Crown has no ownership interest, it was considered inappropriate that the Governor in Council should have authority to determine the basis of liability for loss. Therefore, provision is made for the discretion in this matter to be exercised by the Minister.

The purpose of subsection (8) is to ensure that there is not too great a deviation, as among the three Services, in the use and ultimate disposition of non-public property.

As to subsection (9), the method of auditing this type of property varies in the Services and the Minister is empowered under this subsection to direct the form and manner of all audits.

The purpose of subsection (10) is to make it clear that the Consolidated Revenue and Audit Act does not apply to non-public property. The pertinent provisions of that Act read in part:

"2(i). 'public moneys', 'public revenue' or 'revenue' means and includes and applies to all revenue of the Dominion of Canada, and all branches thereof, including .....all moneys, whether arising from.....any rents or dues, or from any other source whatsoever, whether such moneys belong to Canada or are collected by officers of Canada for or on account of special purposes or in trust for any person.....or otherwise";

"3. All public moneys shall be paid to the credit of the account of the Receiver General through such officers, banks or persons, and in such manner as the Minister (the Minister of Finance and Receiver General of Canada) from time to time directs and appoints and such public moneys shall form the Consolidated Revenue Fund of Canada, hereinafter called the Consolidated Revenue Fund".

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40. (1) The service estates of officers and men who die during their service in the Canadian Forces may be collected, administered and distributed in whole or in part as prescribed in regulations made by the Governor in Council.

(2) For the purposes of this section, "service estate" means the following parts of the estate of a deceased officer or man mentioned in subsection one,

(a) service pay and allowances;
(b) all other emoluments emanating from His Majesty that, at the date of death, are due or otherwise payable;
(c) personal equipment that the deceased person is, under regulations, permitted to retain; and
(d) personal belongings, including cash,

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found on the deceased person or in camp, quarters or otherwise in the care or custody of the Canadian Forces.

COMMENTS

This section was based upon the following section of the Department of National Defence Act:

"7. (1) The Governor in Council may make regulations respecting the collection, administration and distribution of the service estates of members of the Naval, Military or Air Forces of Canada who die during their service as such members, or of former members who die while receiving hospital treatment or institutional care under the control or direction of the Department of Veterans Affairs on account of any disability suffered or incurred during their service as such members.

(2) For the purposes of this section, "service estate" shall mean that part of the personal estate of the deceased member of the Naval, Military or Air Forces of Canada mentioned in this section which consists of balance of pay and allowances, and all other emoluments emanating from the Crown, which at date of death are due or otherwise payable, and effects issued by the Crown which, under the regulations applicable to a member of any of said Forces, he is permitted to retain, and all personal belongings found on the deceased and in camp, quarters, or otherwise in the care or custody of the Naval, Military or Air Force authorities concerned, including cash on hand and personal articles and effects".

The Estates Branch of the Department of National Defence was set up in March, 1940, by Order in Council passed under the War Measures Act, for the purpose of administering the personal effects and other service assets of active service fatal casualties and of service personnel dying while on strength of DVA. The main object was to facilitate the distribution of small service estates without the expense to next of kin involved in obtaining Letters Probate or Letters of Administration through the Courts. For the same reason, the Director of Estates was by various later Orders in Council empowered to get in and administer bank deposits, Victory Loan bonds and similar civil assets up to certain limited total amounts in each case ($2,000.00 for assets in Canada, and $5,000.00 for overseas assets). These last-mentioned Orders in Council were revoked on 15 December, 1947.

During the Second World War and up to 1 September, 1947, the Director of Estates administered and closed 43,242 service estates, for a total monetary value of $18,273,138.24. Effective 1 September, 1947, the estates of discharged service personnel who died while on strength of DVA were transferred to DVA, and the remainder of the functions of the Director of Estates were taken over the the JAG. Effective 15 December, 1947, the then existing Estates Regulations were revoked and replaced by PC 5156 dated 15 December, 1947, under which the functions of the JAG as Director of Estates

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are limited to purely service assets. The purpose of the Estates Regulations remains the same.

At the present time the estates under administration by the JAG fall into four classes:

(a) estates of certain active service casualties which by reason of unlocated or minor beneficiaries cannot yet be closed;

(b) war service gratuities and other belated credits now being received for previously closed estates of active service casualties;

(c) war service gratuities and other belated credits now being received for estates of personnel who died after discharg from the forces;

(d) service assets of personnel who die while serving in the Regular Forces.

The number of estate accounts taken over by JAG on 1 September, 1947, was 288 valued at $82,733.48. From 1 September, 1947, to 30 September, 1949, 1205 new accounts were received, valued at $305,624.38. During the same period 1297 accounts with a value of $349,251.69 were closed, leaving a balance on hand as of 30 September, 1949, of 196, having a value of $39,106.17. The average individual value of estates on hand is $199.52.

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41. Where an officer or man disappears under circumstances that, in the opinion of the Minister or such other authorities as he may designate, raise beyond reasonable doubt a presumption that he is dead, the Minister or any such other authority may issue a certificate declaring that such officer or man is deemed to be dead and stating the date upon which his death is presumed to have occurred, and such officer or man shall thenceforth, for the purposes of this Act and the regulations and in relation to his status and service in the Canadian Forces, be deemed to have died on that date.

COMMENTS

This is new. It has been the practice in all three Services to issue certificates of presumption of death in respect of missing personnel based upon careful investigation into the circumstances of disappearance. The purpose of this section is to give statutory authority for the practice.

A certificate issued under this section would not of course be conclusive in so far as property and civil rights are concerned, since these are matters which fall within the provincial legislative field. There is, however, provincial legislation giving recognition to certificates of presumption of death issued by the Services. It has been found that insurance companies will generally accept these certificates as sufficient evidence of death.

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Whatever the value of this provision may be in relation tc determination of property rights, it would be of real value in so far as the status and service in the Canadian Forces of the missing person is concerned.

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42. The personal belongings and decorations of an officer or man, who is absent without leave, that are found in camp, quarters or otherwise in the care or custody of the Canadian Forces shall vest in Hia Majesty and shall be disposed of in accordance with regulations made by the Governor in Council.

COMMENTS

This is new. It should be compared with the following provision of the Naval Service Act:

> "71. If any person is absent without leave for a period of one month.....the Commander-in-Chief may by an order containing a statement of the absence without leave direct that the clothes and effects, if any, left by him on board ship or at his place of duty be forfeited, and the same may be sold, and the proceeds of the sale shall be disposed of as the Commander-in-Chief may direct, and every order under this provision for forfeiture or sale shall be conclusive as to the fact of the absence without leave as therein stated of the person therein named; but in any case the Minister may, if it seem fit on sufficient cause being shown at any time after forfeiture and before sale remit the forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the use of the person to whom the clothes or effects belonging, or his representatives".

During the recent period of active service, great difficulty was experienced in certain locations by reason of the fact that storage facilities were inadequate for the safekeeping of the personal belongings of large numbers of personnel who were illegally absent. It became necessary to make provision by Order in Council for the early disposal of personal effects in these cases. In normal circumstances, however, there is no reason why personal effects should not be kept for a considerable period of time.

It is necessary from the legal point of view to have this property vested in the Crown, until it is disposed of either by return to the owner or his next of kin, or otherwise. The method of disposition should be flexible so as to meet varying conditions. Hence it should be governed by regulations made by the Governor in Council -- the appropriate authority where the property of a subject is affected.

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43. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, where it is expedient that he or any such other authority should be informed on any matter connected with the government, discip-lin , administration or functions of the Canadian Forces or affecting any officer or man, convene a board of inquiry for the pur-pose of investigating and reporting on that matter.

COMMENTS

This was derived from the following subsection of the Militia Act:

> "93. (1) The Governor in Council may make regu-lations for the convening of courts of inquiry and the composition thereof for the purpose of investi-gating and reporting on any matter connected with the government or discipline of the Canadian Army or with the conduct of any officer or man thereof".

The new section will provide a statutory foundation for the convening of investigating bodies to assist govern-mental and service authorities in establishing the facts in relation to any given situation. Proceedings of boards of inquiry are not admissible in evidence in any disciplinary proceedings, except in respect of perjury in giving evidence before them. The only purpose of the proceedings is to provide guidance to the authority who convened the board of inquiry. The board itself makes no decisions.

Under the former regulations of the three Services, the attendance of civilian witnesses is not compellable. No change is contemplated in this respect as these inquiries are purely of a service character.

Regulations will continue to provide that any officer or man who is directly concerned in the subject matter of the inquiry must be given an opportunity of being present throughout the entire inquiry and of giving whatever evidence and explanation he wishes to give.

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44. (1) The Minister may authorize the forma-tion of cadet organizations under the joint or several control and supervision of the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force, to consist of boys not less than twelve years of age and who have not attained the age of nineteen years.

(2) The cadet organizations mentioned in subsection one shall be trained for such periods, administered in such manner provided with materiel and accommodation, under such conditions and shall be subject to the authority and command of such officers as the Minister may direct.

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(3) The cadet organizations mentioned in subsection one shall not be comprised in the Canadian Forces.

COMMENTS

This section was derived from the following section of the Naval Service Act:

"28A. The Minister may

(a) authorize the formation of Royal Canadian Sea Cadet Corps to consist of boys who have attained the age of twelve years but who have not attained the age of nineteen years and who have voluntarily applied for membership in the Corps;

(b) authorize Royal Canadian Sea Cadet Corps, or any portion thereof, or any members thereof to drill or train for such period of time during each year as he may direct".

"28B. (1) Royal Canadian Sea Cadet Corps shall be drilled, trained and administered in such manner and shall be furnished with arms, ammunition and equipment under such conditions and shall be subject to the authority and command of such officers as the Minister may direct, and the members and instructors thereof shall be entitled to accommodation, medical care and pay and allowances as may be prescribed by the Governor in Council.

(2) Royal Canadian Sea Cadet Corps shall not be liable to service in the Naval Forces in any emergency".

A similar amendment was made to the Royal Canadian Air Force Act in 1946.

The pertinent provisions formerly applicable to the army are the following sections of the Militia Act:

"59. The Minister may

(a) authorize boys of twelve years of age, who are attending school, to be formed into school cadet corps;

(b) uthorize boys over fourteen years of age, and under eighteen years of age, to be formed into senior cadet corps;

(c) authorize cadet corps, or any portion thereof, to drill or train for a period of not more than thirty days in each year".

"60. Each cadet corps shall be aubject to the authority and under the command of such officer as may be appointed by the Minister".

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"61. Cadet corps shall be drilled and trained as prescribed by the Minister and may be furnished with arms, ammunition and equipment under conditions prescribed by him".

"62. Cadet Corps shall not be liable to service in the Militia in any emergency, save only in the case of a levee en masse".

The authority to make regulations in respect of the government and administration of Cadet Corps is to be found in section 13 of the new Act.

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45. (1) The Governor in Council, and such other authorities as are prescribed or appointed by the Governor in Council for that purpose, may in the interests of national defence establish institutions for the training and education of officers and men, officers and employees of the Department and of the Defence Research Board, candidates for enrolment in the Canadian Forces or for employment in the Department or by the Defence Research Board and other persons whose attendance has been authorized by or on behalf of the Minister.

(2) The institutions mantioned in subsection one shall be governed and administered in the manner prescribed by the Minister.

COMMENTS

The object of this section is to authorize the operation of service educational institutions. The institutions such as the Royal Military College (which was purely an army institution) and the Royal Canadian Naval College (which was solely a naval institution) are now replaced by tri-service colleges organized to meet the collective requirements of the three Services in the light of modern defence requirements.

Former legislation governing the establishment of the Royal Military College and the Royal Canadian Naval College (neither of which is now operating as originally constituted) is to be found in the Royal Military College Act and Sections 24 to 28 inclusive of the Naval Service Act, 1944.

The Royal Canadian Military College Act:

"1. This Act may be cited as the Royal Military College Act.

2. (1) There shall be an institution for the purpose of imparting a complete education in all branches of military tactics, fortifications, engineering, and general scientific knowledge in subjects connected with, and necessary to a thorough knowledge of the military profession, and for qualifying officers for command, and for staff appointments.

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(2) Such institution shall be known as "The Royal Military College of Canada", and shall be located in or near some one of the garrison towns of Canada, and shall be under the direction and management of the Minister of National Defence.

3. (1) The Governor in Council may make regulations for the government of the College and the administration of its affairs.

(2) Such regulations shall be published in the Canada Gazette and, upon being so published, they shall have the same force in law as if they formed part of this Act.

4. (1) The military and civil establishment of the College shall be such as is from time to time authorized by the Governor in Council.

(2) All officers employed at the College shall be appointed thereto by the Governor in Council, and shall hold office during pleasure.

(3) All civilians employed at the College shall be appointed in the manner made and provided by the Civil Service Act, chapter twenty-two of the Revised Statutes of Canada, 1927, and the regulations thereunder.

5. The College shall be conducted under the superintendence of a Commandant who shall be a military officer possessing special qualifications with regard to discipline and the instruction required to be given at the College.

6. The pay and allowances and salaries of all military and civilian personnel employed at the College shall be as from time to time authorized by the Governor in Council and as authorized in the manner made and provided by the Civil Service Act, chapter twenty-two of the Revised Statutes of Canada, 1927, and the regulations thereunder respectively.

7. (1) The selection of cadets from each province shall be in order of merit and the number of cadets in attendance at the College and the conditions of entry shall be as from time to time authorized by the Governor in Council.

(2) Every person who enters as a cadet upon a course of instruction at the College shall sign a roll of entry and shall thence-forth for the period of his pupilage be subject to military law.

8. The Minister of National Defence may from time to time authorize the holding of special courses of instruction at the College for officers and other ranks of His Majesty's Naval, Land and Air Forces.

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9. Every cadet shall be required to furnish himself with such books, apparatus and equipment as are not supplied by the College, and to pay a sum not exceeding the rate of three hundred dollars per annum and such allowances as are from time to time authorized by the Governor in Council to meet the ordinary expenses of living and the procuring of uniform.

10. The Royal Military College Act, chapter one hundred and thirty-one of the Revised Statutes of Canada, 1927, is hereby repealed".

Naval Service Act:-

"24. (1) There shall be an institution for the purpose of imparting a complete education in all branches of naval science, tactics and strategy.

(2) Such institution shall be known as the Royal Canadian Naval College and shall be located at such place as the Governor in Council may determine".

"25. (1) The Royal Canadian Naval College shall be governed and its affairs administered under such regulations as may be made by the Governor in Council.

(2) Such regulations shall be published in the Canada Gazette, and upon such publication shall have the same force of law as if they formed part of this Act".

"26. (1) The Royal Canadian Naval College shall be conducted under the superintendence of a naval officer who has special qualifications with regard to discipline and to the instruction to be given, and such professors, instructors and assistants as are found necessary and as are authorized by Parliament.

(2) The staff of the Royal Canadian Naval College shall be appointed by the Governor in Council and shall hold office during pleasure".

"27. (1) Every candidate for admission to the Royal Canadian Naval College shall be required to pass a medical examination and produce satisfactory proof of date of birth and satisfactory certificates of good character.

(2) No candidate shall be admitted until he has passed a medical examination, and thereafter such qualifying examination as may be prescribed by the Governor in Council.

(3) The age of candidates on admission to the Royal Canadian Naval College shall be as prescribed by the Governor in Council".

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"28. Every person admitted as a student to the Royal Canadian Naval College shall engage to serve in the Naval Forces for such length of time and under such conditions as may be prescribed by the Governor in Council, and shall take the oath of allegiance to His Majesty".

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46. (1) The Governor in Council may establish associations and organizations for purposes designed to further the defence of Canada.

(2) The Minister may authorize the provision of accommodation, materiel and facilities for the training, practice and use of the associations and organizations mentioned in subsection one and other associations and organizations designed to further the defence of Canada, whether or not the members of such associations and organizations are officers or men.

COMMENTS

This section was based upon the principle contained in the following section of the Militia Act:

"57. The Governor in Council may make regulations--

(a) for the management of rifle associations and clubs, existing or hereafter formed;
(b) for prescribing the constitution, objects and duties of such associations and clubs, and the conducting of their business and rifle meetings; and
(c) for furnishing rifles and ammunition for the training and practice of persons, whether they are, or are not, members of the Canadian Army".

It will be observed that the above legislation relates only to rifle associations and clubs. The new section has been broadened to make possible the establishment of any associations or clubs designed to further the defence of Canada; for example, service associations such as the Canadian Artillery Association and others already in existence, glider clubs, yacht squadrons, etc., as well as rifle associations.

The type of association that has been or will be established under this section should not be confused with the associations of former service men such as the Canadian Legion, the Naval Officer's Club and the Royal Canadian Air Force Association, which are established by separate Acts of Parliament or by charter under the Companies Acts of Canada or the provinces.

There is also another category of association formed outside of the scope of the Militia Act and this Act, known as Military or United Services Institutes. These organizations consist of former service men and are also

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open to all members of the regular forces and reserves in their localities. Part of their functions are educational, as well as social, and as they frequently maintain good military libraries they have for many years been given annual grants in the Defence Estimates. The outstanding institute of this type is the Royal Canadian Military Institute in Toronto. Undoubtedly under section 46(2) such institutes could be assisted, as indeed they are now.

The Dominion of Canada Rifle Association and the various provincial rifle associations already in existence have been included in the Estimates for many years. The first-named was created by a Dominion Act of Parliament passed in 1900 and the provincial associations are incorporated under provincial law. The National Defence Headquarters Rifle Association and other District and Regimental Rifle Associations have been created by General Orders.

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47. Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or man may be exercised by, or done by, to or before any other officer or man for the time being authorized in that behalf by regulations or according to the custom of the service.

COMMENTS

This section was derived from the following section of the Army Act (UK):

"171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service, or according to rules made under section seventy of this Act".

Section 171 of the Air Force Act (UK) corresponds. No similar legislation has existed in the case of the navy.

Section 70 of the Army and Air Force Acts (referred to in the above quotation), authorizes the making of regulations. Authority to make regulations in the new Act appears in section 13.

The object of this section is to prevent legal difficulties arising from the usages of the services in permitting the exercise of the authority of one officer by another.

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"48. Orders made under this Act may be signified by an order, instruction or letter under the hand of any officer whom the authority who made such orders has authorized to issue orders on his behalf; and any order, instruction or letter purporting to be signed by any officer appearing therein so to be authorized is evidence of his being so authorized.

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COMMENTS

This section was derived from the following section of the Army Act (UK):

> "172. (1) Where any order is authorized by this Act to be made by the Army Council or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of the Army Council or such general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized".

The Air Force Act (UK) contains a corresponding provision. No similar legislation has existed in the case of the navy.

The new section, like sedtion 47, is designed to prevent legal difficulties which might arise from the exercise of authority. It provides a statutory basis for the practice in the services whereby a staff officer or adjutant may sign orders, correspondence, etc., on behalf of his superior.

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49. (1) All regulations and all orders and instructions issued to the Canadian Forces shall be held to be sufficiently notified to any person whom they may concern by their publication, in the manner prescribed in regulations made by the Governor in Council, in the unit or other element in which that person is serving.

(2) All regulations and all orders and instructions relating to or in any way affecting an officer or man of the reserve forces, other than an officer or man who is serving with a unit or other element, when sent to him by registered mail, addressed to his last known place of abode or business, shall be held to be sufficiently notified.

(3) Notwithstanding subsections one and two, all regulations and all orders and instructions mentioned in those subsections shall be held to be sufficiently notified to any person whom they may concern by their publication in the Canada Gazette.

COMMENTS

Subsection (1) should be compared with the following:

Naval Service Act:

"31. All general orders issued to the Naval Forces shall be held to be sufficiently notified

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to all persons whom they concern by their publication and exhibition in the vessel or naval establishment to which those concerned belong, and proof of such exhibition shall be evidence of the issue of such orders".

Militia Act:

"136. All general orders issued to the Canadian Army shall be held sufficiently notified to all persons whom they concern by their insertion in the Canada Gazette".

"137. Every order made by the commanding officer of any unit of the Canadian Army, other than the Active Force, shall be held to be sufficiently notified to all persons whom it concerns, by insertion in some newspaper published in the regimental division in which such unit is situated, or, if there is no such newspaper, then by posting a copy thereof in a post office, or in some other public place, in each company division affected by such order".

"138. It shall not be necessary that any order or notice under this Act be in writing, unless herein required to be so, if it is communicated to the person who is to obey or be bound by it, either directly by the officer or person making or giving it, or by some other person by his order".

The new section is considered sufficiently flexible to meet the different needs of the three Services in all circumstances.

Subsection (2) is new and will apply only to those members of the reserves who are not on the strength of any unit, i.e. persons serving on the retired list, and supplementary reserve and other inactive lists.

Subsection (3) is new. This is a saving provision and is designed to preserve the procedure of notification by publication in the Canada Gazette. Subsection (1), of course, contemplates the provision of a realistic notification procedure which would bring all of this material to the actual attention of members of the forces. The bulk of them never see the Gazette.

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50. A commission, appointment, warrant, order or instruction in writing purported to be granted, made or issued under this Act is evidence of its authenticity without proof of the signature or seal affixed thereto or the authority of the person granting, making or issuing it.

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COMMENTS

This clause is derived from the following:

Militia Act:

"100. The production of a commission or appointment, warrant or order in writing, purporting to be granted or made according to the provisions of this Act, shall be prima facie evidence of such commission or appointment, warrant or order, without proving the signature or seal thereto, or the authority of the person granting or making it".

Naval Service Act:

"32. The production of a commission or appointment, warrant or order in writing, purporting to be made under the provisions of this Act, or of regulations made hereunder shall be prima facie evidence of such commission or appointment, warrant or order, without proving the signature or seal thereto, or the authority of the person granting or making it".

The purpose of this section was to avoid the necessity of proving the authenticity of a document unless its authenticity is attacked.

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51. (1) The Governor General may cause his signature to be affixed to a commission granted to an officer of the Canadian Forces by stamping the signature on the commission with a stamp approved by him and used for the purpose by his authority.

(2) A signature affixed in accordance with subsection one is as valid and effectual as if it were in the handwriting of the Governor General, and neither its authenticity nor the authority of the person by whom it was affixed shall be called in question except on behalf of His Majesty

COMMENTS

This clause is derived from the following section of the Militia Act:

"34. (1) The Governor General may cause his signature to be affixed to any commission granted or issued under this Act, by stamping the same on such commission with a stamp approved by him, and used for the purpose by his authority.

(2) The signature so affixed shall be, to all intents and purposes, as valid and effectual as if in the handwriting of the Governor General.

(3) Neither the authenticity of any such stamped signature, nor the authority of the person by whom it has been affixed to any commission, shall be called in question except on behalf of the Crown".

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52. Every bond to His Majesty entered into by any person before a judge or justice of the peace, or officer of the Canadian Forces, for the purpose of securing the payment of a sum of money or the performance of a duty or act required or authorized by this Act or by regulations, is valid and may be enforced accordingly.

COMMENTS

This section is derived from the following section of the Militia Act:

"128. Every bond to the Crown entered into by any person before any judge or justice of the peace, or officer of the Canadian Army, in conformity with any general order or regulation for the purpose of securing the payment of any sum of money, or the performance of any duty or act hereby required or authorized, shall be valid and may be enforced accordingly".

The purpose of this section was to establish the validity of bonds taken by the Crown which otherwise might be beyond the powers of the Crown to accept. An example occurs where, for defence purposes, the Department lends military equipment to civil organizations such as Air Raid Precaution groups. The department has no specific legislative authority to lend such equipment without charge and must protect itself by a bond enforceable in law.

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PART III.

THE DEFENCE RESEARCH BOARD

This Part contains, in amplified form, provisions for the Defence Research Board that have been contained in section 8 of the Department of National Defence Act as enacted by Statutes of Canada, 1947, Chapter 5.

The provisions contained in sections 53 to 55 which constitute Part III, were based on the following section of the Department of National Defence Act:

> "8. (1) The Governor in Council shall establish a Defence Research Board composed of such persons, not exceeding twelve in number, as may be appointed thereto by him, which shall carry out such duties in connection with research relating to the Defence of Canada and the development of or improvement to service equipment and material as the Minister may assign to it, and shall advise the Minister on all matters relating to scientific, technical and other research and development which affects national defence.
>
> (2) The Governor in Council may appoint one of the members of the Defence Research Board to be Director General of Defence Research. The Director General of Defence Research shall be the chairman and chief executive officer of the Defence Research Board. The Director General of Defence Research and the other members of the Board shall hold office during pleasure and shall be paid such salaries, remuneration and expenses as may be fixed from time to time by the Governor in Council.
>
> (3) Subject to the approval of the Governor in Council, the Defence Research Boardmay,
>
> (a) enter into contracts in the name of His Majesty and establish scholarships in connection with and make grants in aid for research and investigations for national defence;
> (b) establish and support a pension fund or make other pension or superannuation arrangements for the benefit of all or any of the permanent or temporary officers or employees of the Defence Research Board.
>
> (4) The Governor in Council may by regulations-
>
> (a) notwithstanding anything contained in the Civil Service Act and section five of this Act prescribe the manner of selection, remuneration and terms of appointment and service of the officers and employees engaged in the work of the Defence Research Board;

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(b) co-ordinate the work of the Defence Research Board with the Honorary Advisory Council for Scientific and Industrial Research and other organizations and corporations engaged in scientific research and investigation;

(c) make provision generally for carrying out the purposes of this section.

(5) All expenses of the Defence Research Board shall be paid out of moneys appropriated by Parliament for the purpose or received by the Board through the conduct of its operation, bequests, donations or otherwise and shall be paid by the Minister of Finance on the requisition of the Minister. The Minister may request the Minister of Finance to allocate any portion of the moneys appropriated by Parliament for the purpose of the Board for scholarships or grants in aid of research and investigations and thereupon the Minister of Finance shall hold such portion of said moneys in trust and may at any time, on the requisition of the Minister disburse such moneys for scholarships or grants in aid of research and investigations".

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53. (1) There shall be a Defence Research Board which shall carry out such duties in connection with research relating to the defence of Canada and development of or improvements in materiel as the Minister may assign to it, and shall advise the Minister on all matters relating to scientific, technical, and other research and development that in its opinion may affect national defence.

(2) The Defence Research Board shall consist of a Chairman and a Vice Chairman, appointed by the Governor in Council, the persons who from time to time hold the offices of Chief of the Naval Staff, Chief of the General Staff, Chief of the Air Staff, President of the Honorary Advisory Council for Scientific and Industrial Research, and Deputy Minister of National Defence, and such additional members representative of universities, industry and other research interests as the Governor in Council appoints.

(3) The Chairman and Vice Chairman shall hold office during pleasure, and shall be paid such salaries as the Governor in Council determines.

(4) The members of the Defence Research Board, other than the Chairman, Vice Chairman or the ex officio members, shall hold office for a period not exceeding three years but shall be eligible for re-appointment, and shall be paid such remuneration, if any, as the Governor in Council determines.

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(5) Each member shall be paid his travelling and other expenses incurred in connection with the work of the Defence Research Board.

(6) The Chairman shall be the chief executive officer of the Defence Research Board and, under the direction of the Minister and in accordance with policies approved by the Board, shall oversee and direct the officers, clerks and employees of the Board, have general control of the business of the Board, have supervision over the work directed to be carried out by the Board, be charged with the organization, administration and operation of the defence establishments of the Board and perform such other duties as the Minister may assign to him.

(7) The Vice Chairman shall perform such duties as may be assigned to him under the by-laws made by the Defence Research Board.

(8) The Chairman shall have a status equivalent to that of a chief of staff of a Service of the Canadian Forces.

COMMENTS

In so far as section 8(1) of the Department of National Defence Act quoted above relates to the constitution and functions of the Defence Research Board, the new subsection 53(1) is substantially the same.

The new subsection 53(2) provides for the composition of the Defence Research Board. It is derived mainly from section 8(1) and (2) quoted above. In addition, provision has been made for a Vice-Chairman and it will be noted that, in the interests of flexibility, no ceiling has been placed upon the number of additional members. The title 'Director General of Defence Research' has been eliminated.

Subsection (3) was derived from section 8(2) quoted above.

Subsection (4) is new and was based upon experience in the operation of the Defence Research Board.

Subsection (5) was based upon section 8(2) quoted above.

Subsections (6) and (7) are new.

Subsection (8) is new in statutory form. In view of the positions of the Chiefs of Staff being created by section 19 of the new Act, it was considered desirable that the relationship of the Chairman of the Board be defined with regard to the heads of the Services. It will also assist him in his dealings with the Armed Services of other countries.

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54. The Defence Research Board may, with the approval of the Minister,

(a) notwithstanding the Civil Service Act or any other section of this Act or any other statute or law, appoint and employ the professional, scientific, technical, clerical and other employees required to carry out efficiently the duties of the Board, prescribe their duties and, subject to the approval of the Governor in Council prescribe their terms of appointment and service and fix their remuneration;

(b) make by-laws or rules for the regulation of its proceedings and for the performance of its functions;

(c) enter into contracts in the name of His Majes ty for research and investigations with respect only to matters relating to defence; and

(d) make grants in aid of research and investigations with respect only to matters relating to defence and establish scholarships for the education or training of persons to qualify them to engage in such research and investigations.

COMMENTS

Paragraph (a) of section 54 was derived from subsection 4(a) of Section 8 of the Department of National Defence Act. The discretion of the Board is effectively controlled by reserving to the Governor in Council authority for fixing salaries and remuneration.

Paragraph (b) is new.

Paragraph (c) was derived from subsection 3(a) of section 8 of the Department of National Defence Act except that the approval required for the making of contracts is that of the Minister and not of the Governor in Council. However, under the procedure established for the negotiation of contracts on behalf of the Government, all such undertakings involving $15,000 or more of public funds must be submitted to Council for final approval.

The comments to section 56(c) are also applicable to paragraph (d). It is considered more convenient and in the interest of national security that the Minister be authorized to deal with these subjects. Grants in aid are limited to matters relating to national defence. The establishment of scholarships will be for the education or training of persons to qualify them to engage in research and investigations with relation only to nationsl defence. New fields of science have been opened which are of paramount interest to the armed services but which as yet are of only passing interest to the civilian research organizations. Research into guided weapons is such a field. It is

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difficult to hire a scientist-expert in this subject; it may therefore be necessary to hire a scientist and provide special training at Government expense.

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55. (1) All expenses of the Defence Research Board shall be paid out of moneys appropriated by Parliament for the purpose or received by the Board through the conduct of its operations, bequests, donations or otherwise and shall be paid by the Minister of Finance on the requisition of the Minister.

(2) The Minister may request the Minister of Finance to allocate any portion of the moneys appropriated by Parliament for the purposes of the Defence Research Board for scholarships or grants in aid of research and investigations, and thereupon the Minister of Finance shall hold that portion of the moneys in trust and may at any time on the requisition of the Minister disburse that portion of the moneys for scholarships or grants in aid of research and investigations.

(3) Any moneys allocated by the Minister of Finance under this section that, in the opinion of the Minister, are not required for the purpose for which they were allocated shall cease to be held in trust.

COMMENTS

Section 55, in relation to the financial powers of the Board, is in effect the same as section 8(5) of the Department of National Defence Act.

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PART IV

DISCIPLINARY JURISDICTION OF THE SERVICES

For convenience, this Part and Parts V to IX inclusive, relating to discipline within the armed forces, are designated as the "Code of Service Discipline". The purpose of Part IV is to establish the classes of persons who are subject to that Code and the circumstances in which they are so subject. It also contains certain provisions relating to the jurisdiction of service tribunals generally.

56. (1) The following persons, and no others, are subject to the Code of Service Discipline,

(a) an officer or man of the regular forces;
(b) an officer or man of the active service forces;
(c) an officer or man of the reserve forces when he is
  (i) undergoing drill or training whether in uniform or not,
  (ii) in uniform,
  (iii) on duty,
  (iv) called out under subsection two of section thirty-five to render assistance in a disaster,
  (v) called out under Part XI in aid of the civil power,
  (vi) called out on service,
  (vii) placed on active service,
  (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
  (ix) serving with any unit or other element of the regular forces or the active service forces, or
  (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;

(d) subject to such exceptions, adaptations, and modifications as the Governor in Council may by regulations prescribe, a person who pursuant to law is attached or seconded as an officer or man to a Service of the Canadian Forces;

(e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or man of any force raised and maintained out of Canada by His Majesty in right of Canada and commanded by an officer of the Canadian Forces;

(f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;

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(g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section forty-five;
(h) an alleged spy for the enemy;
(i) a service convict, service prisoner or service detainee, not otherwise subject to the Code of Service Discipline, who is committed to undergo his punishment in a service prison or detention barrack, as the case may be;
(j) a person, not otherwise subject to the Code of Service Discipline, while serving with a Service of the Canadian Forces under an engagement with the Minister whereby he agreed to be subject to that Code.

(2) Every person subject to the Code of Service Discipline under subsection one at the time of the alleged commission by him of a service offence shall continue to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that he may have, since the commission of that offence, ceased to be a person mentioned in subsection one.

(3) Every person who, since the alleged commission by him of a service offence, has ceased to be a person mentioned in subsection one, shall for the purposes of the Code of Service Discipline be deemed, for the period during which under that Code he is liable to be charged, dealt with and tried, to have the status and rank that he held immediately prior to the time when he ceased to be a person mentioned in subsection one.

(4) Subject to subsections five and six, every officer or man who is alleged to have committed a service offence may be charged, dealt with and tried only within the Service of the Canadian Forces in which he is enrolled.

(5) Every officer or man who, while attached or seconded to a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other service, as if he were an officer or man thereof, or within the Service in which he is enrolled.

(6) Every officer or man who, while embarked on any vessel or aircraft of a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled.

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(7) Every person serving in the circumstances set forth in paragraph (e) of subsection one who, while so serving, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service of the Canadian Forces in which his commanding officer is serving.

(8) Every person mentioned in paragraph (f) of subsection one who, while accompanying any unit or other element of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within the Service in which is comprised the unit or other element of the Canadian Forces that he accompanies, and for that purpose shall be treated as a man, unless he holds from the commanding officer of the unit or other element of the Canadi Forces that he so accompanies or from any other officer prescribed by the Minister for that purpose, a certificate, revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, entitling such person to be treated on the footing of an officer, in which case he shall be treated as an officer in respect of any offence alleged to have been committed by him while holding that certificate.

(9) Every person mentioned in subsection eight shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces that such person accompanies.

(10) Every person mentioned in paragraph (h) of subsection one may be charged, dealt with and tried within the Service of the Canadian Forces in which he is at any time held in custody and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of such unit or other element of that Service as may be holding him in custody from time to time.

(11) Every person mentioned in paragraph (i) of subsection one who is alleged to have committed, during the currency of his imprisonment or detention, a service offence, may be charged, dealt with and tried within the Service of the Canadian Forces which controls or administers the service prison or detention barrack to which he has been committed, and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of that service prison or detention barrack, as the case may be.

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(12) Every person mentioned in paragraph (j) of subsection one who, while serving with a Service of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service and for that purpose he shall be treated as a man, unless the terms of the agreement under which he was engaged entitle him to be treated as an officer, in which case he shall be treated as an officer.

(13) Every person mentioned in subsection twelve shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces in which that person is serving.

(14) The Code of Service Discipline, in its application to female persons, may be limited or modified by regulations made by the Governor in Council.

COMMENTS

The following comments are made with respect to the various subsections quoted above:

Subsection (1)

Para (a) Officers and men of the regular forces are at all times subject to the Code of Service Discipline.

Para (b) Officers and men of the active service forces, when created, will be subject to the Code.

Para (c) Officers and men of the reserves are subject to the Code only in certain circumstances, all of which are detailed in this paragraph.

Para (d) This should be read in conjunction with section 28, and the comments relating thereto.

Para (e) This paragraph contemplates two situations, first the case in which Canada is in occupation of another country and raises forces therein, and second, the case where forces are raised by Canada in another country with the consent of the government of that country. Persons serving in those circumstances would be subject to the Code of Service Discipline, although not officers or men of the Canadian Forces.

Para (f) This is applicable to persons who "accompany" the forces, for example, war correspondents and civilians who operate meteorological services or provide canteen facilities. The word "accompany" has a well understood meaning in Service custom and practice. Persons of this class are generally referred to as "camp followers".

Para (g) Persons attending educational institutions may or may not be members of the forces. If they are not members of the forces this paragraph leaves it open to the Governor in Council to prescribe the extent to which they will be subject to the Code.

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Para (h) This is new for the army and air force but was provided for in former naval legislation. Such a person is subject to the Code of Service Discipline and may be tried merely by reason of having the status of a spy and without any overt act of "spying" having occurred. This paragraph should be read in conjunction with section 69, which prescribes the offence and the penalty.

Para (i) This is to cover the situation where a person commits an offence while he is undergoin punishment in a service prison or detention quarters, after having been released from the Service or otherwise having ceased to be subject to the Code. Were it not for this paragraph, the Services might have no jurisdiction to deal with the new offence.

Para (j) Cases may arise in which technical experts will go to sea or fly with the Services. If under their contract they agree to be subject to the Code, this paragraph covers them.

Subsection (2)

This subsection broadens the application of the Code of Service Discipline by providing that a released person shall continue to be liable to trial under the Code if at the time of the alleged commission of the offence he was subject to it. It provides part of the basis for section 60 which places a three year limitation upon the trial of all service offences, excepting mutiny, desertion, absence without leave or a service offence for which the punishment is death. Thus every person, subject to the Code when the offence is committed, is in respect of the great majority of crimes liable to trial for three years irrespective of whether he is still in the forces or whether he has been released therefrom. The present law makes serving personnel who have been released, liable to the Code for periods of three to six months. This is considered most unfair in that a person who commits an offence may well seek his release from the forces on any ground available and thus escape liability to prosecution while another who is equally involved or who committed a similar offence would continue to be liable to trial for at least three years. This subsection places both categories of persons in the same position. Reference is made to Section 71(1) and (2) of the Militia Act, Section 91 of the Naval Service Act, Section 12 of the RCAF Act, and Section 158(1) of the Army Act (UK).

Subsection (3)

This is new. It is essentially procedural, being designed to ensure that no uncertainty will exist regarding such matters as the type of service tribunal that should be convened, the nature of punishments that may be imposed, etc., in respect of the personnel affected.

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Subsections (4) to (7)

These subsections did not introduce any new basic principle but are largely a clarification of existing Service law. It will be noted from subsection (4) that an officer or man is liable to trial only within his own Service, subject to the exceptions set out in subsections (5) and (6) relating to cases of attachment and secondment and persons on a ship or aircraft of another Service. There is complete flexibility as between the Services in dealing with officers and men who are attached or seconded. They may be charged, dealt with and tried within the Service to which they belong or within the Service to which they are attached or seconded, as circumstances warrant.

Subsections (8) to (13)

These subsections prescribe the Service within which each of the persons mentioned in paragraphs (f) to (j) of subsection (1) may be tried, and in addition makes provision for the command of such persons in order to create jurisdiction in a commanding officer and also in a court martial, should one be convened. As a result of a decision in an Ontario case, Rex vs Thompson (No 1), 1946 4 DLR, 579, it is essential in order to place jurisdiction in a court martial that a person, occupying the position of commanding officer in respect of the accused, should consider the charge against him and exercise a judicial discretion by (a) dismissing the charge, (b) dealing with it himself, (c) consulting superior military authority, or (d) remanding the case for trial by court martial. Some of the material contained in the subsections (8) to (13) is new but the general effect of the former legislation has not been altered.

Subsection (14)

Authority formerly existed for the enrolment of women in the armed forces because of the following provision of the Interpretation Act:

"31. In every Act, unless the contrary intention appears,
(i) words importing the masculine gender include females";

Certain provisions of the Code of Service Discipline, applicable to male personnel, would be inappropriate for women. The main purpose of paragraph (14) is to indicate that regulations may be made limiting the extent to which the Code should be applied to women. For example, it was considered in the Second World War that the punishment of "detention" was inappropriate to women in the forces.

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57. (1) Every person, in respect of whom a charge of having committed a service offence has been dismissed, or who has been found guilty or not guilty either by a service tribunal or a civil court on a charge of having committed any such offence, shall not be tried or tried again by a service tribunal under this Act in respect of that offence or any other offence of which he might have been found guilty on that charge by a service tribunal or a civil court.

