



NOT TO BE PUBLISHED

DIGEST OF OPINIONS AND RULINGS

OTTAWA: MARCH 31, 1944

COMPILED FROM THE RECORDS OF
THE OFFICE OF
THE JUDGE ADVOCATE-GENERAL
AT NATIONAL DEFENCE HEADQUARTERS

FOREWORD

SINCE the outbreak of the present war many thousands of matters have been referred to the Office of the Judge Advocate-General for a ruling or opinion. A large number of these were of a novel or unusual character due to war conditions. In consequence it has been considered desirable to issue in printed form a new and comprehensive digest of opinions and rulings. The present publication is the result. It comprises a digest of those opinions and rulings emanating from the Office of the Judge Advocate-General up to 31st March, 1944, which pertain to questions which more frequently arise, and it includes only those which are of general interest.

The main purpose of this publication is to make these opinions and rulings available to officers who in the course of their duty are dealing with the subjects to which the same relate, with a view to minimizing the number of inquiries or references which are from time to time made in connection therewith. It must be distinctly understood, however, that in making use of this publication the opinions and rulings therein contained are not to be construed in the nature of a binding authority. They are rather to be regarded as being intended for the purpose of enlightening officers as to the manner in which current problems can more adequately be approached or dealt with. Moreover, each such opinion and ruling is based upon a particular set of circumstances and is not intended to have any application beyond the terms thereof.

This volume will supersede the previous interim digest of opinions and rulings issued under date of 1st July, 1942. No further digest of opinions and rulings either by way of an addendum to this publication or a further volume thereof will be issued. Commencing 1st April, 1944, it is proposed to issue at suitable intervals summaries of more important opinions and rulings of general interest. These will be issued in the form of reported cases.

In this volume the same opinion or ruling may appear in several places under appropriate headings. It was considered that this would make for greater convenience than would be

afforded by a system of cross-references. The preparation of the present volume entailed a very considerable amount of work extending over several months. The task of digesting in brief and synoptic form a lengthy and comprehensive opinion or ruling is not easy, and notwithstanding the most meticulous care in this respect certain errors are bound to occur. It would be appreciated if our attention could be drawn to any such errors which come to notice.

In conclusion I wish to express a word of acknowledgment of the manner in which those Officers and N.C.Os. of the Office of the Judge Advocate-General have worked in the preparation of this volume. A large part of the work done in connection therewith was performed after regular office hours and during what would otherwise have been their spare time, and if this publication proves to be of some use it is due mainly to their efforts.

N.D.H.Q.
6th April, 1944.

R. J. ORDE, Brigadier,
Judge Advocate-General

ABSENCE WITHOUT LEAVE

Cost of Apprehension of R.A.F. Personnel

Where R.A.F. personnel are attached to the R.C.A.F. in Canada such persons are subject to R.C.A.F. law and, unless the provisions of R.C.A.F. regulations relating to the cost of apprehension of absentees and deserters are specifically excluded from being applicable to such personnel, they may be charged with such costs. On the other hand, R.A.F. personnel at R.A.F. schools in Canada are not liable for cost of apprehension on a charge of absence without leave or desertion.

J.A.G. 886A (37)
75-1-45 Vol. 2
d/19/9/42

Absentees—Medical Expenses While Absent

While the Crown is not liable for expenses of medical treatment incurred by a deserter or an absentee without leave, yet when such deserter or absentee surrenders himself he becomes entitled to treatment and hospitalization at public expense.

J.A.G. 817A (31)
d/6/3/42
H.Q. 54-27-5-3 FD. 85

Absentees—Custody of, in Civil Gaols

A soldier apprehended by the military authorities on a charge of desertion or absence without leave would normally be wholly in military custody, but where there is a lack of accommodation the soldier may temporarily be kept in a civil lock-up, providing the order to do so is signed by the commanding officer of the soldier as required by K.R. (Can.) para. 451 (f).

J.A.G. 856 (33)
d/23/5/42
H.Q.S. 6265-5- F.D. 2

Absentees and Deserters—Death during Absence— Funeral Expenses

Where an absentee or deserter dies while he is absent without leave or in desertion he is not entitled to burial at the public expense pursuant to F.R. & I. Article 220. By

ABSENCE WITHOUT LEAVE

F.R. & I. Article 220 (12) an officer or soldier who is on leave of absence without pay is excepted from the benefits of the article. *A fortiori*, an officer or soldier who is absent without leave or in desertion, and who automatically forfeits his pay for his period of absence, can be in no better position.

J.A.G. 817 (31)
d/3/3/42
405-S-5413 (JAG)

Death of Absentee—Generally No Need for a Court of Inquiry

Where death occurs while a member of the Services is a deserter or A.W.L. there is no need save in exceptional cases to hold a Court of Inquiry, since such death does not occur during "Military Service" as such.

J.A.G. 817 (31)
d/3/3/42
405-S-5413 (JAG)

Elements to be Proven and Method of Proof

Where the accused is charged with absence without leave or desertion, there must be some evidence from which the Court can draw the proper inference that the accused was absent during the whole period between the time of absence and the time of apprehension or surrender. Some of the ways in which this can be proven are: (a) a witness can state that the accused, after he absented himself or was found absent, continued to remain so; (b) an M.F.B. 375 shows the time at which the accused absented himself and it also shows that he was still absent after the twenty-first day; (c) a Part II Order often shows that an accused "is absent from....." a certain date and time and the Order is dated a day or so later. Although in cases (b) and (c) the evidence has not completely established that the accused was absent during the whole intervening period covered by the charge, nevertheless there is some evidence that he was still absent at some specified time between the two dates. Where there is evidence of (1) the commencement of absence, (2) the termination of absence, and (3) the fact of absence at some specified time within the period, the Court can properly draw an inference that the accused was absent throughout the whole period. Hence a case is established which calls for a reply from the accused.

55-G-400
d/22/6/43

ABSENCE WITHOUT LEAVE

Period of, Particulars in Charge

The period of absence recited in particulars to a charge of desertion or of absence without leave should not go beyond the date on which the accused surrendered himself, either to Canadian or United States Authorities.

55-H-258

Reserve Army—Failure to Attend Drill

Notwithstanding the treating of three nights' drill in a Reserve Unit as one day for the purpose of pay, the failure to attend a single night's drill of a Reserve Unit constitutes one day of absence for the purposes of Section 115 of The Militia Act.

J.A.G. 861B (34)
d/12/6/42
7488-1-7

Charge of—Time of the Essence

Where the accused is charged with desertion or absence without leave, it is insufficient to allege that absence began between certain dates because, since time is of the essence, an exact date should be named as that on which the absence commences. If the evidence reveals that the absence began at a later date, a special finding may be made accordingly, but if the absence began at an earlier date, there can be no special finding, as the accused is entitled to the benefit of the date set out in the particulars of the charge.

55-L-341
25 Aug. 42

Absentees—Confinement in Civil Gaol

There is no power in the Provost Corps nor any military police to place a deserter or absentee in temporary custody in a civil lock-up pending appearance before military authorities rather than civil authorities, and where two soldiers were so placed in a civil gaol without the order for such custody signed by their Officer Commanding as required by K.R. (Can.) 451 (f), and where the purpose of the jailing was a military and not a civil proceeding, such custody was most irregular and without authority.

J.A.G. 856 (33)
d/23/5/42
H.Q.S. 6265-5 F.D. 2

ABSENCE WITHOUT LEAVE

NOTE.—A number of Routine Orders deal with the maintenance of prisoners in Civil Gaols. See C.A.R.O. 515, 1575, 1705, 2106.

Absence or Desertion—Determination of Offence

The question of whether a soldier should be charged with the offence of desertion under the Army Act: s. 12 (1) (a), or with absence without leave under s. 15 (1), is a matter entirely for the decision of the Commanding Officer concerned. Where consideration discloses that the accused had the intention to desert His Majesty's service but the evidence in support thereof is not particularly strong, the more serious charge may properly be laid. But if his review of evidence convinces the Commanding Officer that there was no intention to desert, the lesser charge may be laid.

54-27-65-1

ABSENTEES

Custody of, in Civil Gaols

A soldier apprehended by the military authorities on a charge of desertion or absence without leave would normally be wholly in military custody, but where there is a lack of accommodation the soldier may temporarily be kept in a civil lock-up, providing the order to do so is signed by the Commanding Officer of the soldier as required by K.R. (Can.) para. 451 (f).

J.A.G. 856 (33)

d/23/5/42

H.Q.C. 6265-5 F.D. 2

From U.S.A. Armed Forces

The United States Army has been given the power of trying its personnel in Canada by court-martial under the Foreign Forces Order 1941, which has been made applicable to the United States Forces stationed in Canada by Order in Council P.C. 2813 dated April 6th, 1943, and accordingly the members of the United States Forces in Canada may be apprehended in this country if a request is made by the Officer Commanding said Forces or by the United States Government (see Sections 8, 9 and 12 of the Foreign Forces Order, 1941). This order applies only to members of the United States Forces which are stationed in Canada, and consequently absentees and deserters of the United States Army who are not members of a United States Force stationed in Canada cannot be apprehended in Canada under this Order by Canadian Service Police.

J.A.G. 985 (47)

54-27-65-10

d/23/7/43

Medical Treatment for

Where an officer or soldier is a deserter or an illegal absentee, he is not entitled to receive at the public expense medical or dental treatment or hospitalization. Such treatment is only provided for officers or soldiers on leave of absence or furlough or on Active Service. (C.A.R.O. 924 and 1146 K.R. (Can.) para. 962, R.O. 807 and para. 365, Instructions for the R.C.A.M.C. and the C.D.C., 1937).

J.A.G. 880 (37)

405-Z-183

d/3/9/42

ABSENTEES

Period of Absence of, included in "the Period of Continuous Service"

Where a soldier is an absentee or a deserter, whether convicted or not of the offence of absence without leave or desertion, he must be considered as being in the service of the military forces of Canada during such periods of absence, even if the soldier has been struck off strength as a deserter, and the period of absence must not be subtracted from but must be included in the period of continuous service (six months) referred to in Article 187, F.R. & I. for the purpose of determining entitlement to clothing allowance on discharge.

J.A.G. 877 (35)
405-P-4481
d/28/8/42

ACCIDENTS

Medical Treatment—Accounts for

When, as the result of an accident, the services of a civilian doctor become immediately necessary and are requested and received by the Department, the latter is bound for the payment thereof, independently of any recourse which it may have against a third party.

JAG. (DOR 239)

Stoppages for Reimbursement

The stoppages which may be made against an officer or soldier in respect of the amount paid by the Crown as reimbursement to a claimant injured by an officer or a soldier (Order-in-Council P.C. 59/7305 dated 17th September, 1941) are entirely separate and distinct from those which may be awarded by a Court-Martial or Commanding Officer in consequence of the officer or soldier having been convicted of some military offence. (F.R. and I. Articles 86 (b) and (d), 158 (1) and (2).) The fact that disciplinary action may already have been taken is immaterial as to liability for the damage caused and stoppages therefor.

J.A.G. 866B (35)
405-S-2952
d/7/7/43

Reserve Army—Motor Vehicle Accidents Occasioned by Personnel of

The provisions of Orders-in-Council, P.C. 80/1045, dated the 19th March, 1940, dealing with motor accident claims generally, and P.C. 59/7305, dated September 17th, 1941, dealing with motor accidents involving claims not exceeding \$200.00, apply to Reserve Army personnel operating D.N.D. vehicles in the course of their military duty.

The extent to which such personnel should be called upon to reimburse the Crown for claims paid would also be determined under the aforementioned Orders-in-Council.

J.A.G. 966-B (45)
57-7-16-590
21 May, 1943

To Serving Personnel

The Crown has a legal right of action against a party through whose negligence serving personnel are injured. The

ACCIDENTS

Crown's damages for such a claim consist of (a) the cost of medical treatment and hospitalization required as the result of injuries; (b) damages in respect of loss of service being the amount of pay and allowances paid during the period in which the injured member of the forces is absent from his duties as a result of said injuries. (See Attorney General vs. Valle-Jones [1935] 2 K.B. 209.)

J.A.G. (DOR 512)

NOTE.—But under Order-in-Council P.C. 3167 dated 19th April, 1943, the Crown will not assert any claim against the owner or driver of a civilian motor vehicle in respect of injuries sustained by a member of the Armed Forces while being carried as a gratuitous passenger in such motor vehicle.

. ACTING RANK

Definition of

An officer while performing the duties of a rank or appointment higher than the substantive rank held by him may be granted acting rank. Such acting rank carries all the pay and allowances of substantive rank but, as the term implies, may be taken away from the officer at any time. Paid acting rank is granted to all non-commissioned officers on first appointment to fill a vacancy in an establishment. This rank is confirmed after specified periods, or will be relinquished if the non-commissioned officer proves to be unsatisfactory, or if the acting rank was only granted while employed temporarily in a senior position or to fill a vacancy by the temporary absence of another warrant officer or non-commissioned officer. Unpaid acting rank is granted for disciplinary purposes and is held only while the man is carrying out the duties for which he was so appointed.

J.A.G. 977A (47)
C. 9050-35 Vol. 2
d/3/7/43

Reversion in Rank from

K.R. (Can.) 471 and Section 46 (8) of the Army Act and note 15 thereto, and the second paragraph of R.P. 10 provide for the reversion of an N.C.O. from acting rank or a lance appointment to permanent rank, by order of a C.O.

J.A.G. 977 (47)
405-E-2692
2 July 43

ACTIVE SERVICE

Definition of

By virtue of Section 69 of the Militia Act, the Army Act is made applicable to the Canadian Militia only in so far as it is not inconsistent with the Militia Act. Section 2 (g) of the Militia Act defines "on active service" as applied to persons subject to Military service. The said definition is wider in scope than that contained in Section 189 of the Army Act and therefore governs. As members of the Active Army come within the terms of this definition in Section 2 (g) of the Militia Act, they are to be considered as "on active service" for all purposes under the Army Act, Rules of Procedure and also K.R. (Can.). Section 2 (g) of the Militia Act defines "on active service" as applied to a person subject to Military Service as meaning 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.

J.A.G. (1)
24 Oct. 40

Militia—Placed on

Those officers and other ranks who are members of the Active Militia are, by virtue of Section 64 of the Militia Act, liable to be placed on Active Service anywhere in Canada and also beyond Canada for the defence thereof at any time. All members of the Militia called out for service under any of the General Orders flowing from Order-in-Council P.C. 2396, dated 26th August, 1939 (G.O. 125), for example personnel called out under G.O. 139/39, must, in order to enable them so to be called out, be members of the Active Militia and as such are liable under Section 64 of the Militia Act to be placed on Active Service as above. Such personnel so called out have not been placed on Active Service beyond Canada, but under G.O. 170/39 they are, during the period they are so called out, placed on Active Service in Canada only.

J.A.G. 866G (35)
20 Jul. 42

"Regular Forces"—Members of Canadian Army (Active) Sec. 13 (Army Act)

For the purpose of Sec. 13 of the Army Act, a member of the Canadian Army on Active Service belongs to the regular forces.

J.A.G. 816F (35)

ACTIVE SERVICE

R.C.A.F. (W.D.) Placed on

The Royal Canadian Air Force (Women's Division) is a component of the Royal Canadian Air Force, and the members thereof have been placed on active service in Canada or beyond Canada for the defence thereof. (See Appendix III K.R. (Air).)

J.A.G. 827B (31)
d/27/3/42

When Corps Legally on—in and beyond Canada

When, by order of the Governor in Council under Sec. 64 of the Militia Act, a corps of the active militia is placed on active service in Canada (and the territorial waters thereof) then such corps or any members thereof cannot legally be employed on active service beyond Canada, unless, by a further order of the Governor in Council. Consequently, though the declaration on M.F.M. 2 is not restrictive with respect to service either in or beyond Canada, the fact of the individual signing such declaration would not in itself result in his being required to serve overseas unless there is the further Order of the Governor in Council mentioned above.

J.A.G. 434 (10)
d/4/6/40

AID TO CIVIL POWER

Strikes—Costs of Assistance by the Militia to a Civil Power

The Crown in the right of the Dominion has no valid claim against a Province for the costs of assistance by the Militia to the Civil power unless the Province concerned empowered the Attorney-General to bind the Province in the matter of paying said costs. (Ref. A.G. Canada vs. A.G. N.S. [1930] 4 D.L.R. 82.)

J.A.G. 843 (32)
17-Apr.-42
H.Q. 383-63-1

AIR CADET CORPS

Pensions—Air Cadets Not Entitled to

Since the Air Cadets (organized under Order-in-Council P.C. 6647 dated 19 Nov. 1940) are not part of the R.C.A.F. they are not members of the Forces within the meaning of Sec. 2 (1) of the Pensions Act, R.S.C. 1927, Ch. 157, as amended, and, consequently, claims arising out of injury or death to an air cadet while undergoing training would be determined under the provisions of Sec. 19 of the Exchequer Court Act. Provision has, however, been made for medical care and hospitalization of Air Cadets and civilian Air Cadet Instructors under specified conditions by Order-in-Council P.C. 95/6991 dated 4th Sept. 1943.

J.A.G. 855 (33)
d/20/5/42
H.Q. 660-1-12

AIRCRAFT

Army Personnel Injured Therein

Where army personnel are injured or killed as a direct result of a flight in aircraft undertaken in the course of duty and under due authority, such person or his dependents, as the case may be, would be eligible to receive compensation under the provisions of the Pension Act; but where a member of the Canadian Army serving in Canada is injured or killed while proceeding on furlough, he is ineligible to receive compensation.

J.A.G. 949 and 950 (44)
8926 F.D. 4
d/27/3/43

AIR FORCE ACT

Application of—to Civilians

Under Section 69 of the Militia Act the Army Act, in so far as it is not inconsistent with the Militia Act or the regulations made thereunder, is to have force and effect as if it has been enacted by the Parliament of Canada for the government of the Militia. It is therefore quite clear that the provisions of the Army Act do not apply to civilians. On the other hand, Section 11 of The R.C.A.F. Act states that the provisions of the Air Force Act, not inconsistent with The R.C.A.F. Act or any regulation, shall have force and effect as if the said provisions formed part of The R.C.A.F. Act. It therefore follows that any such provisions of the Air Force Act as are not inconsistent with The R.C.A.F. Act may be invoked to regulate the conduct of civilians.

J.A.G. 861 (A1) (34)
1011-1-52
d/5/6/42

S. 24 (2)—Losing by Neglect

There is a distinction between charging an airman with losing by neglect and charging him with the cost of articles lost through such neglect. If he is charged with losing by neglect under the Air Force Act, s. 24 (2), without mention of the specific deficiencies, he may be punished for the former but not sentenced to stoppage in respect of the latter. Although he may have to pay for deficiencies in his kit, in the ordinary course of accounting for same, this latter course would not be reflected in his conduct sheet as would a charge containing detailed deficiencies.

11-R-161491
19 Mar. 43

SS. 39 (A) (1) (b), 40—Neglect Charged Rather than a Charge of Aider or Abettor

Where it is desired to charge the captain of an aircraft in connection with a specific act of negligence on the part of the pilot, there is no provision in the Air Force Act for charging the captain directly with such act of negligence on the ground that he aided and abetted it. But he could be charged under s. 39 (A) (1) (b) with neglect in that he failed to order the pilot to desist from his negligent operation; or, under s. 40 with such failure amounting to "neglect," "to the prejudice of good order and air-force discipline."

11-R-117540
23 Jul. 43

AIR FORCE ACT

S. 44—Field Punishment—Award of in Canada

Field punishment may be legally awarded to Army and R.C.A.F. personnel in Canada on active service within the rules set out by M.A.F.L., page 619, and M.M.L. 787, but as a matter of policy, both the Army and the R.C.A.F. do not award it in Canada, where detention or imprisonment would meet the needs of justice, and therefore it will be awarded in Canada only in very exceptional cases.

J.A.G. 843D (32)
d/20/4/42

NOTE.—For relevant provisions in K.R. (Air) see para. 493, 494. See also M.M.L. pages 463, 466, 787, and M.A.F.L. page 257, 260, note 22.

SS. 47, 137 (1) (2)—Absence without Leave— Forfeiture of Pay

An authority dealing summarily under Section 47 of the Air Force Act with a charge against an officer may award, as part of the punishment, such a deduction from his ordinary pay as is authorized by Section 137 (2) of the Air Force Act. He would not, however, be entitled, under that subsection, on a charge of absence without leave, to place the accused officer under forfeiture of pay in respect of the period of illegal absence. The authority for imposing such forfeitures is vested in the Minister under Article 86 of F.R. and I. (see also Section 137 (1) Air Force Act.)

J.A.G. 941A (42)
d/22/1/43

S. 68 (1)—Day of Sentence—Error in Date

The term of detention to which an accused is sentenced by Court-Martial runs from the "day" not the "date" on which the proceedings were signed by the President: Air Force Act, S. 68 (1). Hence an error of the president in inserting the date does not affect the sentence. It may be corrected and initialled by the president and judge advocate just as an omission to enter the date may be rectified: Note 3 to the same section.

11-RAF-975438
22 Sept. 42

AIR FORCE ACT

**S. 190 (5)—Non-commissioned Officer—Leading
Naval Airman**

The rank of Leading Naval Airman does not fall within the definition of "non-commissioned officer" in the Air Force Act, s. 190 (5) as amended (1943). It follows, pursuant to Section 44 (mm), that a sentence of reprimand may not be awarded to a Leading Naval Airman.

11-FX-88740
15 Oct. 42

ALIENS

P.C. 5842—Naturalization

Enemy aliens are not supposed to be enlisted nor are they liable to be called up under the N.R.M.A. (1943) Regulations unless they have made a "Declaration of Intention" as provided in Order-in-Council P.C. 5842, dated 9 July 1942. Para. 1 of the Regulations established by the Order-in-Council provides for the granting of a Certificate of Naturalization to any alien serving outside Canada in one of the Services on the filing of the requisite documents. If enemy aliens are enlisted or enrolled after taking advantage of the said Order-in-Council and are taken prisoner they would be treated as ordinary prisoners of war.

54-21-1-111 Vol. 2
d/2/6/43

ALLOWANCES

Officers—During Period of Suspension from Duty or Absence without Leave

When an officer is suspended from duty or absent without leave, his pay and allowance (exclusive of dependents' allowance and assigned pay) are suspended and not credited to his account during the period of his suspension or absence, and the decision of the Minister or such officer as he may designate is necessary in order that it may be determined whether there will be forfeitures of pay and allowances during the period of suspension or absence and the amount of such forfeiture, as set out in F.R. & I. Art. 87.

JAG 932 (41)
C. 55-R-245
d/15/12/42

Rehabilitation Grant

Paragraph (1) (a) of Order-in-Council P.C. 7521, dated 19 December, 1940, states that: "Every member of the Naval, Militia or Air Forces of Canada who has served continuously on Active Service therein during the present War, for a period of not less than 183 days shall be entitled under certain conditions to rehabilitation grant." No distinction is made as to whether the individual has served in one or more of the Services, the only condition being that he served continuously for 183 days in one or more of the Services.

J.A.G. 709A (21)
d/1/5/41

Travelling Transportation Allowance Claims— Arts. 92, 93

Articles 92-93 of P. & A. Regulations do not apply to an officer travelling from one station to another where he has been posted to such other station and therefore a change of station is involved.

J.A.G. 845 (32)
d/22/4/42

ARMY ACT

Application of, in Canada—Militia Act

Under Section 69 of the Militia Act, the Army Act shall have force and effect as if it had been enacted by the Parliament of Canada. Unless the said Act is inconsistent with the Militia Act or the Regulations made thereunder, it must be read and interpreted as if it were specifically passed by the Dominion Parliament as applicable to the Canadian Forces. It follows that in considering the term "Regular Forces" as used in the Army Act, S. 13, Active Service personnel are part of these forces.

J.A.G. 866F (35)
405-A-3515
d/20/7/43

Application of—to Civilians

Under Section 69 of the Militia Act, the Army Act in so far as it is not inconsistent with the Militia Act or the regulations made thereunder, is to have force and effect as if it has been enacted by the Parliament of Canada for the government of the Militia. It is, therefore, quite clear that the provisions of the Army Act do not apply to civilians. On the other hand, Section 11 of The R.C.A.F. Act states that the provisions of the Air Force Act, not inconsistent with The R.C.A.F. Act or any regulation, shall have force and effect as if the said provisions formed part of The R.C.A.F. Act. It therefore follows that any such provisions of the Air Force Act as are not inconsistent with The R.C.A.F. Act may be invoked to regulate the conduct of civilians.

J.A.G. 861 (A1) (34)
1011-1-52
d/5/6/42

Prisoners of War—Subject to

Where prisoners of war escaped and have been apprehended, they should not be placed under stoppages to make good the expenses of such apprehension since, under Article 50 of the International Convention, escaped prisoners of war who are recaptured before they have been able to rejoin their own Armed Forces, or to leave the territory occupied by the Armed Forces which captured them, shall be liable only to disciplinary punishment. This is awarded by the Commandant or Officer Commanding; and under para. 55 of the Regulations Governing the Maintenance of Discipline among and Treatment of

ARMY ACT

Prisoners of War, when that officer proceeds to deal summarily, he may award the offender either detention for any period not exceeding twenty-eight days, or confinement to quarters for any period not exceeding fourteen days. No mention is made of an award of stoppages. Para. 55 thus limits Art. 45 of the Convention which makes prisoners subject to the laws, regulations and orders in force in the Armed Forces of the detaining power which otherwise would make prisoners of war liable to stoppages under Sec. 44 A.A.

JAG 650 (18)
S. 7236 F.D. 13
20 Feb. 41

S. 8—Superior Officer—Striking or Threatening

Where a court acquits the accused of striking his superior officer, but makes a Special Finding, that he is guilty of "offering violence or using violence," this is erroneous, as "offering" and "using" violence are separate offences under s. 8 of the Army Act, and the accused could have been found guilty of one of them but not both.

C. 55-T-220
19 Feb. 43

S. 8—Striking Superior—Intent

In military as well as civil law, it is necessary to prove *mens rea*, or guilty intent, against an accused. There is, of course, the principle that the accused intends the natural consequences of his act, but this presumption may be displaced by the particular circumstances of a case. On a charge that a soldier struck his superior officer it is essential to prove that he knew it was his superior whom he was striking: Army Act, s. 8, Note 3.

55-F-156

S. 9—Vaccination—Refusal to Submit to

Where a member of the forces refuses to submit himself to vaccination, inoculation or treatment against any infectious disease and blood examination, he may not be physically forced so to subject himself, but Order-in-Council P.C. 634 dated 27th January, 1942, rescinding Order-in-Council P.C. 6375 dated 19th August, 1941, provides that an unreasonable refusal shall constitute an offence against subsection 2 of

ARMY ACT

Section 9 of the Army Act. This would not be a continuing offence and each refusal would constitute a separate offence.

J.A.G. 927 (39)
54-27-34-4 F.D. 4
29-11-42

S. 9—Purported Conscientious Objector— Disobedience by

Where a Mobilization Board pursuant to the National Selective Service Regulations, Order-in-Council P.C. 10924, dated 1 December, 1942, determines that an applicant is not a conscientious objector within the meaning of the Regulations, such applicant, having been called, medically examined and enrolled under the Regulations, is thereupon required to undergo the same training as any other "R" Recruit; and where in the course of such training he disobeys a lawful command of a superior officer, he may be charged and convicted of the offence by court-martial. (See now N.R.M.A. Regs. 1943, Sec. 26, for situation before enrollment.)

J.A.G. 777C (27)
d/22/11/41
C. 55-A-99

SS. 12 (1) (a), 15 (1)—Desertion—Absence— Distinction

The question of whether a soldier should be charged with the offence of desertion under the Army Act: s. 12 (1) (a) or with absence without leave under s. 15 (1), is a matter entirely for the decision of the Commanding Officer concerned. Where consideration discloses that the accused had the intention to desert His Majesty's service but the evidence in support thereof is not particularly strong, the more serious charge may properly be laid. But if his review of evidence convinces the Commanding Officer that there was no intention to desert, the lesser charge may be laid.

54-27-65-1

S. 13—Regular Forces—Active Service Personnel

For the purpose of Sec. 13 of the Army Act, a member of the Canadian Army on Active Service belongs to the regular forces.

J.A.G. 816F (35)
405-A-3515
d/20/7/43

ARMY ACT**SS. 18, 41—Theft—Whether from Person
Subject to Military Law**

Where a soldier is charged with stealing money from a sailor, the charge should be laid under s. 41 of the Army Act or by the civil authorities. Section 18 (4) of the Army Act applies only where property stolen belongs to a person subject to military law.

55-L-237

S. 25—False Documents and Statements

A charge under Sec. 25 of the Army Act must relate to a document which, in respect of the accused, it is his duty to make or complete. The section would not extend to something which, because the accused is a soldier, he has a right to do of his own volition, such, for instance, as an application for dependents' allowance on form M.F.M. 16. A false statement in such a document might be the subject of a charge under Sec. 18 (5) with an alternative under Sec. 40 but not under Sec. 25.

J.A.G. 966A (45)
55-W-336
d/21/5/43

S. 29—False Evidence—Court of Inquiry

While a court of inquiry should be guided by the rules of evidence of the civil courts as far as possible it has to be allowed some latitude in view of the fact that it is formed to collect information, not to try an issue. Hence, strictly inadmissible evidence may sometimes be heard at a court of inquiry. If it does, this fact should be noted by those who have to consider the finding. Evidence at such a Court cannot be used against any officer or soldier, except for wilfully giving false evidence, contrary to S. 29 of the Army Act. However, this rule does not prevent the use of the proceedings of a court of inquiry in cross examination of a witness at a court-martial to test his credibility. He may be asked if at a court of inquiry he made a certain statement different from what he is presently making, and if he denies it the pertinent portion of the proceedings may be proven, not as evidence of guilt or innocence, but for the limited purpose only of its effect upon the credibility of the witness, be he accused or any other witness. Proof will not be made by producing or filing the proceedings, but by

ARMY ACT

calling a witness who can swear as to what happened, using, if he wishes, the record to refresh his memory.

J.A.G. (2)
19 Jan. 41

S. 40—Charge of Negligence Under—Stoppages— Reimbursement to Crown

Order-in-Council P.C. 59/7305 dated September 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay. Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also, in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said P.C. 59/7305. A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 815 (31)
H.Q. 57-7-18-175
2 Mar. 42

J.A.G. 808 (30)
57-7-18-175 (JAG)
10 Feb. 42

J.A.G. 809 (1) (30)
14 Feb. 42

ARMY ACT

S. 40—"Neglect" Not to be Confused with "Negligence" in Law

The word "neglect" in a charge of neglect under section 40 A.A. is not to be confused with, or interpreted like, the expression "minor negligence" as used in Order-in-Council P.C. 59/7305 dated 17 September, 1941, or gross negligence as that expression is found in the law of negligence; and a Commanding Officer trying the matter and applying the definition of neglect as set out in the note to Sec. 40 A.A. (M.M.L. p. 458) must bear in mind the facts of the particular case as they have relevance to the question of "good order and military discipline." The civilian aspects of a problem arising under the said Order-in-Council P.C. 59/7305 or under some other proceeding under Civil Law affecting a soldier bear no relation to determining the culpability of a soldier with respect to a charge of "neglect" under Sec. 40 A.A.; indeed the facts of "minor negligence" as determined by the Judge Advocate General pursuant to Order-in-Council P.C. 59/7305 may constitute "neglect" or "conduct" within Sec. 40 A.A.

J.A.G. 843C (32)
d/21/4/42
H.Q. 57-7-50

S. 41—Assault—Law of England Applies

Where a judge advocate is defining an assault with reference to a charge under S. 41 of the Army Act, he should do so in terms of the law of England, which applies, and not the Criminal Code of Canada, even though the law may appear to be similar.

C. 55-A-179
15 Apr. 43

S. 41—Civil Offence—Applicability to Canada

For a civil offence as referred to in Section 41 A.A. to be tried by an Army Court-Martial in Canada it must be such an offence as was chargeable under the law of England; and the mere fact that it is one punishable under the law of Canada is immaterial. Courts-Martial in the Canadian Army may take judicial notice of the law of England, Canada and any of its Provinces or Territories, and expert evidence need not be called to prove such law. Before applying it, however, the Court must be certain that it clearly understands such law,

ARMY ACT

and in order to do so may consult reliable authority. Unless there is reason for thinking that any statement in the Manual of Military Law as to the law of England is incorrect or has become obsolete, it may be accepted as a final authority in most cases.

J.A.G. 770B (26)

d/20/10/41

N.S. 42-1-1

H.Q. 70-60-3

H.Q. 866-1-191

S. 41—Civil Offence—Bail

Where a soldier charged with a criminal offence is released on bail pending his trial, he should, unless on leave, return forthwith to his Unit. Upon his return to his Unit, the Military Authorities are under no legal obligation to make him available at the date of trial, but they should not do anything which would impede or prevent the soldier's appearance in Court.

Where a soldier's release on bail is requested by the Military Authorities, the granting of such request might give rise to an implied obligation on the part of the Military Authorities to produce the soldier at the court at the appointed time. Such a procedure should, therefore, be avoided wherever possible.

J.A.G. 947 (43)

54-27-63-32

19 Feb. 43

S. 42—Complaint—Officer

Where the case of an officer's retirement, removal, etc., under K.R. (Can.) paras. 267 and 268, is in the course of being decided upon but no action has been taken, his only recourse is the statement which he may make, in accordance with the procedure laid down in K.R. (Can.) App. XII, with respect to his prospective retirement, resignation or removal; it is only after he has been "wronged," that is, after the aforementioned action has been taken, and he has been reverted to Reserve status that he may have recourse to Sec. 42 of the Army Act, and under Sec. 42 he may have his "complaint" forwarded through the proper channels to the Minister who, by virtue of G.O. 93/25 is vested with all the powers, duties and functions which by the Army Act are vested in the Army Council. It is for the Minister to decide whether the complaint is properly "timed."

J.A.G. 906 (39)

338-6-54

6 Nov, 42

ARMY ACT

S. 42—Grievances—Officer—Redress of

An officer who considers himself aggrieved may complain to the Minister of National Defence, pursuant to Sec. 42 of the Army Act, and the Minister is to examine such complaint, and, if so required by the complainant, make a report to the Governor-in-Council. The proper procedure for an officer or soldier who considers himself wronged by a Court-Martial is to present a petition under para. 574 of K.R. (Can.), and it is not proper to complain under Sec. 42 of the Army Act. Complaints as to other matters should be made under this latter section, the proper procedure being set out in C.A.R.O. 2575.

J.A.G. 851 (32)
30 Apr. 42

S. 43—Grievances—Other Ranks—Redress of

Sec. 43 A.A. sets out the procedure by which a soldier may make a complaint and R.P. 126 (A) describes the prescribed officer to whom such complaint may be made. K.R. (Can.) 417 (b) states that a soldier is forbidden to use any other method of obtaining redress for a grievance.

JAG 977 (47)
405-E-2692
2 Jul. 43

S. 44—Escape—Accused Credited with Time Served

Where a man escapes from detention or imprisonment he should be credited with the time he has served before his escape. Note 19 s. 44, the Army Act, shall not be taken as meaning that the whole sentence must be served afresh; because, if that were done, there would be imposed upon the accused a longer period of detention or imprisonment than was awarded by the Court and this would be illegal.

55-K-199
6 Sept. 43

Ss. 44 (4), 57—Discharge with Ignominy—Detention

Where a court sentences a soldier to imprisonment and discharge with ignominy, a sentence which is valid under the

ARMY ACT

Army Act, s. 44 proviso (4), and the Confirming Authority commutes the imprisonment to detention but lets the discharge stand, the resulting sentence is illegal in that the discharge with ignominy cannot accompany detention under s. 44. The original sentence cannot stand because it has been commuted; the new sentence cannot stand because it is illegal; and so the accused, although duly convicted, is not subject to sentence, s. 57 of the Act, Note 6. The Confirming Officer should, in commuting the sentence to detention, have remitted the discharge with ignominy: K.R. (Can.) 563 (k).

C. 55-B-277
24 Sept. 42

Ss. 44, 57, 182, 183—Sentence—Inoperative— Acting Rank

Where the Confirming Authority commutes to one of reduction to the ranks a sentence awarded an acting sergeant, he has produced an inoperative sentence because a Court-Martial does not deal with acting rank: the Army Act s. 44, Note 13, Page 465 M.M.L. Hence there is no sentence remaining but the conviction holds good (S. 57 of the Act, Note 6, P. 486, M.M.L.). If the Commanding Officer thinks the Acting Sergeant could be reverted to his permanent rank of Private, he should do so pursuant to S. 182 of the Act. Note 3, P. 594 of the Manual and S. 183, Note 9, at p. 595 (a).

55-S-576
16 June 1943

S. 44—Field Punishment—Award of—in Canada

Field Punishment may be legally awarded to Army and R.C.A.F. personnel in Canada on Active Service, within the rules set out by M.A.F.L. page 619 and M.M.L. 787, but as a matter of policy both the Army and the R.C.A.F. do not award it in Canada where detention or imprisonment would meet the needs of Justice, and therefore it will be awarded in Canada only in very exceptional cases.

J.A.G. 843D (32)
d/20/4/42

NOTE.—For Relevant Provisions in K.R. (Air) see para. 493, 494. See also M.M.L. pages 463, 466, 787, and M.A.F.L. pages 257, 260, Note 22.

ARMY ACT

S. 46—Investigation by O.C.—Judicial Hearing

Where there is an investigation before the commanding officer under s. 46 of the Army Act and R.P. 2, this is a judicial hearing and not the same as an investigation carried on by civil police after a crime has been committed against civil law. The accused soldier is placed in custody, charged with an offence and paraded before his commanding officer for hearing. The C.O. may dismiss a charge under any section of the Army Act; may adjudicate summarily in the cases set out in K.R. (Can.) 459, and may adjudicate in all cases by direction of superior authority. Even if the commanding officer, contrary to the instructions contained in K.R. (Can.) does adjudicate against an accused on a charge such as theft, the Finding and Sentence, if otherwise legal, can stand.

55-H-264
8 Aug. 42

S. 46—Mitigation or Remission of Sentence—C.O.

The commanding officer has power to remit and mitigate punishment awarded by him but has not the power to commute such punishment. Article 599 K.R. (Can.) gives him power to release a soldier undergoing detention following an award made by him. Note 2 to R.P. 6 (a) states that the C.O. can at any time diminish punishment before its completion and Note 18 to Army Act, Section 46, states that the C.O. can at any time before the punishment has been completed, mitigate or remit a minor or summary punishment. For distinction between commutation, remission and mitigation see Notes to the Army Act, Section 57.

JAG 948A
405-S-6065
d/1/3/43

S. 46 (8)—Reversion—from Acting Rank—by C.O.

K.R. (Can.) 471 and Section 46 (8) of the Army Act and note 15 thereto, and the second paragraph of R.P. 10 provide for the reversion of a N.C.O. from Acting Rank or lance appointment to permanent rank, by order of a C.O.

J.A.G. 977 (47)
405-E-2692
2 July 43

ARMY ACT

S. 47—Summary Trial—Representation of Accused

Where the accused is tried summarily under s. 47 of the Army Act there is no provision in the Act, the Rules of Procedure or K.R. (Can.) whereby the accused may be represented by counsel or by a Defending Officer.

C. 55-C-560
26 July 43

S. 47—Summary Trial—Accused May Call Any Witness

Where the accused is tried summarily under s. 47 of the Army Act, he may call any witnesses he desires in his defence. In stating that accused or his wife may testify for the defence R.P. 9 (b) does not limit the defence witnesses to these two persons.

C. 55-C-560
26 July 43

S. 47 (2)—Summary of Evidence—Admission—Consent

Under Sec. 47 (2) of the Army Act, the Summary of Evidence may not be used at the hearing without obtaining the written consent of the accused to its use as evidence. When the Summary of Evidence is so used without such written consent, the conviction would be quashed, and the accused should not be tried again, because he would be able to raise a plea of *autrefois acquit* as a good defence. See C.A.R.O. 3187, para. 6 (b).

J.A.G. 959B (45)
H.Q. 332-61-174 (JAG)
d/17/5/43

S. 48 (10)—R.C.A.F. Officers—Army Court-Martial

Under Section 48 (10) of the Army Act officers of the R.C.A.F. may sit as a President or Member of an army District Court-Martial, provided, however, that in the opinion of the Convening Officer the necessary number of military officers is not available to form such Court, such opinion to be expressed in the Convening Order, and subject to the direction of the Minister of National Defence and the consent of the proper Air Force Authority.

H.Q.C. 55-S-333
22 Aug. 42

ARMY ACT

SS. 48 (a), 53 (2)—President of Court-Martial— Procedure

The President of the Court is appointed by the Convening Officer. Where, after the commencement of the trial, the President dies or is unable to attend, the senior member present should take the chair and an adjournment should be had for report to the Convening Officer. The latter may then appoint a new President and he may appoint the senior member of the Court, if he be of sufficient rank and the Court is not reduced below the legal minimum. Unless a President is appointed, the trial shall not proceed. Failure to follow these provisions of the Army Ss. 48 (a) and 53 (2), K.R. (Can.) 554 and R.P. 65 (B) and 66, may invalidate proceedings.

55-W-279
24 Sept. 42

S. 54—Finding—Revised—Effect on Sentence

Where the Court finds the accused Guilty of Desertion and awards sentence of detention and stoppages of pay, where the Confirming Authority sends the Finding back for revision, and where the Court makes a new Finding of Guilty of absence without leave and then awards a new sentence of detention, the stoppages formerly awarded are cancelled as all of the former sentence lapsed with the revoking of the Finding on revision: Army Act, s. 54, Note 3 and M.M.L. Chapter 6, Section 94.

C. 55-G-394
19 May 43

S. 57 (2)—Power of Remission—"Inferior Authority"

The proviso in S. 57 (2) of the Army Act, to the effect that the power of remission shall not be exercised by an officer holding a command "inferior" to that of the authority confirming the sentence, is only applicable where two commands form part of another or where two commands are so interlocked that comparison between them is possible. It has no application where the situation relates to independent commands such as that of a D.O.C. and that of a Division.

C. 55-D-299
5 May 43

ARMY ACT

S. 100—Attestation—Defects

The fact that a soldier writes his surname before his Christian name does not make his signature any the less binding on him. The real test is whether he means to affix his signature as witness of his assent or agreement. The subsequent striking out of his signature by another person, without the consent of the soldier, has no effect. In any event, this irregularity, as well as that of the soldier in signing only one M.F.M. 2, instead of in triplicate, is curable by s. 100 of the Army Act. As for the status of the officer before whom the soldier takes the oath, K.R. (Can.) Para. 280, requires only that the officer should have taken the oath himself. Paragraph 295, in providing that the officer shall be not below the rank of captain, in the case of the permanent force, is probably directory only and, in any case, is not applicable to the non-permanent active militia.

405-D-6581
8 May 43

S. 125—Civilian Witness—Compelling Attendance of

There is no authority under which the attendance of civilian witnesses at summary trials by Commanding Officers can be compelled and the effect of R.P. 4 (H) is to require attendance only in the taking of a Summary of Evidence. Where a C.O. believes that the evidence of a civilian witness who is unwilling to attend is necessary he should remand the accused for the taking of a Summary of Evidence in which case the attendance of such a civilian witness would be compellable.

J.A.G. 852C (33)
d/8/5/42
H.Q.C. 55-1-41

NOTE.—For the form of the summons see Page 761 M.M.L.

S. 128—Rules of Evidence—Courts-Martial— Army—Air

The rules of evidence followed by the English civil courts prevail before Army Courts-Martial; Militia Act, Section 69 and Army Act, Section 128. But, by virtue of K.R. (Air) 1943, paragraph 1322, item 5 and Appendix 1A, item 21, the law of evidence before R.C.A.F. Courts-Martial is that of the civil courts of Canada, i.e. the Evidence Acts of Canada and

ARMY ACT

the Provinces. Hence the privileges and obligations of witnesses will be determined by the code under which the trial is being conducted.

J.A.G. 667A (19)
12/3/41
J.A.G. (DOR 12)
J.A.G. (1)
23/7/40

S. 138—Penal Deductions—Forfeiture of Pay

The distinction between stoppages for the cost of hospitalization and of the pay received in hospital lies in the way in which they are imposed. Stoppages in respect of hospitalization costs are penal deductions, which "may" be imposed by the court-martial which finds that the hospitalization was caused by an offence under the Army Act: s. 138 (3) of that Act. Stoppages as to pay (i.e. hospital stoppages), although mentioned in s. 138 (1) of the Army Act, are dealt with under F.R. & I. under the Militia Act, with which, in this respect, the Army Act is inconsistent. F.R. & I. 149 (1) (d) makes the stoppages of pay for the days spent in hospital a forfeiture which is mandatory once the medical officer certifies that the time spent in hospital was caused by the patient's having committed an offence against military law. Costs of hospitalization shall be included in the particulars of the charge in all cases where it is intended to put the accused under stoppages for same, if the costs arise from the commission of an offence under the Army Act.

C. 55-K-136
16 Jan. 42

S. 138—Penal Deduction—to Reimburse Crown— Civilian Claims

Order-in-Council P.C. 59/7305 dated September 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay.

Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary

ARMY ACT

action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under said P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also, in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said P.C. 59/7305.

A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 815 (31)
d/2/3/42
H.Q. 57-7-18-175

S. 139—Penal Deductions

C.A.R.O. 1820 has reference specifically to K.R. (Can.) paras. 539A and 914 relating to damage occasioned by a member of the forces to public property and limits the deductions which may be made to 90 days' pay but this Routine Order is applicable as well to Sec. 139 of the Army Act and applies to all loss occasioned to the Crown by reason of injury to a soldier, etc., caused through the fault, negligence, etc., of a member of the Army.

J.A.G. 986 (47)
d/24/7/43

S. 144—Civil Process—Soldiers—Exemption from

While there is no restriction on the issue of a civil process against a soldier of the Canadian Army, the limitation imposed by Section 144 of the Army Act precludes a soldier of the Regular Forces from being compelled to appear in person (other than as a civilian) before any court of law except in respect of the matters contained in the said section; and the expression "Regular Forces" as defined in Section 190 (8) of

ARMY ACT

the Army Act, as amended, is applicable to the active units, formations, detachments and personnel of the Canadian Army.

J.A.G. (3)
d/21/7/41

S. 144—Civil Process—Soldiers—Exemption from

The effect of military service on the civil status of the soldier is to superimpose the military liability on a continuing civil status with the result that he remains subject to the criminal law of the land as well as to civil process of the courts, save that he cannot be compelled to appear in any action as a party for debt, damages, or sum of money under 30 pounds as set out in Sec. 144 Army Act. These restrictions are imposed in order that the Crown should not lose the soldier's services but recourse may be had to his personal property for civil debts.

J.A.G. (5)
d/2/1/40

S. 158 (1)—“R” Recruits on Leave—Trial for Offence

When an “R” Recruit commits an offence while attached to a Training Centre he may be tried by Court-Martial for such offence even when, under orders of a proper Board, he has gone on leave of absence, or his period of training is postponed by the proper Board, providing however the Trial is held within the time limit prescribed by Section 158 (1) A.A.

J.A.G. 777BB (27)
d/22/11/41

Ss. 158 (2) 57 (2)—Sentence—Service of, After Discharge—Liability of Soldier

Where the period of detention of a convicted soldier has not been completed at the time of his discharge or dismissal from the Army, he is liable to serve the whole period. (See Army Act s. 158 (2)). But the proper authority may order remission of sentence under s. 57 (2) of the Act and in accordance with 597 K.R. (Can.)

C. 55-B-589
25 Jan. 42

ARMY ACT

S. 158 (2)—Sentence—Service of, After Discharge— Liability of Soldier

When a person subject to military law is sentenced by Court-Martial to penal servitude, imprisonment or detention, the Army Act, Section 158 (2) will apply to him notwithstanding that he is discharged and he may be kept, removed, imprisoned, made to undergo detention and punished accordingly as if he continued to be subject to military law. So also may a soldier discharged by reason of being unable to meet physical standards (e.g. a soldier placed in Category "E" by a Medical Board) be required to serve the balance of a sentence of detention notwithstanding such discharge.

JAG 936 (41)
54-27-106-47
54-27-3-34 Vol. 6
d/21/12/42

See also P.C. 60/6567, d/18/8/43.

S. 163—Documents—Admissible—by Statute or Order—by Ordinary Rules

A distinction must be drawn between (1) documents which are admissible, upon production, as proof of the facts therein stated, pursuant to the Army Act, s. 163 or to an Order-in-Council under the War Measures Act and (2) documents admissible only when proven by a witness in the ordinary way, e.g., a Nominal Roll, a Roll Book or an inventory.

55-S-118
55-R-165

S. 163 (1) (H)—Part I and Part II Orders— Admissibility of

Part I and Part II Orders, being part of the Regimental Books, are admissible as evidence of the facts therein stated: Army Act, S. 163 (1) (H) C.A.R.O. 1429. They should be put in through copies certified by the officer having charge of the books of the Unit, who should offer his true signature, not a mimeographed one.

55-M-509
55-H-234

ARMY ACT

S. 163—Court of Inquiry—Declaration— When Admissible

Where the Declaration of a Court of inquiry is duly entered in a Regimental Book by the Commanding Officer under K.R. (Can.) Para. 1513 and where an exact reproduction thereof is duly certified by the O.C. or Adjutant, as the officer having custody of the Regimental Books, such certified copy of the Declaration is admissible as evidence of the facts therein stated under the Army Act, s. 163 (1) (H). It is not fatal to admissibility that in the original declaration and hence in the true copy thereof, there is a slight variation from the wording prescribed in R.P. 125, Note 3.

55-B-314

S. 163—Documents Admissible Under—Originals

Where an original document is available it must be produced. This is especially true of Certificates of Surrender or Apprehension of a deserter or absentee, under the Army Act, s. 163 (j) (k) (l) (m) and the Air Force Act, s. 163, which are admissible only in their original form. The same is true of other documentary evidence, such as statements of account, canteen and mess ledgers, etc., except in the circumstances mentioned in para. 35, Chap. VI, Manual of Military Law.

J.A.G. (DOR 130)

S. 163 (1) (a)—M.F.M. 2—Evidence of Specified Facts

Where the M.F.M. 2 of the accused is tendered in evidence by the Prosecution it is admissible under the Army Act, Section 163 (1) (a) for two purposes only: (1) that the soldier gave the answers to the questions which he is therein represented as having given. (2) To prove the enlistment of the soldier. However, the M.F.M. 2, even having been admitted as aforesaid, should not be used to show the previous record of the accused, including previous convictions, as this evidence should not be before the Court until after conviction and before sentence.

55-M-642
20 Nov. 42

S. 183 (2) (c)—N.C.O.—Reduction to the Ranks—Power of D.O.C.

By virtue of G.O. 152 of 1942 a District Officer Commanding is empowered to reduce a non-commissioned officer not

ARMY ACT

above the rank of Sergeant, pursuant to Section 183 (2) (c) of the Army Act. K.R. (Can.) 329 (c) sets out the requirements to be complied with for reduction to the ranks.

J.A.G. 977 (47)
405-E-2692
2 July 43

S. 189—"Active Service"—Definition of— Militia Act

By virtue of Section 69 of the Militia Act, the Army Act is made applicable to the Canadian Militia only in so far as it is not inconsistent with the Militia Act. Section 2 (g) of the Militia Act defines "on active service" as applied to persons subject to Military service. The said definition is wider in scope than that contained in Section 189 of the Army Act and therefore governs. As members of the Active Army come within the terms of this definition in Section 2 (g) of the Militia Act, they are to be considered as "on active service" for all purposes under the Army Act, Rules of Procedure and also K.R. (Can.).

Section 2 (g) of the Militia Act defines "on active service" as applied to a person subject to Military Service as meaning 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.

J.A.G. (1)
d/24/10/40

ARREST

Of Regular Forces—by Civil Process

While there is no restriction on the issue of a civil process against a soldier of the Canadian Army, the limitation imposed by Section 144 of the Army Act precludes a soldier of the Regular Forces from being compelled to appear in person (other than as a civilian) before any court of law except in respect of the matters therein contained in the said section, and the expression "Regular Forces" as defined in Section 190 (8) of the Army Act, as amended, is applicable to the active units, formations, detachments and personnel of the Canadian Army.

J.A.G. (3)
d/21/7/41

Of Civilians—by Provost

A member of the Provost Corps is not a peace officer under the definition set forth in the Criminal Code, hence his powers to arrest are only the same as those of a civilian who is not a peace officer. But by Order-in-Council P.C. 4179, dated 25th May, 1943, the power of arrest by a member of the Provost Corps is extended to include arrest of any person acting in a suspicious manner and action akin thereto, in any area designated by the Minister of National Defence.