(2) Nothing in subsection one shall affect the validity of a new trial ordered under section one hundred and ninety-one or one hundred and ninety-nine.

(3) Every person who under section one hundred and sixty-three has been sentenced in respect of a service offence admitted by him shall not be tried by a service tribunal under this Act in respect of that offence.

COMMENTS

Subsection (1) was based on the following provisions of the Army Act (UK):

> "46(7). An offender shall not be liable to be tried by court martial where the charge has been dismissed or the offence has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by a court martial".
>
> "157. Where a person subject to military law has been acquitted or convicted of an offence by a court martial, he shall not be liable to be tried again by a court martial in respect of that offence".
>
> "162(6). Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act".

Similar provisions appear in the Air Force Act (UK) and in naval regulations.

Subsection (2) is new. It relates to a new trial ordered by the Court Martial Appeal Board or a new trial ordered as the result of newly discovered evidence.

Subsection (3) is new. It protects an accused person who has been sentenced in respect of an offence admitted by him in the course of his trial upon another similar offence. See the comments to section 163.

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58. Subject to section sixty-one, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or out of Canada.

COMMENTS

This is derived from the following section of the Army Act (UK):

> "159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorized to convene general courts martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court martial takes place, and the offender were under the command of the officer convening such court martial".

A similar provision appears in the Air Force Act (UK).

Those sections should be compared with the following provision of the Naval Service Act:

> "90. (1) Every person who is charged with an offence under sections forty-nine to eighty-eight, both inclusive, and section ninety-six of this Act, (NB. These are service offences), may be tried and punished under this Part regardless of where the alleged offence was committed.
>
> (2) Every person who is charged with an offence under section eighty-nine (NB. Civil offences), of this Act may be tried and punished under this Part:
>
> (a) when the alleged offence was committed within Canada --
>
> (i) in any harbour, haven, or creek or on any lake or river; or
>
> (ii) in or on any property of the Naval Service, including naval establishments, ships and other vessels, aircraft and vehicles; or
>
> (iii) on any premises held by or on behalf of the Crown in the right of Canada for naval or military or air force purposes; or
>
> (iv) in a canteen or sailor's home or any place of recreation placed at the disposal of or used by officers or men of the Naval Forces which is prescribed by the Minister;
>
> (b) when the alleged offence was committed outside of Canada, at any place on land, at sea or in the air.

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It will be noted that under subsection (2) of section 90 of the Naval Service Act, naval tribunals have had no jurisdiction to deal with an offence punishable by ordinary law committed in Canada, unless the offence was committed in one of the places designated in paragraph (2) of that subsection. Section 58 brings the three Services into line, the broader jurisdiction held by the army and air force having been adopted.

This section should be read in conjunction with section 61 which precludes service tribunals from dealing with offences of murder, rape or manslaughter committed in Canada.

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59. Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or out of Canada.

COMMENTS

This was based on the following section of the Army Act (UK):

"159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorized to convene general courts martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court martial takes place, and the offender were under the command of the officer convening such court martial".

A similar provision appears in the Air Force Act (UK).

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60. (1) Except in respect of the service offences mentioned in subsection two, no person shall be liable to be tried by a service tribunal unless his trial begins before the expiration of a period of three years from the day upon which the service offence was alleged to have been committed.

(2) Every person, subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence of mutiny, desertion or absence without leave or a service offence for which the highest punishment that may be imposed is death, shall continue to be liable to be charged, dealt with and tried at any time under the Code of Service Discipline.

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COMMENTS

This was based on the following:

Militia Act:-

"71. (3) Any officer or man of the Canadian Arm may be tried by court martial for the crime of desertion at any time, without reference to the length of time which has elapsed since his desertion."

Naval Service Act:-

"91. Where an offence under this Part has been committed by any person while subject to this Part such person may be taken into and kept in custody and tried and punished for such offence although he has ceased to be subject to this Part, in like manner as he might have been taken into and kept in custody, tried or punished if he had continued so subject; provided that where a person has since the commission of an offence ceased to be subject to this Part, he shall not be tried for such offence, except in case of offences of mutiny or desertion, unless proceedings against him are instituted within three months after he has ceased to be subject to this Part, but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court martial."

"99. No person, unless he is an offender who has avoided apprehension or fled from justice, shall be tried or punished in pursuance of this Part for any offence committed by him unless the trial shall take place within three years from the commission of the offence, or within one year after the return of the offender to Canada, where he has been absent from Canada during such period of three years."

RCAF Act:-

"12. (3) Any officer or airman charged with desertion may be charged, tried and punished under this Act for such offence at any time, and shall remain subject to this Act accordingly."

Army Act (UK):-

"158 (1) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject:

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Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment, unless his trial commences within three months after he had ceased to be subject to military law, or unless the offence was committed outside the United Kingdom and is an offence which when committed in England is punishable by the law of England, and the Attorney-General consents to the trial; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial, and the limitation of time imposed by this proviso shall not apply in the case of a person who has been attached to or seconded for service with His Majesty's military forces and has ceased to be subject to military law by reason only of the termination of such attachment or seconding."

"161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court martial; and where a soldier has served continuously in an exemplary manner for not less than three years as a soldier of the regular forces he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment all service prior to such enlistment shall be forfeited: Provided that a soldier who has fraudulently enlisted during a period of re-engagement shall only forfeit the service rendered during such re-engagement, and that the Army Council may by general or special regulations provide for the restoration of all or any part of the service forfeited under this section to any soldier who may perform good and faithful service or may otherwise be deemed to merit such restoration of service."

The provisions of the Criminal Code relating to periods of liability to trial are somewhat complicated and no reason is seen for departmeng from the relatively simple approach incorporated in Service legislation.

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61. A service tribunal shall not try any person charged with an offence of murder, rape or manslaughter, committed in Canada.

COMMENTS

This was based on the following proviso to section 41 of the Army Act (UK):-

> "41.....Provided that a person subject to military law shall not be tried by court martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court".

The Air Force Act (UK) contains a similar provision but, as made applicable to the RCAF, it has referred specifically to Canada.

The offences "treason" and "treason-felony" were omitted from the new section because it appeared inconsistent to restrict the powers of service tribunals to try persons for civil offences of a treasonable nature while making provision in other offence sections of the Act for the trial of personnel for service offences also of a treasonable nature.

The reference to distance in the proviso quoted above appears to be unrealistic having regard to modern transportation facilities and therefore it was not included in the new section. There has been no similar provision in respect of the navy, but under section 90(2) of the Naval Service Act (quoted in full in the comments to section 58) these offences could not be tried by navy tribunals unless they were committed in ships, harbours, lakes and other places specified in paragraph (a) of that subsection.

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62. (1) Nothing in the Code of Service Discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

(2) Where a person, sentenced by a service tribunal in respect of a conviction on a charge of having committed a service offence, is afterwards tried by a civil court for the same offence or for any other offence of which he might have been found guilty on that charge, the civil court shall in awarding punishment take into account any punishment imposed by the service tribunal for the service offence.

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(3) Where a civil court that tries a person in the circumstances set out in subsection two either acquits or convicts the person of an offence, the unexpired term of any punishment of imprisonment for more than two years, imprisonment for less than two years or detention, imposed by the service tribunal in respect of that offence, shall be deemed to be wholly remitted as of the date of the acquittal or conviction by that civil court.

COMMENTS

Subsections 62(1) and (2) were derived from the Army Act (UK):

"41A. Nothing in this Act affects any jurisdiction of any civil court to try a person subject to military law for any offence".

"162(1). If a person sentenced by court martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence, that court shall, in awarding punishment, have regard to the military punishment he may have already undergone.

(2). Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service".

Similar provisions appear in the Air Force Act (UK).

These subsections should be compared with the following from the Naval Service Act:

"121. Nothing in this Act shall supersede or affect the authority or power of any court or tribunal of ordinary civil or criminal jurisdiction in respect of any offence mentioned in this Part which may be punishable by the common or statute law, or prevent any person being proceeded against and punished in respect of such offence otherwise than under this Part".

Subsection (3) is new. Under subsections (1) and (2) the civil court in imposing punishment is obliged to take into account any punishment imposed on the offender as a result of a conviction by a service tribunal for the same offence. It follows as a matter of course that the unexpired portion, if any, of the service punishment should be remitted and the offender punished under the civil sentence only in which would be gathered up all the elements that should be considered.

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PART V

This Part prescribes service offences applicable to all three Services, with the maximum punishments considered appropriate for each offence. Where practicable, the principles embodied in the Criminal Code have been followed. The Part contains a scale and description of service punishments, with details of the circumstances in which specific punishments may be imposed. It concludes with provisions which make available to persons accused of having committed service offences, the same grounds of defence as are available to persons tried in the civil courts.

63. (1) Every person is a party to and guilty of an offence who

(a) actually commits it;
(b) does or omits an act for the purpose of aiding any person to commit the offence;
(c) abets any person in commission of the offence; or
(d) counsels or procures any person to commit the offence.

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not.

COMMENTS

This section is self-explanatory and is based upon the following provisions of the Criminal Code:

"69. Every one is a party to and guilty of an offence who
(a) actually commits it;
(b) does or omits an act for the purpose of aiding any person to commit the offence;
(c) abets any person in commission of the offence; or
(d) counsels or procures any person to commit the offence."

"72. Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit such offence or not".

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64. Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who

(a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;
(b) being in action, does not, during the action,

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in his own person and according to his rank, encourage his officers and men to fight courageously;
(c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy;
(d) being in action, improperly withdraws from the action;
(e) improperly fails to pursue an enemy or to consolidate a position gained;
(f) improperly fails to relieve or assist a known friend to the utmost of his power; or
(g) when in action, improperly forsakes his station, is guilty of an offence and on conviction, if he acted traitorously shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.

COMMENTS

This was based upon the following:

Naval Service Act:

"49. Every flag officer, captain, commander or officer commanding who:
(a) upon signal of battle, or on sight of a ship of an enemy which it is his duty to engage, does not use his utmost exertion to bring his ship into action, or
(b) his ship being in action, does not, during the action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously, or
(c) surrenders his ship to the enemy when capable of making a successful defence, or
(d) in time of action improperly withdraws from the fight, shall, if he has acted traitorously, suffer death; if he has acted from cowardice, suffer death or such lesser punishment as is hereinafter mentioned; if he has acted from negligence, or through other default, be dismissed from the Naval Service, with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

"50. Every officer who forbears to pursue the chase of any enemy, pirate, or rebel, beaten or flying, or does not relieve and assist a known friend in view to the utmost of his power, or who improperly forsakes his station, shall, if he therein acts traitorously, suffer death; if he acts from cowardice, suffer death or such lesser punishment as is hereinafter mentioned; if he acts from negligence, or through other default, be dismissed from the Naval Service, with disgrace or suffer such lesser punishment as is hereinafter mentioned".

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Army Act (UK):

"4. Every person subject to military law who commits any of the following offences; that is to say,
(1) Shamefully abandons or delivers up any garrison, place, post, or guard or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post or guard, which it was the duty of such governor, officer, or person to defend;
shall, on conviction by court martial, be liable to suffer death, or such less punishment as is in this Act mentioned".

Air Force Act (UK):

"4. Every person subject to this Act who commits any of the following offences; that is to say:

(1) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend;

(10) When ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air treacherously or shamefully fails to use his utmost exertions to carry such orders into effect;

shall on conviction by court martial be liable to suffer death, or such less punishment as is in this Act mentioned".

The sections quoted above have been rearranged and brought into line with modern requirements and made applicable to all three Services.

As this is the first of the service offence sections, attention is directed to section 121(1) which contains the scale of punishments that may be awarded by service tribunals, and to section 121(2) which indicates the significance of the expression "less punishment".

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65. Every person who
(a) improperly delays or discourages any action against the enemy;
(b) goes over to the enemy;
(c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;
(d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard;

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(e) assists the enemy with materiel;
(f) improperly casts away or abandons any materiel in the presence of the enemy;
(g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;
(h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;
(i) behaves before the enemy in such manner as to show cowardice; or
(j) does or omits to do anything with intent to imperil the success of any of His Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment.

66. Every person who
(a) improperly holds communication with or gives intelligence to the enemy;
(b) without authority discloses in any manner whatsoever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of His Majesty's Forces or of any forces co-operating therewith;
(c) without authority discloses in any manner whatsoever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of His Majesty's Forces or of any forces co-operating therewith;
(d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;
(e) gives a parole, watchword, password, countersign or identification signal different from that which he received;
(f) without authority alters or interferes with any identification or other signal;
(g) improperly occasions false alarms;
(h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
(i) forces a safeguard or forces or strikes a sentinel; or
(j) does or omits to do anything with intent to prejudice the security of any of His Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

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67. Every person who
(a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
(b) having been made a prisoner of war, fails to rejoin His Majesty's service when able to do so; or
(c) having been made a prisoner of war, serves with or aids the enemy,
is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

68. Every person who
(a) does violence to any person bringing materiel to any of His Majesty's Forces or to any forces co-operating therewith;
(b) irregularly detains any materiel being conveyed to any unit or other element of His Majesty's forces or of any forces co-operating therewith;
(c) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any materiel being conveyed to any other unit or element of His Majesty's forces or of any forces co-operating therewith;
(d) without orders from his superior officer, improperly destroys or damages any property;
(e) breaks into any house or other place in search of plunder; or
(f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,
is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.

COMMENTS

Sections 65, 66, 67 and 68 consist of groups of offences, each group having a common characteristic; but each section is derived from different offence sections in the following legislation:

Naval Service Act:

"51. When any action or any service is commanded, every person who delays or discourages the action or service or who in the presence or vicinity of the enemy deserts his post or sleeps upon his watch, shall suffer death or such lesser punishment as is hereinafter mentioned".

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"52. Every person not being a Commanding Officer, who does not use his utmost exertions to carry the orders of his superior officers into execution when ordered to prepare for action, or during the action, shall: if he acts traitorously, suffer death; if he acts from cowardice suffer death or such lesser punishment as is hereinafter mentioned; if he acts from negligence, or through other default, be dismissed from the Naval Service, with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

"54. Every person who:

(a) traitorously holds correspondence with or gives intelligence to the enemy; or

(b) fails to make known to the proper authorities any information he may have received from the enemy; or

(c) relieves the enemy with any supplies;

shall suffer death, or such lesser punishment as is hereinafter mentioned".

"55. Every person who without any treacherous intention, holds any improper communication with the enemy, shall be dismissed with disgrace from the Naval Service, or shall suffer such lesser punishment as is hereinafter mentioned".

Army Act (UK):

"4. Every person subject to military law who commits any of the following offences; that is to say,

(1) Shamefully abandons or delivers up any garrison, place, post, or guard or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

(2) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy; or

(3) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy; or

(4) Assist the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner; or

(5) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy; or

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(6) Knowingly does when on active service any act calculated to imperil the success of His Majes ty's forces, or any forces co-operating therewith, or any part of any such force;

shall, on conviction by court martial, be liable to suffer death, or such less punishment as is in this Act mentioned.

"5. Every person subject to military law who on active service commits any of the following offences; that is to say,

(1) Without orders from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or

(2) Without orders from his superior officer wilfully destroys or damages any property; or

(3) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or

(4) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or

(5) By word of mouth, or in writing, or by signals, or otherwise spreads reports calculated to create unnecessary alarm or despondency; or

(6) In action, or previously to going into action, uses words calculated to create alarm or despondence; or

(7) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,

shall, on conviction by court martial, be liable to suffer penal servitude, or such less punishment as is in the Act mentioned".

"6. (1) Every person subject to military law who commits any of the following offences; that is to say,

(i) Treacherously makes known the parole, watchword, or countersign to any person not entitled to receive it; or treacherously gives a parole, watchword, or countersign different from what he received;

shall, on conviction by court martial,

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if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service be liable if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2) Every person subject to military law who commits any of the following offences; that is to say,

(a) Leaves his commanding officer to go in search of plunder; or

(b) Forces a safeguard; or

(c) Forces or strikes a sentinel; or

(d) Breaks into any house or other place in search of plunder; or

(e) Being a soldier acting as sentinel sleeps or is drunk on his post; or

(f) Without orders from his superior officer, leaves his guard, piquet, patrol or post; or

(g) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or

(h) Being a soldier acting as sentinel, leaves his post before he is regularly relieved,

shall, on conviction by court martial,

if he commits any such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned, and

if he commits any such offence on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(3) Every person subject to military law who commits any of the following offences; that is to say,

(a) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field or elsewhere; or

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(b) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword, or countersign different from what he received; or

(c) Impedes the provost marshal or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person; or

(d) Does violence to any person bringing provisions or supplies to the forces, whether His Majesty's forces or force co-operating therewith; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or

(e) Irregularly detains or appropriates to his own corps, batallion, or detachment any provisions or supplies proceeding to any such force as aforesaid, contrary to any orders issued in that respect,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

"36. Every person subject to military law who commits the following offence; that is to say,

Whether serving with any of His Majesty's forces or not, without due authority, either verbally or in writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the Court to have produced effects injurious to His Majesty's Service,

shall, on conviction by Court Martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The Air Force Act (UK) contains provisions similar to those contained in the Army Act (UK) and, in addition, the following:

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Air Force Act (UK):

"4. (10) When ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air treacherously or shamefully fails to use his utmost exertions to carry such orders into effect;

shall on conviction by court martial be liable to suffer death, or such less punishment as is in this Act mentioned".

"5. (9) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice;

shall, on conviction by court martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned".

It will be noted that in sections 65, 66, 67 and 68, several archaic offences have been modified in the light of modern requirements, but that no new principle has been introduced.

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69. Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment.

COMMENTS

This was based on the following section of the Naval Service Act:

"53. All spies for the enemy shall suffer death or such lesser punishment as is hereinafter mentioned".

There has been no similar provision for the army or air force.

It will be observed that under section 56, subsection (1)(h), a person who is alleged to be a spy for the enemy is made subject to the Code of Service Discipline and that under subsection (10) of section 56 any such person may be charged, dealt with and tried within the Service of the Canadian Forces in which he is at any time held in custody.

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70. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment.

71. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment.

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COMMENTS

Sections 70 and 71 were based on the following:

Naval Service Act:

"57. Where a mutiny is accompanied by violence, every person who joins therein shall suffer death, or such lesser punishment as is hereinafter mentioned; and every person who does not use his utmost exertions to suppress the mutiny shall; if he acts traitorously, suffer death, or such lesser punishment as is hereinafter mentioned; if he acts from cowardice, suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned; if he acts from negligence be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned."

"58. Where a mutiny is not accompanied by violence, the ringleader or ringleaders of the mutiny shall suffer death, or such lesser punishment as is hereinafter mentioned and all other persons who join in such mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned."

Army Act (UK):

"7. (3) Every person subject to military law who commits any of the following offences; that is to say,

(3) Joins in, or being present does not use his utmost endeavours to suppress, any mutiny or sedition in any such force as aforesaid;

shall, on conviction by court martial, be liable to suffer death, or such less punishment as is in this Act mentioned."

A provision similar to section 7(3) of the Army Act (UK) appears in the Air Force Act (UK).

The naval conception of the offence of mutiny has been adopted. A mutiny may be accompanied by violence or not accompanied by violence, and the gravity of the offence depends in large measure on this factor.

It will be observed that in section 71 a distinction is made between ringleaders and others.

These sections should be read in conjunction with the definition of "mutiny" in section 2(u).

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72. Every person who
(a) causes or conspires with any other person to cause a mutiny;
(b) endeavours to persuade any person to join in a mutiny;
(c) being present, does not use his utmost endeavours to suppress a mutiny; or
(d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,
is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"7. Every person subject to military law who commits any of the following offences; that is to say,

(1) Causes or conspires with any other person to cause any mutiny or sedition in any of His Majesty's military, naval, or air forces (including any Dominion force); or

(2) Endeavours to seduce any person in any such force as aforesaid from allegiance to His Majesty, or to persuade any person in any such force as aforesaid to join in any mutiny or sedition; or

(3) Joins in, or being present does not use his utmost endeavours to suppress, any mutiny or sedition in any such force as aforesaid; or

(4) Coming to the knowledge of any actual or intended mutiny or sedition in any such force as aforesaid, does not without delay inform his commanding officer of the same,

shall, on conviction by court martial, be liable to suffer death, or such less punishment as is in this Act mentioned."

Section 7 of the Air Force Act (UK) is similar.

Reference is also made to the following provisions of the Naval Service Act:

"59. Every person who endeavours to seduce any other person subject to this Part from his duty or allegiance to His Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such lesser punishment as is hereinafter mentioned."

"61. Every person who makes or endeavours to make any mutinous assembly, or leads or incites any person to join in any mutinous assembly or utters any words of sedition or mutiny, shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned."

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"62. Every person who wilfully conceals any traitorous or mutinous practice or design, or any traitorous or mutinous words spoken against His Majesty, or any words, practice, or design tending to the hindrance of the service, shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned."

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73. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

COMMENTS

Section 73 is new. It will be noted from sub-section (4) of section 7 of the Army Act (UK), quoted in the comments opposite section 72, that 'sedition' appears in the same offence section as mutiny. In order to avoid confusion, it has been thought advisable to treat sedition separately.

The terms of the new 'sedition' offence section were derived from the definition of 'seditious intentions' which appears in the following provision of the Criminal Code:

> "133 (4) Without limiting the generality of the meaning of the expression 'seditious intentions' everyone shall be presumed to have a seditious intention who publishes, or circulates any writing, printing or document in which it is advocated, or who teaches or advocates, the use, without the authority of law, of force, as a means of accomplishing any governmental change within Canada."

Although the former Army Act provision mentioned provides for the death penalty for sedition, it is considered that life imprisonment is a sufficient maximum punishment.

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74. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

COMMENTS

This was based on the following legislation:

Naval Service Act:

"64. Every person who wilfully disobdys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt to his superior officer, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

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Army Act (UK):

"9. (1) Every person subject to military law who commits the following offence; that is to say,

> Disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall, on conviction by court martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

(2) Every person subject to military law who commits the following offence; that is to say,

> Disobeys any lawful command given by his superior officer, shall, on conviction by court martial, if he commits such offence on active service, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and
>
> if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 9 of the Air Force Act (UK) contains the subsections quoted last above and in addition includes a subsection which provides for the captain of an aircraft being "deemed to be the superior officer of every other person therein". It was not thought necessary to reproduce this subsection in view of section 100, which deals specifically with the matter of command in aircraft.

Section 74 follows the former naval section rather than the army and air force counterparts, the reason being that the various additional elements in army and air force legislation have caused considerable confusion in the past and are not essential elements of the offences. The severity of the maximum punishment was considered to be justified in order that extreme cases of disobedience, possibly resulting in failure of an operation and the loss of many lives, may be dealt with adequately.

Attention is directed to section 2(*ll*) where 'superior officer' is defined.

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75. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

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COMMENTS

This was based on the following legislation:

Naval Service Act:

"63. Every person who strikes or attempts to strike, or draws or lifts up any weapon against, or uses or attempts to use any violence against his superior officer whether or not such superior officer is in the execution of his office, shall suffer imprisonment in a penitentiary or such less punishment as is hereinafter mentioned".

Army Act (UK):

"8. (1) Every person subject to military law who commits any of the following offences; that is to say,

> Strikes or uses or offers any violence to his superior officer, being in the execution of his office,

shall, on conviction by court martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and

(2) Every person subject to military law who commits any of the following offences; that is to say,

> Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,

shall, on conviction by court martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned".

Section 8 of the Air Force Act (UK) contains a similar provision.

The new section introduces no new principle, although it will be noted that the distinction arising from "execution of his office", contained in army and air force legislation, has been discarded. This change was made because of the difficulty experienced in the past in determining when a superior officer was "in the execution of his office". The severity of the maximum punishment is justified by reason of the very serious consequences which might, in a particular case, flow from the striking of a superior officer.

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76. Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment.

COMMENTS

This was based on the following legislation:

Naval Service Act:

"64. Every person who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language or behaves with contempt to his superior officer, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

Army Act (UK):

"8. (2) Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatinging or insubordinate language to his superior officer,

shall, on conviction by court martial, if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as in this Act mentioned".

Section 8(2) of the Air Force Act (UK) contains a similar provision.

This section covers insubordinate behaviour of a less serious character than that prescribed as offences in sections 74 and 75. The penalty is the same as in the Naval Service Act.

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77. Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

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COMMENTS

This was based on the following sectionof the Naval Service Act:

> "65. Every person who quarrels or fights with any other person, whether such other person is or is not subject to this Part, or who uses reproachful or provoking speeches or gestures tending to make any quarrel or disturbance, shall suffer imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned".

There has been no corresponding legislation in effect for the army or air force.

The offence of quarreling or fighting could attain serious proportions in the confined spaces of a ship or aircraft. Modern conditions of service in the army involving the use of troop-carrying aircraft, gliders and vehicles, raise similar problems. It is highly unlikely of course that any commanding officer would invoke this section to suppress minor altercations not affecting good order and discipline.

Fighting with civilians could be dealt with as conduct to the prejudice of good order and discipline, or as a civil offence triable under this Act, or by the civil authorities, as might appear most appropriate in the circumstances.

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> 78. Every person who
>
> (a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;
>
> (b) strikes or uses or offers violence to any person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;
>
> (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
>
> (d) breaks out of barracks, station, camp, quarters or ship,
>
> is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was derived from the following section of the Army Act (UK):

> "10. Every person subject to military law who commits any of the following offences; that is to say,

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(1) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer; or

(2) Strikes or uses or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or

(3) Resists an escort whose duty it is to apprehend him or to have him in charge; or

(4) Being a soldier, breaks out of barracks, camp or quarters,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

The Air Force Act (UK) contains a similar provision.

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79. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

(2) A person deserts who

(a) being on or having been warned for active service or other important service, is absent without authority with the intention of avoiding that service;

(b) having been warned that his vessel is under sailing orders, is absent without authority, with the intention of missing that vessel;

(c) absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;

(d) is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returining to that unit, formation or place; or

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(e) while absent with authority from his unit or formation or the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequences of which act or omission is to preclude his return to that unit, formation or place at the time required.

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

COMMENTS

This was based on the following legislation:

Naval Service Act:

"66. Every person who absents himself from his ship, or from the place where his duty requires him to be, with the intention of not returning to such ship or place, or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place, shall be deemed to have deserted, and

(a) if he has deserted to the enemy he shall be punished with death or such lesser punishment as is hereinafter mentioned;

(b) if he has deserted under any other circumstances, he shall be punished with imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned;

and in every case he shall forfeit all pay, bounty, salvage, prize money, and allowances that have been earned by him, and all annuities, gratuities, medals, decorations, and good conduct and good service badges that have been granted to him, and also all clothes and effects which he left on board the ship or at the place from which he deserted, unless the tribunal by which he is tried, or the Minister, otherwise directs".

"67. Every person who endeavours to seduce any other person subject to this Part to desert shall suffer imprisonment elsewhere than in a penitentiary, or such less punishment as is hereinafter mentioned".

Army Act (UK):

"12. (1) Every person subject to military law who commits any of the following offences; that is to say,

(a) Deserts or attempts to desert His Majesty's service; or

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(b) Persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert from His Majesty's service.

shall, on conviction by court martial --

if he committed such offence when on active service or under orders for active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned".

Section 12(1) of the Air Force Act (UK) is similar.

The provisions of the Army Act (UK) quoted above refer to desertion from "His Majesty's service" whereas the naval provision and the new section do not contain this expression. The reason for dropping the words "His Majesty's service" is that they have an unduly restrictive effect; for example, a soldier who leaves a regiment in combat for the purpose of joining a regiment in the rear, cannot be said to have deserted His Majesty's service. The approach adopted in the new section approximates the former naval provision whereby a person deserts who leaves his unit or place of duty with the intention of not returning.

The elements contained in Section 12(1)(b) of the Army Act and Air Force Act are not perpetuated. They are dealt with for all offences in section 63 (Responsibility for Offences).

The maximum penalty for desertion has been placed at five years, thus striking an average between penal servitude and two years. Two considerations were responsible for this change:-

(A). The broader definition of desertion would include thousands of cases that were formerly treated as absence without leave.

(B). Experience in the Second World War showed that the offence rarely resulted in a sentence in excess of two year's imprisonment, and no case is known where an offender actually served more than five years.

Section 79(2) is new. The purpose was to establish beyond doubt the various circumstances in which the offence of desertion may be committed. Although most of the situations outlined in paragraphs (2)(a) to (e) are self-explanatory, the following comments are made:

(a) This would include a case where troops had been given a draft warning in respect of military movements, service in a case such as the British Columbia

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or Manitoba floods under section 35, aid of the civil power, mercy flights by the RCAF or other important duties of a specific nature.

(b) This was intended to cover the normal movements of crews of ships.

(c) This is probably the most common type of desertion.

(d) This contemplates the situation in which absence without leave develops into the more serious offence of desertion."

(e) This was intended to cover cases in which officers and men, while properly on leave, decide to desert. They could be apprehended and a charge could be laid even though their leave had not expired.

Section 73(3) is new and was considered a reasonable presumption to provide for in respect of an absentee without leave. It may of course be rebutted.

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80. Every person who

(a) being aware of the desertion or intended desertion of a person from any of His Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith; or

(b) fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"14. Every person subject to military law who commits any of the following offences; that is to say,

(2) Being cognizant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter or intending deserter to be apprehended,

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned."

Section 14(2) of the Air Force Act (UK) is similar.

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Subsection (1) of section 14 of both the Air Force Acts (UK) refers to the offence of assis person subject to military law to desert His Majest service. It is not considered necessary to reproduc subsection in view of section 63, relating to respons for offences, which makes a person guilty of an offenc who assists in its commission.

Attention is directed to the following section o the Naval Service Act covering a particular type of case that would be included in the proposed section 80.

"Every officer in command of any of His Majesty's Canadian Ships who receives or entertains a deserter from His Majesty's Canadian naval, military, or air forces, after discovering him to be a deserter, and does not with all convenient speed, in the case of a deserter from the Naval Forces give notice to the Commanding Officer of the ship to which the deserter belongs, or if the ship is at a distance, to the Commander-in-Chief, or, in case of a deserter from His Majesty's Canadian military or air forces, give notice to the Department of National Defence, or the Commanding Officer of the regiment or unit to which the deserter belongs, the officer so offending shall be dismissed from the Naval Service, or suffer such lesser punishment as is hereinafter mentioned."

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81. (1) Every person who absents himself without leave out leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

(2) A person absents himself without leave who

(a) without authority leaves his unit or formation or the place where his duty requires him to be;

(b) without authority is absent from his unit or formation or the place where his duty requires him to be; or

(c) having been authorized to be absent from his unit or formation or the place where his duty required him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorized.

COMMENTS

This was based on the following legislation:

Naval Service Act:

If any person without being guilty of deser- improperly leaves his ship or place of duty, l be liable to imprisonment elsewhere than

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in a penitentiary or to such lesser punishment as is hereinafter mentioned, and to such other punishment by forfeiture of wages or of other benefits as the Minister prescribes".

"70. Every person who without being guilty of desertion or of improperly leaving his ship or place of duty is absent without leave shall be liable in time of emergency to imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned, and at other times to imprisonment elsewhere than in a penitentiary or detention for any period not exceeding ten weeks, or such other punishment as the circumstances of the case require, and to such other punishment by forfeiture of wages or of other benefits as the Minister prescribes".

Army Act (UK):

"15. Every person subject to military law who commits any of the following offences; that is to say,

(1) Absents himself without leave; or

(2) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks; or

(3) Being a soldier, when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general garrison or other order, without a pass or written leave from his commanding officer; or

(4) Being a soldier without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 15 of the Air Force Act (UK) is similar.

It will be noted that only one substantive offence of absence without leave is provided for and that, as in the case of the offence of desertion, 'absence without leave' is defined in subsection (2). All of the separate offences included in the above-mentioned legislation fall within the definition of absence without leave.

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82. Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following provision of the Army Act (UK):

"27. Every person subject to military law who commits any of the following offences; that is to say,

(4) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 27(4) of the Air Force Act (UK) is similar.

The points of distinction between former legislation and the new section are; first, that the new section is made applicable to officers as well as men; second, that a false statement in respect of prolongation of leave is an offence no matter to whom it is made; and third, the element of wilfulness has been replaced by the word "knowingly" for the reason that a statement may be made wilfully but the accused person may not have been aware of its untruthfulness.

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83. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service.

COMMENTS

This was based on the following:

Naval Service Act:

"73. Every officer who is guilty of cruelty, or of any scandalous or fraudulent conduct, shall be dismissed from the Naval Service with disgrace and every officer who is guilty of any other conduct unbecoming the character of an officer shall be dismissed from the Naval Service with or without disgrace".

Army Act (UK):

16. Every officer who being subject to military law, who commits the following offence; that is to say,

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behaves in a scandalous manner, unbecoming the character of an officer and a gentleman

shall, on conviction by court martial, be cashiered".

Section 16 of the Air Force Act (UK) is similar.

In all three Services, the offence of scandalous conduct has been prescribed for officers because officers hold a special position of responsibility, and conduct that, on the part of a man, might merely be prejudicial to good order and discipline would, on the part of officers, have a highly deleterious effect upon the discipline and reputation of the forces in general.

It will be noted that the naval provision quoted above contains features not found in the army and air force sections. The elements of cruelty and fraudulent conduct in the naval section have been dealt with elsewhere in the Act, cruelty in section 84 and fraudulent conduct in section 107.

Either the punishment of dismissal with disgrace or dismissal is made mandatory for this offence. They are considered to be the most appropriate punishments. It will be observed, however, that under sections 174 and 175 higher authority may alter the punishment to one which is lower in the scale of punishments. In the result, the discretion in respect of the penalty is removed from the service tribunal and placed in the hands of higher authority.

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84. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

COMMENTS

This was based on the following:

Naval Service Act:

"72. Every person who is guilty of any profane oath, cursing, execration, drunkenness, uncleanness, or other scandalous action in derogation of God's honour and corruption of good manners, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

"73. Every officer who is guilty of cruelty, or of any scandalous or fraudulent conduct, shall be dismissed from the Naval Service with disgrace and every officer who is guilty of any other conduct unbecoming the character of an officer shall be dismissed from the Naval Service with or without disgrace".

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Army Act (UK):

"18. Every person subject to military law who commits any of the following offences; that is to say,

(5) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent or unnatural kind,

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 18(5) of the Air Force Act (UK) is similar.

The new section was designed to deal with offences of a cruel or disgraceful nature more serious than contemplated by section 118, i.e. conduct to the prejudice of good order and discipline.

The new section does not include a number of elements mentioned in the above-quoted legislation. These matters have been dealt with as follows:

A. Drunkenness is specifically dealt with in section 88.

B. Profanity and other matters mentioned in section 72 above could be dealt with through charges laid under section 84 or under section 118 (conduct to the prejudice of good order and discipline), depending upon the seriousness of the particular offence.

C. Fraudulent conduct is dealt with in section 107.

D. Disgraceful conduct of an indecent or an unnatural kind is left to be dealt with under the Criminal Code, which may be applied by service tribunals under section 119.

Offences under this section, being of a more serious nature than conduct to the prejudice of good order and discipline, require a more severe punishment than dismissal with disgrace or imprisonment for a term less than two years, in order that the most serious cases may be dealt with adequately; hence a penalty up to five years imprisonment.

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85. Every person who uses traitorous or disloyal words regarding His Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

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COMMENTS

This was based on the following section of the Army Act (UK):

"35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words regarding the Sovereign, shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned".

Section 35 of the Air Force Act (UK) is similar.

The penalty for this offence has been increased from two years to seven years. This change was made because of the high degree of loyalty expected of members of His Majesty's forces.

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86. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following provision of the Army Act (UK):

"37. Every officer or non-commissioned officer who commits any of the following offences; that is to say,

(1) Strikes or otherwise ill-treats any soldier;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment or such less punishment as is in this Act mentioned".

Section 37(1) of the Air Force Act (UK) is similar.

The section quoted above makes provision for offences in respect of specific relative ranks. The new section in addition makes it an offence for one holding a particular appointment to strike a person inferior to him in appointment, e.g., a commanding officer might be charged under this section with striking another officer of the same rank under his command.

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87. Every person who

(a) makes a false accusation against an officer or man, knowing such accusation to be false; or

(b) when seeking redress under section thirty, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"27. Every person subject to military law who commits any of the following offences; that is to say,

(1) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or

(2) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts;

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 27(1) and (2) of the Air Force Act (UK) is similar.

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88. Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a man who is neither on active service nor on duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.

COMMENTS

This was based on the following :

Naval Service Act:

"72. Every person who is guilty of any profane oath, cursing, execration, drunkenness, uncleanness, or other scandalous action in derogation of God's honour and corruption of good manners, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

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Army Act (UK):

"19. Every person subject to military law who commits the following offence; that is to say,

> The offence of drunkenness, whether on duty or not on duty,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding five pounds; provided that, where the offence of drunkenness is committed by a soldier not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months, with or without the addition of the aforesaid fine".

Section 19 of the Air Force Act (UK) is similar.

The former legislation in the army and air force provided a lower punishment for officers than for men. Under the new section discrimination has been eliminated by providing the same punishment for both.

As fines are provided for in the general scale of punishments, specific reference need not be made in this section to a fine.

The special ceiling on the punishment which may be awarded to a man, who is neither on active service nor on duty, has been lowered from six months to ninety days detention as it is considered that six months is an unduly severe maximum in such circumstances.

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89. Every person who

> (a) malingers or feigns or produces disease or infirmity;
> (b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or
> (c) wilfully maims or injures himself or any other person who is a member of any of His Majesty's forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service, or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case, is liable to imprisonment for a term no exceeding five years or to less punishment.

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COMMENTS

This was based on the following:

Naval Service Act;

"80. Every person who wilfully does any act or omits to do any thing with intent to prejudice His Majesty's naval forces or any part thereof, or wilfully or without lawful excuse does any act or omits to do any thing which it is his duty to do as a person employed in His Majesty's naval forces or as a person subject to naval law, or wilfully or without lawful excuse does any act or omits to do any thing which it is the duty of any person subject to naval law to do as a person employed in His Majesty's naval forces, or wilfully disobeys any lawful command given by his superior officer, or wilfully neglects to perform any duty imposed on him as aforesaid, or wilfully or without lawful excuse disobeys any general or standing order or regulation lawfully made relating to His Majesty's naval forces, or any person who is guilty of any act, conduct, disorder or neglect to the prejudice of good order and naval discipline, shall, on conviction by court martial, be liable to suffer death or such other punishment as is in this Act mentioned, and if he commits any such offence when on active service he shall be liable to suffer death or such other punishment as by this Act is assigned to the offence.

Army Act

"18. Every person who wilfully does any act or omits to do any thing with intent to prejudice His Majesty's military forces or any part thereof, or wilfully or without lawful excuse does any act or omits to do any thing which it is the duty of any person subject to military law to do as a person employed in His Majesty's military forces, or wilfully disobeys any lawful command given by his superior officer, or wilfully neglects to perform any duty imposed on him as aforesaid, or wilfully or without lawful excuse disobeys any general or standing order or regulation lawfully made relating to His Majesty's military forces, or any person who is guilty of any act, conduct, disorder or neglect to the prejudice of good order and military discipline, shall, on conviction by court martial, be liable to suffer death or such other punishment as is in this Act mentioned, and if he commits any such offence when on active service he shall be liable to suffer death or such other punishment as by this Act is assigned to the offence.

(1) Malice

(2) Wilfully

other person

interest

be material

person thereby

or injury

(3) Is wilfully

fully disobeys any order

wise, disobedience he

thereby

disease or

or

Section 18(1), (2) and (3) of the Air Force Act

Section 18(1), (2) and (3) of the Army Act (UK) is similar.

The maximum penalties have been provided for desertion, etc. This individual

In order to deal adequately with indiscipline, the maximum penalties provided by the Air Force Act and the Army Act (UK) are the same as that provided for desertion, etc. This individual has been imprisoned for life or for such lesser punishment as the court may direct, or, in the case of an officer, be cashiered or sentenced to be dismissed from His Majesty's service.

In order to deal adequately with indiscipline, the maximum penalties provided by the Air Force Act and the Army Act (UK) are the same as that provided for desertion, etc. This individual has been imprisoned for life or for such lesser punishment as the court may direct, or, in the case of an officer, be cashiered or sentenced to be dismissed from His Majesty's service.

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COMMENTS

This was based on the following provision of the Army Act (UK):

"21. Every person subject to military law who commits any of the following offences; that is to say,

(1) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 21(1) of the Air Force Act (UK) is similar. There has been no similar legislation in the navy.

The former legislation in the army and air force provided a lower punishment for officers than for men. Under the new section the maximum punishment is the same for both so that the punishment for all ranks will be on a common basis.

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91. Every person who

(a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;
(b) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or
(c) assists any person in escaping or in attempting to escape from custody,

is guilty of an offence and on conviction, if he acted wilfully, is liable of imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"20. Every person subject to military law who commits any of the following offences; that is to say,

(1) When in command of a guard, piquet, patrol, or post, releases without proper authority whether wilfully or otherwise, any person committed to his charge; or

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(2) Wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,

shall, on conviction by court martial, be liable if he has acted wilfully, to suffer servitude, or such less punishments as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned".

Section 20 of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

This section contains all of the elements of the above-quoted provision. The offence prescribed in paragraph (c) of the section is new. While an offender might, under (c), be convicted by reason of section 63 (responsibility for offences), it was considered desirable to prescribe specifically what is a not uncommon offence.

In the new section the maximum penalty in cases where the offence was committed wilfully is reduced from penal servitude (i.e. life imprisonment) to seven years. This brings the maximum punishment for the offence in line with the maximum punishment prescribed in the Criminal Code for the offence of assisting, etc., a person in custody to escape.

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92. Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"22. Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 22 of the Air Force Act (UK) is a similar provision. There has been no corresponding naval legislation.

The former legislation in the army and air force provided a lower punishment for officers than for men. Under the new section discrimination has been eliminated by altering the maximum punishment for officers so that the punishment for all ranks will be on a common basis.

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93. Every person who

(a) resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline; or
(b) when called upon, refuses or neglects to assist an officer or man in the performance of any such duty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"6. (3) Every person subject to military law who commits any of the following offences; that is to say,

(c) Impedes the provost marshal or any assistant provost marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost marshal, or, when called on, refuses to assist in the execution of his duty the provost marshal, assistant provost marshal, or any such officer, non-commissioned officer, or other person;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 6(3)(c) of the Air Force Act (UK) contains a similar provision. There has been no corresponding naval provision.

The new section is in line with existing service practice in respect of the performance of service police duties.

The former legislation in the army and air force provides a lower punishment for officers than for men. Under the new section discrimination has been eliminated by altering the maximum penalty for officers so that the punishment for all ranks will be on a common basis.

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94. Every person who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

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COMMENTS

This was based on the following section of the Army Act (UK):

> "39. Every person subject to military law who commits any of the following offences; that is to say,
>
> On application being made to him neglects or refuses to deliver over to the civil magistrates, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,
>
> shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 39 of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The phraseology of the new section is similar in intent to the legislation quoted above but has been brought in line with modern requirements.

In the former legislation, the punishment provided for officers is lower in the scale than that specified for men. This discrimination has been removed by altering the maximum penalty for officers so that the punishment for all ranks will be on a common basis.

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> 95. Every person who wilfully or negligently or through other default loses; strands or hazards, or suffers to be lost, stranded or hazarded any of His Majesty's Canadian Ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majes ty's service or to less punishment.

COMMENTS

This was based on the following section of the Naval Service Act:

> "74. Every person who, designedly or negligently or by any default loses, strands, or hazards or suffers to be lost, stranded, or hazarded, any of His Majesty's Canadian Ships or other ships in the Naval Service, or designedly or negligently or by any default loses or suffers to be lost any aircraft belonging to the Naval Service, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

No corresponding legislation exists in the case of the army or air force.

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The new section is to the same effect as the above-quoted legislation except that no reference is made in it to "aircraft". This offence in relation to aircraft is now dealt with in section 97.

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96. Every officer who, while serving in one of His Majesty's Canadian Ships involved in the convoying and protection of a vessel,

(a) fails to defend a vessel or goods under convoy;
(b) refuses to fight in the defence of a vessel in his convoy when it is attacked; or
(c) cowardly abandons or exposes a vessel in his convoy to hazards,

is guilty of an offence and on conviction is liable to suffer death or less punishment.

COMMENTS

This was derived in part from the following section of the Naval Service Act:

"75. The officers of His Majesty's Canadian Ships appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf; and every officer who fails in his duty in this respect, and does not defend the ships and goods under his convoy, without deviation to any other objects, or refuses to fight in their defence, if they are assailed, or cowardly abandons and exposes the ships in his convoy to hazard, or demands or exacts any money or other reward from any merchant or master for convoying any ships or vessels entrusted to his care, or misuses the masters or mariners thereof, shall make such repa ration in damages to the merchants, owners, and others, as the competent civil court adjudges, and also shall be punished according to the nature of his offence, by death or such lesser punishment as is hereinafter mentioned".

There is no corresponding legislation for the army or air force.

The effect of the new section is the same as that of the above-quoted provision except that all reference to liability for damages is omitted. The question of damages is not a matter which should be included in an offence section. This is a matter for settlement by the appropriate civil courts and need not be dealt with in this Act.

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97. Every person who

(a) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person;

(b) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any of His Majesty's aircraft or aircraft material, or of aircraft or aircraft material of any forces cooperating with His Majesty's Forces; or

(c) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of His Majesty's aircraft, or aircraft of any forces co-operating with His Majesty's Forces,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following provisions of the Army Act (UK):

"39A. (1) Every person subject to military law who commits any of the following offences; that is to say,

(a) wilfully or by wilful neglect or negligently damages, destroys, or loses any of His Majesty's aircraft or aircraft material; or

(b) is guilty of any act or neglect likely to cause such damage, destruction, or loss; or

(e) is guilty of any act or neglect in flying or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(f) during a state of war wilfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of His Majes ty's aircraft,

shall, on conviction by court martial, be liable, if he has acted wilfully or with wilful neglect, to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment, or such less punishment as is in this Act mentioned".

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Section 39A(1)(a), (b), (e) and (f) of the Air Force Act (UK) is similar. There has been no corresponding provision in naval legislation.

The new section introduces no new principle but differs from the legislation quoted above in phraseology only.

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98. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was derived from the following provision of the Army Act (UK):

"39A. (2) Every person subject to military law who commits any of the following offences, that is to say,

(a) signs any certificate in relation to an aircraft or aircraft material without ensuring the accuracy thereof;

shall on conviction by court martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 39A (2)(a) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

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99. Every person who flies an aircraft at a height less than the miminum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following provision of the Army Act (UK):

"39A. (2) Every person subject to military law who commits any of the following offences, that is to say,

(b) being the pilot of one of His Majesty's aircraft, flies it at a height less than such height as may be prescribed by any regulation issued under the authority of the Army Council or the Air Council, except

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(i) while taking off or alighting; or

(ii) in such other circumstances as may be so prescribed;

shall on conviction by court martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 39A(2)(b) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

It is considered that the former provision quoted above is too detailed and therefore too restrictive. The new section is accordingly made broader in its effect.

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100. (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

(2) For the purposes of this section
(a) every person whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the latter is subject to the Code of Service Discipline; and
(b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline.

COMMENTS

This was based on the following provision of the Army Act (UK):

"39A. (3) The following provisions shall have effect as respects powers of command in aircraft:

(a) every person subject to military law, whatever his rank, shall, while he is in an aircraft, be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety thereof, of the captain of the aircraft, whether the latter is subject to military law or not;

(b) if the aircraft is a glider aircraft and is

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being towed by another aircraft, the captain of the glider aircraft, being a person subject to military law, shall, so long as his aircraft is being towed, be under the command (as respects all the matters aforesaid) of the captain of the towing aircraft, whether the latter is subject to military law or not;

(c) any person subject to military law who disobeys any lawful command given as respects any of the matters aforesaid by a person under whose command he is placed by virtue of this subsection shall, on conviction by court martial, be liable to suffer penal servitude or such less punishment as is in this Act mentioned".

Section 39A(3) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The new section is identical in principle with the section quoted above but a re-arrangement has been made in order to place this provision in the same form as other offence sections in this Part.

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101. Every person who

(a) having the charge of a vehicle of the Canadian Forces, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, does or causes to be done any bodily injury to any person or damage to any property;
(b) drives a vehicle of the Canadian Forces on a street, road, highway or any other place, whether public or private, recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case; or
(c) drives a vehicle of the Canadian Forces while intoxicated or under the influence of a narcotic,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

COMMENTS

This was based on the following provisions of the Criminal Code:

"285. (1) Every one is guilty of an indictable offence and liable to two years' imprisonment who, having the charge of any carriage or motor vehicle, automobile, or other vehicle, by wanton or furious driving, or racing or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person.

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(6) Every one who drives a motor vehicle on a street, road, highway or other public place recklessly, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the street, road, highway or place, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on such street, road, highway or place, shall be guilty of an offence and liable

(a) upon indictment to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dollars or to both such imprisonment and fine; or

(b) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars or to both such imprisonment and fine.

(4) Every one who, while intoxicated or under the influence of any narcotic, drives any motor vehicle or automobile, or has the care or control of a motor vehicle or automobile, whether it is in motion or not, shall be guilty of an offence, and shall be liable,

(a) upon indictment, for a first offence to imprisonment for a term not exceeding three months and not less than thirty days, and for each subsequent offence to any term not exceeding one year and not less than three months; or

(b) upon summary conviction, for a first offence to a term of imprisonment not exceeding thirty days and not less than seven days, for a second offence to a term of imprisonment not exceeding three months and not less than one month, and for each subsequent offence to a term of imprisonment not exceeding one year and not less than three months. And the provisions of section ten hundred and thirty-five, in so far as it authorizes the imposition of a fine in lieu of any punishment otherwise authorized, and of section ten hundred and eighty-one of this Act shall not apply in the case of a conviction for an offence under this subsection".

There was no former service legislation concerning this subject. In view of the large numbers of vehicles in use in the Canadian Forces, it was considered desirable for deterrent effect to include this provision in the Code of Service Discipline. Vehicle offences have generally been charged as conduct to the prejudice of good order and discipline, which is not realistic.

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102. Every person who

(a) uses a vehicle of the Canadian Forces for an unauthorized purpose;
(b) without authority uses a vehicle of the Canadian Forces for any purpose; or
(c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This is new. It was adopted as a deterrent to the unauthorized use of vehicles, a common military offence formerly charged as conduct to the prejudice of good order and discipline.

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103. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any materiel, defence establishment or work for defence is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Naval Service Act:

"78. Every person who unlawfully sets fire to any dockyard, victualling yard, factory, arsenal, magazine, building, stores, or to any ship, vessel, hoy, barge, boat, or other craft or furniture thereunto belonging, not being the property of an enemy, pirate, or rebel, shall suffer death or such lesser punishment as is hereinafter mentioned".

There has been no corresponding army or air force legislation.

The effect of the above legislation has been broadened in the new section. The maximum punishment of death was considered too severe and therefore it was reduced to life imprisonment.

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104. (1) Every person who steals is guilty of an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.

(2) For the purposes of this section,

(a) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent

(i) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest;

(ii) to pledge the same or deposit it as security;

(iii) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion;

(b) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;

(c) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment;

(d) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen.

COMMENTS

This is new. It was based on the following provisions of the Criminal Code:

"347. Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently

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and without colour of right converting to the use of any person, anything capable of being stolen, with intent,

(a) to deprive the owner, or any person, having any special property or interest therein, temporarily or absolutely of such thing or of such property or interes t; or

(b) to pledge the same or deposit it as security; or

(c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

(2) Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

(3) The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

(4) It is immaterial whether the thing converted as taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting."

"386.(1) Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same."

"359. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,

(c) being employed in the service of His Majesty, or of the Government of Canada or the government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment."

"344. Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it: Provided that nothing growing out of the earth of a value not exceeding twenty-five cents shall, except in cases hereinafter provided, be deemed capable of being stolen.

Former service legislation having to do with theft in its various forms was complex and therefore unsuitable for application by service authorities. Following is the legislation in question:

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Naval Service Act:.

"77. Every person who wastefully expends, steals, or fraudulently buys, sells or receives any ammunition, provisions, or other public stores, and every person who knowingly permits any such wasteful expenditure, theft, sale, or receipt, shall suffer imprisonment elsewhere than in a penitentiary, or such lesser punishment as is hereinafter mentioned".

Army Act (UK):

"17. Every person subject to military law who commits any of the following offences; that is to say,

> Being charged with or concerned in the care or distribution of any public, regimental or garrison property, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such property,

shall, on conviction by court ma rtial, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned".

"18. Every person subject to military law who commits any of the following offences; that is to say,

> (4) Steals, embezzles or fraudulently misapplies or receives, knowing it to have been stolen or embezzled, any property belonging to a person subject to military law, or belonging to any regimental band, regimental or garrison mess, or regimental or garrison institution, or to the Navy, Army and Air Force Institutes, or any public property; or

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Sections 17 and 18(4) of the Air Force Act (UK) are similar.

Former service legislation quoted above includes the offence of receiving stolen goods. This element is provided for in section 105.

The new section encompasses the offences of embezzlement, fraudulent misapplication and improper pawning and is considered adequate for all service purposes.

The definition of "stealing" in subsection (2) is identical with the definition of "theft or stealing" quoted above from the Criminal Code, except that the word "theft" has been deleted. This was done in order to avoid confusion in the laying of and dealing with charges.

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105. Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

COMMENTS

This is new. It was based on the following section of the Criminal Code:

> "399. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained".

The former service legislation creating the offence of receiving is quoted in the comments to section 104.

The severity of the punishment, fourteen years' imprisonment, specified in the section of the Criminal Code quoted above is believed to be based upon the necessity of adequately punishing professional receivers of stolen goods in civil life. This situation is not encountered within the armed forces and, moreover, the trusteeship principle which is considered adequate justification for fourteen years for stealing, is not present in the case of receiving.

Attention is directed to the fact that the offence of receiving is not limited to the receiving of stolen goods but, as under the Criminal Code, may apply to the receipt of any property obtained as a consequence of the commission of an offence.

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106. Every person who

(a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of His Majesty's Forces or of any forces co-operating therewith;
(b) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline; or
(c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of His Majesty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

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COMMENTS

This was based on the following provisions of the Army Act (UK):

"24. Every soldier who commits any of the following offences; that is to say,

(1) Makes away with, or is concerned in making away with (whether by pawning, selling, destruction, or otherwise howsoever), his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge, or any public property issued to him for his use or entrusted to his care for military purposes, or

(2) Loses by neglect anything before in this section mentioned; or

(3) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military or air force decoaration granted to him; or

(4) Wilfully injures anything before in this section mentioned, or any property belonging to a comrade, or to an officer, or to any regimental band, regimental or garrison mess, or regimental or garrison institution, or to the Navy, Army and Air Force Institutes, or any public property;

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 24(1), (2), (3) and (4) of the Air Force Act (UK), is similar. There has been no corresponding naval legislation.

In the above legislation, the offences prescribed have been associated with other offences involving theft, e.g. by including the element of pawning or selling. Considerable confusion has resulted in the past and it has been thought desirable to place these "destruction -- loss" offences in one new section by themselves.

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107. Every person who

(a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces;
(b) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department, the Canadian Forces or the Defence Research Board;

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(c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of His Majesty's Forces, or to any forces co-operating therewith or to any mess, institute or canteen operated for the use and benefit of members of such forces;

(d) demands or accepts compensation, consideration or personal advantage for convoying a vessel entrusted to his care;

(e) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board; or

(f) commits any act of a fraudulent nature not particularly specified in the Code of Service Discipline,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following:

Naval Service Act:

"73. Every officer who is guilty of cruelty, or of any scandalous or fraudulent conduct, shall be dismissed from the Naval Service with disgrace and every officer who is guilty of any other conduct unbecoming the character of an officer shall be dismissed from the Naval Service with or without disgrace".

"75. The officers of His Majesty's Canadian Ships appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf; and every officer who fails in his duty in this respect, and does not defend the ships and goods under his convoy, without deviation to any other objects, or refuses to fight in their defence, if they are assailed, or cowardly abandons and exposes the ships in his convoy to hazard, or demands or exacts any money or other reward from any merchant or master for convoying any ships or vessels entrusted to his care, or misuses the masters or mariners thereof, shall make such reparation in damages to the merchants, owners, and others, as the competent civil court adjudges, and also shall be punished according to the nature of his offence, by death or such lesser punishment as is hereinafter mentioned".

"76. Every officer in command of any of His Majesty's Canadian Ships who receives on board or permits to be received on board such ship any goods or merchandise whatsoever, other than for the sole use of the

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ship, except goods and merchandise on board any ship which may be shipwrecked or in imminent danger, either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Minister or his superior officer, shall be dismissed from the Naval Service, or suffer such lesser punishment as is hereinafter mentioned".

Army Act (UK):

"18. Every person subject to military law who commits any of the following offences that is to say,

(5) Is guilty of any other offence of a fraudulent nature not be re in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent or unnatural kind, shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishemtn as is in this Act mentioned".

"23. Every person subject to military law who commits any of the following offences; that is to say,

(1) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or

(2) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's Forces (including any Dominion force),

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Sections 18(5) and 23 of the Air Force Act (UK) are similar to the Army Act sections quoted.

The various offences prescribed in the new section are self-explanatory except the offence mentioned in paragraph (a). An example of the type of offence contemplated by this paragraph would occur when an officer or man, through some private arrangement, causes undue expense to a contractor supplying goods to the Canadian Forces. The contractor would normally pass that additional expense on to the Crown and therefore the officer or man would have indirectly caused the Crown additional expense, as well as having probably secured for himself a secret commission.

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COMMENTS

This was based on the following section of the Army Act(UK):

"29. Every person subject to military law who commits the following offences; that is to say,

When examined on oath or solemn declaration before a court martial or any court or officer authorized by this Act to administer an oath, wilfully gives false evidence,

shall be liable, on conviction by court martial, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 29 of the Air Force Act (UK) is similar.

It has been considered proper to increase the maximum penalty provided in the Army and Air Force Acts from two years to seven years, in view of the serious results which may in some cases ensue from commission of this offence.

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110. Every person who

(a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for materiel has been provided; or

(b) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises on which materiel is or has been accommodated,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was derived from the following section of the Army Act (UK):

"30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

(1) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or

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(3) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses have been billeted, or to the making up and transmitting of an account of the money due to such a person;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 30(1) and (3) of the Air Force Act (UK) contains a similar provision.

No change in principle is involved; 'materiel' has taken the place of 'horse'.

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111. Every person who, having been released from His Majesty's Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of his release is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following section of the Army Act (UK):

"32. (1) Every person having become subject to military law, who is discovered to have committed the following offence; that is to say,

Having been discharged with disgrace from any part of His Mjaesty's military or air forces, or having been dismissed with disgrace from the navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge, or dismissal,

shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 32(1) of the Air Force Act (UK) contains a similar provision.

The phraseology has been altered to conform with the definitions in the Act. There is no change in principle.

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112. Every person who knowingly makes a false answer to any question set forth in any document required to be completed in relation to his enrolment is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on section 33 of the Army Act (UK):

> "33. Every person having become subject to military law who is discovered to have committed the following offence; that is to say,
>
> To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested,
>
> shall, on conviction by court martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned".

Section 33 of the Air Force Act (UK) contains a similar provision.

The phraseology has been altered to conform with the definitions in the Act. There is no change in principle. Reference is made to section 231 which prescribes the counterpart of this offence for civilians.

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113. Every person who is concerned in the enrolment of any other person, and who knows or has reasonable cause to believe that by being enrolled such other person commits an offence under this Act, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This was based on the following provision of the Army Act (UK):

> "34. Every person subject to military law who commits any of the following offences; that is to say,
>
> (1) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act;
>
> shall, on conviction by court martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 34(1) of the Air Force Act (UK) contains a similar provision.

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114. Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment.

COMMENTS

This was based on the following section of the Naval Service Act:

"56. Every person who deserts his post or sleeps upon his watch, or negligently performs a duty imposed on him, shall be dismissed from the Naval Service with disgrace or shall suffer such lesser punishment as is hereinafter mentioned".

There has been no comparable offence, other than neglect to the prejudice of good order and discipline, in army or air force le islation.

The elements of leaving a post or sleeping upon a watch, mentioned in the last-quoted section, are provided for in sections 65(h), 66(g) and 81 of the new Act.

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115. Every person who

(a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such document, orders the making or signing thereof;
(b) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or
(c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

COMMENTS

This was based on the following:

Naval Service Act:

"79. Every person who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other person in the making or signing thereof, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

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Army Act (UK):

"25. Every person subject to military law who commits any of the following offences; that is to say,

(1) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy --

(a) Knowingly makes or is privy to the making of any false or fraudulent statement; or

(b) Knowingly makes or is privy to the making of any omission with intent to defraud; or

(2) Knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(3) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,

shall, on conviction by court martial, be liable to suffer imprisonment or such less punishment as is in this Act mentioned".

"26. Every person subject to military law who commits any of the following offences; that is to say,

(1) When signing any document relating to pay, arms, ammunition, equipment, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Actmentioned".

Sections 25 and 26(1) of the Air Force Act (UK) are similar.

It is considered that subsections (a), (b) and (c) of section 119 contain all of the essential elements referred to in varying terms in the last-quoted legislation. The penalty of seven years imprisonment is considered appropriate in view of the extremely serious consequences which in some cases, e.g. in relation to operations, might ensue from the fabrication of false documents.

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116. Every person who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This is new.

It was considered essential that provision be made for this sort of case in view of the fact that personnel might avoid a particular type of service, e.g. in southern climates, by refusing to accept essential immunization treatment. The possibility of bacteriological warfare renders this provision even more necessary.

It will be noted that the expression "without reasonable excuse" is sufficiently broad to exculpate any person who, by reason of religious principles or through belief in drugless medical practice, may refuse to submit to vaccination, etc.

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117. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do anything, in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or causes or is likely to cause damage to or destruction of any property, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

COMMENTS

This is new.

Having regard to the highly dangerous substances, such as atomic weapons, which may in the not too distant future be within the control of the armed forces, it was considered advisable to make specific provision for negligence, etc, in relation to their handling.

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118. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from His Majesty's service or to less punishment.

(2) No person may be charged under this section with any offence for which special provision is made in sections sixty-four to one

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hundred and seventeen but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.

(3) Contravention by any person of

(a) any of the provisions of this Act;
(b) any regulations, orders or instructions published for the general information and guidance of that Service of the Canadian Forces to which that person belongs, or to which he is attached or seconded; or
(c) any general, garrison, unit, station, standing, local or other orders,

is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(4) An attempt to commit any of the offences prescribed in sections sixty-four to one hundred and seventeen is, unless such attempt is in itself an offence punishable under any of those sections, an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(5) Nothing in subsections three or four shall affect the generality of subsection one.

COMMENTS

Subsections (1) and (2) were based on the following:

Naval Service Act:

"87. Every person who is guilty of any act, disorder, or neglect to the prejudice of good order and naval discipline, not hereinbefore specified, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned".

Army Act (UK):

"40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no

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person shall be charged under this section in respect of any offence for which special provision is made in any other section of this Act, and which is not a civil offence; nevertheless this conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction".

Section 40 of the Air Force Act (UK) is similar.

There has been no change in principle from the former provisions, although the terminology has been altered slightly in the interests of clarification. The penalty has been adjusted in accordance with the scale set out in section 121(1), but in the result the severity of the maximum punishment has not been increased. The former discrepancy between officers and men in this connection has been eliminated.

Subsection (3) was derived in principle from the following section of the Army Act (UK):

"11. Every person subject to military law who commits the following offences; that is to say,

neglects to obey any general or garrison or other orders,

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression 'general orders' in this section shall not include the King's Regulations for the Army, or any order in the nature of a regulation published for the general information and guidance of the army".

Section 11 of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

Subsection (4) is new. It places in statutory form one of the more common types of offences charged at present under the general head "acts to the prejudice of good order and discipline".

Subsection (5) is new and was added for abundant caution.

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119. (1) An act or omission

(a) that takes place in Canada and is punishable under Part XII of this Act, the Criminal Code or any other Act of the Parliament of Canada; or

(b) that takes place out of Canada and would, if it had taken place in Canada, be punishable under Part XII of this Act, the Criminal Code or any other Act of the Parliament of Canada,

is an offence under this Part and every person convicted thereof is liable to suffer punishment as provided in subsection two.

(2) Subject to subsection three, where a service tribunal convicts a person under subsection one, the service tribunal shall,

(a) if under Part XII of this Act, the Criminal Code or other Act of the Parliament of Canada, a minimum penalty is prescribed, impose a penalty in accordance with the enactment prescribing that minimum penalty; or

(b) in any other case,

(i) impose the penalty prescribed for the offence by Part XII of this Act, the Criminal Code or that other Act; or

(ii) impose dismissal with disgrace from His Majesty's service of less punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment of death, imprisonment for two years or more, imprisonment for less than two years, and a fine, shall apply in respect of penalties imposed under paragraph (a), or sub-paragraph (i) of paragraph (b) of subsection two.

(4) Nothing in this section shall be in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections sixty-four to one hundred and eighteen and to impose the punishment for that offence mentioned in the section prescribing that offence.

COMMENTS

Subsections (1) and (2) were based on the following:

Naval Service Act:

"89. Every person who is guilty of:
(a) treason shall suffer death;
(b) murder shall suffer death;
(c) an offence under section three of The Treachery Act shall suffer death;

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(d) rape shall suffer death or imprisonment in a penitentiary;
(e) buggery, either with a human being or any other living creature, shall suffer imprisonment in a penitentiary;
(f) manslaughter shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned;
(g) robbery or theft shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned;
(h) any other offence which, if committed in Canada, would be punishable under the Criminal Code or any other Act of the Parliament of Canada, shall suffer either,

(i) the punishment assigned for the offence by the Criminal Code or the other Act; or
(ii) if in committing the offence he is guilty under section eighty-seven of this Act of an act to the prejudice of good order and naval discipline not otherwise specified, the punishment provided by section eighty-seven".

Army Act:

"41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court martial, and on conviction to be punished as follows; that is to say,

(1) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2) If he is convicted of murder, be liable to suffer death; and

(2A) If he is convicted of an offence under The Treachery Act, 1940, be liable to suffer death; and

(3) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as in this Act mentioned; and

(4) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as in this Act mentioned; and

(5) If he is convicted of any offence not before in this section particularly specified, which

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when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided that a person subject to military law shall not be tried by court martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within His Majesty's dominions, other than the United Kingdom and Gibralter, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court".

Section 41 of the Air Force Act (UK) is similar.

In the main, all points mentioned in the provisions quoted above have been reproduced in the new section in a simplified and more readily understandable form. The only changes in substance are the following:

A. It is made clear that offences mentioned in Part XII of the Act, triable by civil courts, may be tried by service tribunals where alleged to have been committed by service personnel or by civilians subject to the Code of Service Discipline.

B. The Criminal Code and the Treachery Act make complete provision for penalties for all offences. It was therefore unnecessary to reproduce the references to specific offences contained in the legislation last quoted above.

C. If the Criminal Code or other statute provides a minimum penalty, the service tribunal must impose that penalty.

D. The points mentioned in the proviso to the Army Act section quoted above have been dealt with in section 61 and reference is made to the comments thereto.

Subsection (3) is new. It was designed to insure that all provisions of the Code of Service Discipline with respect to death, imprisonment and fines shall apply to those punishments where imposed by a service tribunal pursuant to a section of the Criminal Code or other statute of Canada. For example, a punishment of imprisonment imposed upon an officer in respect of a military offence involves automatically a punishment of dismissal and the same consequences should flow from a punishment of imprisonment imposed under this section by a service tribunal in respect of an offence prescribed in the Criminal Code.

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Subsection (4) is new. It was intended to ensure that no accused person can demand to be tried for an offence specified in the Criminal Code where service authorities have caused him to be charged with substantially the same offence as specified in the military offence section of this Part.

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120. (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged with attempting to desert may be found guilty of being absent without leave.

(3) A person charged with any one of the offences prescribed in section seventy-five may be found guilty of any other offence prescribed in that section.

(4) A person charged with any one of the offences prescribed in section seventy-six may be found guilty of any other offence prescribed in that section.

(5) A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, befound guilty of the same offence as having been committed under circumstances involving a lower punishment.

(6) Where a person is charged with an offence under section one hundred and nineteen and the charge is one upon which, if he had been tried by a civil court in Canada for that offence, he might have been found guilty of any other offence, he may be found guilty of that other offence.

COMMENTS

This was derived from the following:

Army Act (UK):

"56. (3) An accused charged before a court martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4) An accused charged before a court martial with attempting to desert may be found guilty of being absent without leave.

(4A) An accused charged before a court martial with striking may be found guilty of using or offering violence.

(4B) An accused charged before a court martial with using violence may be found guilty of offering violence.

(4C) An accused charged before a court martial with using threatening language may be found guilty of using insubordinate language.

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(5) An accused charged before a court martial with any offence under this Act, may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

(6) Where an accused is charged before a court martial with a civil offence and the charge is one upon which, if he had been tried by a civil court in England for such an offence committed in England, he might have been found guilty of any other offence, the court martial shall have power to find him guilty of that offence".

Naval Service Act:

"92. Where the amount of punishment for any offence under this Part depends upon the intent with which it has been committed, and any person is charged with having committed such offence with an intent involving a greater degree of punishment, a court martial may find that the offence was committed with an intent involving a less degree of punishment, and award such punishment accordingly".

"93. (1) Every person charged with an offence under sections forty-nine to eighty-eight of this Act, both inclusive, may, upon failure of proof of the commission of the offence charged be found guilty of another offence of the same class of which the evidence adduced proves him guilty the maximum punishment for which is less than the maximum punishment prescribed for the offence with which he is charged.

(2) If an offence with which a person is charged under section eighty-nine of this Act is not proved, he may be found guilty of any offence included in that offence of which on the evidence adduced he could be convicted under the Criminal Code or any other Act of the Parliament of Canada".

Section 56(3) to (6) of the Air Force Act (UK) is similar.

No difference in principle is involved in the new section. By reason of the new theft section 104, it was no longer necessary to perpetuate subsections (1) and (2) of section 56 of the Army and Air Force Acts.

Subsection (5) was designed to make it possible for a person, for example, charged with having committed an offence traitorously, to be found guilty of the same offence without the traitorous element.

Subsection (6) merely makes possible the application of the "cognate" provisions of the Criminal Code and other statutes; for example, an accused charged before a service tribunal with having committed the offence of murder could be found guilty of manslaughter.

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121. (1) The following punishments may be imposed in respect of service offences:--

(a) death;
(b) imprisonment for two years or more;
(c) dismissal with disgrace from His Majesty's service;
(d) imprisonment for less than two years;
(e) dismissal from His Majesty's service;
(f) detention;
(g) reduction in rank;
(h) forfeiture of seniority;
(i) dismissal of an officer from the ship to which he belongs;
(j) forfeiture of service toward progressive increase in pay;
(k) fine;
(l) severe reprimand;
(m) reprimand;
(n) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments".

COMMENTS

The variations between former scales were carefully considered by Service authorities over a long period and the new scale above represents their combined opinion.

Details of the conditions applicable to each punishment in the scale are stated in the comments to each subsection below.

121. (2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

COMMENTS

This subsection was based on the following:

Naval Service Act:

"100. Where any punishment is specified by this Part as the penalty for any offence, and it is further declared that a lesser punishment may be awarded in respect of the same offence, the expression 'lesser punishment' shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment according to the scale contained in section ninety-seven of this Act".

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Army Act (UK):

"44. Proviso (1). Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment".

Section 44 of the Air Force Act (UK) contains a similar proviso.

Following is an example of the application of the expression 'less punishment' as defined in this subsection:

> Section 82 provides for the offence of a false statement in respect of leave. The punishment is 'imprisonment for less than two years or less punishment'. If a court martial should not see fit to impose a punishment of imprisonment, it might impose any one or more of the punishments that appear below item (d) in the scale of punishments, e.g. forfeiture of seniority and a fine. If, however, the court should see fit to award <u>any</u> term of imprisonment, it would be precluded from also imposing additional punishments.

> 121. (3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members.

<u>COMMENTS</u>

This was based on the following:

Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

> (b) judgment of death shall not be passed on any prisoner unless four at least of the officers present at the court martial, where the number does not exceed five, and in other cases a majority of not less than two-thirds of the officers present, concur in the sentence".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

> (8) Sentence of death shall not be passed on any person without the concurrence of two-thirds at the least of the officers serving on the court martial by which he is tried".

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Section 48(8) of the Air Force Act (UK) is similar.

When a sentence of death is imposed by a service tribunal, it cannot be carried into effect until approved by the Governor in Council under section 170(1).

121. (4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions,

(a) every person who, on conviction of a service offence, is liable to imprisonment for life or for a term of years or other term, may be sentenced to imprisonment for a shorter term;
(b) a sentence that includes a punishment of imprisonment for twy years or more imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
(c) a sentence that includes a punishment of imprisonment for less than two years imposed upon an officer shall be deemed to include a punishment of dismissal from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
(d) where a service tribunal imposes a punishment of imprisonment for two years or more upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from His Majesty's service;
(e) where a service tribunal imposes a punishment of imprisonment for less than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal from His Majesty's service;
(f) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
(g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the

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case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour.

COMMENTS

Subsection (4)(a) was based on the following section of the Criminal Code:

"1054. Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Provided that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted".

Subsection (4)(b) was based on the following:

Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(e) the punishment of imprisonment in a penitentiary shall in all cases involve dismissal with disgrace from the Naval Service".

Army Act (UK):

"44. Proviso (2) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment".

Section 44 of the Air Force Act (UK) contains a similar proviso.

Under the army and air force provisions last mentioned cashiering was an inevitable preliminary to imprisonment for any term. Paragraph (c) of the new subsection, however, provides that a sentence of imprisonment for less than two years will automatically be accompanied by "dismissal from His Majesty's service" and not "cashiering", i.e. "dismissal with disgrace from His Majesty's service". In the result army and air force officers will be subject to the same provisions as now applies to naval officers.

Subsection (4)(c) was based on the following:

Army Act (UK):

"44. Proviso (2) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment".

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Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(g) the punishment of imprisonment elsewhere than in a penitentiary may be inflicted for any term less than two years and may be accompanied with a sentence of dismissal from the Naval Service".

Section 44 of the Air Force Act (UK) contains a similar proviso.

This conjoining of punishments has been permissive in the case of the navy and mandatory in the case of the army and air force. The latter approach has been adopted.

Subsection (4)(d) was based on the following:

Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(e) the punishment of imprisonment in a penitentiary shall in all cases involve dismissal with disgrace from the Naval Service".

Army Act (UK):

"44. Proviso (4) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service".

Proviso (4) in part of Section 44 of the Air Force Act (UK) is similar.

This conjoining of punishments in the case of the navy has been mandatory and in the case of the army and air force permissive. The latter approach has been adopted because of the relatively less serious consequences from the standpoint of service prestige which result from the imprisonment of a man in a penitentiary as compared with the imprisonment of an officer in the same place.

Subsection (4)(e) was based on the following provision of the Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(g) the punishment of imprisonment elsewhere than in a penitentiary may be inflicted for any term less than two years and may be accompanied with a sentence of dismissal from the Naval Service".

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Subsection (4)(f) was based on the following:

Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(k) the punishment of imprisonment elsewhere than in a penitentiary, or detention whether on board ship or on shore, shall involve disrating in case of a chief petty officer, petty officer, or leading rating and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment or detention: Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of wages during the term of detention".

Army Act (UK):

"183. In the application of this Act to a non-commissioned officer, the following modifications shall apply:

(4) A non-commissioned officer sentenced by court martial to penal servitude, field punishment, imprisonment or detention shall be deemed to be reduced to the ranks".

Section 183(4) of the Air Force Act (UK) is similar.

The new paragraph (f) does not permit reduction to a rank lower than that which regulations would permit. This provision is required in the cases of warrant officers and non-commissioned officers with very special technical qualifications who are occasionally enrolled in the Services at a stated rank. It would be inequitable to reduce them below the rank at which they were originally enrolled.

Subsection (4)(g) should be compared with the following provision of the Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(i) a sentence of imprisonment elsewhere than in a penitentiary may also be accompanied with a direction that the prisoner shall be kept to hard labour for all or any part of the term of imprisonment".

The Penitentiaries Act provides that imprisonment in a penitentiary, i.e. imprisonment for a term of two years or more, shall be with hard labour whether so directed in the sentence or not.

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In the case of imprisonment for a term less than two years, it was considered desirable that it should be deemed to be imprisonment with hard labour as the imposition of hard labour makes it possible under provincial legislation for the service prisoner to be incarcerated in a reformatory, where he can be taught a useful trade. If the sentence is without hard labour the service prisoner is normally required to serve his term in a common jail where opportunities for helpful employment are lacking. In the result it was considered that the imposition of imprisonment with hard labour is less severe than without hard labour. However, provision is made for the Minister to order that the punishment of imprisonment for less than two years may be without hard labour in order that special local circumstances may be met.

> 121. (5) Where a service tribunal imposes a punishment of dismissal with disgrace from His Majesty's service upon an officer or man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of imprisonment for less than two years.

COMMENTS

It is a general principle in the Code of Service Discipline that punishments may be conjoined only where a "less punishment" is imposed. (See comments to subsection (2) of section 121). In cases where "dismissal with disgrace from His Majesty's service" is prescribed as the maximum punishment, however, it seemed appropriate, in order that due allowa nce might be made for serious cases, to make it possible by subsection (5) to conjoin with that punishment the lower punishment of imprisonment for a term of less than two years.

> 121. (6) A person upon whom a punishment of dismissal with disgrace from His Majesty's service has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to serve His Majesty again in any military or civil capacity.

COMMENTS

This subsection was based on the following provision of the Naval Service Act:

> "98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:
>
> (f) a sentence of dismissal with disgrace shall involve in all cases a forfeiture of all pay, bounty, salvage, prize money, and allowances that have been earned by, and of all annuities, gratuities, medals, decorations, and good conduct and good service badges that may have been granted to, the offender, and an incapacity to serve His Majesty again in

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any naval, military, air force, or civil service, and may also in all cases be accompanied by a sentence of imprisonment elsewhere than in a penitentiary".

Although the army and air force have had no similar legislation, the practice in those services has corresponded with that of the navy. Many of the items mentioned in the naval provision quoted above have not been perpetuated. In the case of medals, the regulations or conditions of grant themselves contain provision for forfeiture in the event of misconduct. The reference to "prize money" in the existing naval legislation has not been continued in view of the intended abandonment of prize money as a feature of naval and air force service.

121. (7) The punishment of detention is subject to the following conditions,

(a) detention shall not exceed two years and a person sentenced to detention shall not be subject to detention for more than two years consecutively by reason of more than one conviction;
(b) no officer may be sentenced to detention;
(c) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

COMMENTS

Subsection (7) was based on the following:

Naval Service Act:

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(j) the punishment of detention may be inflicted for any term not exceeding two years;

(k) the punishment of imprisonment elsewhere than in a penitentiary, or detention whether on board ship or on shore, shall involve disrating in case of a chief petty officer, petty officer, or leading rating and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment or detention; Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of wages during the term of detention;

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(ℓ) no officer shall be subject to detention".

Army Act (UK):

"44. Proviso (1B) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences".

"183. In the application of this Act to a non-commissioned officer, the following modifications shall apply:

(4) A non-commissioned officer sentenced by court martial to penal servitude, field punishment, imprisonment or detention shall be deemed to be reduced to the ranks".

Sections 44, Proviso (1B) and 183(4) of the Air Force Act (UK) are similar.

No new principles have been introduced.

121. (8) The punishment of reduction in rank shall apply to officers, warrant officers, chief petty officers, petty officers, non-commissioned officers and leading ratings.