J.A.G. 878 (36)
54-27-97-1
d/29/8/42

Foreign Forces—Power Over

By the Visiting Forces Act, 1932-33 Statutes of Canada, c. 21, Sec. 3 (5), while the Minister of National Defence may be requested to exercise powers of arrest over members of visiting foreign forces, unless such request is made by the proper authorities, the military police of the Canadian Services have no power to make such arrests.

J.A.G. 772 (26)
d/23/10/41

ATTACHMENT

Where R.C.A.F. Attached to R.A.F.—Discharge

Where a member of the R.C.A.F. attached to the R.A.F. is sentenced to be discharged with ignominy by an R.A.F. Court-Martial, the actual administrative act of discharge should be carried out by the R.C.A.F. authorities. Before such action can be taken however, it would be necessary for the appropriate R.A.F. authorities to terminate his attachment to the R.A.F.

J.A.G. 844A (32)
d/21/4/42
H.Q. 866-1-51 Vol. 4

ATTESTATION

False Answers—on Trial for

While Sec. 33 A.A. uses the word "Justice" the word may be interpreted to include an officer authorized to carry out attestation pursuant to K.R. (Can.) 280 and 302 (a) (iv).

Although false answers are made on attestation, a person once attested becomes subject to the Army Act and may be tried for such false answers either by a Court-Martial or a Court of Summary Jurisdiction.

J.A.G. 774A (27)
d/5/11/41

NOTE.—See M.M.L., A.A., Sec. 99 note 4; Sec. 33 Note 3; Sec. 163 (1) (a) Note 3.

In R.C.A.F.—Outside of Canada

An officer of the R.C.A.F. with the rank of F/L or higher has power to administer oaths for purposes of attestation and other service requirements outside of Canada, and such oath will be held binding upon the person so swearing as if the said oath had been administered for such purposes in Canada.

For powers of R.C.A.F. officers to administer oath for service purposes see Order-in-Council P.C. 9161 dated October 9th, 1942.

J.A.G. 824 (31)
d/16/3/42

Oath on—Administration of

An officer not below the rank of captain may attest a man on enlistment in the Permanent Force, Para. 295 K.R. (Can.), but in the matter of enlistment in the "Active" units etc. of the Army no such limitation is placed on the person to take the oath. Para. 302 (iv) K.R. (Can.) merely provides that the declaration and oath of allegiance may be taken by an officer on the Active List who is qualified in accordance with Para. 280 of K.R. (Can.), and this latter paragraph makes no restriction as to the rank of the officer who may act thereunder.

C. 6075 Vol. 5
25 May 42

AUXILIARY SERVICES

Tobacco Tax—Liability to Province

Unless special provision is made by statute or by administrative exemption, Auxiliary Services are liable for payment of the Quebec Provincial Tax, with respect to cigarettes and tobacco.

J.A.G. 773 (26)
d/24/10/41
H.Q. 54-27-66-5 Vol. 1
and 2

BAIL

Criminal Charge—Soldier—Release on

Where a soldier charged with a criminal offence is released on bail pending his trial, he should, unless on leave, return forthwith to his Unit. Upon his return to his Unit, the Military Authorities are under no legal obligation to make him available at the date of trial, but they should not do anything which would impede or prevent the soldier's appearance in court.

Where a soldier's release on bail is requested by the Military Authorities, the granting of such request might give rise to an implied obligation on the part of the Military Authorities to produce the soldier at the court at the appointed time. Such a procedure should, therefore, be avoided whenever possible.

J.A.G. 947 (43)
54-27-63-32
19 Feb. 43

"BOY"

Enlisting as "Man"—Reverting

Where a "boy" enlists as a "man" he cannot be permitted to revert to the rank of "boy" on his own request and to serve thereafter as a "boy," but he may be discharged and re-enlisted as a "boy" subject to the provisions of K.R. (Can.) 296.

J.A.G. 795 (28)

d/18/12/41

H.Q. 54-27-12-2

NOTE.—For enlistment of a "boy" see K.R. (Can.) 304.

CANADA EVIDENCE ACT

Courts-Martial—When Invoked in

The rules of evidence followed by the English civil courts prevail before Army Courts-Martial; Militia Act, Section 69 and Army Act, Section 128. But, by virtue of K.R. (Air) 1943, paragraph 1322, item 5 and Appendix 1A, item 21, the law of evidence before R.C.A.F. Courts-Martial is that of the civil courts of Canada, i.e. the Evidence Acts of Canada and the Provinces. Hence the privileges and obligations of witnesses will be determined by the code under which the trial is being conducted.

J.A.G. 667A (19)
12/3/41
J.A.G. (DOR 12)
J.A.G. (1)
23/7/40

CANADA TEMPERANCE ACT

Canteens—Application to

Inasmuch as the Crown is not mentioned in the Canada Temperance Act, a Dominion Statute, the provisions of that statute would not apply to the carrying on of the Crown's services in a Canada Temperance Act area; the operation of Military and Air Force Messes and Canteens is comprised in such services.

J.A.G. 586 (15)
H. 2-129-1-3 Vol. 3
d/24/11/40

CANADIAN AIR PUBLICATIONS

Charges—Based on

When Command Instructions are incorporated in Standing Orders or other Orders, a charge for the breach of any paragraph thereof may be laid under A.F.A., Section 11 as a breach of Station Standing Orders or other Orders; if not so incorporated, the charge may still be laid under A.F.A. Section 11 for breach of Command Instructions, provided the instruction in question can be considered "general, local or other order": otherwise it should be laid under A.F.A. Section 40. If a charge be laid for the breach of any regulation, instruction or order which has been recopied into C.A.P. 303, then, at the trial, if it has been shown that C.A.P. 303 containing the paragraph of the regulation, etc. in question, has been adequately brought to the attention of the accused, this should constitute sufficient notice to him of the regulation, etc. upon which the charge is based. A charge under the A.F.A. should not be based on C.A.P. 303 but rather on the relevant regulation or instructions.

JAG 978 (47)
d/8/7/43

CANADIAN ARMY ROUTINE ORDERS

441—Minor—Enlistment—Discharge

Where a soldier under eighteen years of age incorrectly states his age upon attestation, he cannot afterwards seek a discharge, since he is precluded by virtue of C.A.R.O. 441 from having his age for military purpose changed on his documents; but his parents or guardian may apply for such a discharge upon presenting proper proof of age, since an enlistment under the age of eighteen is not a valid enlistment, as to age, as required by the Militia Act, R.S.C. 1927, C. 132, S. 8.

J.A.G. 806D (29)
d/27/1/42
H.Q. 54-27-12-2 Vol. 2

1029 (3)—Minor—Improper Attestation—Discharge

Where a soldier under eighteen years of age at the time of attestation, correctly states his age to be seventeen, such soldier should never have been attested and, his attestation having been brought about by the fault of the Military Authorities, his discharge should be forthwith carried out under the provisions of C.A.R.O. 1029 (3), without recourse to disciplinary action.

J.A.G. 806D (29)
d/27/1/42
H.Q. 54-27-12-2 Vol. 2
(JAG)

1099, 3464—Cost of Apprehension—Proof of

It is improper to proceed for recovery of costs of apprehension by setting forth the same in a cash debit voucher. The proper method is to prove the costs of transportation by M.F.B. 1481 and of meals and other proper incidentals by M.F.B. 1482, pursuant to R.O. 1099 and 3464.

55-H-202

1099, 3464—Cost of Apprehension—Other than Military Authorities

There is no provision in R.O. 1099 or 3464 for admitting a statement of expense by a local police chief or a letter from the R.C.M.P., setting out the expense incurred by the latter.

55-L-316
55-A-122

CANADIAN ARMY ROUTINE ORDERS

1099, 3464—Apprehension—Certificates as to Cost—Copies

R.O. 1099 makes admissible, as evidence of the facts therein stated: (1) the certificate of the officer who issued or authorized the transportation; and (2) the certificate of the escort commander as to incidental expenses; but neither this order nor R.O. 3464 permits certified copies of such certificates to be admitted in evidence. The original forms M.F.B. 1481 and 1482 must be submitted to the Court. Nor is there any provision for proof of these costs by way of telegram.

55-J-118
55-S-311

1429—Admissibility of Part I and Part II Orders

Part I and Part II Orders, being part of the Regimental Books, are admissible as evidence of the facts therein stated: Army Act, s. 163 (1) (H); C.A.R.O. 1429. They should be put in through copies certified by the officer having charge of the books of the Unit, who should offer his true signature, not a mimeographed one.

55-M-509
55-H-234

1820—Loss Occasioned to the Crown

C.A.R.O. 1820 has reference specifically to K.R. (Can.) paras. 539A and 914, relating to damage occasioned by a member of the forces to public property and limits the deductions which may be made to 90 days' pay, but this Routine Order is applicable as well to Sec. 138 of the Army Act and applies to all loss occasioned to the Crown by reason of injury to a soldier, etc., caused through the fault, negligence, etc., of a member of the Army.

J.A.G. 986 (47)
d/24/7/43

2972—Necessaries—Public Property

The effect of Article 173 (1) F.R. & I. and C.A.R.O. 2972 is that necessaries are in exactly the same class as public clothing and equipment, and are the property of the Crown at all times, and are maintained at public expense. It follows,

CANADIAN ARMY ROUTINE ORDERS

therefore, that on a charge of fraudulent enlistment, a soldier should not be charged with obtaining a free kit of necessaries any more than he should be charged with obtaining a free kit of public clothing and equipment.

J.A.G. 967 (C)

54-27-63-26

d/7/6/43

3464—Deficiencies—Depreciated Rate

A Special Finding may be made where the cost of apprehension is not proven to the satisfaction of the Court or where the particulars of the charge fail to set out the depreciated values of the articles in accordance with R.O. 3464 (4). Of course, even on a straight Finding of Guilty of Desertion or Absence Without Leave, the Court may exercise a discretion in its sentence so as to award all, part, or none of the costs set out in the Charge. This is the only way of rectifying an overcharge of costs in a charge to which there is a plea of "Guilty," since, on a plea of "Guilty" no Special Finding may be made.

55-N-1602

55-H-281

55-L-285

55-V-51

3464—Part II Orders—*Prima Facie* Evidence

Where it is necessary for the Prosecution to submit proof of absence, it is preferable that MFB 375 be produced rather than to substitute certified copies of Part II Orders—even though the latter are *prima facie* evidence under Routine Order No. 3464.

55-S-452

13 Nov. 42

CANADIAN NAVAL REGULATIONS (1942)

Art. 144—White Race—One-twelfth Indian Blood— Effect of

An applicant for enlistment who exhibits all the characteristics of the white race and none of the Indian Race, although the father was one-sixth Indian, and the mother is white, is properly regarded as "of the white race" and therefore eligible to serve in the Royal Canadian Navy pursuant to the provisions of C.N.R. 1942 Art. 144.

J.A.G. 832 (32)
d/7/4/42
N.S. 113/G-994

Art. 377—Crown—Liability of—Personal Car— Public Business

As between the Crown and Naval Personnel using their own cars on public business with permission, the Crown does not assume any liability for damage to any person or property, which damage occurs at the time of such travel as set out in the provisions of C.N.R. (1942) 377-2 (7) (f); and where the Crown is made liable to a third party for any damage caused under such conditions, it would appear that as between itself and members of the Naval Service, recoupment may be sought by the Crown for liabilities so incurred.

J.A.G. 807EE (30)
d/10/2/42

NOTE.—See the amendment to the Exchequer Court Act, 1943, Statutes of Canada, C. 25 S. 1.

CANTEENS

Canada Temperance Act—Effect on

Inasmuch as the Crown is not mentioned in the Canada Temperance Act, a Dominion Statute, the provisions of that statute would not apply to the carrying on of the Crown's services in a Canada Temperance Act area; the operation of Military and Air Force Messes and Canteens is comprised in such services.

J.A.G. 586 (15)
H. 2-129-1-3 Vol. 3
d/24/11/40

Alcoholic Beverages—Sale in

A Province has no legal right to interfere with the carrying on of the services of His Majesty in the right of the Dominion of Canada and if the Crown, in the interest of discipline and welfare of the troops, considers it desirable that alcoholic beverages be sold in messes, Institutes, etc., then it is free to authorize such sale.

J.A.G. 59 (2)
d/4/10/39

CIVIL COURTS

Witnesses for Soldier in—Attendance

The question as to a soldier's procuring the attendance of defence witnesses whether service personnel or civilians, is purely a matter between the soldier and the civil authorities. The soldier should request the Court concerned to subpoena the witnesses he desires for his defence. Whether any service personnel so summoned to appear as defence witnesses should be given leave to attend the trial would appear to be a matter for determination of the Commanding Officer, but such leave ought not to be refused unless necessary for the efficient prosecution of the war.

J.A.G. 680 (19)
405-O-650
23 Mar. 41

Prisoners of War—Trial in

Prisoners of War may be tried in the Civil Courts for committing civil offences such as breaking, entering, theft, etc., provided the provisions of the International Convention relative to the treatment of Prisoners of War, signed at Geneva, 27th July, 1929, are strictly complied with. Articles 60 to 67 of the Convention set out the pertinent points to be observed and the procedure to be followed.

J.A.G. 991 (47)
7236-IN. 12639
d/29/7/43

Soldiers Attending—Witness Fees

Where a soldier is subpoenaed as a witness by civil process, permission to attend should, if the exigencies of the military situation so allow, be granted by his Commanding Officer, and when granted is tantamount to a grant of "absence with leave." The mere fact that the soldier in question is not performing military services during the period of such absence with leave is no reason for his pay and allowances being stopped.

J.A.G. 884 (37)
405-D-7711
d/15/9/42

CIVIL DEBT

Judgment—Against Soldier for

A judgment for civil debt obtained against a soldier in any province is enforceable in another province; but action to execute such judgment by way of stoppages of pay cannot be taken.

J.A.G. (DOR 187)

Liability—of Soldier Under Civil Process for

The effect of military service on the civil status of the soldier is to superimpose the military liability on a continuing civil status, with the result that he remains subject to the criminal law of the land as well as to civil process of the courts, save that he cannot be compelled to appear in any action as a party for debt, damages or sum of money under 30 pounds as set out in Sec. 144, Army Act. These restrictions are imposed in order that the Crown should not lose the soldier's services, but recourse may be had to his personal property for civil debts.

J.A.G. (5)
d/2/1/40

Stoppages—None for

There is no law or regulation which authorizes a stoppage being made from the pay of an officer or soldier for the purpose of being applied towards the payment of any private indebtedness which such officer or soldier may have incurred.

J.A.G. 14 (1)
d/22/9/39

Service Pay—Garnishee for

Salary, pay, and allowance, or other emoluments issuable by the Crown to its servants are not subject to attachment for the purpose of liquidating a private debt.

J.A.G. (4)
d/2/12/39

CIVIL GAOLS

Deserters and Absentees—Held in

A soldier apprehended by the military authorities on a charge of desertion or absence without leave would normally be wholly in military custody, but where there is a lack of accommodation the soldier may temporarily be kept in a civil lock-up providing the order to do so is signed by the Commanding Officer of the soldier as required by K.R. (Can.) para. 451 (f).

J.A.G. 856 (33)

d/23/5/42

H.Q.S. 6265-5 F.D. 2

CIVIL OFFENCES

Prisoners of War—Tried for

Prisoners of War may be tried in the Civil Courts for committing civil offences such as breaking, entering, theft, etc., provided the provisions of the International Convention relative to the treatment of Prisoners of War, signed at Geneva, 27th July, 1929, are strictly complied with. Articles 60 to 67 of the Convention set out the pertinent points to be observed and the procedure to be followed.

J.A.G. 991 (47)
7236 IN. 12639
d/29/7/43

Army Act—S. 41—Under

For a civil offence as referred to in Section 41 A.A. to be tried by an Army Court-Martial in Canada it must be such an offence as was chargeable under the law of England; and the mere fact that it is one punishable under the law of Canada is immaterial. Courts-Martial in the Canadian Army may take judicial notice of the law of England, Canada and any of its Provinces or Territories, and expert evidence need not be called to prove such law. Before applying it, however, the court must be certain that it clearly understands such law, and in order to do so may consult reliable authority. Unless there is reason for thinking that any statement in the Manual of Military Law as to the law of England is incorrect or has become obsolete, it may be accepted as a final authority in most cases.

J.A.G. 770B (26)
d/20/10/41
N.S. 42-1-1
H.Q. 70-60-3
H.Q. 866-1-191

CIVIL POWER

Aid to—Employment of Troops

The employment of Troops under Regulation 51A of Defence of Canada Regulations is not in aid of Civil Power, but a "Military Purpose" within the meaning of Section 63 Militia Act (R.S.C. 1927 C. 132).

J.A.G. 775C (27)
d/6/11/41
S. 5603, Vol. 5

Assistance by the Militia to—Cost

The Crown in the right of the Dominion has no valid claim against a Province for the costs of assistance by the Militia to the Civil power unless the Province concerned empowered the Attorney-General to bind the Province in the matter of paying said costs. Ref. A.G. Canada vs. A.G. N.S. (1930) 4 D.L.R. 82.

J.A.G. 843 (32)
J-17/Apr.-42
H.Q. 383-63-1

CIVIL PROCESS

Regular Forces—Arrest Under

While there is no restriction on the issue of a civil process against a soldier of the Canadian Army, the limitation imposed by Sec. 144 of the Army Act precludes a soldier of the Regular Forces from being compelled to appear in person (other than as a civilian) before any court of law except in respect of the matters contained in the said section, and the expression "Regular Forces" as defined in Sec. 190 (8) of the Army Act, as amended, is applicable to the active units, formations, detachments and personnel of the Canadian Army.

J.A.G. (3)
d/21/7/41

CIVILIAN AUTHORITY

Military Authority—Distinction

Where a soldier charged with a criminal offence is released on bail pending his trial, he should, unless on leave, return forthwith to his Unit. Upon his return to his Unit, the Military authorities are under no legal obligation to make him available at the date of trial, but they should not do anything which would impede or prevent the soldier's appearance in court.

Where a soldier's release on bail is requested by the Military authorities, the granting of such request might give rise to an implied obligation on the part of the Military Authorities to produce the soldier at the court at the appointed time. Such a procedure should, therefore, be avoided wherever possible.

J.A.G. 947 (43)
54-27-63-32
19 Feb. 43

CIVILIAN CLAIMS

Reimbursement of Crown for Payment of— Stoppages

Order-in-Council P.C. 59/7305 dated Sept. 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees upon demand to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay.

Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under said P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also, in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said P.C. 59/7305.

A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 808 (30)
d/10/2/42
57-7-18-175 (JAG)

Rifle Range—for Use of

Where damage or injury results from the use of a rifle range, the Militia Act does not require that the injured party establish neglect on the part of the Crown's servants in the performance of their duty or employment as is required in the normal class of case. On the contrary, such neglect is not a factor and under the Act, the Crown is required to pay compensation unless the claim is barred by the provisions of sec. 54 (2) of the Militia Act.

J.A.G. 905A (39)
18-1-50
d/5/11/42

CIVILIANS

Air Force Law—Civil Servants

Persons employed by the Department of National Defence for Air and who perform their duties with the R.C.A.F. are Civil Servants and do not come within the provisions of Section 6 of the R.C.A.F. Act for purposes of discipline. Such persons are governed by the Civil Service Act (R.S.C. 1927 c. 22) and are subject to the penalties prescribed therein.

J.A.G. 727A
d/4 June, 41

Army and Air Force Acts—Application to

Under Section 69 of the Militia Act, the Army Act in so far as it is not inconsistent with the Militia Act or the regulations made thereunder, is to have force and effect as if it has been enacted by the Parliament of Canada for the government of the Militia. It is, therefore, quite clear that the provisions of the Army Act do not apply to civilians. On the other hand, Section 11 of the R.C.A.F. Act states that the provisions of the Air Force Act, not inconsistent with the R.C.A.F. Act or any regulation, shall have force and effect as if the said provisions formed part of the R.C.A.F. Act. It therefore follows that any such provisions of the Air Force Act as are not inconsistent with The R.C.A.F. Act may be invoked to regulate the conduct of civilians.

J.A.G. 861 (A1) (34)
1011-1-52
d/5/6/42

Provost—Authority Over

Under Section 154 of the Army Act the power to apprehend persons suspected as being deserters or absentees without leave is premised upon reasonable suspicion that the person concerned is a deserter or absentee without leave from the Army. If a particular person whom a member of the Provost Corps suspects is a deserter or absentee is interrogated and claims that he is not the person to whom such suspicion should be directed, then, if such member of the Provost Corps still has reason to suspect that the person is the man being sought, it would be proper for the Provost Corps member to ask the suspected person to produce his Registration Certificate or furnish some other means of identification.

J.A.G. 967 (C) 46
54-27-106-49
d/1/6/43

CIVILIANS

Provost—Power to Arrest

A member of the Provost Corps is not a peace officer under the definitions set forth in the Criminal Code, hence his powers to arrest are only the same as that of a civilian who is not a peace officer. But by Order-in-Council P.C. 4179, dated 25th May, 1943, the power of arrest by a member of the Provost Corps is extended to include arrest of any person acting in a suspicious manner and action akin thereto, in any area designated by the Minister of National Defence.

J.A.G. 878 (36)
54-27-97-1
d/29/8/42

Flying Instructors—Courts-Martial

Since instructors of Elementary Flying Training Schools are civilians they cannot, except through due process of law, exercised through civilian tribunals, be subject to penalties to which, if they were under Air Force law, they could be subjected through trial by Court-Martial.

J.A.G. 775 (27)
d/5/11/41
1700-4695

CLAIMS

Canadian Nationals—Travelling from U.S. to Enlist—Expenses—Illness

Where a Canadian has been called up to serve in the United States forces and has elected to serve in the Canadian Forces and where such person, while voluntarily en route to a Canadian enlistment centre suffers illness or injury, the Crown could not be held liable for any claim against it arising out of such illness or injury (as for example, medical attention) since such claimant is not yet a member of the Canadian Forces and the mere payment of his travelling expenses by the Crown would not alter that relationship.

J.A.G. 855B (33)

d/22/5/43

H.Q. 1064-36-7 F.D. 38

CLOTHING ALLOWANCE

On Discharge—Length of Service—Deserter

Where a soldier is an absentee or a deserter, whether convicted or not of the offence of absence without leave or desertion, he must be considered as being in the service of the military forces of Canada during such periods of absence, even if the soldier has been struck off strength as a deserter, and the period of absence must not be subtracted from, but must be included in, the period of continuous service (six months) referred to in Article 187, F.R. & I. for the purpose of determining entitlement to clothing allowance on discharge.

J.A.G. 877 (35)
405-P-4481
d/28/8/42

COMMANDING OFFICER

Civilian Witnesses—to Compel Attendance—Power

There is no authority under which the attendance of civilian witnesses at summary trials by Commanding Officers can be compelled and the effect of R.P. 4 (H) is to require attendance only in the taking of a summary of Evidence; where a C.O. believes that the evidence of a civilian witness who is unwilling to attend is necessary he should remand the accused for the taking of a Summary of Evidence in which case the attendance of such a civilian witness would be compellable.

J.A.G. 852C (33)
d/8/5/42
H.Q.C. 55-1-41

NOTE.—For the form of summons see Page 761 M.M.L.

Where C.O. a Witness

A Commanding Officer is, under R.P. 19 (B) (ii), disqualified for serving on a Court-Martial if he is the prosecutor or a witness for the prosecution but being a witness does not preclude him from dealing summarily with the charge. This is a matter which should be left to his discretion and if he feels, by reason of the fact that he has been a witness to the matter under investigation, that he is unable to exercise impartial judgment, he should remand the accused for disposition by a superior authority.

J.A.G. 957A (45)
1600-34-1501
d/10 May 1943

Power of—to Remit—Mitigate—Commute

The Commanding Officer has power to remit and mitigate punishment awarded by him but has not the power to commute such punishment. Article 599 K.R. (Can.) gives him power to release a soldier undergoing detention following an award made by him. Note 2 to R.P. 6 (a) states that the C.O. can at any time diminish punishment before its completion and Note 18 to Army Act, Section 46, states that the C.O. can at any time before the punishment has been completed, mitigate or remit a minor or summary punishment. For the distinction between commutation, remission and mitigation see notes to the Army Act, Section 57.

J.A.G. 948A
405-S-6065
d/1/3/43

COMMISSIONS

Holding of—During Pleasure

While other ranks engage to serve for a specific period or during the present emergency for the duration of the war and the period of demobilization thereafter—during which time they cannot otherwise than in exceptional cases claim their discharge—it is a well-established principle of law that officers hold their commissions during H.M. pleasure.

J.A.G. 859 (33)
26 May 42

Army—Corps Relation

An officer of the Canadian Army holds a Commission in the Active Militia and not one in the Corps in which he may for the time being be serving in consequence of being appointed thereto; and he may be transferred from one Corps to another without obtaining his consent, but no such transfer could be made with a reduction in rank unless he consented to revert to a lower rank.

J.A.G. 848 (32)
30 Apr. 42
H.Q. 74-74-25

Effective Date of Appointment to

Under paragraph 121 of K.R. (Air) (1943) first appointments to commissions require the approval of the Minister on the recommendation of the Chief of the Air Staff. If the effective date of the appointment is prior to the date of approval by the Minister, the Minister becomes *functus officio* as soon as he has given his approval. If, however, the effective date of the appointment is subsequent to the approval by the Minister, the Minister does not become *functus* until the said effective date. In other words, he may withdraw his approval at any time prior to that date. A different procedure prevails in the Army, in which a first appointment to a commission requires the approval of the Governor-in-Council, pursuant to the provisions of Section 33 of the Militia Act.

CONFIRMING AUTHORITY

Accused—Release from Custody by

As soon as the trial of an accused commences he is in the custody of the Court. As soon as sentence has been passed by the Court and has been dated, the President and members become *functi officio* (unless the proceedings are referred back for revision). The Confirming Authority is therefore the only person to decide whether or not the accused should be released from custody after sentence but before promulgation.

J.A.G. 866 (35)
1011-1-52
d/6/7/43

CONSTITUTIONAL LAW

Alcohol—Transportation

No servant of the Crown in the right of the Dominion is required to secure a Provincial Licence in order to transport alcohol from the Military Stores to Military or Air Force hospitals; but the local branch of a Chemical Company supplying the alcohol is required to conform to Provincial Laws, even where such alcohol is destined for shipment to the District Medical Stores.

J.A.G. 808B (31)
d/5/3/42

NOTE.—Rex v. Anderson 39 D.L.R. 84. Gauthier v. The King 40 D.L.R. 256. Martinnell & Co., and McCormick & Muggah 50 D.L.R. 799.

Municipal Building Permit—Dominion

A Municipality has no power to require a tax on or a permit for a building being constructed for the Dominion Government by its own employees.

J.A.G. 807E (30)
d/6/2/42
54-27-82-8

Grievances—Redress of

An officer who considers himself aggrieved may complain to the Minister of National Defence, pursuant to Sec. 42 of the Army Act, and the Minister is to examine such complaint, and, if so required by the complainant, make a report to the Governor-in-Council. The proper procedure for an officer or soldier who considers himself wronged by a Court-Martial is to present a petition under para. 574 of K.R. (Can.), and it is not proper to complain under Sec. 42 of the Army Act. Complaints as to the other matters should be made under this latter section, the proper procedure being set out in C.A.R.O. 2575.

J.A.G. 851 (32)
d/30/4/42

Entertainment—Held by Unit—When Liable to Provincial Taxation

Where an entertainment is held by a Military Unit in an Armoury and is of a purely private character and solely

CONSTITUTIONAL LAW

for the purposes of the Unit, such entertainment is to be regarded as of an official character pertaining to the carrying on of the services of the Crown in the right of the Dominion, and therefore such entertainment is not subject to a Provincial Amusement Tax; but when the public are invited and particularly if the public pay an admission fee, such entertainment is not then an official function and the sponsors therefore are bound to comply with Provincial Legislation even though such sponsors are Military Personnel.

It is a question however, if when certain members of the public are invited to attend without charge and where their presence is considered as a benefit to morale, whether such entertainment may not be considered as an official function and therefore immune from Provincial legislation either for taxation or regulation.

J.A.G. 827 (31)
d/19/3/42
800-18-1

Strikes—Cost of Assistance by Militia to Civil Power

The Crown in the right of the Dominion has no valid claim against a Province for the costs of assistance by the Militia to the Civil power unless the Province concerned empowered the Attorney-General to bind the Province in the matter of paying said costs. Ref. A.G. Canada vs. A.G. N.S. (1930) 4 D.L.R. 82.

J.A.G. 843 (32)
J-17 Apr.-42
H.Q. 383-63-1

Indian Act—Beer—Canteens

The provisions of the Indian Act do not apply to the sale of or serving with beer by a canteen, duly established in accordance with the Regulations, to an Indian who is a duly appointed or enlisted member of His Majesty's Forces and who, as such a member, is entitled to avail himself of the privileges of the particular canteen or canteens.

J.A.G. 505 (12)
d/8/6/40

Sale of Intoxicants—Indian Servicemen— Restrictions

The provisions of the Indian Act and of any relevant Provincial Legislation apply to the sale or serving of intoxicants

CONSTITUTIONAL LAW

in beer parlors or taverns operated by private parties, regardless of the fact that the Indian concerned is a member of the forces.

J.A.G. 796 (28)
d/23/12/41
54-27-3-24

Municipal Water Rates—Dominion—Policy

While the Crown is not bound to pay taxes levied by a municipality in respect of water supplied to properties owned by the Crown therein, it is the practice of the Dominion Government to pay reasonable compensation to the municipality for such service.

J.A.G. (DOR) 88

R.C.A.F. Act—Regulations Under—Air Force Act (Imp.)

Under section 16 of The Royal Canadian Air Force Act the Governor in Council may make regulations relating to the pay and allowances of officers and airmen and there is no restriction on his powers in this regard. By virtue of Section 11 of the said Act he may make regulations inconsistent with the provisions of the Air Force Act; the effect of such regulations would be to make such provisions of the Air Force Act inoperative so that any provisions of F.R. & I., to the extent that the same are inconsistent with the provisions of the Air Force Act, would supersede the latter.

J.A.G. 952B (45)
d/7/4/43

Emoluments Paid by Crown (Dominion)—Provincial Legislation

While the Province cannot legislate to garnishee the emoluments paid by the Crown in the right of Canada to any of its servants or employees, legislation which is directed against the person of such Dominion employees and which in effect requires them to deposit a portion of their salary to the benefit of creditors is not *ultra vires* the provinces any more than is a system of Judgment Summons wherein defaulting debtors may be held guilty of contempt of Court.

J.A.G. 799 (28)
d/31/12/41

CONSTITUTIONAL LAW

NOTE.—Worthington v. Attorney General of Manitoba (1936) S.C.R. 40; also Forbes v. A. G. Man (1937) A.C. 260, for the principle of Provincial Taxation of Federal salaries.

Alcoholic Beverages—Sale in Canteens and Messes—Provincial Regulations

A Province has no legal right to interfere with the carrying on of the services of His Majesty in the right of the Dominion of Canada and if the Crown, in the interests of discipline and welfare of the troops considers it desirable that alcoholic beverages be sold in messes, Institutes, etc., then it is free to authorize such sale.

J.A.G. 59 (2)
d/4/10/39

Vehicles—National Defence—Provincial Registration

Since the Provinces have no power to interfere or authorize interference with the carrying on of the services of His Majesty in the right of Canada, they cannot require the registration of National Defence motor vehicles or the licencing of drivers thereof pursuant to Provincial statute.

J.A.G. 779 (27)
d/24/11/41
38-72-164 Vol. 7

Bus Franchises—Provincial or Municipal—Dominion Rights

The Crown in the right of the Dominion cannot be affected by Provincial or Municipal Legislation with regard to existing franchises where it would appear that it is essential for the proper carrying out of the service of the Crown to operate buses.

J.A.G. 915A (39)
1600-10-6-12
d/13/11/42

Real Property—Provincial Tax—Dominion Liability

Property held under lease by the Crown in the right of the Dominion is liable to be assessed and the owner thereof is

CONSTITUTIONAL LAW

liable for payment of real property taxes imposed by or under the authority of Provincial legislation.

J.A.G. 763 (25)
c-8864
d/13 Sept. 41

Chauffeurs—Military—Provincial License

Under the provisions of the British North America Act, the Crown, in the right of the Dominion, is given exclusive jurisdiction over all matters pertaining to the Militia and Military services of Canada, and, therefore, if military chauffeurs are necessary the same can be employed without any interference on the part of the Provincial Legislature. Further, Military chauffeurs in uniform cannot be compelled to wear the Provincial chauffeur's badge which may have been issued to them by the Provincial authorities.

J.A.G. (DOR) 158

Sale of Goods—Military Canteens—Provincial Tax

Where military personnel make purchases from Military canteens they are liable to pay the tax imposed by the Act, but the act does not impose any liability, upon members of His Majesty's military forces while acting within the scope of their duties as such, in the operation of a military canteen, to collect the tax at the time of sale.

J.A.G. 892 (38)
54-27-66-5 Vol. 3
d/8/10/42

Barbers in Service—Not Subject to Provincial Regulations

Where a duly enlisted member of the Air Force is employed as a station barber he is not subject to Provincial regulations with respect to scale of charges and hours of work; but where the station employs a civilian barber it is incumbent upon the Commanding Officer to comply with the Regulations laid down by the Provinces with respect to such employment.

J.A.G. 787 (28)
d/16/12/41
File 13-1-8

CONSTITUTIONAL LAW

Medical Officers—No Provincial Registration

A Medical Officer of any one of the Services does not require to be registered under Provincial regulations to enable him to deal professionally with Service Personnel but a civilian doctor employed by any service must be so registered.

J.A.G. 787 (28)
d/16/12/41
File 13-1-8

Wage Deductions—Provincial Legislation—Dominion

A Provincial Act which creates an obligation on the part of employers to deduct a tax from wages or salaries paid to their employees is not effective against the Crown in the right of the Dominion or against any Department of the Dominion Government.

J.A.G. (DOR 396)

CONTINUOUS SERVICE

Definition of—Clothing Allowances

Where a soldier is an absentee or a deserter, whether convicted or not of the offence of absence without leave or desertion, he must be considered as being in the service of the military forces of Canada during such periods of absence, even if the soldier has been struck off strength as a deserter, and the period of absence must not be subtracted from but must be included in the period of continuous service (six months) referred to in Article 187, F.R. & I. for the purpose of determining entitlement to clothing allowance on discharge.

J.A.G. 877 (35)
405-P-4481
d/28/8/42

CONTRACTS

Execution of—Authority for

In contracts, agreements or documents where the Crown is a party for National Defence purposes, the Minister alone binds the Crown but by Order-in-Council or other legislation the signing authority has and may be extended. Order-in-Council P.C. 6186 dated 16th July 1942, extends the signing authority to include the Acting Deputy Minister and such person as may be properly authorized by Order-in-Council to sign for the Acting Deputy Minister.

J.A.G. 866J (35)
54-27-35-85 F.D. 49
d/28/7/42

CONVENING AUTHORITY

Courts of Inquiry—Under Oath—in Discretion of

Except in the case of a returned prisoner of war, where a Court of Inquiry must be held under Oath under R.O. 124 and a Court on illegal absence under A.A. 72, the holding of such inquiry under Oath is in the discretion of the convening authority; and where the latter chooses to order the evidence taken under oath, the Court-Martial procedure should be followed. Hence, the signature of the witness can be dispensed with as it is not required under R.P. 83. If it is not taken under Oath, the provisions of R.P. 4 as to a Summary of Evidence (not under Oath) shall be followed. Under this rule the evidence of each witness must be signed by him. (See also C.A.R.O. 417 of 1940, as amended by C.A.R.O. 628 of 1940 and 965, 1139 of 1941.) An officer or soldier whose character or military reputation may be affected by the Inquiry may request the evidence to be taken on oath and this should be acceded to him.

J.A.G. (DOR 11)
J.A.G. (DOR 286)

CONVOYS

Military—Traffic Regulations

Where a convoy is moving from one location to another, other than in military drill, it should obey, if possible, the local by-laws pertaining to the regulation of traffic, on the grounds of good public policy.

J.A.G. 699A (20)
16 Apr. 41

COST-OF-LIVING BONUS

Flying School Employees—Entitled to

Flying Schools having a contract with the Crown to provide flying instructions are not agents of His Majesty and do not therefore come within the provisions of Order-in-Council P.C. 6702 dated 26 Aug. 1941 as amended by Orders-in-Council P.C. 64/897 dated 2 Feb. 1943 and P.C. 1/4456 dated 31 May 1943, providing Cost-of-Living Bonus for members of the Public Service of Canada; instead, the employees of said schools are employees of independent contractors and come within the provisions of Orders-in-Council P.C. 8253 dated 15 Nov. 1941 and P.C. 9298 dated 27 Nov. 1941 providing respectively for Cost-of-Living Bonus to employees and to foremen and executives earning less than \$3,000 per year, and for a ceiling on wages and salaries except as otherwise permitted by the National War Labour Board.

J.A.G. 800B (28)
d/8/1/41

COUNSEL

Prisoner of War—Entitled to

A Military Court held for the trial of a prisoner of war falls within the category of a "Judicial Proceeding." The procedure relating to Military Courts is identical with that relating to Courts-Martial, as required by the International Convention in relation to the treatment of Prisoners of War (1929) Art. 145. Under Art. 62 of the said Convention the accused is entitled to be represented by a duly qualified Counsel of his own choice, or by an advocate obtained for him by the Protecting Power or by an officer of the Armed Forces of the Detaining Power who shall be known as the Defending Officer. Such counsel, advocate or defending officer shall have all the rights of an accused with respect to witnesses, objections, addresses, etc. An opportunity shall be given to the accused to make a request in writing for the services of a defending officer if no defending personnel have yet been made available to him as provided by 8 (b) of the Regulations governing Prisoners of War.

J.A.G. 844 (3)
d/21/4/42
H.Q.S. 4498

NOTE.—The regulations provide for the application of Canadian Military Law. See Reg. 7 of the Proceedings of Military Courts Assembled for trial of prisoners of War 65 (b). Interned enemy aliens are governed generally by the same Provisions. See Reg. 2.

COURTS-MARTIAL GENERAL

Rules of Evidence—Army—Air Force

The rules of evidence followed by the English civil courts prevail before Army Courts-Martial: Militia Act, Section 69 and Army Act, Section 128. But, by virtue of K.R. (Air) 1943, paragraph 1322, item 5 and Appendix 1A, item 21, the law of evidence before R.C.A.F. Courts-Martial is that of the civil courts of Canada, i.e. the Evidence Acts of Canada and the Provinces. Hence the privileges and obligations of witnesses will be determined by the code under which the trial is being conducted.

J.A.G. 667A (19)
12/3/41
J.A.G. (DOR 12)
J.A.G. (1)
23/7/40

Custody under—Release

As soon as the trial of an accused commences, he is in the custody of the Court. As soon as sentence has been passed by the Court and has been dated, the President and members become *functi officio* (unless the proceedings are referred back for revision). The Confirming Authority is therefore the only proper person to decide whether or not the accused should be released from custody after sentence but before promulgation.

J.A.G. 866(35)
1011-1-52
d/6/7/43

Discharge—after Sentence by

When a person subject to military law is sentenced by Court-Martial to penal servitude, imprisonment or detention, the Army Act Section 158 (2) will apply to him notwithstanding that he is discharged and he may be kept, removed, imprisoned, made to undergo detention and punished accordingly, as if he continued to be subject to military law. So also may a soldier, discharged by reason of being unable to meet physical standards (e.g. a soldier placed in Category "E" by a Medical Board), be required to serve the balance of a sentence of detention notwithstanding such discharge.

J.A.G. 936 (41)
54-27-106-47
54-27-3-34 Vol. 6
d/21/12/42

COURTS-MARTIAL—GENERAL

See also Order-in-Council P.C. 60/6567, dated 18 August 1943.

Discharge—Effect in Military Law

Where a soldier is discharged he ceases to be subject to military law as of the date of such discharge. The actual delivery of the Discharge Certificate is not a necessary condition of discharge but rather a necessary consequence thereof. M.M.L., page 513, Note 3. It is merely evidence of an act already completed.

55-P-267

Attestation—False Answers on—Triable by

While Sec. 33 A.A. uses the word "Justice" the word may be interpreted to include an Officer authorized to carry out attestation pursuant to K.R. (Can) 280 and 302 (a) (iv). Although false answers are made at attestation, a person once attested becomes subject to the Army Act and may be tried for such false answers, either by a Court Martial or a Court of Summary Jurisdiction.

J.A.G. 774A (29)
d/5/11/41
T-22-1-359

Note.—See M.M.L., A.A., Sec. 99 note 4, Sec. 33 note 3, Sec. 163 (1) (a) note 3.

Rules of Procedure—Effect on

Certain of the notes to the Rules of Procedure and Sections of the Army Act, which are of an explanatory nature, are based on decisions of the English Courts which have been approved by superior tribunals and handed down from generation to generation, becoming part of the Common Law and resulting in certain definite principles being established. Hence, although these notes have not in themselves the force of law and cannot override the provisions of the Act and the Rules of Procedure, they should serve as a guide to the principles which should be followed in applying any particular section or rule and as an interpretation thereof.

J.A.G. (DOR 113)

COURTS-MARTIAL—GENERAL

Commanding Officer—Disqualification for

A Commanding Officer is, under R.P. 19 (B) (ii), disqualified for serving on a Court-Martial if he is the prosecutor or a witness for the prosecution, but being a witness does not preclude him from dealing summarily with the charge. This is a matter which should be left to his discretion, and if he feels, by reason of the fact that he has been a witness to the matter under investigation, that he is unable to exercise impartial judgment, he should remand the accused for disposition by a superior authority.

J.A.G. 957A (45)
1600-34-1501
d/10/5/43

Summary of Evidence—Use at

Under Sec. 47 (2) of the Army Act, the Summary of Evidence may not be used at the hearing without obtaining the written consent of the accused to its use as evidence. When the Summary of Evidence is so used without such written consent, the conviction would be quashed, and the accused should not be tried again, because he would be able to raise a plea of *autrefois acquit* as a good defence.

J.A.G. 959B (45)
H.Q. 332-61-174 (JAG)

COURTS-MARTIAL COURT OF INQUIRY

Civilian—Witness

A civilian cannot be compelled to attend a Court of Inquiry. Where he does attend no valid promise can be made to him of immunity from any subsequent proceedings at which he would be a compellable witness.

J.A.G. 492A (11)
27 Jul. 40

Declaration—How Admissible

Where the Declaration of a Court of Inquiry is duly entered in a regimental book by the Commanding Officer, under K.R. (Can.) para. 1513 and where an exact reproduction thereof is duly certified by the O.C. or Adjutant, as the officer having custody of the regimental books, such certified copy of the Declaration is admissible as evidence of the facts therein stated under the Army Act, S. 163 (1) (H). It is not fatal to admissibility that in the original declaration, and hence in the true copy thereof, there is a slight variation from the wording prescribed in R.P. 125 note 3.

55-B-314

Declaration of—to Prove Continued Absence

Where the charge is one of desertion, there should be some evidence of absence between the date on which the absence began and the date of apprehension; if a certified copy of the Declaration of the Court of Inquiry on the illegal absence is in evidence and declares that the accused is still absent at its date, as it should, this will generally suffice.

55-L-407
30 Dec. 42

Evidence—under Oath

Except in the case of a returned prisoner of war, where a Court of Inquiry must be held under oath under R.P. 124 and a Court on illegal absence, under Section 72 of the Army Act, the holding of such inquiry under oath is in the discretion of the convening authority; and where the latter

COURTS-MARTIAL—COURT OF INQUIRY

chooses to order the evidence taken under oath, courts-martial procedure should be followed. Hence the signature of the witness can be dispensed with, as it is not required under R.P. 83. If it is not taken under oath, the provisions of R.P. 4 as to a Summary of Evidence (not under oath) shall be followed. Under this rule the evidence of each witness must be signed by him. (See also C.A.R.O. 417 of 1940, as amended by C.A.R.O. 628 of 1940 and 965 and 1139 of 1941). An officer or soldier whose character or military reputation may be affected by the Inquiry may request the evidence to be taken on oath and this should be acceded to.

J.A.G. (DOR 11)
J.A.G. (DOR 286)

Obligation to Convene—Request of Third Party

There is no obligation on the part of the Minister or the officer in command of a formation or unit to convene a Court of Inquiry at the request or suggestion of some third party.

J.A.G. 739a
1 Jul. 41
C-6-5-17

Enemy Alien—Proceedings—Disclosure

Where an enemy alien is shot while trying to escape, and where enquiries pursuant to his death are made by the Protecting Power, there is no obligation to disclose the whole or part of any proceedings of a Court of Inquiry, and as a matter of policy such proceedings should not be disclosed; but where the Protecting Power has asked certain specific questions of fact, it would not be improper, if otherwise desirable, to communicate to such Protecting Power, facts elicited by the Court which would answer these questions.

J.A.G. 807CC (30)
7 Feb. 42
7236-35-1

Evidence at—Rules

While a Court of Inquiry should be guided by the rules of evidence of the Civil Courts as far as possible, it has to

COURTS-MARTIAL—COURT OF INQUIRY

be allowed some latitude in view of the fact that it is formed to collect information, not to try an issue. Hence, strictly inadmissible evidence may sometimes be heard at a Court of Inquiry. If it does, this fact should be noted by those who have to consider the finding. Evidence at such a Court cannot be used against any officer or soldier, except for wilfully giving false evidence, contrary to S. 29 of the Army Act—R.P. 125A. However, this rule does not prevent the use of the proceedings of a Court of Inquiry in cross-examination of a witness at a Court-Martial to test his credibility. He may be asked if at a Court of Inquiry he made a certain statement different from what he is presently making, and if he denies it the pertinent portion of the proceedings may be proven, not as evidence of guilt or innocence, but for the limited purpose only of its effect upon the credibility of the witness, be he accused or any other witness. Proof will not be made by producing or filing the proceedings but by calling a witness who can swear as to what happened, using if he wishes, the record to refresh his memory.

J.A.G. (2)
9 Jan. 41

Declaration—When Admissible

A Court of Inquiry shall be held in all cases of absence (except in the case of absconded recruits) at the expiration of 21 clear days from the date of absence or as soon after as practicable, unless the Commanding Officer of the soldier has learned of his apprehension or return. The time shall be calculated exclusive of the date of going absent and the date of holding the Court. If the Court is held at an earlier date, the record of its Declaration, M.F.B. 375, is inadmissible in evidence. See Army Act S. 72 and Note 1 thereto; R.P. 124 (A), (C) and R.P. 125, Note 2; K.R. (Can.) 743A.

55-P-179
405-B-1395
44-M-403

Deficiencies—Investigation at

The liability of officers and soldiers to meet public and regimental claims is subject to "due investigation" as is set out in Article 84 (2) F.R. & I. and this Article should be read in conjunction with Secs. 44 and 127 of the Militia Act. This Article occurs in regulations made under the Militia

COURTS-MARTIAL—COURT OF INQUIRY

Act, and is supplementary to those sections and should not be interpreted as giving wider powers of recovery than are therein contemplated. The relationship of creditor and debtor must be found to exist between the Crown and the Soldier under Article 84 (2) of F.R. & I. or the "negligence in respect of or default in the performance of a Military duty" must be established under Article 84 (3) of such regulations. Article 84 was not designed as an instrument of perfunctory justice and "due investigation" must be of a thorough nature if by Court of Inquiry, and should not be invoked where large sums of money are involved when the officer seems to have a case or when in effect he demands a Court-Martial to establish either his indebtedness, his negligence or his default, unless a thorough investigation establishes beyond a shadow of doubt the presence of one or more of these factors or the absence of all of them.

J.A.G. 959A (45)
650-24-67-5 Vol. 3
18 May 43

COURTS-MARTIAL ADDRESSES

Closing—of Defending Officer—Argument as to Admissibility

Where the Defending Officer desires to contest the admissibility of evidence, he should do this when it is tendered. His closing address is not the place for such discussion.

11 R-155275
5 Sept. 42

On Plea of Guilty

Where an accused pleads "Guilty" there is no closing address by either the Prosecutor or the Defending Officer. After the recording of the plea of guilty the accused may make a statement with reference to the charge and may give evidence and call witnesses as to character. The accused or the Defending Officer may then, in the proceedings on conviction before sentence, address the Court. In the latter case, the Prosecutor does not make an address, except where the accused is liable to any exceptional punishment by reason of the nature of his service or attention has been directed in local orders to the prevalence of the offence of which the accused has been convicted. It is the duty of the prosecutor to bring such special circumstances to the attention of the Court. See R. P. 46 (E) and K.R. (Can.) 563.

55-H-294 26 Oct. 42
55-M-601 8 Sept. 42
55-P-262 29 July 42
55-V-81 7 Apr. 43

Prosecutor—Attitude in

The Prosecutor must, in his addresses, adhere to matters disclosed or to be disclosed in evidence and must maintain an impartial attitude. In his opening address, he should not digress to reflect on the character of the accused, nor should he ask the court to disregard whatever explanation the accused may have to offer. In the closing address, it is improper for the Prosecutor to refer to the fact that certain offences are prevalent, or for him to suggest the punishment that should be imposed and to ask that an example be made. See M.M.L. page 56, para. 60; also p. 55, para. 52 and R.P. 60 (a) and (b).

C. 55-K-108 C. 55-M-549
C. 55-S-379 C. 55-G-204
C. 55-H-216

COURTS-MARTIAL APPREHENSION

Certificate of—Contents

The Certificate of Apprehension or Surrender is admissible under statutory provision which cannot be stretched to cover the inclusion, in such certificate, of material not proper to the Certificate and, apart from the certificate, inadmissible.

55-A-113
55-B-277

Certificate of—Erroneous Date

Where a Certificate of Apprehension sets out the fact, date and place of arrest and is signed by the officer authorized by Order-in-Council P.C. 2797, dated 10th April 1942, an error in the date of the certificate will not invalidate it, provided the certificate can be identified as related to the case concerned, since the Order-in-Council does not require that the certificate itself be dated.

55-G-304
19 Dec. 42

Certificate of—Civil Police—M.F.'s M. 215 & 216

Where an absentee or deserter is apprehended by the civil police, M.F.M. 215 is the proper certificate of apprehension. But where the civilian police turn the accused, after arrest, over to military police, the latter may complete M.F.M. 216 with a notation of the arrest by civilian police and the surrender to them. Order-in-Council P.C. 2797, dated 10th April 1942, does not require that the arrest should have been made by Military Police in order that their certificate in M.F.M. 216 may be admitted.

55-J-140
21 Dec. 42

Certificate of—Defect in—Special Finding

Where a certificate of apprehension is invalid because it is signed by a Petty Officer in charge of the Shore Patrol, instead of by the Officer in charge, a certificate of apprehension by civil police, if it is also available, is admissible. The Court, however, should bring in a Special Finding to the effect that the accused was apprehended, not by the Shore Patrol, but by civil authority.

55-H-372
25 May 43

COURTS-MARTIAL—APPREHENSION

Certificate of—Necessary Recitals

Where an accused is arrested by the Civil Police and turned over to the Military authority by whom the Certificate, M.F.M. 216, is completed, the certificate should recite the fact, date and place of arrest by the civil power in order to be admissible as proof of these facts under Order-in-Council P.C. 2797, dated 10th April 1942.

55-G-262
30 Sept. 42

Costs of—Mode of Recovering

It is improper to proceed for recovery of costs of apprehension by setting forth the same in a cash debit voucher. The proper method is to prove the costs of transportation by M.F.B. 1481 and of meals and other proper incidentals by M.F.B. 1482, pursuant to R.O. 1099 and 3464.

55-H-202

Costs of—Incidentals

Where it is necessary to make an out of pocket payment, other than the usual ones for fare and meals, to return an absentee to his unit, the amount of such payment may be deducted from the pay of the accused by order of the court-martial: F.R. & I., Article 172, Paras. 7 & 8. It may be proven in Court, if paid by the Commander of the Military Escort (1) through M.F.B. 1482, as incidental expenses; (2) through the testimony of the Commander, who would produce the receipted voucher; or, if not paid by the Commander, through the testimony of someone having knowledge of the amount paid.

55-S-350
55-T-115

Costs of—Improper Charges

There should not be charged against the accused, in connection with his apprehension and return, such improper items as (1) the extra amount required to return him by an indirect route, when a direct route is available; (2) cost of a telegram sent in connection with his documents one month after his apprehension; (3) travelling allowance to an escort

COURTS-MARTIAL—APPREHENSION

for one day which he took as "excused duty"; (4) charge for the meals served accused in a detention barracks subsequent to his apprehension.

55-H-210
55-H-133
55-S-309
55-J-95

Costs of—Informal Claim

There is no provision in R.O. 1099 or 3464 for admitting a statement of expense by a local police chief or a letter from the R.C.M.P., setting out the expense incurred by the latter.