COMMENTS

Formerly there was no provision for the punishment of reduction in rank of a commissioned officer in the naval forces of Canada, the Canadian Army or in any of the forces of the United Kingdom. In view of its experience during the war, the Royal Canadian Air Force caused an amendment to be made to the Air Force Act (UK) as applicable to Canada to provide for the following punishment:

"44(ee). Reduction to a lower commissioned rank in the air force".

The reason for the above provision was that the former scale of punishments has been found to be inadequate for the disciplining of relatively junior officers. This will provide an appropriate means of punishing them without unduly damaging their prestige as commissioned officers.

121 (9) The punishment of reduction in rank shall not

(a) involve reduction to a rank lower than that to which under regulations the offender can be reduced;
(b) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and
(c) in the case of a subordinate officer, involve reduction to a rank lower than an inferior grade of subordinate officer.

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COMMENTS

In the case of commissioned officers and subordinate officers, there is a restriction placed upon the level to which the punishment of reduction may go. The reason is that the status of commissioned officers and subordinate officers is a basic element in their conditions of service and an involuntary alteration in that their status would be improper in that it would amount to a unilateral change in the terms of their enrolment.

121. (10) Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited.

COMMENTS

This subsection was based on the following provision of the Naval Service Act:

"97. The following punishments may be inflicted in the Naval Service:

(g) Forfeiture of seniority as an officer for a specified time, or otherwise".

Army and air force conditions of forfeiture of seniority have been contained in rules of procedure.

Although the naval provision quoted above does not definitely require the period of forfeiture to be specified, it was considered essential that such be done.

121. (11) The punishment of dismissal of an officer from the ship to which he belongs shall apply only to officers of the Royal Canadian Navy.

COMMENTS

This subsection was based on the following section of the Naval Service Act:

"97. The following punishments may be inflicted in the Naval Service:

(h) Dismissal from the ship to which the offender belongs".

Army and air force legislation has contained no similar provision.

This punishment is of long standing in the navy and therefore has particular value for continued use in that Service. Although the punishment would appear to be applicable to men as well as officers, naval regulations in effect restrict its application to officers. The new subsection has been brought in line with practice by restricting the punishment to officers.

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121. (12) A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man, three months basic pay, and in the case of any other person the sum of two hundred dollars, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

COMMENTS

This subsection is new. As it represents a substantial departure from former scales of punishment in all three Services, it is desirable to indicate the past situation with respect to all punishments of a purely monetary character and then to state the reason for the new provision.

The naval scale has contained no provision for fines, the following being the only punishment of a monetary nature provided for in the Naval Service Act:

> "97. (k) Forfeiture of pay, bounty, salvage, prize money, and allowances earned by, and of all annuities, gratuities, medals, decorations, and good conduct and good service badges granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the ship to which he belongs";

Former army and air force punishments of a purely monetary type are prescribed in the Army Act (UK) and the Air Force Act (UK). These provisions are very complicated, and, in fact, have been largely superseded by King's Regulations and Pay Regulations. In brief, the following is the former scheme of punishments of a monetary nature in the army and air force:

A. Fines might be imposed only for the offence of drunkenness in the case of men and the highest penalty which might be inflicted for a single offence was the sum of sixteen dollars.

B. Forfeitures or stoppages might be imposed both in the army and air force upon officers and men on active service expressed as a certain number of days' pay, to a maximum of twenty-eight days. In the air force, when not on active service, a maximum of fourteen days' pay might be imposed.

C. Deductions from pay might be imposed, based upon damage or loss suffered by the Crown or others, as the result of wrongful act of an officer or man.

In addition to the highly confusing nature of the above punishment structure, which has caused many administrative difficulties, the following particular objections also apply to the punishments indicated:

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A. Fines: No good reason is seen why fines should have been applicable to drunkenness only as many other offences merit their application.

B. Forfeitures and stoppages: The punishment of forfeiture of pay is one that has introduced considerable complications in pay accounting procedure. By its nature it has been difficult to apply this punishment and take account of special cases of financial hardship. For example, a forfeiture of twenty-eight days' pay for a married man with a family is a very different punishment from twenty-eight days' forfeiture of pay for a single man with no dependents. In either case, however, to deprive an individual completely of his pay for a specified period of time is unduly harsh and subversive of good morale.

C. Deductions: As to deductions from pay for loss or damage, it is the considered view of all three Services that recovery, in whole or in part, should not be effected by the device of punishment. The unrealistic nature of former penal provisions of this type is illustrated by the fact that an accused who may have done a great deal of damage cannot recompense the Crown by way of sentence for more than a very small portion of the loss, whereas an offender equally at fault who has caused only a small loss may be required to make good in full. For example, an air force corporal through neglect might cause the loss of an aircraft worth several hundred thousand dollars and it would not be possible to recover more than a minute fraction of the loss, whereas another corporal who caused twenty-five dollars damage to the fender of a vehicle might have imposed upon him a sentence requiring him to recompense the Crown for the entire loss. Punishments founded on quantum of loss usually bear no relation to the degree of culpability and are therefore highly inequitable.

There are many advantages in having available a monetary type of punishment and all of these are realized in the use of fines, without the disadvantages of other forms of monetary punishments mentioned above. In this connection, the following points are drawn to attention:

I. Fines may be stated by service tribunals in precise amounts, not dependent on pay entitlement complicated as it is with pay of rank, trades pay, risk pay, etc.

II. Fines may conveniently be adjusted in relation to the degree of culpability, not being based on any unrealistic proportion of loss or damage caused by the offender.

III. The maximum deterrent effect on others will be achieved by fines as daily orders will show fines awarded in dollars, rather than by reference to forfeitures based on a period of time at an unstated rate of pay.

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IV. The payment of a fine may conveniently be extended over such period as the commanding officer of the offender considers appropriate having regard to the financial obligations of the offender.

V. A fine expressed in dollars is a standard penalty applied in the criminal courts under the Criminal Code and other penal statutes. For example, a civilian charged with reckless driving may be fined fifty dollars for that offence, although he may well have to pay one thousand dollars in damages subsequently in a civil action brought by the injured party. In other words, the existing service procedure of collecting, as a punishment, all or a portion of the damage or loss caused by an offender is a departure from the well-recognized distinction in civil life between penalties for wrong-doing and responsibility for damages.

VI. Fines should have a particularly salutary effect upon offenders who consistently misuse their pay and thereby become involved in offences, such as drunkenness and conduct to the prejudice of good order and discipline.

It is of course clear that an offender with private means who has mis-behaved would not necessarily be deterred in his wrong-doing by the imposition of fines. The scale of punishments, however, is sufficiently detailed to permit service tribunals to impose other punishments more appropriate to that offender's circumstances.

As in the case of the present fine for drunkenness, regulations may contain restrictions upon the power of service tribunals to impose successive fines to an extent that would impoversih a particular offender.

To sum up, it is considered that the new system of fines will be realistic, easy of application and in accord with long established principles in the criminal courts

(NOTE: Nothing in the foregoing applies to forfeitures of pay that by regulations result from sentences of imprisonment or detention or that are effected administratively for periods in which no services are rendered. In addition, reference is made to sections 38 and 39(7) under which individuals may be liable in respect of loss or damage to public and non-public property. In the latter cases recovery would be administrative rather than penal).

121. (13) Minor punishments shall be such as are prescribed in regulations made by the Governor in Council.

COMMENTS

This subsection was derived from the scale of punishments contained in the Naval Service Act:

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"97. (2) Such minor punishments as are now inflicted according to the customs of the Naval Service, or may from time to time be allowed by the Minister".

Army and air force legislation has contained no similar provision although minor punishments in both of those Services have been prescribed in regulations.

The types of punishment envisaged under this head are such minor penalties as admonition, confinement to camp, extra work, etc. It appeared inappropriate to specify these minor punishments in the Act as requirements will change from time to time and it is necessary in the interest of flexibility to leave them to be prescribed in regulations.

121. (14) The authority of a service tribunal to impose punishments may be limited in accordance with regulations made by the Governor in Council.

COMMENTS

This subsection, which is new, is self-explanatory.

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122. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline, and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it.

COMMENTS

This is new. Under former naval practice and army and air force rules of procedure only one sentence has been passed upon an offender at a trial regardless of the number of charges upon which he is found guilty. That sentence, however, might include more than one punishment. This principle has been continued in view of its relative simplicity for application by service tribunals.

The point incorporated in the latter portion of this section was derived from the following provision of the Criminal Code:

"1005. If one sentence is passed upon any verdict of guilty on more counts of an indictment than one, the sentence shall be good if any of such counts would have justified it".

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123. Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, from the date of the punishment of the new sentence, run concurrently, but the punishment higher in the scale of punishments shall be served first.

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COMMENTS

This is new. Reference is made to the following provision of the Naval Service Act:

> "113. Whenever sentence is passed by a court martial on an offender already under sentence either of detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary, passed upon him under this Part for a former offence, the court may award sentence of detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary for the offence for which he is under trial to commence at the expiration of the detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary to which he has been previously sentenced, although the aggregate of terms of detention, imprisonment elsewhere than in a penitentiary or imprisonment in a penitentiary , may exceed the term for which any of those punishments could otherwise be awarded; Provided that nothing in this section shall cause a person to undergo imprisonment elsewhere than in a penitentiary for any period exceeding in the aggregate less than two consecutive years, or detention for any period exceeding in the aggregate two consecutive years, and so much of any term of imprisonment or detention respectively imposed on a person by a sentence in pursuance of this section as would prolong the total term of his punishment beyond those periods shall be deemed to be remitted.

The provision above-quoted is considered to be unduly complicated and, further, differs from practice in the army and air force in that it permits consecutive sentences. Formerly in the army and air force all punishments of incarceration have commenced on the day on which the sentence was imposed and thus have been concurrent.

The scheme of imposing consecutive sentences of incarceration was not considered to be appr opriate to service conditions because there are three different types of punishment involving incarceration, i.e., detention in a detention barrack, imprisonment for less than two years in a reformatory or gaol and imprisonment for more than two years in a penitentiary. The imposition of these punishments one upon another would result in serious anomalies.

It was considered that the guiding principle should be that a subsequent punishment higher in the scale than the punishment then being served should take precedence over the lower punishment, at least for the term of the higher punishment. There being provision for only one method of dealing with subsequent punishments of incarceration, namely the concurrent method, courts martial would not be obliged to resolve the complicated situations which would result from consecutive punishments of different types.

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The only anomalous situation that will remain under this section will be where the balance of a term of detention under a prior sentence requires to be served after the expiration of a shorter term of imprisonment in a reformatory or gaol. In any such case it might not be appropriate to require completion of the punishment of detention in view of the more serious punishment undergone by the offender. That case could be dealt with by service authorities in the light of particular circumstances by remission of the balance of detention remaining to be served.

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124. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by him.

COMMENTS

This was based on the following section of the Criminal Code:

"22. The fact that an offender is ignorant of the law is not an excuse for any offence committed by him".

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125. All rules and principles from time to time followed in the civil courts in proceedings under the Criminal Code that would render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall be applicable to any defence to a charge under the Code of Service Discipline, except in so far as such rules and principles are altered by or are inconsistent with this Act.

COMMENTS

Reference is made to the following section of the Criminal Code:

> "16. All rules and principles of the common law which render any circumstances a justification or excuse for any act, or a defence to any charge, shall remain in force and be applicable to any defence to a charge under this Act except in so far as they are hereby altered or are inconsistent herewith".

It was considered advisable to place all defences to military charges on the same basis as in criminal cases tried by civil courts. If civil defences are in future altered by statute or codified they will likewise be applicable in their new form before service tribunals.

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126. (1) No person shall be convicted of a service offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

(2) In respect of a person labouring under specific delusions, but in other respects sane, subsection one shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

(3) Every person shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

COMMENTS

This was derived from the following section of the Criminal Code:

"19. (1) No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission and of knowing that such an act or omission was wrong.

(2) A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed would justify or excuse his act or omission.

(3) Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved".

Former service legislation did not deal with the subject of insanity as a defence to a charge. It was desirable, in view of the fact that the Criminal Code has a specific provision in this regard, to adopt that provision for the purposes of the Code of Service Discipline. Thus service personnel will be in the same position as civilians in respect of the problem.

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PART VI

ARREST

This Part contains provisions relating to arrest in respect of service offences. Provision is also made for the prompt trial of accused persons held in custody.

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127. (1) Every person who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence, may be placed under arrest.

(2) Every person authorized to effect arrest under this Part may use such force as is reasonably necessary for that purpose.

COMMENTS

Subsection (1) should be compared with the following provision of the Army Act (UK):

> "45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:
>
> (1) Every person subject to military law when so charged may be taken into military custody:"

Section 45(1) (except proviso) of the Air Force Act (UK) is similar.

The former legislation quoted above was not sufficiently explicit for service purposes. The new subsection represents what are considered to be service requirements in respect of arrest.

(NOTE: The provisos to section 45(1) of the Army Act (UK) and the Air Force Act (UK) deal with restrictions upon the length of time during which a person may be held in custody before trial. This subject is dealt with in section 132(1) of the new Act).

Subsection (2) contains a principle found in the following section of the Naval Service Act:

> "95. Every officer in command of a fleet or squadron of His Majesty's Canadian Ships, or of one of His Majesty's Canadian Ships or the Senior Officer present at a port, or an officer having by virtue of subsections two and three of section one hundred and one of this Act power to try offences, may, by warrant under his hand, authorize any person to arrest any offender for any offence against this Part mentioned in such warrant; and any such warrant may include the names of more persons than one in respect of several offences of the same nature; and any person named in any such warrant may forthwith

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on his apprehension, if the warrant so directs, be taken on board the ship to which he belongs, or some other ship of the Naval Service and any person so authorized may use force, if necessary, for the purpose of effecting such apprehension towards any person subject to this Part".

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128. (1) An officer may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of

(a) any man;
(b) any officer of equal or lower rank; and
(c) any officer of higher rank who is engaged in a quarrel, fray or disorder.

(2) A man may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of

(a) any man of lower rank; and
(b) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.

(3) An order given under subsection one or subsection two shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same Service, component, unit or other element of the Canadian Forces.

(4) Every person who is not an officer or man, but who was subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by such person as any commanding officer may designate for that purpose.

COMMENTS

Subsections (1), (2) and (3) should be compared with the following provision of the Army Act (UK):

"45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

(3) Without prejudice to the last foregoing paragraph, any officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray, or disorder".

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Section 45(3) of the Air Force Act (UK) is similar.

There has been no corresponding provision in naval legislation. In the navy, the procedure for arrest has been by way of warrant which is dealt with in section 130 of the Bill.

The points of difference between the new section 128 and the legislation quoted above are the following:

A. Former legislation refers only to the ordering of the arrest of offenders. This was unrealistic as it presupposed that some other appropriate person will always be present to carry out such orders. The new section will enable officers and men to arrest as well as to order the arrest of offenders.

B. Under the new section an officer may arrest an officer of equal or lower rank, even though the offender is not engaged in a quarrel, fray or disorder. Under the legislation quoted above, this power of arrest, in circumstances not involving a quarrel, fray or disorder, did not extend to officers of equal rank but only to those of lower rank. The only restriction necessary is that officers shall not have power to arrest or order the arrest of officers of higher rank, unless engaged in a quarrel, fray or disorder.

C. The power of arrest by officers or men will in all cases be exercisable only if the circumstances set forth in section 127 exist.

D. The phrase "without a warrant" is inserted so that no confusion may arise because of the provisions of section 130.

Subsection (4) is new. As there are several classes of persons, such as camp followers, who are subject to the Code of Service Discipline, it is necessary that provision be made for their arrest. It appeared undesirable, however, to clothe officers and men generally with powers of arrest in relation to them. This subsection will place the matter under the direct control of each commanding officer, thereby insuring that the rights of civilians will not be unduly interfered with.

(NOTE: The provisions of this Part do not in any way restrict the rights and obligations of officers and men as citizens to make arrests in accordance with the provisions of the Criminal Code".

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129. Such officers and men as are appointed under regulations for the purposes of this section may

(a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence; and

(b) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council.

COMMENTS

This was based on the following section of the Army Act (UK):

"74. (1) For the prompt repression of all offences which may be committed out of the United Kingdom, provost marshals with assistants may from time to time be appointed by the general order of the general officer or brigadier commading a body of forces.

(2) A provost marshal or his assistant may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court martial, but shall not inflict any punishment of his or their own authority:

Provided that a provost marshal and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison".

The counterpart of this section in the Air Force Act (UK) was not made applicable to the RCAF.

The navy has nad no corresponding legislation.

The purpose of the new section is to delineate the main powers of service police, designated as shore patrol, provost or service police (air force).

Paragraph (b) of the new section was designed to enable the Governor in Council to grant such other powers as might be required from time to time, such as the carrying into effect of punishments mentioned in the above-quoted legislation.

Attention is directed to the fact that provost and shore patrol personnel are the police forces of the Services and that their powers to make arrests are not

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subject to any limitations based on rank. Under former regulations, provost and shore patrol have had full police powers over members of the three Services, irrespective of the Service to which an individual person exercising such powers might belong.

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130. (1) Subject to subsection two, every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection three of section one hundred and thirty-six may by a warrant under his hand authorize any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service offence.

(2) An officer authorized to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorizing the arrest of any officer of rank higher than he himself holds.

(3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included.

(4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant.

COMMENTS

The principle of this section was derived from the following section of the Naval Service Act:

> "95. Every officer in command of a fleet or squadron of His Majesty's Canadian Ships, or of one of His Majesty's Canadian Ships or the Senior Officer present at a port, or an officer having by virtue of subsections two and three of section one hundred and one of this Act power to try offences, may, by warrant under his hand, authorize any person to arrest any offender for any offence against this Part mentioned in such warrant; and any such warrant may include the names of more persons than one in respect of several offences of the same nature; and any person named in any such warrant may forthwith, on his apprehension, if the warrant so directs, be taken on board the ship to which he belongs, or some other ship of the Naval Service and any person so authorized may use force, if necessary, for the purpose of effecting such apprehension towards any person subject to this Part".

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Army and air force legislation has contained no similar provision.

Although sections 127 and 128 provide broad authority for an officer to order the arrest of other persons subject to the Code of Service Discipline, it is desirable that officers with powers of command have available a special procedure whereby formal warrants may be issued for the arrest of service offenders. For example, a commanding officer may wish to send a relatively junior person to effect the arrest of an offender in some location well beyond the confines of the defence establishment concerned. In many such cases, the hand of the person designated to effect arrest will be greatly strengthened by possession of a formal warrant, i.e. proof that he was authorized or ordered to effect that particular arrest. Such a warrant, issued to a person other than an officer or man, would in certain circumstances of service in remote areas be not only desirable but necessary.

Subsection (4) was inserted to make it abundantly clear that the first three subsections would notoperate to restrict the general powers to effect arrests under sections 127, 128 and 129 of the Act or under the Criminal Code, or otherwise under the law of Canada.

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131. (1) A person arrested under this Part may forthwith on his apprehension be placed in civil custody or service custody or be taken to the unit or formation with which he is serving or to any other unit or formation of the Canadian Forces; and such force as is reasonably necessary for the purposes of this section may be used.

(2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section one hundred and twenty-nine shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal, or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held incustody.

(3) An officer or man who, pursuant to subsection two, receives a person committed to his custody shall, as soon as practical and in any case within twenty-four hours thereafter, give in writing to the officer or man to whom it is his duty to report, the name of that person, and an account of the offence alleged to have been committed by that person so far as is known and the name and rank of the officer, man or other person by whom the

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person so committed was placed in custody, accompanied by any account in writing which has been submitted pursuant to subsection two.

COMMENTS

The provision in subsection (1) for the use of reasonable force is derived from a statement contained in the following section of the Naval Service Act:

"95. Every officer in command of a fleet or squadron of His Majesty's Canadian Ships, or of one of His Majesty's Canadian Ships or the Senior Officer present at a port, or an officer having by virtue of subsections two and three of section one hundred and one of this Act power to try offences, may, by warrant under his hand, authorize any person to arrest any offender for any offence against this Part mentioned in such warrant; and any such warrant may include the names of more persons in respect of several offences of the same nature; and any person named in any such warrant may forthwith, on his apprehension, if the warrant so directs, be taken on board the ship to which he belongs, or some other ship of the Naval Service and any person so authorized may use force, if necessary, for the purpose of effecting such apprehension towards any person subject to this Part."

Subsection (2) was based on the following provisions of the Army Act (UK):

"21. Every person subject to military law who commits any of the following offences; that is to say,

(2) Having committed a person to the custody of any officer, non-commissioned officer, provost marshal, or assistant provost marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter to the officer, non-commissioned officer, provost marshal or assistant provost marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned."

"45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

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(4) An officer or non-commissioned officer commanding a guard, or a provost marshal or assistant provost marshal, shall not refuse to receive or keep any person who is committed to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost marshal, or assistant provost marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged".

Secti ons 21(2) and 45(4) of the Air Force Act (UK) are similar. There has been no corresponding naval legislation.

The new subsection (2) differs from the subsections quoted above only to the extent necessary to bring it in line with the phraseology used in the new Act. There is no change in principle.

Subsection (3) was based on the principle contained in the following offence section of the Army Act (UK):

"21. Every person subject to military law who commits any of the following offences; that is to say,

(3) Being in command of a guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him; and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account;

shall, on conviction by court martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned".

Section 21(3) of the Air Force Act (UK) is similar.

Although the legislation last quoted is in the form of an offence, it was considered advisable to incorporate in the Act an administrative requirement to like effect. A breach of this subsection would be "an act, etc. to the prejudice of good order and discipline" under section 118.

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132. (1) Where a person triable under the Code of Service Discipline has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court martial has been ordered to assemble.

(2) Every person held in custody in the circumstances mentioned in subsection one, who has been continuously so held for a period of twenty-eight days without a summary trial having been held or a court martial having been ordered to assemble, shall at the expiration of that period be entitled to direct to the Minister, or to such authority as the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case and in any event that person shall be so freed when a period of ninety days continuous custody from the time of his arrest has expired, unless a summary trial has been held or a court martial has been ordered to assemble.

(3) A person who has been freed from custody pursuant to subsection two shall not be subject to re-arrest for the offence with which he was originally charged, except on the written order of an authority having power to convene a court martial for his trial.

COMMENTS

Subsection (1) was derived from the proviso in the following section of the Army Act (UK):

"45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

(1) Every person subject to military law when so charged may be taken into military custody; Provided that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed; and a similar report shall be forwarded every eight days until a court martial is assembled or the officer or soldier is released from custody".

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Section 45(1) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

Apart from phraseology, the only change in the new section is that the report of delay of trial is to be made when on active service, as well as when not on active service. Modern communications should overcome difficulties which formerly made it desirable to restrict the operation of this provision to non-active service conditions.

Subsections (2) and (3) are new. They are self-explanatory.

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PART VII

SERVICE TRIBUNALS

This Part makes provision for the constitution powers and procedure of navy, army and air force tribunals.

133. (1) Every reference in this Part to a commanding officer shall be deemed to be a reference to the commanding officer of the accused person, or to such other officer as may, in accordance with regulations, be empowered to act as the commanding officer of the accused person.

(2) Every reference in this Part to the rank of an officer or man shall be construed in accordance with regulations made by the Governor in Council and every such reference shall be deemed to include a person who holds any equivalent relative rank, whether that person is enrolled in, or is attached, seconded or on loan to the Canadian Forces.

COMMENTS

Subsection (1) is new. It is of course essential that every member of the forces have a commanding officer. Where, however, a service offender is at a considerable distance from his parent unit at the time it is desired to try him for an offence, it may be necessary for him to be dealt with by a commanding officer other than his own. For example, a soldier on leave several hundred miles from his unit might commit a service offence and this subsection authorizes regulations enabling him to be charged, dealt with and tried, by a commanding officer in the area where he is apprehended and where the witnesses are to be found.

Subsection (2) is new. In this Part reference is made to army and air force ranks, both with respect to officers who may be appointed as members of courts martial and with respect to accused persons. As it would be possible for a convening authority to appoint officers of any Service to sit on courts martial under section 138(2), and as members of one Service who are attached or seconded could be tried within another Service, it is necessary to ensure that rank qualifications mentioned in this Part shall have tri-service application.

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134. Where a charge is laid against a person to whom this Part applies alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.

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COMMENTS

This section was based on the following provision of the Army Act (UK):

"45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:

(5) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such persons shall be discharged from custody".

Section 45(5) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The element of discharge from custody was omitted from the new section as the offenders may or may not be in custody and, in any event, dismissal of the charge under subsection (2) below would automatically result in his release from custody, unless he continued to be held on some other charge.

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135. Where, after investigation, a commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

COMMENTS

This section was based on the following provision of the Army Act (UK):

"46. (1) The commanding officer shall, upon investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, but where he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to court martial, or, in the case of an officer below the rank of lieutenant-colonel, or of a warrant officer, may refer the case to be dealt with summarily under the provisions of this Act, or in the case of a soldier may deal with the case summarily".

Section 46(1) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

Throughout the Code of Service Discipline the various steps in disciplinary action have been set down in chronological order, rather than in the somewhat haphazard manner of the Army Act and the Air Force Act of the United Kingdom. Accordingly some of the matters mentioned in

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he thinks the charge ought to be proceeded with, he may take steps for bringing the offender to court martial, or, in the case of an officer below the rank of lieutenant-colonel or of a warrant officer, and refer the case to be dealt with summarily under the provisions of this Act, or in the case of a soldier may deal with the case summarily.

"46 (8) Where a commanding officer has power to deal with a case summarily, under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall in every case where the award or finding involves a forfeiture of ordinary pay, and in every other case, unless he awards no other punishment than one of the minor punishments referred to in this section, ask the soldier charged whether he desires to be dealt with summarily or to be tried by a district court martial and if the soldier elects to be tried by a district court martial the commanding officer shall take steps for bringing him to trial by a district court martial, but otherwise shall proceed to deal with the case summarily".

The Air Force Act (UK) contains si ilar provisions.

136. (2) Subject to the conditions set out in this section and in Part V relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(a) detention for a period not exceeding ninety days subject to the following provisions,

(i) a punishment of detention imposed by a commanding officer upon a chief petty officer, petty officer, non-commissioned officer or leading rating shall not be carried into effect until approved by an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving, and only to the extent so approved;

(ii) where a commading officer imposes more than thirty days detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving;

(b) reduction in rank, but a punishment of reduction in rank imposed by a commading officer shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore,

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the legislation quoted above are not dealt with in this section but rather in subsequent sections of the Act where appropriate.

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136. (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied,

(a) the accused person is either a subordinate officer or a man below the rank of warrant officer;
(b) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;
(c) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial;
(d) the offence is not one that in regulations made by the Governor in Council the commanding officer is precluded from trying.

COMMENTS

Subsection (1) embodies the principles that, although not stated in this form, are implicit in the following former legislation:

Naval Service Act:

"101. (2) Any offence not capital which is triable under this Part, and (except in the cases by this Part expressly provided for) is not committed by an officer, ~~any~~; under such regulations as the Minister from time to time issues, be summarily tried and punished by the Officer in Command of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the Officer in Command shall not have power to award imprisonment in a penitentiary at all or to award imprisonment elsewhere than in a penitentiary or detention for more than three calendar months".

"102. With respect to any subordinate officer, the punishment of forfeiture of time or seniority may be imposed by the Minister for any time not exceeding twelve months, or by the Commanding Officer for any time not exceeding three months".

Army Act (UK):

"46. (1) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, but where

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under whom the commanding officer who imposed the punishment is serving;
(c) forfeiture of seniority;
(d) forfeiture of service toward progressive increase in pay;
(e) a fine not exceeding basic pay for one month;
(f) severe reprimand;
(g) reprimand;
(h) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale.

COMMENTS

This subsection is substantially new. It should be compared with:

Army Act (UK):

"46. (2) Where he deals with a case summarily, he may--

(a) Award to the offender detention for any period not exceeding twenty-eight days; and
(b) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding two pounds, either in addition to or without any other punishment; and
(c) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay authorized by this Act to be made by the commanding officer; and
(d) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to, or without any other punishment, order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days; and
(e) In addition to or without any other punishment may award such other minor punishment as he is for the time being authorized to award, so however that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

Section 46(2) of the Air Force Act (UK) is similar.

The powers of punishment of a commanding officer are set forth in complete detail and constitute in effect a sub-scale of punishments, derived as they are from the scale of punishments prescribed in section 121(1).

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The maximum period of detention that officer in the army or in the air force may now twenty-eight days, has been increased to ninety the safeguard that any period in excess of thirty be effective only to the extent approved by higher ity. The reason for this alteration is that many c martial were held during the Second World War which have been avoided if army and air force commanding officers' powers had been greater. In the case of the particularly, the number of courts martial that it beca necessary to hold in the field had a highly disturbing effect upon the conduct of operations. While these conditions do not obtain in peacetime, it is desirable that differences between disciplinary provisions as between peace and war be reduced to the absolute minimum in order to train the regular forces for war-time conditions.

Another change in relation to detention is that commanding officers for the first time under this subsection would be able to award detention to non-commissioned officers, subject to the approval of higher authority.

The punishment of reduction in rank was not formerly available to commanding officers. In line with the desire to increase commanding officers' powers of punishment, it was considered appropriate that commanding officers should be able to impose this punishment, subject to approval by higher authority.

As to the navy, the new commanding officers' scale represents in some respects an increase in powers and in other respects a decrease.

The other punishments which might be imposed by commanding officers are self-explanatory and were adopted from the scale of punishments in section 121(1), except that the maximum fine which a commanding officer may impose would not exceed one month's ordinary pay or rank.

136. (3) A commanding officer may, subject to regulations made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following,

(a) a fine not exceeding ten dollars;
(b) a reprimand;
(c) minor punishments.

COMMENTS

This subsection was based on the following pro-
on of the Army Act (UK):

46. (9) The power of dealing summarily with a
se may be delegated by a commanding officer to
officer under his command in accordance with
subject to the King's Regulations for the

vided that such officer shall not have power
ict any punishment other than a minor

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punishment or such fines for drunkenness as may be provided for by these Regulations.

Section 46(9) of the Air Force Act (UK) as made applicable to the RCAF did not include the proviso contained in the above-quoted Army Act subsection as the restric tions mentioned in that proviso were set out in King's Regulations for the RCAF.

136. (4) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

COMMENTS

Subsection (4) was derived from the following provision of the Army Act (UK):

"46. (6) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court martial shall be administered to each witness in such case.

Section 46(6) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

136. (5) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations.

COMMENTS

This subsection involves a new conception for the army and air force. It is based on naval regulations which provide that before punishments, except certain very minor punishments, may be imposed summarily, approval must be obtained from specified officers who are senior to the commanding officer. Such approval operates as a condition precedent to the imposition of punishment and should not be confused with subsection 136(2) which contains "conditions subsequent".

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137. (1) An officer of or above the rank of commodore, brigadier or air commodore, or any other officer prescribed or appointed by the Minister for that purpose, referred to in this section as a "superior commander", may in his discretion try by summary trial an officer below the rank of lieutenant-commander, major or squadron leader, or a warrant officer, charged with having committed a service offence, and in an emergency the Governor in Council may extend the provisions of this section to cases where the accused person is of the rank of lieutenant-commander, major or squadron leader.

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

(3) Subject to the conditions set out in this section and in Part V relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(a) forfeiture of seniority;
(b) forfeiture of service toward progressive increase in pay;
(c) fine;
(d) severe reprimand;
(e) reprimand.

(4) A superior commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial.

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request.

COMMENTS

This was based on the following section of the Army Act (UK):

"47. (1) Any of the following authorities shall have power to deal summarily with a charge against an officer below the rank of lieutenant-colonel or against a warrant officer referred for that purpose, or for trial by court martial, under the foregoing section of this Act, that is to say, any general officer or brigadier authorized to convene a general court martial, and any such officer (not under the rank of major-general) as may be prescribed or as may be appointed for the purpose by

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the Army Council, and also in the case of a force on service out of the United Kingdom the general or air officer commanding the force and any officer (not under the rank of major-general) appointed for the purpose by him:

Provided that--

(a) in such cases or classes of cases and subject to such restrictions as the Army Council may direct, the powers exercisable under this section. by a major-general appointed for the purpose may be exercised by a brigadier appointed in like manner;

(b) no charge against a field officer shall be dealt with summarily under this section except by a general or air officer authorized to convene a general court martial or an officer not under the rank of lieutenant-general.

(2) The authority having power to deal summarily with the case may, with or without hearing the evidence, dismiss the charge, if he in his discretion thinks that it ought not to be proceeded with, or, where he thinks the charge ought to be proceeded with, take steps for bringing the offender to a court martial, or may, after hearing the evidence, or, if the accused consents thereto in writing, after reading a summary or abstract of the evidence, deal with the case summarily by awarding in the case of an officer one or more of the following punishments:

(a) Forfeiture of seniority of rank either in the army or in the corps to which the offender belongs, or in both, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion;

(b) Severe reprimand or reprimand;

(c) Any deduction authorized by this Act to be made from his ordinary pay;

and in the case of a warrant officer one or more of the following punishments:

(a) Forfeiture in the prescribed manner of seniority of rank;
(b) Severe reprimand or reprimand;
(c) Any deduction authorized by this Act to be made from his ordinary pay.

(3) Where the authority having power to deal summarily with the case considers that he may so deal with the case, he shall, unless he awards a severe reprimand, or a reprimand, in every case ask the accused whether he desires to be dealt with summarily or to be tried by a court martial, and if the accused elects to be tried by a court martial, take steps for bringing him to trial by a court martial, but otherwise shall proceed to deal with the case summarily.

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(4) In every case where an authority has power to dispose of a case summarily, and decides so to do, the accused may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court martial shall be administered to each witness in such case.

(5) An offender shall not be liable to be tried by court martial where the charge has been dismissed or the offence has been dealt with summarily under this section, and shall not be liable to be punished under this section for any offence of which he has been acquitted or convicted by a competent civil court or by a court martial".

The comparable section of the Air Force Act was largely superseded by regulations under the RCAF Act. Naval legislation has contained no counterpart.

It has been considered desirable to continue this form of disciplinary tribunal. The type of offence that would be dealt with under this section would be one involving no moral turpitude. The convening of a court martial would be unnecessarily cumbersome and, having regard to the very minor type of punishment that would be imposed, undesirable.

In the interest of clarity the arrangement of the new section has been varied from the Army Act section quoted above. Following are the points of difference:

A. Army - The former situation was that superior authorities might deal summarily with warrant officers and officers of the rank of major and below. The new section down-grades this power by one rank, i.e. to that of captain and below, except in an emergency.

AIR FORCE - The former situation was that this power might be exercised in respect of warrant officers and officers of the rank of flight-lieutenant (captain in the army) and below. The effect of the new section is to raise the rank by one grade in the case of an emergency.

B. The punishments which a superior commander may award have been broadened by adding "forfeiture of service toward progressive increase in pay" and "fine". It has always been considered that the authority of superior commanders has been unduly restricted and the addition of these new punishments will render summary trials of officers and warrant officers more effective instruments of discipline.

C. Subsection (5) of the Army Act provision quoted above is already provided for in section 37 relating to the effect of previous trials.

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138. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may convene General Courts Martial and Disciplinary Courts Martial.

(2) An authority who convenes a court martial under subsection one may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces.

COMMENTS

Subsection (1) was derived from the following legislation:

Militia Act:

"93. (2) The Governor in Council may make regulations for the convening of courts martial and the jurisdiction and composition thereof for the purpose of trying any officer or man of the Canadian Army for any offence under this Act or for the purpose of trying any other persons punishable under this Act".

Naval Service Act:

"104. (9) The Minister shall have power to order courts martial to be held for the trial of offences under this Part, and to grant commissions to any officer of the Naval Forces on full pay authorizing him to order courts martial to be held for the trial of such offences".

"103. (1) Where any officer or man is in time of emergency alleged to have been guilty of an offence under section fifty-six, sixty-four, sixty-five, sixty-six, sixty-nine, seventy, seventy-two, or eighty-seven of this Act, the officer having power to order a court martial may, if he considers that the offence is of such a character as not to necessitate trial by court martial, in lieu of ordering a court martial, order a disciplinary court constituted as hereinafter mentioned".

The RCAF Act did not contain a corresponding provision. Authority for the convening of courts martial in the air force has been set out in regulations.

Two types of courts martial are mentioned in the new section, General Courts Martial and Disciplinary Courts Martial. A General Court Martial (at present known in the Navy as a "court martial") has been the highest court martial and will continue to occupy that position. It will remain unfettered with respect to the classes of persons subject to the Code of Service Discipline that it can try, the offences with which it can deal and the punishments that it can impose.

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A Disciplinary Court Martial under the new scheme will take the place of the former District Court Martial in the army and air force and Disciplinary Court in the navy. In the army and air force, the change is one in terminology only, the reason for it being that the word "district", that at one time had a geographical connotation in relation to courts martial, has ceased to have that meaning. In the navy, under section 103 (1) quoted above, this type of court formerly could be convened only in an emergency.

Subsection (2) was based on the following legislation:

RCAF Act:

"13. An officer of the air force shall be eligible and may be ordered to serve on any court martial constituted under any statute to try any person not subject to this Act".

Air Force Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(10) If it becomes necessary to convene a court martial under this Act at any place where in the opinion of the convening officer the necessary number of officers of the force is not available to form such a court, or where in his opinion such a necessary number could not be made available without serious injury to the interests of the service, such opinion to be expressed in the order convening the court, and to be conclusive, then the said convening officer may, with the consent of the proper naval or military authority, nominate any naval or military officer to preside over the court, or nominate as members of the court any necessary number of naval or military officers in addition to or in lieu of officers of the air force: Provided that no naval or military officers shall be qualified to perform any function in relation to such court martial unless he is of equal seniority and equivalent rank to that which would have been required by the provisions of this Act if he had been an officer of the air force".

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139. A General Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

COMMENTS

The principles embodied in this section were derived from the following legislation:

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Naval Service Act:

"101. (1) Any offence triable under this Part may be tried and punished by court martial".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(6) A district court martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court martial, may be tried and punished by either a general or district court martial:"

Section 48(6) of the Air Force Act (UK) is similar.

Former army and air force provisions relating to the convening and composition of courts martial related in part to General Courts Martial and in part to District Courts Martial. This led to considerable confusion and therefore the new Act places provisions relating to all types of courts martial on their own feet.

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140. (1) A General Court Martial shall consist of not less than five officers and not more than such maximum number of officers as may be prescribed in regulations.

(2) The president of a General Court Martial shall be an officer of or above the naval rank of captain or of or above the rank of colonel or group captain and shall be appointed by the authority convening the General Court Martial or by an officer empowered by that authority to appoint the president.

(3) Where the accused person is of or above the rank of commodore, brigadier or air commodore, the president of a General Court Martial shall be an officer of or above the rank of the accused person, and the other members of the court martial shall be of or above the naval rank of captain or of or above the rank of colonel or group captain.

(4) Where the accused person is of the naval rank of captain or of the rank of colonel or group captain, all of the members of a General Court Martial, other than the president, shall be of or above the rank of commander, lieutenant-colonel or wing commander.

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(5) Where the accused person is a commander, lieutenant-colonel or wing commander, at least two of the members of a General Court Martial, exclusive of the president, shall be of or above the rank of the accused person.

COMMENTS

Subsection (1) was based on the following legislation:

Naval Service Act:

"104. (1) A court martial shall consist of not less than five nor more than nine officers.

(13) No commander, lieutenant-commander, or lieutenant shall be required to sit as a member of any court martial when four officers of a higher rank and junior to the president can be assembled at the place where the court martial is to be held (but the regularity or validity of any court martial or of the proceedings thereof, shall not be affected by any commander, lieutenant-commander, or lieutenant being required to sit, or sitting, thereon, under any circumstances); and when any commander, lieutenant-commander or lieutenant sits on any court martial the members of it shall not exceed five in number".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(3) A general court martial shall consist of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than four must be of a rank not below that of captain:"

Section 48(3) of the Air Force Act (UK) is similar.

The new section is similar in principle to the legislation last quoted above except that it was considered undesirable to perpetuate the three-year commissioned qualification. The selection of the court is best left to those charged with its establishment; for example, an officer of some years' seniority might be lesssuitable than a more junior officer, having regard to their particular experience.