55-L-316
55-A-122

Cost of—over 1500 Miles

Before bringing back an absentee or deserter a distance of more than 1500 miles, at high expense, the procedure laid down in C.A.R.O. 1877, Appendix, Para. 10 (2) should be followed.

See C.A.R.O. 3464.

55-A-143
28 Nov. 42

Cost of—Out of Pocket Expenses Only

Article 172 (8) of F. R. & I., which defines the cost of apprehension as the sum required to make good any expenses incurred for the purpose of effecting the arrest of the accused, should be interpreted to mean the actual out-of-pocket expenses of the escort. An item of "two days' Command Pay \$7.00" and an unexplained item of \$7.50 should be disallowed. Furthermore, it would be unfair to enforce against the accused the Provisions of Article 90 of the Pay and Allowances Regulations, under which the travelling allowances, chargeable against accused, would vary with the rank of the escort.

55-D-333
7 Jan. 43

55-M-678
8 Jan. 43

COURTS-MARTIAL—APPREHENSION

Certificates of—Copies—Inadmissible

R.O. 1099 makes admissible, as evidence of the facts therein stated, (1) the certificate of the officer who issued or authorized the transportation; and (2) the certificate of the escort commander as to incidental expenses; but neither this order nor R.O. 1877 permits certified copies of such certificates to be admitted in evidence. The original forms M.F.B. 1481 and 1482 must be submitted to the Court. Nor is there any provision for proof of these costs by way of telegram.

55-J-118
55-S-311

Cost of, Against R.A.F. Personnel

Where R.A.F. personnel are attached to the R.C.A.F. in Canada such persons are subject to R.C.A.F. law and, unless the provisions of R.C.A.F. Regulations relating to the cost of apprehension of deserters are specifically excluded from being applicable to such personnel, they may be charged with such costs. On the other hand, R.A.F. personnel at R.A.F. Schools in Canada are not liable for cost of apprehension on a charge of absence without leave or desertion.

J.A.G. 886A (37)
75-1-45 Vol. 2
d/19/9/42

COURTS-MARTIAL CHARGES

Absence Without Leave—Proof of

Where the accused is charged with absence without leave or desertion, there must be some evidence from which the Court can draw the proper inference that the accused was absent during the whole period between the time of absence and the time of apprehension or surrender. Some of the ways in which this case can be proven are (a) a witness can state that the accused, after he absented himself or was found absent, continued to remain so; (b) an MFB 375 shows the time at which the accused absented himself and it also shows that he was still absent after the twenty-first day; (c) a Part II Order often shows that an accused "is absent from . . ." a certain date and time, and the Order is dated a day or so later. Although, in cases (b) and (c), the evidence does not completely establish that the accused was absent during the whole intervening period covered by the charge, nevertheless, there is some evidence that he was still absent at some specified time between the two dates. Where there is evidence of (1) the commencement of absence, (2) the termination of absence and (3) the fact of absence at some specified time within the period, the Court can properly draw an inference that the accused was absent throughout the whole period. Hence, a case is established which calls for a reply from the accused.

55-G-400
d/22/6/43

Approval of—After Failure to Sign Charge Sheet

Where the Commanding Officer has failed to sign the charge sheet, a conviction may properly be confirmed if, in fact, the charge has been approved, before trial, by the Commanding Officer. See R.P. 56. Failure of the Convening Officer to endorse or sign an order for trial on the charge sheet might also be cured by this Rule.

55-M-801
11 May 43

Air Force—Standing Orders—Basis of

When Command Instructions are incorporated in Standing Orders or other Orders, a charge for the breach of any paragraph thereof may be laid under A.F.A., Section 11 as a breach

COURTS-MARTIAL—CHARGES

of Station Standing Orders or other Orders; if not so incorporated, the charge may still be laid under A.F.A. Section 11 for breach of Command Instructions, provided the instruction in question can be considered "general, local or other order": otherwise it should be laid under A.F.A. Section 40. If a charge be laid for the breach of any regulation, instruction or order which has been recopied into C.A.P. 303, then at the trial, if it has been shown that C.A.P. 303 containing the paragraph of the regulation, etc., in question has been adequately brought to the attention of the accused, this should constitute sufficient notice to him of the regulation, etc., upon which the charge is based. A charge under the A.F.A. should not be based on C.A.P. 303 but rather on the relevant regulation or instructions.

J.A.G. 978 (47)
d/8/7/43

Absence Without Leave and Desertion— Time of Essence

Where the accused is charged with desertion or absence without leave, it is insufficient to allege that absence began between certain dates because, since time is of the essence, an exact date should be named as that in which the absence commences. If the evidence reveals that the absence began at a later date, a Special Finding may be made accordingly, but if the absence began at an earlier date, there can be no Special Finding, as the accused is entitled to the benefit of the date set out in the Particulars. If there is doubt, therefore, the Particulars should allege commencement of absence at the earlier date.

55-L-341
25 Aug. 42

Aider and Abettor—Air Force Act

Where it is desired to charge the captain of an aircraft in connection with a specific act of negligence on the part of the pilot, there is no provision in the Air Force Act for charging the captain directly with such act of negligence on the ground that he aided and abetted it. But he could be charged under S. 39 A (1) (b) with neglect, in that he failed to order the pilot to desist from his negligent operation; or, under S. 40 with such failure amounting to neglect, "to the prejudice of good order and air-force discipline."

11-R-117540
23 July 43

COURTS-MARTIAL—CHARGES

Air Force—Administrative Orders—Basis of

Since Air Force Administrative Orders are in the nature of regulations published for the general information and guidance of the Air Force, within the meaning of the proviso to Section 11 of the Air Force Act, breaches of such orders are properly charged under S. 40 of the Act.

R-85967
8 July 43

Charge Sheet—Amendment by C.O.

When he has considered the Summary of Evidence, the Commanding Officer of the accused may vary or add to the charges on the Charge Sheet.

55-P-295
3 Nov. 42

Charge Sheet—Error—Order for Trial

The fact that an order for trial is made on a charge sheet in no way validates a bad charge, and a Defending Officer need not fear on that account to take proper objection to any charge even though it bears the signature of the District Officer Commanding.

55-M-662
21 Dec. 42

Costs of Apprehension—Against Officer

Where an officer is charged with desertion or absence without leave, he is not chargeable with the costs of apprehension and return, so the costs should not be included in the particulars of the charge.

55-R-300
1 Mar. 43

Desertion—Attempt

Where the accused was absent from a certain date until his surrender three months later, the evidence may justify a conviction of desertion or of absence without leave, but there is no basis for a verdict of attempted desertion. The latter

COURTS-MARTIAL—CHARGES

charge consists of doing some act which, if carried further would lead to desertion: M.M.L. para. 22, p. 20; note 2, p. 438. On the above set of facts, if there was desertion, it was a completed act.

55-B-564
5 Jan. 43

Desertion or Absence—Decision of Commanding Officer

The question of whether a soldier should be charged with the offence of desertion under the Army Act: s. 12 (1) (a) or with absence without leave under s. 15 (1), is a matter entirely for the decision of the Commanding Officer concerned. Where consideration discloses that the accused had the intention to desert His Majesty's service but the evidence in support thereof is not particularly strong, the more serious charge may properly be laid. But if his review of evidence convinces the Commanding Officer that there was no intention to desert, the lesser charge may be laid.

54-27-65-1

Desertion—Warning for Draft—Where Not in Particulars

Where there is a charge of deserting the Service and not of desertion after warning for draft, evidence of warning may be given in order to show the accused's state of mind. This may be done even though the draft warning is not included in the Particulars.

55-D-359
8 Mar. 43

Drafting Particulars—Disobedience of Order

Where a soldier is charged with disobedience of an order it should be shown that the order was given him and that he did not, in fact, obey it. It is insufficient to show that the accused used words indicative of refusal.

55-C-418
55-B-478
55-B-468

COURTS-MARTIAL—CHARGES

Costs of Apprehension—Meals

Where form M.F.B. 1482 is to be filled out as to the cost of meals incurred in escorting accused back to his Unit, Order-in-Council P.C. 58/4015 dated 24th May 1943 does not require the escort to certify that the costs were incurred by him, and he can sign the form as to sums which he is satisfied were incurred by the R.C.M.P. before they handed the accused over to him. The amount of such expense may be included in the particulars against the accused.

H.Q.C.
24 May 43

Dependents' Allowance—Misrepresentation

There is no reason why, in cases where the circumstances so permit, disciplinary action should not be taken against an officer or soldier who, being an applicant for Dependents' Allowance, has obtained said allowance through misrepresentation or fraud.

Common cases are where the applicant represents a person to be his dependent who, in fact, is not his dependent, or where Dependents' Allowances are claimed for persons who are not entitled thereto.

In cases where there has been an omission, misrepresentation or fraud in the application for Dependents' Allowance, if there is evidence of intent to defraud, the charge should be laid under A.A. Section 18, Subsection 5, generally with an alternative charge under Section 40. Where there is no evidence of intent to defraud the charge should be laid under Section 40 only. Forms of charges approved by the Judge Advocate-General are as follows:—

Under A.A. Section 18, Subsection 5 in that he did at . . . on or about . . . , with intent to defraud, make the following statement . . . or words to that effect (produce the following documents), with the object of obtaining Dependents' Allowance for his alleged dependents and for which said dependents were not eligible, well knowing that the said statement (documents) were misrepresentations."

Under A.A. Section 40—"an act to the prejudice of good order and military discipline in that he at . . . on or about the . . . did make the following false statements on Dependents' Allowance Form M.F.M. 16 . . . well knowing that the said statements were false."

In addition, in cases where the Summary of Evidence

COURTS-MARTIAL—CHARGES

discloses that, as a result of such representation, Dependents' Allowance was, in fact, actually paid, the facts of the amounts so paid should be set out in the particulars of a charge somewhat in the following form:

"And thereby obtained Dependents' Allowance for said dependents from . . . to . . . in the sum of . . ."

J.A.G. (2)
d/4/2/41
J.A.G. 728A (22)
d/4/6/41

Change in Rank of Accused—Mode of Trial—Sentence

Where the accused undergoes change of rank he should be tried according to the rank he holds at the date of his trial and not that held at the date of his offence. Hence if a N.C.O., alleged to have struck a N.C.O. then superior to him, comes before his C.O. on the date of his commission as a lieutenant, he must be tried and subsequently dealt with as an officer, although the offence remains the same.

55-P-370
8 July 43

Negligence—Damage to Vehicles

Where a driver is charged with negligence in connection with an accident involving a D.N.D. vehicle and a civilian vehicle, the charge should be confined to the allegation of negligence in causing the accident to both vehicles and the damage done the D.N.D. vehicle, but not the damage done the civilian vehicle. There is provision for separate enquiry pursuant to which the authorities can place the driver of a D.N.D. vehicle under stoppages of pay to make good the damages paid by the Crown to the owner of the civilian vehicle.

55-L-243

Particulars—to Be in Accord with

Particulars should refer to the charge which they are alleged to support. They should not overlap or conflict with other charges or the particulars thereto; much less should

COURTS-MARTIAL—CHARGES

they refer to charges not laid against the accused. Each charge and the particulars thereto should be confined to one offence. So on a charge of "neglecting to obey such standing orders," the particulars should not contain two separate instances of disobedience. Even if they both occurred in the one tour of duties they could not be considered a "single transaction" within the meaning of R.P. 13, Note 3. Also, the particulars to one charge should not recite two separate occasions of absence without leave. And in a case where the charges of "using violence," "offering violence" and "using threatening language" are possible, each charge laid should be stated with the appropriate particulars in support, not with the particulars suitable to another charge. And where the charge and particulars recite "when in lawful custody escaping" the particulars should not go on to allege an absence without leave from the time of the escape to the time of apprehension.

55-B-465
55-T-168
55-K-135
55-B-488
55-T-157

Particulars—Desertion or Absence Without Leave

Particulars to charges of desertion or absence without leave should show whether accused was apprehended or surrendered; whether such apprehension or surrender was by military or civil authorities; the date and hour of such apprehension or surrender; and, under K.R. (Can.) 539, the expenses of apprehension and return.

55-S-350

Particulars—Reference to Other Charges

Where there are two charges, reference may be made, in the particulars of the second, to the particulars of the first. The fact that there has been an acquittal on the first charge, does not preclude the Court from proceeding on a second, of which charge particulars are given in whole or in part by reference to the first. R.P. 13 (E) and note thereto.

55-G-285
2 Jan. 42

Particulars—Desertion—Special Duty

Where a soldier is charged with desertion, with intent to avoid special duty, all that is necessary in drafting the

COURTS-MARTIAL—CHARGES

charge is to refer generally to the warning for special duty and the intent. It is unnecessary to describe the special duty in detail.

55-S-559
18 May 43

Superseded Orders—When Basis for

Where Station Standing Orders are superseded, a charge may be laid under the former orders if the offence was committed while they were in force: The Interpretation Act, R.S.C. 1927, c.1 ss 1 (c) (d) and 2 (e); but where it was committed after the new Orders had replaced the old, the charge cannot be based on the old Orders.

11-RAF-1433709
28 Aug. 42

Theft—on City Streets

Where it is proposed to charge a soldier with theft of gasoline on a city street, it is a case for prosecution by the Civil Authorities, unless the person from whom the gasoline was stolen is subject to military law. If, however, the Civil Authorities do not prosecute, and it is desired to proceed by Court-Martial, it would be better to frame the charge under the general provisions of s. 40 of the Army Act, rather than s. 41 (5), which would introduce the technicalities of the English Law of theft.

55-G-320
11 Jan. 43

Two—Not Stated Alternatively— Power of Judge Advocate

Where two charges are set out in the Charge Sheet not alternatively, the Judge Advocate has no power to advise the Court to consider them as alternate charges, because he has no power to amend the Charge Sheet.

55-M-731
21 Sept. 42

Desertion—Note to A.A. 12

The note to A.A. Sec. 12 states "To establish desertion it is necessary to prove some circumstances justifying the

COURTS-MARTIAL—CHARGES

inference that the accused intended not to return to military duty." Among the circumstances from which the Court may infer the intent of the accused not to return there are the facts that he was apprehended and that at the time he was wearing civilian clothes. This is often shown in the certificate of apprehension. The soldier may in his defence contradict such statement, and the Court will usually require the prosecutor to call oral testimony to prove the contention of the prosecution and then weigh the conflicting evidence, disregarding the statement in the document. In a case where the accused does not contradict directly any statement made in the document, such as his civilian dress on apprehension, but in a sworn statement in defence swears that he always intended to return, then the Court will weigh the inference of intention not to return arising from his civilian dress against his own statement as to intention and will arrive at its own conclusion as to the true intention.

J.A.G. 989 (47)
26 Jul. 43

Desertion—Onus of Proof

Where the Prosecutor, in addressing the Court upon a charge of desertion, points out the Defence failed to prove that there was intention to return, this is improper. The onus of proving the charge rests upon the Prosecution. It is for the Prosecution to prove such facts as will allow the Court to infer that the accused did not intend to come back—not for the Defence to prove that there was such an intention. Nevertheless the Court might infer an intention not to return from the mere fact that the man was away from his unit when he ought to be with it. The inference to be drawn is for the Court and depends upon the circumstances.

55-B-709
17 May 43

Desertion—Intention—Proof

Where a soldier absents himself from his unit with the intention to desert, but afterwards changes his mind, he may be found guilty of desertion. If he absents himself without any such intention, but later forms an intention not to return, he may also be found guilty of desertion. It is unnecessary for the Prosecution to establish that the desertion continued throughout the whole period of absence.

55-G-157

COURTS-MARTIAL—CHARGES

Desertion—Warning Order—Particular Draft

Where a Warning Order bears a certain date and the accused goes absent without leave two and a half months later, and where, in the meantime, the draft for which the warning was given leaves the camp and the accused does not accompany it, for reasons other than absence, such evidence is insufficient to prove a charge of desertion. A man is not to be placed in a state of perpetual warning, but is to be warned for a particular draft or special duty, and can only be convicted of desertion if he goes absent without leave with the intention of evading that particular draft or special duty, unless, of course, his absence without leave indicated an intention to abandon the service without reference to the particular draft.

55-W-320
d/5/1/43

Charge Sheet—Correction—After Court Convened

Where the members of the Court in going over the charge sheet and the Convening Order find that the charge sheet must be changed, they may adjourn for the correction of the charge sheet or they may wait until they are sworn and then adjourn.

55-L-433
11 Feb. 43

Fraudulent Enlistment—Proof of Signature

Where a soldier is charged with absenting himself without leave on two occasions and with fraudulent enlistment after both of such occasions, there may be someone in the District who can identify the accused as the man who signed the various M.F.'s M. 2, but if there is not, a *prima facie* case is established if a witness identifies accused as the man who signed one M.F.M. 2 and points out abundant similarities in the statements of fact and the handwriting made in all these M.F.'s M. 2.

55-T-210
19 Jan. 43

Fraudulent Enlistment—Obtaining Necessaries

The effect of Article 173 (1) F.R. & I. and C.A.R.O. 2972 is that necessaries are in exactly the same class as public

COURTS-MARTIAL—CHARGES

clothing and equipment, and are the property of the Crown at all times, and are maintained at public expense. It follows, therefore, that on a charge of fraudulent enlistment, a soldier should not be charged with obtaining a free kit of necessities any more than he should be charged with obtaining a free kit of public clothing and equipment.

J.A.G. 967
54-27-63-26
7 Jun. 43

Losing by Neglect—Cost of Lost Articles

There is a distinction between charging an airman with losing by neglect and charging him with the cost of articles lost through such neglect. If he is charged with losing by neglect under the Air Force Act, s. 24 (2), without mention of the specific deficiencies, he may be punished for the former but cannot be sentenced to stoppage in respect of the latter. Although he may have to pay for deficiencies in his kit, in the ordinary course of accounting for same, this latter course would not be reflected in his conduct sheet as would a charge containing detailed deficiencies.

11-R-161491
19 Mar. 43

Losing by Neglect—Date

In fairness to the accused it is preferable to charge him with Losing by Neglect as near as possible to the date on which he went absent, ordinarily the date named in M.F.B. 375. But if the Summary of Evidence points to a subsequent date as more satisfactory, this may be named.

55-R-331
17 Jun. 43

Theft—Public Property—Particulars

On a charge of stealing an article belonging to the public, it is sufficient to describe such article as "public property" without saying that it belongs to the Department of National Defence or a particular unit.

55-M-441

COURTS-MARTIAL—CHARGES

Theft—From Person Not under Military Law

Where a soldier is charged with stealing money from a sailor, the charge should be laid under s. 41 of the Army Act or by the civil authorities. Section 18 (4) of the Army Act applies only where property stolen belongs to a person subject to Military Law.

55-L-237

Withdrawal of—Reference to Convening Officer

Since a charge has been initiated by the Commanding Officer and ordered to trial by the Convening Officer, it is not for the Prosecutor to withdraw it without reference to the Convening Officer. The exceptions to this rule are contained in R.P. 35 (C) and R.P. 62 (D).

11-RAF-1324134

COURTS-MARTIAL COMPOSITION

Civil Liability—Members—No Jurisdiction

When a Court has no jurisdiction, the Members of the Court, the Convening Officer and the Confirming Officer would be liable to action for damages and other civil process. Heddon v Evans, (1919) 35 T.L.R. 642.

H.Q.C. 55-D-334
1 Feb. 43

Commissioned Service—Date of Qualification

To be eligible to sit as a member of the Court an officer must have held a commission for at least two years. The fact that an Army officer has been qualified in his rank for less than two years does not affect his eligibility.

H.Q.C. 55-K-181
27 Apr. 43

Commissioned Service—CWAC—RCAF (WD)

By virtue of Order-in-Council P.C. 4881 dated June 9th, 1942, officers of the C.W.A.C. and R.C.A.F. (WD) who have not had the required length of commissioned service for eligibility as members of Courts-Martial may, nevertheless, serve in such capacities if they are otherwise eligible and not disqualified.

d. Feb. 20/43

Commissioned Service—N.P.A.M.

Commissioned service in the N.P.A.M. can be included in ascertaining the eligibility of officers for Courts-Martial. There is only one type of commission in the Army, irrespective of whether the officer is on Active Service or a member of Reserve Army.

H.Q.C. 55-B-562
H.Q.C. 55-R-275
H.Q.C. 55-V-71
20 Jan. 43

Defending Officer—Witness Against Defendant on Summary

An officer who gives evidence at the Summary, against the accused, should not be appointed Defending Officer unless

COURTS-MARTIAL—COMPOSITION

the accused requests the said officer to be so appointed. The reason for this is because if an accused pleads "not guilty" his Defending Officer would be giving evidence against him at the Trial.

H.Q.C. 55-F-169
11 Nov. 42

Defending Officer—Legal Qualifications

If an accused retains civilian counsel, he must give notice as soon as possible in order that the Convening Authority may appoint a counsel on behalf of the Prosecutor. However, the mere fact that the Defending Officer, duly appointed or detailed, has legal qualifications does not imply that similar notice must be given.

H.Q.C. 55-M-522

Defending Officer—Not Officer Who Took Summary

As a matter of practice the officer who takes the Summary should not act as the Defending Officer. If it should be found necessary to put in evidence a statement made by the accused at the Summary it would be necessary to call the Defending Officer who took the summary to give that evidence; in such a case the Defending Officer would be giving evidence for the prosecution.

H.Q.C. 55-D-290
11 Sep. 42

R.C.A.F. Officers—Army Court

Under Section 48 (10) of the Army Act officers of the R.C.A.F. may sit as a President or Members of a District Court-Martial provided, however, that in the opinion of the Convening Officer the necessary number of military officers is not available to form such Court, and subject to the direction of the Minister of National Defence and the consent of the proper Air Force Authority.

H.Q.C. 55-S-333
22 Aug. 42

COURTS-MARTIAL CONVENING ORDER

D.O.C.—Convening out of District

K.R. (Can.) 31 does not automatically divest the District Officer Commanding of his powers if he leaves the District, nor relieve him of the duties imposed upon him by K.R. (Can.) 30 (b). In other words, an order given by the District Officer Commanding, under K.R. (Can.) 30, while he is physically present in another District, would be operative in his own District, unless by virtue of a Militia Order his command had devolved upon some other officer during his absence.

H.Q.C. 55-L-408
29 Dec. 42

“Officer Commanding”—Cannot Convene

The “Commanding Officer” of the accused, as said expression is defined in R.P. 129, cannot convene a G.C.M. or D.C.M., and if he does the proceedings are a nullity pursuant to K.R. (Can.) 526 and 525 and the defect could not be cured by having the Proceedings confirmed by an authority competent so to do.

H.Q.C. 55-P-367
31 Mar. 43

Change in—by President

The President of the Court has no jurisdiction whatsoever to make or initial any changes in the Convening Order. In this regard see M.M.L., page 768, para. 11 and also K.R. (Can.) para. 554 (c). If the important parts of a Convening Order are irregular, the Court should adjourn in order that a new Convening Order may be properly made.

H.Q.C. 55-L-347
3 Sep. 42

Signing of—Before Trial

The Convening Order must be signed by the Convening Authority or by a staff officer for him, or by one of his staff officers as such, naming his appointment (R.P. 22 Note 4) before trial and, if not, the Finding and Sentence of a Court-Martial must be quashed. On the other hand the order for trial endorsed on the charge sheet must be signed by the Convening Officer or by a Staff Officer “for him” (R.P. 11 Note 1). A defect here could be cured by R.P. 56.

H.Q.C. 55-B-313

COURTS-MARTIAL EVIDENCE—DEFENCE

Accused—Cross-examination—Confession

Where the alleged confession of the accused has been rejected by the Court and the accused later gives evidence he may not be cross-examined by the Prosecutor on such statement. An accused person giving evidence on his own behalf may be asked any question in cross-examination notwithstanding that the answer would tend to incriminate him as to the particular offence charged, but not as to other offences.

55-K-113

Drunkenness—as a Defence

Where accused pleads guilty of stealing property belonging to a Regimental Institution and then, in mitigation, says he was drunk at the time and did not know what he was doing, the safest course for the Court is to enter a plea of "Not Guilty" and try the case. While drunkenness is not necessarily a defence in itself, it would be a good defence to a theft charge or to any charge involving intention as a necessary element if the accused could show that he was so drunk that he did not know the nature and quality of his act. However if the Statement in mitigation does not go so far as to suggest that the accused may have been incapable of forming an intention, the proceedings would not be quashed merely because the plea of guilt was acted upon.

55-B-588

Restitution—No Defence

Where accused is charged with negligently performing his duties with respect to public moneys so as to be unable to account for same, it is no defence to the charge for him to say that restitution has been made.

11-C-2153
20 Nov. 42

Rules of Evidence—Latitude

Where the report of an "M" test, signed by an army examiner, is tendered on behalf of the accused through a witness who was not present at the time of signature, this is,

COURTS-MARTIAL—EVIDENCE—DEFENCE

strictly speaking, inadmissible; but it is not considered good practice or good policy to apply the rules of evidence too strictly in relation to the defence offered by an accused soldier.

55-L-389
1 Nov. 42

Letters Received by Accused—Admissible as Corroborative Evidence

Where the accused swears in his evidence that he received certain letters under circumstances relevant to his defence, such letters are admissible, not as evidence of their contents, but in support of his allegation that he received them through the mail, purporting to be sent by the persons therein named and purporting to state the facts therein set out.

55-D-317
28 Nov. 42

On Plea of Guilty

Where an accused pleads "Guilty" there is no closing address by either the Prosecutor or the Defending Officer. After the recording of the plea of guilty the accused may make a statement with reference to the charge and may give evidence and call witnesses as to character. The accused or the Defending Officer may then, in the proceedings on conviction before sentence, address the Court. In the latter case the Prosecutor does not make an address, except that where the accused is liable to any exceptional punishment by reason of the nature of his service or attention has been directed in local orders to the prevalence of the offence of which the accused has been convicted. It is the duty of the prosecutor to bring such special circumstances to the attention of the Court. See R.P. 46 (E) and K.R. (Can.) 563.

55-H-294 26 Oct. 42
55-M-601 8 Sept. 42
55-P-262 29 July 42
55-V-81 7 Apr. 43

COURTS-MARTIAL EVIDENCE—DOCUMENTARY

Admissible on Production—Distinction Where Proof Required

A distinction must be drawn between (1) documents which are admissible, upon production, as proof of the facts therein stated, pursuant to the Army Act, s. 163 or to an Order-in-Council under the War Measures Act and (2) documents admissible only when proven by a witness in the ordinary way, e.g., a Nominal Roll, a Roll Book or an inventory.

55-S-118
55-R-165

Orders—Admissibility of

Part I and Part II Orders, being part of the Regimental Books, are admissible as evidence of the facts therein stated: Army Act s. 163 (1) (H), C.A.R.O. 1429. They should be put in through copies certified by the officer having charge of the books of the Unit, who should offer his true signature, not a mimeographed one.

55-M-509
55-H-234

Certificate of Apprehension—Foreign Material

The Certificate of Apprehension or Surrender is admissible under statutory provision which cannot be stretched to cover the inclusion in such certificate of material not proper to the Certificate and apart from the Certificate, inadmissible.

55-A-113
55-B-277

Certificates—Cost of Apprehension

R.O. 1099 makes admissible, as evidence of the facts therein stated: (1) the certificate of the officer who issued or authorized the transportation; and (2) the certificate of the escort commander as to incidental expenses; but neither this order nor R.O. 3464 permits certified copies of such certificates to be admitted in evidence. The original forms M.F.B. 1481 and

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

1482 must be submitted to the Court. Nor is there any provision for proof of these costs by way of telegram.

55-J-118
55-S-311

Charge Sheet—Admissible in Civil Courts

The Deputy Minister of Justice has ruled that a Charge Sheet and the Finding and Sentence of a court-martial are public documents, and copies thereof certified by the Judge Advocate-General are admissible in a Civil court by virtue of the Canada Evidence Act, R.S.C. 1927 C. 59.

S. 24
C. 55-Y-14
16 Mar. 43

Declaration—Court of Inquiry—May Be Attacked

Where M.F.B. 375, Declaration of Court of Inquiry, is produced, it is admissible in proof of the facts therein stated, but the Defending Officer can attack the findings of the Court of Inquiry, either by cross-examining the witness who offers the document or by calling a witness of his own to disprove the facts stated in M.F.B. 375.

55-D-257
25 Jul. 42

Declaration—Court of Inquiry—When Admissible

A Court of Inquiry shall be held in all cases of absence (except in the case of absconded recruits) at the expiration of 21 clear days from the date of absence or as soon after as practicable, unless the Commanding Officer of the soldier has learned of his apprehension or return. The time shall be calculated exclusive of the date of going absent and the date of holding the Court. If the Court is held at an earlier date, the record of its Declaration, M.F.B. 375, is inadmissible in evidence. See Army Act s. 72 and Note 1 thereto; R.P. 124 (A) (C) and R.P. 125, Note 2; K.R. (Can.) 643 (a).

55-P-179
405-B-1395
44-M-403

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

Declaration—Court of Inquiry—Reproduction

Where the Declaration of a Court of Inquiry is duly entered in a Regimental Book by the Commanding Officer, under K.R. (Can.) para. 1513, and where an exact reproduction thereof is duly certified by the O.C. or Adjutant, as the officer having custody of the regimental books, such certified copy of the Declaration is admissible as evidence of the facts therein stated under the Army Act, s. 163 (1) (H). It is not fatal to admissibility that in the original declaration, and hence in the true copy thereof, there is a slight variation from the wording prescribed in R.P. 125, Note 3.

55-B-314

Admission—Ruling on—Time for

Where a document is tendered, it should first be admitted by the Court before being given a reference letter as an exhibit and read into the proceedings. If the document were read and then rejected as an exhibit, injustice might be done the accused.

55-M-811
13 May 43

Losing by Neglect—Proof— Production of Forms

Where the charge is one of losing by neglect under s.24 (2) of the Army Act, the proper mode of proof is for a witness, who has made a kit inspection of the accused, to give oral evidence of the fact setting out *verbatim* the deficiencies revealed on the inspection, together with the values thereof. He should state that comparison was made with MFB 375 or MFC 800, either of which should be produced to the Court. The MFB 375 may be produced alone, but if it cannot be produced a certified copy of MFC 800 must be put in to support the allegation that the accused was actually issued with the articles: A.A. s. 24 (2), Note 6, M.M.L., p. 449.

55-G-307
23 Dec. 42

55-C-444
1 Oct. 42

55-C-473
14 Dec. 42

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

Medical Certificate—for Each Day of Trial

Where a trial lasts more than one day, there should be a medical certificate for each day of the trial.

55-L-451
24 Feb. 43

“Officer in Charge of Records”—Who Is

Where evidence is to be given by the Officer in charge of Regimental Records, this can be done by the Commanding Officer, who is always in charge of or has custody of all the records of a Unit; as well as by the Adjutant or Officer in charge of records. Such evidence may also be given by an assistant to the Officer of Records, having charge of the records in the absence of such officer.

55-B-623
26 Feb. 43

Part II Orders—Form of Introduction

Where an extract from a Part I or Part II Order is produced, in place of a certified copy of the whole Order, there should be included the heading of the Order of which the extract is required and a copy of the signature of the Order by the O.C. or his Adjutant, within the meaning of the Army Act Section 163 (1) (G), as well as the usual certificate signed by the proper officer, that it is a true extract.

55-A-135
24 Oct. 42

Part II Orders—Hospital Entries

Where Part II Orders, containing entries of the hospitalization of a soldier, are produced, they are receivable as evidence of such hospitalization, under the Army Act, Section 163.

55-R-271
16 Dec. 42

Cost of Apprehension—Proof of

It is improper to proceed for recovery of costs of apprehension by setting forth the same in a cash debit voucher.

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

The proper method is to prove the costs of transportation by MFB 1481 and of meals and other proper incidentals by MFB 1482, pursuant to R.O. 1099 and R.O. 3464.

55-H-202

Signatures—Designated Persons—No Substitute for

Where the signature of certain officers is required in documents rendered admissible under the Army Act s. 163 (G) and para. 1513 K.R. (Can.), 1939, such documents must be signed by the officers themselves and not by somebody else "for him."

J.A.G. (DOR 196)

Summary of Evidence—Statement of Accused— Where Read

Where a statement made by the accused and contained in the Summary is read as evidence at the close of the Prosecutor's case, the entire Summary is thereupon annexed to the proceedings. This is provided by R.P. 17, Note S, and Para. 26 of the Memoranda on Page 570, M.A.F.L.

11-RAF-975438
7 Oct. 42

Tattoo and Absentee Reports

Tattoo and Absentee reports are inadmissible, but the witnesses who sign them can use them to refresh their memories if they were made by the witnesses at the time of the event.

55-S-459
17 Nov. 42

Written Statement of Accused—Where Accused Testifies

Where the accused testifies in his own defence, he cannot put in a statement written by himself, as part of his testimony. Such statement is not evidence at all and at most could only be considered as an address to the Court.

55-L-370
2 Nov. 42

Letter—Received by Accused—Admissible for Its Worth

Where the accused tenders a letter which he received, and which purports to be signed by an Officer on behalf of the Officer Commanding the District in which the accused's depot is situated, the letter is admissible, not necessarily in proof that it was sent by whom it purported to be sent, but that, in fact, such letter, for what it was worth, was received by him.

55-T-170
31 Aug. 42

Certificate—Cost of Meals—Civilian Constable

Where form 1482 "Absentees and Deserters," the Certificate of the cost of meals for the escort and the accused, is signed by a civilian constable, it is inadmissible, since this is not authorized by Order-in-Council P.C. 58/4015 dated 24th March 1943, under which the certificate is issued.

55-T-182
22 Oct. 42

Certificates—Civilian Professional Men—Where Admissible

Where the accused presents certain certificates of a clergyman and a civilian physician, which he swears he obtained from the persons signing the same, these are admissible as documents, in support of the statement of the accused that he did obtain some such certificates. But they are not proof of the statements made therein. It cannot be said that a Court is wrong in giving leeway to the accused in giving his evidence in view of the difficulties he may have in procuring witnesses.

55-S-450
10 Nov. 42

Certified Copy—How Signed

Where a certified true copy of a paragraph of Station Standing Orders is made an exhibit to the Summary of Evidence, such exhibit should be signed by the Certifying Officer, e.g. the C.O. or Adjutant of the Unit or by the officer taking

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

the Summary (if the latter has compared the extract with the original) and the capacity in which such officer signs should also be indicated.

11-RAF 621171
14 Oct. 42

Document Inadmissible—Leeway Given Accused

Where the report of an "M" test, signed by an Army Examiner, is tendered on behalf of the accused through a witness who was not present at the time of signature, this is, strictly speaking, inadmissible; but it is not considered good practice or good policy to apply the rules of evidence too strictly in relation to the defence offered by an accused soldier.

55-L-389
1 Nov. 42

Document—Prejudicial Notation

Where, on the certificate of apprehension by civil police, Form 215, there is a notation of the charges laid against accused by such police at the time, such document may be held inadmissible as likely to prejudice the case of the accused.

55-A-157
14 Jan. 43

Statement as to Character—Conduct Prior to Attaining Military Status

While MFB 355 (statement as to character and particulars of service of accused) is properly admissible after conviction and before sentence, this form should not contain reference to a civil conviction against the accused before he acquired military status. Where a Court learns from the Defending Officer that there is such an entry, it is right in excluding the document.

55-L-417
16 Nov. 43

Statement—Signed by Accused—Referred to

Where reference is made in the Summary of Evidence to the fact of accused having signed a statement that he had

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

read Station Standing Orders, this should, if available, be made part of the Summary and produced at the trial.

11 RAF 621171
14 Oct. 42

Confessions and Admissions

When a Prosecutor wishes to introduce into evidence as part of his case an alleged confession or admission made by an accused, the onus is upon him to lay a foundation for the introduction of such evidence. He can establish a basis for it either by—

- (a) Satisfying the Court that the person to whom it was made was not a person in authority or connected with the offence (such as the victim of an assault or a theft would be) or
- (b) If made to a person in authority, etc., by producing evidence that it was made freely and voluntarily without hope of favour, if made, and without fear of prejudice if not made.

If the defence contends that the confession or admission is inadmissible because a proper foundation has not been laid as indicated above, he should raise the issue by objection at once and not wait until he is called on to make a defence, and the Court should, before admitting the confession, try out this issue of admissibility and this issue alone then and there, in what is often called a "trial within a trial." Witnesses, whose evidence must be confined to this issue alone, may be called by both sides and the accused may be, and naturally often is, one of these witnesses. But, just as his evidence at this stage must be confined to the disclosure of the circumstances surrounding the making of the confession or admission, so must his cross-examination or his questioning by the Court or the Judge Advocate be confined to this issue. It would be irrelevant and most improper that advantage should be taken of the presence of the accused in the witness box at this stage to ask him questions, the answers to which might incriminate him of the charges before the Court. Of course the fact that he has given evidence during this "trial within a trial" does not preclude him from giving evidence and being cross-examined thereon, later, on the main issue of guilt or innocence.

If a confession or admission is in writing and has been signed by the accused, in addition to laying the foundation referred to above, the Prosecution must prove the signature of the accused before the writing may be admitted as an

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

exhibit. In some cases, however, a writing exists which has not been signed by the accused, or where it is impossible to prove his signature. In this case, if the document can be described as a memorandum, made by a witness, of admissions made to that witness or in his hearing by the accused, then the witness may use the document to refresh his memory, but it cannot be made an exhibit to the proceedings. The Defending Officer can of course cross-examine the witness as to the circumstances under which the memorandum was made and as to its manner of preparation, and in order to enable him to do so he should be allowed to examine the document.

Embarkation Pass—Not Regimental Book

Where an Embarkation Pass is offered in evidence against the accused, it is not admissible by itself, as it is not part of a Regimental Book, but it may be put in through a witness who can say that the Pass was given to the accused.

55-P-290
28 Oct. 42

H.D. Member—Document Admissible

Where MFB 1481 is produced at the trial of a member H.D. of the Canadian Army, this is admissible. Under the Reserve Army Special Regulations, 1941, members H.D., although not placed on active service, are to be considered subject to all the obligations and duties of, and be governed by, the same laws, orders and regulations as men of the Active Militia who are placed on active service.

55-B-719
4 Jun. 43

NOTE.—This ruling is also applicable to a N.R.M.A. soldier under the provisions of N.R.M.A. Regs. (Army) 1943.

Hospital Records—Proof of Hospitalization and Pay

Where a witness has custody of the hospital records and makes the entries therein, he can give evidence as to dates between which a soldier was confined to the hospital and can produce the records in this respect. Where it is necessary to

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

prove the pay given a soldier in hospital, the Unit's Paymaster can give evidence as to the pay actually paid to the soldier concerned and can produce his records in this regard; provided, however, that in both the aforementioned instances the witness could, of his own knowledge, have given such evidence at the time such records were prepared.

55-R-271
16 Dec. 42

Letters Received by Accused—Admissible

Where the accused swears in his evidence that he received certain letters, under circumstances relevant to his defence, such letters are admissible, not as evidence of their contents, but in support of his allegation that he received them through the mail, purporting to be sent by the persons therein named and purporting to state the facts therein set out.

55-D-317
28 Nov. 42

M.F.B. 355—Time in Civil Gaol

Where the accused serves time in gaol for an offence under the Criminal Code, this shall not be included in M.F.B. 355 as time "awaiting trial on the present charges."

C. 55-S-556
10 June 43

Originals—Must Be Produced

Where an original document is available it must be produced. This is especially true of Certificates of Surrender or Apprehension of a deserter or absentee, under the Army Act, s. 163 (j) (k) (l) (m) and the Air Force Act, s. 163, which are admissible only in their original form. The same is true of other documentary evidence, such as statements of account, canteen and mess ledgers, etc., except in the circumstances mentioned in para. 35, Chap. VI, Manual of Military Law.

J.A.G. (DOR 130)

Transportation Cost—Proof of

Form 1481, the cost of transportation on the apprehension and return of a deserter or absentee, is admissible if it purports

COURTS-MARTIAL—EVIDENCE—DOCUMENTARY

to be signed by the officer who actually issued or authorized the transportation. It should not be signed by such officer in mimeograph form nor should it be signed by someone for him; and a letter should not be substituted for the appropriate form.

55-T-132

Regimental Books—Quartermaster

Copies of M.F.C. 800, to be certified by the officer having custody of regimental books, may be so certified by the officer commanding, as the officer having charge of all the regimental books; and by the Adjutant and Assistant Adjutant, as having the custody of regimental books for the O.C.; and also by the Quartermaster and Assistant Quartermaster, as those responsible for the proper custody of Quartermasters' books, of which this Form is part.

C. 55-L-594
7 Sept. 43

When Rejected—Not an Exhibit

Where the Court rules against the admissibility of a document, the latter should not be made an exhibit to the Proceedings, but should be forwarded with the latter to the Judge Advocate-General for review.

55-W-349
7 Apr. 43

COURTS-MARTIAL EVIDENCE—GENERAL

Absence—Continued—*Prima Facie* Evidence of

Where the accused is charged with absence without leave or desertion, there must be some evidence from which the Court can draw the proper inference that the accused was absent during the whole period between the time of absence and the time of apprehension or surrender. Some of the ways in which this can be proved are: (a) a witness can state that the accused, after he absented himself or was found absent, continued to remain so; (b) an MFB 375 shows the time at which the accused absented himself and it also shows that he was still absent after the twenty-first day; (c) a Part II Order often shows that an accused "is absent from . . ." a certain date and time and the Order is dated a day or so later. Although, in cases (b) and (c) the evidence does not completely establish that the accused was absent during the whole intervening period covered by the charge, nevertheless there is some evidence that he was still absent at some specified time between the two dates. Where there is evidence of (1) the commencement of absence, (2) the termination of absence, and (3) the fact of absence at some specified time within the period, the Court can properly draw an inference that the accused was absent throughout the whole period. Hence a case is established which calls for a reply from the accused.

55-G-400
d/22/6/43

Admission—Defending Officer—Going to the Root of Charge

Where the Defending Officer makes an admission of a fact which goes to the root of the charge, such admission should not be received. Paragraph 72, p. 90, M.M.L. sets out that admissions may be received only of collateral or relatively unimportant facts, which are not disputed, but which must be proved on the part of the prosecution or the defence, such as the signature of a document, the truth of a copy, certain details in enumeration of stores, or an account; and in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the Court. But in the case of a man charged with desertion, the fact of apprehension should be proven by the Prosecutor.

55-M-750
d/17/3/43

COURTS-MARTIAL—EVIDENCE—GENERAL

Accused—Evidence of Own Previous Offence

Where the accused desires to give evidence as to his having been absent without leave on previous occasions, this should be allowed by the Court. The accused has the right to bring out his own previous absence without leave as it may be connected with some explanation he may desire to give. However, the Court would be correct in disallowing a question on the point, if put by the Prosecutor to a witness for the Prosecution.

55-W-338
d/11/5/43

Civil Rules of Evidence—Apply to Air Force Courts-Martial

The rules of evidence followed by the English civil courts prevail before Army Courts-Martial; Militia Act, Section 69 and Army Act, Section 128. But, by virtue of K.R. (Air) 1943, paragraph 1322, item 5 and Appendix 1A, item 21, the law of evidence before R.C.A.F. Courts-Martial is that of the civil courts of Canada, i.e., the Evidence Acts of Canada and the Provinces. Hence the privileges and obligations of witnesses will be determined by the code under which the trial is being conducted.

J.A.G. 667A (19)
12/3/41
J.A.G. (DOR 12)
J.A.G. (1)
23/7/40

Confessions and Admissions

When a Prosecutor wishes to introduce into evidence as part of his case an alleged confession or admission made by an accused, the onus is upon him to lay a foundation for the introduction of such evidence. He can establish a basis for it either by—

- (a) Satisfying the Court that the person to whom it was made was not a person in authority or connected with the offence (such as the victim of an assault or a theft would be) or
- (b) If made to a person in authority, etc., by producing evidence that it was made freely and voluntarily without hope of favour, if made, and without fear of prejudice if not made.

COURTS-MARTIAL—EVIDENCE—GENERAL

If the defence contends that the confession or admission is inadmissible because a proper foundation has not been laid as indicated above, he should raise the issue by objection at once and not wait until he is called on to make a defence, and the Court should, before admitting the confession, try out this issue of admissibility and this issue alone then and there, in what is often called a "trial within a trial." Witnesses, whose evidence must be confined to this issue alone, may be called by both sides and the accused may be, and naturally often is, one of these witnesses. But, just as his evidence at this stage must be confined to the disclosure of the circumstances surrounding the making of the confession or admission, so must his cross-examination or his questioning by the Court or the Judge Advocate be confined to this issue. It would be irrelevant and most improper that advantage should be taken of the presence of the accused in the witness box at this stage to ask him questions the answers to which might incriminate him of the charges before the Court. Of course the fact that he has given evidence during this "trial within a trial" does not preclude him from giving evidence and being cross-examined thereon, later, on the main issue of guilt or innocence.

If a confession or admission is in writing and has been signed by the accused, in addition to laying the foundation referred to above, the Prosecution must prove the signature of the accused before the writing may be admitted as an exhibit. In some cases, however, a writing exists which has not been signed by the accused, or where it is impossible to prove his signature. In this case, if the document can be described as a memorandum, made by a witness, of admissions made to that witness or in his hearing by the accused, then the witness may use the document to refresh his memory, but it cannot be made an exhibit to the proceedings. The Defending Officer can of course cross-examine the witness as to the circumstances under which the memorandum was made and as to its manner of preparation, and in order to enable him to do so he should be allowed to examine the document.

Court of Inquiry—Evidence at

While a Court of Inquiry should be guided by the rules of evidence of the civil courts as far as possible, it has to be allowed some latitude in view of the fact that it is formed to collect information, not to try an issue. Hence, strictly inadmissible evidence may sometimes be heard by a Court of Inquiry. If it does, this fact should be noted by those who have to consider the finding. Evidence at such a Court cannot

COURTS-MARTIAL—EVIDENCE—GENERAL

be used against any officer or soldier, except for wilfully giving false evidence, contrary to S. 29 of the Army Act—R.P. 125A. However, this rule does not prevent the use of the proceedings of a Court of Inquiry in cross-examination of a witness at a Court-Martial, to test his credibility. He may be asked if at a Court of Inquiry he made a certain statement different from what he is presently making, and if he denies it the pertinent portion of the proceedings may be proven, not as evidence of guilt or innocence, but for the limited purpose only of its effect upon the credibility of the witness, be he accused or any other witness. Proof will not be made by producing or filing the proceedings but by calling a witness who can swear as to what happened, using if he wishes, the record to refresh his memory.

J.A.G. (2)
d/9/1/41

New Evidence—Cannot Be Heard after Promulgation—Petition

Where a finding and sentence have been confirmed, the trial cannot be reopened for the hearing of new evidence. The only course for an accused who wishes new evidence considered is a petition to the reviewing authority under K.R. (Can.) 574. To this petition should be attached statements or affidavits as to the evidence which accused and his witnesses could have given at the trial had accused availed himself of the opportunity for full defence, or as to evidence which has since the trial come to light.

J.A.G. (2)
16/5/41

Court of Inquiry—Where Taken under Oath— Where Not so Taken

Except in the case of a returned prisoner of war where a Court of Inquiry must be held under Oath under R.P. 124, and a Court on illegal absence under A.A. 72, the holding of such inquiry under Oath is in the discretion of the convening authority; and where the latter chooses to order the evidence taken under Oath, Courts-Martial procedure should be followed. Hence, the signature of the witness can be dispensed with, as it is not required under R.P. 83. If it is not taken under Oath, the provisions of R.P. 4 as to a Summary of Evidence (not under Oath) shall be followed. Under this rule the evidence of each witness must be signed by him.

COURTS-MARTIAL—EVIDENCE—GENERAL

(See also C.A.R.O. 417 of 1940 as amended by C.A.R.O. 628 of 1940 and 965 and 1139 of 1941.) An officer or soldier whose character or military reputation may be affected by the inquiry may request the evidence to be taken on Oath, and this should be acceded to him.

J.A.G. (DOR 11)

J.A.G. (DOR 286)

Desertion—Intention under Charge of

Where a soldier absents himself from his Unit with the intention to desert, but afterwards changes his mind, he may be found guilty of desertion. If he absents himself without any such intention, but later forms an intention not to return, he may also be found guilty of desertion. It is unnecessary for the Prosecution to establish that the desertion continued throughout the whole period of absence.

55-G-157

Desertion—Warning for Draft

Where there is a charge of deserting the Service and not of desertion after warning for draft, evidence of warning may be given in order to show the accused's state of mind. This may be done even though the allegation that a warning for a draft was given is not included in the Particulars.

55-D-359

8 Mar. 43

Desertion—Warning Order for Particular Draft Only

Where a Warning Order bears a certain date and the accused goes absent without leave 2½ months later; and where, in the meantime, the draft for which the warning was given leaves the camp and the accused does not accompany it, for reasons other than absence, such evidence is insufficient to prove a charge of desertion. A man is not to be placed in a state of perpetual warning, but is to be warned for a particular draft or special duty; and can only be convicted of desertion if he goes absent without leave, with the intention of evading that particular draft or special duty, unless, of course, his absence without leave indicated an intention to abandon the service without reference to the particular draft.

55-W-320

d/5/1/43

COURTS-MARTIAL—EVIDENCE—GENERAL

Disobedience—Proof of Charge

Where an accused is charged with disobeying an order the facts required to be shown in the evidence are: (1) that the order demanded immediate compliance or, if it did not demand immediate compliance, that the accused had an opportunity to comply before he was arrested; and (2) that having received the Order (to go on parade) he actually disobeyed it (by not going on parade).

55-D-384
11 Mar. 43

Documentary vs. Parol

The note to A.A., Sec. 12, states "To establish desertion it is necessary to prove some circumstances justifying the inference that the accused intended not to return to military duty." Among the circumstances from which the Court may infer the intent of the accused not to return there are the facts that he was apprehended and that at the time he was wearing civilian clothes. This is often shown in the certificate of apprehension.

The soldier may in his defence contradict such statement, and the Court will usually require the prosecutor to call oral testimony to prove the contention of the prosecutor and then weigh the conflicting evidence disregarding the statement in the document. In a case where the accused does not contradict directly any statement made in the document, such as civilian dress or apprehension, but in a sworn statement in defence swears that he always intended to return, the Court will weigh the inference of intention not to return arising from his civilian dress against his own statement as to intention and will arrive at its own conclusion as to the true intention.

JAG 989 (47)
d. 26 July 43

Orders Proving Prevalence of Crime— Admissibility of

A Court may always impose a sentence more severe than those suggested as a guide in para. 563 (m) K.R. (Can.) 1939. One circumstance which might bring this about would be the prevalence in the garrison or camp of the offence of which the accused was convicted. A District or Garrison Order

COURTS-MARTIAL—EVIDENCE—GENERAL

calling attention to such prevalence, is admissible if produced by the Prosecutor after finding and before sentence and, if proven, the Prosecutor may ask for a more severe sentence.

J.A.G. (DOR 59)
27/11/23

Signature—Documents to Support *Prima Facie* Case of Fraudulent Enlistment

Where a soldier is charged with absenting himself without leave on two occasions and with fraudulent enlistment after both of such occasions, there may be someone in the District who can identify the accused as the man who signed the various M.F.'s M.2, but if there is not, a *prima facie* case is established if a witness identifies accused as the man who signed one M.F.M. 2 and points out abundant similarities in the statements of fact and the handwriting in the statements of fact and the handwriting made in all three M.F.'s M. 2.

55-T-210
d/19/1/43

Prosecution—Must Rely on Case Presented Prior to Closing

Where the accused is charged with neglecting to obey an order, contrary to A.A., Section 11; where the prosecution closes its case without producing the order, and where it is produced and proven at the request of the Court, the Defending Officer is right in objecting to such a proceeding as the case against the accused is limited to what is adduced by the prosecution before closing its case. See R.P. 86 (D) note 4. It might even be necessary for the Court to conduct a trial within a trial and hear evidence as to whether or not the default was or was not due to the negligence of the prosecutor.

J.A.G. (DOR 101)
J.A.G. (DOR 112)

COURTS-MARTIAL

EVIDENCE—INADMISSIBLE

Accomplice—Confession

The written confession of an accomplice is not admissible in evidence against an accused upon production thereof. The Prosecutor may, of course, call the accomplice as a witness and if he is declared adverse, cross-examine him on the statement.

55-N-46

Accused—Cannot Be Compelled to Give Further Evidence

Once the accused has given his evidence, the Court cannot recall him for further questioning, unless a request that he be recalled is made by him or the Defending Officer.

55-L-369
30 Nov. 42

Certificates of Clergyman or Physician—Admissible for Accused

Where the accused presents certain certificates of a clergyman and a civilian physician, which he swears he obtained from the persons signing the same, these are admissible as documents, in support of the statement of the accused that he did obtain such certificates. But they are not proof of the statements made therein. It cannot be said that a Court is wrong in giving leeway to the accused in giving his evidence in view of the difficulties he may have in procuring witnesses.

55-S-450
10 Nov. 42

Certificates—as to Cost of Apprehension—Copies

R.O. 1099 makes admissible, as evidence of the facts therein stated, (1) the certificate of the officer who issued or authorized the transportation; and (2) the certificate of the escort commander as to incidental expenses; but neither this order nor R.O. 3464 permits certified copies of such certificates to be admitted in evidence. The original forms M.F.B. 1481

COURTS-MARTIAL—EVIDENCE—INADMISSIBLE

& 1482 must be submitted to the Court. Nor is there any provision for proof of these costs by way of telegram.

55-J-118

55-S-311

Confessions and Admissions

When a Prosecutor wishes to introduce into evidence as part of his case an alleged confession or admission made by an accused, the onus is upon him to lay a foundation for the introduction of such evidence. He can establish a basis for it either by—

- (a) Satisfying the Court that the person to whom it was made was not a person in authority or connected with the offence (such as the victim of an assault or a theft would be) or
- (b) If made to a person in authority, etc., by producing evidence that it was made freely and voluntarily without hope of favour, if made, and without fear of prejudice if not made.

If the defence contends that the confession or admission is inadmissible because a proper foundation has not been laid as indicated above, he should raise the issue by objection at once and not wait until he is called on to make a defence, and the Court should, before admitting the confession, try out this issue of admissibility and this issue alone then and there, in what is often called a "trial within a trial." Witnesses, whose evidence must be confined to this issue alone, may be called by both sides and the accused may be, and naturally often is, one of these witnesses. But, just as his evidence at this stage must be confined to the disclosure of the circumstances surrounding the making of the confession or admission, so must his cross-examination or his questioning by the Court of the Judge Advocate be confined to this issue. It would be irrelevant and most improper that advantage should be taken of the presence of the accused in the witness box at this stage to ask him questions the answers to which might incriminate him of the charges before the Court. Of course the fact that he has given evidence during this "trial within a trial" does not preclude him from giving evidence and being cross-examined thereon, later, on the main issue of guilt or innocence.

If a confession or admission is in writing and has been signed by the accused, in addition to laying the foundation referred to above, the Prosecution must prove the signature of the accused before the writing may be admitted as an exhibit. In some cases, however, a writing exists which has

COURTS-MARTIAL—EVIDENCE—INADMISSIBLE

not been signed by the accused, or where it is impossible to prove his signature. In this case, if the document can be described as a memorandum, made by a witness, of admissions made to that witness or in his hearing by the accused, then the witness may use the document to refresh his memory, but it cannot be made an exhibit to the proceedings. The Defending Officer can of course cross-examine the witness as to the circumstances under which the memorandum was made and as to its manner of preparation, and in order to enable him to do so he should be allowed to examine the document.

Costs of Apprehension—Non-military Authorities— Proof of

There is no provision in R.O. 1099 or 3464 for admitting a statement of expense by a local police chief or a letter from the R.C.M.P., setting out the expense incurred by the latter.

55-L-316
55-A-122

Court of Inquiry—Evidence at

While a Court of Inquiry should be guided by the rules of evidence of the civil courts as far as possible it has to be allowed some latitude in view of the fact that it is formed to collect information, not to try an issue. Hence, strictly inadmissible evidence may sometimes be heard at a Court of Inquiry. If it does, this fact should be noted by those who have to consider the finding. Evidence at such a Court cannot be used against any officer or soldier, except for wilfully giving false evidence, contrary to s. 29 of the Army Act, R.P. 125. However, this rule does not prevent the use of the proceedings of a Court of Inquiry in cross-examination of a witness at a Court-Martial to test his credibility. He may be asked if at a Court of Inquiry he made a certain statement different from what he is presently making, and if he denies it the pertinent portion of the proceedings may be proven, not as evidence of guilt or innocence, but for the limited purpose only of its effect upon the credibility of the witness, be he accused or any other witness. Proof will not be made by producing or filing the proceedings but by calling a witness who can swear as to what happened using, if he wishes, the record, to refresh his memory.

J.A.G. (2)
d/9/1/41

COURTS-MARTIAL—EVIDENCE—INADMISSIBLE

Defending Officer—Time for Disputing Admissibility

Where the Defending Officer desires to contest the admissibility of evidence, he should do this when it is tendered. His closing address is not the place for such discussion.

11-R-155275 -
5 Sept. 42

Embarkation Pass—Inadmissible—Per Se

Where an Embarkation Pass is offered in evidence against the accused, it is not admissible by itself, as it is not part of a Regimental Book, but it may be put in through a witness who can say that the Pass was given to the accused.

55-P-290
28 Oct. 42

Document—Not Signed in Presence of Witness Offering

Where the report of an "M" test, signed by an Army Examiner, is tendered on behalf of the accused through a witness who was not present at the time of signature, this is, strictly speaking, inadmissible; but it is not considered good practice or good policy to apply the rules of evidence too strictly in relation to the defence offered by an accused soldier.

55-L-389
1 Nov. 42

Foreign Material—in Certificate of Apprehension

The Certificate of Apprehension or Surrender is admissible under statutory provision which cannot be stretched to cover the inclusion in such certificate of material not proper to the certificate and apart from the certificate, inadmissible.

55-A-113
55-B-277

M.F.M. 2—Admissible for Specific Purposes Only

Where the M.F.M. 2 of the accused is tendered in evidence by the Prosecution it is admissible under the Army Act,

COURTS-MARTIAL—EVIDENCE—INADMISSIBLE

Section 163 (1) (a) for two purposes only: (1) that the soldier gave the answers to the questions which he is therein represented as having given; (2) to prove the enlistment of the soldier. However, the M.F.M. 2, even having been admitted as aforesaid, should not be used to show the previous record of the accused, including previous convictions, as this evidence should not be before the Court until after conviction and before sentence.

55-M-642
20 Nov. 42

Notation on Certificate—Inadmissible

Where, on the certificate of apprehension by civil police, M.F.M. 215, there is a notation of the charges laid against accused by such police at the time, such document may be held inadmissible as likely to prejudice the case of the accused.

55-A-157
14 Jan. 43

Offence Charged—Evidence Restricted to

Where an accused is charged with negligently operating a D.N.D. vehicle, it is wrong for the Court to ask the accused whether he had permission for using the vehicle. R.P. 80 (D).

55-S-580
23 June 43

Written Statement—in Accused's Evidence

Where the accused testifies in his own defence, he cannot put in a statement written by himself, as part of his testimony. Such statement is not evidence at all, and at most could only be considered as an address to the Court.

55-L-370
2 Nov. 42

COURTS-MARTIAL

EVIDENCE—INSUFFICIENT

Charge of Disobedience—Failure to Produce Order

Where the accused is charged with neglecting to obey an order, contrary to the Army Act, Section 11, and the prosecution closes its case without producing the Order; and where it is produced and proven at the request of the Court, the Defending Officer is right in objecting to such a proceeding, and the case against the accused is limited to what is adduced by the prosecution before closing its case. While under R.P. 86 (D) the Court may call or recall any witness at any time in the interest of justice, this rule is not interpreted to supplement negligent conduct on the part of the prosecution. Note 4 to the Rule.

J.A.G. (DOR 101)

J.A.G. (DOR 112)

Disease—Concealment—Symptoms

Where an accused is charged with attempting to conceal a certain disease, it is insufficient proof of his having contracted the disease for the Medical Officer to testify that accused complained to him of suffering from what is one symptom of such disease. To prove the fact of the disease named in the charge there should be testimony by the M.O. that he has examined the accused and found him to be suffering from such disease.

11-R-77354

17 Nov. 42

Disobedience—Proof Required

Where a soldier is charged with disobedience of an order, it should be shown that the order was given him and that he did not, in fact, obey it. It is insufficient to show that the accused used words indicative of refusal.

55-C-418

55-B-478

55-B-468

Desertion—Apprehension—Alleged—Not Proven

Where a charge of desertion includes an allegation that the accused was apprehended by the civil power and the

COURTS-MARTIAL—EVIDENCE—INSUFFICIENT

evidence establishes that accused surrendered, this error in the charge sheet is so serious as to invalidate a conviction of desertion if it had been found. However, it would not affect a conviction of absence without leave, since the fact of apprehension is not an essential ingredient of this offence.

11-R-117728
15 Dec. 42

Failure of Prosecution—No New Trial

Where a conviction is not confirmed because the prosecution failed to produce at the proper time, that is, before the end of its case, evidence which would have supported the conviction, a new trial should not be allowed on different charges based on the same facts, since this would be simply an attempt to remedy the defect at the original trial.

J.A.G. (DOR 103)

COURTS-MARTIAL

EVIDENCE—SUMMARY OF

Under Oath—Witness Must Sign

R.P. 4 (f) refers to the taking of evidence under oath, at a Summary of Evidence, if the Commanding Officer directs or the accused demands it; but this subsection does not dispense with the requirement of R 4 (e) that the evidence of each witness shall be read over to, and signed by, him, so that R.P. 4 (e) shall be followed, whether or not the witnesses are sworn.

J.A.G. (DOR 10)

Officer Taking—Posting to Unit

Under R.P. 4 (e) the Officer taking the Summary of Evidence need not be posted to the accused's unit. So, the Air Officer Commanding may make an officer available to the Commanding Officer for the purpose of taking the Summary; and such officer can be assigned accordingly without his being posted to the unit of the accused.

11-R-70306

Statement of Accused—Procedure

Where the accused, having been duly cautioned, has made a statement for the Summary of Evidence and it is then found necessary to adduce additional evidence, the accused must be given a further opportunity to speak and a further warning at the same time, as required by R.P. 4 (e) and notes.

55-M-637
9 Nov. 42

COURTS-MARTIAL

FINDING

Charges—Inconsistent

Where two charges are laid which arise from the same facts and are mutually inconsistent, so that they should really have been laid alternatively, the Court can return a Finding of Guilty on only one of the charges, namely the one which appears proven by the evidence. If a soldier is found asleep away from his post he may properly be found "Guilty" of leaving his post but not also of being asleep at his post.

55-M-524
55-C-382
55-F-134

Motion to Dismiss—Allowed— Subsequent Admissions

Where, in the trial of more than one charge, the Court allows the motion for dismissal on one such charge, it must adhere to this decision, even though an admission of guilt may subsequently be made by the accused in the course of his evidence on another charge.

Revision of—Sentence

Where the court finds the accused Guilty of Desertion and awards Sentence of detention and stoppages of pay, and the Confirming Authority sends the Finding back for revision, and where the Court makes a new Finding of Guilty of Absence without Leave and then awards a new Sentence of detention, the stoppages formerly awarded are cancelled as all of the former Sentence lapsed with the revoking of the Finding on revision: A.A., S.54, Note 3 and M.M.L. Ch. 6, S. 94.

C. 55-G-394
19 May 1943

Special—Mistake in Number of Aircraft

Where a mistake in the number of the Aircraft, which accused is alleged to have flown, is discovered after the Court has begun to examine witnesses, it is too late to correct the error under R.P. 33 (b). If a witness can say he was flying

COURTS-MARTIAL—FINDING

with the accused in one of His Majesty's Aircraft at the relevant time, this is sufficient proof provided that the Court returns a Special Finding as to the number of the Aircraft. If, however, the pilot can only be identified through a Flight Authorization Form, the number is so material that the error would be fatal to the proof.

11-J-22258 C-127-211
22 June 1943

Special—Error in Certificate of Apprehension

Where a certificate of apprehension is invalid because it is signed by a Petty Officer in charge of the Shore Patrol, instead of by the Officer in Charge, a certificate of apprehension by Civil Police, if it is also available, is admissible. The Court, however, should bring in a Special Finding to the effect that the accused was apprehended, not by the Shore Patrol, but by civil authority.

55-H-372
25 May 1943

Special—Date of Offence in Error

In cases of theft or improper possession, where the evidence fixes the date of the offence at a date different from that set forth in the particulars, the Court may make a special finding under Rule 44 (d), provided that time is not of the essence of the offence and the change in dates is not so material as to have prejudiced the accused in his defence. In drafting a charge, where the exact date or time is unknown, regard should be had to Paras. 19 and 20, page 701, M.M.L.

C. 55-L-490

COURTS-MARTIAL

PLEAS

Drunkenness—with Plea of "Guilty"

Where accused pleads guilty of stealing property belonging to a Regimental Institution and then, in mitigation, says he was drunk at the time and did not know what he was doing, the proper course for the Court is to enter a plea of "Not Guilty" and try the case. While drunkenness is not necessarily a defence in itself, it would be a good defence to a theft charge if the accused could show that he was so drunk that he did not know the nature and quality of his act.

55-B-588

"Guilty" Plea—Should Be Scrutinized

When, in the summary or abstract or otherwise, an accused has made a statement inconsistent with the plea of Guilty but the Court accepts such a plea, a full record of the proceedings in the Court Room, showing the reasons why the Court accepted the plea, notwithstanding such inconsistency, should be attached to the proceedings, as part of the record.

11-J-5494

COURTS-MARTIAL PROCEDURE

Accused—Where Represented— Cannot Cross-examine

Where an accused is represented at his trial by Counsel or Defending Officer, he has no right to examine or cross-examine witnesses himself, but such examination or cross-examination must be conducted by his Counsel or Defending Officer. The accused does not need to be represented at his trial, but if he places his defence in the hands of another, he should not interfere in the Proceedings. Counsel or Defending Officer is seized of the case and should have full conduct thereof, unless the accused wishes to replace him.

C.55-B-536
19 Nov. 42

Addresses—on Plea of "Guilty"

Where an accused pleads "Guilty" there is no closing address by either the Prosecutor or the Defending Officer. After the recording of the plea of guilty the accused may make a statement with reference to the charge and may give evidence and call witnesses as to character. The accused or the Defending Officer may then, in the proceedings on conviction before sentence, address the Court. In the latter case the Prosecutor does not make an address, except that where the accused is liable to any exceptional punishment by reason of the nature of his service or attention has been directed in local orders to the prevalence of the offence of which the accused has been convicted. It is the duty of the prosecutor to bring such special circumstances to the attention of the Court. See R.P.: 46 (E) and K.R. (Can.) 563.

55-H-294 26 Oct. 42
55-M-601 8 Sep. 42
55-P-262 29 Jul. 42
55-V-81 7 Apr. 43

Adjournment—to Another Place

Where a Court-Martial adjourns to view a place, or to take the evidence of a witness unable to attend the Court, the procedure to be followed is that laid down in Section 53, Army Act and R.P. 63. All the members of the Court, the Prosecutor and the accused must be present.

COURTS-MARTIAL—PROCEDURE

Adjournment—to a Fixed Day and Time

Whenever a Court adjourns, it should adjourn to a definite time and date, and then, if necessary, a further adjournment can be made. Then there is no necessity of obtaining another Convening Order.

55-R-248

Cadets—Not to Be Sworn under Instruction

Under the Army Act and the Rules of Procedure, officers may be sworn for instructional purposes but not cadets who are merely proceeding to their commissions. The defect in Court-Martial proceedings caused by a cadet's attendance is curable under R.P. 56.

55-B-537
20 Nov. 42

Charges—Particulars in One May Refer to the Other

Where there are two charges, reference may be made, in the particulars of the second, to the particulars of the first. The fact that there has been an acquittal on the first charge does not preclude the Court from proceeding upon a second of which charge particulars are given in whole or in part by reference to the first: R.P. 13 (E) and Note 7 thereto.

55-G-285
2 Jan. 42

Charges—Superseded Orders

Where Station Standing Orders are superseded, a charge may be laid under the former orders if the offence was committed while they were in force: The Interpretation Act, R.S.C. 1927, C. 1 §§. 1 (c) (d) and 2 (e); but where it was committed after the new Orders had replaced the old, the charge cannot be based on the old Orders.

C-11-RAF1433709
28 Aug. 42

Charge Sheet—Error—Special Finding

Where a mistake in the number of the Aircraft, which accused is alleged to have flown, is discovered after the Court

COURTS-MARTIAL—PROCEDURE

has begun to examine witnesses, it is too late to correct the error under R.P. 33 (B). If a witness can say he was flying with accused in one of His Majesty's Aircraft at the relevant time, this is sufficient proof, provided that the Court returns a special finding as to the number of the Aircraft. If, however, the pilot can only be identified through a Flight Authorization Form, the number is so material that the error would be fatal to the proof.

C-11-J-22258
C-127-211
22 Jun. 43

Civilian Witnesses—Compelled to Attend— in Canada

A Convening Officer has the necessary authority to subpoena the attendance of civilian witnesses residing any place in Canada at a Court-Martial, but there is no law to compel a civilian witness outside Canada to attend a Court-Martial. (See R.P. 78.)

55-M-709
19 Mar. 43

Court—Closing of

The Court does not "adjourn" to consider an objection, it merely "closes." Statements made while the Court is closed do not appear on the proceedings. It is sufficient to indicate the closing of the Court, the decision of the Court and the re-opening of the Court, with the decision being announced to the accused.

55-D-198

Commencement of Trial—Where Several Accused

Where several accused are tried by the same Court, all should be brought before the Court at once and the time of commencement of trial will be the same for all. The Proceedings are continued with all accused present until the reporter has been sworn. At that point, a Minute of Adjournment is entered as to the trial of all except the one who is being tried first.

C-11-RAF-1232656
28 Sep. 42

COURTS-MARTIAL—PROCEDURE

Signatures—Proof of

Where documents admittedly signed by the accused are before the Court and an application for Dependents' Allowance, allegedly signed by the accused, is tendered by the Prosecutor, it is not the proper function of the Court to compare the signatures on the three documents and then, on the basis of such comparison, to admit the Application in evidence. The Application is admissible only through the evidence of a witness who saw the accused sign it or who is familiar with the handwriting of the accused.

55-P-386
8 Jun. 43

Confirmation of Finding—Mitigation of Sentence

Where the Confirming Authority refuses confirmation of the finding on one charge but confirms the finding on another charge and then mitigates the sentence without first confirming the same, he is not thereby *functus officio* but may either prepare a new minute of confirmation or add a further minute, stating that he confirms the sentence, subject to the remission. Promulgation will have to be effected again.

C. 55-C-564
19 May 43

Constitution of Court-President

The President of the Court is appointed by the Convening Officer. Where, after the commencement of the trial, the President dies or is unable to attend, the senior member present should take the chair and an adjournment should be had for report to the Convening Officer. The latter may then appoint a new President and he may appoint the senior member of the Court, if he be of sufficient rank and the Court is not reduced below the legal minimum. Unless a President is appointed, the trial shall not proceed. Failure to follow the provisions of the Army Act SS. 48 (a) and 53 (2), K.R. (Can.) 554 and R.P. 65 (b) and 66, may invalidate proceedings.

55-W-279
24 Sep. 42

Convening Order—Publication

The issue of a convening order itself, and not its publication in camp or unit orders, is sufficient to call a Court-Martial. So, if the Order has not been published in District

COURTS-MARTIAL—PROCEDURE

Routine Orders, there may be a departure from long-established custom, but not such an omission as to affect the validity of the Constitution of the Court. Hence, there is no need to postpone the Court-Martial in order to effect such publication.

11 Jun. 43

Attestation—Proof of

The fact that a soldier writes his surname before his Christian name does not make his signature any the less binding on him. The real test is whether he means to affix his signature as witness of his assent or agreement. The subsequent striking out of his signature by another person, without the consent of the soldier, has no effect. In any event, this irregularity, as well as that of the soldier in signing only one MFM 2, instead of in triplicate, is curable by S. 100 of the Army Act. As for the status of the officer before whom the soldier takes the oath, K.R. (Can.) para. 280, requires only that the officer should have taken the oath himself. Paragraph 295, in providing that the officer shall be not below the rank of captain, in the case of the permanent force, is probably directory only and, in any case, is not applicable to the non-permanent active militia.

405-D-6581
8 May 43

Document—Inadmissible—Not Exhibit

Where the Court rules against the admissibility of a document, the latter should not be made an exhibit to the proceedings, but should be forwarded with the latter to the Judge Advocate-General for review.

55-W-349
7 Apr. 43

Document—Exhibit—Introduction

Where a document is tendered, it should first be admitted by the Court before being given a reference letter as an exhibit and read into the proceedings. If the document were read and then rejected as an exhibit, injustice might be done the accused.

55-M-811
13 May 43

COURTS-MARTIAL—PROCEDURE

Prosecutor—Attitude

The Prosecutor must in his addresses adhere to matters disclosed or to be disclosed in evidence and must maintain an impartial attitude. In his opening address, he should not digress to reflect on the character of the accused, nor should he ask the court to disregard whatever explanation the accused may have to offer. In the closing address it is improper for the Prosecutor to refer to the fact that certain offences are prevalent, or for him to suggest the punishment that should be imposed and to ask that an example be made. See M.M.L. p.55, para. 52, and R.P. 60 (a) and (b).

C. 55-K-108
C. 55-M-549
C. 55-S-379
C. 55-G-204
C. 55-R-216

Charge—Amended—Election

Where the accused has elected trial by Court-Martial, and the evidence in the Summary does not coincide with that in the original investigation, so that the Commanding Officer decides to change the charge, the accused should be given an opportunity by his C.O. to say whether he will accept the punishment of his C.O. rather than go to court-martial on the new charge.

55-S-287
10 Aug. 43

Judge Advocate—to Caution Court

Where an issue has first been tried upon a Plea in Bar of Trial, the Judge Advocate should caution the President and Members of the Court to cast from their minds, in considering the guilt or innocence of the accused, any evidence heard on the Plea in Bar of Trial.

C-11-C2153
24 Dec. 42

Investigation by Commanding Officer— A Judicial Hearing

Where there is an Investigation before the Commanding Officer under S. 46 of the Army Act and R.P. 2, this is a judicial

COURTS-MARTIAL—PROCEDURE

hearing and not the same as an investigation carried on by civil police after a crime has been committed against civil law. The accused soldier is placed in custody, charged with an offence and paraded before his Commanding Officer for hearing. The C.O. may dismiss a charge under any section of the Army Act; may adjudicate summarily in the cases set out in K.R. (Can.) 459, and may adjudicate in all cases by direction of superior authority. Even if the Commanding Officer, contrary to the instruction contained in K.R. (Can.) does adjudicate against an accused on a charge such as theft, the Finding and Sentence, if otherwise legal, debar proceedings by court-martial for the same offence.

55-H-264
8 Aug. 42

Judge Advocate—Defining Charge—Army Act

Where a Judge Advocate is defining an assault with reference to a charge under S. 41 of the Army Act he should do so in terms of the law of England, which applies, and not the Criminal Code of Canada, even though the law may appear to be similar.

C. 55-A-179
15 Apr. 43

Name of Accused—Mis-spelled

Where the name of accused is mis-spelled in the Convening Order this cannot be corrected by the Court or the Judge Advocate without the authority of the Convening Officer. The error in the Order does not vitiate proceedings, since the Court is assembled to try the person or persons named in the margin and "such other person or persons as may be brought before them." Such error in the charge sheet, however, may be corrected under the provisions of R.P. 33 (a).

55-F-165
26 Oct. 42

Mitigation—Confirmation First

Where the Confirming Authority desires to remit, commute or mitigate the sentence of the court, his proper course is first to confirm the finding and sentence of the court and then to make such remission, mitigation or commutation as he

COURTS-MARTIAL—PROCEDURE

may deem necessary. For example: "I confirm the Finding and sentence of the court, but remit three months detention and stoppages of pay in the sum of \$1.20." See specimen at p. 760 M.M.L.

C. 55-K-175
2 Apr. 43

Motion for Dismissal—Sequence of Argument

When the Defending Officer moves for dismissal on the ground that no *prima facie* case has been established, his argument in support of the motion should be followed by the argument of the Prosecutor. The Defending Officer then has the right to reply, and if he is not allowed to exercise this right a conviction may be quashed: R.P. 70. All addresses should be attached to the proceedings, with proper notations. On the argument of this motion, as at all times, the Prosecutor must take an impartial attitude, and if he fails to do so, the court should check him.

C. 55-S-379
5 Aug. 42

C. 55-D-393
21 May 43

Motion for Dismissal—None Made— Conviction on Defence Evidence

Where the case for the prosecution fails to establish the offence charged; and the defending officer does not move for dismissal but introduces evidence in defence in the course of which the accused or his witnesses give evidence sufficient to cure the deficiencies in the prosecution case, a finding of guilty in such circumstances may properly be made.

C. 55-W-311
8 Dec. 42

C. 55-B-547
5 Dec. 42

C. 55-B-521
26 Oct. 42

C. 55-K-158
9 Jan. 43

C. 55-H-304
14 May 43

C. 55-F-174
7 Dec. 42

Motion for Dismissal—Consideration—Closing

Upon a motion by the Defending Officer to dismiss the charge on the ground that insufficient evidence has been

COURTS-MARTIAL—PROCEDURE

adduced by the Prosecution, the Court shall close for consideration of the submission: R.P. 40, Note 1. Where, instead of adopting this course, the President proceeds, without consulting his colleagues, to "find" in open Court that a *prima facie* case has been established and the trial proceeds accordingly and where the motion is one worthy of consideration, the error is so substantial as to require the quashing of the conviction.

55-B-363

Motion for Dismissal—Allowed— Subsequent Admission

Where, in the trial of more than one charge, the Court allows the motion for dismissal on one such charge, it must adhere to this decision, even though an admission of guilt may subsequently be made by the accused in the course of his evidence on another charge.

Motion for Dismissal—Wrongly Disallowed— Subsequent Admission

Where a motion for dismissal, made by the Defending Officer at the conclusion of the case for the Prosecution, is disallowed by the court; where such a motion should have been allowed in view of the insufficiency of the evidence; and where the accused later enters the box, an admission by the accused, even if sufficient to establish his guilt, will not cure such prior defect, because he should never have had to give evidence, and a conviction which without such evidence, would not stand, will accordingly be quashed.

C. 55-V-73
28 Jan. 43

New Evidence—After Promulgation—Petition

Where a finding and sentence have been confirmed the trial cannot be reopened for the hearing of new evidence. The only course for an accused who wishes new evidence considered is a petition to the reviewing authority under K.R. (Can.) 574. To this petition should be attached statements or affidavits as to the evidence which accused and his witnesses could have given at the trial had accused availed himself of the opportunity for full defence, or as to evidence which has since the trial come to light.

J.A.G. (2)
16 May 41

COURTS-MARTIAL—PROCEDURE

Plea of Guilty—Summary Inconsistent

Where in the Summary or abstract or otherwise an accused has made a statement inconsistent with a plea of Guilty but the Court accepts such plea, a full record of the proceedings in the Court Room showing the reasons why the Court accepted the plea, notwithstanding such inconsistency, should be attached to the proceedings as part of the record.

C. 11-J-3494

President—Judge Advocate—Questioning Accused

While both the President and the Judge Advocate may question the accused in order to clear up any ambiguity in his evidence, extensive questioning of the accused by either of them is to be avoided, as this is an assumption of the Prosecutor's duties and tends to give an impression of partiality.

55-G-298
11 Dec. 42

Promulgation—Time of —R.A.F.

If a sentence of dismissal from the service, duly confirmed by His Majesty, were promulgated to an R.A.F. officer in Canada, he would immediately resume civilian status, and it would be difficult to deport him to England or enforce his liability for military service in the United Kingdom. Hence, he should be returned to the United Kingdom and promulgation carried out immediately he boards ship.

C. 11-RAF-115162
6 Mar. 43

Prosecutor—Substitute for

Where the Prosecutor is, through illness or otherwise, unable to act, it is important that his substitute be approved by the Convening Officer. If the substitution has to be effected quickly, authority may be obtained by telephone and confirmed in a covering letter, setting out exactly what took place. In addition, it should be noted after the new Prosecutor's name on page "A" of the Proceedings—"Approved by Convening Authority."

55-L-353
24 Sep. 42

COURTS-MARTIAL—PROCEDURE

Expert Witness—Remaining in Court

An expert witness for the Defence may be permitted to be present in Court while accused is giving his evidence, but a notation to this effect should be made in the proceedings.

C.11-R-119062
20 Feb. 43

R.A.F.—R.C.A.F.—Application of Respective Laws

Every member of the R.C.A.F. placed at the disposal of the R.A.F. becomes subject to R.A.F. law, except members of the R.C.A.F. posted to R.A.F. units in Canada who remain subject to R.C.A.F. law. Every member of the R.A.F. placed at the disposal of the R.C.A.F. becomes subject to R.C.A.F. law except members of the R.A.F. posted to R.C.A.F. units in United Kingdom, who remain subject to R.A.F. law: Order-in-Council P.C. 5836 July 7, 1942 and disposal and attaching Order of the Minister thereunder, paras. 1, 2 and 3. If an R.A.F. officer or airman is posted to an R.C.A.F. station in Canada, he is subject to R.C.A.F. law. But if, while at an R.A.F. station in Canada he commits an offence against R.A.F. law and is subsequently posted to an R.C.A.F. station in Canada, he cannot be tried under R.C.A.F. law for an offence against R.A.F. law. Hence he should be posted back to the R.A.F. station and tried under R.A.F. law.

R.A.F. 42533
14 Jul. 43
6 Aug. 43

Witnesses for Prosecution—Called by Defence

While it is unusual for a Defending Officer to call, as a witness for the Defence, a witness who has already given evidence for the Prosecution, and whom he might have cross-examined fully, he is within his rights in so doing. It is an error for the Court to restrict a witness, thus called, to the field of character evidence.

55-H-311
2 Mar. 43

Release from Custody—Pending Confirmation

After he has received the proceedings, and before confirmation, the Confirming Officer may order the release of an

COURTS-MARTIAL—PROCEDURE

accused soldier, if his sentence is lower in the scale of punishments than discharge with ignominy. In cases where confirmation must be by the Governor in Council, then it is the Convening Officer who may order the officer's release pending confirmation, if the punishment is lower than dismissal from the service, and in normal circumstances he should always do so. K.R. (Can.) 567.

C. 55-C-47
25 Jan. 43

C. 55-R-256
16 Dec. 42

Deserter—Still under C.O.

When a soldier is struck off strength as a deserter he is still a member of his Unit, although he is not filling a vacancy or performing duties. He is under the command of the C.O. of his Unit until such time as he is taken on the strength of another Unit. On apprehension or surrender, he is taken on strength of his Unit by an entry in Part II Orders, but even if this was not done, the C.O. would still have jurisdiction.

55-B-592
29 Jan. 43

Summary Trial—No Defending Officer

Where the accused is tried summarily under S. 47 of the Army Act, there is no provision in that Act, the Rules of Procedure or K.R. (Can.) whereby the accused may be represented by counsel or by a Defending Officer.

C. 55-C-560
26 Jul. 43

Summary Trial—Defence May Call Witnesses

Where the accused is tried summarily under S. 47 of the Army Act, he may call any witnesses he desires in his defence. In stating that accused or his wife may testify for the defence, R.P. 9 (b) does not limit the defence witnesses to these two persons.

C. 55-C-560
26 Jul. 43

COURTS-MARTIAL—PROCEDURE

Remission—Superior Military Authority— Independent Commander

The proviso in S. 57 (2) of the Army Act, to the effect that the power of remission shall not be exercised by an officer holding a command "inferior" to that of the authority confirming the sentence, is only applicable where one command forms part of another or where two commands are so interlocked that the comparison between them is possible. It has no application where the situation relates to independent commands such as that of a D.O.C. and that of a Division.

C. 55-D-299
5 May 43

Theft—Definition—Army—Air

Where a Court is trying a soldier for theft, it must have regard to the definition of "steals" in M.M.L. Insofar as personnel subject to the R.C.A.F. Act are concerned this ruling will also apply unless the offence has been preferred under Section 41, Air Force Act. In such case, by virtue of the amendment made to Section 41 by the Air Force Act, Amendment Order No. 1, the definition of "Stealing" contained in the Criminal Code of Canada will apply.

C. 11-R-223436
12 Aug. 43

Prosecutor—Time for Re-examination

The Prosecutor's time for re-examination is after the cross-examination by the Defending Officer. The questions asked by the Court or Judge Advocate should not come between the two; and once the Court and Judge Advocate have asked questions, any further questioning should only be done through and by permission of, the Court.

55-C-467
13 Nov. 42

Evidence—Report—Long-hand

If no short-hand reporter is available, evidence may be taken in long-hand, but the mode of proceeding should be

COURTS-MARTIAL—PROCEDURE

made known to the accused and the Rules of Procedure complied with, particularly R.P. 83 (B) as to the reading over to a witness of the evidence he has given.

C. 55-L-332
C. 55-L-316
C. 55-H-266

Withdrawal of Charge—Reference to Convening Officer

Since a charge has been initiated by the Commanding Officer and ordered to trial by the Convening Officer, it is not for the Prosecutor to withdraw it without reference to the Convening Officer. The exceptions to this rule are contained in R.P. 35 (C) and R.P. 62 (D).

11-RAF-1324134

Witnesses—Questioned by Court

Questions by the Court are put by, or by permission of, the President. Where a Member asks a question with such permission, the proper notation is "Questioned by the Court." Such questions should come at the end of the testimony, unless clarity demands an earlier interruption. The Court should not ask too many questions or consider that it has to assist the Prosecutor.

55-B-311
55-D-287

COURTS-MARTIAL RULES OF PROCEDURE

R.P. 2—Investigation by O.C.

Where there is an investigation before the Commanding Officer under S. 46 of the Army Act and R.P. 2, this is a judicial hearing and not the same as an investigation carried on by civil police after a crime has been committed against civil law. The accused soldier is placed in custody, charged with an offence and paraded before his Commanding Officer for hearing. The C.O. may dismiss a charge under any section of the Army Act, may adjudicate summarily in the cases set out in K.R. (Can.) 459, and may adjudicate in all cases by direction of superior authority. Even if the Commanding Officer, contrary to the instructions contained in K.R. (Can.) does adjudicate against an accused on a charge such as theft, the Finding and Sentence, if otherwise legal, debar proceedings by court-martial for the same offence.

55-H-264
8 Aug. 42

R.P. 4 (c)—Warning—Accused— Summary of Evidence

Where the accused, having been duly cautioned, has made a statement for the Summary of Evidence and it is then found necessary to adduce additional evidence, the accused must be given a further opportunity to speak and a further warning at the same time, as required by R.P. 4 (e) and notes.

55-E-637
9 Nov. 42

R.P. 5—New Charge—After Summary— New Election

Where the accused has elected trial by Court-Martial and the evidence in the Summary does not coincide with that in the original investigation so that the Commanding Officer decides to change the charge, the accused should be given an opportunity by his C.O. to say whether he will accept the punishment of his C.O. rather than go to Court-Martial on the new charge.

C. 55-S-287
10 Aug. 43

COURTS-MARTIAL—RULES OF PROCEDURE

R.P. 9—Summary Trial—Accused May Call Any Witness

Where the accused is tried summarily under S. 47 of the Army Act, he may call any witnesses he desires in his defence. In stating that accused or his wife may testify for the defence, R.P. 9 (b) does not limit the defence witnesses to these two persons.

C. 55-C-560
26 Jul. 43

R. P. 13—Two Charges—Reference in One to the Other

Where there are two charges, reference may be made in the particulars of the second, to the particulars of the first. The fact that there has been an acquittal on the first charge does not preclude the Court from proceeding upon a second, of which charge particulars are given in whole or in part by reference to the first: R.P. 13 (E) and Note thereto.

55-C-385
2 Jan. 42

R.P. 13—Charges—Particulars—Single Transaction

Particulars should refer to the charge which they are alleged to support. They should not overlap or conflict with other charges or the particulars thereof; much less should they refer to charges not laid against the accused. Each charge and the particulars thereto should be confined to one offence. So on a charge of "neglecting to obey such standing orders," the particulars should not contain two separate instances of disobedience. Even if they both occurred in the one tour of duties they could not be considered a "single transaction" within the meaning of R.P. 13, Note 3. Also, the particulars to one charge should not recite two separate occasions of absence without leave, and in a case where the charges of "using violence," "offering violence" and "using threatening language" are possible, each charge laid should be stated with the appropriate particulars in support, not with the particulars suitable to another charge. And where the charge and particulars recite "When in lawful custody escaping" the particulars should not go on to allege an absence without leave from the time of the escape to the time of apprehension.

55-B-465
55-T-168
55-H-135
55-B-488
55-T-157

COURTS-MARTIAL—RULES OF PROCEDURE

R.P. 33—Error in Number of Aircraft—Discovered After Court Begun

Where a mistake in the number of the Aircraft, which accused is alleged to have flown, is discovered after the Court has begun to examine witnesses, it is too late to correct the error under R.P. 33 (B). If a witness can say he was flying with the accused in one of His Majesty's Aircraft at the relevant time, this is sufficient proof provided that the Court returns a Special Finding as to the number of the Aircraft. If, however, the pilot can only be identified through a Flight Authorization Form, the number is so material that the error would be fatal to the proof.

11-J-22258
C-127-211
22 Jun. 43

R.P. 33 (a)—Charge Sheet—Error in Spelling

Where the name of the accused is mis-spelled in the Convening Order this cannot be corrected by the Court or the Judge Advocate without the authority of the Convening Officer. The error in the Order does not vitiate proceedings, since the Court is assembled to try the person or persons named in the margin and "such other person or persons as may be brought before them." Such error in the charge sheet may be corrected under the provisions of R.P. 33 (a).

55-F-165
26 Oct. 42

R.P. 35 (C), 62 (D)—Withdrawal of Charges

Since a charge has been initiated by the Commanding Officer and ordered to trial by the Convening Officer, it is not for the Prosecutor to withdraw it without reference to the Convening Officer. The exceptions to this rule are contained in R.P. 35 (c) and R.P. 62 (D).

11-RAF-1324134

R.P. 37—Alternative Charges—One Conviction

Where an accused faces two charges which are alternative, he may be found guilty of one only, even though a conviction on the one would seem to imply guilt in the other: Note 2, R.P. 37, M.M.L., p. 641.

COURTS-MARTIAL—RULES OF PROCEDURE

R.P. 40—Motion to Dismiss—Must Be Considered

Upon a motion by the Defending Officer to dismiss the charge on the ground that insufficient evidence has been adduced by the Prosecution, the Court should close for consideration of the submission: R.P. 40, Note 1. Where, instead of adopting this course, the President proceeds, without consulting his colleagues, to "find" in open Court that a *prima facie* case has been established and the trial proceeds accordingly and where the motion is one worthy of consideration, the error is so substantial as to require the quashing of the conviction.

55-B-363

R.P. 44—Change in Date of Offence— Special Finding

In cases of theft or improper possession, where the evidence fixes the date of the offence at a date different from that set forth in the Particulars, the Court may make a Special Finding under Rule 44 (d), provided that time was not of the essence of the offence and the change in dates is not so material as to have prejudiced the accused in his defence. In drafting a charge, where the exact date or time is unknown, regard should be had to paras. 19 & 20, page 701 M.M.L.

C. 55-L-490

R.P. 56—Confirmation—Technical Error— Other Deviation

Where the Commanding Officer has failed to sign the charge sheet, a conviction may properly be confirmed if, in fact, the charge has been approved, before trial, by the Commanding Officer. See R.P. 56. Failure of the Convening Officer to endorse or sign an order for trial on the charge sheet might also be cured by this Rule.

55-M-801
11 May 43

R.P. 56—Cadet—Attending Court

Under the Army Act and the Rules of Procedure, officers may be sworn for instructional purposes but not cadets who

COURTS-MARTIAL—RULES OF PROCEDURE

are merely proceeding to their commissions. The defect in Court-Martial proceedings caused by a cadet's attendance is curable under R.P. 56.

55-B-537
20 Nov. 42

R.P. 65, 66—President of Court

The President of the Court is appointed by the Convening Officer. Where, after the commencement of the trial, the President dies or is unable to attend, the senior member present should take the chair and an adjournment should be had for report to the Convening Officer. The latter may then appoint a new President and he may appoint the senior member of the Court, if he be of sufficient rank and the Court is not reduced below the legal minimum. Unless a President is appointed, the trial shall not proceed. Failure to follow these provisions of the Army Act, ss. 48 (a) and 53 (2), K.R. (Can.) 544 and R.P. 65 (B) and 66, may invalidate proceedings.

55-W-279
24 Sep. 42

R.P. 70—Motion for Dismissal—Order of Argument

When the Defending Officer moves for dismissal on the ground that no *prima facie* case has been established, his argument in support of the motion should be followed by the argument of the Prosecutor. The Defending Officer then has the right to reply, and if he is not allowed to exercise this right a conviction may be quashed: R.P. 70. All addresses should be attached to the proceedings, with proper notations. On the argument of this motion, as at all times, the Prosecutor must take an impartial attitude, and if he fails to do so the court should check him.

C. 55-S-379
5 Aug. 42

C. 55-D-393
21 May 43

R.P. 79—Adjournment to Another Place

Where a Court-Martial adjourns to view a place, or to take the evidence of a witness unable to attend the Court,

COURTS-MARTIAL—RULES OF PROCEDURE

the procedure to be followed is that laid down in Section 53, Army Act and R.P. 63. All the members of the Court, the Prosecutor and the accused must be present.

R.P. 86 (D)—Court Recalling Witness

Where the accused is charged with neglecting to obey an order, contrary to the Army Act, Sec. 11, and the prosecution closes its case without producing the order and where it is produced and proven at the request of the Court, the Defending Officer is right in objecting to such a proceeding and the case against the accused is limited to what is adduced by the prosecution before closing its case. While under R.P. 86 (D) the Court may call or recall any witness at any time in the interest of justice, this rule is not interpreted to supplement negligent conduct on the part of the prosecution. Note 4 to the Rule.

J.A.G. (DOR 101)
J.A.G. (DOR 112)

R.P. 125—Declaration of Court of Inquiry— Variation in Entry

Where the Declaration of a Court of Inquiry is duly entered in a Regimental Book by the Commanding Officer under K.R. (Can.) para. 1513 and where an exact reproduction thereof is duly certified by the O.C. or Adjutant, as the officer having custody of the regimental books, such certified copy of the Declaration is admissible as evidence of the facts therein stated under the Army Act, s. 163 (1) (H). It is not fatal to admissibility that in the original declaration and hence in the true copy thereof, there is a slight variation from the wording prescribed in R.P. 125, Note 3.

55-B-314

R.P. 125—Declaration of Court of Inquiry— When Admissible

A Court of Inquiry shall be held in all cases of absence (except in the case of absconded recruits) at the expiration of 21 clear days from the date of absence or as soon after as practicable, unless the Commanding Officer of the soldier has learned of his apprehension or return. The time shall be

COURTS-MARTIAL—RULES OF PROCEDURE

calculated exclusive of the date of going absent and the date of holding the Court. If the Court is held at an earlier date, the record of its Declaration, M.F.B. 375, is inadmissible in evidence. See Army Act s. 72 and Note 1 thereto: R.P. 124 (A) (C) and R.P. 125, Note 2: K.R. (Can.) 643 (a).

55-P-179
405-B-1395
44-M-403

COURTS-MARTIAL SENTENCE

Admonition—Soldier

A sentence by Court-Martial of admonition to a soldier is not a sentence authorized by the Army Act. Such a sentence should be quashed and expunged from the records of the accused, although the conviction will stand.

55-L-259

Air Force—Date from Which Reckoned

The term of detention to which an accused is sentenced by Court-Martial runs from the "day" not the "date" on which the proceedings were signed by the President: Air Force Act, s. 68 (1). Hence, an error of the President in inserting the date does not affect the sentence. It may be corrected and initialled by the President and Judge Advocate, just as an omission to enter the date may be rectified: Note 3 to the same Section.

11-RAF-975438
22 Sep. 42

Stoppages—Army

Under Military Law, the Court may reduce the stoppages awarded to a figure less than the amount named in the charge; or it may decline to award any stoppage; and stoppages awarded may be similarly reduced by the Confirming Officer.

55-N-246
55-L-277

Rank—at Date of Award

Where the accused undergoes change of rank he should be tried according to the rank he holds at the date of his trial and not that held at the date of his offence. Hence, if an N.C.O., alleged to have struck an N.C.O. then superior to him, comes before his C.O. on the date of his commission as a lieutenant, he must be tried in the manner prescribed for officers, although the charge remains the same. The sentence, which may be passed must be in accordance with rank held at the date of passing.

55-P-370
8 Jul. 43

COURTS-MARTIAL—SENTENCE

Alternative Charges—Stoppages

Where the first charge alleges that certain moneys were falsely obtained and sets out the particulars thereof; and the alternative charge merely charges conduct to the prejudice of good order and military discipline without setting out such particulars the Court, having found accused "Not Guilty" of the first but "Guilty" of the alternative charge, cannot, in its sentence, award stoppages based on the particulars to the first charge.

55-R-173

Confinement—under Criminal Code—"Awaiting Trial on the Present Charges"

Where the accused serves time in gaol for an offence under the Criminal Code, this shall not be included in M.F.B. 355 as time "Awaiting trial on the present charges."

C. 55-S-556
10 Jun. 43

Confirmation—Mitigation

Where the Confirming Authority desires to remit, commute and mitigate the sentence of the Court, his proper course is first to confirm the finding and sentence of the Court and then to make such remission, mitigation or commutation as he may deem necessary. For example, "I confirm the Finding and Sentence of the Court, but mitigate three months' detention and stoppages of pay in the sum of \$1.20." See specimen at p. 760 M.M.L.

C. 55-K-175
2 Apr. 43

Confirmation—Mitigation

Where the Confirming Authority refuses confirmation of the finding on one charge but confirms the finding on another charge and then mitigates the sentence without first confirming the same, he is not thereby *functus officio* but may either prepare a new minute of confirmation or add a further minute, stating that he confirms the sentence, subject to the remission. Promulgation will have to be effected again.

C. 55-C-564
19 May 43

COURTS-MARTIAL—SENTENCE

Escape—How Calculated after

Where a man escapes from detention or imprisonment he should be credited with the time he has served before his escape. Note 19 S. 44, the Army Act, shall not be taken as meaning that the whole sentence must be served afresh; because, if that were done, there would be imposed upon the accused a longer period of detention or imprisonment than was awarded by the Court and this would be illegal.

55-K-199
6 Sep. 42

Cost of Apprehension—Improper Charges

There should not be charged against the accused, in connection with his apprehension and return, such improper items as (1) the extra amount required to return him by an indirect route, when a direct route is available; (2) cost of a telegram sent in connection with his documents one month after his apprehension; (3) travelling allowances to an escort for one day which he took as "excused duty"; (4) charge for the meals served accused in a detention barracks subsequent to his apprehension.

55-H-210
55-H-133
55-S-309
55-J-95

Cost of Apprehension and Return— Award Permissive

The award by a Court of stoppages in respect of the cost of apprehension and return of an absentee or deserter is not obligatory. Hence a Court may award stoppage of all, part or none of the expenses: F.R. & I. Articles 158 and 172.

C. 55-J-128
16 Feb. 43

Detention—After Discharge or Dismissal

Where the period of detention of a convicted soldier has not been completed at the time of his discharge or dismissal from the Army, he is liable to serve the whole period. (See

COURTS-MARTIAL—SENTENCE

Army Act S. 158 (2)). But the proper authority may order remission of sentence under S. 57 (2) of the Act and in accordance with 597 K.R. (Can.).

C. 55-B-589
25 Jan. 43

Discharge—Where R.C.A.F. Attached to R.A.F.

Where a member of the R.C.A.F. attached to the R.A.F. is sentenced to be discharged with ignominy by an R.A.F. Court Martial, the actual administrative act of discharge should be carried out by the R.C.A.F. authorities. Before such action can be taken however, it would be necessary for the appropriate R.A.F. authorities to terminate his attachment to the R.A.F.

J.A.G. 844 A (32)
21 Apr. 42
H.Q. 866-1-51 Vol. 4

Dismissal—R.A.F. Officer—Promulgation

If a sentence of dismissal from the service, duly confirmed by His Majesty, were promulgated to an R.A.F. officer in Canada, he would immediately resume civilian status and it would be difficult to deport him to England or enforce his liability for military service in the United Kingdom. Hence, he should be returned to the United Kingdom and promulgation carried out immediately he boards ship.

C. 11-RAF-115162
6 Mar. 43

Field Punishment—as Commutation of Detention—"First"

Where the Confirming Officer awards seven days "First Field Punishment" (i.e. Field Punishment Number One) in place of fourteen days detention, this is a commutation of sentence to be expressed along the lines set out in the second Appendix to the Rules of Procedure, M.M.L. p. 760. But there is now only one grade of Field Punishment, M.M.L. p. 787.

C. 55-W-310
7 Dec. 42

COURTS-MARTIAL—SENTENCE

Hospitalization—Penal Deductions— Forfeiture of Pay.

The distinction between stoppages for the cost of hospitalization and of the pay received in hospital lies in the way in which they are imposed. Stoppages in respect of hospitalization costs are penal deductions, which "may" be imposed by the Court-Martial which finds that the hospitalization was caused by an offence under the Army Act: S. 138 (3) of that Act. Stoppages as to pay (i.e. hospital stoppages) although mentioned in S. 138 (1) of the Army Act, are dealt with under F.R. & I. under the Militia Act, with which, in this respect, the Army Act is inconsistent. F.R. & I. 149 (1) (d) makes the stoppages of pay for the days spent in hospital a forfeiture which is mandatory once the medical officer certifies that the time spent in hospital was caused by the patient's having committed an offence against military law. Costs of hospitalization shall be included in the particulars of the charge in all cases where it is intended to put the accused under stoppages for same, if the costs arise from the commission of an offence under the Army Act.

C. 55-K-136
16 Jan. 43

Cost of Apprehension—Incidentals—Deduction

Where it is necessary to make an out-of-pocket payment, other than the usual ones for fare and meals, to return an absentee to his unit, the amount of such payment may be deducted from the pay of the accused by order of the court-martial: F.R. & I. Art. 172, paras. 7 & 8. It may be proven in Court, if paid by the Commander of the Military Escort (1) through M.F.B. 1482 as incidental expenses; (2) through the testimony of the Commander who would produce the receipted voucher or, if not paid by the Commander, through the testimony of someone having knowledge of the amount paid or accruing due.

55-S-350
55-T-115

Increase of

Where the sentence awarded by a Court-Martial appears to be inadequate, there is no provision whereby it may be increased in severity.

11-C-5271
24 Nov. 42

COURTS-MARTIAL—SENTENCE

Reduction—from Acting Rank

Where the Confirming Authority commutes to one of reduction to the ranks a sentence awarded an acting sergeant, he has produced an inoperative sentence, because a Court-Martial does not deal with acting rank: Army Act, S. 44, Note 13, Page 465, M.M.L. Hence there is no sentence remaining but the conviction holds good. (S. 57 of the Act, Note 6, P. 486, M.M.L.) If the Commanding Officer thinks that the acting sergeant should be reverted to his permanent rank of Private, he should do so pursuant to S. 182 of the Act, Note 3, P. 594 of the Manual and S. 183, Note 9, at p. 595 (a).

55-S-576
16 Jun. 43

Stoppage—Limitations

While the amount chargeable against a soldier's pay by sentence of Court-Martial, for damage done a Government-owned vehicle, is limited to the equivalent of 90 days pay: K.R. (Can.) para. 539 (a), that is the only limitation binding on a Court-Martial, which can award stoppage to the full extent of any other loss or expense incurred. With respect to persons subject to the Air Force Act, see 516 K.R. (Air).

55-R-271

Penal Servitude

Under Canadian criminal law there is no such punishment as Penal Servitude. However, under the Army Act which by the Militia Act is made part of the law of Canada, Penal Servitude is a lawful punishment.

A District Court Martial cannot award a sentence of Penal Servitude. The maximum sentence which can be awarded by a D.C.M. is two years imprisonment with hard labour, but, since by virtue of the criminal law of Canada all sentences of two years imprisonment, with or without hard labour, must be served in a penitentiary, such a sentence by a D.C.M. would in effect constitute Penal Servitude, which is beyond the power of a D.C.M. to award. Accordingly, it is considered that a D.C.M., when it deems it advisable to award a maximum sentence, should limit the sentence to imprisonment with or without hard labour for two years less one day. This is the subject of an A.G. circular letter dated

COURTS-MARTIAL—SENTENCE

August 8, 1940. Should, however, a sentence for two years with or without hard labour, be awarded by any D.C.M., then in all such cases the confirming authority should remit at least one day thereof, or such further period as he deems advisable.

J.A.G. 923 (39)
20 Nov. 42

C.O.—Power to Remit, Mitigate or Commute

The Commanding Officer has power to remit and mitigate punishment awarded by him but has not the power to commute such punishment. Para. 599 K.R. (Can.) gives him power to release a soldier undergoing detention following an award made by him. Note 2 to R.P. 6 (a) states that the C.O. can at any time diminish punishment before its completion and Note 18 to Army Act, Section 46, states that the C.O. can at any time before the punishment has been completed, mitigate or remit a minor summary punishment. For distinction between commutation, remission and mitigation, see Notes to the Army Act, section 57.