Subsections (2) to (5) were derived from the following legislation:

Naval Service Act:

"104. (5) No court martial for the trial of a flag officer shall be duly constituted unless the

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president is a flag officer, and the other officers composing the court are of the rank of captain, or of higher rank.

(6) No court martial for the trial of a captain in the Naval Forces shall be duly constituted unless the president is a captain or of higher rank, and the other officers composing the court are commanders or officers of higher rank.

(7) No court martial for the trial of a person below the rank of captain in the Naval Forces shall be duly constituted, unless the president is a captain or of higher rank, nor, if the person to be tried is of the rank of commander, unless in addition to the president two other members of the court are of the rank of commander or of higher rank.

(12) The president of every court martial shall be named by the authority ordering the same, or by any officer empowered by such authority to name the president".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(9) The president of a court martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer; unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court martial, and he shall not be under the rank of captain, except in the case of a district court martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, having due regard to the public service, available;"

Section 48(9) of the Air Force Act (UK) is similar.

The new section does not differ in principle from the legislation last quoted, the only basic change being that the president of a General Court Martial may not in future hold a rank lower than that of major or squadron leader. The reason for the change is that a General Court Martial should be presided over by a senior officer in view of the broad authority held by such a tribunal.

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141. Such authority as is prescribed for that purpose in regulations shall appoint a person to officiate as judge advocate at a General Court Martial.

COMMENTS

This is new. It will be noted that a judge advocate must be appointed for every General Court Martial under the new Act.

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142. None of the following persons shall sit as a member of a General Court Martial,

(a) the officer who convened the court martial;
(b) the prosecutor;
(c) a witness for the prosecution;
(d) the commanding officer of the accused person;
(e) a provost officer;
(f) an officer who is under the age of twenty-one years;
(g) an officer below the naval rank of lieutenant, the army rank of captain or the air force rank of flight lieutenant; or
(h) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person if founded.

COMMENTS

This section was derived from the following legislation:

Naval Service Act:

"104. (2) Subject to section one hundred and five, no officer shall be qualified to sit as a member of any court martial held in pursuance of this Act unless he is a flag officer, captain, commander, lieutenant-commander, or lieutenant of the permanent naval force on full pay.

(4) No officer shall sit on a court martial who is under twenty-one years of age.

(8) The prosecutor shall not sit on any court martial for the trial of a person whom he prosecutes.

(11) The officer ordering a court martial shall not sit thereon."

"105. When the Naval Forces are on active service, officers of the naval reserve force and the naval volunteer reserve force may sit as members of courts martial or disciplinary courts on the same basis and under the same conditions as officers of the permanent naval force".

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Army Act (UK):

"50. (2) The officer who convened a court martial shall not, save as is otherwise expressly provided by this Act, sit on that court martial.

(3) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any accused, or the commanding officer of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which an accused is arraigned, shall not, save in the case of a field general court martial, sit on the court martial for the trial of such accused, nor shall he act as judge advocate at such court martial".

The Air Force Act (UK) contains a corresponding provision.

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143. Subject to any limitations prescribed in regulations made by the Governor in Council, a Disciplinary Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

COMMENTS

This is new. It should be compared with the following:

Naval Service Act:

"103 (1) Where any officer or man, is in time of emergency alleged to have been guilty of an offence under section fifty-six, sixty-four, sixty-five, sixty-six, sixty-nine, seventy, seventy-two, or eighty- seven of this Act, the officer having power to order a court martial may, if he considers that the offence is of such a character as not to necessitate trial by court martial, in lieu of ordering a court martial, order a disciplinary court constituted as hereinafter mentioned".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(6) A district court martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court martial, may be tried and punished by either a general or district court martial".

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Section 43(6) of the Air Force Act (UK) is similar.

Under the new section limitations as to jurisdiction (offences and persons triable) will be prescribed in regulations. It would be undesirable to make statutory provisions in this regard as it is essential that flexibility be preserved to meet varying circumstances; for example, it may be desirable for certain classes of subordinate officers to be triable by Disciplinary Courts Martial.

Reference is made to the comments to section 138.

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144. A Disciplinary Court Martial shall not pass a sentence including a punishment higher in the scale of punishments than dismissal with disgrace from His Majesty's service, or higher than such other punishment as may be prescribed in regulations; but no such other punishment shall be higher in the scale of punishments than dismissal with disgrace from His Majesty's service.

COMMENTS

This was derived from the following:

Naval Service Act:

"103. (3) A disciplinary court shall have power to impose any punishment inferior to imprisonment elsewhere than in a penitentiary in the scale hereinbefore contained, but no greater punishment".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(6) A district court martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court martial, may be tried and punished by either a general or district court martial".

Air Force Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(6) A district court martial shall not try a person subject to this Act as an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, any

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offence under this Act committed by a person subject to this Act, and triable by court martial, may be tried and punished by either a general or district court martial".

Under the army and air force legislation last quoted above this type of court martial could impose punishment except death or penal servitude. In the navy, however, the highest punishment that might be imposed was detention. In this section the army and air force ceiling has been adopted. If the navy, because of differences of conditions of service, feels that this type of court should be limited to punishments lower than the maximum prescribed in this section, this could be done in regulations.

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145. A Disciplinary Court Martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in regulations.

COMMENTS

This should be compared with the following:

Naval Service Act:

"103 (2) A disciplinary court shall be composed of not less than three nor more than five officers, of whom one shall be a commander or of higher rank".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(4) A district court martial shall consist of not less than three officers, each of whom must have held a commission during not less than two whole years".

Section 48(4) of the Air Force Act (UK) is similar.

The differences between the legislation last quoted above and the new section are:

A. It was considered undesirable to perpetuate the two-year commission qualification formerly contained in army and air force legislation as the selection of the court is best left to those charged with establishing it; for example, an officer of some years' seniority might be less suitable than a more junior officer, having regard to their particular experience.

B. It is desirable that authority should exist for a maximum number of members to be prescribed in regulations in order that military activities may not, in certain circumstances, be unduly interfered with by reason of an excessive number

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of officers being required to sit upon courts martial of this type. It would be inappropriate, however, to perpetuate the former naval ceiling as it is considered that such an approach is too restrictive.

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146. (1) The president of a Disciplinary Court Martial shall be appointed by the authority convening the Disciplinary Court Martial or by an officer empowered by that authority to appoint the president.

(2) The president of a Disciplinary Court Martial shall be an officer of or above the rank of lieutenant-commander, major or squadron leader or of or above such higher rank as may be prescribed in regulations.

COMMENTS

This was derived from the following:

Naval Service Act:

"103. (2) A disciplinary court shall be composed of not less than three nor more than five officers, of whom one shall be a commander or of higher rank".

Army Act (UK):

"48. The following rules are enacted with respect to general courts martial and district courts martial:

(9) The president of a court martial, whether general or district, shall be appointed by order of the authority convening the court, but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court martial, and he shall not be under the rank of captain, except in the case of a district court martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, having due regard to the public service, available".

Section 48(9) of the Air Force Act (UK) is substantially similar.

Having regard to the nature of the punishments that may be imposed, it was considered that the former provisions of the army and air force with respect to the minimum rank of the president did not adequately safeguard the accused.

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147. Such authority as may be prescribed for that purpose in regulations may appoint a person to officiate as judge advocate at a Disciplinary Court Martial.

COMMENTS

This is new. It should be compared with the following section of the Naval Service Act:

> "108. In the absence of the Judge Advocate of the Fleet or his deputy, and in default of any appointment in this behalf by the Minister, or by the Commander-in-Chief of any fleet or squadron, the officer who is to be the president of the court martial shall appoint a person to officiate as deputy judge advocate at the trial; and the Judge Advocate of the Fleet for the time being, or his deputy, or the person officiating as deputy judge advocate, at any trial, shall administer an oath to every witness appearing at the trial."

It lies within the discretion of the authority who has power to appoint a judge advocate to determine whether such an official is necessary at a particular Disciplinary Court Martial.

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148. None of the following persons shall sit as a member of a Disciplinary Court Martial,

(a) the officer who convened the court martial;
(b) the prosecutor;
(c) a witness for the prosecution;
(d) the commanding officer of the accused person;
(e) a provost officer;
(f) an officer who is under the age of twenty-one years; or
(g) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

COMMENTS

This section was derived from the following:

Naval Service Act:

"104. (4) No officer shall sit on a court martial who is under twenty-one years of age.

(8) The prosecutor shall not sit on any court martial for the trial of a person whom he prosecutes.

(11) The officer ordering a court martial shall not sit thereon."

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"105. When the Naval Forces are on active service, officers of the naval reserve force and the naval volunteer reserve force may sit as members of courts martial or disciplinary courts on the same basis and under the same conditions as officers of the permanent naval force".

Army Act (UK):

"50. (2) The officer who convened a court martial shall not, save as is otherwise expressly provided by this Act, sit on that court martial.

(3) Any of the following persons, that is to say, a prosecutor or witness for the prosecution of any accused, or the commanding officer of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which an accused is arraigned, shall not, save in the case of a field general court martial, sit on the court martial for the trial of such accused, nor shall he act as judge advocate at such court martial".

The Air Force Act (UK) contains a corresponding provision.

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149. (1) The Governor in Council may in an emergency establish Standing Courts Martial and each such court martial shall consist of one officer, to be called the president, who is or has been a barrister or advocate of more than three years standing and who shall be appointed by or under the authority of the Minister.

(2) Subject to any limitations prescribed in regulations, a Standing Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed a service offence, but a Standing Court Martial shall not pass a sentence including any punishment higher in the scale of punishments than imprisonment for less than two years.

COMMENTS

This is new.

This type of court martial was instituted in the army in Canada during the Second World War by Order in Council PC 3375, of 1944. Its jurisdiction was originally limited to the large volume of cases of absence without leave and desertion, but it was subsequently extended to

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cover all offences committed by soldiers, not including warrant officers. Officers were at no time subject to Standing Courts Martial. The powers of punishment of this tribunal were limited to imprisonment, with or without hard labour, for a term not exceeding two years.

Particular advantages of this type of courts martial were the economy in use of officer personnel and the expedition with which it could deal with offences. The president of the court martial, who was generally a qualified barrister or advocate serving in the army, held regular sittings on circuit in specified groups of military establishments and dealt with all offenders who were presented before him. No convening order was necessary in respect of any of these trials. Confirmation of the sentence of the court was not required and it was promulgated to the accused forthwith by the signing of the committal order. Cases normally requiring the best part of a day of the time of a District Court Martial could readily be disposed of by a Standing Court Martial in less than an hour.

The Standing Court Martial occupied a position in the system of military justice very similar to that held by a police magistrate in the civil system. The court was prompt, expeditious, readily available, and well-informed as to service law, customs and policies.

In view of the practical advantages of this form of tribunal, statutory provision has been made for its establishment in an emergency. This represents an innovation for the navy and air force.

Subsection (2) limits the powers of punishment of a Standing Court Martial and provides that the offences which it may deal with and the persons subject to its jurisdiction may be restricted by regulations.

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150. At any proceedings before a court martial the accused person shall have the right to be represented in such manner as shall be prescribed in regulations made by the Governor in Council.

COMMENTS

This section is new.

It was based on rules of procedure and regulations which have long been in force in the three Services. It was considered desirable to prescribe the basic right by statute.

No change in former practice is contemplated. An accused person has normally been defended by an officer requested by him and detailed for that duty. He has been entitled to counsel if he so desired, and present regulations provide for payment of part or all of such counsel's fees. He has also, if he had no other representation, been entitled to have a "prisoner's friend" sit

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by him. The latter could not cross-examine witnesses or address the court but might advise the accused throughout the trial.

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151. (1) Subject to subsections two and three, courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.

(2) Where the authority who convenes a court martial or the president of a court martial considers that it is expedient in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the minutes of the proceedings of the court martial.

(3) Witnesses, other than the prosecutor and the accused person and his representative, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court martial.

(4) The president may, on any deliberation among the members, cause a court martial to be cleared of any other persons in accordance with regulations.

COMMENTS

This section is substantially new. It is a codification of existing rules of procedure, practice and service jurisprudence.

Subsection (4) was derived from the following provision of the Army Act (UK):

"53. (5) The President of any court martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons".

The Air Force Act (UK) contains a similar provision.

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152. (1) The rules of evidence at a trial by court martial held in Canada shall be the same as those from time to time followed in proceedings under the Criminal Code in civil courts in the province of Canada in which the court martial is held, except in so far as such rules are inconsistent with this Act or regulations.

(2) Where a court martial is held out of Canada or in a ship beyond the territorial limits of Canada, the rules of evidence shall be the same as those from time to time followed in proceedings under the Criminal Code in civil courts in the province in which the accused person states to the court martial that his ordinary place of residence is situated, except in so far as such rules are inconsistent with this Act or regulations.

(3) Where, in the circumstances mentioned in subsection two, an accused person states that his ordinary place of residence is situated out of Canada, or makes no statement as to his ordinary place of residence, the court martial shall apply the rules of evidence from time to time followed in proceedings under the Criminal Code in civil courts in the province in which the capital city of Canada is situated, except in so far as such rules are inconsistent with this Act or regulations.

(4) A court martial, wherever held, shall not as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing, be subject to any Act, law or regulation not in force in Canada.

COMMENTS

This is new. Former legislation on this subject is to be found in the following:

Army Act (UK):

"128. The rules of evidence to be adopted in proceedings before courts martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court."

Air Force Act (UK) (as made applicable to the RCAF):

"128. (1) The rules of evidence to be adopted in proceedings before courts martial shall be the same as those which are followed in civil courts in England, except in so far as such rules are inconsistent with any statute of the Parliament of

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Canada or regulation made thereunder.

(2) Notwithstanding subsection (1), in the event of any inconsistency between a rule of evidence contained in a regulation made under the Royal Canadian Air Force Act and a rule of evidence contained in any statute of the Parliament of Canada, the rule of evidence contained in the said regulation shall govern".

It has long been found in practice that the application of rules of evidence in force in England has caused considerable difficulty to officers conducting courts martial in the Canadian forces. There are a number of basic differences between the law of evidence applicable in civil courts in England, on the one hand, and in Canada on the other, and there was continual possibility of confusion.

By reason of the nature of the Canadian constitution, there is no single complete body of Canadian law of evidence. It is therefore provided if the trial takes place in Canada, to adopt the law of evidence applicable at the place of trial.

Subsection (4) should be compared with the following section of the Army Act (UK):

> "127. A court martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to any Act, law, or ordinance of any legislation or authority whatsoever other than the Parliament of the United Kingdom."

Section 127 of the Air Force Act (UK) was made inapplicable to the RCAF. Thers has been no corresponding naval legislation.

The new section is an example of the degree to which, under the new Act, Canadian rather than English law is made applicable to the Service.

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153. (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations.

(2) A court martial may receive, as evidence of the facts therein stated, declarations made in the manner prescribed by section thirty-six of the Canada Evidence Act, subject to the following condiotions,

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(a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;
(b) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and
(c) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (a) or (b) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.

COMMENTS

Subsection (1) is new. It was designed to provide for maximum flexibility in respect of the types of documents that may be admitted in evidence. Flexibility is particularly important in view of the tri-service nature of the new Act, having regard to the vast number and continually changing types of forms, etc. in use in the navy, army and air force.

In sections 163 and 164 of the Army Act (UK) and Air Force Act (UK), the types of documents that may be admitted in evidence are listed in detail. Such an approach was considered to be unduly restrictive and therefore was not perpetuated. Sections 163 and 164 are very lengthy and their repetition in these comments would serve no useful purpose.

Subsection (2) is new. The procedure envisaged should be distinguished from "evidence on commission" provided for in section 155.

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154. (1) The commanding officer of the accused person, the authority who convenes a court martial, or, after the assembly of the court martial, the president, shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by any such commanding officer, authority who convenes a court martial or president to be frivolous or vexatious.

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can

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reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in regulations, and if at the trial the evidence of the witness proves to be relevant and material, the president of the court martial or the authority who convened the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses of the witness so paid.

(3) Nothing in this section shall limit the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit.

COMMENTS

This is new. It was based upon rules of procedure, practice and service jurisprudence. The subject is so basic that it was deemed advisable to make statutory provision for it.

The purpose of the section is to impose an obligation on the military authorities to secure the necessary witnesses. It has quite a different objective than section 200, the purpose of which is to impose an obligation upon the persons summoned, whether civilian or otherwise, as witnesses. Officers and men would not ordinarily be summoned as their attendance would be enforceable by the issue of lawful commands, supplemented by service administrative arrangements.

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155. (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose, that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take the evidence of the witness under oath.

(2) The document containing the evidence of a witness, taken under subsection one and duly certified by the commissioner, shall be admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

(3) Where in the opinion of the president of a court martial, a witness whose evidence has been taken on commission, should

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in the interests of justice appear and give evidence before the court martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

(4) The document mentioned in subsection two or a true copy thereof may be attached to the summary or abstract of evidence taken in respect of the charge against the accused person and, on being so attached, that document shall form part of the summary or abstract of evidence.

(5) At any proceedings before a commissioner the accused person and the prosecutor shall be entitled to be represented and the persons representing them shall have the right to examine and cross-examine any witness.

(6) The accused person shall, at least twenty-four hours before it is admitted at the court martial, be furnished without charge with a copy of the document mentioned in subsection two.

COMMENTS

This is new. The principle of allowing evidence on commission to be taken is of course well established in the civil courts. It was adopted during the war in the case of the army by PC 2939 dated 12 April, 1943, and in the case of the air force by PC 8915 dated 23 November, 1943, the first of which is no longer in effect. The navy had no corresponding procedure.

The following points are particularly drawn to attention:

A. Evidence on commission can be taken from all witnesses, but, in the case of prosecution witness, only **when ill or** in another country, whereas such evidence can be taken from witnesses for the accused where not readily obtainable for <u>any reason</u>.

B. A safeguard is provided for the appointment of a fit and proper person to take evidence on commission by placing selection under the control of the Judge Advocate General.

Sections 716(2), 995, 996, 997 and 998 of the Criminal Code, which deal with evidence on commission in civil courts, are not quoted in these comments because of the differences in the organization of civil tribunals on the one hand and service tribunals on the other. The same principles are applicable but have been broadened in the new section for the benefit of the accused.

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156. A court martial may, where the president considers it necessary, view any place, thing or person.

COMMENTS

This was derived from the following:

Army Act (UK):

"53. (7) The court may also, where necessary, view any place".

Section 53(7) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

Criminal Code:

"958. (1) On the trial of any person for an offence against this Act, the court may, if it appears expedient for the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict, direct that the jury shall have a view of the place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person shall be shown to such jurors, and may for that purpose adjourn the trial, and the cost occasioned thereby shall be in the discretion of the court".

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157. (1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.

(2) The procedure for the replacement of a president of a court martial or any other members of a court martial in respect of whom an objection has been allowed shall be as prescribed in regulations.

COMMENTS

This was based on the following:

Naval Service Act:

"109. (1) As soon as the court is assembled, the names of the officers composing the court shall be read over to the person charged, who shall be asked if he objects to being tried by any member of the court. If the person charged objects to any member, the objection shall be decid d by the court. If the objection is allowed the place of the member objected to shall be filled by the officer next in seniority who is not on the court martial, and is qualified to sit.

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(2) The person charged may then raise any other objection which he desires to make respecting the constitution of the court martial. The objection shall then be decided by the court, which decision shall be final, and the constitution of the court martial shall not be afterwards impeached, and it shall be deemed to have been in all respects duly constituted".

Army Act (UK):

"51. (1) An accused about to be tried by any court martial may object, for any reasonable cause, to any member of the court, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection.

(2) Every objection made by an accused to any officer shall be submitted to the other officers appointed to form the court.

(3) If the objection is to the president, such objection, if allowed by one third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5) If the objection is to a member other than the president and is allowed by one half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form thecourt shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer".

Section 51 of the Air Force Act (UK) is similar.

The new section is similar in principle to the legislation last quoted above. The only change is that a number of details contained in the legislation last quoted above, that are considered to be procedural in nature, have been left to be provided for in regulations, where they undoubtedly should have been prescribed in the first instance.

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158. (1) At every court martial an oath shall be administered to each of the following persons,

(a) the president and other members of the court martial;
(b) the judge advocate general;
(c) the officers ordered to attent for purposes of instruction;
(d) court reporters;
(e) interpreters;
(f) witnesses,

in the manner and in the forms prescribed in regulations.

(2) If a person to whom an oath is required to be administered under subsection one,

(a) objects to take the oath and the president of the court martial is satisfied of the sincerity of the objection; or
(b) is objected to as incompetent to take the oath and the president of the court martial is satisfied that the oath would have no binding effect on the conscience of that person,

the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in regulations and, for the purposes of this Act, a solemn affirmation shall be deemed to be an oath.

COMMENTS

This was based on the following:

Army Act (UK):

"52. (1) An oath in the prescribed form shall be administered by the prescribed person to every member of every court martial before the commencement of the trial.

(2) An oath in the prescribed form or forms, shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court martial for the purpose of instruction (if any), and also to every shorthand writer or interpreter (if any) in attendance on the court martial.

(3) Every witness before a court martial shall be examined on oath, which the President or other prescribed person shall administer in the prescribed form.

(4) If a person by this Act required either as a member of, or person in attendance on, or witness before a court martial, or otherwise in respect of a court martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection, or where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall

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permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath."

Section 52 of the Air Force Act (UK) is similar.

Naval Service Act:

"103. (4) The Minister may from time to time make regulations governing the assembling, constitution and procedure and practice of disciplinary courts under this section, and the regul ations shall provide for evidence being taken on oath and empower the court to administer oaths for that purpose",

"110. Before the court proceeds to try the person charged, the Judge Advocate of the Fleet, or his Deputy, or the person officiating as deputy judge advocate, shall administer to every member of the court the following oath: that is to say,

"I,....., do swear that I will duly administer justice according to law, without partiality, favour, or affection; and I do further swear,

that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court martial, unless there unto required in due course of law. So help me God".

"111. As soon as the oath is administered to the members of the court martial, the president shall administer to the Judge Advocate of the Fleet, or his deputy, or the person officiating as deputy judge advocate, the following oath:

"I,....., do swear, that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless thereunto required in due course of law. So help me God".

The new section is similar in principle to the army and air force legislation quoted above, although a major re-arrangement has been made.

Although the Naval Service Act provisions contain the forms of oath to be administered, this appears to be unnecessary. It is considered that provision for forms should be made in regulations.

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159. A court martial may be adjourned whenever the president considers adjournment desirable.

COMMENTS

This should be compared with the following provision of the Army Act (UK):

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"53. (6) The court may adjourn from time to time".

Section 53(6) of the Air Force Act (UK) is similar.

It was considered necessary that the matter of adjournment should be definitely placed within the authority of the president, who is responsible for the conduct of the proceedings, and not left indefinite as in the former legislation.

The naval provision concerning this subject was the following section of the Naval Service Act:

> "107. A court martial held in pursuance of this Part may, if it appears to the court that an adjournment is desirable, be adjourned for a period not exceeding six days, but except where an adjournment is ordered shall sit from day to day, with the exception of Sundays, until sentence is given, unless prevented from so doing by stress of weather or unavoidable accident, and its proceedings shall not be delayed by the absence of any member, so that not less than four are present; and no member shall absent himself unless compelled to do so by sickness or other just cause, to be approved of by the other members of the court, and if any member of a court martial absents himself therefrom, in contravention of this section, he shall be dismissed from the Naval Service, or shall suffer such lesser punishment as may be awarded by a court martial.

The time limitation in respect of adjournments mentioned in the naval provision quoted above was considered to be unduly restrictive, having regard to the fact that lengthy delays are sometimes absolutely necessary, and are often in the interests of the accused. In any event, such a restriction would have little practical effect in view of the fact that it could be circumvented by re-assembly of the court from time to time with further adjournments.

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160. (1) Where, after the commencement of a trial, a court martial is by death or otherwise reduced below the minimum number of members prescribed in this Act, it shall be deemed to be dissolved.

(2) Where, after the commencement of a trial, the president of a court martial dies or for any other reason cannot attend and the court martial is not thereby reduced below the minimum number of members prescribed in this Act, the authority who convened the court martial may appoint the senior member of the court martial to be the president and the trial shall proceed; but if the senior member of the court martial is not of sufficient rank to be appointed president, the court martial shall be deemed to be dissolved.

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(3) Where, on account of the illness of the accused person, it is impossible to continue the trial, the court martial shall be dissolved.

(4) Where a court martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced.

COMMENTS

This was derived from the following section of the Army Act (UK):

"53. (1) If a court martial after the commencement of the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank, the court shall be dissolved.

(3) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court martial shall be dissolved.

(4) Where a court martial is dissolved under the foregoing provisions of this section the accused may be tried again".

Section 53(1), (2), (3) and (4) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

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161. (1) Where at any time during a trial by court martial, it appears to the president that there is a technical defect in a charge that does not affect the substance of the charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case.

(2) Where an amendment to the charge has been made, the president of the court martial shall, if the accused person so reques ts, adjourn the court martial for such period as the president considers necessary to enable the accused person to meet the charge so amended.

(3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed by the president of the court martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection therewith as being the original charge sheet.

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COMMENTS

This is new. It was based upon the following section of the Criminal Code:

> "893. Where, before trial, or at any stage of a trial, it appears to the Court that the indictment is defective, the court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice, and may make such order as to the payment of any costs incurred owing to the necessity for amendment as the Court thinks fit".

The objective sought in the new section was to insure that charges, otherwise valid, will not fall on account of mere technicalities, e.g. an error in the name or description of an accused whose identity is otherwise well established".

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162. (1) The finding and, subject to subsection three of section one hundred and twenty-one, the sentence of a court martial and the decision in respect of any other matter or question arising after the commencement of the trial shall be determined by the vote of a majority of the members.

(2) In the case of an equality of votes on the finding, the accused shall be found not guilty.

(3) In the case of an equality of votes on the sentence or on any other matter or question arising after the commencement of the trial, except the finding, the president of the court martial shall have a second or casting vote.

COMMENTS

Subsection (1) is new. It was based upon existing rules of procedure. The point is so fundamental it was considered that it should be prescribed in the new Act.

Subsections (2) and (3) were derived from the following provision of the Army Act (UK):

> "53. (8) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote".

Section 53(8) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

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163. A court martial may at the request of the offender and in its discretion take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the offender has been found guilty, that are admitted by him, as if he had been charged with, tried on and found guilty of such offences; but the sentence of the court martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty.

COMMENTS

This is new. It was based, in principle, upon a recommendation contained in the Report of the United Kingdom Army and Air Force Courts Martial Committee (known as the Lewis Report) issued in May, 1948.

It was considered desirable that offenders convicted of one offence should be given an opportunity to expiate, as it were, other offences of a similar nature. It has the advantage of providing for the closing of the records in respect of offences of which the perpetrators are unknown and which may have been the subject of considerable investigation and inquiry.

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164. The finding and sentence of a court martial shall at the conclusion of the trial be pronounced to the offender in open court and he shall be under the sentence as of the date of the pronouncement thereof.

COMMENTS

This is new. It places in statutory form a change recently made in army and air force rules of procedure.

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165. Where a court martial has found a person guilty of an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen applies, the court martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial.

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COMMENTS

This section was based on the principle contained in the following provision of the Army Act (UK):

> "53. (9) When a court martial recommend a person under sentence to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and sentence".

Section 53(9) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The new section differs substantially from that last quoted above, The findings and sentences of courts martial will not be subject to confirmation and are a final disposition of each case, apart from appeal or petition. It would not therefore be logical for the court to impose a particular punishment and at the same time recommend mercy. Therefore, recommendations to clemency would be appropriate only in a case in which a court martial, having found an accused guilty, is bound to impose a particular punishment by reason of a mandatory provision in the section prescribing the offence.

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166. (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

(2) Where the decision of the court martial on an issue mentioned in subsection one is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried.

(3) Where the decision of a court martial held in Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be treated in accordance with s ubsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the Criminal Code, as if the same decision had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

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(4) Where the decision of a court martial held out of Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the Criminal Code, as if the same decision had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

(5) No decision of a court martial that an accused person is unfit to stand or continue his trial by reason of insanity shall prevent that person being afterwards tried in respect of the offence or of any other offence of which he might have been found guilty on the same charge; and the period during which he is unfit to stand or continue his trial by reason of insanity shall not be taken into account in applying to him in respect of that offence the provisions of section sixty.

COMMENTS

This is new. It was based on the following section of the Criminal Code:

"967. If at any time after the indictment is found, and before the verdict is given, it appears to the court that there is sufficient reason to doubt whether the accused is then, on account of insanity, capable of conducting his defence, the court may direct that an issue shall be tried whether the accused is or is not then, on account of insanity, unfit to take his trial.

(2) If such issue is directed before the accused is given in charge to a jury for trial on the indictment, such issue shall be tried by any twelve jurors, or in the province of Saskatchewan, by any six jurors.

(3) If such issue is directed after the accused has been given in charge to a jury for trial on the indictment, such jury shall be sworn to try this issue in addition to that on which they are already sworn.

(4) If the verdict on this issue is that the accused is not then unfit to take his trial, the arraignment or the trial shall proceed as if no such issue had been directed.

(5) If the verdict is that he is unfit on account of insanity, the court shall order the accused to be kept in custody till the pleasure of the lieutenant governor of the province shall be

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known, and any plea pleaded shall be set aside and the jury shall be discharged.

(6) No such proceeding shall prevent the accused being afterwards tried on such indictment."

It was considered that accused persons in the armed forces, who prove to be insane at the time of trial by court martial, should be treated on the same basis as persons who are insane at trials in civil criminal courts. Therefore, the same general approach to the problem as that followed in the Criminal Code has been adopted in the new section. The only difference arises from the fact that service personnel may be tried by court martial outside of Canada and have to be brought back to Canada. Insanity in such cases raises the question as to which province is responsible for care and custody and it was sought in this section to provide a clear-cut procedure for the disposition of the insane in every case.

Former service legislation on this subject is to be found in the Army Act (UK):

"130. (1) Where it appears on the trial by court martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(3) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure, in such place and in such manner as His Majesty thinks fit."

Section 130(1) and (3) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The Army Act subsections quoted above are not in themselves inappropriate, but it was thought preferable to bring the new Act in line with the Criminal Code in so far as possible, thereby placing insane members of the forces in a similar position to other insane persons in Canada.

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167. (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.

(2) Where a court martial held in Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict

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custody and he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the Criminal Code, as if the same finding had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

(3) Where a court martial held out of Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the Criminal Code, as if the same finding had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

COMMENTS

This is new.

The reasons set out in the comments to section 166 for the adoption of the Criminal Code provisions apply with equal force to this section. It was based upon the following section of the Criminal Code:

> "966. Whenever evidence is given upon the trial of any person charged with an indictable offence, that such person was insane at the time of the commission of such offence, the jury, if they acquit such person, shall be required to find, specially, whether any such person was insane at the time of the commission of such offence, and to dedare whether he is acquitted by it on account of such insanity.
>
> (2) If the jury finds that such person was insane at the time of committing such offence, the court before which such trial is had shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit, until the pleasure of the lieutenant governor is known."

Former service legislation on the subject is to be found in the Army Act (UK):

> "130. (2) Where, on the trial by court martial of a person charged with an offence, it appears that such person did the act or made the omission with which he is charged, but that he was insane at the time when he did or made the same, the court shall find specially that the accused was guilty of the

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act or omission charged but was insane at the time when he did the act or made the omission, and such person shall be kept in custody in the prescribed manner until the directions of His Majes ty thereon are known.

(3) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure, in such place and in such manner as His Majesty thinks fit."

Section 130(2) and (3) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

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168. A copy of the minutes of the proceedings of a court martial and of the form of the Statement of Appeal mentioned in section one hundred and eighty-eight shall be delivered without charge as soon as practical after the conclusion of the trial to the person who has been tried and found guilty by that court martial.

COMMENTS

As a right of appeal exists in respect of every court martial on questions of law and mixed law and fact, it is obvious that the offender must have a copy of the proceedings to enable him to consider his position. It was considered desirable therefore to prescribe by statute the delivery to him of the proceedings, together with a copy of a Statement of Appeal form.

Reference is made to the following section of the Army Act (UK):

"124. Any person tried by a court martial shall be entitled, on demand, at any time in the case of a general court martial within seven years, and in the case of any other court martial within three years, after the confirmation of the finding and sentence of the court or after his acquittal, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, uponpayment for the same at the prescribed rate, not exceeding fourpence for every folio of seventy-two words, and for the purposes of this section the proceedings of courts martial shall be preserved in the prescribed manner:

Provided that, when any person tried by court martial dies within the above-mentioned periods of seven or three years, his next of kin shall, within a period of twelve months after his death, have the same right to obtain a copy of the proceedings".

Section 124 of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The provisions of the last-quoted legislation would not be appropriate having regard to the appeal provisions of the new Act.

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PART VIII

PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL

This Part provides for the effective date of sentences and the carrying out of punishments. It also empowers service authorities to quash findings and alter sentences in circumstances where the ends of justice and the interests of the accused render that action desirable.

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169. (1) Subject to subsection three and sections one hundred and seventy-six and one hundred and seventy-seven, the term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention, shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

(2) The only time which shall be reckoned toward the completion of a term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

(3) Where a punishment mentioned in subsection two cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration; the offender shall as soon as practical, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out, and the period of time prior to the date of arrival of the offender at that place shall not be reckoned toward the completion of the term of the punishment.

COMMENTS

Subsection (1) was based on the following:

Naval Service Act:-

"114. (1) Every term of imprisonment in a penitentiary or imprisonment elsewhere than in a penitentiary, or detention in pursuance of this Part shall be reckoned as commencing on the day on which the sentence was awarded."

Army Act (UK):-

"68. (1) The term of penal servitude, imprisonment, or detention to which a person subject to military law is sentenced by a court martial, whether his sentence has been revised or not, and whether the person is already undergoing sentence or not shall (save as otherwise expressly provided in this Act), be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court martial."

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Subsection (2) is new but reflects a basic principle long accepted in practice. Attention is drawn to section 178(2) which covers time spent by an offender in hospital. Temporary removal from prison under section 179 will continue to be service custody or civil custody and will count against the sentence.

Subsection (3) was based on the following provision of the Naval Service Act:-

> "114. (3) Where, by reason of a ship being at sea or off a place at which there is no proper penitentiary, prison, or naval detention quarters, a sentence of imprisonment, either in a penitentiary or elsewhere, or detention, as the case may be, cannot be duly executed, then, subject as hereinafter mentioned, an offender under sentence of imprisonment, either in a penitentiary or elsewhere, or detention, as the case may be, may be sent with all reasonable speed to some place at which there is a proper penitentiary, prison or naval detention quarters, in which the sentence can be duly executed, and on arrival there the offender shall undergo his sentence, in like manner as if the date of such arrival were the day on which the sentence was awarded, notwithstanding that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary, or detention, as the case may be, shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said sentence."

The army and air force have had no corresponding legislation. This subsection is a re-statement in a simplified form of the principles embodied in the above naval legislation, with the exception of a variation in the manner of reckoning time, which accords with the new subsection (2).

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170. (1) A punishment of death imposed by a court martial shall be subject to approval by the Governor in Council and shall not be carried out unless so approved.

(2) A punishment of dismissal with disgrace from His Majesty's service or of dismissal from His Majesty's service, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (b) or paragraph (c) of subsection four of section one hundred and twenty-one shall be subject to approval by the Minister or such authorities as are prescribed in regulations and shall not be carried out unless so approved; but any punishment of imprisonment for two years or more, imprisonment for less than two years or detention included in the sentence shall commence and be carried out under section one hundred and sixty-nine as if the sentence had not included a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service, as the case may be.

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(3) A punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service shall be deemed to be carried out as of the date upon which the release of the offender from the Canadian Forces is effected,

(4) An authority mentioned in section one hundred and seventy-three shall have power to substitute a new punishment for

(a) a punishment of death that has not been approved under subsection one;

(b) a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service that has not been approved under subsection two; or

(c) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection two or five of section one hundred and thirty-six, as the case may be.

COMMENTS

Subsection (1) is derived from the following:

Militia Act:-

"93. (3) The Governor in Council shall approve, confirm, mitigate or remit sentences of all courts martial and may direct that the record of a conviction by a court martial be removed and the accused relieved from all consequences of his trial. The Governor in Council may delegate to any military authority all or any of the duties and powers mentioned in this subsection; provided that no sentence of death passed by any court martial shall be carried into effect until approved by the Governor in Council."

Naval Service Act:-

"98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

(c) the punishment of death shall not be inflicted on any prisoner until the sentence has been confirmed by the Governor in Council;"

Former air force provisions with respect to confirmation of sentences of courts martial were contained in KR (Air), wherein confirmation of sentences of death imposed by General Courts Martial is reserved exclusively to the Governor in Council.

Subsection (2) is new.

All sentences involving release from the Service have required confirmation or approval by superior authority. That authority has had an opportunity to consider whether such a sentence should be carried out in a particular case. Occasions arise in which an officer or man has technical qualifications of such a nature that the interests of the Service would be advanced by retaining him and substituting some punishment other than that imposed by the court martial.

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Under the new approach, sentences would normally take effect upon their pronouncement in open court and therefore an offender sentenced to be dismissed would in most cases be released from the Service before superior authority could have an opportunity to weigh the matter in the light of service requirements. It is therefore desirable that approval of superior authority be a condition precedent to release from the Service by sentence.

Subsection (3) is new. Due to the administrative requirements necessary to carry out sentences of dismissal, it was considered advisable that the effective date of dismissal should be the actual date on which release is accomplished.

Subsection (4) is new. It makes the necessary provision for substitution where punishments requiring approval have not been approved.

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171. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may quash any finding of guilty made by a service tribunal.

(2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal shall cease to have force and effect.

(3) Where, after a finding of guilty has been quashed, another finding of guilty remains, and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

COMMENTS

This section embodies one of the main features of the new court martial scheme, but it does not in effect introduce any new principle. Formerly, all findings and sentences of army and air force courts martial have been subject to confirmation by higher authority, and those having power to confirm might render findings inoperative merely by withholding confirmation. For the reasons given in the comments to section 185, the introduction of a court martial appeal procedure in Part IX of the Act made it undesirable to retain the principle of confirmation, but it was not considered practical to remove from higher authority the power to overrule courts martial in respect of findings. This power has therefore been preserved by vesting an absolute right to quash in the Minister and other authorities designated for the purpose.

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In the result, it is envisaged that superior service authorities, e.g. naval area commanders, General Officers Commanding and Air Officers Commanding will have restricted power to quash findings of guilty made in respect of less serious offences by persons in the lower ranks; higher service authorities, e.g., the Chiefs of Staff, will be empowered to quash findings of guilty upon more serious charges against persons of higher rank; while power to quash in the most serious cases will be reserved to the Minister.

The purpose of this provision is to preserve the powers of higher authority in cases where the conviction is considered perverse or against the weight of the evidence.

The authority which formerly existed for confirmation or, by implication, to withhold confirmation is contained in the following provision of the Army Act (UK):-

> "54. (1) The following authorities shall have power to confirm the findings and sentences of courts martial; that is to say,
>
> (b) In the case of a general court martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts martial immediately or mediately from His Majesty;
>
> (c) In the case of a district court martial, an officer authorized to convene general courts martial, or some officer deriving authority to confirm the findings and sentences of district courts martial from an officer authorized to convene general courts martial."

Section 54(1)(b) and (c) of the Air Force Act (UK) has not been applicable to the RCAF as it has been overborne by the provisions of KR (Air) which have been, in respect of this point, to like effect. The Naval Service Act has no provision for confirmation and the power to quash has been deemed to be vested in the Minister by virtue of his general authority to control and manage the Naval Service.

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172. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may substitute a new finding for any finding of guilty, made by a service tribunal, that is illegal or cannot be supported by the evidence, if the new finding could validly have been made by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding.

(2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the new finding, or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

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COMMENTS

This was based on the following provision of the Army Act (UK):-

"70. (1) Subject to the provisions of this Act His Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them; that is to say,

(ee) The substitution by His Majesty or the Army Council of a new finding for any finding of guilty by a court martial which is invalid or cannot be supported by the evidence, if the new finding could have been validly made by the court martial on the charge and if it appears that the court martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and the imposition of a sentence for the said offence, not being a sentence of greater severity than the sentence imposed by the court martial;"

Section 70(1)(ee) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The procedure provided for in this section should be contrasted with the "outright quashing" which is possible under section 171.

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173. Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, substitute for the illegal punishment such new punishment or punishments as he considers appropriate.

COMMENTS

This was derived in part from the following provision of the Army Act (UK):-

"70. (1) Subject to the provisions of this Act His Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter, or add to, provisions in respect of the following matters or any of them; that is to say,

(e) The confirmation and revision of the findings and sentences of courts martial, and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court martial;"

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Section 70(1)(e) of the Air Force Act (UK) is similar. The same result could be accomplished under the following provision of the Naval Service Act:-

> "98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:
>
> (a) The Minister may, except in case of sentence of death, which shall only be remitted by His Majesty, suspend, annul, or modify any sentence passed on any person subject to this Part, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted, and any sentence so modified shall (subject to the provisions of this Part) be valid, and shall be carried into execution as if it had been originally awarded, with such modifications; but so that neither the degree nor the duration of the punishment involved in any sentence be increased by any such modification;"

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174. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.

COMMENTS

This was based upon the following section of the Army Act (UK):-

> "57. (2) When a sentence passed by a court martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court martial, or if such punishment is death, awarded for the offence of murder, or for an offence under the Treachery Act, 1940, then for penal servitude or such less punishment as in this Act mentioned or, if such punishment is cashiering awarded for an offence under section sixteen of this Act, then for dismissal from His Majesty's service or such less punishment as is in this Act mentioned; that is to say,
>
> (a) As respects offenders in whatever place they may for the time being be, His Majesty or the Army Council, or any prescribed officer, or, except in the United Kingdom, the officer, not below the rank of field officer or corresponding rank, commanding the body of the forces to which the offender belongs or the command within which they are serving, whether such officer is an officer of the navy, army or air force.

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Provided that the power given by this subsection shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorized by such confirming authority or other superior military authority to exercise such power;"

Section 57(2) of the Air Force Act (UK) is similar.

It will be noted that several of the elements provided for in the above-quoted Army Act subsection are necessary at present by reason of the procedure of confirmation. As confirmation has not been perpetuated in the new Act, such matters are not mentioned in this section.

The limitations contained in the above-quoted subsection upon the power to impose new punishments are provided for in section 175, which is an overall provision relating to new punishments, by whatever means they may be brought into being.

The legal basis whereby superior authority in the navy has been able to alter punishments is found in section 98(1)(a) of the Naval Service Act quoted in the comments to section 173.

This section represents no change in principle for any of the three Services.

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175. The following conditions shall apply where under this Act a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal,

(a) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;

(b) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve a period of incarceration exceeding the period comprised in that sentence;

(c) where the new punishment is detention and the punishment that it replaces is imprisonment for two years or more or imprisonment for less than two years, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of two years; and

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(d) where the offence of which a person has been found guilty by a service tribunal is an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence.

COMMENTS

This is new in form, but contains no new principle. It represents the gathering up of several principles contained in section 98(1)(a) of the Naval Service Act, quoted in the comments to section 173, and section 57(2) of the Army Act (UK) quoted in the comments to section 174. In addition, this section is derived partly from the following provision of the Army Act (UK):-

"44. (1A) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment;

(1B) An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences."

Section 44(1A) and (1B) of the Air Force Act (UK) is similar.

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176. Where under the authority of this Act, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment shall have force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be.

COMMENTS

This is self-explanatory and was derived from the following section of the Army Act (UK):-

"57. (5) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation."

Section 57(5) of the Air Force Act (UK) is similar. The same principle is to be found in section 98(1)(a) of the Naval Service Act quoted in the comments to section 173.

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177. (1) Where an offender has been sentenced to imprisonment for two years or more, imprisonment for less than two years or detention, the carrying into effect of the punishment may be suspended by the Minister, or such other authorities as he may prescribe or appoint for that purpose; and the Minister or any authority so prescribed or appointed is referred to in this section as a "suspending authority".

(2) Where, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as the case may be, may postpone committal until the directions of a suspending authority have been obtained.

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment.

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment, he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment.

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on such review it appears to the suspending authority that the conduct of the offender, since the punishment was suspended, has been such as to justify a remission of the punishment, he shall remit it.

(7) A punishment that has been suspended shall be deemed to be wholly remitted on the expiration of the period specified as the term of that punishment, unless the punishment has been put into execution prior to the expiration of that period.

(8) A suspending authority may, at any time while a punishment is suspended, direct the authority who is empowered to commit the offender to commit him, and from the date of the committal order that punishment shall cease to be suspended.

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence.

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(5) Where a sentence has been suspended under this section, the case may at any time, and shall, at intervals of not more than three months, be reconsidered by a competent military authority, and, if on any such reconsideration it appears to the competent military authority that the conduct of the soldier since his conviction has been such as to justify a remission of the sentence, he shall remit it.

(6) A superior military authority may, at any time whilst a sentence is suspended under this section, order that the soldier be committed to prison or detention barracks, and from the date of such order the sentence shall cease to be suspended.

(7) Where a soldier whilst a sentence on him is so suspended is sentenced to penal servitude, imprisonment or detention for a fresh offence, a superior military authority may direct that the two sentences shall either run concurrently or consecutively, so, however, that the aggregate term of imprisonment or detention shall not exceed two consecutive years; provided that, where the sentence for such fresh offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence of imprisonment or detention which has been suspended shall be avoided.

(8) The powers conferred by this section shall be in addition to and not in derogation of any other powers as to the mitigation, remission, commutation, or suspension of sentences conferred by this Act, and a superior military authority under this section shall be an authority having power to mitigate, remit, or commute sentences of penal servitude, imprisonment or detention under subsection (2) of section fifty-seven of this Act.

(9) In this section --

The expression "superior military authority" means the Army Council and any general or air officer or brigadier whom the Army Council may appoint for the purpose, or the officer (whether military or air force) in chief command of any force employed on active service out of the United Kingdom, and any general officer or brigadier whom he may appoint for that purpose;

The expression "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorized by a superior military authority".

(NOTE: Section 57 of the Army Act (UK) provides that "the confirming authority may also suspend for such time as seems expedient the execution of a sentence". This power of suspension can take effect only after confirmation. It was unnecessary to continue this provision as it is founded upon the procedure of confirmation, which is not perpetuated in the new Act).

Section 57A of the Air Force Act (UK) is similar to section 57A of the Army Act (UK). The subject of suspension is also mentioned in section 98(1)(a) of the Naval Service Act which is quoted in the comments to section 173.

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The only new principles that have been introduced are:

A. Provision is made in subsection (7) for automatic remission of a suspended punishment upon the expiration of the original term, if it has not been sooner remitted or if it has not been put into execution prior to the expiry of the term.

B. Under the Naval Service Act, sentences upon all ranks may be suspended, but in the army and air force the device of suspension is available only in respect of men except for a very restricted type of suspension applicable to both officers and men under section 57 of the Army Act (UK) quoted in the NOTE above. Upon the basis of service experience, the suspension of sentences has been made applicable to all ranks.

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178. (1) The Minister may prescribe or appoint authorities for the purposes of this section and any such authority is referred to in this section as a "committing authority".

(2) Such places as are designated by the Minister for the purpose shall be service prisons and detention barracks and any hospital or other place for the reception of sick persons to which a person who is a service convict, service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed.

(3) A committal order, in such form as is prescribed in regulations, made by a committing authority shall be a sufficient warrant for the committal of a service convict, service prisoner or service detainee to any lawful place of confinement.

(4) A committing authority may from time to time by warrant order that a service convict, service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

(5) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one such place to another such place, a service convict, service prisoner or service detainee may be held in any place, either in service custody or in civil custody or at one time in service custody and at another time in civil custody, as occasion may require, and may be transferred from place to place by any mode of conveyance, under such restraint as is necessary for his safe conduct.

(6) Where a punishment of imprisonment for two years or more is to be put into execution, the service convict shall as soon as practical be committed to a penitentiary, there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the

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Governor in Council, order that a service convict be committed to a service prison there to undergo his punishment or part of his punishment, and where a service convict has undergone part of his punishment in a service prison and a committing authority then orders him to be committed to a penitentiary, the service convict may be so committed notwithstanding that the unexpired portion of the term of his punishment is less than two years.

(7) Where a punishment of imprisonment for less than two years is to be put into execution, the service prisoner shall as soon as practical be committed to a civil prison there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service prisoner be committed to a service prison or detention barrack there to undergo his punishment or part of his punishment.

(8) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practical be committed to a detention barrack there to undergo his punishment.

COMMENTS

This is a re-arrangement and simplification without any alteration in principle, of the following:

Militia Act:-

"132. (1) Any prisoner duly sentenced for any term by any court martial, or by any military authority may be sentenced to imprisonment in a penitentiary.

(2) If such prisoner is sentenced to a term less than two years, he may be sentenced to imprisonment in a common gaol or in some other lawful prison or place of confinement other than a penitentiary in which imprisonment may be lawfully executed."

"133. Any officer or man of the Canadian Army sentenced to be imprisoned may, if the Minister by regulation or otherwise directs, be imprisoned in any place specially appointed therefor, instead of in a gaol, prison or penitentiary."

Naval Service Act:-

"114. (2) The place of imprisonment or detention whether the imprisonment or detention was awarded as an original or as a commuted punishment, shall be such place as may be appointed by the Court or the Commanding Officer awarding the punishment, or as may from time to time be appointed by the Minister.

(4) Where in pursuance of this Part a person is sentenced to imprisonment, either in a penitentiary or elsewhere, or detention, the order of the Minister or of the Commander-in-Chief, or of the officer ordering the court-martial by which such person was sentenced, or, if he was sentenced by the Commanding Officer of a ship, the order of such Commanding Officer shall be a sufficient warrant for the

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sending of such person to the place of imprisonment or detention, there to undergo his sentence according to law, and until he reaches such place of imprisonment or detention for detaining him in naval custody, or in the case of a person sentenced to imprisonment, either in a penitentiary or elsewhere, in any penitentiary, civil prison or place of confinement."

"116. Whenever it is deemed expedient the Minister, the Commander-in-Chief or senior naval officer present may by an order in writing from time to time change the place of confinement of any offender imprisoned or sentenced to be imprisoned elsewhere than in a penitentiary or detained in pursuance of this Part or of any offender undergoing or sentenced to undergo detention, and the gaoler or other person having the custody of such offender shall immediately on the receipt of such order remove such offender to the other place of confinement, or in case of an offender undergoing or sentenced to undergo detention, to the naval detention quarters mentioned in the said order, or shall deliver him over to naval custody for the purpose of the offender being removed to such other place of confinement or naval detention quarters; and every gaoler or keeper of such last-mentioned place of confinement or naval detention quarters shall, upon being furnished with a copy of such order of removal attested by or on behalf of the Minister receive into his custody and shall confine pursuant to such sentence or order every such offender."

"118. The Minister may set apart any buildings or vessels, or any parts thereof, as naval prisons or naval detention quarters, and any buildings or vessels, or parts of buildings or vessels, so set apart as naval prisons or naval detention quarters, as the case may be, shall be deemed to be naval prisons or naval detention quarters respectively within the meaning of this Part."

Army Act (UK):-

"58. Where a sentence of penal servitude is passed by a court martial, the military convict shall, as soon as practicable, be committed to a penal servitude prison to undergo his sentence according to law:

Provided that where the sentence was passed for an offence committed on active service, the competent military authority may order that any part of the sentence, not exceeding two years, shall be served in a military prison in accordance with rules made for the purpose under this Act, and in such case the provisions of this Act with respect to penal servitude (except those relating to the treatment of a military convict on arrival at a penal servitude prison), shall, with respect to the part of the sentence to be so served, have effect as though for references to a penal servitude prison there were substituted references to a military prison."

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"60. (1) Until transferred to a penal servitude prison a military convict --

(a) if in the United Kingdom, or a Dominion, the law of which does not provide for the civil custody of military convicts, or a foreign country, shall be kept in military custody;

(b) if in a Dominion, the law of which provides for the civil custody of military convicts, or a colony, may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may, by order of the competent military authority, from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require."

"61. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military convict to a penal servitude prison.

(2) An order of the competent military authority shall be a sufficient authority for the transfer of the military convict from military custody to civil custody and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient until he is transferred to a penal servitude prison.

(3) A military convict at any time either before or after his arrival at a penal servitude prison, may, if his sentence is remitted, be released by order of the competent military authority.

(4) A military convict may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal."

"63. (1) Where a sentence of imprisonment is passed by a court martial, the military prisoner shall undergo the term of his imprisonment either in a military prison, or detention barrack, or in other military custody, or in a civil prison, or partly in one way and partly in another.

(2) Where a sentence of detention is passed by a court martial or a commanding officer, the person on whom that sentence has been passed shall undergo the term of his detention either in a detention barrack, or in military custody, or partly in one way and partly in the other, but not in a prison."

"65. A military prisoner or soldier undergoing detention may until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may, by order of the competent military authority, from time to time be transferred from military custody to civil custody, and from civil custody to military custody as occasion may require."

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"66. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack.

(2) An order of the competent military authority shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or vice versa, or from one prison or detention barrack to another prison or detention barrack or for the transfer of a soldier undergoing detention from one detention barrack to another, or for the delivery into military custody of a military prisoner or a soldier undergoing detention.

(3) A military prisoner or a soldier undergoing detention may at any time, if his sentence is remitted, be released by order of the competent military authority.

(4) A military prisoner or a soldier undergoing detention may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal."

"67. (2) Where the hospital or place for reception of such persons in a prison or detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require."

Royal Canadian Air Force Act:-

"14. (1) A warrant for the imprisonment of any person sentenced to imprisonment by an air force court martial may, if the sentence is for less than two years, direct the person sentenced to be imprisoned either in any place specially appointed for the imprisonment of offenders under this Act, the Naval Service Act or the Militia Act, or in the common gaol or other lawful prison or place of confinement, other than in a penitentiary, nearest to the place at which the sentence was pronounced, but if the sentence is for imprisonment for two years or more, the warrant shall direct the person sentenced to be imprisoned in a penitentiary."

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179. Where the exigencies of the service so require, a service convict, service prisoner or service detainee may, by an order made by a committing authority mentioned in section one hundred and seventy-eight, be removed temporarily from the place to which he has been committed for such period as may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order shall be necessary upon his return to that place.

COMMENTS

The principle embodied in this section should be compared with the following section of the Naval Service Act:

"117. (1) Whenever any offender is undergoing imprisonment elsewhere than in a penitentiary or detention in pursuance of this Part, it shall be lawful for the Minister, or where an offender is undergoing imprisonment elsewhere than in a penitentiary or detention by order of his Commanding Officer, for such a Commanding Officer of the Minister, to give an order in writing directing that the offender be discharged; and it shall also be lawful for the Minister and any officer commanding any of His Majesty's Canadian Ships by order in writing, to direct that such offender be delivered over to naval custody for the purpose of being brought before a court martial, either as a witness, or for trial or otherwise, and such offender shall accordingly, on the production of any such order, be discharged, or delivered over to such custody.

(2) The time during which any offender under sentence of imprisonment elsewhere than in a penitentiary or detention is detained in naval custody under subsection one of this section or under section one hundred and sixteen shall be reckoned as imprisonment or detention under his sentence for whatever purpose he is so detained; and the governor, gaoler, keeper, or superintendent who delivers over any such offender shall again receive him from naval custody, so that he may undergo the remainder of his punishment".

There has been no similar legislation in the army and air force although the same principle is expressed in regulations.

It will be noted that the above quoted legislation relates only to the temporary removal of an offender for the purpose of being brought before a court martial as a witness or otherwise. It was thought advisable to extend the purpose for which temporary removal may be effected to include any service exigency.

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180. While a service convict is undergoing punishment in a penitentiary or a service prisoner is undergoing punishment in a civil prison, he shall be dealt with in the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment in a penitentiary or civil prison, as the case may be, shall in so far as circumstances permit, apply accordingly; but a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison shall not be discharged therefrom until the expiration of the term of his punishment, as reduced for good conduct by virtue of any rules in effect in that penitentiary or civil prison, unless an authority mentioned in section one hundred and seventy-four or section one hundred and seventy-seven orders that he be discharged therefrom prior to the expiration of the term of his punishment.

COMMENTS

This was based on the following provisions of the Army Act (UK):

"62. After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the samemanner as an ordinary civil prisoner under sentence of penal servitude; and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly".

"67. (1) A military prisoner while in a civil prison shall be confined, kept to hard labour, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment".

There has been no similar naval legislation and the corresponding sections of the Air Force Act (UK) were made inapplicable to the RCAF.

It was considered desirable that service offenders in civil incarceration should be subject to the same penitentiary or prison discipline as offenders serving sentences awarded in the criminal courts. It was not thought appropriate, however, that parole boards should have jurisdiction to deal with such service offenders, as those boards by their nature are not qualified to weigh the seriousness of service offences. The cross-reference in the new section, ie. to section 174, relating to mitigation, commutation and remission of punishments, and to section 177, relating to suspension of imprisonment, are intended to place this responsibility in the hands of the Minister and such Service authorities as may be designated for the purpose.

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181. The custody of a service convict, service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Act, or by reason only that such document deviates from the prescribed form; and any such document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature.

COMMENTS

This was based on the following provision of the Army Act (UK):

> "172. (4) Where any military convict or military prisoner or soldier undergoing detention is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner or soldier shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly".

Section 17(4) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

The purpose of this section is to ensure that the ends of justice are not defeated by mere technicalities in form.

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182. A service convict or service prisoner who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a penitentiary or a civil prison, shall be treated in the same manner as if he were a person undergoing a term of imprisonment in such penitentiary or civil prison by virtue of the sentence of a civil court.

183. A service convict, service prisoner or service detainee who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barrack, may, in the discretion of the commanding officer of that service prison or detention barrack, be made available to the Lieutenant-Governor of the province in which the service prison or detention barrack is situated, in order that he may be treated in the manner provided for in section nine hundred and seventy

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of the Criminal Code, and, pending action under that section , he shall be kept in strict custody until his case has been disposed of under that section, whether or not his term of imprisonment or detention has expired.

COMMENTS

These sections are new. The effect of section 183 will be to make applicable to a service offender in a penitentiary or civil prison the same rules as apply to civil offenders in the same institutions. The object of section 183 is to make similar provision for service offenders who have been released from the service and are incarcerated in service prisons and detention barracks.

The other legislation on this subject, repeated here for purpose of comparison, is:

Criminal Code:-

"970. (1) The Lieutenant-Governor, upon evidence satisfactory to him that any person imprisoned in any prison other than a penitentiary for an offence or imprisoned in safe custody charged with an offence, or imprisoned for not finding bail for good behaviour, or to keep the peace, is insane, mentally ill, or mentally deficient, may order the removal of such person to a place of safe keeping and such person shall remain there, or in such other place of safe keeping as the Lieutenant-Governor from time to time orders, until his complete or partial recovery is certified to the satisfaction of the Lieutenant-Governor, who may then order such person back to imprisonment, if then liable thereto, or otherwise to be discharged; provided that where such person is confined in a mental hospital or other provincial institution, he shall, if and when he is not liable to be returned to imprisonment, be subject to the direction of the provincial Minister of Health, or such other person as the Lieutenant-Governor in Council may designate, who may make such orders or directions in respect of such insane person as he may deem proper.

(2) Without limiting in any way the application of the provisions contained in the next preceding subsection of this section, the Lieutenant-Governor upon evidence satisfactory to him that a person imprisoned in a reformatory prison, reformatory school or industrial school, is feeble minded, mentally ill or mentally deficient, may order the removal of such person to a place of safe keeping; and the person so removed shall remain there or in such other place of safe keeping as the Lieutenant-Governor may from time to time order, until his complete or partial recovery is certified to the satisfaction of the Lieutenant-Governor who may then order the person back to imprisonment, if he is then liable thereto, or if otherwise, that he be discharged; provided that where such person is confined in a mental hospital or other provincial institution he shall, if and when he is not liable to be returned to imprisonment, be subject to the direction of the Provincial Minister

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of Health, or such other person as the Lieutenant-Governor in Council may designate, who may make such orders or directions in respect of such insane person as he may deem proper".

Army Act (UK):

"130. (5) If a person imprisoned or undergoing detention by virtue of this Act becomes insane, then, without prejudice to any other provison for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in a colony the Governor of that colony, may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such person to a mental hospital or other proper place for the reception of insane persons in the United Kingdom or the colony, according as the person is confined in the United Kingdom or the colony, there to remain for the unexpired term of his imprisonment or detention, and, upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment".

Section 130(5) of the Air Force Act (UK) is similar. There has been no corresponding naval legislation.

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PART IX

APPEAL, REVIEW AND PETITION

This Part is new. It gives an offender a right of appeal which is designed to place service personnel, as closely as practical, in the same position as persons convicted by civil courts. When the appeal relates only to severity of sentence it will be dealt with by service authorities as formerly. When the appeal raises a question of law or one of mixed law and fact, it will be dealt with by the Court Martial Appeal Board, consisting of judges and other legally qualified persons, provision for which is made in this Part. A further appeal will lie to the Supreme Court of Canada in certain circumstances. Where no appeal has been entered, provision is made for an automatic review by service authorities of findings and sentences of service tribunals. In addition, provision is made for a petition for a new trial in the case of newly discovered evidence.

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184. For the purposes of this Part, the expressions "legality" and "illegal", shall be deemed to relate either to questions of law or to questions of mixed law and fact.

COMMENTS

This is new.

The words "legality" and "illegal" are defined to make it abundantly clear what matters may be dealt with by the Court Martial Appeal Board.

Any remedial action required to be taken as a result of the finding of a court martial based upon questions of fact alone could be taken under section 171, relating to the quashing of findings, and section 172, relating to the substitutions of findings.

If any question of fact alone should be raised in connection with the validity of a sentence, it could be disposed of under section 174, relating to mitigation, commutation and remission of punishments.

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185. Nothing in this Part shall be in derogation of the powers conferred under Part VIII to quash findings or alter findings and sentences.

COMMENTS

This is new.

It was considered desirable to make it very clear that the powers of the Minister and designated service authorities, in respect of quashing findings and altering findings and sentences, are not in any way circumscribed by this Part.

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Formerly the findings and sentences of all army and air force courts martial were subject to confirmation by the Governor in Council, the Minister, or certain service authorities depending upon the factors involved. While the procedure of confirmation has not been in effect in the navy, the sentence could be dealt with by the Minister in the same manner as in the army and air force. In setting up a court martial appeal system, it was conceived to be undesirable to interfere with the discretion that the Minister and certain service authorities have always been able to exercise. As a method of accomplishing this purpose, however, it was considered that continuance of the present army and air force confirmation procedure in conjunction with an appeal procedure, would result in a most complicated series of steps to be taken before final determination of charges tried by court martial. For example, if confirmation had been retained, a finding could not take effect following trial until after confirmation by higher authority and until then an offender would not be in a position to know whether he should appeal or not. The entry of his appeal would further and materially delay the final decision as to confirmation and involve an unreasonable amount of administrative action and correspondence. The situation would be further complicated by the fact that the confirming authority, before exercising his power, would often seek the legal advice of a representative of the Judge Advocate General and it might even be necessary to refer the matter in a more serious or complicated case, as now, to the Office of the Judge Advocate General at Ottawa before confirmation could be effected. As will be seen from this Part, the Judge Advocate General has several functions to perform in relation to appeal and review and to have perpetuated confirmation would would have resulted in many cases in unnecessary and time-consuming delays.

In order to preserve the necessary degree of discretion in the Minister and certain service authorities, without retaining the procedure of confirmation, it was considered that provision be made for power to quash findings, and alter findings and sentences, entirely apart from the processes of appeal and review. These powers are set forth in sections 171, 172, 173 and 174.

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186. Every person who has been tried and found guilty by a court martial shall, subject to subsection three of section one hundred and eighty-eight, have a right to appeal in respect of any or all of the following matters,

(a) the severity of the sentence;
(b) the legality of any or all of the findings; or
(c) the legality of the whole or any part of the sentence.

COMMENTS

This is new

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187. The right of any person to appeal from the finding or sentence of a court martial shall be deemed to be in addition to and not in derogation of any rights that he has under the law of Canada.

COMMENTS

This is new and was intended to protect the ordinary civil rights of an officer or man as a subject, e.g. habeas corpus, certiorari, prohibition, etc.

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188. (1) An appeal under this Part shall be stated on a form to be known as a Statement of Appeal which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant.

(2) A Statement of Appeal shall not be invalid by reason only of informality or the fact that it deviates from the prescribed form.

(3) No appeal under this Part shall be entertained unless the Statement of Appeal is delivered to a superior officer or to any person by whom the appellant is held in custody

(a) within fourteen days after delivery to the offender, pursuant to section one hundred and sixty-eight, of a copy of the minutes of the proceedings and of the form of the Statement of Appeal; or

(b) where the finding or sentence in respect of which the offender intends to enter an appeal has been altered under section one hundred and seventy, one hundred and seventy-two, one hundred and seventy-three or one hundred and seventy-four, within fourteen days after the date upon which notice of such alteration is given to the offender.

(4) All statements of Appeal shall be forwarded to the Judge Advocate General.

COMMENTS

This section prescribes the procedure to be followed by an offender in exercising his right to appeal. An essential feature of the whole appeal procedure is the fact that all persons convicted by court martial shall receive without charge a copy of the court martial proceedings (See section 168). Only after having perused those proceedings would an offender be in a position to decide whether an appeal should be entered. It was considered that 14 days is a sufficient period for this purpose.

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Attention is directed to subsection (4) which provides that all Statements of Appeal are to be forwarded to the Judge Advocate General. It is contemplated that in practice such statements will be routed to the Judge Advocate General through normal service channels. It therefore follows that superior authority (other than the Judge Advocate General or his representative at Command Headquarters or National Defence Headquarters), would have an opportunity to peruse Statements of Appeal, and in many cases it is expected that the remedy sought will be granted at lower levels administratively by way of quashing or substitution of findings, substitution of sentence or mitigation, commutation or remission of punishments under section 171, 172, 173 or 174, as applicable. In such cases it would be inappropriate for the Statement of Appeal to be forwarded to the Judge Advocate General, without reference back to the appellant. It is therefore provided in paragraph (b) of subsection (3) that an offender, whose case has been so dealt with by higher service authority, should have an opportunity to consider entering his appeal for a further period of 14 days following notification to him of the administrative action taken by service authorities. Under section 171, 172, 173 or 174 there is nothing to prevent action being taken by service authorities before an appeal has been entered as well as after.

The mechanics whereby the appeal and review procedure would be made effectual would depend upon the provisions of regulations and service orders. It is envisaged that the following might well be the procedure:-

A. Upon conviction and sentence being pronounced to an accused in open court, 3 copies of the proceedings would be prepared, one each for

   (1) The offender. This copy would have attached to it the necessary copies of the Statement of Appeal form together with suitable instructions for its completion;

   (2) The convening authority; and

   (3) The Chief of Naval Personnel, the Adjutant General or the Air Member for Personnel, as applicable.

B. Upon delivery to him of his copy of the proceedings an offender would then have 14 days within which to decide whether an appeal should be entered.

C. During the 14 day period however, the convening authority might himself, if duly authorized, grant some form of relief either by way of quashing, substitution, commutation, mitigation or remission. The offender would forthwith be advised of such action.

D. On the assumption that the convening authority takes no such action at this stage, the offender decides to appeal. His Statement of Appeal would be forwarded to the convening authority who would once again have an opportunity to decide whether action to quash, substitute, commute, mitigate, or remit would be appropriate.

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E. If the convening authority takes action to alter the findings or sentence, he would inform the appellant and return the Statement of Appeal to him in order that he might then decide whether to proceed with his appeal.

F. On the assumption that the convening authority decides to take no action, he would send the Statement of Appeal to naval, army or air force headquarters, as the case might be, where the appropriate staffs would undertake the same sort of review as that undertaken at the convening authority level. If any relief by way of quashing, substitution, commutation, mitigation or remission should be considered appropriate at this stage, the Statement of Appeal would be returned to the offender as would be done by a convening authority in the circumstances mentioned in para E.

It will be seen from A to F above that the finding and sentence of a court martial may be considered by service authorities --

(1) after pronouncement of sentence and possibly before appeal is entered,
(2) definitely after appeal is entered, both at
(a) convening authority level, and
(b) headquarters level.

Only after this "screening" of a <u>non-legal</u> nature had been carried out, would the Statement of Appeal and proceedings be directed to the Judge Advocate General. The disposition made by him of the matter is dealt with in subsequent sections of this Part and constitutes in effect the <u>legal</u> "screening" required before the appeal is heard.

It has been the considered view of all three Services that the procedure for entry of appeals, of which the foregoing is one approach that might be adopted, is capable of relatively simple administrative handling and is such as to ensure that every offender will receive the benefit of careful review, particularly as respects the quantum of punishment imposed upon him.

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189. (1) Where an appeal relates only to the severity of the sentence,, mentioned in paragraph (a) of section one hundred and eighty-six, the Judge Advocate General shall forward the Statement of Appeal to an authority who, under section one hundred and seventy-four, has power to mitigate, commute or remit punishments and that authority may dismiss the appeal or, subject to Part VIII, may mitigate, commute or remit the punishments comprised in the sentence.

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(2) Where an appeal relates to the legality of the findings, as mentioned in paragraph (b) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board provided for in this Part, unless the appropriate chief of staff, acting on the certificate of the Judge Advocate General that all of the findings in respect of which an appeal has been made are illegal, quashes such findings.

(3) Where an appeal relates to the legality of the sentence, mentioned in paragraph (c) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board, unless the Judge Advocate General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void.

COMMENTS

The Judge Advocate General, the Court Martial Appeal Board and the Supreme Court of Canada will not under the new appeal scheme have any jurisdiction in respect of an appeal, that is based solely upon the question of severity of punishment. It is therefore provided in subsection (1) that the Judge Advocate General will forward appeals relating only to severity of sentence to the appropriate service authorities having power to mitigate, commute or remit punishments.

Under subsection (2) the Judge Advocate General would automatically forward to the Court Martial Appeal Board all appeals relating to legality of findings, having no power whatsoever to disallow such appeals. It is provided, however, that the Judge Advocate General has authority to certify that findings are illegal, the purpose of this provision being to make it unnecessary for appeals founded upon obvious illegalities to be heard by the Court Martial Appeal Board. In such cases, Service authorities will normally, acting on the advice of the Judge Advocate General, quash the findings. It is to be noted that the Judge Advocate General's certification will be based upon technical legal grounds only and will not interfere with service control over severity of punishment.

The effect of subsection (3) is that the Judge Advocate General will be obliged to submit all appeals based upon legality of sentence to the Court Martial Appeal Board, unless the sentence should fall completely by lack of a legal finding to sustain it. In such cases the sentence will cease to have force and effect.

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190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following members:

(a) a Chairman, who shall be a judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the Criminal Code; and

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(b) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the Criminal Code, or a barrister or advocate of not less than five years standing,

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence, including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the Inquiries Act.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council.

COMMENTS

This is the basic provision for the constitution of the Court Martial Appeal Board . Three points are drawn to attention:

A. It is possible for the Court Martial Appeal Board to sit in several separate tribunals at the same time. This may occur because subsection (5) provides for a quorum of three members, subsection 2(b) authorizes the appointment of more than three and subsection (4) contemplates sittings of the Board at "any place or places". This possibility provides the degree of flexibility required in the event of there being large forces under arms, or forces widely dispersed during a period of hostilities.

B. This section gives to the Board the powers of commissioners under the Inquiries Act.

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191. (1) Upon the hearing of an appeal respecting the legality of a finding of guilty on any charge, the Court Martial Appeal Board, if it allows the appeal, shall

(a) set aside the finding and direct a finding of not guilty to be recorded in respect of that charge; or

(b) direct a new trial on that charge, in which case the appellant shall be tried again as if no trial on that charge had been held.

(2) Where the Court Martial Appeal Board has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence shall cease to have force and effect.

(3) Where the Court Martial Appeal Board has set aside a finding of guilty but another finding of guilty remains, the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

COMMENTS

The precise powers of the Court Martial Appeal Board are set forth in this section.

In subsection (3) provision is made for the administrative substitution of a new punishment and the Court Martial Appeal Board would have no discretion as to the matter of severity. This was considered to be a most important point as the quantum of punishment, apart from the question of legality, can only be settled by service authorities on the basis of service experience and requirements. In this connection, reference is made to section 194 under which the service authorities would have full power to mitigate, commute, remit or suspend new punishments which had been imposed by reason of administrative substitution under subsection (3).

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192. Upon the hearing of an appeal respecting the legality of a sentence passed by a court martial, the Court Martial Appeal Board, if it allows the appeal, shall forthwith refer the proceedings to the Minister, or to such other authority as the Minister may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

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COMMENTS

The purpose of this section was to make applicable to appeals based on illegality of sentence the same principles as apply to substitution of new punishments where the appeal was founded on illegality of findings.

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193. Notwithstanding anything in this Part, the Court Martial Appeal Board may disallow an appeal if, in the opinion of the Board, to be expressed in writing, there has beeen no substantial miscarriage of justice.

COMMENTS

This was derived from the following provision of the Criminal Code:

> "1014(2). The court may also dismiss the appeal if, notwithstanding that it is of opinion that on any of the grounds above mentioned the appeal might be decided in favour of the appellant, it is also of opinion that no substantial wrong or miscarriage of justice has actually occurred."

The purpose of the new section was to enable the Court Martial Appeal Board to refrain from setting aside findings or sentences in cases where failure to observe technicalities might defeat the ends of justice.

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194. Where a punishment included in a sentence has been dealt with pursuant to subsection three of section one hundred and ninety-one or section one hundred and ninety-two, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court martial that tried the appellant.

COMMENTS

The purpose of this section was to make it abundantly clear that, where a new punishment is substituted under section 191(3) or 192, it may still be altered to the benefit of the offender. For general comments on the jurisdiction of the service authorities, see the comments to section 185.

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195. (1) The Chairman of the Court Martial Appeal Board, with the approval of the Governor in Council may make rules not inconsistent with this Act respecting,

(a) the seniority of members of the Board for the purpose of presiding at appeals;

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(b) the practice and procedure to be observed at hearings;
(c) the conduct of appeals;
(d) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;
(e) the production of all other documents and records relating to an appeal;
(f) the extent to which new evidence may be introduced;
(g) the circumstances in which the appellant may attend or appear before the Board on the hearing of his appeal, but no such rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death; and
(h) provision for and payment of fees of counsel for the appellant.

(2) No rule made under this section shall have effect until it has been published in the Canada Gazette.

COMMENTS

Provision is here made for special rules of procedure relating to appeals coming before the Court Martial Appeal Board, including provision for the payment of fees of counsel for the appellant. In many cases the appellant will not have sufficient private means to prosecute his appeal. If the right of appeal is to be effectively exercised, without distinction of rank or means, some such provision will be necessary. There is precedent for this approach, contained at the present time in PC 88/2047 of 7th May, 1948, which provides for the payment in certain cases of fees to civilian counsel, who are likewise members of the reserves of any of the Services, for persons on trial by court martial.

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196. (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney General of Canada.

(2) An application for leave to appeal under subsection one shall be delivered to the Attorney General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board.

(3) The Supreme Court of Canada shall, in respect of the hearing and determination of an appeal under this section, have the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections one hundred and ninety-one to one hundred and ninety-four shall apply with such adaptations and modifications as the circumstances may require.

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COMMENTS

Appeals may be made to the Supreme Court of Canada in very restricted cases only. It was considered that any broader provision might well result in an unnecessary volume of appeals to that court. Every offender has, in addition to the procedure provided for in this Part, an inherent constitutional right to direct a petition to the King which in Canada means to the Governor in Council.

This Act, to the extent that legislative safeguards are necessary, is quite adequate for the protection of subjects who are also members of the forces. It should be stressed that no right of appeal from a court martial to a civil tribunal has previously existed, other than at common law, e.g. by way of habeas corpus, certiorari, prohibition, etc.

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197. Upon the expiration of the period mentioned in subsection three of section one hundred and eighty-eight within which an appeal may be made, the proceedings of every court martial shall be reviewed by the Judge Advocate General in respect of any matter mentioned in paragraph (b) or (c) of section one hundred and eighty-six on which an appeal has not been made.

COMMENTS

This section provides for a final review of all proceedings of courts martial for the purpose of ascertaining that no injustice will be done to any person by reason of illegality of findings or sentences. It is, and has for many years, been the practice for the Office of the Judge Advocate General so to review all army and air force cases and the same review has been made of naval courts martial by the Judge Advocate of the Fleet.

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198. Where, upon the review mentioned in section one hundred and ninety-seven, the Judge Advocate General certifies that any finding or punishment is illegal, he shall refer the minutes of the proceedings of the court martial to the appropriate chief of staff for such action under this Act as that chief of staff may deem fit.

COMMENTS

The appropriate Chief of Staff would normally accept the advice of the Judge Advocate General, but if he should be in doubt, he could seek the opinion of the Department of Justice.

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199. (1) Every person who has been tried and found guilty by a court martial shall have a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial.

(2) No petition under this section shall be entertained unless it is delivered to an officer designated for that purpose in regulations

(a) within one year after the date of the pronouncement of the finding; or
(b) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out,

whichever is the later.

(3) Every petition under this section shall be forwarded to the Judge Advocate General who shall refer the petition with his recommendation to the appropriate chief of staff who, if he is of the opinion that the petition should be granted, shall order a new trial, in which case the petitioner shall be tried again as if no trial had been held.

(4) When a new trial is held pursuant to subsection three and the petitioner is found guilty the sentence passed at the original trial shall be restored and shall have force and effect as if the new trial had not been ordered.

COMMENTS

The new principle embodied in this section was derived from legislation recently introduced in the United State. A petition could be made under this section even though action by way of an appeal had been taken.

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PART X

This Part embodies miscellaneous provisions which impose duties and obligations upon members of the general public in relation to the defence of Canada. It prescribes certain limitations upon the civil liabilities of service personnel. The prosecution and settlement of salvage claims is also provided for.

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PART X

MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATION

200. (1) For the purposes of this section, "court martial", in addition to the tribunals mentioned in paragraph (g) of section two, includes a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations; and references in this section to the president or members of a court martial shall be deemed to include references to any such commissioner or officer.

(2) Every person required to give evidence before a court martial may be summoned under the hand of the authority by whom the court martial was convened, established or appointed, or the Judge Advocate General, or under the hand of the president, judge advocate, commissioner taking evidence under this Act or officer taking a summary of evidence in accordance with regulations.

(3) A person summoned under subsection two may be required to bring with him and produce at a court martial any documents in his possession or under his control relating to the matters in issue before the court martial.

(4) A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations.

(5) Any conduct of counsel before a court martial that would be liable to censure or be contempt of court if it took place before a civil court in the place where the court martial is held shall likewise be liable to censure or be contempt of court in the case of a court martial; and the regulations governing the procedure of courts martial shall be binding upon counsel appearing before courts martial, and wilful disobedience of those regulations shall, if persevered in, be deemed to be contempt of court.

(6) A court martial may, by order under the hand of the president, a commissioner taking evidence under this Act or an officer taking a summary of evidence in accordance with regulations, cause counsel to be removed from the court martial for contempt, but an officer taking a summary of evidence shall not take action under this subsection without the approval of his commanding officer.

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COMMENTS

This was based on the following:

Naval Service Act:-

"46. (1) Any person required to give evidence before a court martial or disciplinary court assembled under Part II of this Act shall be summoned under the hand of the Deputy Minister, or the Judge Advocate of the Fleet, or his deputy, or the person appointed to officiate as deputy judge advocate at the trial, or, in the case of disciplinary courts, the person appointed to act as clerk of the Court."

Militia Act:-

"95. The remuneration of persons attending such courts may be fixed by the Governor in Council."