J.A.G. 948 A
405-36065
1 Mar. 43

Reduction to Ranks

Sentence of reduction of a warrant officer to the ranks is only possible where the accused enlisted as a soldier. See S. 182 (2) (a), Army Act.

C. 55-R-263
30 Nov. 42

M.F.B. 355—Civil Conviction Before Enlistment

While M.F.B. 355 (statement as to character and particulars of service of accused) is properly admissible after conviction and before sentence, this form should not contain reference to a civil conviction against the accused before he acquired military status. Where a Court learns from the Defending Officer that there is such an entry, it is right in excluding the document.

55-L-417
16 Feb. 43

COURTS-MARTIAL—SENTENCE

Remission—Confirming Authority—Delegation

An order for remission of sentence or committal to prison must be signed by the officer responsible for it, and such order cannot be made by a staff officer for such responsible officer.

55-H-381
24 Jun. 43

Reprimand—Leading Naval Airman

The rank of Leading Naval Airman does not fall within the definition of "non-commissioned officer" in the Air Force Act, s. 190 (5) as amended (1943). It follows, pursuant to Sec. 44 A.F.A. that a sentence of reprimand may not be awarded to a Leading Naval Airman.

11-FX-88740
15 Oct. 42

Self-inflicted Injuries—Cost of Hospitalization

Where the accused is convicted of wilfully injuring himself, in that, some time after being properly admitted to hospital for treatment of leg ulcers, he aggravated the ulcers by applying a caustic ingredient, he can be sentenced to stoppages of pay only for the cost of that period of his hospitalization which was made necessary by the act of aggravation. Where the period in question cannot be deduced from the evidence, no stoppages at all should be awarded.

c. 55-C-246
18 Aug. 42

Stoppages—After Trial—F.R. & I.

Where a soldier accused of desertion or of absence without leave is found "Not Guilty" through some technical flaw in the proceedings, this may nevertheless be a case where no military service has been rendered and, the Minister, under F.R. & I. 85 (2) may order that no pay be issued to that soldier for the period he was absent.

C. 55-D-310
28 Nov. 42

. COURTS-MARTIAL—SENTENCE

Deficiencies—Value—Discretion of Court

A special finding may be made where the cost of apprehension is not proven to the satisfaction of the Court or where the particulars of the charge fail to set out the depreciated values of the articles in accordance with R.O. 3464 (4). Of course, even on a straight finding of Guilty of Desertion or Absence Without Leave, the Court may exercise a discretion in its sentence so as to award all, part or none of the costs set out in the charge. This is the only way of rectifying an over charge of costs in a charge to which there is a plea of "Guilty," since, on a plea of "Guilty," no Special Finding may be made.

55-N-1602

55-H-281

55-L-285

55-V-51

Effective Time of

Sentence of Naval Officers is effective as soon as it is pronounced, but in the case of officers of the Army or Air Force the same is not effective until it has been promulgated after sentence has been confirmed. Special provision is made in the regulations for the repatriation of former Naval officers who have been dismissed from the Service.

J.A.G. 974 (a) (46)

45-15-3

18 Jun. 43

COURTS-MARTIAL WITNESSES

Accused—Cross-examination—Extent of

Where the accused, on being asked if he applies to give evidence on his own behalf, replies "Yes, sir, as to the deficiencies in clothing contained in the fourth charge only," he will, once he enters the box, be subject to cross-examination on matter relevant to all the charges, not merely on the matter as to which he proposes to testify.

55-C-463
3 Nov. 42.

Adverse—Procedure for Impeaching

Where a Prosecutor considers a witness hostile, he must ask the Court to so declare. If such a ruling is made, he may introduce to the witness a previous statement made by him inconsistent with his present testimony. He should refer the witness to the statement and ask him if he made it. The previous statement is not evidence of the facts therein contained, but is only for the purpose of impeaching the credibility of the hostile witness.

11-R-55820
29 Sep. 43

Civilian—Compellable in Canada

A Convening Officer has the necessary authority to subpoena the attendance of civilian witnesses residing any place in Canada at a Court-Martial, but there is no law to compel a civilian witness outside Canada to attend a Court-Martial. (See R.P. 78.)

55-M-709
19 Mar. 43

Civilian—Court of Inquiry

A civilian cannot be compelled to attend a Court of Inquiry. Where he does attend, no valid promise can be made to him of immunity from any subsequent proceedings at which he would be a compellable witness.

J.A.G. 492 A (11)
27 Jul. 40

COURTS-MARTIAL—WITNESSES

Cross-examination of—Extent

Where the Defending Officer calls a witness as to certain aspects of the case, the Prosecutor in his cross-examination is not confined to the material adduced by the Defending Officer, but may ask any question relevant to the case as a whole. The object of cross-examination is two-fold: (1) to weaken, qualify or destroy the opponent's case; (2) to establish the party's own case by means of his opponent's witness. This principle of Civil Evidence is borne out by the Army Act, Sec. 114, page 101, M.M.L., which rules out of cross-examination only those questions which have no bearing on the issue at all and which do not tend to impeach the accuracy or credibility of the witness. It is in re-examination that a Prosecutor or Defending Officer would be limited in his scope, namely, to any new elements raised by the cross-examination.

55-B-684
20 Apr. 43

Examination of—Away from Courtroom

Where a Court-Martial adjourns to view a place, or to take the evidence of a witness unable to attend the Court, the Procedure to be followed is that laid down in Section 53, Army Act and R.P. 63. All the members of the Court, the Prosecutor and the accused must be present.

Objection to Question—Should Be Made Before Answer

Where a Defending Officer wishes to object to a question, he should do so before the answer is given, but, if he does not, it is unnecessary to strike out that part of the proceedings to which objection is taken.

11-R-56726
26 Nov. 42

Expert—May Remain in Court

An expert witness for the Defence may be permitted to be present in Court while accused is giving his evidence, but a notation to this effect should be made in the proceedings.

11-R-119062
20 Feb. 43

COURTS-MARTIAL—WITNESSES

Questioning of—by Court

Questions by the Court are put by, or by permission of, the President. Where a Member asks a question with such permission, the proper notation is "Questioned by the Court." Such questions should come at the end of the testimony, unless clarity demands an earlier interruption. The Court should not ask too many questions or consider that it has to assist the Prosecutor.

55-B-311

55-D-287

CRIMINAL CODE

SS. 438, 991—Uniform—Wearing

The power to authorize the wearing of a uniform prescribed by the proper authorities of the Navy, Army or Air Force cannot legally be extended to a person not a member of the Service concerned, or a former member thereof, who, on retirement or discharge, was allowed to retain his uniform.

J.A.G. (DOR 432)

CROWN

Operation of Buses under—Provincial and Municipal Legislation

The Crown in the right of the Dominion cannot be affected by Provincial or Municipal legislation with regard to existing franchises where it would appear that it is essential for the proper carrying out of the service of the Crown to operate buses.

J.A.G. 915A (39)
1600-10-6-12
d/13/11/42

Claim Against—by Canadian Coming from U.S. to Enlist

Where a Canadian has been called up to serve in the United States forces and has elected to serve in the Canadian Forces and where such person, while voluntarily en route to a Canadian enlistment center, suffers illness or injury, the Crown could not be held liable for any claim against it arising out of such illness or injury (as for example medical attention) since such claimant is not yet a member of the Canadian Forces and the mere payment of his travelling expenses by the Crown would not alter that relationship.

J.A.G. 855B (33)
H.Q. 1064-36-7 F.D. 38

Damage—Liability for—Motor Cars— Naval Regulation

As between the Crown and Naval Personnel using their own cars on public business with permission, the Crown does not assume any liability for damage to any person or property, which damage occurs at the time of such travel as set out in the provisions of C.N.R. (1942) 377-2 (7) (f); and where the Crown is made liable to a third party for any damage caused under such conditions, it would appear that as between itself and members of the Naval service, recoupment may be sought by the Crown for liabilities so incurred.

NOTE.—See the amendment to the Exchequer Court Act, 1943, Statutes of Canada, c. 25, s. 1.

J.A.G. 807 E.E. (30)
D-10/2/43

Damages—Claim for—from Servicemen

Where a member of the Services in his private capacity causes damage to the Crown giving rise to a claim, the proper

CROWN

procedure would be to institute proceedings against the said member of the forces and upon judgment being obtained, and not being satisfied, then the Crown may invoke the provisions of The Debts Due to The Crown Act, Stats. Can. 1932, C. 18; and therefore in such cases there is no question of invoking any of the service regulations relating to forfeitures, stoppages, etc.

J.A.G. 809 BB (3)
N.S. 81-1-2 F.D. 47

Employees of

Casual or day labourers hired for the specific purpose of constructing some definite defence project cannot properly be considered as being persons in the employ of the Crown, for, if they were considered, the same would be repugnant both to the letter and spirit of several Orders-in-Council prescribing the powers, duties and functions of certain boards.

J.A.G. 336 B (7)
d/29/3/40

Flying Schools—Not Agents of—Bonus

Flying Schools having a contract with the Crown to provide flying instruction are not agents of His Majesty and do not therefore come within the provisions of Order-in-Council P.C. 6702 dated 26th August, 1941, as amended by Orders-in-Council P.C. 64/897 dated 2 Feb. 1943 and P.C. 1/4456 dated 31 May 1943, providing cost of living bonus for members of the public service of Canada; instead the employees of said schools are employees of independent contractors, and come within the provisions of Orders-in-Council P.C. 8253 dated 15th Nov. 1941 and P.C. 9298 dated 27th Nov. 1941, providing respectively for Cost of Living Bonus to employees and to foremen and executives earning less than \$3,000 per year, and for a ceiling on wages and salaries except as otherwise permitted by the National War Labour Board.

J.A.G. 800B (29)
d/8/1/42

Motor Vehicle Accidents—Personnel of

The provisions of Orders-in-Council P.C. 80/1045, dated the 19th March, 1940, dealing with motor accident claims

CROWN

generally and P.C. 59/7305 dated 17th September 1941, dealing with motor accidents involving claims not exceeding \$200.00 apply to Reserve Army personnel operating D.N.D. vehicles in the course of their military duty. The extent to which such personnel should be called upon to reimburse the Crown for claims paid would also be determined under the aforementioned Orders-in-Council.

J.A.G. 966-B (45)
57-7-16-590
21 May, 1943

Liability of—Flying School (R.C.A.F.) Operations

Where the Crown has by a standard agreement with a flying school agreed to indemnify said School from all claims in respect to loss or damage to persons or property, the position of the Crown in relation to the School is analogous to that of an Insurance Company in relation to an insured and the Crown therefore has a vital interest in the question of settlement both as to quantum, litigation and other pertinent matters.

J.A.G. 831 A (32)
d/1/4/42

Flying Schools—Damage—Liability of

Under the standard form of agreement between the Crown and civilian companies operating flying schools, provision is made by which the Crown supplies certain equipment, including various types of motor vehicles to those companies. If, however, any of this equipment is operated under the exclusive control of R.C.A.F. authorities, such equipment cannot, under those circumstances, be said to be on loan to the company under such conditions as would render said company liable for complete responsibility for its maintenance and repair, nor could the company be held primarily responsible for injury or damage to the property or persons of third parties caused by such equipment. In both cases the primary responsibility would rest with the Crown.

J.A.G. 831 A (32)
d/1/4/42

Motor Vehicle Accidents—Reimbursement to

The stoppages which may be made against an officer or soldier in respect of the amount paid the Crown as reim-

CROWN

bursement to a claimant injured by an officer or a soldier (Order-in-Council P.C. 59/7305 dated 17 September 1941) are entirely separate and distinct from those which may be awarded by a Court-Martial or Commanding Officer in consequence of the officer or soldier having been convicted of some military offence. (F.R. & I. Articles 86 (b) and (d), 158 (1) and (2)). The fact that disciplinary action may already have been taken is immaterial as to liability for the damage and stoppages therefor.

J.A.G. 866 B (35)
405-S-2592
d/7/7/43

Rifle Ranges—Liability of—Results

Where damage or injury results from the use of a rifle range, the Militia Act does not require that the injured party establish neglect on the part of the Crown's servants in the performance of their duty or employment as is required in the normal class of case. On the contrary, such neglect is not a factor and, under the Act, the Crown is required to pay compensation unless the claim is barred by the provisions of 54 (2) of the Militia Act.

J.A.G. 905A 39
18-1-50
d/5/11/42

Loss to—Government Vehicles

C.A.R.O. 1820 has reference specifically to K.R. (Can.) paras. 539 A and 914 relating to damage occasioned by a member of the forces to public property and limits the deductions which may be made to 90 days pay but this Routine Order is applicable as well to Sec. 138 of the Army Act and applies to all loss occasioned to the Crown by reason of injury to a soldier, etc.

J.A.G. 986 (47)
d/24/7/43

Municipal Water Rates—Payment by

While the Crown is not bound to pay taxes levied by a municipality in respect of water supplied to properties owned by the Crown therein, it is the practice of the Dominion

CROWN

Government to pay reasonable compensation to the municipality for such service.

J.A.G. (DOR 88)

Action of—Against Driver—Where Soldier Injured

While the Crown at Common Law would have an action against the owner and driver of a vehicle where negligence caused injury to a soldier, despite any Provincial legislation depriving gratuitous passengers of such cause of action, nevertheless by the provisions of Order-in-Council P.C. 3167 dated 19 April 1943, the Crown no longer claims against the driver and owner of such a motor vehicle.

J.A.G. 806 F (29)
869-K-347
d/30/1/42

Crown—Reimbursement to—Civilian Claims

Order-in-Council P.C. 59/7305 dated September 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay.

Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said P.C. 59/7305.

A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages

CROWN

to cover all or part of these damages, but only to the extent of 90 days pay of rank (K.R. (Can.) 539 A).

J.A.G. 815 (31)
H.Q. 57-7-18-175
d/2/3/42

J.A.G. 808 (30)
57-7-18-175 (JAG)
d/10/2/42

J.A.G. 809 (1) (30)
d/14/2/42

Right of Action by—Injury to Personnel

The Crown has a legal right of action against a party through whose negligence serving personnel are injured. The Crown's damages for such a claim consists of (a) the cost of medical treatment and hospitalization required as the result of injuries; (b) damages in respect of loss of service, being the amount of pay and allowances paid during the period in which the injured member of the forces is absent from his duties as a result of said injuries.

(See Attorney General vs. Valle-Jones
(1935) 2 K.B. 209)

J.A.G. (DOR 512)

NOTE.—But, under Order-in-Council P.C. 3167 dated 19th April, 1943, the Crown will not assert any claim against the owner or driver of a civilian motor vehicle in respect of injuries sustained by a member of the Armed Forces while being carried as a gratuitous passenger in such motor vehicle.

CUSTODY

Release from

As soon as the trial of an accused commences he is in the custody of the Court. As soon as sentence has been passed by the Court and has been dated, the President and members become *functi officio* (unless the proceedings are referred back for revision). The Confirming Authority is therefore the only proper person to decide whether or not the accused should be released from custody after sentence but before promulgation.

J.A.G. 866 (35)
1011-1-52
d/6/7/43

C.W.A.C.

Pensions for

Members of the C.W.A.C. and R.C.A.F. (W.D.) are eligible to receive pensions under the Pension Act, subject to the provisions of Order-in-Council P.C. 4/7635 dated 1 October, 1941.

J.A.G. 777 A (1) (27)
d/20/11/41
s. 5603 F.D. 7

DEBIT BALANCES

Cancellation of

Authority to cancel a debit balance in the pay account of a soldier may be granted only by the Governor-General in Council.

J.A.G. 887 (37)
54-27-65-1 F.D. 58
21 Sept. 42

DEFENCE OF CANADA REGULATIONS

51A—Employment of Troops

The employment of troops under Regulation 51A of Defence of Canada Regulations is not in aid of Civil Power, but is a "Military Purpose" within the meaning of Section 63, Militia Act R.S.C. 1927 C. 132.

J.A.G. 775C (27)
d/6/11/41
S. 5603—Vol. 5

DEFICIENCIES

Due Investigation of

The liability of officers and soldiers to meet public and regimental claims is subject to "due investigation" as is set out in Article 84 (2) F.R. & I. and this Article should be read in conjunction with Secs. 44 and 127 of the Militia Act. This Article occurs in regulations made under the Militia Act and is supplementary to those sections and should not be interpreted as giving wider powers of recovery than are therein contemplated. The relationship of creditor and debtor must be found to exist between the Crown and the soldier under Article 84 (2) of F.R. & I. or the "negligence in respect of or default in the performance of a Military duty" must be established under Article 84 (3) of such regulations. Article 84 was not designed as an instrument of perfunctory justice and "due investigation" must be of a thorough nature if by Court of Inquiry, and should not be invoked where large sums of money are involved when the officer seems to have a case, or when he in effect demands a Court-Martial to establish either his indebtedness, his negligence or his default, unless a thorough investigation establishes beyond a shadow of doubt the presence of one or more of these factors or the absence of all of them.

J.A.G. 959 A (45)
650-24-67-5 Vol. 3
d/18/5/43

DESERTERS

Custody of—in Civil Gaols

A soldier apprehended by the military authorities on a charge of Desertion or Absence Without Leave would normally be wholly in military custody, but where there is a lack of accommodation the soldier may temporarily be kept in a civil lock-up providing the order to do so is signed by the Commanding Officer of the soldier as required by K.R. (Can.) para. 451 (f).

J.A.G. 856 (33)
d/23/5/42
H.Q.C. 6265-5 F.D. 2

U.S.A. Armed Forces—from

The United States Army has been given the power of trying its personnel in Canada by Court-Martial under the Foreign Forces Order 1941, which has been made applicable to the United States Forces stationed in Canada by Order-in-Council P.C. 2813 dated April 6th, 1943, and accordingly the members of the U.S. Forces in Canada may be apprehended in this country if a request is made by the Officer Commanding said Forces or by the U.S. Government. (See Sections 8, 9 and 12 of the Foreign Forces Order 1941.) This Order applies only to members of the U.S. Forces which are stationed in Canada, and consequently absentees and deserters of the United States Army who are not members of a U.S. Force stationed in Canada cannot be apprehended in Canada under this Order by Service Police.

J.A.G. 985 (47)
54-27-65-10
d/23/7/43

Medical Treatment for—During Absence

Where an officer or soldier is a deserter or an illegal absentee, he is not entitled to receive at the Public expense medical or dental treatment or hospitalization. Such treatment is only provided for officers or soldiers on Leave of absence or furlough or on Active Service (C.A.R.O. 924 & 1146) K.R. (Can.) Para. 962 R.O. 807 & Para. 365, Instructions for the R.C.A.M.C. and the C.D.C. 1937.

J.A.G. 880 (37)
405-Z-183
d/3/9/42

DESERTERS

Medical Attention for—on Surrender

While the Crown is not liable for expenses of medical treatment incurred by a deserter or an absentee without leave, yet when such deserter or absentee surrenders himself he becomes entitled to treatment and hospitalization at public expense.

J.A.G. 817 A (31)
d/6/3/42
H.Q. 54-27-5-3F.D. 85

Period of Absence—Service—Clothing Allowance

Where a soldier is an absentee or deserter, whether convicted or not of the offence of absence without leave or desertion, he must be considered as being in the service of the Military forces of Canada during such periods of absence, even if the soldier has been struck off strength as a deserter, and the period of absence must not be subtracted from but must be included in the period of continuous service (six months) referred to in Article 187, F.R. & I. for the purpose of determining entitlement to clothing allowance on discharge.

J.A.G. 877 (35)
405-P-4481
d/28/8/42

Civil Lock-up—Placed in—by Provost

There is no power in the Provost Corps nor any military police to place a deserter or absentee in temporary custody in a civil lock-up pending appearance before military authorities rather than civil authorities, and where two soldiers were so placed in a civil gaol without the order for such custody signed by the Commanding Officer of the said soldiers as required by K.R. (Can.) 451 (f), and where the purpose of the jailing was a military and not civil proceeding, such custody was most irregular and without authority.

J.A.G. 856 (33)
d/23/5/42
H.Q.S. 6265-5 F.D. 2

DESERTION

Cost of Apprehension—R.A.F. Personnel Charged with

Where R.A.F. personnel are attached to the R.C.A.F. in Canada such persons are subject to R.C.A.F. Law and unless the provisions of R.C.A.F. Regulations relating to the cost of apprehension of deserters are specifically excluded from being applicable to such personnel, they may be charged with such costs. On the other hand, R.A.F. personnel at R.A.F. Schools in Canada are not liable for cost of apprehension on a charge of absence without leave or desertion.

J.A.G. 886 A (37)
75-1-45 Vol. 2
d/19/9/42

Death on—Funeral Expenses

When an absentee or deserter dies while he is absent without leave or in desertion he is not entitled to burial at the public expense, pursuant to F.R. & I. Article 220. By F.R. & I. Article 220 (12) an officer or soldier who is on leave of absence without pay is excepted from the benefits of the Article. A *fortiori* an officer or soldier who is absent without leave or in desertion and who automatically forfeits his pay for his period of absence can be in no better position.

J.A.G. 817 (31)
d/3/3/42
405-S-5413

Proof of

Where the accused is charged with absence without leave or Desertion, there must be some evidence from which the Court can draw the proper inference that the accused was absent during the whole period between the time of absence and the time of apprehension or surrender. Some of the ways in which this can be proven are: (a) a witness can state that the accused, after he absented himself or was found absent, continued to remain so; (b) an MFB 375 shows the time at which the accused absented himself and it also shows that he was still absent after the twenty-first day; (c) a Part II Order often shows that an accused "is absent from . . ." a certain date and time and the Order is dated a day or so later.

DESERTION

Although, in cases (b) and (c), the evidence does not completely establish that the accused was absent during the whole intervening period covered by the charge, nevertheless, there is some evidence that he was still absent at some specified time between the two dates. Where there is evidence of (1) the commencement of absence, (2) the termination of absence and (3) the fact of absence at some specified time within the period, the Court can properly draw an inference that the accused was absent throughout the whole period. Hence a case is established which calls for a reply from the accused.

55-G-400
d/22/6/43

Intention to Desert

The note to A.A. Sec. 12 states "To establish desertion it is necessary to prove some circumstances justifying the inference that the accused intended not to return to military duty." Among the circumstances on which the Court may infer the intent of the accused not to return there is the fact that he was apprehended and that at the time, he was wearing civilian clothes.

This is often shown in the certificate of apprehension. The soldier may in his defence contradict such statement and the Court will usually require the prosecutor to call oral testimony to prove the contention of the prosecutor and then weigh the conflicting evidence, disregarding the statement in the document. In a case where the accused does not contradict directly any statement made in the document, such as his civilian dress or apprehension, but in a sworn statement in defence swears that he always intended to return, then the Court will weigh the inference of intention not to return, arising from his civilian dress, against his own statement as to intention and will arrive at its own conclusion as to the true intention.

J.A.G. 989 (47)
26 July 43

Attempt to Desert

Where the accused was absent from a certain date until his surrender three months later, the evidence may justify a conviction of desertion or of absence without leave, but there is no basis for a verdict of attempted desertion. The latter charge consists of doing some act which, if carried further

DESERTION

would lead to desertion: M.M.L. para. 22, p. 20; Note 2, p. 438.
On the above set of facts, if there was desertion, it was a
completed act.

55-B-564
5 Jan. 43

Time—of Essence—in Charge of

Where the accused is charged with desertion or absence without leave it is insufficient to allege that absence began between certain dates because since time is of the essence, an exact date should be named as that in which the absence commences. If the evidence reveals that the absence began at a later date, a special finding may be made accordingly, but if the absence began at an earlier date, there can be no special finding, as the accused is entitled to the benefit of the date set out in the particulars of the charge.

55-L-341
25 Aug. 42

DIRECT TAXATION

Real Property—Liability of Crown

Property held under lease by the Crown in the right of the Dominion is liable to be assessed for and the owner thereof is liable for payment of real property taxes imposed by or under the authority of Provincial legislation.

J.A.G. 763 (25)

C-8864

13 Sept. 41

DISABILITY PENSION

Waiver of

A soldier who suffers a disability in the performance of a military duty is entitled to all the benefits which the law provides in such cases. He should not, therefore, sign or be required to sign any waiver which might have the effect or be intended to have the effect of depriving him of these benefits.

J.A.G. (DOR) 150

DISCHARGE

Sentence—Served After

When a person subject to military law is sentenced by Court-Martial to penal servitude, imprisonment or detention, the Army Act, Section 158 (2) will apply to him notwithstanding that he is discharged and he may be kept, removed, imprisoned, made to undergo detention and punished accordingly as if he continued to be subject to military law. So also may a soldier discharged by reason of being unable to meet physical standards (e.g. a soldier placed in Category "E" by a Medical Board) be required to serve the balance of a sentence of detention notwithstanding such discharge.

J.A.G. 936 (41)
54-27-106-47
54-27-3-34 Vol. 6
d/21/12/42

Documents on—Signature

The fact that a soldier refuses to sign certain documents relating to his discharge does not affect the validity thereof. The reason he is made to sign these documents is to obtain from him an acknowledgment that he has no reservation or claim against the Crown.

J.A.G. (DOR 274)

Effective Date of

A certificate of discharge cannot validly be antedated because until a soldier is lawfully discharged he remains subject to military law and is, unless specifically excepted, entitled to be paid until so discharged.

J.A.G. 507 (12)
d/7/8/40

After—Sentence—Civil

Where a soldier has been convicted by a civil power during his service and sentenced to a term in excess of 6 months, the D.O.C. has power under G.O. 169/39 to authorize his discharge. The D.O.C. may authorize the discharge at any time prior to the expiration of the sentence. Once the discharge

DISCHARGE

has been authorized, however, the necessary action to carry it out should be taken forthwith.

J.A.G. 839 (32)
15 Apr. 42
H.Q. 405-S-1900

Minor—Application for

Where a soldier under eighteen years of age incorrectly states his age upon attestation, he cannot afterwards seek a discharge since he is precluded by virtue of C.A.R.O. 441 from having his age for military purpose changed on his documents; but his parents or guardians may apply for such a discharge upon presenting proper proof of age since an enlistment under the age of eighteen is not a valid enlistment, as to age, as required by the Militia Act, R.S.C. 1927 C. 132 S. 8.

J.A.G. 806 D (29)
27 Jan. 42
54-27-12-2 Vol. 2

R.C.A.F. Personnel—Attached to R.A.F.

Where a member of the R.C.A.F. attached to the R.A.F. is sentenced to be discharged with ignominy by an R.A.F. Court Martial, the actual administrative act of discharge should be carried out by the R.C.A.F. authorities. Before such action can be taken, however, it would be necessary for the appropriate R.A.F. authorities to terminate his attachment to the R.A.F.

J.A.G. 844 A (32)
21 Apr. 42
H.Q. 866-1-51 Vol. 4

Medically unfit—False Statement on Attestation— Rehabilitation Grant

Where a soldier makes a false answer on attestation but is discharged for not being able to meet the required physical standards, he is not deprived of his Rehabilitation Grant since he did not leave the service by reason of having made a false answer on enrolment or attestation as provided by Order-in-Council P.C. 7521 dated 19 Dec. 1940.

J.A.G. 810 (30)
17 Feb-42
405-M.11420

DISCIPLINE

Field Punishment—in Canada

Field punishment may be legally awarded to Army and R.C.A.F. personnel in Canada on Active Service within the rules set out by M.A.F.L. page 619 and M.M.L. 787, but as a matter of policy, both the Army and the R.C.A.F. do not award it in Canada where detention or imprisonment would meet the needs of justice, and therefore it will be awarded in Canada only in very exceptional cases.

J.A.G. 843 D (32)
20 April, 1942

NOTE.—For relevant provisions in K.R. (Air) see para. 493, 494; see also M.M.L. pages 463, 466, 787, and M.A.F.L. page 257, 260 note 22.

N.R.M.A. Soldier—Subject to Military Law

Where an "R" Recruit (now an N.R.M.A. soldier) commits an offence while attached to a Training Centre he may be tried by Court Martial for such offence even when under orders of the proper Board he has gone on leave of absence, or his period of training is postponed by the proper board, providing however the trial is held within the time limit prescribed by S. 158 (1) A.A.

J.A.G. 777 BB (27),
22 Nov. 1941

DIVORCE

Military Information—for Proceedings in

Information relating to a member of the Naval, Military or Air forces obtained officially or in the course of duty should not be furnished to third parties without the consent of the member concerned and should not be furnished even should consent be given, if the nature of the information would not justify disclosure or if the furnishing of the same was contrary to the interest of the state. Furthermore if such information is sought through legal process, that is by way of subpoena, the same can be refused if, in the opinion of the head of the Department of State concerned, the furnishing of the same is contrary to the interests of the State.

J.A.G. 954 (46)
405-P-9327
3 May, 1943

DOCUMENTARY EVIDENCE

Apprehension—Certificate—Circumstances

The note to A.A. S. 12 states "To establish desertion it is necessary to prove some circumstances justifying the inference that the accused intended not to return to military duty." Among the circumstances from which the Court may infer the intent of the accused not to return there is the fact that he was apprehended and that at the time he was wearing civilian clothes. This is often shown in the certificate of apprehension. The soldier may in his defence contradict such statement, and the Court will usually require the prosecutor to call oral testimony to prove the contention of the prosecutor and then weigh the conflicting evidence, disregarding the statement in the document. In a case where the accused does not contradict directly any statement made in the document, such as his civilian dress or apprehension, but in a sworn statement in defence swears that he always intended to return, then the Court will weigh the inference of intention not to return, arising from his civilian dress, against his own statement as to intention and will arrive at its own conclusion as to the true intention.

J.A.G. 989 (47)
26 July, 43

DURATION OF THE WAR

Definition of

The expression "duration of the war" means the period between the dates fixed by the proclamation of His Majesty or the Governor-in-Council as the date of the commencement of the war and the date of a proclamation by which it is declared that the war no longer exists. (See War Measures Act, R.S.C. 1927 Ch. 206, S. 2.)

J.A.G. 915 (39)
1600-10-6/12
13 Nov. 42

ENEMY ALIEN

Classes of

Persons interned in internment camps operated by the Department of National Defence come within one of the following categories:

- (a) Military Prisoners of War.
- (b) Alien Enemies interned under Regulation No. 24 Defence of Canada Regulations Consolidation, 1940.
- (c) Persons whose detention has been ordered by the Minister of Justice under Regulation No. 21 with a view to preventing them from acting in any manner prejudicial to the Public Safety or the Safety of the State.

The persons referred to in (a) and (b) are by law Prisoners of War. The persons referred to in (c) while not prisoners of war in the strict sense of that term, are detained and dealt with under the same conditions as are applicable to Prisoners of War.

J.A.G. 584 (15)
Nov. 18, 40

Death of—Information—Protecting Power

Where an enemy alien is shot while trying to escape and where enquiries pursuant to his death are made by the Protecting Power, there is no obligation to disclose the whole or part of any proceedings of a Court of Inquiry and as a matter of policy such proceedings should not be disclosed; but where the Protecting Power has asked certain specific questions of fact, it would not be improper, if otherwise desirable, to communicate to such Protecting Power, facts elicited by the Court which would answer those questions.

J.A.G. 807 CC (30)
2 July, 42
S. 7236—35—1

ENLISTMENT

Aliens—Declaration

Enemy aliens are not supposed to be enlisted, nor are they liable to be called up under the N.R.M.A. (1943) Regulations unless they have made a "Declaration of Intention" as provided in Order-in-Council P.C. 5842, dated 9 July 1942. Para. 1 of the Regulations established by the Order-in-Council provides for the granting of a Certificate of Naturalization to any alien serving outside Canada in one of the Services on the filing of the requisite documents. If enemy aliens are enlisted or enrolled after taking advantage of the said Order-in-Council and are taken prisoner they would be treated as ordinary prisoners of war.

54-21-1-111 Vol. 2
2 June, 43

"Boy" Reverting from Status of Enlisted Man

Where a "boy" enlists as a "man" he cannot be permitted to revert to the rank of "boy" on his own request and to serve thereafter as a "boy," but he may be discharged and re-enlisted as a "boy" subject to the provisions of K.R. (Can.) 296 and 304.

J.A.G. 795 (28)
18 Dec. 41
H.Q. 54-27-12-2

Minor—Medical Treatment

Where a minor under 18 years of age enlists with the consent of parents or guardian, he becomes in any case subject to Regulations and permission of said parents or guardian is not required to perform a medical operation on him.

J.A.G. (768) 26
7 Oct. 41
54-27-7-234

NOTE.—See M.M.L. p. 216 as to validity of contract of enlistment by minors; also K.R. (Can.) 304.

Minor—Subject to Military Law After

When minors are properly and legally attested, the age given by them upon enlistment is deemed, for official purposes,

ENLISTMENT

to be their actual age. It follows, therefore, that they are subject to Military Law, including liability to be tried by Court Martial, and to any disciplinary measures authorized by appropriate regulations.

J.A.G. (3)
2 Sept. 41

Naval—Indians—Eligibility

An applicant for enlistment who exhibits all the characteristics of the white race and none of the Indian race, although the father was one sixth Indian, and the mother is white, is properly regarded as of "the white race" and therefore eligible to serve in the Royal Canadian Navy pursuant to the Provisions of C.N.R. 1942, Art. 144.

J.A.G. 832 (32)
7 April, 42
N.S. 113-G-994

Under-age—Correct Age Stated on Attestation

Where a soldier under eighteen years of age at the time of attestation, correctly states his age to be seventeen, such soldier should never have been attested and his attestation having been brought about by the fault of the Military Authorities his discharge should be forthwith carried out under the provisions of C.A.R.O. 1029 (3) without recourse to disciplinary action.

J.A.G. 806 D (29)
27 Jan. 42
54-27-7-234

NOTE.—See Militia Act R.S.C. 1927 C. 132 S. 8.

Under-age—Claim for Discharge—Parent

Where a soldier under eighteen years of age incorrectly states his age upon attestation, he cannot afterwards seek a discharge, since he is precluded by virtue of C.A.R.O. 441 from having his age for military purpose changed on his documents; but his parents or guardian may apply for such a discharge upon presenting proper proof of age since an enlistment under the age of eighteen is not a valid enlistment, as to age, as required by the Militia Act, R.S.C. 1927 C. 132 S. 8.

J.A.G. 806 D (29)
27 Jan. 42
54-27-12-1-Vol. 2

ENLISTMENT

Oath on—Requirements

The taking of the oath required by K.R. (Can.) 302 (a) (iv) upon enlistment in the N.P.A.M. does not require witnesses providing it is taken before an officer of the Active List or a Justice of the Peace.

J.A.G. 770 (26)
18 Oct. 41
54-27-36-1

FALSE DOCUMENTS

Statements—Army Act—SS. 25, 40

A charge under S. 25 of the Army Act must relate to a document which, in respect of the accused, it is his duty to make or complete. The section would not extend to something which, because the accused is a soldier, he has a right to do of his own volition. In the latter case, a charge may properly be laid under S. 40 of the Army Act.

J.A.G. 966 A (45)
55-W-336
21 May, 43

FIELD PUNISHMENT

Award of—in Canada

Field punishment may be legally awarded to Army and R.C.A.F. personnel in Canada on Active Service within the rules set out by M.A.F.L. page 619 and M.M.L. 787 but, as a matter of policy, both the Army and the R.C.A.F. do not award it in Canada where detention or imprisonment would meet the needs of Justice, and therefore it will be awarded in Canada only in very exceptional cases.

J.A.G. 843 D (32)
20 April, 42

NOTE.—For Relevant Provisions in K.R. (Air):

See para. 493, 494;

See also M.M.L. pages 463, 466, 787, and M.A.F.L.
page 257, 260, note 22.

FINANCIAL REGULATIONS AND INSTRUCTIONS

Provisions of—Air Force Act

Under S. 16 of the Royal Canadian Air Force Act the Governor in Council may make regulations relating to the pay and allowances of officers and airmen and there is no restriction on his powers in this regard. By virtue of S. 11 of the said Act he may make regulations inconsistent with the provisions of The Air Force Act; the effect of such regulations would be to make such provisions of The Air Force inoperative so that any provisions of F.R. & I., to the extent that the same are inconsistent with the provisions of The Air Force Act, would supersede the latter.

J.A.G. 952 B (45)

7 Apr. 43

Art. 84—Liability—Officers and Soldiers— Public and Regimental Claims

The liability of officers and soldiers to meet public and regimental claims is subject to "due investigation" as is set out in Art. 84 (2) F.R. & I. and this Article should be read in conjunction with SS. 44 and 127 of the Militia Act. This Article occurs in regulations made under the Militia Act and is supplementary to those sections and should not be interpreted as giving wider powers of recovery than are therein contemplated. The relationship of creditor and debtor must be found to exist between the Crown and the soldiers under Article 84 (2) of F.R. & I. or the "negligence in respect of or default in the performance of a Military duty" must be established under Article 84 (3) of such regulations. Article 84 was not designed as an instrument of perfunctory justice and "due investigation" must be of a thorough nature if by Court of Inquiry and should not be invoked where large sums of money are involved, when the officer seems to have a case, or when he in effect demands a Court-Martial to establish either his indebtedness, his negligence or his default, unless a thorough investigation establishes beyond a shadow of doubt the presence of one or more of these factors or the absence of all of them.

J.A.G. 959 A (45)

620-24-67-5 Vol. 3

d/18/5/43

Art. 85—Suspension—No Military Service

Art. 85 (2) F.R. & I. was intended to be applied to those cases where although an officer or soldier has not committed

FINANCIAL REGULATIONS AND INSTRUCTIONS

an offence under Military Law, at the same time he has, by reason of his own fault or carelessness, rendered himself incapable of performing any military service, whether such officer or soldier is on leave or at his station. The decision as to the period for which the officer or soldier is not entitled to draw pay pursuant to the said Article is solely a matter for the discretion of the Minister, or such officer as he may designate. While negligence on the part of an officer or soldier ought to be, generally speaking, the basis for considering whether this Article should be invoked, the determining factor is the degree of negligence amounting to a violation of all principles of care and common sense, and not a mere error of judgment or an accident. The period involved might include or consist of time spent in a Military Hospital, even though, in a sense, the officer or soldier was in such institution in pursuance of his duty.

J.A.G. 817 A (31)

6 Mar. 42

H.Q. 54-27-5-3 F.D. 82

J.A.G. 818 B (31)

11 Mar. 42

54-27-5-3 F.D. 82

Art. 87—Officer's Pay—Suspension from Duty

When an officer is suspended from duty or absent without leave, his pay and allowances (exclusive of Dependents' Allowance, assigned pay and the amounts allowed by Art. 87 (5) F.R. & I.) are suspended and not credited to his account during the period of his suspension or absence, and the decision of the Minister or such officer as he may designate is necessary in order that it may be determined whether there will be forfeitures of pay and allowances during the period of suspension or absence and the amount of such forfeiture, as set out in F.R. & I. Art. 87.

J.A.G. 932 (41)

C. 55-R-245

15 Dec. 42

Art. 88 (1) (2)—Assignment of Pay

"Pay of rank" as used in Art. 88 (1) with regard to the amount to be assigned for Dependents' Allowance purposes includes (a) the pay of authorized acting rank and (b) in cases where a special rate of pay is provided for on appointment, the

FINANCIAL REGULATIONS AND INSTRUCTIONS

pay of that appointment. But Art. 88 (2) of F.R. & I. deals with ranks, as such, as opposed to appointments and excludes the special pay of an appointment. Accordingly, a "cadet" of any of the ranks set out in the Article need only assign the amount set opposite that rank as equivalent of 15 days pay of rank, irrespective of the rate of pay actually received.

J.A.G. 768 (46)
54-27-35-233 F.D. 12
11 Jun. 43

Art. 97 (h)—"Public Authority"— Sessional Indemnities

The sessional indemnities received by members of the Senate or House of Commons of Canada or of Provincial Legislatures should not be considered as salary or remuneration from a Public Authority. The meaning commonly ascribed to the expression "indemnity" supports this view. Moreover, it is questionable whether a Parliament or a Legislature is such a body as would come within the scope of the definition "Public Authority" as set out in Art. 97 (h) F.R. & I.

J.A.G. 430 (10)
3 June 40

Art. 172 (8)—Cost of Apprehension

Art. 172 (8) of F.R. & I., which defines the cost of apprehension as the sum required to make good any expenses incurred for the purpose of effecting the arrest of the accused, should be interpreted to mean the actual out-of-pocket expenses of the escort. An item of "two days Command Pay \$7.00" and an unexplained item of \$7.50 should be disallowed. Furthermore, it would be unfair to enforce against the accused the Provisions of Article 90 of the Pay and Allowances Regulations, under which the travelling allowances, chargeable against accused, would vary with the rank of the escort.

55-D-333
7 Jan. 43

55-M-678
8 Jan. 43

Art. 178—Officers—Marriage During War

Having regard to the provisions of Interpretation Act R.S.C. 1927, Ch. 1 S. 19 (1), where an officer of the Permanent

FINANCIAL REGULATIONS AND INSTRUCTIONS

Active Militia marries while on Active Service during the present war, he will be entitled to the status of a married officer therein until such time as he ceases to serve on Active Service at the termination of hostilities notwithstanding the provisions of F.R. & I. Art. 178.

J.A.G. 846 (32)

23-4-42

H.Q. 54-107-61 F.D. 1

Art. 187—Application of, to Deserters and Absentees

Where a soldier is an absentee or a deserter, whether convicted or not of the offence of absence without leave or desertion, he must be considered as being in the service of the military forces of Canada during such periods of absence, even if the soldier has been struck off strength as a deserter and the period of absence must not be subtracted from but must be included in the period of continuous service (six months) referred to in Art. 187 F.R. & I. for the purpose of calculating the said period.

J.A.G. 877 (35)

405-P-4481

d. 28-8-42

Art. 220—Absentee—Burial

When an absentee or deserter dies while he is absent without leave or in desertion he is not entitled to burial at the public expense pursuant to F.R. & I. Art. 220. By F.R. & I. Art. 220 (12) an officer or soldier who is on leave of absence without pay is excepted from the benefits of the Article. *A fortiori* an officer or soldier who is absent without leave or in desertion and who automatically forfeits his pay for his period of absence can be in no better position.

J.A.G. 817 (31)

3 Mar. 42

405-S-5413

Art. 148 (2)—Confinement under Sentence—Reductions—Remissions

When a soldier is in custody under close arrest on a charge of which he afterwards is convicted by a Court-Martial, he shall forfeit, under Art. 149 (1) (c) (i) of F.R. & I.,

FINANCIAL REGULATIONS AND INSTRUCTIONS

his pay and allowances for each day he is so held in custody, and such forfeiture is not subject to remission except under Art. 149 (4) where under very special circumstances the Minister, or such officer as he may designate, may order the issue of pay for the period or any part thereof during which the soldier was in custody under close arrest while awaiting trial. Under Art. 148 (2) F.R. & I. the Minister may remit a deduction of pay for the period during which the soldier was in confinement under sentence.

J.A.G. 896 (37)
C-55-D-257
17 Sept. 42

FINES

Charges—Drunkenness

An accused person cannot be placed under stoppages of pay for an unstated amount; nor can a fine be imposed on an accused for any military offence except drunkenness. When such punishment is awarded by a Commanding Officer, the award, pursuant to R.P. 10, should be cancelled and the entry expunged in the records of the accused.

J.A.G. 948 (B 45)
45-R-4672
29 April, 43

Collection of—Pay

Regarding the question of the collection of fines imposed by the civil power pursuant to S. 28 of N.S.S.M. regulations, there are no military regulations under which such collection could be effected by means of deduction from the pay and allowances of a man after he has become a member of the active militia.

J.A.G. 948 (44)
869-S-2631
1 Mar. 43

FINGER PRINTING

Army Personnel

Finger printing of army personnel is for the purpose of identification only and is in no way connected with the Identification of Criminals Act, Chapter 38, R.S.O. 1927 and should not be used for purposes falling within the scope of that Act.

J.A.G. 938 (42)
405-R-3280
8 Jan. 43

FLYING REGULATIONS

Breaches of—Civilian Instructors

Since instructors in Elementary Flying Training Schools are civilians they cannot, except by due process of law, exercised through Civilian Tribunals, be subject to penalties to which, if they were under Air Force law, they could be subjected through trial by Court-Martial.

J.A.G. 775 (27)
5 Nov. 41
1700-4695

FORCIBLE FEEDING

Soldier—Hunger Strike—Administering

Where a soldier in custody awaiting trial goes on a hunger strike, forcible feeding may be resorted to, subject to the advice of the D.G.M.S. and after an examination by a psychiatrist to determine whether the prisoner should be handed over to the civilian authorities because of unbalanced mind.

J.A.G. 806 B (29)
26 Jan. 42

FOREIGN FORCES ORDER

Deserter—Apprehension of—Under

The United States Army has been given the power of trying its personnel in Canada by Court-Martial under the Foreign Forces Order 1941, which has been made applicable to the United States Forces stationed in Canada by Order-in-Council P.C. 2813 dated April 6th, 1943, and accordingly the members of the U.S. Forces in Canada may be apprehended in this country if a request is made by the Officer Commanding said Forces or by the U.S. Government. (See Ss. 8, 9 & 10 of the Foreign Forces Order 1941.) This Order applies only to members of the U.S. Forces which are stationed in Canada, and consequently absentees and deserters of the United States Army who are not members of a U.S. Force stationed in Canada cannot be apprehended in Canada under this Order by Canadian Service Police.

J.A.G. 985 (47)
54-27-65-10
23 July 43

FRAUDULENT ENLISTMENT

Necessaries—Obtaining on

The effect of Article 173 (1) F.R. & I. and C.A.R.O. 2972 is that necessities are in exactly the same class as public clothing and equipment and are the property of the Crown at all times, and are maintained at public expense. It follows, therefore, that on a charge of fraudulent enlistment, a soldier should not be charged with obtaining a free kit of necessities any more than he should be charged with obtaining a free kit of public clothing and equipment.

J.A.G. 967 (C)
54-27-63-26
7 Jun. 43

FUNERAL EXPENSES

Absentee—Death During Absence

When an absentee or deserter dies while he is absent without leave or in desertion he is not entitled to burial at the public expense pursuant to F.R. & I. Article 220. By F.R. & I Article 220 (12) an officer or soldier who is on leave of absence without pay is excepted from the benefits of the Article. *A fortiori* an officer or soldier who is absent without leave or in desertion and who automatically forfeits his pay for his period of absence can be in no better position.

J.A.G. 817 (31)
3 Mar. 42
405-S-5413

FURLOUGH

Injury—to Soldier on .

Where Army personnel are injured or killed as a direct result of a flight in aircraft undertaken in the course of duty and under due authority, such person or his dependents, as the case may be, would be eligible to receive compensation under the provisions of the Pension Act; but where a member of the Canadian Army serving in Canada is injured or killed while proceeding on furlough, he is ineligible to receive compensation.

J.A.G. 949 & 950 (44)

8926 F.D. 4

27 Mar. 43

GARNISHMENT

Service Pay—Not Subject to

There is no law or regulation which authorizes a stoppage being made from the pay of an officer or soldier for the purpose of being applied towards the payment of any private indebtedness which such officer or soldier may have incurred.

**J.A.G. 14 (1)
d/22/9/39**

GENERAL ORDERS

139—Militia Personnel Called out Under

Those officers and other ranks who are members of the Active Militia are, by virtue of Section 64 of the Militia Act, liable to be placed on Active Service anywhere in Canada and also beyond Canada for the defence thereof at any time. All members of the Militia called out for service under any of the General Orders flowing from Order-in-Council P.C. 2396, dated 26th August, 1939 (G.O. 125), for example personnel called out under G.O. 139/39, must, in order to enable them so to be called out, be members of the Active Militia and as such are liable under Section 64 of the Militia Act to be placed on Active Service as above. Such personnel so called out have not been placed on Active Service beyond Canada but under G.O. 170/39 they are, during the period they are so called out, placed on Active Service in Canada only.

J.A.G. 866 G (35)
20 Jul. 42

152—D.O.C.'s Powers—Extension

By virtue of G.O. 152 of 1942 the District Officer Commanding is empowered to reduce a non-commissioned officer not above the rank of Sergeant, pursuant to Section 183 (2) (c) of the Army Act. K.R. (Can.) 329 (c) sets out the requirements to be complied with for reduction to the ranks.

J.A.G. 977 (47)
405-E-2692
2 Jul. 43

169—Civil Conviction—Discharge

Where a soldier has been convicted by a civil power during his service and sentenced to a term in excess of 6 months, the D.O.C. has power under G.O. 169/39 to authorize his discharge from the Army. The D.O.C. may authorize the discharge at any time prior to the expiration of the sentence. Once the discharge has been authorized, however, the necessary action to carry it out should be taken forthwith.

J.A.G. 839 (32)
15-4-42
H.Q. 405-S-1900

GENERAL ORDERS

93/25—Army Council—Powers of Minister

Where the case of an officer's retirement, removal, etc., under K.R. (Can.) paras. 267 and 268 is in the course of being decided upon but no action has been taken, his only recourse is the statement which he may make in accordance with the procedure laid down in K.R. (Can.) App. XII with respect to his prospective retirement resignation or removal; it is only after he has been "wronged," that is, after the aforementioned action has been taken, that he may have recourse to Sec. 42 of the Army Act, and under Sec. 42 he may have his "complaint" forwarded through the proper channels to the Minister who, by virtue of G.O. 93/25, is vested with all the powers, duties and functions which by the Army Act are vested in the Army Council. It is for the Minister to decide whether the complaint is properly "timed."

J.A.G. 906 (39)
338-6-54
6 Nov. 42

GIFTS TO UNITS

Property of His Majesty

Articles of furniture, etc., which have been obtained through gifts donated by voluntary organizations are, under Sec. 129 of the Militia Act, for legal purposes, deemed to be the property of His Majesty. Under K.R. (Can.) paras. 1007 and 1040, the Crown has power to issue directions as to the manner of dealing with these articles and failure to comply with these provisions makes the offender liable to prosecution under the Army Act.

J.A.G. 734 B (22)
d/26/6/41

GRATUITOUS PASSENGER

Crown—Action Where Soldier Injured as

While the Crown at Common Law would have an action against the owner and driver of a vehicle where negligence caused injury to a soldier, despite any Provincial Legislation depriving gratuitous passengers of such cause of action, nevertheless by the provisions of Order-in-Council P.C. 3167, dated 19th April, 1943, the Crown no longer claims against the driver and owner of such a motor vehicle.

J.A.G. 806 F (29)
d/30/1/42
869-K-347

GRIEVANCES

Redress of

Provisions of K.R. (Can.) paragraphs 417 and 419 define the manner in which members of the Forces may seek redress of a grievance. Intervention or representation by an outside party on behalf of an individual member of the Forces, at the instance of such member concerned, constitutes an offence on the part of such member; on the other hand, if some outside party, on his own behalf and not at the instance of any member or group of members of the Forces, made representation to superior authority of an impersonal character, this would not constitute a contravention by such member or group of the regulations.

J.A.G. 950 D (44)
d/16/3/43

Redress of—S. 42 A.A.

An officer who considers himself aggrieved may complain to the Minister of National Defence, pursuant to Sec. 42 of the Army Act, and the Minister is to examine such complaint, and, if so required by the complainant, make a report to the Governor-in-Council. The proper procedure for an officer or soldier who considers himself wronged by a Court Martial is to present a petition under para. 574 of K.R. (Can.), and it is not proper to complain under Sec. 42 of the Army Act. Complaints as to the other matters should be made under this latter section, the proper procedure being set out in C.A.R.O. 2575.

J.A.G. 851 (32)
d/30/4/42

HOSPITALIZATION

Personnel on Leave—R.C.A.F.—Eligibility for

An officer or airman of the Royal Canadian Air Force, other than one who is a member of the Permanent Active Air Force, who is granted leave of absence without pay and allowances for the purpose of engaging in a civilian occupation, will not be eligible for medical treatment or hospitalization at the public expense in respect of any injury, disease or illness suffered or incurred during such leave of absence.

J.A.G. 511 A (12)
d/12/8/40

INDIANS

Canteen Privileges—Indian Act

The provisions of the Indian Act do not apply to the sale or serving of beer by a canteen duly established in accordance with the Regulations, to an Indian who is a duly appointed or enlisted member of His Majesty's Forces and who as such a member is entitled to avail himself of the privileges of the particular canteen or canteens.

J.A.G. 505 (12)
d/8/6/40

Taverns—Indian Servicemen

The provisions of the Indian Act and of any relevant Provincial Legislation apply to the sale or serving of intoxicants in beer parlors or taverns operated by private parties regardless of the fact that the Indian concerned is a member of the forces.

J.A.G. 796 (28)
d/23/12/41
54/27/3/24

NOTE.—See R.S. (Can.) (1927) C. 98 S. 126.

Navy Applicant—One Twelfth Indian Blood

An applicant for enlistment who exhibits all the characteristics of the white race and none of the Indian Race, although the father was one sixth Indian, and the mother is white, is properly regarded "as of the white race" and therefore eligible to serve in the Royal Canadian Navy pursuant to the Provisions of C.N.R. 1942 Art. 144.

J.A.G. 832 (32)
d/7/4/42
N.S. 113-G-994

INOCULATION

Refusal to Take

Where a member of the forces refuses to submit himself to vaccination, inoculation or treatment against any infectious disease and blood examination, he may not be physically forced so to subject himself, but Order-in-Council P.C. 634 dated 27th January, 1942, rescinding Order-in-Council P.C. 6375 dated 19th August, 1941, provides that an unreasonable refusal shall constitute an offence against subsection 2 of Section 9 of the Army Act. This would not be a continuing offence and each refusal would constitute a separate offence.

J.A.G. 927 (39)
54-27-34-4 F.D. 4
d/29/11/42

INSURANCE CLAIMS

Suicide—Officer—Information to Insurer

Where an officer is found by a Court of Inquiry to have died by his own hand and an insurance company requests information as to the death, evidently with the intention of resisting payment under a suicide clause, the Department of National Defence cannot be compelled to disclose such information but it may, with the consent of the officer's beneficiary, hand the insurer a copy of the opinion of the Court. The Insurer should not be given a transcript of the record of the proceedings nor should it be informed of the personnel of the Court of Inquiry. Even a copy of the opinion need not be given if the Minister thinks it contrary to the public interest.

J.A.G. 808 (1) (30)
12 Feb. 42
332-66-59

NOTE.—In a case where the Attorney General of a Province or a Coroner would have ordered an inquest had a military Court of Inquiry not been held, the parties seeking information obtainable if there had been an inquest should not be prejudiced in such circumstances. Accordingly information as to the circumstances of death ought to be furnished unless the case is one where in the public interest such information ought not to be furnished.

INTERNATIONAL CONVENTION (PRISONERS OF WAR)

Art. 27—Non-commissioned Officer— Supervisory Work

Article 49 of the International Convention provides that no prisoner of war may be deprived of his rank by the detaining power and further, that prisoners on whom disciplinary punishment is inflicted shall not be deprived of the privileges attaching to their rank. Article 27 of the said Convention provides that non-commissioned officers who are prisoners of war may be compelled to undertake only supervisory work unless they expressly request remunerative occupation. It follows, therefore, that non-commissioned officer prisoners of war who have been awarded disciplinary punishment cannot be compelled to do the same work as privates, and cannot be punished for a refusal to do such work.

J.A.G. 723 B (21)
d/22/5/41

Art. 50—Escaped P.O.W.—Disciplinary Action

Where prisoners of war escape and have been apprehended they should not be placed under stoppages to make good the expense of such apprehension since under Article 50 of the International Convention escaped prisoners of war who are recaptured before they have been able to rejoin their own Armed Forces, or to leave the territory occupied by the Armed Forces which captured them, shall be liable only to disciplinary punishment; this is awarded by the Commandant or officer commanding, and under para. 55 of the Regulations governing the Maintenance of Discipline among and Treatment of Prisoners of War, when that officer proceeds to deal summarily he may award the offender either detention for any period not exceeding twenty-eight days, or confinement to quarters for any period not exceeding fourteen days. No mention is made of an award of stoppages. Para. 55, then, limits Art. 45 of the Convention which makes prisoners subject to the laws, regulations and orders in force in the Armed Forces of the detaining power which otherwise would make prisoners of war liable to stoppages under Sec. 44 A.A.

J.A.G. 659 (18)
s. 7236 F.D. 12
20 Feb. 41

INTERNATIONAL CONVENTION—(PRISONERS OF WAR)

Art. 60 to 67—Trial of Prisoners—Civil Courts

Prisoners of War may be tried in the Civil Courts for committing civil offences such as breaking, entering, theft, etc., provided the provisions of the International Convention relative to the treatment of Prisoners of War signed at Geneva, 27th July 1929, are strictly complied with. Articles 60 to 67 of the Convention set out the pertinent points to be observed and the procedure to be followed. But there is some doubt as to a conviction being obtained where, for instance, the articles stolen were taken for the sole purpose of furthering the escape. See *Rex vs. Krebs*, decided by Magistrate Galligan in Pembroke, Ontario, 7th Oct. 1943, (unreported).

J.A.G.:991 (47)
7236 IN 12639
d/29/7/43

INTERNATIONAL LAW

Prisoners of War—Trial—Procedure Under

A military court held for the trial of a prisoner of war falls within the category of a "Judicial Proceeding." The procedure relating to Military Courts is identical with that relating to Courts-Martial, as required by the International Convention in relation to The Treatment of Prisoners of War (1929) Art. 145. Under Art. 62 of the said convention the accused is entitled to be represented by a duly qualified counsel of his own choice, or by an advocate obtained for him by the Protecting Power, or by an officer of the armed forces of the Detaining Power who shall be known as the Defending Officer. Such counsel, advocate or defending officer shall have all the rights of an accused with respect to witnesses, objections, addresses, etc., and an opportunity shall be given to the accused to make a request, in writing, for the services of a defending officer if no defending personnel have yet been made available to him as provided by 8 (b) of the Regulations governing Prisoners of War.

J.A.G. 844 (3)
d/21/4/42
H.Q.C. 4498

NOTE.—The Regulations provide for the application of Canadian Military Law. See Reg. 7 of the Proceedings of Military Courts assembled for trial of prisoners of war 65 (b). Interned Enemy aliens are governed generally by the same provisions. See Reg. 2.

Enemy Alien—Information to Protecting Power

Where an enemy alien is shot while trying to escape and where enquiries pursuant to his death are made by the Protecting Power, there is no obligation to disclose the whole or part of any proceedings of a Court of Inquiry and as a matter of policy such proceedings should not be disclosed; but where the Protecting Power has asked certain specific questions of fact, it would not be improper, if otherwise desirable, to communicate to such Protecting Power, facts elicited by the Court which would answer those questions.

J.A.G. 807 CC (30)
d/7/2/42
s. 7236-35-1

INTERNEES

Categories of

Persons interned in internment camps operated by the Department of National Defence come within one of the following categories:

- (a) Military Prisoners of War.
- (b) Alien Enemies interned under Regulation No. 24, Defence of Canada Regulations Consolidation, 1940.
- (c) Persons whose detention has been ordered by the Minister of Justice under Regulation No. 21 with a view to preventing them from acting in any manner prejudicial to the public Safety or the Safety of the State.

The persons referred to in (a) and (b) are by law Prisoners of War. The persons referred to in (c) while not prisoners of war in the strict sense of that term, are detained and dealt with under the same conditions as are applicable to Prisoners of War.

J.A.G. 584 (15)
d/18/11/40

War Production—Employment of

The provisions of the Geneva Convention are not applicable to persons who are interned but who do not by reason of such internment acquire the status of, or are not required to be treated as, prisoners of war; hence there are no restrictions with regard to the class of work on which they may be employed.

J.A.G. 553 (13)
d/30/9/40

Trial of—Procedure—Counsel

A military Court held for the trial of a prisoner of war falls within the category of a "Judicial Proceedings" and the procedure relating to Military Courts is identical with that relating to Courts-Martial, as required by the International Convention in Relation to The Treatment of Prisoners of War (1929) Art. 145. Under Art. 62 of the said convention the accused is entitled to be represented by a duly qualified counsel of his own choice, or by an advocate obtained for him by the Protecting Power, or by an officer of the armed forces of the Detaining Power who shall be known as the Defending Officer. Such counsel, advocate or defending officer shall have all the rights of an accused with respect to witnesses, objections,

INTERNEES

addresses, etc., and an opportunity shall be given to the accused to make a request, in writing, for the services of a defending officer if no defending personnel have yet been made available to him as provided by 8 (b) of the Regulations governing Prisoners of War.

J.A.G. 844 (3)

d/21/4/42

H.Q.C. 4498

NOTE.—The Regulations provide for the application of Canadian Military Law. See Reg. 7 of the Proceedings of Military Courts assembled for trial of prisoners of war, 65 (b). Interned enemy aliens are governed generally by the same Provisions. See Reg. 2.

INTERPRETATION

Notes—Army Act—Rules of Procedure

Certain of the notes to the Rules of Procedure and Sections of the Army Act, which are of an explanatory nature, are based on decisions of the English Courts which have been approved by superior tribunals and handed down from generation to generation, becoming part of the Common Law and resulting in certain definite principles being established. Hence, although these notes have not in themselves the force of law and cannot override the provisions of the Act and the Rules of Procedure, they should serve as a guide to the principles which should be followed in applying any particular section or rule.

J.A.G. (DOR 113)

INVENTIONS

By Service Personnel

Since officers and soldiers are not "persons employed in the public service of Canada" patents of invention granted to them do not fall within the provisions of Sec. 46 of the Patent Act. Stats. Can. 1935 C. 37. See Order-in-Council P.C. 9750 dated 24th December 1943.

J.A.G. 818 A (31)

d/10/3/42

H.Q. 360-S-40

K.R. (AIR)

Paras. 2019 & 2022—Rules of Evidence—Civil Courts in Canada—Air Force Courts-Martial

The rules of evidence followed by the English Civil courts prevail before Army courts-martial; Militia Act Section 69 and Army Act, Section 128. But, by virtue of K.R. (Air) 1943, paragraph 1322, item 5 and Appendix 1 A, item 21, the law of evidence before R.C.A.F. courts-martial is that of the civil courts of Canada, i.e. the Evidence Acts of Canada and the Provinces. The privileges and obligations of witnesses will be determined by the code under which the trial is being conducted.

J.A.G. 667 A (19)
12/3/41

J.A.G. (DOR 12)

J.A.G. (1)
23/7/40

K.R. (CAN.)

Paras. 267 and 268—Removal of Officers

Where the case of an officer's retirement, removal, etc., under K.R. (Can.) paras. 267 and 268, is in the course of being decided upon but no action has been taken, his only recourse is the statement which he may make, in accordance with the procedure laid down in K.R. (Can.) App. XII, with respect to his prospective retirement, resignation or removal. It is only after he has been "wronged," that is, after the aforementioned action has been taken, that he may have recourse to Sec. 42 of the Army Act, and under Sec. 42 he may have his "complaint" forwarded through the proper channels to the Minister who, by virtue of G.O. 93/25, is vested with all the powers, duties and functions which by the Army Act are vested in the Army Council. It is for the Minister to decide whether the complaint is properly "timed."

J.A.G. 906 (39)
338/6/54
6 Nov. 42

Paras. 267, 268—Removal—Retirement and Reversion—Army Officers

The procedure to be followed in the case of removal retirement or reversion to reserve status of an Army officer is provided in K.R. (Can.) paras. 267 and 268, and Appendix XII. When an officer has been punished by either a Court-Martial or under Section 47 of the Army Act for any offence the facts incidental to the charge so laid can be used as a ground for disposing of the officer under paras. 267 and 268, K.R. (Can.) but the disposal of the officer under para. 267 is not in any sense a punishment but such action is taken purely from the point of view of the good of the service. The Adjutant-General may, if in his opinion he feels that the facts do not justify submission to the Minister, refuse to submit same; but once the matter is submitted the Minister is not limited in any way by consideration of the legal sufficiency of the evidence.

J.A.G. 943 (42)
332-158-103
d/27/1/43

J.A.G. 931 (41)
d/15/12/42

Paras. 280 & 302—Attestation—Active Militia

An officer not below the rank of Captain may attest a man on enlistment into the Permanent Force, para. 295 K.R.

K.R. (CAN.)

(Can.), but in the matter of enlistment in the "Active" units etc., of the Army no such limitation is placed on the person to administer the Oath. Para. 302 (iv) K.R. (Can.) merely provides that the Declaration and Oath of Allegiance may be administered by an officer on the Active List who is qualified in accordance with Para. 280 of K.R. (Can.), and this latter paragraph makes no restriction as to the rank of the officer who may act thereunder.

C. 6075 Vol. 5
25 May 42

Para. 296, 304—Boy—Enlistment of—Reverting

Where a "boy" enlists as a "man" he cannot be permitted to revert to the rank of "boy" on his own request and to serve thereafter as a "boy" subject to the provisions of K.R. (Can.) 296.

J.A.G. 795 (28)
d/18/12/41
54-27-12-2

Para. 329 (e)—Reduction of N.C.O. to the Ranks

By virtue of G.O. 152 of 1942 the District Officer Commanding is empowered to reduce a non-commissioned officer not above the rank of Sergeant, pursuant to Section 183 (2) (c) of the Army Act. K.R. (Can.) 329 (e) sets out the requirements to be complied with for reduction to the ranks.

J.A.G. 977 (47)
405-E-2692
2 July 1943

Para. 417 (h)—Redress of Grievance

Sec. 43 A.A. sets out the procedure by which a soldier may make a complaint, and R.P. 126 (A) describes the prescribed officer to whom such complaint may be made. K.R. (Can.) 417 (b) states that a soldier is forbidden to use any other method of obtaining redress for a grievance.

J.A.G. 977 (47)
405-E-2692
2 July 43

K.R. (CAN.)

Paras. 417—419—Redress of Grievance

Provisions of K.R. (Can.) Paras. 417 & 419 define the manner in which the members of the Forces may seek redress of a grievance. Intervention or representation by an outside party on behalf of an individual member of the Forces, at the instance of such member concerned constitutes an offence on the part of such member; on the other hand, if some party, on his own behalf and not at the instance of any member or group of members of the Forces, made representation to superior authority of an impersonal character, this would not constitute a contravention by such member or group of the regulations.

J.A.G. 950 D (44)
d/16/3/43

Para. 425—Indebtedness of Officer

The procedure to be followed where an officer is indebted is set out in K.R. (Can.) para. 425 and K.R. (Air), para. 435, but this procedure is between the officer and the Department and not between the Department and the Creditor. When action is not taken by the Department against the officer, it is the practice to inform the creditor of the last known address of the officer and at the same time to inform the latter of the possibility of his being made subject to disciplinary action for failure of discharge of the indebtedness.

J.A.G. (DOR 128)

Para. 451 (f)—Placing of Deserters and Absentees in Civil Custody

There is no power in the Provost Corps nor any military police to place a deserter or absentee in temporary custody in a civil lock-up pending appearance before military authorities rather than civil authorities, and where two soldiers were so placed in a civil gaol without the order for such custody signed by the Commanding Officer of the said soldiers as required by K.R. (Can.) 451 (f), and where the purpose of the jailing was a military and not a civil proceeding, such custody was most irregular and without authority.

J.A.G. 856 (33)
d/23/5/42
H.Q.S. 6265-5 F.D. 2

K.R. (CAN.)

**Para. 452 (h)—Duties to Be Performed During
Close Arrest**

Under the Reserve Army (Special) Regulations 1941, recruits and members (H.D.) Canadian Army are considered to be subject to all obligations and duties, and be governed by the same laws, orders and regulations as a man of the Active Militia, on the strength of a Corps thereof, which is placed on Active Service pursuant to Section 64 of the Militia Act. Accordingly all such members would be "on Active Service" within the meaning of para. 452 (h) of K.R. (Can.). Hence while under close arrest they could in accordance with this paragraph, "be ordered to bear arms, attend parades and perform all such duties as may be required of them" because of this Active Service status. The duties would include fatigue duties.

J.A.G. 967 B (46)
54-27-82-16 F.D. 1
d/7/6/43

Para. 471—Reversion in Rank from Acting Rank

K.R. (Can.) 471 and Section 46 (8) of the Army Act and note 15 thereto, and the second paragraph of R.P. 10 provide for the reversion of a N.C.O. from Acting Rank or a lance appointment to permanent rank, by order of a C.O.

J.A.G. 977 (47)
405-E-2692
2 July 43

**Paras. 539A, 914—Damage to Government-owned
Vehicles—Fire**

C.A.R.O. 1820 has reference specifically to K.R. (Can.) para. 539A and 914 relating to damage occasioned by a member of the forces to public property, and limits the deductions which may be made to 90 days pay, but this Routine Order is applicable as well to Sec. 138 of the Army Act and applies to all loss occasioned to the Crown by reason of injury to a soldier, etc., caused through the fault, negligence, etc., of a member of the Army.

J.A.G. 986 (47)
d/24/7/43

Para. 559—Proof that Accused Was Defaulter

Where the charge sheet contains an allegation that the accused was a defaulter at the time he absented himself, the

K.R. (CAN.)

Prosecutor should prove this fact as part of his case and not wait until the accused gives evidence so that he can adduce this evidence from the accused's own mouth. The manner in which proof that a man is a defaulter may be given is set out in K.R. (Can.) para. 559.

55-R-261
d-23-11-42

Para. 560—Procedure for Introducing Certified Copy of Order

Where an original order is produced to the Court, but only a certified copy of the Order is attached to the proceedings as an exhibit, there should be a notation in the proceedings that the original was produced to the Court and that a copy, duly compared with the original by the President and certified by him, was inserted in the proceedings in the place of the original document, which was required for other purposes. This is in compliance with K.R. (Can.) para. 560.

55-S-416
14 Aug. 42

Para. 563 (m)—Sentences of Courts-Martial

The Court may impose a sentence more severe than those suggested as a guide in para. 563 (m) K.R. (Can.) 1939. One circumstance leading to this would be the prevalence in the garrison or camp of the offence of which the accused was convicted. A District or Garrison Order calling attention to such prevalence is admissible and should be produced by the Prosecutor after finding and before sentence, if he asks for a severe sentence.

J.A.G. (DOR 59)
27/11/23

Para. 574—New Evidence

Where a finding and sentence have been confirmed the trial cannot be reopened for the hearing of new evidence. The only course for an accused who wishes new evidence considered is a petition to the reviewing authority under K.R. (Can.) 574. To this petition should be attached statements or affidavits as to the evidence which accused and his witnesses could have

K.R. (CAN.)

given at the trial had accused availed himself of the opportunity for full defence, or as to evidence which has since the trial come to light.

J.A.G. (2)
16/5/41

Para. 599—Power of C.O. to Release from Detention

A Commanding Officer has power to remit and mitigate punishment awarded by him but has not the power to commute such punishment. 599 K.R. (Can.) gives him power to release a soldier undergoing detention following an award made by him. Note 2 to R.P. 6 (a) states that the C.O. can at any time diminish punishment before its completion and Note 18 of the Army Act, Section 46, states that the C.O. can at any time before the punishment has been completed, mitigate or remit a minor or summary punishment. For distinction between commutation, remission and mitigation, see Notes to the Army Act, S. 57.

J.A.G. 948 A
405-S-6065
d/1/3/43

Para. 1359—Disposal of Medals on Death

The entry as to next-of-kin on a soldier's attestation paper has no legal effect whatever as regards distribution of property in the event of death, and unless a formal will is executed, the soldier's estate will be dealt with as if he died intestate. It is legally immaterial who is entered on a soldier's attestation paper as his next-of-kin and the entry so far as the soldier's medals are concerned, is of no effect, as the medals of a soldier who has died must be disposed of in accordance with Para. 1359, K.R. (Can.) 1939.

J.A.G. (DOR 23)

LANCE RANK

Definition of

A lance rank, if it be—as strictly it should not be—regarded as a rank and not an appointment, is always an acting rank (M.M.L. pp. 37-39), and a Commanding Officer may cancel this rank or appointment by reason of unsuitability or because the position for which the appointment was made has disappeared. However, by virtue of K.R. (Can.) 308 the appointment of lance sergeant carries with it the temporary (wartime) or substantive rank of corporal, and therefore a lance sergeant deprived of his appointment as such could not be reverted below the rank of corporal by his Commanding Officer. Such an appointment as that of an “acting lance sergeant” is contemplated by K.R. (Can.) 308, and a soldier with this appointment could be ordered to revert to a private. If, however, he were “confirmed” in the status of “acting lance sergeant” he could not be reverted below the rank of corporal.

J.A.G. 948B (45)

A.J.A.G. (file)

29 Apr. 43

H.Q. 54-21-11-6 Vol. 11

23 Nov. 43

LICENSES

Chauffeurs—Military—Provincial System of

Under the provisions of the British North America Act, the Crown, in the right of the Dominion, is given exclusive jurisdiction over all matters pertaining to the Militia and Military Services of Canada and therefore, if military chauffeurs are necessary, the same can be employed without any interference on the part of the Provincial Legislature. Further, military chauffeurs in uniform cannot be compelled to wear the Provincial Chauffeur's badge which may have been issued to them by the Provincial authorities.

J.A.G. (D.O.R. 158)

MARRIAGE

Proxy—No Provision for

There is no special provision for marriage by proxy on the part of members of the Armed Forces.

J.A.G. 849 (32)

30 Apr. 42

H.Q. 1018-1-13 V. 3

MARRIED ESTABLISHMENT

Permanent Force—Effect of F.R. & I. 178

Having regard to the provisions of Interpretation Act R.S.C. 1927, Ch. 1 S. 19 (1), where an officer of the Permanent Active Militia marries while on Active Service during the present war, he will be entitled to the status of a married officer therein until such time as he ceases to serve on Active Service at the termination of hostilities notwithstanding the provisions of F.R. & I. Art. 178.

J.A.G. 846 (32)
23 Apr. 42
H.Q. 74-107-61 F.D. 1

MASCULINE GENDER

Includes Female

Where it is not repugnant to the spirit and intent of an Order-in-Council in which the masculine gender is used it may be deemed to include females in accordance with the rule of interpretation that, unless a contrary intimation appears, words importing the masculine gender include the female.

NOTE.—Interpretation Act, R.S.C. 1927 Ch. 1, S. 31 (i).

J.A.G. 887A (37)
8979 Vol. 3
19 Sep. 42

MEDALS

Disposal of—in Event of Death—Under K.R. (Can.) para. 1359

The entry as to next-of-kin on a soldier's attestation paper has no legal effect whatever as regards distribution of property in the event of death, and unless a formal will is executed, the soldier's estate will be dealt with as if he died intestate. It is legally immaterial who is entered on a soldier's attestation paper as his next-of-kin and the entry so far as the soldier's medals are concerned, is of no effect, as the medals of a soldier who has died must be disposed of in accordance with Para. 1359, K.R. (Can.) 1939.

J.A.G. (DOR 23)

MEDICAL ATTENTION

Deserters or Absentees—Whether Entitled to

Where an officer or soldier is a deserter or an illegal absentee, he is not entitled to receive at the Public Expense medical or dental treatment or hospitalization.

Such treatment is only provided for officers or soldiers on leave of absence or furlough or on Active Service (C.A.R.O. 924 and 1146) K.R. (Can.) para. 962, R.O. 807 and para. 365, Instructions for the R.C.A.M.C. and the C.D.C. 1937.

J.A.G. 880 (37)
405-Z-183
3 Sep. 42

Deserters and Absentees—Before and After Surrender

While the Crown is not liable for expenses of medical treatment incurred by a deserter or an absentee without leave, yet when such deserter or absentee surrenders himself he becomes eligible for treatment and hospitalization at public expense.

J.A.G. 817A (31)
6 Mar. 42
H.Q. 54-27-5-3 F.D. 85

Forcible Feeding

Where a soldier in custody awaiting trial goes on a hunger strike, forcible feeding may be resorted to subject to the advice of the D.G.M.S. and after an examination by a psychiatrist to determine whether the prisoner should be handed over to the civilian authorities because of unbalanced mind.

J.A.G. 806B (29)
26 Jan. 42

Minor—Parents' Consent

Once an individual has enlisted in the Naval, Military or Air Forces of Canada he becomes subject to all the Regulations governing personnel in such service; and where a boy under eighteen years enlists with his parents' consent, he may be operated upon by the appropriate medical authorities without the permission of such parents.

J.A.G. 776 (27)
10 Nov. 41
H.Q. 54-27-7-234
J.A.G. 846A (32)
23 Apr. 42
H.Q. 866-3-3

MEMBERS OF PARLIAMENT

Officers—Position as

Military information which an individual obtained by reason of his status as an active officer, should not be disclosed if it would:

- (a) aid the enemy;
- (b) be prejudicial to the interest or the safety of the State;
- (c) contravene the Official Secrets Act or disclosure of which would place the individual concerned in jeopardy and liable to be made the object of appropriate legal proceedings.

No peculiar immunity could be claimed because the officer is also a member of Parliament, unless of course he makes statements in the House, in which case the rules of privilege, custom and precedent applicable to such cases would apply.

With regard to discussing political matters having to do with military policy and administration, an officer who is a member of parliament should not be restricted but any criticism made by him should not be such as would be repugnant to his status as an active officer.

J.A.G. 903 (39)
4 Nov. 42

MESSES

Alcoholic Beverage—Sale in

A province has no legal right to interfere with the carrying on of the services of His Majesty in the right of the Dominion of Canada and if the Crown, in the interests of discipline, and welfare of the troops, considers it desirable that alcoholic beverages be sold in messes, Institutes, etc., then it is free to authorize such sale.

J.A.G. 59 (2)
4 Oct. 39

MILITARY AUTHORITIES

Discretionary Power of—Disciplinary Action

Where an officer strikes a soldier he may be tried under the A.A. Sec. 37 with an alternative charge under Sec. 40 of conduct to the prejudice of good order and military discipline. An apology after the commission of the offence might be considered as minimizing the gravamen of the offence and in mitigation of punishment, but would not have any effect on the commission of the offence of striking *per se*. The question as to whether disciplinary action is or is not to be taken under the A.A. is entirely for the consideration of the appropriate military authorities, and a complainant has no legal recourse against said authorities should they refuse to act. On the other hand, the question as to proceedings in the civil courts is completely discretionary in a complainant and the military authorities have no discretion in this respect.

If a complainant should take action in the civil courts, the military authorities could still take such disciplinary action against the officer as they thought fit, because any charge to be tried by a court-martial would not be for the same offence as that for which he would be tried in the criminal courts.

J.A.G. 970 (47)
6-P-21
27 Jul. 43

MILITARY DOCUMENTS

Information—State and Departmental Files

Documents and communications respecting matters of State are privileged from disclosure whenever it would be injurious to the public interests to produce them. The question as to whether or not such disclosure is injurious is a matter for the decision of the head of the Department concerned.

J.A.G. (DOR. 178)

Information—Personal—Disclosure

Information concerning a member or former member of the Armed Services obtained officially or in the course of duty, cannot properly be disclosed to an outside party without previously obtaining the consent of the member concerned. If, on the other hand, such information is sought through legal process, the same can be refused, if, in the opinion of the Head of the Department concerned, the disclosure thereof is contrary to the interests of the State.

J.A.G. (DOR. 472)

MILITARY INFORMATION

Personal—Furnishing of—Legal Process

Information relating to a member of the Naval, Military or Air Forces obtained officially or in the course of duty should not be furnished to third parties without the consent of the member concerned and should not be furnished even should consent be given if the nature of the information would not justify disclosure or if the furnishing of the same was contrary to the interests of the state. Furthermore if such information is sought through legal process, that is by way of subpoena, the same can be refused if, in the opinion of the head of the Department of State concerned, the furnishing of the same is contrary to the interests of the State.

J.A.G. 954 (46)

405-P-9327

3 May 43

Confidential—Service Personnel

Generally, information acquired in the course of duty with regard to a member of the Forces, and which could only have been acquired or obtained because the individual possesses that status, is confidential and privileged and ought not to be made the subject of disclosure to third parties. For example, information regarding a Serviceman's medical history while in the Service should not be disclosed to a commercial insurance company which is seeking to cancel a policy or to refuse payment thereof on the ground that in his application therefor the airman concealed or made misrepresentations with respect to any factual matters when he was examined by the insurance company's medical examiners. So also it would be improper to disclose to a third party, such as a prospective employer, information obtainable from a report made in the course of duty by a superior in respect of one of his subordinates.

Exceptions to the general rule occur in relation to litigation where information or evidence is sought through due process of law and non-disclosure or non-production would frustrate the due administration of justice and although in many instances privilege may be pleaded in that disclosure would be contrary to the public interest, yet such a plea is rare.

Between one department of the Government of Canada and another, where the information is for official purposes, the information is furnished; and where information has already been published or otherwise disseminated so that the party to whom the same was of interest could have obtained the

MILITARY INFORMATION

same (though possibly with much inconvenience) there would be no objection to such information being furnished, as, for example, the finding and sentence of a Court-Martial.

J.A.G. 958 (45)
13 May 43
1011-1-72

MILITARY LAW

Application of—to Civilians

Persons employed by the Department of National Defence for Air and who perform their duties with the R.C.A.F. are Civil Servants and do not come within the provisions of Sec. 6 of the R.C.A.F. Act for purposes of discipline. Such persons are governed by the Civil Service Act (R.S.C. 1927 C. 22) and are subject to the penalties prescribed therein.

J.A.G. 727A
4 Jun. 41

Minors—Enlisted—Subject to

When minors are properly and legally attested, the age given by them upon enlistment is deemed, for official purposes, to be their actual age. It follows, therefore, that they are subject to Military Law, including liability to be tried by Court-Martial, and any disciplinary measures authorized by appropriate regulations.

J.A.G. (3)
2 Sep. 41

Soldier Subject to—Until Discharged

A certificate of discharge cannot validly be antedated because until a soldier is lawfully discharged he remains subject to Military Law and is, unless specifically excepted, entitled to be paid until so discharged.

J.A.G. 507 (12)
7 Aug. 40

MILITARY PERSONNEL

Information Concerning

Generally, information acquired in the course of duty with regard to a member of the Forces, and which could only have been acquired or obtained because the individual possesses that status, is confidential and privileged and ought not to be made the subject of disclosure to third parties. For example, information regarding a Serviceman's medical history while in the Service should not be disclosed to a commercial insurance company which is seeking to cancel a policy or to refuse payment thereof on the ground that in his application therefor the airman concealed or made misrepresentations with respect to any factual matters when he was examined by the insurance company's medical examiner. So also it would be improper to disclose to a third party, such as a prospective employer, information obtainable from a report made in the course of duty by a superior in respect of one of his subordinates.

Exceptions to the general rule occur in relation to litigation where information or evidence is sought through due process of law and non-disclosure or non-production would frustrate the due administration of justice and although in many instances privilege may be pleaded in that disclosure would be contrary to the public interest yet such a plea is rare.

Between one department of the Government of Canada and another where the information is for official purposes, the information is furnished and where information has already been published or otherwise disseminated so that the party to whom the same was of interest could have obtained the same (though possibly with much inconvenience) there would be no objection to such information being furnished, as, for example, the finding and sentence of a Court-Martial.

J.A.G. 958 (45)
1011-1-72
13 May 42

MILITARY SERVICE

Duration of—Officers—Other Ranks

While other ranks engage to serve for a specific period or during the present emergency or for the duration of the war and the period of demobilization thereafter—during which time they cannot otherwise than in exceptional cases claim their discharge—it is a well established principle of law that officers hold their commissions during H.M. pleasure.

J.A.G. 859 (33)
26 May 42

Incapacity for—Suspension of Pay

Art. 85 (2) F.R. & I. was intended to be applied to those cases where, although an officer or soldier has not committed an offence under Military Law, at the same time he has, by reason of his own fault or carelessness rendered himself incapable of performing any military service, whether such officer or soldier is on leave or at his station. The decision as to the period for which the officer or soldier is not entitled to draw pay pursuant to the said Article is solely a matter for the discretion of the Minister, or such officer as he may designate. While negligence on the part of an officer or soldier ought to be, generally speaking, the basis for considering whether this Article should be invoked, the determining factor is the degree of negligence amounting to a violation of all principles of care and common sense, and not a mere error of judgment or an accident. The period involved might include or consist of time spent in a Military Hospital, even though, in a sense, the officer or soldier was in such institution in pursuance of his duty.

J.A.G. 817A (31)
6 Mar. 42
H.Q. 54-27-5-3 F.D. 82

J.A.G. 818B (31)
11 Mar. 42
H.Q. 54-27-5-3 F.D. 82

MILITIA

Members of—Status

Those officers and other ranks who are members of the Active Militia are, by virtue of Section 64 of the Militia Act, liable to be placed on Active Service anywhere in Canada and also beyond Canada for the defence thereof at any time. All members of the Militia called out for service under any of the General Orders flowing from Order-in-Council P.C. 2396, dated 26th August, 1939, (G.O. 125), for example personnel called out under G.O. 139/39, must, in order to enable them so to be called out, be members of the Active Militia and as such are liable under Section 64 of the Militia Act to be placed on Active Service as above. Such personnel so called out have not been placed on Active Service beyond Canada but under G.O. 170/39 they are, during the period they are so called out, placed on Active Service in Canada only.

J.A.G. 866G (35)
20 Jul. 42

MILITIA ACT

S. 2 (b)—Definition of Emergency

The expression "duration of the War" means the period between the dates fixed by the proclamation of His Majesty or the Governor-in-Council as the date of the commencement of the war and the date of a proclamation by which it is declared that the War no longer exists. (See War Measures Act, R.S.C. 1927, C. 206 Sec. 2.)

J.A.G. 915 (39)
1600-10-6/12
13 Nov. 42

Ss. 2 (g), 69—"Active Service"

By virtue of Sec. 69 of the Militia Act, the Army Act is made applicable to the Canadian Militia only in so far as it is not inconsistent with the Militia Act. Sec. 2 (g) of the Militia Act defines "on active service" as applied to persons subject to Military Service. The said definition is wider in scope than that contained in Sec. 189 of the Army Act and therefore governs. As members of the Active Army come within the terms of this definition in Sec. 2 (g) of the Militia Act, they are to be considered as on "active service" for all purposes under the Army Act, Rules of Procedure and also K.R. (Can.).

Sec. 2 (g) of the Militia Act defines "On Active Service" as applied to a person subject to Military Service as meaning 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.

J.A.G. (1)
24 Oct. 40

S. 8—Minor—Age Mis-stated—Discharge

Where a soldier under eighteen years of age incorrectly states his age upon attestation, he cannot afterwards seek a discharge since he is precluded by virtue of C.A.R.O. 441 from having his age for military purposes changed on his documents; but his parents or guardian may apply for such a discharge upon presenting proper proof of age since an enlistment under the age of eighteen is not a valid enlistment, as to age, as required by the Militia Act, R.S.C. 1927 C. 132 S. 8.

J.A.G. 806D (29)
27 Jan. 42
H.Q. 54-27-12-2

MILITIA ACT

S. 8—Minor—Improperly Attested—Discharge

Where a soldier under eighteen years of age at the time of attestation, correctly states his age to be seventeen, such soldier should never have been attested and his attestation having been brought about by the fault of the Military Authorities, his discharge should be forthwith carried out under the provisions of C.A.R.O. 1029 (3) without recourse to disciplinary action.

J.A.G. 806D (29)

27 Jan. 42

H.Q. 54-27-12-2 Vol. 2

Ss. 44, 127—Deficiency—Damage to Public Property

The liability of officers and soldiers to meet public and regimental claims is subject to "due investigation" as is set out in Art. 84 (2) F.R. & I. and this Article should be read in conjunction with Ss. 44 and 127 of the Militia Act. This Article occurs in regulations made under the Militia Act and is supplementary to those sections and should not be interpreted as giving wider powers of recovery than are therein contemplated. The relationship of creditor and debtor must be found to exist between the Crown and the soldiers under Article 84 (2) of F.R. & I. or the "negligence in respect of or default in the performance of a Military duty" must be established under Art. 84 (3) of such regulations. Art. 84 was not designed as an instrument of perfunctory justice and "due investigation" must be of a thorough nature if by Court of Inquiry, and should not be invoked where large sums of money are involved if the officer seems to have a case or when he in effect demands a Court-Martial to establish either his indebtedness, his negligence or his default unless a thorough investigation establishes beyond a shadow of doubt the presence of one or more of these factors or the absence of all of them.

J.A.G. 959A (45)

H.Q. 650-24-67-5 Vol. 5

18 May 43

S. 54—Damage Caused by Use of Rifle Ranges

Where damage or injury results from the use of a rifle range, the Militia Act does not require that the injured party establish neglect on the part of the Crown's servants in the performance of their duty or employment as is required in

MILITIA ACT

the normal class of case. On the contrary, such neglect is not a factor and under the Act, the Crown is required to pay compensation unless the claim is barred by the provisions of S. 54 (2) of the Militia Act.

J.A.G. 905 (a) (39)
H.Q. 18-1-50
5 Nov. 42

S. 63—Military Purpose—Definition of

The employment of troops under Regulation 51A of Defence of Canada Regulations is not in aid of Civil Power, but a "Military Purpose" within the meaning of S. 63 of Militia Act (R.S.C. 1927 C. 132).

J.A.G. 775C (27)
6 Nov. 41
S. 5603 Vol. 5

S. 63, 64—Militia Called Out Under

Those officers and other ranks who are members of the Active Militia are, by virtue of Section 64 of the Militia Act, liable to be placed on Active Service anywhere in Canada and also beyond Canada for the defence thereof at any time. All members of the Militia called out for service under any of the General Orders flowing from Order-in-Council P.C. 2396, dated 26th August, 1939 (G.O. 125), for example personnel called out under GO 139/39, must, in order to enable them so to be called out, be members of the Active Militia and as such are liable under Section 64 of the Militia Act to be placed on Active Service as above. Such personnel so called out have not been placed on Active Service beyond Canada but under G.O. 170/39 they are, during the period they are so called out, placed on Active Service in Canada only.

J.A.G. 866G (35)
20 Jul. 42

S. 69—Application of Army Act

Under S. 69 of the Militia Act the Army Act shall have force and effect as if it had been enacted by the Parliament of Canada. Unless the said Act is inconsistent with the Militia Act or the Regulations made thereunder, it must be read and interpreted as if it were specifically passed by the Dominion

MILITIA ACT

Parliament as applicable to the Canadian Forces. It follows that in considering the term "Regular Forces" as used in the Army Act, S. 13, Active Service personnel are part of these forces.

J.A.G. 866F (35)
405-A-3515
20 Jul. 43

S. 116—Interrupting or Hindering Any Portion of the Militia at Drill

Where a convoy is moving from one location to another, other than in military drill, it should obey, if possible, the local by-laws pertaining to the regulations of traffic, on the grounds of good public policy.

J.A.G. 699A (20)
16 Apr. 41

S. 129—Gifts to Units—Property of Crown

Articles of furniture, etc., which have been obtained through gifts donated by voluntary organizations are, under S. 129 of the Militia Act, for legal purposes, deemed to be the property of His Majesty. Under K.R. (Can.) paras. 1007 and 1040 the Crown has the power to issue directions as to the manner of dealing with these articles and failure to comply with these provisions makes the offender liable to a charge under the Army Act.

J.A.G. 734B (22)
26 Jun. 41

MINISTER OF NATIONAL DEFENCE

Debit Balance—Soldiers—Cancellation by

Authority to cancel a debit balance in the pay account of a soldier may only be granted by the Governor-General in Council.

J.A.G. 887 (37)
H.Q. 54-27-65-1 F.D. 58
21 Sep. 42

Discretion to Withhold Pay—Art. 85 (2) F.R. & I.

Art. 85 (2) F.R. & I. was intended to be applied to those cases where, although an officer or soldier has not committed an offence under Military Law, at the same time he has, by reason of his own fault or carelessness, rendered himself incapable of performing any military service, whether such officer or soldier is on leave or at his station. The decision as to the period for which the officer or soldier is not entitled to draw pay pursuant to the said Article is solely a matter for the discretion of the Minister, or such officer as he may designate. While negligence on the part of an officer or soldier ought to be, generally speaking, the basis for considering whether this Article should be invoked, the determining factor is the degree of negligence amounting to a violation of all principles of care and common sense, and not a mere error of judgment or an accident. The period involved might include or consist of time spent in a Military Hospital, even though, in a sense, the officer or soldier was in such institution in pursuance of his duty.

J.A.G. 817A (31)
6 Mar. 42
H.Q. 54-27-5-3 F.D. 82

J.A.G. 818B (31)
11 Mar. 42
H.Q. 54-27-5-3 F.D. 82

Forfeiture of Pay by Officer—for Absence—May Order

When an officer is suspended from duty or absent without leave, his pay and allowances (exclusive of Dependents' Allowance and assigned pay) are suspended and not credited to his account during the period of his suspension or absence and the decision of the Minister or such officer as he may designate is necessary in order that it may be determined whether there

MINISTER OF NATIONAL DEFENCE

will be forfeitures of pay and allowances during the period of suspension or absence and the amount of such forfeiture, as set out in F.R. & I. Art. 87.

J.A.G. 932 (41)
C. 55-R-245
15 Dec. 42

Power of Army Council

Where the case of an officer's retirement, removal, etc., under K.R. (Can.) paras. 267 and 268, is in the course of being decided upon but no action has been taken, his only recourse is the statement which he may make in accord with the procedure laid down in K.R. (Can.) App. XII, with respect to his prospective retirement, resignation or removal; it is only after he has been "wronged" that is, after the aforementioned action has been taken, that he may have recourse to S. 42 of the Army Act, and under S. 42 he may have his "complaint" forwarded through the proper channels to the Minister who, by virtue of G.O. 93/25, is vested with all the powers, duties and functions which by the Army Act are vested in the Army Council. It is for the Minister to decide whether the complaint is properly "timed."

J.A.G. 906/39
338-6-54
6 Nov. 42

Signing Documents for

In contracts, agreements or documents where the Crown is a party for National Defence purposes, the Minister alone binds the Crown but by Order-in-Council or other legislation the signing authority has been and may be extended. Order-in-Council P.C. 6186 dated 16th July, 1942, extends the signing authority to include the Acting Deputy Minister and such person as may be properly authorized by Order-in-Council to sign for the Acting Deputy Minister.

J.A.G. 866J (35)
H.Q. 54-27-35-85 F.D. 49
28 Jul. 42

Remission of Deduction by

When a soldier is in custody under close arrest on a charge of which he is afterwards convicted by a Court-Martial, he shall forfeit, under Art. 149 (1) (C) (1) of F.R. & I., his pay

MINISTER OF NATIONAL DEFENCE

and allowances for each day he is so held in custody, and such forfeiture is not subject to remission except under Art. 149 (4) where under very special circumstances the Minister or such officer as he may designate, may order the issue of pay for the period, or any part thereof, during which the soldier was in custody under close arrest while awaiting trial. Under Art. 148 (2) F.R. & I. the Minister may remit a deduction of pay for the period during which the soldier was in confinement under sentence.

J.A.G. 886 (37)
C-55-D-257
17 Sep. 42

MINOR

Discharge of—Where Improperly Attested

Where a soldier under eighteen years of age at the time of attestation, correctly states his age to be seventeen, such soldier should never have been attested and his attestation having been brought about by the fault of the Military Authorities his discharge should be forthwith carried out under the provisions of C.A.R.O. 1029 (3) without recourse to disciplinary action.

J.A.G. 806D (29)

27 Jan. 42

H.Q. 54-27-12-2 Vol. 2

Medical Operation—No Consent of Parents

Once an individual has enlisted in the Navy, Militia or Air Force of Canada he becomes subject to all the regulations governing personnel in such Service; and where a boy under eighteen years enlists with his parents' consent, he may be operated upon by the appropriate medical authorities without the permission of such parents.

J.A.G. 846A (32)

23 Apr. 42

H.Q. 866-3-3

J.A.G. 776 (27)

10 Nov. 41

H.Q. 54-27-7-234

Military Law—Subject to

When minors are properly and legally attested, the age given by them upon enlistment is deemed, for official purposes, to be their actual age. It follows, therefore, that they are subject to Military Law, including liability to be tried by Court-Martial, and any disciplinary measures authorized by appropriate regulations.

J.A.G. (3)

2 Sep. 41

MOBILIZATION INSTRUCTIONS

Effect on Enlistment Procedure

Mobilization Instructions and Recruiting Memoranda are instructions only, and non-compliance with them would not affect the validity of an enlistment completed in accordance with K.R. (Can.) 302.

J.A.G. 770 (26)
18 Oct. 41
H.Q. 54-27-36-1

MORATORIUM

Dominion—Taxes—Civilian Financial Obligations

There is no provision under Dominion Law which exempts, as such, a member of the Naval, Military or Air Forces of Canada on Active Service from paying taxes or otherwise fulfilling his civilian financial obligations. But certain Provinces and Municipalities have provided for limited exemptions from taxation for members of the Armed Services.

J.A.G. 467A (11)
5 Jul. 40

MOTOR VEHICLES

Ambulance—Loaned by R.C.A.F. to Flying School— Damage to Third Parties

Under the standard form of agreement between the Crown and civilian companies operating flying schools, provision is made by which the Crown supplies certain equipment, including various types of motor vehicles, to these companies. If, however, any of this equipment is operated under the exclusive control of R.C.A.F. authorities, such equipment cannot, under those circumstances, be said to be on loan to the company under such conditions as would render said company liable for complete responsibility for its maintenance and repair, nor could the company be held primarily responsible for injury or damage to the property or persons of third parties caused by such equipment. In both cases the primary responsibility would rest with the Crown.

J.A.G. 831A (32)
1 Apr. 42

Damage—Soldier Driving Own Car

Where a soldier driving his own car, causes damage to an officer or servant of the Crown or to Crown property, while so driving, but not in the course of Military Duty, the position of the soldier is the same for purposes of recovery against him by the Crown as if he were a civilian and no proceedings should be taken under any Service Regulation to interfere with the pay of such soldier; instead the Crown's remedy is to proceed against the said driver in the Civil Courts in the ordinary manner.

J.A.G. 806A (29)
24 Jan. 42
H.Q. 57-7-50 Vol. 5

NOTE.—It is a question whether any proceedings could be taken by the Crown pursuant to the Debts due to the Crown Act, 22-23 Geo. V. C. 18 (1932).

Traffic Regulations—Local

Where a convoy is moving from one location to another, other than in military drill, it should obey, if possible, the local by-laws pertaining to the regulation of traffic, on the grounds of good public policy.

J.A.G. 699A (20)
16 Apr. 41

MOTOR VEHICLES

Owned by Servicemen—Liability of Crown

As between the Crown and Naval personnel using their own cars on public business with permission, the Crown does not assume any liability for damage to any person or property, which damage occurs, at the time of such travel as set out in the provisions of C.N.R. (1942) 377-2 (7) (f); and where the Crown is made liable to a third party for any damage caused under such conditions, it would appear that as between itself and members of the Naval Service, recoupment may be sought by the Crown for liabilities so incurred.

J.A.G. 207E (30)
10 Feb. 42
N.S. 81-1-2

NOTE.—See the amendment to the Exchequer Court Act, 1943, Statutes of Canada C. 25, S. 1.

“Negligent” Operation—S. 40 A.A.

The word “neglect” in a charge of neglect under S. 40 A.A. is not to be confused with or interpreted like the expression “minor negligence” as used in Order-in-Council P.C. 59/7305 dated 17 Sept. 1941, or gross negligence as that expression is found in the law of negligence; and a Commanding Officer trying the matter applying the definition of neglect as set out in the note to S. 40 A.A. (M.M.L. p. 458) must bear in mind the facts of the particular case as they have relevance to the question of “good order and Military discipline.” The civilian aspects of a problem arising under P.C. 59/7305 or under some other proceeding under Civil Law affecting a soldier bear no relation to determining the culpability of soldier with respect to a charge of “neglect” under S. 40 A.A.; indeed the facts of “minor negligence” as determined by the Judge Advocate General pursuant to P.C. 59/7305 may constitute “neglect” or “conduct” within S. 40 A.A.

J.A.G. 843C (32)
21 Apr. 42
H.Q. 57-7-50

Gasoline Tax—Provincial

The purchases of gasoline in the various provinces by the Government of the Dominion of Canada or any Department thereof are not subject to any existing gasoline tax. The

MOTOR VEHICLES

Provincial Governments designate the Oil Companies to collect the tax for every gallon of gasoline sold with certain exceptions, one being the quantity of gasoline purchased by the Government of the Dominion of Canada or any Department thereof. In practice, on small individual purchases the tax is paid and rebated periodically.

J.A.G. 966 (46)
S. 8909 Vol. 2
24 May 43

Privately Owned—Use of—Compensation

An Officer or soldier who avails himself of the permission granted under Art. 100 (6) P. & A. Regulations, to travel in a privately owned motor vehicle is not entitled to treatment or compensation for any injury or disability suffered by reason of his making use of that form of conveyance.

J.A.G. (DOR 481)

Privately Owned—Use of—Duty

The use of a privately owned motor car under the provisions of Art. 100 (6) P. & A. Regulations is in the nature of a privilege, and the authority to use such means of transportation is, strictly speaking, an authority to the individual concerned not to use the means of transportation which the Department would otherwise provide. An officer or soldier while travelling in his own motor car in these circumstances cannot be considered as being in the performance of some military duty as would be the case if he were travelling in some motor vehicle owned by the Department or operated under its control.

J.A.G. (DOR 483)

Accident Claims—Reserve Army

The provisions of Orders-in-Council P.C. 80/1045, dated the 19th March, 1940, dealing with motor accident claims generally and P.C. 59/7305, dated Sept. 17th, 1941, dealing with motor accidents involving claims not exceeding \$200.00, apply to Reserve Army personnel operating Department of National Defence vehicles in the course of their military duty. The extent to which such personnel should be called upon to re-imburse the Crown for claims paid would also be determined under the aforementioned Orders-in-Council.

J.A.G. 966B (45)
H.Q. 57-7-16-590
21 May 1943

MUNICIPAL TAXATION

Liability of Service Personnel for

Taxation by the Province in a legal division thereof, such as a municipality, if not discriminatory against Service personnel as such, may be levied against personnel of the Armed Services in their private capacities since such personnel are in no different position from that of any other residents of the municipality who are made subject to the tax, and immunity, if any, must be granted by appropriate municipal or Provincial legislation.

J.A.G. 782 (27)

26 Nov. 41

H.Q. 54-27-60-3 Vol. 2

NARCOTICS

When Prescribed to Civilians—by Medical Officer

Medical officers, as are all other officers, are precluded from carrying on their private practice and occupations while serving with the forces and are therefore precluded from issuing narcotic prescriptions to civilians save where emergency conditions so require, but when so prescribing, a medical officer would be governed by the civil laws on the subject.

J.A.G. 858B (33)
25 May 42
H.Q.S. 8242

NOTE.—For the rules governing civil occupation of officer and other ranks, see C.A.R.O. 3112 amended by 3382.

NATIONAL RESOURCES MOBILIZATION ACT

Persons Subject to

The power vested by The National Resources Mobilization Act 1940, in the Governor-in-Council whereby the latter may from time to time make such orders and regulations requiring persons to place themselves and their services at the disposal of His Majesty in the right of Canada, is not by the Act in question, restricted to British subjects.

J.A.G. 470 (11)
9 Jul. 40

NATURALIZATION

Acquired Through Father

Where the father of a child becomes naturalized as a British subject before the birth of the child, such child is to be deemed a natural born British subject during his minority, regardless of his place of residence during such period, provided that such child was born on or after 1st January, 1915. When the father of such child becomes naturalized as a British subject after the birth of the child, then if the name of the child is included in the Certificate of Naturalization granted to the father, such child thereupon shall become a British subject, provided that he may within one year after attaining his majority make a declaration of alienage, and he shall thereupon cease to be a British subject.

J.A.G. 643 (18)
11 Feb. 41

Aliens—Enlistment—Capture

Enemy aliens are not supposed to be enlisted nor are they liable to be called up under the N.M.R.A. (1943) Regulations, unless they have made a "Declaration of Intention" as provided in Order-in-Council P.C. 5842, dated 9 July, 1942. Para. 1 of the Regulations established by Order-in-Council provides for the granting of a Certificate of Naturalization to any alien serving outside Canada in one of the services, on the filing of the requisite documents. If enemy aliens are enlisted or enrolled after taking advantage of the said Order-in-Council and are taken prisoner they would be treated as ordinary prisoners of war.

H.Q. 54-21-1-111 Vol. 2
2 June 43

British Nationality—Oath of Allegiance

The fact that any person on enlistment or appointment to the Canadian Naval, Military or Air forces has taken an oath or made a declaration that he will bear true allegiance to His Majesty, would not in itself cause the individual to become a British subject. As to whether the taking of such an oath or making such a declaration divests him of his former nationality is a matter which is governed by the Laws of the nation to which the individual belongs.

J.A.G. 38 (1)
28 Sep., 39

NATURALIZATION

Oath of Allegiance—Not Conferred by

When a citizen of the United States takes the oath of allegiance on enlistment or appointment to a commission in the Canadian Army, he loses his United States citizenship. But Order-in-Council P.C. 3294 July 20, 1940, provides that such an oath should not be required to be taken by a citizen of a foreign country if, by so doing, that person would, under the laws of the country in question, forfeit his citizenship therein. See para. 173 (8) K.R. (Air) for R.C.A.F. procedure *re* such foreign citizens.

J.A.G. 503 (12)
5 Aug. 40

J.A.G. 868 (36)
405-V-499
10 Aug. 42

NOTE.—Special provision has now been made under U.S. law whereby U.S. nationals who forfeited their citizenship by taking the oath of allegiance may have such citizenship restored.