"96. Every person required to give evidence before a court martial may, in the manner from time to time prescribed by the Governor in Council, be summoned and ordered to attend."

Army Act (UK):-

"125. (1) Every person required to give evidence before a court martial may be summoned or ordered to attend in the prescribed manner.

(3) For the purposes of this and the next succeeding section, the expression "a court martial" shall be deemed to include an officer taking a written summary of evidence in accordance with rules of procedure made under this Act; and references to the president or members of a court martial shall be construed as including references to such officer."

"129. The following provisions shall have effect with respect to the conduct of counsel when appearing on behalf of the prosecution or defence at courts martial in pursuance of rules under this Act:-

(1) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court martial; and the rules laid down for the practice of courts martial and the guidance of counsel shall be binding on counsel appearing before such courts martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(3) A court martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section."

The Air Force Act (UK) contains a similar provision.

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201. Every person when required to give evidence on oath under this Act shall take his oath in the form prescribed in regulations and that oath shall, in respect of any prosecution for perjury under the Criminal Code, have the same force and effect as an oath taken before a civil court.

COMMENTS

This section is new. Refer to the following section of the Army Act (UK):-

> "126. (2) Where a person not subject to military law when examined on oath or solemn declaration before a court martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury."
>
> The Air Force Act (UK) contains a similar provision.

It was considered unnecessary to prescribe in this Act that any person committing perjury would be liable to prosecution at civil law. It was deemed advisable, however, to prescribe the forms of oaths and to give such oaths the status of oaths in civil courts.

Reference is made to section 109 which prescribes the service offence of giving false evidence. This offence is the military counterpart of the civil offence of perjury.

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202. (1) For the purposes of this section "justice" means a justice as defined in the Criminal Code.

(2) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, for any officer, man or other person, to apprehend that suspected person and forthwith to bring him before a justice.

(3) A justice, if he is satisfied by evidence on oath that a deserter or absentee without leave is, or is reasonably suspected to be, within his jurisdiction, may issue a warrant authorizing the deserter or absentee without leave to be apprehended and brought forthwith before him or any other justice.

(4) Where a person is brought before a justice charged with being a deserter or absentee without leave under this Act, that justice may examine into the case in like manner as if that person were brought before him accused of an indictable offence.

(5) A justice, if satisfied either by evidence on oath or by the admission of a person brought before him under this section that he is a deserter or absentee without leave, shall cause him to be delivered into service custody in such manner as the justice may deem most expedient; and, until he can be so delivered, the justice may cause him to be held in civil custody for such time as appears to the justice reasonably necessary for the purpose of delivering him into service custody.

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(6) Where a person has admitted that he is a deserter or absentee without leave and evidence of the truth or falsehood of the admission is not then forthcoming, the justice before whom that person is brought shall remand him for the purpose of obtaining information as to the truth or falsehood of the admission; and for that purpose the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(7) A justice, before whom a person is brought under this section, may from time to time remand that person for a period not exceeding eight days on each appearance before him, but the whole period during which a person is so remanded shall not be longer than appears to the justice reasonably necessary for the purpose of obtaining the information mentioned in subsection six.

(8) Where a justice before whom a person is brought under this section causes him to be delivered into service custody or to be held in civil custody, the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(9) Where a person surrenders himself to a constable and admits desertion or absence without leave, the constable in charge of the police station to which he is brought shall forthwith inquire into the case and, if it appears to him from the admission that such person is a deserter or absentee without leave, he may cause him to be delivered into service custody, without bringing him before a justice; and in that event the constable shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

COMMENTS

This was based on the following provision of the Army Act (UK):-

"154. With respect to deserters and absentees without leave the following provisions shall have effect:-

(1) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction;
(2) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter or absentee without leave is or is reasonably suspected to be within his jurisdiction, issue a warrant authorizing such deserter or absentee without leave to be apprehended and brought forthwith before a court of summary jurisdiction;

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(3) Where a person is brought before a court of summary jurisdiction charged with being a deserter or absentee without leave under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence;
(4) The Court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter or absentee without leave, shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody;
(5) Where the person confessed himself to be a deserter or absentee without leave, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to the Army Council, or as they may direct, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by the Army Council;
(6) The Court may from time to time remand the said person for a period not exceeding eight days in each instance and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information;
(7) Where the court cause a person either to be delivered into military custody or to be committed as a deserter or absentee without leave, the court shall send, if in the United Kingdom, to the Army Council, or as they may direct, and if in a colony, to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter or absentee without leave, for which the clerk of the court shall be entitled to a fee of two shillings;
(8) The Army Council shall direct payment of the said fee;
(9) Where a person surrenders himself to a constable in the United Kingdom as being a deserter or absentee without leave, the officer or police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that that person is a deserter or absentee without leave, he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction under this section, and in such case shall send to the Army Council or as they may direct a certificate signed by himself as to the fact, date, and place of such surrender."

Only subsection (1) of section 154 of the Air Force Act (UK) has been applicable to the RCAF.

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No changes have been made in the principles embodied in the above-quoted U.K. legislation. The phraseology has been adapted to conditions in Canada.

The object of the section is to validate the handling of deserters and absentees by the civil police and magisterial authorities and to expedite their delivery into service custody.

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203. Where any person subject to the Code of Service Discipline has at any time been tried by a civil court, the clerk of that court or other authority having custody of the records of the court shall, if required by any officer of the Canadian Forces, transmit to that officer a certificate setting forth the offence for which that person was tried, together with the judgment or order of the court thereon, and shall be allowed for that certificate the fee authorized by law.

COMMENTS

This was based on the following provision of the Army Act (UK):-

"164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court or his deputy, or other officer having the custody of the records of such court, shall if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment or order of the court thereon, or if he was acquitted, the acquittal, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the order of the court or of the acquittal of the prisoner, as the case may be."

Section 164 of the Air Force Act (UK) is similar.

As section 153(1) prescribes the classes of documents and records which may be admitted as evidence, it has been unnecessary to perpetuate the last sentence of the above-quoted legislation.

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204. (1) Every warden, governor, gaoler, commanding officer, commandant or other keeper of a penitentiary, civil prison, service prison or detention barrack shall take cognizance of any warrant of committal purporting to be signed by a committing authority mentioned in section one hundred and seventy-eight and shall receive and detain, according to the exigency of that warrant, the offender mentioned therein and delivered into his custody and shall confine that person until discharged or delivered over in due course of law.

(2) Any person mentioned in subsection one to whom a Statement of Appeal is delivered under section one hundred and eighty-eight shall cause the Statement of Appeal to be forwarded forthwith to the Judge Advocate General.

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COMMENTS

Sub-section (1) was based upon:

Militia Act:-

"131. (1) The governor, keeper or warden of every gaol, prison or penitentiary in Canada, shall receive and detain, according to the exigency of any warrant under the hand of any district officer commanding, or other person authorized under the regulations to issue a warrant, any person mentioned in such warrant and delivered into his custody, and shall confine such prisoner until discharged or delivered over in due course of law.

(2) Every such governor, keeper or warden shall take cognizance of any warrant purporting to be signed by any such officer as aforesaid."

Naval Service Act:-

"44. The keeper, gaoler, or warden of every gaol, prison or penitentiary in Canada shall receive and detain according to the exigency of any warrant under the hand of the person authorized under Part II of this Act or regulations, to issue a warrant, any person mentioned in such warrant and delivered into his custody, and shall confine such prisoner until discharged or delivered over in due course of law; and every such keeper, gaoler or warden shall take cognizance of any warrant purporting to be signed by any such authorized person."

Air Force Act:-

"14. (2) Every officer in charge of any place specially appointed for the imprisonment of offenders under this Act, the Naval Service Act or the Militia Act, and every governor, keeper or warden of every gaol, prison or penitentiary in Canada shall receive and detain any person delivered into his custody and named in such warrant addressed to him and shall confine such prisoner until discharged or delivered over in due course of law."

Army Act (UK):-

"61. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military convict to a penal servitude prison."

"66. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack."

Sections 61(1) and 66(1) of the Air Force Act (UK) have been made inapplicable to the RCAF.

Sub-section (2) is new. It lays a duty upon all gaolers, whether military or civil, to forward to service authorities any Statements of Appeal that they may receive.

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205. (1) For the purpose of training the Canadian Forces, the Minister may authorize the execution of military exercises or movements, referred to in this section as "manoeuvres", over and upon such parts of Canada and during such periods as are specified.

(2) Notice of manoeuvres shall be given to the inhabitants of any area concerned by appropriate publication.

(3) Units and other elements of the Canadian Forces may execute manoeuvres on and pass over such areas as are specified under subsection one, stop or control all traffic thereover whether by water, land or air, draw water from such sources as are available, and do all things reasonably necessary for the execution of the manoeuvres.

(4) Any person who wilfully obstructs or interferes with manoeuvres authorized under this section and any animal, vehicle, vessel or aircraft under his control may be forcibly removed by any constable or by any officer, or by any man on the order of any officer.

(5) No action shall lie by reason only of the execution of manoeuvres authorized under this section.

COMMENTS

This section is new.

The principle of statutory authorization for military manoeuvres has long been established in the United Kingdom by the Military Manoeuvres Act, 1897. An Order in Council, PC 5134 of 1941, was made under the War Measures Act to authorize military manoeuvres in Canada and was invoked on a number of occasions.

In view of modern developments in the science of war, requiring the execution of large scale movements for training purposes, this section was considered essential in peace-time. In an emergency, manoeuvres would be merged in operations. Large scale exercises such as Operation SWEETBRIAR would come within the purview of this section.

Because of possible interference with certain rights of the civil population, it was considered essential that the Minister's authority be sought in each case. Provision is made in section 208 for compensation for damage caused to civilians or their property in the course of such exercises.

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206. (1) When the Governor in Council by reason of an emergency declares it to be expedient for His Majesty to take control of property, including transportation or communications facilities in Canada or operating from Canada, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession of property which he considers necessary for defence purposes or to assume the operation or management thereof for the service of His Majesty in such manner as the Minister directs; and all persons employed in whatever manner in connection with such property shall obey the directions of the Minister or of the person named in the warrant.

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(2) A warrant mentioned in subsection one shall remain in force only so long as the emergency exists.

(3) Where action relating to any property has been taken under subsection one, all contracts and agreements in respect of that property, which would otherwise have been enforceable by or against the person who owns that property, including the directors, officers, servants and agents of that person, shall be enforceable by or against His Majesty.

COMMENTS

This section is not new in principle. It is based upon the following:

Naval Service Act:-

"20. (1) When the Governor in Council declares that an emergency has arisen in which it is expedient for the public service that His Majesty should have control of any dock, shipyard, pier, wharf, machine shop, repairing or salvage plant, factory, warehouse, store or other building, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession thereof in the name and on behalf of His Majesty, and to use it for the service of His Majesty in such manner as the Minister directs, and all persons, officers, servants and employees employed thereon shall obey the directions of the Minister in connection with the management or operation thereof.

(2) Such warrant shall remain in force so long, as, in the opinion of the Minister, the emergency exists.

(3) There shall be paid to any person whose property is taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury he so sustains as is agreed upon between the Minister and the said person, or, in case of difference, as is fixed upon reference to the Exchequer Court of Canada.

(4) Where any property is taken possession of under the provisions of this section, all contracts and agreements between the persons whose property is so taken possession of and the directors, officers and servants of such person or between such person and any other person in relation to, the working or maintenance of such property which would if such possession had not been taken, have been enforceable by the said person shall, during the continuance of such possession, be enforceable by His Majesty."

Militia Act:-

"90. (1) When the Governor in Council declares that an emergency has arisen in which it is expedient for the public service that the Government should have control of the railways in Canada, or any of them, the Minister may, by warrant under his hand, empower any person or persons named in such warrant to take possession, in the name or on behalf of His Majesty, of any railway in Canada, and of the plant belonging thereto, or any part thereof, or to take possession of any plant without taking possession of the railway itself, and to use it for His Majesty's service at such times and in such manner as the Minister directs; and the directors, officers and servants of such railway shall obey the directions of the

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Minister as to the use of the railway or plant as aforesaid for His Majesty's service.

(2) Any such warrant granted by the Minister shall remain in force so long as, in the opinion of the Minister, the emergency exists."

"92. Where any railway or plant is taken possession of in the name or on behalf of His Majesty in pursuance of this Act, all contracts and engagements between the person whose railway is so taken possession of and the directors, officers and servants of such person, or between such person and any other person, in relation to the working or maintenance of the railway, or in relation to the supply or working of the plant of the railway, which would, if such possession had not been taken, have been enforceable by or against the said person, shall, during the continuance of such possession, be enforceable by or against the Government of Canada".

In view of the sudden and unexpected manner in which modern wars are initiated, it was considered that statutory authority of this kind is much more necessary than it was when the above-quoted legislation was first passed by Parliament. It was also thought that there should be no limitation upon the type of property, either real or personal, which might be taken under control for the defence of Canada in this manner. It will be noted of course that these powers could only be exercised when the Governor in Council declares it to be expedient by reason of an emergency. Emergency is defined in section 2(1) as

> "war, invasion, riot or insurrection, real or apprehended;"

All that would be required to bring this section into operation would be the passage of an Order in Council declaring it to be expedient that property in general be taken under control. The Minister would then be empowered by the statute to issue one blanket warrant covering all of the properties that the planning authorities considered necessary for the mobilization or other military operations. This would not, of course, preclude the Minister from issuing additional warrants from time to time as required, on the authority of the original Order in Council.

The fact has not been overlooked that under the Expropriation Act, Chap 64, Revised Statutes of Canada, 1927, the Minister already had very broad powers to enter upon and take possession of any real property, the compensation for which can be determined under that Act. It may well be that the Expropriation Act would be invoked, either alone or at the same time as action was taken under this section, to secure properties which it was desired should be owned outright for the use of the Services. On the other hand, the Expropriation Act is not adequate to cover equipment or going concerns which it is not necessarily desired to own, but merely to control through the management of those in charge of them.

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It is also realized that, in the Second World War, the War Measures Act was invoked and under its authority requisitioning of ships, aircraft and other chattels took place. This course is still open but it may be most undesirable in some cases to invoke the War Measures Act as that is tantamount to notice to foreign powers that war, invasion or insurrection is considered imminent.

It should also be noted that while riots create an emergency they do not warrant action under the War Measures Act. Under the new section, action could be taken in respect of property generally without the necessity of publicising the apprehensions and disclosing the intentions of the Government with reference to the defence of Canada.

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207. When an emergency exists, the officer in command of any unit of the Canadian Forces or any officer duly authorized by him may, subject to regulations made by the Governor in Council, enter upon, take, impress, control, use, occupy, alter, remove or cause to be removed, destroy, desolate or lay waste any property imperatively required to be so dealt with immediately for the purpose of meeting the emergency.

COMMENTS

This was based upon the following:

Royal Canadian Air Force Act:-

"10. (1) The officer commanding any unit of the air force on active service may, subject to regulations, enter upon, take or destroy any private property, real or personal, required to be entered upon, taken or destroyed for the purpose of meeting the emergency."

Militia Act:-

"7. (1) Whenever an emergency exists, the officer of the Canadian Army in command in the locality, or any officer duly authorized by him, may, subject to the regulations, enter upon and occupy with troops, or other persons, any buildings or land for defence purposes, and may dig trenches and throw up field-works on any such lands, and may fortify any buildings, and may, for the purposes aforesaid, destroy or desolate and lay waste any such buildings or lands, and destroy food, crops, fodder, stores or other things, and slaughter livestock, or may take or cause to be taken, any such food, crops, fodder, stores or other things; and may remove or cause to be removed vehicles, aircraft or other means of transportation or live stock to some place of safety; and may also impress any horses, mules, oxen or other animals, vehicles, aircraft or other means of transportation required for military purposes."

The new section contemplates the use and control of property, as well as its destruction, for the immediate tactical requirements of a unit. It could only be relied upon in an emergency and the commanding officer who invoked

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it would have to justify his actions on the ground that such a state of affairs existed. No governmental declaration of a state of emergency would be necessary, e.g. if a local riot broke out, a commanding officer of a unit there present could take immediate action under this section to deal with the situation as he saw fit. In view of the sweeping powers here conferred, it has been considered essential to make the exercise of these powers subject to regulations of the Governor in Council.

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208. Any person who suffers loss, damage or injury by reason of the exercise of any of the powers conferred by section two hundred and five, two hundred and six or two hundred and seven shall be compensated from the Consolidated Revenue Fund.

COMMENTS

This section was based on the following:

Royal Canadian Air Force Act:-

"10. (2) Any person who suffers damage by reason of the exercise of the powers by this section conferred shall be compensated from the Consolidated Revenue Fund of Canada."

"18. All sums of money payable under this Act by way of compensation for damage arising from acts done in case of emergency or for the pay, allowance and other expenses incurred by reason of the calling out of officers or airmen on active service during such emergency may be paid out of the Consolidated Revenue Fund upon warrant directed by the Governor General to the Minister of Finance."

Militia Act:-

"7. (2) Any person injured by the exercise of any of the provisions of this section shall be compensated from the Consolidated Revenue Fund of Canada."

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209. (1) No duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landing-place, highway, road, right of way, bridge or canal, shall be paid by or demanded from any unit or other element of the Canadian Forces or an officer or man when on duty or any person under escort or in respect of the movement of any material.

(2) Nothing in this section shall affect the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of His Majesty.

COMMENTS

This was based upon the following provision of the Army Act (UK):-

"143. (1) All officers and soldiers of the regular forces on duty or on the march; and
Their horses and baggage; and
All prisoners under military escort; and

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All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same, shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order, or direction of any legislature or other authority in a colony.

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels."

There is no corresponding air force legislation.

Sub-section (2) is new and was designed to prevent any abuse of the privilege of exemption from tolls, e.g., an officer, when not on duty, proceeding in his own private vehicle would not be exempt from tolls.

Reference is made to section 246 which prescribes the civil offence of demanding tolls not payable.

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210. Every master or other person in command of a merchant or other vessel under the convoy of any of His Majesty's Canadian Ships shall obey the directions of the commanding officer of the convoy or the directions of the commanding officer of any of His Majesty's Canadian Ships in all matters relating to the navigation or security of the convoy, and shall take such precautions for avoiding the enemy as may be directed by any such commanding officer; and if he fails to obey such directions, that commanding officer may compel obedience by force of arms, without being liable for any loss of life or property that may result from the use of such force.

COMMENTS

This clause was derived from the following provision of the Naval Service Act:-

"45. Every master or other officer in command of any merchant or other vessel under the convoy of any of His Majesty's Canadian Ships shall obey the Commanding Officer thereof in all matters relating to the navigation or security of the convoy, and shall take such precautions for avoiding the enemy as may be directed by such commanding officer; and if he fails to obey such directions, such Commanding Officer may compel obedience by force of arms, without being liable for any loss of life or of property that may result from his using such force."

The penalty for disobedience of directions is prescribed in section 247.

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211. (1) Where salvage services are rendered by or with the aid of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces, His Majesty may claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the vessel or aircraft had belonged to him.

(2) No claim for salvage services by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces shall be finally adjudicated upon, unless the consent of the Minister to the prosecution of claim is proved; and such consent may be given at any time before final adjudication.

(3) Any document purporting to give the consent of the Minister for the purpose of this section shall be evidence of that consent.

(4) Where a claim for salvage services is prosecuted and the consent of the Minister is not proved the claim shall be dismissed with costs.

(5) The Minister may, upon the recommendation of the Attorney General of Canada, accept on behalf of His Majesty and the commander and crew or part of the crew, offers of settlement made with respect to claims for salvage services rendered by vessels or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

(6) The proceeds of any settlement made under subsection five shall be distributed in such manner as the Governor in Council may prescribe.

(7) Section five hundred and thirty-four of the Canada Shipping Act, 1934, shall not apply to or in respect of any claim for salvage services by His Majesty or by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

COMMENTS

This section is new. Formerly, this subject was governed by the following section of the Canada Shipping Act:-

> "534. (1) Where salvage services are rendered by a ship belonging to His Majesty (other than a ship specially equipped with salvage plant or a tug) or by the commander or crew thereof, no claim shall be allowed for any loss, damage, or risk caused to the ship or her stores, tackle, or furniture, or for the use of any stores or other articles belonging to His Majesty, supplied in order to effect those services, or for any other expense or loss sustained by His Majesty by reason of that service, and no claim for salvage services by the commander or crew, or

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part of the crew of a ship belonging to His Majesty shall be finally adjudicated upon, unless the consent of the Governor in Council to the prosecution of that claim is proved. Such consent may be given at any time before final adjudication.

(2) Any document purporting to give the consent of the Governor in Council for the purpose of this section, shall be evidence of that consent.

(3) If a claim is prosecuted and the consent is not proved, the claim shall stand dismissed with costs.

(4) This section shall apply to aircraft and the word "ship" shall include aircraft, provided that with respect to claims by aircraft the consent referred to herein may be the consent of the Minister of National Defence."

During the Second World War, following the practice adopted in Great Britain, Orders in Council were passed under the War Measures Act suspending the operation of section 534 in the case of salvage services rendered by His Majesty's Canadian Ships. In effect, these Orders in Council made it possible for the Crown, as well as the officers and crew of the salvor, to claim salvage with the consent of the Governor in Council. They also authorized the Minister to settle claims for salvage asserted on behalf of the Crown and on behalf of the officers and crew and prescribed the procedure for distribution of the proceeds of such claims.

These Orders in Council were continued in force by Order in Council PC 363 dated 31st Jan 1947, passed pursuant to the Continuation of Transitional Measures Act, 1947, and were finally repealed by Order in Council 5005 of 8th December 1947.

The new section in effect reduces to permanent form the principles contained in the War Measures Orders in Council referred to above, and under section 251 have taken effect retroactively to the 8th December, 1947, the date of cancellation of the War Measures Orders in Council. This section should be compared with the Merchant Shipping (Salvage) Act, 1940, (UK), which reads:-

"1. (1) Where salvage services are rendered by or with the aid of any ship, aircraft or other property whatsoever belonging to His Majesty, His Majesty shall be entitled to claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the ship, aircraft or property had belonged to him.

(2) Where salvage services are rendered by or with the aid of any requisitioned ship or aircraft (a), the ship or aircraft shall be treated, for the purpose of any claim in respect of those services, as belonging to His Majesty and not as belonging to any other person:

Provided that this subsection shall not apply if, under any agreement made on behalf of His Majesty in connection with the requisition, salvage earned by the ship or aircraft is for the benefit of some person other than His Majesty.

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(3) In this section the expression "requisitioned ship or aircraft" means a ship or aircraft which for the time being is in the possession of, or at the disposal of, any person on behalf of His Majesty, by virtue of the exercise of any power conferred by regulations made under the Emergency Powers (Defence) Act, 1939 (b), or by section seven of the Air Navigation Act, 1920 (c), as amended by any subsequent enactment, or any power exercisable by virtue of the prerogative of the Crown; and the expression "requisition" shall be construed accordingly.

2. References in the foregoing section to the Emergency Powers (Defence) Act, 1939 (b), or section seven of the Air Navigation Act, 1920 (c), shall respectively be construed --

(a) in the application of this Act to any country outside the United Kingdom to which that Act or that section as the case may be has been extended by Order in Council, as a reference to that Act or section as so extended; and

(b) in the application of this Act to any other country outside the United Kingdom, as a reference to any corresponding enactment in force in that country.

3. The power to make rules of court under section sixty-one of the Supreme Court of Judicature (Ireland) Act, 1877, (d), as amended by any subsequent enactment, shall include power to make rules for the purpose of this Act.

4. (1) This Act may be cited as the Merchant Shipping (Salvage) Act, 1940.

(2) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1938 (e), and may be cited together with those Acts as the Merchant Shipping Acts, 1894 to 1940.

(3) The enactments set out in the Schedule to this Act (f) are hereby repealed to the extent specified in the third column of that Schedule."

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212. Unless the Governor in Council otherwise directs, the Government Vessels Discipline Act shall not apply to His Majesty's Canadian Ships or to any other ship or vessel of the Canadian Forces or to the officers, men or other persons serving or engaged for service therein, or to officers and men serving in the regular forces, the active service forces, or the reserve forces when on service or on active service.

COMMENTS

This section was derived from the following provision of the Naval Service Act:-

"37. Unless the Governor in Council otherwise directs, the Government Vessels Discipline Act shall not apply to any ship or vessel in the Naval Service, or to the officers, men or persons engaged for service thereon."

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The Government Vessels Discipline Act provides a code of discipline for personnel serving in ships of the Government of Canada. As armed forces have their own disciplinary system, the provisions of the Government Vessels Discipline Act would normally not be invoked. It may happen, however, that the forces may have vessels the crews of which are not subject to the Code of Service Discipline and it may in those circumstances be desirable for the Governor in Council to direct that the Act apply. In the past no such direction has been found necessary.

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213. (1) An officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces is not liable to be taken out of His Majesty's service by any process, execution or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of

(a) a charge of or conviction for an offence punishable under the Criminal Code, or any other law of Canada or of a province of Canada, or an offence punishable according to the law of that part of His Majesty's dominions in which the offence was committed; or

(b) a judgment for a debt, damages or sum of money when the amount involved, exclusive of any costs, exceeds two hundred dollars.

(2) All proceedings and documents in or incidental to a process, execution or order in contravention of this section are void; and where a complaint is made by an officer or man or by his commanding officer that such officer or man has been dealt with in contravention of this section by any process, execution or order issued out of any court, the officer or man or his commanding officer may complain to that court or to any court superior to it and the court or a judge thereof shall examine into the complaint and shall, if necessary, discharge the officer or man without fee, and may award reasonable costs to him which may be recovered as if such costs had been awarded in his favour in an action or other proceeding in such court.

(3) Any person having a cause of action against an officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces may, notwithstanding anything in this section, after due notice in writing of his intention to commence action has been personally served upon the officer or man, or left at his usual place of abode, commence action and proceed to judgment, and may proceed to execution except as against the person, pay, allowances or personal equipment of such officer or man.

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COMMENTS

This section is derived from the following provision of the Army Act (UK):-

> "144. (1) A soldier of the regular forces shall not be liable to be taken out of His Majesty's service by any process, execution or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,
>
> (a) On account of a charge of or conviction for crime; or
>
> (b) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.
>
> (2) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punishable, according to the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfill his contract, or otherwise misconducting himself respecting his contract.
>
> (5) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court or some judge thereof shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.
>
> Provided that --
>
> (1) Any person having cause of action or suit against a soldier of the regular forces may notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessaries, or clothing of such soldier; and
>
> (2) This section shall not prevent such proceedings with respect to apprentices and indentured labourers as is authorized by this Act".

Section 144(1), (2) and (5) of the Air Force Act (UK) is similar. There is no corresponding naval legislation

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The amount of £30-0-0 referred to in the legislation presently applicable has been increased to $200.00, which in many cases is the basic maximum jurisdiction of small debts or division courts in the several provinces of Canada. It should be noted, however, that the section does not exempt an officer or man from appearing as a witness before a court of law. A summons served on him in the name of His Majesty must be obeyed and this fact has long been recognized by the military authorities, who endeavour so to arrange the duties of such a person that he may attend. It is true, of course, that on active service or in an emergency it would not always be possible to make available military personnel who were on duty.

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214. Every officer and man of the reserve forces on active service and every officer and man of the regular forces and active service forces is exempt from serving on a jury.

COMMENTS

This is derived from the following section of the Army Act (UK):-

"147. Every soldier in the regular forces shall be exempt from serving on any jury."

The only change is that the exemption would extend not only to persons belonging to the regular forces but also to the reserve forces serving on active service and the active service forces.

Substantially the same provision appears in provincial statutes relating to exemption from jury service, of which the following extract from the Ontario Juror's Act is an example:-

"3. (1) The following persons shall be exempt from being returned and from serving as grand or petit jurors, and their names shall not be entered on the rolls prepared and reported by the selectors of jurors as hereinafter mentioned:
(n) Every member of His Majesty's Army, Navy or Air Force on full pay;"

The provincial legislation referred to above was no doubt passed under the authority of Section 92, subsection (14) of the British North America Act, 1867, which gives the provincial legislatures exclusive power to make laws in relation to:-

"The Administration of Justice in the Province including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including procedure in Civil Matters in those Courts."

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At the same time it has considered that the Parliament of Canada has authority to legislate in this field under the provisions of Section 91(7) of the British North America Act, which gives Parliament authority to legislate in respect of "Militia, Military and Naval Service, and Defence", and Parliament entered this field by making Section 147 of the Army Act part of the laws of Canada under the Militia Act.

Clearly, any obligation on the part of members of the forces to serve on civil juries might seriously interfere with the efficient operation of the military forces, and this section was considered desirable to ensure that such exemption from jury service will remain a permanent feature of Canadian law, regardless of changes that may occur from time to time in provincial statutes.

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215. (1) No action, prosecution or other proceeding lies against any person for an act done in pursuance or execution or intended execution of this Act or any regulations, or of any military or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, regulations or such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of continuance of injury or damage, within six months after the ceasing thereof.

(2) Nothing in subsection one shall be in bar of proceedings against any person under the Code of Service Discipline.

COMMENTS

Sub-section (1) is based upon the following section of the Militia Act:-

"134. (1) Every action against any officer or person, for anything purporting to be done in pursuance of this Act or of any regulation, shall be laid and tried in the judicial district where the act complained of was done, and shall be commenced within six months from the time of the act committed."

Sub-section (2) is considered necessary so that the three-year time bar provided for in section 60 will apply to any form of disciplinary action

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216. No action or other proceeding lies against any officer or man in respect of anything done or omitted by him in the execution of his duty under the Code of Service Discipline, unless he acted, or omitted to act, maliciously and without reasonable and probable cause.

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COMMENTS

This section is new. It provides for service personnel, engaged in the administration of military justice, the same degree of protection that is afforded to magistrates and justices of the peace under the various Public Authorities Protection Acts in force in the provinces of Canada. The following example is quoted from the Ontario statute:-

"2. No action shall lie or be instituted against a justice of the peace for any act done by him in the execution of his duty as such justice with respect to any matter within his jurisdiction as such justice, unless the act was done maliciously and without reasonable and probable cause."

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PART XI

AID OF THE CIVIL POWER

General

1. The jurisprudence relating to aid of the civil power by the armed forces is one of the more difficult subjects in the field of military law. It has engaged the attention of the courts for many years and has also been studied, both in its legal and military phases, by Royal Commissions in the United Kingdom and Canada. The common law principles of such aid are now well settled and capable of enunciation, and they are reasonably well reflected in the Criminal Code. In addition to these common law principles are the statutory provisions that are mandatory in the sense that, upon a proper requisition, military aid must be furnished to assist the civil power. Such statutory provisions, while in addition to the common law, do not supersede it.

The Militia Act

2. So far as Canada is concerned, the statutory obligation to furnish military aid to the civil power made its appearance first in 1868, when by section 27 of 31 Vict, Chap 40, corps of the active militia were liable to be called out by specified officers on a requisition of the mayor, warden or other head of a municipality or by two magistrates. No provision appears to have been made to give to the military authority, acting in response to a requisition, any discretionary power as to the number of troops to be called out. Successive amendments to the Militia Act had the effect of limiting those municipal authorities who would have power to requisition the assistance of the military forces. Commencing with Chap 46 of 1873, these amendments gave statutory power to the military authority, who had power to call out the troops, to determine the number that would so be called out. In 1904, the municipal authority who had power to requisition military aid and the officer who could call out the troops was restricted to high municipal officials or magistrates, on the one hand, and to the District Officers Commanding, on the other hand. There was the further restriction that, in respect of the troops to be called out, recourse should first be had to the Permanent Force before other militia corps were called out.

3. Under the foregoing legislation the authority to requisition the assistance of the military forces in aid of the civil power was vested in municipalities. However in consequence of certain recommendations made by the Robertson Commission in 1923, dealing with the miners' strikes in Cape Breton, the Militia Act was amended in 1924, by Chap 57 of that year. It limited the power to requisition military aid to the Attorney General of the province in which any riot or disturbance, real or apprehended, occurred or was anticipated as likely to occur. It was also provided that there should be an unconditional undertaking

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on the part of the province to pay the expenses incurred on the part of Canada through the use of military aid in the maintenance of law and order, which was primarily the responsibility of the province. The sections of this Act on the subject do not depart substantially from what now is contained in the Militia Act, but two new features do appear.

Proposed Changes from the Militia Act

4. First, it will be noted that service in aid of the civil power in the new Act is designated simply as "service" and not as "active Service" as in the Militia Act. There are three reasons for changing the status of troops so employed; the first being that active service is a matter of such importance that it should be dealt with only by the Governor in Council under section 32; the second being that "active service" has far-reaching implications in respect of pay, discipline, pensions and conditions of service generally. These implications are inappropriate to service in aid of the civil power because of the temporary nature of the duty. Thirdly, the temporary change in status of officers and men would result in a vast amount of administrative detail, not justified in the normal case of aid of the civil power. It should be pointed out, however, that, if a particular riot assumed serious proportions, it would constitute an emergency under the definition of that term in section 2(1) and, if the peace, order and good government of Canada were threatened to an extent which impinged on the safety of the nation, the Governor in Council could under section 32 place the aiding forces on active service. Such action could be envisaged in the case of a general strike involving wide-spread violence and a paralysis, or threatened paralysis, of communications and transportation. It is also considered that such a step could be taken even if a province had not requested aid of the civil power in the first instance.

5. The second change from former legislation is the imposition on the Royal Canadian Navy of an obligation to serve in aid of the civil power. This follows the same principle as was applied to the Royal Canadian Air Force Act of 1940. While the army is, by reason of its training and weapons, best suited to handle these duties, occasions may occur in which a riot breaks out in an area where there are substantial numbers of airmen or sailors. If the situation required immediate action, the military authorities on whom the requisition was made would have to consider the desirability of requesting that the naval or air forces be called out, bearing in mind that such troops are not normally as well equipped for the task as army troops. In a case where army personnel were entirely lacking in the area, the Officer Commanding the Command would comply with the statute by calling out himself and his immediate staff, and would then be entitled to request the assistance of the naval or air forces. The officer who would command the forces could be directed by the Minister in consultation with the appropriate Chiefs of Staff, the Minister and the Chiefs having control of the forces under sections 4 and 19 respectively. It might also be prescribed in regulations if a specific order were not made. Complete flexibility to meet different or changing conditions is thus available under the proposed legislation.

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Part XI (B)

Statutory Change in the Common Law

6. The question may well arise as to the extent to which the common law has been altered, if any, by the Militia Act and its continuance in this Act. The common law on the subject lays down two cardinal principles,,which are:

(a) every citizen, whether soldier or not, is bound to come to the aid of the civil power when the civil power requires his assistance to enforce law and order; and
(b) in the enforcement of law and order, no one is allowed to use more force than is necessary.

These basic rules apply to every person and every type of disturbance, no matter how small.

7. Under the terms of the Militia Act and the new Act, every officer and man is liable, in addition to his duty as a citizen, to go to the aid of the civil power as a soldier. He does not substitute for the civil power; he only aids it. The first complication which arises is that his employment in a military body, carrying arms and having other warlike equipment, may in itself constitute more force than is necessary. Thus, while he is bound to go, he is bound also to use no excess of force or excessive display of military potential, even at the direction of the civil authority. There are, of course, cases in which the civil authorities only are aware of the circumstances, in which event the soldier would be excused if he relied on their directions. Such, in general, is the position of the soldier at common law. To what extent has it been altered by the Militia Act and the new Act? The answer is that the common law has been modified in one respect only.

8. The Officer Commanding a Command, who is the military authority responsible in the first instance for detailing the troops to aid the civil power, is not entitled to dispute the statement of the civil authorities as to the facts. Attention is directed to section 223(5) which reads as follows:-

> "A statement of fact contained in a requisition made under this Part shall not be open to dispute by the Officer Commanding a Command upon whom the requisition is made."

Thus, if the civil authorities stated that 1000 people were about to destroy property and endanger life, the Officer Commanding the Command would be required to send a substantial force, e.g., a battalion, to restore law and order. If, in fact, the situation had been grossly exaggerated and could have been dealt with by a "corporal's guard" that officer is protected by the Act, as his counterpart, the District Officer Commanding, has been by the Militia Act. Thus it will be seen that there has been a departure in both the Militia Act and the new Act from the common law as underlined in para 6 above.

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9. In view of the several steps by which aid is requested, and the fact that the formal requisition comes directly from an Attorney General, this alteration of the common law is considered quite justified. In the case mentioned, the Officer Commanding troops, on arriving at the scene, would, of course, be derelict in his duty if he did not immediately, on seeing the trivial nature of the trouble, withdraw all of the troops other than those actually required to deal with it.

10. It is also considered that the protection afforded by section 223(5) is necessary in view of the great distances between centres of population in Canada and the places where troops may be found. In case the Officer Commanding the Command should be close to the scene of trouble, he would be well advised, on ascertaining that the true facts varied greatly from those represented, to have the civil authorities modify their statements to accord with them. If they chose not to do so, he could not dispute the statements. The Officer Commanding a Command is, however, given a discretion under section 221(1) to call out such numbers of troops as he considers "necessary". He is thus faced with the choice of complying with the facts as stated to him and being in excess of the force actually required, in which case he is protected by statute, or of exercising his own discretion as to the size of the force and, if underestimating the seriousness of the situation, being liable to censure and disciplinary action. Balancing one choice against the other, the course of wisdom would be for him to act on the facts as represented by the civil authorities and trust that any necessary modifications could be evolved in the application of the aid itself. The closest co-operation is obviously necessary between the military and civil authorities, both at the requisitioning level and at every lower level in the course of the actual operation.

11. The officers and men carrying out the aid are in the same position as at common law. Section 224 which reads:-

> "Officers and men when called out for service in aid of the civil power shall, without further authority or appointment and without taking oath of office, be held to have and may exercise, in addition to their powers and duties as officers and men, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body, and shall be individually liable to obey the orders of their superior officers",

has not altered their position, although it does state that they are "liable to obey the orders of their superior officers". Under the common law a soldier, not being allowed to use more force than is necessary, is bound to refrain from obeying an order which requires the use of such force. The word "liable" must therefore be read as being subject to such a condition. Throughout this Bill "orders" are constantly referred to, particularly in the penal clauses, and invariably the only type of order that is contemplated is a lawful order or command. The courts would therefore

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be inclined to interpret the word "order" in section 224 as being only a lawful order. A soldier would still be under the obligation to distinguish lawful from unlawful commands and to act accordingly. To alter the common law in this respect would require more clear cut phraseology, such as "shall individually obey every order, whether it requires the use of excessive force or not, of their superior officer". It must therefore be concluded that there has been no alteration in the common law in this respect.

12. In view of the organization and system of command in the forces and the great difficulty which any man would have, from his restricted point of vantage, in determining in every case whether an order was lawful or not, it is not likely that the civil courts would deal harshly with him in such circumstances, unless the particular orders were obviously improper. The heavy burden on the military forces in the carrying out of aid to the civil power has long been recognized in the jurisprudence which has been built up on the subject. Judges and juries may be relied upon to deal sympathetically with these cases, realizing the difficult, and indeed delicate, judgments which must be made and giving credit for the sincerity and good intentions of the officers and men involved.

Situation in United Kingdom

13. In connection with the notes in the Manual of Military Law, it should be pointed out that aid to the civil power in the United Kingdom is in a somewhat different position. There, it is not the subject of a statute but is entirely based on the common law and King's Regulations governing the military forces. The concept of a formalized requisition as provided in the Militia Act is not used. The reasons are quite apparent; the United Kingdom has no provincial organization and cities are never too far distant from army establishments.

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217. For the purposes of this Part,

(a) "Attorney General" means the Attorney General of any province of Canada, or the acting Attorney General of a province, or any minister of a government of a province performing for the time being the duties of a provincial Attorney General;

(b) "Officer Commanding a Command" means an officer commanding a Canadian Army Command if he is present in the command and able to act, or if he is not so present, or is from sickness or other cause unable to act, the officer appointed to administer the command or for the time being performing the duties of the officer commanding the command.

COMMENTS

This section is new.