NEGLIGENCE

Crown—Liability—Damage by Flying Schools

Where the Crown has by a standard agreement with a flying school agreed to indemnify said school from all claims in respect to loss or damage to persons or property the position of the Crown in relation to the School is analogous to that of an Insurance company in relation to an insured and the Crown therefore has a vital interest in the question of the settlement of claims as to the quantum of damages and all other pertinent matters.

J.A.G. 831A (32)
1 Apr. 42

Crown—Liability—Naval Regulations—Car Owned by Servicemen

As between the Crown and Naval personnel using their own cars on public business with permission, the Crown does not assume any liability for damage which may occur at the time of such travel to any person or property, as set out in the provisions of C.N.R. (1942) 377-2 (7) (f). Where the Crown is made liable to a third party for any damage caused under such conditions, it would appear that as between itself and members of the Naval Service, recoupment may be sought by the Crown for liabilities so incurred.

J.A.G. 807EE (30)
10 Feb. 42
N.S. 81-1-2

NOTE.—See the amendment to the Exchequer Court Act, 1943, Statutes of Canada, C. 25, S. 1.

Degree of, Before Art. 85 (2) F.R. & I. Operates

While negligence on part of an officer or soldier ought to be, generally speaking, the basis for considering whether Art. 85 (2) F.R. & I. should be invoked, the determining factor is the degree of negligence, and while such degree is difficult of definition it must be negligence amounting to a violation of all principles of care and common sense, and not a mere error of judgment or an accident.

J.A.G. 818B (31)
11 Mar. 42
H.Q. 54-27-5-3 F.D. 82

NEGLIGENCE

Distinguished from "Neglect" Under S. 40 A.A.

The word "neglect" in a charge of neglect under S. 40 A.A. is not to be confused with or interpreted like the expression "minor negligence" as used in Order-in-Council P.C. 59/7305 dated 17 Sept. 1941, or gross negligence as that expression is found in the law of negligence; and a Commanding Officer trying the matter applying the definition of neglect as set out in the note to S. 40 A.A. (M.M.L. p. 458) must bear in mind the facts of the particular case as they have relevance to the question of "good order and Military discipline" and the civilian aspects of a problem arising under P.C. 59/7305 or under some other proceeding under Civil Law affecting a soldier bear no relation to determining the culpability of a soldier with respect to a charge of "neglect" under S. 40 A.A.; indeed the facts of "minor negligence" as determined by the Judge Advocate General pursuant to P.C. 59/7305 may constitute "neglect" or "conduct" within S. 40 A.A.

J.A.G. 843C (32)
21 Apr. 42
H.Q. 57-7-50

NEXT-OF-KIN

Attestation Papers—Entries as to

The entry as to next-of-kin on a soldier's attestation paper has no legal effect whatever as regards distribution of property in the event of death, and unless a formal Will is executed, the soldier's estate will be dealt with as if he died intestate. It is legally immaterial who is entered on a soldier's attestation paper as his next-of-kin and the entry so far as the soldier's medals are concerned, is of no effect, as the medals of a soldier who has died must be disposed of in accordance with Para. 1359 K.R. (Can.) 1939.

J.A.G. (DOR 23)

NOTES

Army Act—Rules of Procedure

Certain of the notes to the Rules of Procedure and sections of the Army Act, which are of an explanatory nature, are based on decisions of the English Courts which have been approved by superior tribunals and handed down from generation to generation, becoming part of the Common Law and resulting in certain definite principles being established. Hence, although these notes have not in themselves the force of law and cannot override the provisions of the Act and the Rules of Procedure, they should serve as a guide to the procedure which should be followed in applying any particular section or rule.

J.A.G. (DOR 113)

NURSING SISTERS

Status of

Order-in-Council P.C. 4059 dated the 15th May, 1942, provides that members of the Nursing Service may be granted and hold commission, and when a Nursing Sister is appointed pursuant to this Order-in-Council she is an officer within the meaning of S. 190 A.A. and accordingly is subject to disciplinary action as such.

J.A.G. 973 (41)
392-6-279
17 Jun 42

OATH

Administered by R.C.A.F. Officer—Outside of Canada

An officer of the R.C.A.F. with the rank of F/L or higher has power to administer oaths for purposes of attestation and other service requirement outside of Canada, and such oath will be held binding upon the person so swearing as if the said oath had been administered for such purposes in Canada.

J.A.G. 824 (31)
16 Mar. 42

NOTE.—For powers of an R.C.A.F. officer to administer the oath for service purposes see Order-in-Council P.C. 9161 dated Oct. 9th 1942.

Attestation—Officer Administering

An officer not below the rank of Captain may attest a man on enlistment into the Permanent Force Para. 295 K.R. (Can.), but in the matter of enlistment in the "Active" Units etc. of the Army no such limitation is placed on the person to take the Oath. Para. 302 (iv) K.R. (Can.) merely provides that the Declaration and Oath of Allegiance may be taken by an officer on the Active List who is qualified in accordance with Para. 280 of K.R. (Can.) and this latter paragraph makes no restriction as to the rank of the officer who may act thereunder.

C. 6075 Vol. 5
25 May 42

Attestation—U.S. Citizen

When a citizen of the United States takes the oath of allegiance on enlistment or appointment to a commission in the Canadian Army, he loses his United States citizenship. But Order-in-Council P.C. 3294 dated July 20th, 1940, provides that such an oath should not be required to be taken by a citizen of a foreign country, if by so doing, that person would, under the laws of the country in question, forfeit his citizenship therein. See para. 173 (8) K.R. (Air) for R.C.A.F. procedure re such foreign citizens.

J.A.G. 503 (12)
5 Aug. 40
J.A.G. 868 (36)
405-V-499
10 Aug. 42

NOTE.—Special provision has now been made under U.S. law whereby U.S. nationals who forfeited their citizenship by taking the oath of allegiance may have such citizenship restored.

OFFENCES

Army Act—S. 41

For a civil offence as referred to in Section 41 A.A. to be tried by an Army Court-Martial in Canada it must be such an offence as was chargeable under the law of England; and the mere fact that it is one punishable under the law of Canada is immaterial. Courts-Martial in the Canadian Army may take judicial notice of the law of England, Canada and any of its Provinces or Territories, and expert evidence need not be called to prove such law. Before applying it, however, the Court must be certain that it clearly understands such law, and in order to do so may consult reliable authority. Unless there is reason for thinking that any statement in the Manual of Military Law as to the law of England is incorrect or has become obsolete, it may be accepted as a final authority in most cases.

J.A.G. 770B (26)
20 Oct. 41
N.S. 42-1-1
H.Q. 70-60-3
H.Q. 866-1-191

OFFICERS

Attestation—Power of

While S. 33 A.A. uses the word "Justice" the word may be interpreted to include an officer authorized to carry out attestation pursuant to K.R. (Can.) 280 and 302 (a) (iv). Although false answers are made on attestation, a person once attested becomes subject to the Army Act and may be tried for such false answers, either by a Court-Martial or a Court of Summary Jurisdiction.

J.A.G. 774A (27)
T-22-1-359
5 Nov. 41

NOTE.—See M.M.L., A.A., Sec. 99 note 4; Sec. 33 Note 3; Sec. 163 (1) (a) Note 3.

Civilian Occupations—Medical Practice

Medical Officers and all other officers are precluded from carrying on their private practice and occupations while serving with the forces and are therefore precluded from issuing narcotic prescriptions to civilians save where emergency conditions so require but when so prescribing a medical officer would be governed by the civil laws on the subject.

J.A.G. 858B (33)
25 May 42
H.Q.S. 8242

NOTE.—For the rules governing civil occupation of officers and other ranks, see C.A.R.O. 3112, amended by 3382.

Commission—Held in Active Militia—Not Corps

An officer of the Canadian Army holds a Commission in the Active Militia and not one in the Corps in which he may for the time being be serving in consequence of being appointed thereto; and he may be transferred from one Corps to another without obtaining his consent, but no such transfer could be made with a reduction in rank unless he consented to revert to a lower rank.

J.A.G. 848 (32)
30 Apr. 42
H.Q. 74-74-25

Commission of—During Pleasure

While other ranks engage to serve for a specific period or during the present emergency for the duration of the war and

OFFICERS

the period of demobilization thereafter—during which time they cannot otherwise than in exceptional cases claim their discharge—it is a well-established principle of law that officers hold their commissions during H.M. pleasure.

J.A.G. 859 (33)
26 May 42

Complaints of

Where the case of an officer's retirement, removal, etc., under K.R. (Can.) paras. 267 and 268 is in the course of being decided upon but no action has been taken, his only recourse is the statement which he may make in accordance with the procedure laid down in K.R. (Can.) App. XII with respect to his prospective retirement, resignation or removal; it is only after he has been "wronged," that is, after the aforementioned action has been taken, that he may have recourse to S. 42 of the Army Act, and under S. 42 he may have his "complaint" forwarded through the proper channels to the Minister who, by virtue of G.O. 93/25, is vested with all the powers, duties and functions which by the Army Act are vested in the Army Council. It is for the Minister to decide whether the complaint is properly "timed."

J.A.G. 906 (39)
338-6-54
6 Nov. 42

Substantive rank of

The substantive rank of an officer is the rank granted by or with the authority of a Sovereign, below which he cannot, according to the unwritten rule of the service, be reduced while he continues on the Active List and on which, if no special rate of pay is prescribed, such officer's pay would be based.

J.A.G. 859 (33)
26 May 42.

Naval—Sentence of

Sentence of Naval Officers is effective as soon as it is pronounced but in the case of officers of the Army or Air Force the same is not effective until it has been promulgated after sentence has been confirmed. Special provision is made in the

OFFICERS

regulations for the repatriation of former naval officers who have been dismissed from the service.

J.A.G. 974 (A) (46)
45-15-3
18 Jun. 43

Grievances

An officer who considers himself aggrieved may complain to the Minister of National Defence, pursuant to S. 42 of the Army Act, and the Minister is to examine such complaint, and, if so required by the complainant, make a report to the Governor-in-Council. The proper procedure for an officer or soldier who considers himself wronged by a Court-Martial is to present a petition under para. 574 of K.R. (Can.) and it is not proper to complain under S. 42 of the Army Act. Complaints as to other matters should be made under this latter section, the proper procedure being set out in C.A.R.O. 2575.

J.A.G. 851 (32)
30 Apr. 42

As Members of Parliament

Military information which an individual obtained by reason of his status as an active officer, should not be disclosed if it would:

- (a) aid the enemy;
- (b) be prejudicial to the interest or the safety of the state;
- (c) contravene the Official Secrets Act or disclosure of which would place the individual concerned in jeopardy and liable to be made the object of appropriate legal proceedings.

No peculiar immunity could be claimed because the officer is also a member of Parliament, unless of course he makes statements in the House, in which case the rules of privilege, custom and precedent applicable to such cases would apply.

With regard to discussing political matters having to do with military policy and administration, an officer who is a member of parliament should not be restricted but any criticism made by him should not be such as would be repugnant to his status as an active officer.

J.A.G. 903 (39)
4 Nov. 42.

OFFICERS

Absence Without Leave—Forfeiture

An authority dealing summarily under Section 47 of the Air Force Act with a charge against an officer may award, as part of the punishment, such a deduction from his ordinary pay as is authorized by S. 137 (2) of the Air Force Act. He would not, however, be entitled, under that subsection, on a charge of absence without leave, to place the accused officer under forfeiture of pay in respect of the period of illegal absence. The authority for imposing such forfeitures is vested in the Minister under Article 86 of F.R. and I. (see also S. 137 (1) Air Force Act).

J.A.G. 941A (42)

22 Jan. 43

Reduction in Rank of

Since a commission is granted by His Majesty the King to discharge "his duties as an officer in the rank of....." or in such other rank as we may from time to time hereafter be pleased to promote or appoint you," such officer may not be demoted and neither the War Measures Act nor the Militia Act, neither of which bind the Crown, could be invoked to accomplish this end.

J.A.G. 940 (42)

C. 55-B-567

21 Jan. 43

Removal, Retirement, or Reversion to Reserve Status

The procedure to be followed in the case of removal, retirement or reversion to reserve status of an Army Officer is provided in K.R. (Can.) paras. 267 and 268, and Appendix XII. When an officer has been punished by either a Court-Martial or under Section 47 of the Army Act for any offence, the facts incidental to the charges so laid can be used as a ground for disposing of the Officer under paras. 267 and 268 K.R. (Can.) but the disposal of the Officer under Para. 267 is not in any sense a punishment but such action is taken purely from the point of view of the good of the Service. The Adjutant-General may, if in his opinion, he feels that the facts do not justify submission to the Minister, refuse to submit same; but once the matter is submitted, the Minister is not

OFFICERS

limited in any way by consideration of the legal sufficiency of the evidence.

J.A.G. 943 (42)
332-158-103
27 Jan. 43

J.A.G. 931 (41)
15 Dec. 42

R.C.A.F. Officer—Administering Oath Outside of Canada

An officer of the R.C.A.F. with the rank of F/L or higher has power to administer oaths for purposes of attestation and other service requirement outside of Canada, and such oath will be held binding upon the person so swearing as if the said oath had been administered for such purposes in Canada.

J.A.G. 824 (31)
16 Mar. 42

NOTE.—For powers of R.C.A.F. officer to administer oath for service purposes see Order-in-Council, P.C. 9161 dated Oct. 9th 1942.

Suspended from Duty or Absent Without Leave—Pay of

When an officer is suspended from duty or absent without leave, his pay and allowance (exclusive of Dependents' Allowance and the amount allowed by Art. 87 (5) F.R. & I. assigned pay) are suspended and not credited to his account during the period of his suspension or absence and the decision of the Minister or such officer as he may designate is necessary in order that it may be determined whether there will be forfeitures of pay and allowances during the period of suspension or absence and the amount of such forfeitures, as set out in F.R. & I. Art. 87.

J.A.G. 932 (41)
c. 55-R-245
14 Dec. 42

ORDERS-IN-COUNCIL

P.C. 634—Refusal of Inoculation

Where a member of the force refuses to submit himself to vaccination, inoculation or treatment against any infectious disease and blood examination, he may not be physically forced so to subject himself, but Order-in-Council P.C. 634 dated 27th January, 1942, rescinding Order-in-Council P.C. 6375 dated 19th Aug. 1941, provides that an unreasonable refusal shall constitute an offence against ss. 2 of S. 9 of the Army Act. This would not be a continuing offence and each refusal would constitute a separate offence.

J.A.G. 927 (39)
54-27-34-4- F.D. 4
29 Nov. 42

P.C. 1658—R.C.A.F. (W.D.)

The Royal Canadian Air Force (Women's Division) is a component of the Royal Canadian Air Force and the members thereof have been placed on active service in Canada or beyond Canada for the defence thereof. (See Appendix III K.R. (Air).)

J.A.G. 827B (31)
27 Mar. 42

P.C. 2396—Reserve Militia—Called Out

Reserve Units and formations of the Canadian Army may be called out for any military purpose other than drill and training under the following conditions:

- (a) In aid of the Civil Power pursuant to SS. 75-85 of the Militia Act.
- (b) Under S. 64 of the Militia Act i.e. by being placed on Active Service by the Governor in Council for the Defence of Canada.
- (c) Under G.O. 125/39 by an order based on Order-in-Council P.C. 2396 dated 26 Aug. 1939 vesting in the Minister power to call out the Militia for any purpose coming within the provisions of Section 63 of the Militia Act.

J.A.G. 818 (31)
10 Mar. 42
S. 20-1-21 F.D. 26

ORDERS-IN-COUNCIL

P.C. 3205—Permanent Force

Activities of members of the Permanent Force are governed by the provisions of K.R. (Can.) and not by the provisions of Order-in-Council P.C. 3205 dated May 31 1943.

J.A.G. (2)
5 May 41

P.C. 3205—Political Conventions—Candidates

The granting of leave of absence or furlough for the purpose of attending political or party conventions is a matter for determination by superior authority and is not granted as of right. Whether such furlough or absence with leave would be with or without pay and allowances is determined by superior authority. In participating in discussions and proceedings, members of the forces may not disclose any information of a professional nature which they have acquired in the course of their military duty such as would prejudice the safety of the state and may not prejudge questions which are under the consideration of superior authority. See Order-in-Council P.C. 3205 dated 31st May 1943.

J.A.G. 919 (39)
18/11/42

P.C. 4059—Nursing Sisters—Commission

Order-in-Council P.C. 4059 dated the 15th May, 1942, provides that members of the Nursing Service may be granted and hold commissions and when a Nursing Sister is appointed pursuant to this Order-in-Council she is an officer within the meaning of S. 190 A.A. and accordingly is subject to disciplinary action as such.

J.A.G. 973 (41)
392-6-279
17 Jun. 43

P.C. 4-7635—Pensions for C.W.A.C., R.C.A.F. (W.D.)

Members of the C.W.A.C. and R.C.A.F. (W.D.) are eligible to receive pensions under the Pension Act, subject to the provisions of Order-in-Council P.C. 4/7635 dated 1 October 1941.

J.A.G. 777A (1) (27)
20/11/41
S. 5603 F.D. 7

ORDERS-IN-COUNCIL

P.C. 5842—Naturalization

Enemy aliens are not supposed to be enlisted nor are they liable to be called up under the N.R.M.A. (1943) Regulations unless they have made a "Declaration of Intention" as provided in Order-in-Council P.C. 5842, dated 9 July 1942. Para. 1 of the Regulations established by the Order-in-Council provides for the granting of a Certificate of Naturalization to any alien serving outside Canada in one of the Services on the filing of the requisite documents. If enemy aliens are enlisted or enrolled after taking advantage of the said Order-in-Council and are taken prisoner they would be treated as ordinary prisoners of war.

54-21-1-111 Vol. 2
2 Jun. 43

P.C. 59/7305—Negligence—Crown—Reimbursement

Order-in-Council P.C. 59/7305 dated September 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant, may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay.

Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently the imposition of stoppages under Order-in-Council P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also, in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said Order-in-Council P.C. 59/7305.

A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages

ORDERS-IN-COUNCIL

to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 815 (31)
H.Q. 57-7-18-175
2 Mar. 42

J.A.G. 808 (30)
57-7-18-175
10 Feb. 42

J.A.G. 809 (1) (30)
14 Feb. 42

P.C. 69/3546—Medical Students—Enlistment

The 24-month restriction contained in paragraph one of the operative part of Order-in-Council P.C. 69/3546, dated April 30, 1942, which deals with enlistment of medical students under certain conditions, is a restriction of the period for which pay and allowances may be granted and not of the period of enlistment which is unrestricted. R.O. 3202 of May 15th, 1943, misinterprets the P.C. Order in this respect.

J.A.G. 973A (46)
5797 F.D. 2
18 June 43

P.C. 7521—Rehabilitation Grant—False Answer

Where a soldier makes a false answer on attestation but is discharged for not being able to meet the required physical standards, he is not deprived of his rehabilitation grant since he did not leave the service by reason of having made a false answer on enrolment or attestation as provided by Order-in-Council P.C. 7521, dated 19 Dec. 1940.

J.A.G. 810 (30)
17 Feb. 42
405-M-11-420

PATENTS

Service Personnel—Grantees of

Since officers and soldiers are not "persons employed in the public service of Canada" patents of invention granted to them do not fall within the provisions of S. 46 of the Patent Act, Statutes of Canada 1935 C. 37. See Order-in-Council P.C. 9750 dated Dec. 24th 1943.

J.A.G. 818A (31)
10 Mar. 42
H.Q. 360-S-40

PAY

Civil Debts—Not Recoverable from

The effect of military service on the civil status of the soldier is to superimpose the military liability on a continuing civil status with the result that he remains subject to the criminal law of the land as well as to civil process of the courts, save that he cannot be compelled to appear in any action as a party for debt, damages, or sum of money under 30 pounds as set out in S. 144 Army Act. These restrictions are imposed in order that the Crown should not lose the soldier's services but recourse may be had to his personal property for civil debts.

J.A.G. (5)
2 Jan. 40

Continues Until Discharge

A certificate of discharge cannot validly be antedated because until a soldier is lawfully discharged he remains subject to military law and is, unless expressly excepted, entitled to be paid until so discharged.

J.A.G. 507 (12)
7 Aug. 40

Absence Without Leave—Forfeiture

An authority dealing summarily under S. 47 of the Air Force Act with a charge against an officer may award, as part of the punishment, such a deduction from his ordinary pay as is authorized by Sec. 137 (2) of the Air Force Act. He would not, however, be entitled, under that subsection, on a charge of absence without leave, to place the accused officer under forfeiture of pay in respect of the period of illegal absence. The authority for imposing such forfeitures is vested in the Minister under Article 86 of F.R. and I. (See also S. 137 (1) Air Force.)

J.A.G. 941A (42)
22 Jan. 43

Forfeiture of—Stoppages

Under the prevailing regulations there is clearly a distinction between "stoppages" and "forfeitures" when those words relate to the pay of military personnel. The former expression connotes that the pay from which stoppages are

PAY

effective is issuable *ab initio* whereas the latter clearly connotes a forfeiture in the strict sense of the term, i.e. payment is stopped in the former case, while in the latter the pay is cancelled.

J.A.G. 22 (1)
25 September 39

Indemnity—Parliamentary—Distinction from

The sessional indemnities received by members of the Senate or House of Commons of Canada or of Provincial Legislatures should not be considered as salary or remuneration from a Public Authority. The meaning commonly ascribed to the expression "indemnity" supports this view. Moreover, it is questionable whether Parliament or a Legislature is such a body as would come within the scope of the definition "Public Authority" as set out in Art. 97 (h) F.R. & I.

J.A.G. 430 (10).
3/6/40

Medical Students

The 24-month restriction contained in paragraph one of the operative part of Order-in-Council P.C. 69/3546, dated April 30, 1942, which deals with enlistment of medical students under certain conditions, is a restriction of the period for which pay and allowances may be granted and not of the period of enlistment which is unrestricted. R.O. 3202 of May 15th, 1943, misinterprets the P.C. Order in this respect.

J.A.G. 973A (46)
5797 F.D. 2
18 Jun. 43

Garnishee Orders—Not Subject to

Salary, pay and allowances, or other emoluments issuable by the Crown to its servants, are not subject to attachment for the purpose of liquidating a private debt.

J.A.G. (4)
2 Dec. 39

Acting Rank—for

An officer while performing the duties of a rank or appointment higher than the substantive rank held by him, may be

PAY

granted Acting Rank. Such Acting Rank carries all the pay and allowances of Substantive rank but, as the term implies, may be taken away from the officer at any time. Paid Acting Rank is granted to all Non-commissioned Officers on first appointment to fill a vacancy in an establishment. This rank is confirmed after specified periods, or will be relinquished if the non-commissioned officer proves to be unsatisfactory or if the Acting Rank was only granted while employed temporarily in a senior position or to fill a vacancy caused by the temporary absence of another Warrant Officer or Non-commissioned Officer. Unpaid Acting Rank is granted for disciplinary purposes and is held only while the man is carrying out the duties for which he was so appointed.

J.A.G. 977A (47)
C. 9050-35 Vol. 2
3 July 43

War Substantive Ranks—for

All ranks granted in active units and formations of the Canadian Army are temporary in the sense that they are granted for the duration of the war only. For all other purposes, such ranks are substantive and cannot be taken away by administrative action. Such temporary or war substantive ranks, of course, carry with them full pay and allowances. Temporary ranks held by officers in Reserve units and formations must be distinguished from the war substantive ranks above mentioned.

J.A.G. 977A (47)
c-9050-35 Vol. 2
3 Jul. 43

Of Rank

"Pay of rank" as used in Art. 88 (1) with regard to the amount to be assigned for Dependents' Allowance purposes, includes (a) the pay of authorized acting rank and (b) in cases where a special rate of pay is provided for "an appointment," the pay of that appointment. But Art. 88 (2) of F.R. & I. deals with ranks, as such, as opposed to appointments and excludes the special pay of an appointment. Accordingly a "cadet" of any of the ranks set out in the Article need only assign the amount set opposite that rank as equivalent of 15 days' pay of rank, irrespective of the rate of pay actually received.

J.A.G. 768 (46)
54-27-35-233 F.D. 12
11 Jun. 43

PAY

Officer's—During Suspension

When an officer is suspended from duty or absent without leave, his pay and allowance (exclusive of Dependents' allowance, assigned pay and the amounts allowed by Art. 87 (5) F.R. & I.) are suspended and not credited to his account during the period of his suspension or absence and the decision of the Minister or such officer as he may designate is necessary in order that it may be determined whether there will be forfeitures of pay and allowances during the period of suspension or absence and the amount of such forfeitures as set out in F.R. & I. Art. 87.

J.A.G. 932 (41)
C. 55-R-245
14 Dec. 42

Remission of Forfeiture

When a soldier is under close arrest on a charge of which he is afterwards convicted by a Court-Martial, he shall forfeit under Art. 149 (1) (C) (i) of F.R. & I., his pay and allowances for each day he is so held in custody, and such forfeiture is not subject to remission except under Art. 149 (4) where under very special circumstances, the Minister or such officer as he may designate, may order the issue of pay for the period or any part thereof during which the soldier was in custody under close arrest while awaiting trial. Under Art. 148 (2) F.R. & I., the Minister may remit a deduction of pay for the period during which the soldier was in confinement under sentence.

J.A.G. 886 (37)
C.-55-D-257
17 Sep. 42

Reserve Unit O.R.'s—Performance of Training

Command and Training Allowances, payable pursuant to P. & A. Art. 227-230, are computed on the basis of all other ranks enrolled in the Unit despite the fact that some of the personnel may not have performed the full number of days prescribed. There is no regulation having the effect of reducing the amount of the allowances payable on the ground that personnel of the Unit had not performed the full period of training prescribed therefor.

J.A.G. 822 (31)
14 Mar. 42
H.Q. 3150-52-1- (6)

PAY

Stoppages of—for Civil Debt

There is no law or regulation which authorizes a stoppage being made from the pay of an officer or soldier for the purpose of being applied towards the payment of any private indebtedness which such officer or soldier may have incurred.

J.A.G. 14 (1)
22 Sep. 39

Stoppage of—Unstated Amount—as Fine

An accused person cannot be placed under stoppage of pay for an unstated amount; nor can a fine be imposed on an accused for any military offence except drunkenness. When such punishment is awarded by a Commanding Officer, the award, pursuant to R.P. 10, should be cancelled and the entry expunged in the record of the accused.

J.A.G. 946 B (45)
45-R-4672
29 Apr. 43

Suspended—Where No Military Service

Art. 85 (2) F.R. & I. was intended to be applied to those cases where, although an officer or soldier has not committed an offence under Military Law, at the same time he has, by reason of his own fault or carelessness, rendered himself incapable of performing any military service, whether such officer or soldier is on leave or at his station. The decision as to the period for which the officer or soldier is not entitled to draw pay pursuant to the said Article is solely a matter for the discretion of the Minister or such officer as he may designate. While negligence on the part of an officer or soldier ought to be, generally speaking, the basis for considering whether this Article should be invoked, the determining factor is the degree of negligence amounting to a violation of all principles of care and common sense, and not a mere error of judgment or an accident. The period involved might include or consist of time spent in a Military Hospital, even though, in a sense, the officer or soldier was in such institution in pursuance of his duty.

J.A.G. 817A (31)
6 Mar. 42
H.Q. 54-27-5-3- F.D. 82
J.A.G. 818B (31)
11 Mar. 42
54-27-5-3 F.D. 82

PAY

Fines—Collection from

Regarding the question of the collection of fines imposed by the civil power pursuant to Section 28 of N.S.S.M. Regulations, there is no military regulation under which such collection could be effected by means of deduction from the pay and allowances of a man after he has become a member of the active militia.

J.A.G. 948 (44)
869-S-2631
1 Mar. 43

PAY AND ALLOWANCE REGULATIONS

Art. 90—95—Travelling Transportation Allowance Claims

Articles 92-93 of P. & A. Regulations do not apply to an officer travelling from one station to another where he has been posted to such other station and therefore a change of station is involved.

J.A.G. 845 (32)
22 Apr. 43

Art. 227-230—Command and Training Allowances

Command and Training allowances payable pursuant to P. & A. Art. 227-230 are computed on the basis of all other ranks enrolled in the Unit despite the fact that some of the personnel may not have performed the full number of days prescribed. There is no regulation having the effect of reducing the amount of the allowances payable on the ground that personnel of the Unit had not performed the full period of training prescribed therefor.

J.A.G. 822 (31)
14 Mar. 42
H.Q. 3150-52 (6)

PENAL DEDUCTIONS

Negligence—Civilian Claims—Reimbursement to Crown

Order-in-Council P.C. 59/7305 dated September 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay.

Action to enforce such payment by way of stoppages is however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under Order-in-Council P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. Also, in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said Order-in-Council P.C. 59/7305.

A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 815 (31)
H.Q. 57-7-18-175
2 Mar. 42

J.A.G. 808 (30)
57-7-18-175
10 Feb. 42

J.A.G. 809 (1) (30)
14 Feb. 42

PENAL SERVITUDE

In Military Law

Under Canadian criminal law there is no such punishment as penal servitude. However, under the Army Act, which by the Militia Act is made part of the law of Canada, Penal Servitude is a lawful punishment. A District Court-Martial cannot award a sentence of Penal Servitude. The maximum sentence which can be awarded by a D.C.M. is two years' imprisonment with hard labour, but since, by virtue of the criminal law of Canada, all sentences of two years' imprisonment, with or without hard labour, must be served in a penitentiary, such a sentence by a D.C.M. would in effect constitute Penal Servitude, which is beyond the powers of a D.C.M. to award. Accordingly, it is considered that a D.C.M., when it deems it advisable to award a maximum sentence, should limit the sentence to imprisonment with or without hard labour, for two years less one day. This is the subject of an A.G. circular letter dated August 8, 1940. Should, however, a sentence for two years with or without hard labour be awarded by any D.C.M. then in all such cases the confirming authority should remit at least one day thereof, or such further period as he deems advisable.

J.A.G. 923 (39)
20 Nov. 42

PENSIONS

Army Personnel—Injured in Aircraft

Where army personnel are injured or killed as a direct result of a flight in Aircraft undertaken in the course of duty and under due authority, such person or his dependents, as the case may be, would be eligible to receive compensation under the provisions of the Pension Act but where a member of the Canadian Army serving in Canada is injured or killed while proceeding on furlough he is ineligible to receive compensation.

J.A.G. 949 and 950 (44)
8926 F.D. 4
27 Mar. 43

For C.W.A.C.'s and R.C.A.F. (W.D.)

Members of the C.W.A.C. and R.C.A.F. (W.D.) are eligible to receive pensions under the Pension Act, subject to the provisions of Order-in-Council P.C. 4/7635 dated 1 October, 1941.

J.A.G. 777A (1) (27)
20 Nov. 41
S-5603 F.D. 7

Air Cadets—Not Entitled to

Since the Air Cadets (organized under Order-in-Council P.C. 6647 dated 19 Nov. 1940) are not part of the R.C.A.F. they are not members of the Forces within the meaning of Sec. 2 (1) of the Pensions Act, R.S.C., 1927, Ch. 157 as amended, and, consequently, claims arising out of the injury or death to an Air Cadet while undergoing training would be determined under the provisions of S. 19 of the Exchequer Court Act. Provision has, however, been made for medical care and hospitalization of Air Cadets and civilian Air Cadet Instructors under specified conditions by Order-in-Council P.C. 95/6991 dated 4th Sept. 1943.

J.A.G. 855 (33)
H.Q. 660-1-12
20 May 42

R.C.A.F. Personnel—Enlisted and Posted to Leave Without Pay

When applicants are enlisted in the R.C.A.F. and forthwith posted to leave without pay they are not during the

PENSIONS

period of such leave liable to perform any Air Force duties and consequently, in the event of injury or death, no claim for pension would arise. However, immediately such an applicant completes his enlistment he becomes subject to Air Force law and may properly be recalled from leave at any time.

J.A.G. 967
2 June 43

University Air Training Corps—Entitled to

The University Air Training Corps under Order-in-Council P.C. 2983, dated 13th May, 1942, is a component of the R.C.A.F. and therefore its personnel are "members of the forces" within the meaning of S. 2 (i) of the Pensions Act, R.S.C. 1927, Ch. 157 as amended. It follows, therefore that an officer or airman of the said Corps would be pensionable in respect of any disability received after the date of the said Order-in-Council, which was directly attributable to the performance of his duties as a member of the said Corps.

J.A.G. 807H (30)
1002-16-34
10 Feb. 42

Eligibility for

Eligibility for pension is not inherent in the contract, if any, between the Crown and person serving in the forces. The right to pension is only a consequential right and one which cannot accrue before the service of the person is terminated.

Misc. 25
21 Jul. 40

Waiver of

A soldier who suffers a disability in the performance of a military duty is entitled to all the benefits which the law provides in such cases. He should not therefore, sign or be required to sign any waiver which might have the effect or be intended to have the effect of depriving him of these benefits.

J.A.G. (DOR 150)

PENSIONS

Waiver of

The terms of the Pension Act indicate a clear intention to protect the persons entitled to benefits thereunder from the consequences of their own acts in assigning, charging attaching, anticipating or commuting their pensions or in waiving the benefits thereof either on their own behalf or on behalf of their dependents. See *Salfort vs. Dewhurst* (1926) A.C. 619, 95 L.J. Ch. D. 457, which is authority for the view that the waiver of pension rights would not be effective.

Misc. 25
21 Jul. 41

Waiver of

The provisions of the Pension Act being of mandatory character in that they provide that pensions shall be awarded under certain circumstances, a duty would appear to be imposed upon the Canadian Pensions Commission to award a pension under such circumstances, regardless of any waiver which an individual may have given. Such waiver could not in any event extend to interfere with the rights of such individual's dependents who might be eligible for pension under the Act in the event of the individual's death.

J.A.G. 869 (36)
332-85-69
13 Aug. 42

PERMANENT FORCE

Gratuities to Officers of

It is not customary to grant a gratuity to an officer, who, by his voluntary resignation, has terminated his Permanent Force Service. Such a grant has only been made when, at the instance of the Crown, such officer has been compulsorily retired or removed to promote efficiency or economy in the Service.

J.A.G. 31 (1)
26 Sep. 39

Marriage—Officer of

Having regard to the provisions of Interpretation Act R.S.C. 1927 Ch. 1 S. 19-(1) where an officer of the Permanent Active Militia marries while on Active Service during the present war, he will be entitled to the Status of a married officer therein until such time as he ceases to serve on Active Service at the termination of hostilities notwithstanding the provisions of F.R. & I. Article 178.

J.A.G. 846 (32)
23-4-42
H.Q. 74-107-61 F.D. 1

Political Activities—Members of

Activities of Members of the Permanent Force are governed by the provisions of K.R. (Can.) and not by the provisions of Order-in-Council P.C. 3205 dated May 31 1943.

J.A.G. (2)
5 May 41

PRISONERS OF WAR

Alien Nationals—in Canadian Forces

Enemy aliens are not supposed to be enlisted nor are they liable to be called up under the N.R.M.A. (1943) Regulations unless they have made a "Declaration of Intention" as provided in Order-in-Council P.C. 5842, dated 9 July 1942. Para. 1 of the Regulations established by the Order-in-Council provides for the granting of a Certificate of Naturalization to any alien serving outside Canada in one of the Services, on the filing of the requisite documents. If enemy aliens are enlisted or enrolled after taking advantage of the said Order-in-Council and are taken prisoner they would be treated as ordinary prisoners of war.

54-21-1-111 Vol. 2
2 June 43

Information About—to Protecting Power

Where an enemy alien is shot while trying to escape and where enquiries pursuant to his death are made by the Protecting Power, there is no obligation to disclose the whole or part of any proceedings of a Court of Inquiry and as a matter of policy such proceedings should not be disclosed; but where the Protecting Power has asked certain specific questions of fact, it would not be improper if otherwise desirable, to communicate to such Protecting Power, facts elicited by the Court which would answer those questions.

J.A.G. 807 C.C. (30)
7 Feb. 42
S. 7236-35-1

Discipline of

Article 49 of the International Convention provides that no prisoner of war may be deprived of his rank by the detaining power and further, that prisoners on whom disciplinary punishment is inflicted shall not be deprived of the privileges attaching to their rank. Article 27 of the said convention provides that non-commissioned officers who are prisoners of war may be compelled to undertake only supervisory work unless they expressly request remunerative occupation. It follows therefore that non-commissioned officer prisoners of war who have been awarded disciplinary punishment cannot be compelled to do the same work as privates, and cannot be punished for a refusal to do such work.

J.A.G. 723B (21)
22 May 41

PRISONERS OF WAR

Internment Camps—Categories of

Persons interned in internment camps operated by the Department of National Defence come within one of the following categories:

- (a) Military prisoners of war;
- (b) Alien Enemies interned under Regulation No. 24, Defence of Canada Regulations Consolidation 1940;
- (c) Persons whose detention has been ordered by the Minister of Justice under Defence of Canada Regulation No. 21 with a view to preventing them from acting in any manner prejudicial to the Public Safety or the Safety of the State.

The persons referred to in (a) and (b) are by law prisoners of war. The persons referred to in (c) while not prisoners of war in the strict sense of that term, are detained and dealt with under the same conditions as are applicable to Prisoners of War. (Reg. 21 supra.)

J.A.G. 584 (15)
18 Nov. 40

Prisoner of War—Property of

Where a Canadian soldier or officer is taken prisoner, his Canadian Property is not subject to the control of the Custodian of Enemy property and such property can only be dealt with pursuant to decision by the owner.

J.A.G. 807E (30)
5 Feb. 42
54-27-82-8

Post Mortem Examinations on

Post mortem examinations may be performed on the bodies of deceased prisoners of war providing that the law of the province in which it is intended to hold such examination permits the same, and the circumstances surrounding the death of the prisoner are such as would give rise to the right to conduct such an examination on the body of a Canadian soldier who had died under similar circumstances.

J.A.G. 929A (41)
54-27-86-4
3 Dec. 42

Stoppages—on Allowance of

Where prisoners of war have escaped and have been apprehended they should not be placed under stoppages to make good the expenses of such apprehension since under

PRISONERS OF WAR

Article 50 of the International Convention, escaped prisoners of war who are recaptured before they have been able to rejoin their own Armed Forces, or to leave the territory occupied by the Armed Forces which captured them, shall be liable only to disciplinary punishment; this is awarded by the Commandant or Officer Commanding, and under para. 55 of the Regulations Governing the Maintenance of Discipline among and Treatment of Prisoners of War, when that officer proceeds to deal summarily he may award the offender either detention for any period not exceeding twenty-eight days, or confinement to quarters for any period not exceeding fourteen days. No mention is made of an award of stoppages. Para. 55 thus limits Article 45 of the Convention which makes prisoners subject to the laws, regulations and orders in force in the Armed Forces of the detaining power which otherwise would make prisoners of war liable to stoppages under S. 44 A.A.

J.A.G. 650 (18)
S. 7236 F.D. 13
20 Feb. 41

Trial of—Regulations

A military court held for the trial of a prisoner of war falls within the category of a "Judicial Proceeding." The procedure relating to Military Courts is identical with that relating to Courts-Martial, as required by the International Convention in Relation to The Treatment of Prisoners of War (1929) Art. 145. Under Art. 62 of the said Convention, the accused is entitled to be represented by a duly qualified Counsel of his own choice or by an Advocate obtained for him by the Protecting Power or by an officer of the Armed Forces of the Detaining Power who shall be known as the Defending Officer. Such Counsel, Advocate or Defending Officer shall have all the rights of an accused with respect to witnesses, objections, addresses, etc. An opportunity shall be given to the accused to make a request in writing for the service of a Defending Officer if no defending personnel have yet been made available to him as provided by 8 (b) of the Regulations governing Prisoners of War.

J.A.G. 844 (3)
21 Apr. 42
H.Q.C. 4498

NOTE.—The Regulations provide for the application of Canadian Military Law. See Reg. 7 of the Proceedings of Military Courts Assembled for trial of Prisoners of War, 65 (b). Interned enemy aliens are governed generally by the same provisions. See Reg. 2.

PRIVILEGE

Divisional Advisory Committee—Report Qualified

Where a Divisional Advisory Committee reports adversely upon the habits or character of an individual who is being considered for appointment as a medical officer in the Armed Services, the statements made in such report would fall within the category of what is known in law as qualified privilege. Although an action might be brought against a member of the Divisional Advisory Committee for libel or slander in respect of his answers to the questions of the Canadian Medical Procurement and Assignment Board concerning the individual under consideration, a good defence to the action would exist if the member could establish that the answers given were made *bona fide* and without malice.

J.A.G. 944 (43)
54-27-7-274
2 Feb. 43

PROVINCIAL LEGISLATION

Garnishee—Salaries—Dominion Employees—Deposit

While the Province cannot legislate to garnishee the emoluments paid by the Crown to any of its servants or employees, legislation which is directed against the person of such Dominion employees and which in effect requires them to deposit a portion of their salary to the benefit of creditors is not *ultra vires* the provinces any more than is a system of Judgment Summons wherein defaulting debtors may be held guilty of contempt of Court.

J.A.G. 799 (28)
31 Dec. 41

NOTE.—Worthington v. Attorney General of Manitoba (1936) S.C.R. 40; also Forbes v. A. G. Man (1937) A.C. 260, for the principle of Provincial Taxation of Federal salaries.

Intoxicants—Indian Servicemen

The provisions of the Indian Act and of any relevant Provincial Legislation apply to the sale or serving of intoxicants in beer parlors or taverns operated by private parties, regardless of the fact that the Indian concerned is a member of the forces.

J.A.G. 796 (28)
23 Dec. 41
54-27-3-24

NOTE.—See R.S. (Can.) (1927) C. 98 S. 126.

Taxation—Service Personnel

Taxation by the Province in a legal division thereof, such as a municipality, if not discriminatory against Service personnel as such, may be levied against personnel of the Armed Services, since such personnel are in no different position from that of any other resident of the municipality who is made subject to the tax, and immunity if any, must be granted by appropriate municipal or Provincial legislation.

J.A.G. 782 (27)
26 Nov. 41

Vehicles—National Defence

Since the Provinces have no power to interfere or authorize interference with the carrying on of the services of His Majesty

PROVINCIAL LEGISLATION

in the Right of Canada, they cannot require the registration of National Defence motor vehicles or the licensing of drivers thereof pursuant to Provincial statute.

J.A.G. 799 (27)
24 Nov. 41
38-72-164 Vol. 7

Service Barber—Provincial Regulations

Where a duly enlisted member of the Air Force is employed as a station barber he is not subject to Provincial Regulations with respect to scale of charges and hours of work; but where the station employs a civilian barber it is incumbent upon the Commanding Officer to comply with the regulations laid down by the Provinces with respect to such employment.

J.A.G. 787 (28)
16 Dec. 41

Medical Officer—Provincial Regulations

A Medical Officer of any one of the Services does not require to be registered under provincial regulation but a civilian doctor employed by any service must be so registered.

J.A.G. 787 (28)
16 Dec. 41

Service Entertainments

Where an entertainment is held by a Military Unit in an Armoury and is of a purely private character and solely for the purposes of the Unit, such entertainment is to be regarded as of an official character pertaining to the carrying on of the Services of the Crown in the right of the Dominion and therefore such entertainment is not subject to a Provincial Amusement Tax; but when the public are invited and particularly if the public pay an admission fee, such entertainment is not then an official function and the sponsors therefore are bound to comply with Provincial Legislation even though such sponsors are Military Personnel. It is a question however, if when certain members of the public are invited to attend without charge and where their presence is considered as a benefit to

PROVINCIAL LEGISLATION

morale, whether such entertainment may not be considered as an official function and therefore immune from Provincial Legislation either for taxation or regulation.

J.A.G. 827 (31)
19 Mar. 42
800-18-1

Traffic Laws—Service Vehicles

Unless Military needs otherwise require, Service vehicles, as in the case of Military Convoys, should obey local intersection and traffic regulations; and when such regulations cannot be complied with, proper precautions should be taken by patrols and other means to safeguard the position of local traffic.

J.A.G. 805A (29)
15 Jan. 42
38-29-39

Alcohol-Transportation—by Military

No servant of the Crown in the right of the Dominion is required to secure a Provincial Licence in order to transport alcohol from the Military Stores to Military or Air Force hospitals; but the local branch of a Chemical Company supplying the alcohol is required to conform to Provincial Laws even where such alcohol is destined for shipment to the District Medical Stores.

J.A.G. 808B (31)
5 Mar. 42
J.R. 6560-42

NOTE.—Rex v. Anderson (1930) 39 D.L.R. 84; Gauthier v. The King 40 D.L.R. 256; Martinnells & Co. and McCormick & Muggah 50 D.L.R. 799.

PROVOST

Appointment—Assistant Provost Marshal—Minister

While an officer may have been posted to the Provost Branch (Air) with the approval of the Minister, such approval does not imply approval to the appointment of Assistant Provost Marshal since the terms of the Order-in-Council P.C. 5824, dated October 22, 1940, provide that such an appointment must be made by the Minister and there is no authority for delegating such powers.

J.A.G. 781A
26 Nov. 41
866-30-1

Arrest of Civilians by

A member of the Provost Corps is not a peace officer under the definition set forth in the Criminal Code, hence his powers to arrest are only the same as those of a civilian who is not a peace officer. But by Order-in-Council P.C. 4179, dated 25th May, 1943, the power of arrest by a member of the Provost Corps is extended to include arrest of any person acting in a suspicious manner and action akin thereto, in any area designated by the Minister of National Defence.

J.A.G. 878 (36)
54-27-97-1
29 Aug. 42

Civil Lock-up—Use of—Pending Military Proceedings

There is no power in the Provost Corps nor any military police to place a deserter or absentee in temporary custody in a civil lock-up pending appearance before military authorities rather than civil authorities, and where two soldiers were so placed in a civil gaol without the order for such custody signed by the Commanding Officer of the said soldiers as required by K.R. (Can.) 451 (f) and where the purpose of the jailing was a military and not a civil proceeding, such custody was most irregular and without authority.

J.A.G. 856 (33)
23 May 42
H.Q.S. 6265-F.D. 2

PROXY

Marriage by

There is no special provision for marriage by proxy on the part of members of the Armed Forces.

J.A.G. 849 (32)

30 Apr. 42

H.Q. 1018-1-13 V. 3

PUBLIC DOCUMENTS

Court of Inquiry—Findings—Disclosure to Insurer

Where an officer is found by a Court of Inquiry to have died by his own hand and an insurance company requests information as to the death, evidently with the intention of resisting payment under a suicide clause, the Department of National Defence cannot be compelled to disclose such information but it may, with the consent of the Officer's beneficiary, hand the insurer a copy of the opinion of the Court. The insurer should not be given a transcript of the record of the proceedings nor should it be informed of the personnel of the Court of Inquiry. Even the copy of the opinion need not be given if the Minister thinks it contrary to the public interest.

J.A.G. 808 (1)
12 Feb. 42
332-66-59

NOTE.—In a case where the Attorney General of a Province or a Coroner would have ordered an inquest had a military Court of Inquiry not been held, the parties seeking information obtainable if there had been an inquest should not be prejudiced in such circumstances. Accordingly information as to the circumstances of death ought to be furnished unless the case is one where in the public interest such information ought not to be furnished.

PUBLIC GAOLS

Deserters and Absentees—Lodged in

A soldier apprehended by the military authorities on a charge of desertion or absence without leave would normally be wholly in military custody, but where there is a lack of accommodation the soldier may temporarily be kept in a civil lock-up, providing the order to do so is signed by the Commanding Officer of the soldier, as required by K.R. (Can.) para. 451 (f).

J.A.G. 856 (33)

23 May 42

H.Q.C. 6265-5 F.D. 2

PUBLIC REVENUE

Fines—Not Part of

Fines for drunkenness imposed under Air Force or Military Law are not "Public moneys" or "Public Revenue" as contemplated by the Consolidated Revenue and Audit Act.

J.A.G. (DOR 458)

RANK

"Lance"—Definition

A lance rank, if it be—as strictly it should not be—regarded as a rank and not an appointment, is always an acting rank (M.M.L. pp 37-39), and a Commanding Officer may cancel this rank or appointment by reason of unsuitability or because the position for which the appointment was made has disappeared. However, by virtue of K.R. (Can.) 308 the appointment of lance sergeant carries with it the temporary (wartime) or substantive rank of corporal, and therefore a lance sergeant deprived of his appointment as such could not be reverted below the rank of corporal by his Commanding Officer. Such an appointment as that of an "acting lance sergeant" is contemplated by K.R. (Can.) 308, and a soldier with this appointment could be ordered to revert to a private. If, however, he were "confirmed" in the status of acting lance sergeant he could not be reverted below the rank of corporal.

J.A.G. 948B (45)
A.J.A.G. (file)
29 Apr. 43
H.Q. 54-21-11-6 Vol. 11
23 Nov. 43

Reduction of Officer's

Since a commission is granted by His Majesty the King to discharge "his duties as an officer in the rank of..... or in such other rank as we may from time to time hereafter be pleased to promote or appoint you," such officer may not be demoted and neither the War Measures Act nor the Militia Act, neither of which binds the Crown, could be invoked to accomplish this end.

J.A.G. 940 (42)
C. 55-B-567
21 Jan. 43

Reduction of N.C.O.

By virtue of G.O. 152 of 1942, the District Officer Commanding is empowered to reduce a non-commissioned officer not above the rank of sergeant, pursuant to S. 183 (2) (c) of the A.A. K.R. (Can.) 329 (c) sets out the requirements to be complied with for reduction to the ranks.

J.A.G. 977 (47)
405-E-2692
2 Jul. 43

RANK

Substantive—Definition of

The substantive rank of an officer is the rank granted by or with the authority of a Sovereign below which he cannot according to the unwritten rule of the service, be reduced while he continues on the Active List and on which, if no special rate of pay is prescribed, such officer's pay would be based.

J.A.G. 859
26 May 42

War Substantive

All ranks granted in active units and formations of the Canadian Army are temporary in the sense that they are granted for the duration of the War only. For all other purposes, such ranks are substantive and cannot be taken away by administrative action. Such temporary or war substantive ranks of course carry with them full pay and allowances. Temporary ranks held by officers in Reserve units and formations must be distinguished from the war substantive ranks above mentioned.

J.A.G. 977A (47)
C-9050-35 Vol. 2
3 Jul. 43

REDRESS

Of Grievances—Officer

An officer who considers himself aggrieved may complain to the Minister of National Defence, pursuant to S. 42 of the Army Act and the Minister is to examine such complaint, and, if so required by the complainant, make a report to the Governor-in-Council. The proper procedure for an officer or soldier who considers himself wronged by a Court-Martial is to present a petition under para. 574 of K.R. (Can.), and it is not proper to complain under S. 42 of the Army Act. Complaints as to other matters should be made under this latter section, the proper procedure being set out in C.A.R.O. 2575.

J.A.G. 851 (32)
30 Apr. 42

Of Grievances—Other Ranks

S. 43 Army Act sets out the procedure by which a soldier may make a complaint, and R.P. 126 (A) describes the prescribed officer to whom such complaint may be made. K.R. (Can.) 417 (b) states that a soldier is forbidden to use any other method of obtaining redress for a grievance.

J.A.G. 977 (47)
405-E-2692
2 Jul. 43

RE-ENLISTMENT

Attestation—False Answers

While S. 33 Army Act uses the word "Justice" the word may be interpreted to include an officer authorized to carry out attestation pursuant to K.R. (Can.) 280 and 302 (a) (iv). Although false answers are made on attestation, a person once attested becomes subject to the Army Act and may be tried for such false answers either by a Court-Martial or a Court of Summary Jurisdiction.

J.A.G. 774A (27)
5 Nov. 41
T. 22-1-359

NOTE.—See M.M.L., A.A., S. 99 note 4; S. 33 note 3; S. 163 (1) (a) note 3.

REGULAR FORCES

Active Service Personnel—Part of

For the purpose of S. 13 of the Army Act, a member of the Canadian Army on active service belongs to the regular forces.

J.A.G. 816F (35)

REHABILITATION GRANT

False Answer on Enlisting—When Bar to

Where a soldier makes a false answer on attestation but is discharged for not being able to meet the required physical standards, he is not deprived of his rehabilitation grant since he did not leave the service by reason of having made a false answer on enrolment or attestation as provided by Order-in-Council P.C. 7521 dated 19 Dec. 1940.

J.A.G. 810 (30)
17 Feb. 42
405-M-11, 420

Who Entitled to

Paragraph (1) (a) of Order-in-Council P.C. 7521, dated December 19th, 1940, states that: "Every member of the Naval, Military or Air Forces of Canada, who has served continuously on Active Service therein during the present War, for a period of not less than 183 days shall be entitled under certain conditions to rehabilitation grant." No distinction is made as to whether the individual has served in one or more of the Services, the only condition being that he served continuously for 183 days in one or more of the Services.