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218. The Canadian Forces, or any unit or other element thereof, or any officer or man, with materiel, are liable to be called out for service in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of an Attorney General, considered as likely to occur, and that is beyond the powers of the civil authorities to suppress, prevent, or deal with.

COMMENTS

This section was based on the following section of the Militia Act:-

> "75. The Canadian Army, or any unit thereof, shall be liable to be called out for active service, within or without the municipality in which such unit is raised or organized, with their arms, ammunition and equipment, in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of the civil authority hereinafter designated in that behalf, anticipated as likely to occur, which is beyond the powers of the civil authorities to suppress, or to prevent, or to deal with."

Under the new section, such of the forces as are called out will not be "on active service" but simply "on service", which is consistent with the principle that duty in aid of the civil power should be "service" as distinct from "active service".

The responsibility to render service in aid of the civil power is primarily that of the Canadian Army. The RCAF might, however, be called on to render assistance under the following provision of the RCAF Act:-

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COMMENTS

Sub-sections (1) and (2) were derived from the following provisions of the Militia Act:-

"77. The Officer Commanding a Command if he is present in the Command and able to act, or if he is not so present, or from sickness or other cause unable to act, the officer appointed to administer the Command, or for the time being performing the duties of Officer Commanding a Command shall call out the Canadian Army in the Command of which he is in command, or such portion thereof as he considers necessary for the purpose of suppressing or preventing any such actual or anticipated riot or disturbance upon receiving a requisition in writing made by the authority hereinbefore designated in that behalf;

Provided that, so far as the Active Force is available, it shall be employed upon the duty of suppressing or preventing such actual or anticipated riot or disturbance, and recourse shall not be had to other Canadian Army units except to the extent that the Active Force is not sufficient or not available."

"78. (1) The power to call out the Canadian Army, or such portion thereof as he considers necessary, vested by the preceding section in an Officer Commanding a Command, or the officer appointed to administer the Command, or, for the time being, performing the duty of Officer Commanding a Command, as the case may be, shall extend only to the calling out of the Canadian Army in the Command of which he is in command.

(2) If the said Officer Commanding a Command or other officer aforesaid considers that the services of the Canadian Army in Commands other than the one of which he is in command are necessary for the purpose of suppressing or preventing any such actual or anticipated riot or disturbance, the said Officer Commanding a Command or other officer aforesaid shall notify the Chief of the General Staff of the number of officers and other ranks, together with their horses and equipment which he so considers necessary, of which number the said Officer Commanding a Command or other officer aforesaid shall be the sole judge, and upon receiving notification from the Chief of the General Staff may call out such of the Canadian Army as in his judgment are available to meet the requirements of the said Officer Commanding a Command, or other officer aforesaid, as set forth in such notification, and shall cause them to be despatched to the said Officer Commanding a Command, or other officer aforesaid."

Sub-section (3) was derived from Section 9(1) of the Royal Canadian Air Force Act (quoted in full in the comments to section 218) and applies to the Royal Canadian Navy in addition to the Royal Canadian Air Force.

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222. A requisition of an Attorney General under this Part may be in the following form, or to the like effect, and the form may, subject to section two hundred and twenty-three, be varied to suit the facts of the case:-

Province of
To wit

Whereas information has been received by me from responsible persons (or a notification has been received by me from a judge of a (superior) (county) (district) court having jurisdiction in) that a riot or disturbance of the peace beyond the powers of the civil authorities to suppress (or to prevent or to deal with) and requiring the aid of the Canadian Forces to that end has occurred and is in progress (or is considered as likely to occur) at ;

And whereas it has been made to appear to my satisfaction that the Canadian Forces are required in aid of the civil power;

Now therefore I, , the Attorney General of , under and by virtue of the powers conferred by the National Defence Act, do hereby require you to call out the Canadian Army or such part thereof as you consider necessary for the purpose of suppressing (or preventing or dealing with) the riot or disturbance and, if it is deemed necessary or desirable by the appropriate authorities, I do hereby request that such other Services of the Canadian Forces as are under that Act liable to be called out in aid of the civil power be so called out for the purpose of assisting the Canadian Army;

And for and on behalf of the Province of , I the said , Attorney General, hereby undertake that all expenses and costs, incurred by His Majesty by reason of the Canadian Forces or any part thereof being called out on service in aid of the civil power pursuant to this requisition, shall be paid to His Majesty by the said province.

Dated at , this day of , 19 .

Attorney General.

COMMENTS

This section was derived from the following provision of the Militia Act:-

"80. The requisition may be in the following form, or to the like effect, and the form may be varied to suit the facts of the case:-

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Province of)
To wit:)

Whereas information has been received by me from responsible persons (or a notification has been received by me from the county (district) court judge having jurisdiction in such place), that a riot or disturbance of the peace beyond the powers of the civil authorities to suppress (or to prevent or to deal with), and requiring the aid of the Canadian Army to that end has occurred and is in progress (or is anticipated as likely to occur) at

And whereas it has been made to appear to my satisfaction that the services of the Canadian Army are required in aid of the civil power.

Now Therefore I, the Attorney General of under and by virtue of the powers conferred by the Militia Act do hereby require you to call out the Canadian Army or such portion thereof as you consider necessary for the purpose of suppressing (or preventing or dealing with) such riot or disturbance.

And for and on behalf of the said Province of I, the said Attorney General, hereby undertake that all expenses and costs incurred by His Majesty by reason of the Canadian Army, or any part thereof, being called out or serving in aid of the civil power pursuant to this requisition shall be paid to His Majesty by the said Province.

Dated at this 19 .

Attorney General"

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223. (1) In a requisition made under this Part it shall be stated that information has been received by the Attorney General from responsible persons, or that a notification has been received by the Attorney General from a judge that a riot or disturbance beyond the powers of the civil authorities to suppress or to prevent or to deal with, as the case may be, has occurred, or is considered as likely to occur, and that the Canadian Forces are required in aid of the civil power; and the requisition shall further state that it has been made to appear to the satisfaction of the Attorney General that the Canadian Forces are so required.

(2) In a requisition made under this Part there shall be embodied an unconditional undertaking by the Attorney General that the province shall pay to His Majesty all expenses and costs incurred by His Majesty by reason of the Canadian Forces or any part thereof being called out for service in aid of the civil power, as by the requisition required.

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(3) Every statement of fa
quisition made under this Part
and binding upon the province on
the requisition is made, and every
promise in the requisition shall be
province and not open to question o
reason of alleged incompetence or la
on the part of the Attorney General o
reason.

(4) In every case where a requisiti
under this Part, the Attorney General of
ince concerned shall, within seven days af
making of the requisition, cause an inquiry
made into the circumstances which occasione d
calling out of the Canadian Forces or any par
of, and shall send a report upon the circumsta
to the Secretary of State.

(5) A statement of fact contained in a requi
ition made under this Part shall not be open to di
pute by the Officer Commanding a Command upon whom
the requisition is made.

COMMENTS

This section was based on the following provisions
of the Militia Act:-

"81. (1) In every requisition in writing as afore-
said it shall be stated that information has been
received by the Attorney General from responsible
persons or, as the case may be, that a notification
has been received by the Attorney General from the
county court or district court judge, or from a
judge of a superior court, as the case may be, that
a riot or disturbance beyond the powers of the civil
authorities to suppress or to prevent or to deal
with as the case may be has occurred, or is antic-
ipated as likely to occur and that the services of
the Canadian Army are required in aid of the civil
power. The said requisition shall further state
that it has been made to appear to the satisfaction
of the said Attorney General that the services of
the Canadian Army are so required.

(2) Moreover in every case there shall be em-
bodied in the requisition, which shall be signed by
the Attorney General, an unconditional undertaking
that the province shall pay to His Majesty all ex-
penses and costs incurred by His Majesty by reason
of the Canadian Army or any part thereof, being
called out or serving in aid of the civil power as
by the requisition required.

(3) Every statement of fact contained in any
requisition made under the provisions of this Act
shall be conclusive and binding upon the province on
behalf of which the requisition is made; and every
undertaking or promise in any such requisition con-
tained shall be binding upon the province and not
open to any question or dispute by reason of any al-
leged incompetence or lack of authority on the part
of the Attorney General to make the same, or for any
other reason.

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(4) In every case where a requisition is made by an Attorney General of a province requiring the Canadian Army or any part thereof to be called out in aid of the civil power, the Attorney General who made the said requisition shall, within seven days after the making of such requisition, cause an enquiry to be made into the circumstances which occasioned the calling out of the Canadian Army or any part thereof, and shall send a report upon such circumstances to the Secretary of State."

"79. Any statements of fact contained in any requisition made under the provisions of this Act shall be final and binding upon the province concerned, and any such statements of fact shall not be open to dispute by the officer upon whom such requisition is made."

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224. Officers and men when called out for service in aid of the civil power shall, without further authority or appointment and without taking oath of office, be held to have and may exercise, in addition to their powers and duties as officers and men, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body, and shall be individually liable to obey the orders of their superior officers.

COMMENTS

This section was derived from the following:

Militia Act:-

"82. (1) The officers and men of such Canadian Army when so called out, shall, without any further authority or appointment, and without taking oath of office, be held to have and may exercise, in addition to their military powers and duties, all the powers and duties of special constables, so long as they remain so called out, but they shall act only as a military body, and shall be individually liable to obey the orders of their military superior officer.

(2) Every officer and man of the Canadian Army at all times and while so called out, shall obey the orders of his military superior officer."

Royal Canadian Air Force Act:-

"9. (2) Every unit, officer and airman called out under this section shall remain on active service until further order, and every such officer or airman shall while on such service have the powers of a peace officer."

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225. The Canadian Forces or any part thereof called out in aid of the civil power shall remain on duty in such strength as the Officer Commanding a Command, who has carried into effect a requisition of an Attorney General made under this Part, deems necessary or orders, until notification is received from the Attorney General that the Canadian Forces are no longer required in aid of the civil power; and the Officer Commanding a Command may, from time to time as in his opinion the exigencies of the situation require, increase or diminish the number of officers and men called out; except that officers and men of the Royal Canadian Navy and the Royal Canadian Air Force called out to assist the Canadian Army in aid of the civil power may be withdrawn at such time and to such extent as the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, under the direction of the Minister, may order.

COMMENTS

This section was derived from the following provision of the Militia Act:-

"83. The Canadian Army when so called out shall remain on duty in such strength as the Officer Commanding a Command or other officer who has called them out deems necessary, or shall order, until notification is received from the authority which made the requisition for calling out the Canadian Army that their services are no longer required in aid of the civil power, and the said Officer Commanding a Command or other officer may from time to time as in his opinion the exigencies of the case require increase or diminish the number of officers and men called out."

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226. All expenses and costs incurred by His Majesty by reason of any of the Canadian Forces being called out under this Part in aid of the civil power, shall be paid to His Majesty by the province the Attorney General of which made the requisition requiring the Canadian Army to be called out.

COMMENTS

This section was derived from the following provision of the Militia Act:-

"84. (1) All expenses and costs incurred by His Majesty by reason of any of the Canadian Army being so called out in aid of the civil power, shall be paid to His Majesty by the province of which the Attorney General made the requisition requiring them to be so called out."

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227. Such moneys as are required to meet the expenses and costs occasioned by the calling out of the Canadian Forces as provided for in this Part and for the services rendered by them shall, pending payment by the province liable under section two hundred and twenty-six, be advanced in the first instance out of the Consolidated Revenue Fund by the authority of the Governor in Council, but shall be payable by and recoverable from the province to and by His Majesty as moneys paid by His Majesty to and for the use of the province at the request of the province.

COMMENTS

This section was derived from the following provision of the Militia Act:-

"85. Such moneys as are required to meet the expense and costs occasioned by the calling out of the Canadian Army as hereinbefore provided and for their services shall, pending payment by the province, be advanced in the first instance out of the Consolidated Revenue Fund by the authority of the Governor in Council, but shall be payable by and recoverable from the province to and by His Majesty as moneys paid by the latter to and for the use of the province at the request of the latter."

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PART XII

OFFENCES TRIABLE BY CIVIL COURTS

This Part prescribes certain offences, relating to the defence of Canada, which are capable of being committed by members of the public as well as by service personnel.

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228. (1) Every person, including an officer or man, shall be liable to be tried in a civil court in respect of any offence prescribed in this Part.

(2) No charge against an officer or man in respect of any offence prescribed in this Part shall, if the complainant is any other officer or man, be tried by a civil court unless the consent thereto in writing of the commanding officer of such first-mentioned officer or man has first been obtained.

COMMENTS

Sub-section (1) is new. It is largely declaratory and was inserted to forestall any confusion which might arise as to the applicability of this Part, both in respect of the public and members of the forces.

Sub-section (2) was based upon the following provision of the Militia Act:

> "126. (1) No prosecution against any officer in the Canadian Army for any penalty under this Act or under any regulation made hereunder shall be brought, except on the complaint of the Adjutant-General or an Officer Commanding a Command.
>
> (2) No prosecution against any man in the Canadian Army for any penalty under this Act, or under any regulation, shall be brought except on complaint by or in the name of the commanding officer or adjutant of the unit or captain of the company or unit to which such man belongs or belonged."

There has been no corresponding naval or air force legislation.

No change in principle from the above-quoted legislation is involved. The purpose of the provision is to relieve the civil courts of frivolous or vexatious charges brought by one member of the Services against another. If the complaint were reasonably founded, the commanding officer of the accused person would not withhold his consent. If the facts disclosed a military offence, rather than an offence under this Part, it would be the duty of the commanding officer to have a charge laid and dealt with by a military tribunal.

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229. No prosecution in a civil court shall be commenced against a person in respect of an offence prescribed in this Part after the expiration of six months from the date of commission of the offence charged, except for any of the offences mentioned in section two hundred and thirty-nine.

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COMMENTS

This section was derived from the following provision of the Militia Act:

"126. (4) No such prosecution shall be commenced after the expiration of six months from the commission of the cffence charged excepting for the offence of unlawfully buying, selling or having in possession arms, accoutrements or other articles belonging to the Crown or unit, or for desertion."

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230. Every person who contravenes regulations respecting the access to, exclusion from, and safety and conduct of any persons in, on or about any defence establishment, work for defence or materiel is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

This section is new. The principle is derived from the following:

Militia Act:-

"53. The Governor in Council may stop, at such time as is necessary during the target practice of the Canadian Army, the traffic on any roads, not being mail roads that cross the line of fire, and may make such other regulations for conducting target practice and registering the results thereof, and for the safety of the public, as are necessary, and may impose penalties for wilful damage to any such butts, targets and appliances.".

"123. Every person, not being at the time an officer or man of the Canadian Army, or a member of a rifle association or club formed or recognized under regulations, who, without the consent of the person in charge of such rifle range, or of some person authorized in that behalf by regulations, uses for target practice a rifle range which has been inspected and approved, shall incur a penalty not exceeding twenty-five dollars."

Naval Service Act:-

"29. (1) The Minister may lay down targets, buoys and other appliances for target practice by the vessels in the Naval Service, and also may provide rifle ranges suitably equipped for the use of the Naval Service at or near any port or any naval establishment.

(2) The Minister may make regulations for ensuring the safety of the public during such practice and may provide penalties for infringement of such regulations and for wilful damage to any such targets, buoys, ranges or other appliances."

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231. Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him by or by direction of the person before whom he appears for the purpose of being enrolled in the Canadian Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

COMMENTS

This section was based upon the following provision of the Army Act (UK):

> "99. (1) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.
>
> (2) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court martial for the offence."

Section 99 of the Air Force Act (UK) was not made applicable to the RCAF.

The new section would permit the prosecution in the civil courts of a person who had given a false answer and had not been enrolled. Cross-reference is made to section 112 which would cover the case where the person had been enrolled. In the latter case, it would still be possible to proceed in the civil courts if under the circumstances it were considered appropriate to do so.

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232. Every medical practitioner who signs a false medical certificate or other document in respect of

(a) the examination of a person for the purpose of enrolment in the Canadian Forces;
(b) the service or release of an officer or man; or
(c) the disability or alleged disability of a person, purported to have arisen or to have been contracted during, in the course of, or as a result of the service of such person as an officer or man,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

This section was based in part upon the following section of the Militia Act:

> "103. Every medical practitioner, who signs a false certificate in respect of any case of permanent disability, arising from injuries received or illness contracted on active service, drill or training, or on duty, coming before a medical board for report, shall incur a penalty of four hundred dollars."

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The former legislation has been amplified by the additional elements mentioned in paragraphs (a) and (b). Cross-reference is made to section 115 which prescribes the service offence of signing false documents. Depending on the circumstances, a medical practitioner subject to the Code of Service Discipline could be prosecuted under either section.

Due to the far-reaching results of such an offence, both to the subject and the Crown, a maximum fine of $500.00 or 6 months imprisonment was considered appropriate.

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233. Every person who falsely personates any other person in respect of any duty, act or thing required to be performed or done under this Act by the person so personated is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

This section was derived from the following provision of the Militia Act:

"112. Every officer and man of the Canadian Army, and every person whatsoever, who at any parade, or on any other occasion for any of the purposes required by this Act, falsely personates another is guilty of an indictable offence, and liable to a fine not exceeding one hundred dollars."

The penalty has been considerably increased because of the serious consequences which might arise from a case of impersonation, particularly where an emergency, aid of the civil power or a national disaster formed the background of the offence.

The section was no doubt originally designed to deter persons, not subject to military law, from personating soldiers and signing muster rolls with a view to securing pay, either for themselves or for a unit. The section would continue to cover that situation.

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234. Every person who falsely represents himself to any military or civil authority to be a deserter from His Majesty's Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

COMMENTS

This section was derived from the following provision of the Army Act (UK):

"152. Any person who falsely represents himself to any military, naval, air force or civil authority to be a deserter from the regular forces shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months."

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Section 152 of the Air Force Act (UK) was not made applicable to the RCAF.

Persons occasionally represent themselves to be deserters for various obscure purposes, e.g. securing transportation to another place, becoming members of a particular force, etc. A considerable amount of administrative difficulty often ensues.

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235. (1) Every officer or man of the reserve forces who without lawful excuse neglects or refuses to attend any parade, drill or training at the place and hour appointed therefor is guilty of an offence and is liable on summary conviction for each offence, if an officer to a fine of ten dollars, and if a man to a fine of five dollars.

(2) Absence from any parade, drill or training mentioned in subsection one shall, in respect of each day on which such absence occurs, be a separate offence.

COMMENTS

This section was based on the following provision of the Militia Act:

"115. (1) Every officer and man of the Canadian Army who without lawful excuse, neglects or refuses to attend any parade or drill or training at the place and hour appointed therefor, or who refuses or neglects to obey any lawful order at or concerning such parade, drill or training, shall incur a penalty, if an officer, of ten dollars, and if a man of five dollars for each offence.

(2) Every day's absence shall be held to be a separate offence."

The element of disobedience of a lawful command has been omitted from the new section as it is a purely military offence and difficult of determination by a civil court.

The section of the Militia Act quoted above has been of considerable value in enforcing attendance at parades of the Reserves. It is generally invoked in cases where a member of the Reserves is not attending parades and has a uniform and equipment at home. A prosecution under this section has a salutary effect on others in the unit and assists in the return of the equipment of a volunteer who is either unable to attend parades or is no longer interested.

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236. Every officer or man of the reserve forces who fails to keep in proper order any personal equipment or who appears at drill, parade or on any other occasion with his personal equipment out of proper order, unserviceable or deficient in any respect is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five dollars for each offence.

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COMMENTS

This section was derived from the following provision of the Militia Act:

"118. Every man who fails to keep in proper order any arms or accoutrements delivered or entrusted to him, or who appears at drill, parade or on any other occasion, with his arms or accoutrements out of proper order, or unserviceable, or deficient in any respect, shall incur a penalty of four dollars for each such offence."

This section is considered particularly appropriate to the conditions of service in the Reserves. Such an offence in the Regular Forces would be charged as neglect to the prejudice of good order and discipline.

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237. Every person who without reasonable excuse interrupts or hinders the Canadian Forces at drill, training or while on the march is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence; and may be taken into custody and detained by any person by the order of an officer until such drill, training or march is over for the day.

COMMENTS

This section was based on the following:

Militia Act:-

"116. Every person who interrupts or hinders any portion of the Canadian Army at drill, or trespasses on the bounds set out by the proper officer for such drill, shall incur a penalty of five dollars for each offence, and may be taken into custody and detained by any person by the order of the commanding officer until such drill is over for the day."

"121. Every person who
(f) interferes with the drill or training of any unit or portion thereof; or
(g) obstructs any unit or portion thereof on the march or elsewhere;
shall incur a penalty not exceeding one hundred dollars."

Royal Canadian Air Force Act:-

"17. Any person who interferes with the training or movement of any unit, officer or airman on service or on active service shall be liable on summary conviction to a fine not exceeding two hundred dollars or to six months imprisonment or to both fine and imprisonment."

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238. Every person who without reasonable excuse obstructs or interferes with manoeuvres authorized under section two hundred and five is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars.

COMMENTS

This section is new and is considered a necessary implementation of section 205 for the proper carrying out of manoeuvres.

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239. (1) Every person who
(a) unlawfully disposes of or removes any property;
(b) when lawfully required, refuses to deliver up any property that is in his possession; or
(c) except for lawful cause, the proof of which lies on him, has in his possession any property,
is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence.

(2) For the purposes of this section, "property" means any public property under the control of the Minister, non-public property, and property of any of His Majesty's Forces or of any forces co-operating therewith.

COMMENTS

Subsection (1) was based on the following provision of the Militia Act:-

"119. (1) Every person who,
(a) unlawfully disposes of or removes any arms, accoutrements or other articles belonging to the Crown or unit;
(b) refuses to deliver up any arms, accoutrements or other articles in his possession belonging to the Crown or unit when lawfully required; or
(c) has in his possession any arms, accoutrements or other articles belonging to the Crown or unit except for lawful cause, the proof of which shall lie upon him;
shall incur a penalty of twenty dollars for each offence."

Subsection (2) is new in that it defines for the purposes of the section the type of property that may be unlawfully dealt with. Due to "public property" being defined in section 2 as any property of His Majesty in right of Canada, it was necessary here to define it to include property of His Majesty's Forces, e.g. property of an Australian force serving in Canada.

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240. (1) Every person who

(a) procures, persuades, aids, assists or counsels an officer or man to desert or absent himself without leave; or

(b) in an emergency, aids, assists, harbours or conceals an officer or man who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that such officer or man was a deserter or an absentee without leave,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and not less than one hundred dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

(2) A certificate signed by the Judge Advocate General, or such person as he may appoint for that purpose, that an officer or man was convicted under this Act, of desertion or absence without leave or had been continuously absent without leave for six months or more, and setting forth the date of commencement and the duration of such desertion, absence without leave or continuous absence without leave, shall for the purposes of proceedings under this section be evidence that the officer or man was a deserter or absentee without leave during the period mentioned in the certificate.

COMMENTS

This section was based on the following:

Naval Service Act:-

"43. Any person who

(a) procures or persuades any member of the Naval Forces to desert;

(c) knowing any person to be a deserter from the Naval Forces conceals him or aids or assists him in concealing himself;

shall be liable upon summary conviction to imprisonment, with or without hard labour, for any period not exceeding twelve months."

Army Act:-

"153. Any person who in the United Kingdom or elsewhere by any means whatsoever --

(1) Procures or persuades any officer or soldier to desert or absent himself without leave, or attempts to procure or persuade any officer or soldier to desert or absent himself without leave; or

(3) Knowing any officer or soldier to be a deserter or absentee without leave, conceals such officer or soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

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shall be liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding thirty pounds."

Subsections 153(1) and (3) of the Air Force Act (UK) were not made applicable to the RCAF.

Reference is made to the following provision of the Criminal Code:-

"82. Every one is guilty of an offence punishable on indictment, or on summary conviction before two justices, who, not being a seaman in His Majesty's naval service, an enlisted soldier or airman in His Majesty's service

(a) by words or with money, or by any other means whatsoever, directly or indirectly persuades or procures, or goes about or endeavours to persuade, prevail on or procure, any such seaman, soldier or airman to desert from or leave His Majesty's naval, military or air service; or

(b) conceals, receives or assists any deserter from His Majesty's naval, military or air service, knowing him to be such deserter;

and is liable, on conviction under indictment, to fine and imprisonment in the discretion of the court, and on summary conviction before two justices, to a penalty not exceeding two hundred dollars, and not less than eighty dollars and costs, and in default of payment to imprisonment for any term not exceeding six months."

In view of the prevalence of the offence of assisting or harbouring absentees in an emergency and its prejudicial effect on defence, it was considered appropriate to deal with the subject in the new Act. A secondary reason for so doing will be found in paragraph (b) which places the onus upon the alleged harbourer to satisfy the court that he did not know the officer or man was a deserter or absentee. Many hundreds of cases arose in the Second World War in which parents and relatives of an absentee harboured him for considerable periods and could reasonably have been expected to know that he was still a member of the forces. It is considered that such an onus is not unduly burdensome in the circumstances in which this offence is frequently committed. A further reason for prescribing the offence here will be found in the provisions of subsection (2). Due to the adverse effect of the offence upon the morale of all concerned and the damage to the interests of the state, the penalty has been made more severe than that prescribed in the Ciminal Code.

Subsection (2) is new. One of the chief obstacles in prosecuting cases of harbouring lies in the difficulty which faces the civil authorities in deciding whether or not the person, in respect of whom the offence was committed, was in fact a deserter. It may well require a trial within a trial to determine that issue. Subsection (2) was designed to overcome the problem by the production of a certificate signed by the Judge Advocate General.

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In cases where the deserter or absentee has not yet been apprehended, it is considered that the production of a certificate of absence of six months or more does not lay any undue burden upon the accused as to the status of the person whom he is charged with harbouring. It is still open to the person charged with harbouring to satisfy the civil court that he did not know such person to be an absentee. Furthermore, the fact that the absentee has not yet been apprehended and convicted of either desertion or absence without leave would afford the defence a cogent argument on the ground of reasonable doubt.

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241. Every person who, knowing that an officer or man is about to desert or absent himself without leave, aids or assists him in his attempt to desert or absent himself without leave is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

This section was derived from the following:

Naval Service Act:-

"43. Any person who
(b) aids or assists any member of the Naval Forces in deserting;
shall be liable upon summary conviction to imprisonment, with or without hard labour, for any period not exceeding twelve months;"

Army Act (UK):-

"153. Any person who in the United Kingdom or elsewhere by any means whatsoever --

(2) Knowing that an officer or soldier is about to desert or absent himself without leave, aids or assists him in deserting or absenting himself without leave,
shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding thirty pounds."

Section 153(2) of the Air Force Act (UK) was not made applicable to the RCAF.

The maximum penalty has been placed on a parity with that of "harbouring" as it is considered that the two offences are equally serious.

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242. Every person who

(a) wilfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such other person is required under this Act or regulations to perform;

(b) counsels any other person not to perform any duty that such other person is required under this Act or regulations to perform;

(c) does an act to the detriment of any other person in consequence of such other person having performed a duty that he is required under this Act or regulations to perform;

(d) interferes with or impedes, directly or indirectly, the recruiting of the Canadian Forces;

(e) wilfully produces any disease or infirmity in, or maims or injures himself or any other person with a view to enabling himself or such other person to avoid service in the Canadian Forces;

(f) with intent to enable any other person to render himself, or to induce the belief that such other person is, permanently or temporarily unfit for service in the Canadian Forces, supplies to or for such other person any drug or preparation calculated or likely to render such other person, or lead to the belief that such other person is, permanently or temporarily unfit for such service; or

(g) gives or receives, or is in any way concerned in the giving or receiving, of any valuable consideration in respect of enrolment, release or promotion in the Canadian Forces,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

Paragraphs (b) and (c) of this section was based upon:

Militia Act:-

"121. Every person who

(d) dissuades any man enlisted or liable to military service, from the performance of any duty he is required by law or regulation to perform;

(e) does any act to the detriment of any man enlisted or liable to military service, in consequence of his having performed any such duty;

shall incur a penalty not exceeding one hundred dollars."

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Paragraphs (a), (e) and (f) were based upon:

Army Act (UK):-

"153A. Any person who in the United Kingdom or elsewhere,
(a) wilfully obstructs, impedes, or otherwise interferes with any officer or soldier in the execution of his duties; or
(b) wilfully produces any disease or infirmity in, or maims or injures any man whom he knows to be a soldier with a view to enabling such man to avoid military service; or
(c) with the intent of enabling a soldier to render himself, or induce the belief that he is, permanently or temporarily, unfit for service, supplies to or for such soldier any drug or preparation calculated or likely to render him or lead to the belief that he is permanently or temporarily unfit for service;
shall be liable, on summary conviction, to a term of imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine."

There has been no legislation, similar to the above-quoted army legislation, applicable to the air force.

Reference is made to the following provisior of the Criminal Code:-

> "167. (1) Every one is guilty of an indictable offence and liable to ten years' imprisonment who resists or wilfully obstructs any public officer in the execution of his duty or any person acting in aid of such officer."

The above section of the Criminal Code prescribes the offence of obstructing a public officer and the severity of the penalty indicates the seriousness with which such a crime is regarded.

Paragraphs (d) and (g) are new and self-explanatory.

Particular reference is made to paragraph (c) which would cover the type of case in which a serviceman, particularly of the Reserves, is penalized or discriminated against in his normal employment either by his employer or any association having to do with his civilian activities. For example, if a musician who belongs to a trade union is penalized by his union for having obeyed a lawful command to play at a parade of his unit, it would be possible to launch a prosecution against all of the persons who were responsible for the imposition of the penalty or other act of discrimination.

In view of the serious results which may flow from any one of these offences, and the widespread mischief which may be caused by them, the penalty has been averaged from the sum of $100.00 in the Militia Act, £100 or six months imprisonment in the Army Act (UK) and 10 years imprisonment in the Criminal Code, to a fine of $1000.00 or twelve months imprisonment or both.

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243. (1) Every person who

(a) on being duly summoned as a witness under section two hundred and after payment or tender of the fees and expenses of his attendance prescribed in regulations, makes default in attending;

(b) being in attendance as a witness before a court martial mentioned in section two hundred,

(i) refuses to take an oath or affirmation legally required of him,

(ii) refuses to produce any document in his power or under his control legally required to be produced by him, or

(iii) refuses to answer any question that legally requires an answer;

(c) uses insulting or threatening language before a court martial mentioned in section two hundred, or causes any interference or disturbance in its proceedings, or prints observations or uses words likely to influence improperly the members of or witnesses before that court martial or to bring that court martial into disrepute, or in any other manner whatsoever displays contempt of that court martial; or

(d) being in attendance as counsel before a court martial mentioned in section two hundred, is in contempt of court within the meaning of subsection five of that section,

is guilty of an offence and the court martial may, by a certificate setting forth the facts thereof, refer the offence of such person to a civil court, in the place where the court martial is held, that has power to punish witnesses guilty of like offences in that civil court.

(2) Any civil court to which an offence mentioned in this section has been referred shall cause to be brought before it the person certified to have committed that offence, and shall inquire into the circumstances set forth in the certificate mentioned in subsection one, and, after examination of any witnesses who may be produced for or against the person so accused and after hearing any statement that may be offered in defence, shall, if it seems just, punish the person in like manner as if he had committed the offence in a proceeding in that civil court.

COMMENTS

This section was based on the following:

Militia Act:-

"130. (1) If any person who is not enrolled in the Canadian Army is summoned as a witness before a court martial, and, after payment or tender of the reasonable expenses of his attandance, makes default in attending, or, being in attendance as a witness

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(a) refuses to take an oath or affirmation lawfully required by the court to be taken;
(b) refuses to produce any document in his power or control lawfully required by the Court to be produced by him;
(c) refuses to answer any question to which the court lawfully requires an answer; or
(d) is guilty of any contempt of the court martial by causing any interruption or disturbance in its proceedings;

the president of the court shall certify the default, refusal or contempt of such person under his hand to a judge of any court of justice in the locality having power to punish persons guilty of like offences in that court.

(2) Such court may thereupon inquire thereinto, hearing such person and any witnesses that may be produced for or against him, and, if such person is found guilty, punish him in like manner as if he had committed the offence in a proceeding in such court."

Naval Service Act:-

"46. (3) Where any person who has been summoned as a witness under subsection one either makes default in attending after payment or tender of the reasonable expenses of his attendance, or while in attendance
(a) refuses to be sworn or make affirmation, of
(b) refuses to give evidence, or
(c) refuses to answer any question to which a court martial or a disciplinary court may legally require an answer, or
(d) prevaricates in his evidence,

the president of the court martial or disciplinary court may certify the offence of that person to any court of law which has power to punish witnesses guilty of like offences committed in that court. Upon receiving the certificate the court of law shall inquire into the alleged offence and, after examination of any witnesses who are produced against or for the accused person and after hearing any statement that is offered in defence, shall, if it seems just, punish the witness in like manner as if he had committed the offence in a proceeding in that court."

Army Act (UK):-

"126. (1) Where any person who is not subject to military law commits any of the following offences; that is to say,
(a) On being duly summoned as a witness before a court martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or

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(b) Being in attendance as a witness --
(i) refuses to take an oath legally required by a court martial to be taken; or
(ii) refuses to produce any document in his power or control legally required by a court martial to be produced by him, or
(iii) refuses to answer any question to which a court martial may legally require an answer,

the president of the court martial may certify the offence of such person under his hand to any court of law in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(3) Where a person not subject to military law is guilty of any contempt towards a court martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court martial may certify the offence of such person, under his hand, to any court of law in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court."

"129. The following provisions shall have effect with respect to the conduct of counsel when appearing on behalf of the prosecution or defence at courts martial in pursuance of rules under this Act:-

(2) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

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If in the case of a court martial held in a Dominion a counsel contravenes any rule made under this Act with respect to the conduct of counsel at courts martial, the steps, if any, to be taken to secure his punishment shall be such steps as may be competent for the purpose under thw law of the Dominion."

Sections 126(1) and (3) and 129(2) of the Air Force Act (UK) are similar.

The new section represents no change in principle from the above-quoted legislation.

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244. Every person employed in connection with any property, control of which has been taken by His Majesty under section two hundred and six, who does not obey the directions of the Minister or such person as is named in any warrant issued by the Minister is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

COMMENTS

This section is new and was considered a necessary sanction for section 206, relating to the requisitioning of property.

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245. Every pe rson who contravenes regulations respecting the quartering, billeting and encamping of a unit or other element of the Canadian Forces, or of an officer or man is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars.

COMMENTS

This section is based on the latter part of the following provision of the Militia Act:-

"86. The Governor in Council may make regulations for the quartering, billeting, and cantoning of the Canadian Army, and may, by such regulations, impose penalties, not exceeding fifty dollars, for any breach thereof."

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246. Every person who receives or demands a duty or toll in contravention of section two hundred and nine is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

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COMMENTS

This section was based on the following provision of the Army Act (UK):-

> "143. (3) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings."

There has been no similar naval or air force legislation.

The penalty has been brought in line with other penalties prescribed for offences in this Part. On a main route, the interference with military movements might be serious.

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247. Every person who fails to comply with directions given under section two hundred and ten is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment

COMMENTS

This section is new and was considered a necessary sanction for section 210, relating to ships in convoy.

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PART XIII

SPECIAL PROVISIONS

This Part contains two clauses of a transitory nature and includes provision for the repeal of certain existing legislation and the coming into force of various portions of the Act by proclamantion.

248. (1) Every member of the Naval Forces of Canada, the Canadian Army and the Royal Canadian Air Force and every person called out for compulsory military service under The National Resources Mobilization Act, 1940, who, while serving on active service beyond Canada at any time after the ninth day of September, one thousand nine hundred and thirty-nine, or while serving on active service within Canada at any time between the thirty-first day of December, one thousand nine hundred and forty-five, and the first day of October, one thousand nine hundred and forty-six, deserted or absented himself without leave and is still absent on the date that this section comes into force, shall for all purposes be deemed never to have been enlisted or enrolled in or appointed to or have served with the naval, army or air forces of Canada during the war that commenced in September, one thousand nine hundred and thirty-nine.

(2) Notwithstanding that any person mentioned in subsection one is deemed never to have served in the naval, army or air forces of Canada, all pay and allowances, rations, kit and materiel at any time paid or issued to him or on his behalf shall be deemed to have been paid or issued with due authority.

COMMENTS

The purpose of subsection (1) is to make final disposition of approximately 414 deserters who were serving on active service in the Second World War. PC 3264 dated 14 Aug 46 made a similar disposition, under the National Emergency Transitional Powers Act, 1945, of all persons in Canada in a state of desertion prior to 1 Jan 46 and who had not surrendered by midnight 14 Aug 46. This section covers subsequent deserters up to the date of the establishment of the regular forces, and also those serving outside of Canada.

Subsection (2) affords protection in respect of all pay, etc. of those deserters deemed never to have served.

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249. Paragraph (e) of section two of The Royal Canadian Air Force Act, chapter fifteen of the statutes of 1940, is repealed and the following substituted therefor:-

"(e) "officer" means a person who holds His Majesty's commission in or who is a subordinate officer in the Royal Canadian Air Force or who is attached or seconded to the Royal Canadian Air Force as an officer;"

COMMENTS

This is new.

"Officer" is defined in the RCAF Act as follows:

"2. (e) "officer" means a person commissioned by His Majesty as an officer in the air force and includes a person commissioned by His Majesty in any other of His Majesty's forces who, by virtue of this Act or the regulations, is entitled to exercise the functions of an officer of the air force".

When KR (Air) was prepared in 1943, the definition of officer read:

"officer" means an individual holding His Majesty's commission as an officer in the air force, and also any person from time to time subject to the Royal Canadian Air Force Act or to these regulations as an officer".

When the regular force was re-constituted in October, 1946, it was considered that the last-mentioned definition provided sufficient authority to cover a proposed class of officers, to be known as "flight cadet", who would not hold commissioned rank but who would have the status of subordinate officers. In the result, the RCAF has on its strength several hundred flight cadets. (Subsequently the KR (Air) definition of "officer" was aletered to make specific provision for subordinate officers but no change in principle was involved).

When in a recent case the Judge Advocate General considered an application for the trial by court martial of a flight cadet, the KR (Air) definition quoted above was held to be ultra vires of the Governor in Council having regard to the fact that the RCAF Act stipulates that definition for which provision is made in that Act apply to all regulations made under that Act. The definition of officer, first-quoted above, from the RCAF Act was therefore binding upon the air force and that definition, it will be noted, contemplated only officers with commissioned rank. An anomolous situation therefore arose in which it was impossible for the air force to take formal disciplinary action against flight cadets by any species of service trial, whether by commanding officers, air officers commanding or courts martial.

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250. The Royal Military College Act, the Militia Act, the Department of National Defence Act, The Royal Canadian Air Force Act and The Naval Service Act, 1944, or any portion thereof, may be repealed by proclamation of the Governor in Council.

COMMENTS

This section is self-explanatory and should be considered in the light of the comments to section 251. As of October 1st, 1950, no part of the statutes mentioned has been specifically repealed but some provisions have been repealed by implication in consequence of the coming into force of certain sections of The National Defence Act.

251. Sections one, two hundred and eleven, two hundred and forty-eight, two hundred and forty-nine and two hundred and fifty of this Act shall come into force when this Act is assented to, section two hundred and eleven shall operate retrospectively to the eighth day of December, one thousand nine hundred and forty-seven, section two hundred and forty-nine shall operate retrospectively to the first day of October, one thousand nine hundred and forty-six, and the other sections of this Act shall come into force on a day or days to be fixed by proclamation of the Governor in Council.

COMMENTS

As The National Defence Act received the Royal Assent on June 30th, 1950, the following sections came into force on that date:

211, 248, 249 and 250.

Sections 211 and 249 were made retroactive for the reasons given in the comments to those sections.

The following sections were brought into force by proclamation of the Governor in Council on the dates indicated:

August 1st, 1950 - 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 53, 54, 55, 190, 195, 205, 206, 207, 208, 209, 210, 212, 213, 214, 228, 229, 230, 238, 244, 246 and 247.

August 7th, 1950 - 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 47 and 48.

As of this date, 1st October, 1950, it is not known when the remaining sections of the Act will be proclaimed. Due notice of proclamation will be given in service orders. Until then, these other sections must not be treated as having the force of law.

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