J.A.G. 709A (21)
1 May 41

"R" RECRUITS

NOTE.—An "R" Recruit is now known as an "N.R.M.A. soldier" under N.R.M.A. Regulations (Army) 1943, effective Dec. 1, 1943.

Convoy to U.S.A.—Not to Participate in

Since H.D. members of the Canadian Army and "R" recruits are required to perform service and duty only within the territorial limits of Canada, or such other areas as may be designated by Parliament or the Governor-in-Council, no authority exists for compelling them to proceed as part of a convoy to the United States, and even should such personnel volunteer to proceed, it would be advisable to refuse such offers in view of restrictions surrounding their service.

J.A.G. 809 (30)
13 Feb. 42
S. 8641-1

NOTE.—See National Selective Service Mobilization Regulations (1942) S. 2 (l) (k).

Duties of—Under Arrest

Under the Reserve Army (Special) Regulations 1941, recruits and members (H.D.) Canadian Army are considered to be subject to all obligations and duties, and be governed by the same laws, orders and regulations as a man of the Active Militia, on the strength of a Corps thereof, which is placed on Active Service pursuant to S. 64 of the Militia Act. Accordingly all such members would be "on active service" within the meaning of para. 452 (h) K.R. (Can.). Hence while under close arrest, they could, in accordance with this paragraph, "be ordered to bear arms, attend parades and perform all such duties as may be required of them" because of their active service status. The duties would include fatigue duties.

J.A.G. 967B (46)
H.Q. 54-27-82-16 F.D. 1
7 Jun. 43

Military Law—Subject to

Where an "R" Recruit commits an offence while attached to a Training Centre he may be tried by Court-Martial for

"R" RECRUITS

such offence even when, under orders of a proper Board, he has gone on leave of absence or his period of training is postponed by the proper Board, providing however the trial is held within the time limit prescribed by S. 158 (1) Army Act.

J.A.G. 777BB (27)
22 Nov. 41

NOTE.—M.M.L. p. 565, notes 1 and 2.

RESERVE ARMY

Absence Without Leave from

Notwithstanding the treating of three nights' drill in a Reserve Unit as one day for the purpose of pay, the failure to attend a single night's drill of a Reserve Unit constitutes one day of absence for the purposes of S. 115 of the Militia Act.

J.A.G. 861B (34)
12 Jun. 42
7488-1-7

Motor Vehicle Accidents—Personnel of

Orders-in-Council P.C. 80/1045 dated 19th March, 1940, dealing with motor accident claims generally and P.C. 59/7305 dated 17th September, 1941, dealing with motor accidents involving claims not exceeding \$200.00, apply to Reserve Army personnel operating D.N.D. vehicles in the course of their military duty. The extent to which such personnel should be called upon to re-imburse the Crown for claims paid would also be determined under the aforementioned Orders-in-Council.

J.A.G. 966B (45)
H.Q. 57-7-16-590
21 May 43

Officers—Liability for Call

Where the requisite consent is obtained from the appropriate representative of the Department of National Defence as provided by S. 10 (15) of the N.S.S.M. Regulations, officers of Reserve units and formations are liable to be called up under the said Regulations. Such consent is not required in the case of retired officers. These regulations supersede the provisions of the Militia Act.

J.A.G. 937 (41)
H.Q. 1161-1-35 F.D. 2
21 Dec. 42

Pay and Allowances

Command and Training Allowances payable pursuant to P. & A. Art. 227-230 are computed on the basis of all other ranks enrolled in the Unit despite the fact that some of the

RESERVE ARMY

personnel may not have performed the full number of days prescribed. There is no regulation having the effect of reducing the amount of the allowance payable on the ground that personnel of the unit had not performed the full period of training prescribed therefor.

J.A.G. 822 (31)

14 Mar. 42

H.Q. 3150 52-1 (6)

RESIDENCE

Of Members of the Active Forces—Defined

A member of the Active Forces is deemed to continue to reside in the place in which he was ordinarily resident at the time he enlisted and this place of residence is not lost until another is gained; nor does absence from this place of residence cause a loss or change thereof. Residence of members of the active forces is then "that place which has been or which he has adopted as the place of his habitation or home, whereto when away therefrom he intends to return." Hence where the statutes of a Province set forth that an incorporated town, etc., may assess poll tax, etc., this will include members of the forces on Active Service who can be established as residents, but will normally include only those who were attested and enlisted at such place.

J.A.G. 916 (39)
H.Q. 7-35-13
13 Nov. 42

RESTITUTION

Effect of—on Offence

Where an officer strikes a soldier he may be tried under the Army Act S. 37 with an alternative charge under S. 40 of conduct to the prejudice of good order and military discipline. An apology after the commission of the offence might be considered as minimizing the gravamen of the offence and in mitigation of punishment but would not have any effect on the commission of the offence of striking *per se*.

The question as to whether disciplinary action is or is not to be taken under the A.A. is entirely for the consideration of the appropriate military authorities, and a complainant has no legal recourse against said authorities should they refuse to act. On the other hand, the question as to proceedings in the civil courts is completely discretionary in a complainant and the military authorities have no discretion in this respect. If a complainant should take action in the civil courts, the military authorities could still take such disciplinary action against the officer as they thought fit, because any charge to be tried by a court-martial would not be for the same offence as that for which he would be tried in the criminal courts.

J.A.G. 970 (47)
6-P-21
27 Jul. 43

RIFLE RANGES

Damage—from Use of

Where damage or injury results from the use of a rifle range, the Militia Act does not require that the injured party establish neglect on the part of the Crown's servants in the performance of their duty or employment as is required in the normal class of case. On the contrary, such neglect is not a factor and under the Act, the Crown is required to pay compensation unless the claim is barred by the provisions of S. 54 (2) of the Militia Act.

J.A.G. 905A (39)

18-1-50

5 Nov. 42

ROYAL AIR FORCE

Cost of Apprehension—Personnel of

Where R.A.F. personnel are attached to the R.C.A.F. in Canada such persons are subject to R.C.A.F. law and unless the provisions of R.C.A.F. Regulations relating to the cost of apprehension of absentees and deserters are specifically excluded from being applicable to such personnel, they may be charged with such costs. On the other hand, R.A.F. personnel at R.A.F. Schools in Canada are not liable for cost of apprehension on a charge of absence without leave or desertion.

J.A.G. 886A (37)
H.Q. 75-1-45 Vol. 2
19 Sep. 42

R.C.A.F. Personnel in Canada—Serving with

Members of the R.C.A.F. serving with an R.A.F. unit in Canada, and members of the R.A.F. serving with R.C.A.F. units in the United Kingdom are not covered by the attaching and disposal Orders made by the Minister of National Defence for Air under the Canadian Visiting Forces Act and by the Air Council under the United Kingdom Visiting Forces Act. It follows, therefore, that in neither of the cases mentioned does any "attachment" take place and the member of the R.A.F. or R.C.A.F. as the case may be, and in the particular circumstances mentioned, remains subject to his own law.

J.A.G. 875A (36)
25 Aug. 42

ROYAL CANADIAN AIR FORCE

Pensions for—Air Cadets

Since the Air Cadets (organized under Order-in-Council P.C. 6647 dated 19 Nov. 1940) are not part of the R.C.A.F. they are not members of the Forces within the meaning of S. 2 (1) of the Pensions Act, R.S.C. 1927, C. 157 as amended, and, consequently, claims arising out of injury or death to an Air Cadet while undergoing training would be determined under the provisions of S. 19 of the Exchequer Court Act. Provision has, however, been made for medical care and hospitalization of Air Cadets and civilian Air Cadet Instructors under specified conditions by Order-in-Council P.C. 95/6991 dated 4th September, 1943.

J.A.G. 855 (33)
20 May 42
H.Q. 660-1-12

Pensions for—Personnel Enlisted and Posted to Leave without Pay

When applicants are enlisted in the R.C.A.F. and forthwith posted to leave without pay they are not during the period of such leave liable to perform any Air Force duties and consequently, in the event of injury or death, no claim for pension would arise. However, immediately such an applicant completes his enlistment, he becomes subject to Air Force law and may properly be recalled from leave at any time.

J.A.G. 967
2 Jun. 43

R.A.F. Personnel in U.K.—Serving with

Members of the R.C.A.F. serving with an R.A.F. Unit in Canada, and members of the R.A.F. serving with R.C.A.F. units in the United Kingdom are not covered by the Attaching and Disposal Orders made by the Minister of National Defence for Air under the Canadian Visiting Forces Act and by the Air Council under the United Kingdom Visiting Forces Act. It follows, therefore, that in neither of the cases mentioned does any "attachment" take place and the member of the R.A.F. or R.C.A.F. as the case may be, and in the particular circumstances mentioned, remains subject to his own law.

J.A.G. 875A (36)
25 Aug. 42

ROYAL CANADIAN AIR FORCE

Pensions for—University Air Training Corps

The University Air Training Corps, under Order-in-Council P.C. 2983, dated 13th May, 1943, is a component of the R.C.A.F. and therefore its personnel are "members of the forces" within the meaning of S. 2 (i) of the Pensions Act, R.S.C. 1927, C. 157 as amended. It follows, therefore, that an officer or airman of the said Corps would be pensionable in respect of any disability received after the date of the said Order-in-Council, which was directly attributable to the performance of his duties as a member of the said Corps.

J.A.G. 807H (30)
1002-16-34
10 Feb. 42

ROYAL CANADIAN AIR FORCE (WOMEN'S DIVISION)

On Active Service

The Royal Canadian Air Force (Women's Division) is a component of the Royal Canadian Air Force and the members thereof have been placed on active service in Canada or beyond Canada for the defence thereof. (See Appendix III K.R. (Air).)

J.A.G. 827B (31)
27 Mar. 42

Pensions for

Members of the C.W.A.C. and R.C.A.F. (W.D.) are eligible to receive pensions under the Pension Act, subject to the provisions of Order-in-Council P.C. 4/7635 dated 1 October, 1941.

J.A.G. 777A (1) (27)
20 Nov. 41
s. 5603 F.D. 7

SEARCH WARRANT

Cost of

The cost of obtaining a Search Warrant in order to search premises in which a deserter is suspected of being concealed is a proper charge against the Department of National Defence.

J.A.G. 702 (20)
22 Apr. 41

STATUTES

Orders-in-Council—War Measures Act

As a general rule, an Order-in-Council passed under one statute cannot over-ride the provisions of another statute. For instance, Article 65, Financial Regulations and Instructions for the C.A.S.F., cannot prevail over a provision of the Public Printing and Stationery Act, R.S.C. 1927, c. 162. But an Order-in-Council, under and in accordance with the War Measures Act, R.S.C. 1927, c. 206, is capable of legislative effect within the very wide powers conferred by the statute and may thus over-ride the provisions of any other statute.

J.A.G. 63 (2)
10 Oct. 39

NOTE.—Since the above ruling was given, the following comment upon *re Gray* (1918) S.C.R. 150 was made by Duff C.J.C. who, as Duff J., was one of the judges of the majority in the *Gray* case: "The War Measures Act came before this Court for consideration in *re Gray* and a point of capital importance touching its effect was settled by the decision in that case. It was decided there that the authority vested in the Governor-General-in-Council is legislative in character and an Order-in-Council which had the effect of radically amending the Military Service Act, 1917, was held to be valid. The decision involved the principle, which must be taken in this Court to be settled, that an Order-in-Council in conformity with the conditions prescribed by, and the provisions of, the War Measures Act, may have the effect of an Act of Parliament."

Reference as to the validity of the Regulations relating to Chemicals: (1943) S.C.R. 1 at 9, and to the same effect: Rinfret J (now C.J.C.), at pp. 17-18 of the Report.

STOPPAGES

As Reimbursement to Crown—Disciplinary Action Distinguished

Order-in-Council P.C. 59/7305 dated Sept. 17, 1941, provides that where the Crown, by reason of the negligence of its officer or servant, is under a legal liability to settle a claim arising thereby, a proportion of the amount paid by the Crown to the claimant may, where such negligence was not of a minor character, be recovered from the officer or servant in question. Furthermore, unless he agrees, upon demand, to reimburse the Crown, the amount demanded may be recovered by stoppages against his pay. Action to enforce such payment by way of stoppages is, however, entirely separate and distinct from any disciplinary action which may be taken against the officer or soldier concerned, either before or after such stoppages have been imposed. Thus, if disciplinary action is taken subsequently, the imposition of stoppages under said Order-in-Council P.C. 59/7305 would not give rise to a plea in bar of trial on a charge based on negligently damaging the civilian vehicle. . Also in the event of a conviction on such a charge, there would be no legal objection, as part of the punishment, to the offender being placed under stoppages in respect of the total damages claimed by the civilian. In such a case, however, the authority awarding the punishment should take into consideration any amount for which the offender is liable under the provisions of said Order-in-Council P.C. 59/7305. A charge could also be laid against the same officer or soldier in respect of the damages to the Departmental vehicle, and, on conviction, he could legally be placed under stoppages to cover all or part of these damages, but only to the extent of 90 days' pay of rank (K.R. (Can.) 539A).

J.A.G. 809 (1) (30)
14 Feb. 42

J.A.G. 808 (30)
10 Feb, 42
57-7-18-175

J.A.G. 815 (31)
2 Mar. 42
H.Q. 57-7-18-175

STRIKES

Costs of Assistance by the Militia to Civil Power

The Crown in the right of the Dominion has no valid claim against a Province for the costs of assistance by the Militia to the Civil power unless the Province concerned empowered the Attorney-General to bind the Province in the matter of paying said costs. Ref. A.G. Canada vs. A.G. N.S. (1930) 4 D.L.R. 82.

J.A.G. 843 (32)
17 Apr. 42
H.Q. 363-63-1

SUBPOENA

Military Information—Sought by

Information relating to a member of the Naval, Military or Air Forces obtained officially or in the course of duty should not be furnished to third parties without the consent of the member concerned and should not be furnished even should consent be given if the nature of the information would not justify disclosure or if the furnishing of the same was contrary to the interest of the state. Furthermore, if such information is sought through legal process, that is by way of subpoena, the same can be refused if in the opinion of the head of the Department of State concerned the furnishing of the same is contrary to the interests of the State.

J.A.G. 954 (46)
405-P-9327
3 May 43

SUMMARY TRIAL

Commanding Officer—Witness of Offence—Trial by

A Commanding Officer is, under R.P. 19 (B) (ii), disqualified for serving on a Court-Martial if he is the prosecutor or a witness for the prosecution but being a witness does not preclude him from dealing summarily with the charge. This is a matter which should be left to his discretion and if he feels, by reason of the fact that he has been a witness to the matter under investigation, that he is unable to exercise impartial judgment, he should remand the accused for disposition by a superior authority.

J.A.G. 957A (45)
1600-34-1501
10 May 43

Witnesses—Civilian—Compelling Attendance

There is no authority under which the attendance of civilian witnesses at summary trials by Commanding Officers can be compelled and the effect of R.P. 4 (H) is to require attendance only in the taking of a Summary of Evidence; where a C.O. believes that the evidence of a civilian witness who is unwilling to attend is necessary he should remand the accused for the taking of a Summary of Evidence in which case the attendance of such a civilian witness would be compellable.

J.A.G. 852C (33)
8 May 42
H.Q.C. 55-1-41

NOTE.—For the form of the summon see Page 761 M.M.L.

For Evidence, Procedure, Witnesses, etc., at Summary trials, see under the appropriate headings in the Courts-Martial section.

TAXATION

Members of the Forces

There is no provision under Dominion Law which exempts as such a member of the Naval, Military or Air Forces of Canada on Active Service from paying taxes or otherwise fulfilling his civilian financial obligations.

J.A.G. 467A (11)
5 Jul. 40

Members of the Forces—Residence

A member of the active forces is deemed to continue to reside in the place in which he was ordinarily resident at the time he enlisted and this place of residence is not lost until another is gained; nor does absence from this place or residence cause a loss or change thereof. Residence of members of the active forces is then, "that place which has been or which he has adopted as the place of his habitation or home, whereto when away therefrom he intends to return." Hence where the statutes of a Province set forth that an incorporated town, etc., may assess poll tax, etc., this will include members of the forces on active service who can be established as residents, but will normally include only those who were attested and enlisted at such place.

J.A.G. 916 (39)
7-35-13
13 Nov. 42

Real Property—Liability of Crown

Property held under lease by the Crown in the right of the Dominion is liable to be assessed and the owner thereof is liable for payment of real property taxes imposed by or under the authority of Provincial legislation.

J.A.G. 763 (25)
C-8864
13 Sep. 41

Provincial—Wage Deductions—Crown (Dominion)

A Provincial Act which creates an obligation on the part of employers to deduct a tax from wages or salaries paid to their employees is not effective against the Crown in the right of the Dominion or against any Department of the Dominion Government.

J.A.G. (DOR 396)

TAXATION

Municipal—Water—Crown (Dominion)

While the Crown is not bound to pay taxes levied by a municipality in respect of water supplied to properties owned by the Crown therein, it is the practice of the Dominion Government to pay reasonable compensation to the municipality for such service.

J.A.G. (DOR 88)

Gasoline—Provincial

The purchases of gasoline in the various provinces by the Government of the Dominion of Canada or any Department thereof are not subject to any existing gasoline tax. The Provincial Governments designate the Oil Companies to collect the tax for every gallon of gasoline sold with certain exceptions, one being the quantity of gasoline purchased by the Government of the Dominion of Canada or any Department thereof. In practice, on small individual purchases the tax is paid and rebated periodically.

J.A.G. 966 (46)
S. 8909 Vol. 2
24 May 43

Provincial—Service Shows

Where an entertainment is held by a Military Unit in an Armoury and is of a purely private character and solely for the purposes of the Unit, such entertainment is to be regarded as of an official character pertaining to the carrying on of the Services of the Crown in the right of the Dominion, and therefore such entertainment is not subject to a Provincial Amusement Tax; but when the public are invited and particularly if the public pay an admission fee, such entertainment is not then an official function and the sponsors therefore are bound to comply with Provincial Legislation even though such sponsors are Military Personnel. It is a question however, if when certain members of the public are invited to attend without charge and where their presence is considered as a benefit to morale, whether such entertainment may not be considered as an official function and therefore immune from Provincial Legislation either for Taxation or regulation.

J.A.G. 827 (31)
19 Mar. 42
800-18-1

TAXATION

Provincial—Tobacco—Auxiliary Services Canteen

Unless special provision is made by statute or by administrative exemption, Auxiliary Services are liable for payment of the Quebec Provincial Tax, with respect to cigarettes and tobacco.

J.A.G. 773 (26)

24 Oct. 41

H.Q. 54-27-66-5 Vol: 1
and 2

TRANSPORTATION

Buses—Operated by Crown (Dominion)— Provincial Legislation

The Crown in the right of the Dominion cannot be affected by Provincial or Municipal Legislation with regard to existing franchises where it would appear that it is essential for the proper carrying out of the services of the Crown to operate buses.

J.A.G. 915A (39)
1600-10-6/12
13 Nov. 42

Of Personnel—in Private Car—Compensation

An officer or soldier who avails himself of the permission granted under Article 100 (6) P. & A. Regulations, to travel in a privately owned motor vehicle is not entitled to treatment or compensation for any injury or disability suffered by reason of his making use of that form of conveyance.

J.A.G. (DOR 481)

Of personnel—in Private Car—Privilege

The use of a privately owned motor car under the provisions of Article 100 (6) Pay and Allowance Regulations, is in the nature of a privilege, and the authority to use such means of transportation is, strictly speaking, authority to the individual concerned not to use the means of transportation which the Department would otherwise provide. An officer or soldier while travelling in his own motor car in these circumstances cannot be considered as being in the performance of some military duty as would be the case if he were travelling in some motor vehicle owned by the Department or operated under its control.

J.A.G. (DOR 483)

TRIAL

Criminal—as Distinguished from Military

Where a soldier charged with a criminal offence is released on bail pending his trial, he should, unless on leave, return forthwith to his Unit. Upon his return to his Unit, the Military Authorities are under no legal obligation to make him available at the date of trial, but they should not do anything which would impede or prevent the soldier's appearance in court. Where a soldier's release on bail is requested by the Military Authorities, the granting of such request might give rise to an implied obligation on the part of the Military Authorities to produce the soldier at the court at the appointed time. Such a procedure should, therefore, be avoided wherever possible.

J.A.G. 947 (43)
54-27-63-32
19 Feb. 43

Military—Complaint in Civil Courts

Where an officer strikes a soldier he may be tried under the Army Act Sec. 37, with an alternative charge under Sec. 40 of conduct to the prejudice of good order and military discipline. An apology after the commission of the offence might be considered as minimizing the gravamen of the offence and in mitigation of punishment but would not have any effect on the commission of the offence of striking *per se*. The question of whether disciplinary action is or is not to be taken under the Army Act is entirely for the consideration of the appropriate military authorities, and a complainant has no legal recourse against said authorities should they refuse to act. On the other hand, the question as to proceedings in the civil courts is completely discretionary in a complainant and the military authorities have no discretion in this respect. If a complainant should take action in the civil courts, the military authorities could still take such disciplinary action against the officer as they thought fit, because any charge to be tried by a court-martial would not be for the same offence as that for which he would be tried in the criminal courts.

J.A.G. 970 (47)
6-P-21
27 Jul. 43

UNIFORM

Wearing of

The power to authorize the wearing of uniform prescribed by the proper authorities of the Navy, Army or Air Force cannot be legally extended to a person not a member of the Service concerned, or a former member thereof, who, on retirement or discharge, was allowed to retain his uniform.

J.A.G. (DOR 432)

NOTE.—Criminal Code, Sec. 438, 991.

UNIVERSITY AIR TRAINING CORPS

Personnel of—Members of the Forces

The University Air Training Corps under Order-in-Council P.C. 2983, dated 13th May, 1942, is a component of the R.C.A.F. and therefore its personnel are "members of the Forces" within the meaning of Section 2 (i) of the Pensions Act, R.S.C. 1927, Chapter 157 as amended. It follows, therefore, that an officer or airman of the said Corps would be pensionable in respect of any disability received after the date of the said Order-in-Council, which was directly attributable to the performance of his duties as a member of the said Corps.

J.A.G. 807H (30)
1002-16-34
10 Feb. 42

VEHICLE REGISTRATION

Provinces Cannot Require

Since the Provinces have no power to interfere or authorize interference with the carrying on of the services of His Majesty in the Right of Canada, they cannot require the registration of a National Defence motor vehicle or the licensing of drivers thereof pursuant to Provincial statute.

J.A.G. 779 (27)
24 Nov. 41
38-72-164 Vol. 7

VISITING FORCES

R.C.A.F. Personnel—Serving with R.A.F.—in Canada

Members of the R.C.A.F. serving with an R.A.F. unit in Canada, and members of the R.A.F. serving with R.C.A.F. units in the United Kingdom are not covered by the Attaching and Disposal Orders made by the Minister of National Defence for Air under the Canadian Visiting Forces Act and by the Air Council under the United Kingdom Visiting Forces Act. It follows, therefore, that in neither of the cases mentioned does any "attachment" take place and the member of the R.A.F. or R.C.A.F., as the case may be, and in the particular circumstances mentioned, remains subject to his own law.

J.A.G. 875A (36)
25 Aug. 42

WAIVER

Of Pension

The provisions of the Pension Act being of mandatory character in that they provide that pensions shall be awarded under certain circumstances, a duty would appear to be imposed upon the Canadian Pensions Commission to award a pension under such circumstances, regardless of any waiver which an individual may have given. Such waiver could not in any event extend to interfere with the rights of such individual's dependents who might be eligible for pension under the Act in the event of the individual's death.

J.A.G. 869 (36)
332-85-69
13 Aug. 42

Of Pension

A soldier who suffers a disability in the performance of a military duty is entitled to all the benefits which the law provides in such cases. He should not, therefore, sign or be required to sign any waiver which might have the effect or be intended to have the effect of depriving him of these benefits.

J.A.G. (DOR 150)

Of Pension

The terms of the Pension Act indicate a clear intention to protect the persons entitled to benefits thereunder from the consequences of their own acts in assigning, charging, attaching, anticipating or commuting their pensions or in waiving the benefits thereof either on their own behalf or their dependents. See Salfort vs. Dewhurst (1926) A.C. 619, 95 L.J. Ch.D. 457, which is authority for the view that the waiver of pension rights would not be effective.

Misc. 25
2 Jul. 40

WAR MEASURES ACT

Statutes—Effect on

As a general rule, an Order-in-Council passed under one statute cannot over-ride the provisions of another statute. For instance, Article 65, Financial Regulations and Instructions for the C.A.S.F., cannot prevail over a provision of the Public Printing and Stationery Act, R.S.C. 1927, c. 162. But an Order-in-Council, under and in accordance with the War Measures Act, R.S.C. 1927 c. 206, is capable of legislative effect within the very wide powers conferred by the statute and may thus over-ride the provisions of any other statute.

J.A.G. 63 (2)
10 Oct. 39

NOTE.—Since the above ruling was given, the following comment upon *re Gray* (1918) S.C.R. 150 was made by Duff C.J.C., who, as Duff J., was one of the judges of the majority in the *Gray* case: "The War Measures Act came before this Court for consideration in *re Gray* and a point of capital importance touching its effect was settled by the decision in that case. It was decided there that the authority vested in the Governor-General-in-Council is legislative in character and an Order-in-Council which had the effect of radically amending the Military Service Act, 1917, was held to be valid. The decision involved the principle, which must be taken in this Court to be settled, that an Order-in-Council in conformity with the conditions prescribed by, the provisions of, the War Measures Act, may have the effect of an Act of Parliament." Reference as to the validity of the Regulations relating to Chemicals: (1943) S.C.R. 1 at 9, and to the same effect: Rinfret J. (now C.J.C.), at pp. 17-18 of the Report.

S. 2—Duration of War

The expression "duration of the War" means the period between the dates fixed by the proclamation of His Majesty or the Governor-in-Council as the date of the commencement of the war and the date of a proclamation by which it is declared that the War no longer exists. (See War Measures Act, R.S.C. 1927 Chapter 206, Sec. 2.)

J.A.G. 915 (39)
1600-10-6/12
13 Nov. 42

WAR SUBSTANTIVE RANK

Definition of

All ranks granted in active units and formations of the Canadian Army are temporary in the sense that they are granted for the duration of the War only. For all other purposes, such ranks are substantive and cannot be taken away by administrative action. Such temporary or war substantive ranks, of course, carry with them full pay and allowances. Temporary ranks held by officers in Reserve units and formations must be distinguished from the war substantive ranks above mentioned.

J.A.G. 977A (47)
C-9050-35 Vol. 2
3 Jul. 43

WILLS

Naming of Next-of-Kin—Not a Will

The entry as to next-of-kin on a soldier's attestation paper has no legal effect whatever as regards distribution of property in the event of death, and unless a formal will is executed, the soldier's estate will be dealt with as if he died intestate. It is legally immaterial who is entered on a soldier's attestation paper as his next-of-kin and the entry so far as the soldier's medals are concerned, is of no effect, as the medals of a soldier who has died must be disposed of in accordance with para. 1359, K.R. (Can.) 1939.

J.A.G. (DOR 23)

INDEX

ABSENCE WITHOUT LEAVE

| | |
|--|-----|
| Absence or desertion—determination of offence..... | 4 |
| Air Force Act—officer—forfeiture..... | 11 |
| Apprehension—not ingredient..... | 132 |
| Charge—time of the essence..... | 3 |
| Cost of apprehension—deficiencies—special finding..... | 50 |
| Court of Inquiry—time for—declaration..... | 85 |
| Court of Inquiry—under oath..... | 83 |
| Particulars to charge..... | 98 |
| Period—continuous service..... | 6 |
| Period—particulars..... | 3 |
| Proof—elements..... | 2 |
| R.A.F. personnel—cost of apprehension..... | 1 |
| Reserve Army—failure to attend drill..... | 3 |

ABSENTEES

| | |
|-----------------------------|------|
| Civil custody..... | 1, 3 |
| Death—Court of Inquiry..... | 1 |
| Funeral expenses..... | 1 |
| Medical treatment..... | 1, 5 |
| U.S. army personnel..... | 5 |

ACCIDENTS

| | |
|--|--------|
| Medical treatment—civilian doctor—account..... | 7 |
| Naval personnel—motor vehicles..... | 172 |
| Negligence—stoppages—reimbursement..... | 7, 24 |
| Reserve Army personnel—liability..... | 7 |
| Service personnel—Crown claims..... | 7, 176 |

ACCUSED

| | |
|---|-----|
| Confessions and admissions..... | 116 |
| Cross-examination by..... | 138 |
| Custody—after sentence and before confirmation..... | 148 |
| Custody—during trial—after sentence..... | 67 |
| Discharge—detention after..... | 161 |
| Drunkenness—as defence..... | 107 |
| Election—further after charge changed..... | 143 |
| Escape—imprisonment after..... | 161 |
| Evidence—admission on one charge—after dismissal of another... | 135 |
| Evidence—cannot limit..... | 168 |
| Evidence—cross-examination on alleged confession..... | 107 |
| Evidence—own previous offence..... | 121 |
| Evidence—recall..... | 127 |
| Evidence—written statement..... | 113 |
| Plea of guilty—inconsistent..... | 137 |
| Plea of guilty—statement—address..... | 108 |
| Rank—change pending trial..... | 97 |
| Release—detention—C.O..... | 29 |
| Several—appearance before court..... | 140 |
| Summary of Evidence—additional evidence—further opportunity to speak..... | 134 |
| Summary of Evidence—demand for evidence under oath..... | 132 |
| Summary Trial—representation..... | 30 |
| Summary Trial—witnesses for..... | 149 |
| View—presence..... | 138 |

| | |
|---|---------|
| ACTING RANK | |
| Definition..... | 9 |
| Reversion..... | 9 |
| ACTIVE SERVICE | |
| Definition..... | 10 |
| Members Canadian Army on—belong to Regular Forces..... | 10 |
| Militia—placed on..... | 10 |
| R.C.A.F. (W.D.)—placed on..... | 11 |
| When corps on..... | 11 |
| ADDRESSES | |
| Closing—defending officer—argument as to admissibility..... | 87 |
| On plea of guilty..... | 87 |
| Prosecutor—attitude..... | 87 |
| ADJUTANT GENERAL | |
| Officer—disposal—discretion..... | 286 |
| AID TO CIVIL POWER | |
| Strikes—assistance by Militia—claim against province..... | 12 |
| AIR CADETS | |
| Medical treatment..... | 13 |
| Pensions..... | 13, 332 |
| AIRCRAFT | |
| Army personnel—injured..... | 14 |
| Number—mistake at trial..... | 132 |
| AIR FORCE ACT | |
| Absence without leave—offence—forfeiture—ss. 47, 137..... | 16 |
| Air force administrative orders—breach—ss. 11, 40..... | 94 |
| Civilians—application..... | 15 |
| Command instructions—breach—ss. 11, 40..... | 92 |
| Documents—originals required—s. 163..... | 37 |
| Field punishment—s. 44..... | 16 |
| Leading naval airman—not N.C.O.—s. 190..... | 17 |
| Losing by neglect—s. 24 (2)..... | 15 |
| Negligence—aiding and abetting—ss. 39, 40..... | 15 |
| Pay and allowances—R.C.A.F. Act..... | 202 |
| Sentence—day of—s. 68..... | 16 |
| Theft—definition—s. 41..... | 150 |
| AIR FORCE ADMINISTRATIVE ORDERS | |
| Breach..... | 94 |
| ALCOHOL | |
| Transportation—military stores—hospitals..... | 68 |
| ALCOHOLIC BEVERAGES | |
| Sale—canteens and messes—provincial regulations..... | 71 |
| Sale—Indian servicemen—canteens..... | 69 |
| Sale—Indian servicemen—private parties..... | 69 |
| ALIENS | |
| Enemy—enlistment—call—subsequent capture..... | 18 |
| Enemy—shot escaping—Protecting Power..... | 306 |

ALLOWANCES.

| | |
|---|----|
| Officers—during suspension..... | 19 |
| Rehabilitation grant—continuous service..... | 19 |
| Travelling Transportation Allowance claims..... | 19 |

APPOINTMENT

| | |
|----------------------------|-----|
| Lance rank—definition..... | 318 |
|----------------------------|-----|

APPREHENSION

| | |
|---|--------|
| Certificate—civil police—M.F.'s M. 215 and 216..... | 88 |
| Certificate—contents..... | 88 |
| Certificate—copies—inadmissible..... | 91 |
| Certificate—defect—special finding..... | 88 |
| Certificate—erroneous date..... | 88 |
| Certificate—necessary recitals..... | 89 |
| Costs—against officer..... | 94 |
| Costs—improper charges..... | 89, 90 |
| Costs—incidentals..... | 89, 96 |
| Costs—local police..... | 90 |
| Costs—out of pocket expenses only..... | 90 |
| Costs—over 1,500 miles..... | 90 |
| Costs—prisoners of war..... | 307 |
| Costs—proof..... | 48 |
| Costs—R.A.F..... | 91 |
| Costs—R.C.M.P..... | 90, 96 |
| Costs—transportation..... | 89 |
| Desertion—intent shown..... | 194 |
| Wrongly charged—effect on conviction..... | 132 |

ARMY ACT

| | |
|---|--------|
| Active service—definition—Militia Act—s. 189..... | 38 |
| Application in Canada—Militia Act..... | 20 |
| Army Court-Martial—R.C.A.F. officers—s. 48 (10)..... | 30 |
| Assault—Law of England—s. 41..... | 25 |
| Attestation—execution—s. 100..... | 32 |
| Attestation—false answers—ss. 33, 99, 163..... | 81 |
| Civil offence—bail—s. 41..... | 26 |
| Civil offence—judicial notice—s. 41..... | 25 |
| Civil process—soldiers—exemption—s. 144..... | 34, 35 |
| Civilians—application..... | 20 |
| Complaint—officer—s. 42..... | 26, 27 |
| Conscientious objector—disobedience—s. 9..... | 22 |
| Court of Inquiry—illegal absence—s. 72..... | 83 |
| Court of Inquiry—declaration—when admissible—s. 163..... | 37 |
| Court of Inquiry—time—declaration—s. 72..... | 85 |
| Court-Martial—petitions—s. 42..... | 27 |
| Cross-examination—scope—s. 114..... | 169 |
| Crown—loss occasioned to—s. 138..... | 49 |
| Desertion—absence—distinction—ss. 12 (1) (a), 15 (1)..... | 22 |
| Desertion—proof of intention—s. 12..... | 186 |
| Discharge with ignominy—detention—ss. 44, 57..... | 27 |
| Documents—admissible—originals—s. 163..... | 37 |
| Documents—admissible—rules—s. 163..... | 36 |
| Escape—credit for time served—s. 44..... | 27 |
| False documents and statements—ss. 18 (5), 25, 40..... | 23 |
| False evidence—Court of Inquiry—s. 29..... | 23 |
| Field punishment—s. 44..... | 28 |
| Finding—revised—effect on sentence—s. 54..... | 31 |
| Grievances—Court-Martial—petition..... | 27 |
| Grievances—officers—s. 42..... | 27 |
| Grievances—other ranks—s. 43..... | 27 |
| Inoculation—refusal—s. 9..... | 288 |

ARMY ACT (Cont'd)

| | |
|---|--------|
| Investigation by C.O.—s. 46..... | 29 |
| Justice—interpretation—s. 33..... | 321 |
| Losing by neglect—proof—forms—s. 24..... | 111 |
| M.F.M. 2—evidence of specified facts—s. 163..... | 37 |
| N.C.O.—reduction—D.O.C.—s. 183..... | 37 |
| Neglect—negligence—distinction—s. 40..... | 25 |
| Neglect to obey—must prove—s. 11..... | 126 |
| Negligence—stoppages—reimbursement—s. 40..... | 24 |
| Notes to—a guide..... | 81 |
| N.R.M.A. Soldiers—offence committed by s. 158 (1)..... | 192 |
| Nursing Sister—officer—s. 190 A.A..... | 280 |
| Officer—disposal of—s. 47..... | 286 |
| Officer—striking soldier—civil process—ss. 37, 40..... | 345 |
| Part I and II orders—admissibility—s. 163..... | 36 |
| Part I and II orders—how certified—s. 163..... | 112 |
| Part II orders—hospital entries—s. 163..... | 112 |
| Penal deductions—forfeiture of pay—s. 138..... | 33 |
| Penal deductions—limitation—s. 139..... | 34 |
| Penal deduction—Crown—civilians—s. 138..... | 33 |
| President—Court-Martial—appointment—ss. 48 (a), 53 (2)..... | 31 |
| Prisoners of war—escape—stoppages—s. 44..... | 20 |
| Provost—authority to apprehend deserter—s. 154..... | 61 |
| “R” recruit—military law—s. 158 (1)..... | 35 |
| “Regular forces”—Canadian Army on active service—s. 13..... | 22 |
| Remission—mitigation—commutation—distinction—s. 57 (notes)..... | 29 |
| Reversion—acting rank—C.O.—s. 46 (8)..... | 29 |
| Rules of Evidence—Courts-Martial—Army—Air—s. 128..... | 32 |
| Sentence—acting rank—ss. 44, 57, 182, 183..... | 28 |
| Sentence—after discharge—liability—ss. 158, 57..... | 35, 36 |
| Sentence—mitigation—remission—ss. 46, 57..... | 29 |
| Sentence—remission—“inferior authority”—s. 57 (2)..... | 31 |
| Striking superior—intent—s. 8..... | 21 |
| Summary of Evidence—admission—consent—s. 47 (2)..... | 30 |
| Summary trial—representation—s. 47..... | 30 |
| Summary trial—witnesses—s. 47..... | 30 |
| Superior officer—striking or threatening—s. 8..... | 21 |
| Theft—subject to military law—ss. 18, 41..... | 23 |
| Vaccination—refusal to submit—s. 9..... | 21 |
| View—court adjourning—s. 53..... | 138 |
| Warrant officer—reduction—s. 182..... | 165 |
| Witness—civilian—compelling—s. 125..... | 32 |

ARREST

| | |
|--------------------------------------|-----|
| Civilians—by provost..... | 39 |
| Close—duties..... | 236 |
| Close—forfeiture of pay..... | 296 |
| Foreign forces—power over..... | 39 |
| Regular forces—by civil process..... | 39 |

ATTACHMENT

| | |
|--------------------------------|----|
| R.C.A.F.—R.A.F.—discharge..... | 40 |
|--------------------------------|----|

ATTESTATION

| | |
|--|-----|
| False answer—rehabilitation grant..... | 323 |
| False answer—trial..... | 41 |
| Minor—age of on enlistment..... | 197 |
| Minor—correct age—discharge..... | 198 |
| Minor—discharge—proof of age..... | 191 |
| Next-of-kin named—not a will..... | 353 |
| Oath—administration..... | 41 |
| Proof—irregularities..... | 142 |
| R.C.A.F.—outside Canada..... | 41 |

| | |
|---|-----|
| AUXILIARY SERVICES | |
| Tobacco tax—liability..... | 42 |
| BADGES | |
| Provincial—military chauffeurs..... | 72 |
| BAIL | |
| Civil offence—soldier..... | 43 |
| BARBER | |
| Service—civilian..... | 72 |
| BOY | |
| Enlistment—reverting..... | 44 |
| BURIAL | |
| Expenses—deserter—absentee..... | 185 |
| BUSES | |
| Franchise—Provincial or Municipal—Dominion rights..... | 71 |
| CADET | |
| Assignment of pay..... | 295 |
| Courts-Martial—Attendance..... | 139 |
| CANADA EVIDENCE ACT | |
| Courts-Martial—invoked in..... | 45 |
| CANADA TEMPERANCE ACT | |
| Canteens—application..... | 46 |
| CANADIAN AIR PUBLICATIONS | |
| Charges—based on..... | 47 |
| CANADIAN ARMY (ACTIVE) | |
| Air injuries..... | 14 |
| Application of Militia Act—Army Act..... | 10 |
| Regular Forces..... | 10 |
| CANADIAN ARMY ROUTINE ORDERS | |
| Certificate of apprehension—admissibility—1099, 3464..... | 49 |
| Civil occupations—3382..... | 283 |
| Complaints—submission—575..... | 68 |
| Costs of apprehension—1099, 3464..... | 48 |
| Court of Inquiry—prisoner of war—under oath—124..... | 76 |
| Court of Inquiry—procedure—417, 628, 965, 1139..... | 83 |
| Damage—public property—1820..... | 49 |
| Deficiencies—depreciated rate—3464..... | 50 |
| Grievances—procedure—2575..... | 285 |
| Inoculation—refusal—1902..... | 288 |
| Interpretation of Order-in-Council P.C. 69/3546—3202..... | 294 |
| Medical treatment—deserter—807, 924, 1146..... | 5 |
| Medical treatment—leave—924 and 1146..... | 183 |
| Minor—discharge—under age—1029 (3)..... | 48 |
| Minor—age incorrectly stated—discharge—441..... | 48 |
| Necessaries—property of Crown—2972..... | 49 |
| Officers—removal, retirement, reversion—2528..... | 286 |
| Part I and II orders—admissibility—1429..... | 49 |
| Part II orders—admissible to prove absence—3464..... | 50 |

CANADIAN ARMY ROUTINE ORDERS (Cont'd)

| | |
|--|-----|
| Penal deductions—damage to public property—1820..... | 49 |
| Prisoners in civil gaols—515, 1575, 1705, 2106..... | 3 |
| Professions—practice of service personnel—3112 and 3382..... | 272 |
| Special Finding—Cost of apprehension—3464..... | 50 |
| Summary of Evidence—3187..... | 30 |

CANADIAN NAVAL REGULATIONS

| | |
|---------------------------------------|----|
| Crown—damages—personnel—art. 377..... | 51 |
| Indians—eligibility—art. 144..... | 51 |

CANTEENS

| | |
|--|----|
| Alcoholic beverages—sale in..... | 52 |
| Canada Temperance Act—effect on..... | 52 |
| Sale of beer—Indian members of Forces..... | 69 |
| Sale of goods—provincial tax..... | 72 |

CHARGES

| | |
|---|-----|
| Absence without leave—proof..... | 92 |
| Absence without leave—time of essence..... | 93 |
| Aider and abettor—Air Force Act..... | 93 |
| Air Force Administrative Orders—basis of..... | 94 |
| Alternative—one conviction..... | 154 |
| Approval—after failure to sign charge sheet..... | 92 |
| Change—further opportunity to elect..... | 143 |
| Change in rank of accused—mode of trial—sentence..... | 97 |
| Charge sheet—admissible in civil court..... | 110 |
| Charge sheet—amendment by O.C..... | 94 |
| Charge sheet—correction—after court convened..... | 101 |
| Charge sheet—error—order for trial..... | 94 |
| Civil court—complainant laying in..... | 345 |
| Dependents' Allowance—misrepresentation..... | 96 |
| Desertion—absence without leave—time of essence..... | 93 |
| Desertion—absence—decision of O.C..... | 95 |
| Desertion—apprehension wrongly charged..... | 132 |
| Desertion—attempted..... | 94 |
| Desertion—intention—proof..... | 100 |
| Desertion—Note to A.A. 12..... | 99 |
| Desertion—Onus of proof..... | 100 |
| Desertion—warning order—proof..... | 101 |
| Desertion—warning—where not in particulars..... | 95 |
| Drafting particulars—disobedience of order..... | 95 |
| Drunkenness—fines..... | 207 |
| Fraudulent enlistment—obtaining necessities..... | 101 |
| Fraudulent enlistment—proof of signature..... | 101 |
| Improper possession—date—charge—special finding..... | 136 |
| Inconsistency—finding..... | 135 |
| Losing by neglect—cost of lost articles..... | 102 |
| Losing by neglect—date..... | 102 |
| Losing by neglect—proof—forms..... | 102 |
| Negligence—D.N.D. vehicle—civilian vehicles..... | 97 |
| Negligence—loss to Crown—reimbursement—stoppages..... | 33 |
| O.C.—amending charge sheet..... | 94 |
| Orders—superseded—basis of..... | 99 |
| Particulars—desertion or absence without leave..... | 98 |
| Particulars—desertion—special duty..... | 98 |
| Particulars—reference to other charges..... | 98 |
| Particulars—to be in accord..... | 97 |
| Station standing orders—basis of..... | 92 |
| Theft—on city streets..... | 99 |
| Theft—public property—particulars..... | 102 |

CHARGES (Cont'd)

| | |
|---|-----|
| Theft—soldier from sailor..... | 103 |
| Two—not stated alternatively—power of Judge Advocate..... | 99 |
| Two—reference to first in particulars of second..... | 139 |
| Withdrawal—reference to convening officer..... | 103 |

CIVIL COURTS

| | |
|--|--------|
| Information—personal—furnishing..... | 252 |
| Prisoners of war—trial..... | 53 |
| Soldier—action against..... | 34, 35 |
| Soldier attending—witness fees..... | 53 |
| Soldier on bail—unit's obligation..... | 345 |
| Striking soldier—complaint..... | 345 |
| Witnesses for soldier—attendance..... | 53 |

CIVIL DEBT

| | |
|--------------------------------------|----|
| Judgment—against soldier..... | 54 |
| Liability—soldier—civil process..... | 54 |
| Service pay—garnishee..... | 54 |
| Stoppages—none for..... | 54 |

CIVIL GAOLS

| | |
|--------------------------------------|----|
| Deserters and absentees—held in..... | 55 |
|--------------------------------------|----|

CIVIL LIABILITY

| | |
|---------------------------|----|
| Soldiers—civil debts..... | 54 |
|---------------------------|----|

CIVIL OFFENCES

| | |
|---------------------------------|----|
| Army Act—s. 41..... | 56 |
| Prisoners of war—tried for..... | 56 |

CIVIL POWER

| | |
|------------------------------|-----|
| Aid to—expense..... | 57 |
| Aid to—military purpose..... | 57 |
| Collection of fines..... | 298 |

CIVIL PROCESS

| | |
|----------------------------|----|
| Regular Forces—arrest..... | 58 |
|----------------------------|----|

CIVILIAN AUTHORITY

| | |
|-------------------------------------|---------|
| Apprehension—proof of cost..... | 48, 114 |
| Military authority—distinction..... | 59 |

CIVILIAN CLAIMS

| | |
|------------------------------|----|
| Crown—payment—stoppages..... | 60 |
| Rifle range—damage..... | 60 |

CIVILIANS

| | |
|--|--------|
| Army and Air Force Acts—application..... | 61 |
| Employees—R.C.A.F..... | 61 |
| Instructions—R.C.A.F.—discipline..... | 62 |
| Provost—authority over..... | 61, 62 |
| Witnesses—Court of Inquiry..... | 83 |
| Witnesses—Court-Martial..... | 140 |
| Witnesses—Summary Trial—Summary of Evidence..... | 65 |

CLAIMS

| | |
|---|-----|
| Canadian recruits—travelling from U.S.—illness..... | 63 |
| Crown—against servicemen in private capacity..... | 172 |

CLAIMS (Cont'd)

| | |
|--|-----|
| Crown—soldier injured—civilian driver..... | 176 |
| Flying schools—Crown—liability | 276 |
| Naval personnel—damage..... | 51 |
| Negligence—degree—recoupment..... | 276 |
| Negligence—stoppages—reimbursement..... | 24 |
| Reserve army—position..... | 270 |
| Rifle ranges—compensation..... | 175 |
| Travelling—officer—station..... | 19 |

CLOTHING ALLOWANCE

| | |
|---|----|
| Discharge—length of service—deserter..... | 64 |
|---|----|

COMMANDING OFFICER

| | |
|---|---------|
| Charge—changing—further election..... | 143 |
| Charge sheet—amending..... | 127 |
| Charge sheet—failure to sign..... | 92 |
| Civil Court—permitting attendance..... | 53 |
| Civil gaol—ordering custody..... | 55 |
| Convening G.C.M., D.C.M..... | 106 |
| Court of Inquiry—convening..... | 84, 85 |
| Court of Inquiry—Declaration—entry..... | 37 |
| Deserter—jurisdiction..... | 149 |
| Desertion—charging soldier..... | 4 |
| Investigation—judicial hearing..... | 29 |
| Prosecutor—self—Court-Martial—Summary Trial..... | 65 |
| Records—custody..... | 112 |
| Reversion—inferior command..... | 150 |
| Power to remit—mitigate—commute..... | 65 |
| Prisoners of war—sentence..... | 307 |
| Release from detention—power to..... | 238 |
| Reversion from acting rank by..... | 29, 164 |
| Summary—direction to take under oath..... | 132 |
| Witness—civilian—power to compel—Summary Trial..... | 65 |
| Witness—self—Court-Martial—Summary Trial..... | 65 |

COMMISSIONS

| | |
|---------------------------------|----|
| Appointment—effective date..... | 66 |
| Army—Corps—relation..... | 66 |
| Holding—during pleasure..... | 66 |

COMPLAINTS

| | |
|----------------------------|-----|
| Officer—redress..... | 320 |
| Other ranks—procedure..... | 320 |

COMPOSITION (COURTS-MARTIAL)

| | |
|--|-----|
| Civil liability—members—no jurisdiction..... | 104 |
| Commissioned service—C.W.A.C.—R.C.A.F. (W.D.)..... | 104 |
| Commissioned service—date of qualification..... | 104 |
| Commissioned service—N.P.A.M..... | 104 |
| Defending officer—legal qualifications..... | 105 |
| Defending officer—not officer who took Summary..... | 105 |
| Defending officer—witness against defendant—Summary..... | 104 |
| R.C.A.F.—officer—Army Court..... | 105 |

CONFIRMING AUTHORITY

| | |
|---------------------------------------|-----|
| Accused—when released by..... | 67 |
| Field punishment—award by..... | 162 |
| Liability to action..... | 104 |
| Sentence—commutation—acting rank..... | 164 |

CONFIRMING AUTHORITY (Cont'd)

| | |
|--|-----|
| Sentence—mitigating without confirming..... | 141 |
| Sentence—remission, commutation or mitigation..... | 144 |
| Stoppages—reducing..... | 160 |

CONSTITUTIONAL LAW

| | |
|--|-----|
| Alcohol—transportation—Army or Air Force..... | 08 |
| Alcoholic beverages—sale—canteens..... | 71 |
| Barbers—services—civilian—provincial regulations..... | 72 |
| Building permits—municipal..... | 08 |
| Bus franchises—provincial or municipal—Dominion rights..... | 71 |
| Chauffeur—military—provincial licences..... | 72 |
| Complaints—procedure—redress—officers..... | 08 |
| Emoluments paid by Crown (Dominion)—Provincial legislation.... | 70 |
| Entertainments—military—provincial taxation..... | 08 |
| Garnishee—provincial legislation..... | 310 |
| Grievances—officers—procedure..... | 08 |
| Grievances—other ranks—procedure..... | 27 |
| Indian servicemen—sale of beer—canteens..... | 69 |
| Indian servicemen—sale of intoxicants—private..... | 69 |
| Medical officer—provincial registration..... | 73 |
| Real property—provincial tax—Dominion liability..... | 71 |
| Regulations—R.C.A.F. Act—Air Force Act..... | 70 |
| Sale of goods—canteens—provincial tax..... | 72 |
| Strikes—assistance by militia to province..... | 69 |
| Vehicles—National Defence—provincial registration..... | 71 |
| Wage deductions—provincial legislation—Dominion rights..... | 73 |
| Water rates—municipal..... | 70 |

CONTINUOUS SERVICE

| | |
|-----------------------------|----|
| For clothing allowance..... | 74 |
|-----------------------------|----|

CONTRACTS

| | |
|--------------------------|----|
| Exécution—authority..... | 75 |
|--------------------------|----|

CONVENING AUTHORITY

| | |
|--|-----|
| Civilian witnesses—power over..... | 140 |
| Convening order—charge—must authorize..... | 144 |
| Convening Order—signature..... | 106 |
| Courts of Inquiry—under oath—discretion..... | 76 |
| Liable to action—when..... | 104 |
| Order for trial—failure to sign..... | 92 |
| Prosecutor—appointing substitute..... | 147 |
| R.C.A.F. officers—appointment..... | 105 |
| Releasing accused—before promulgation..... | 148 |
| Witnesses—civilian—Courts-Martial..... | 168 |

CONVENING ORDER

| | |
|--|---------|
| Change in—Convening Authority..... | 144 |
| Change in—President..... | 106 |
| D.O.C.—convening out of district..... | 106 |
| Officer Commanding—cannot convene G.C.M., D.C.M..... | 106 |
| Publication..... | 141 |
| Second—where definite adjournment..... | 139 |
| Signing—before trial..... | 92, 106 |

CONVOYS

| | |
|-----------------------------------|----|
| Military—traffic regulations..... | 77 |
|-----------------------------------|----|

CORPS

| | |
|--------------------------------|-----|
| Commission—Active militia..... | 283 |
|--------------------------------|-----|

| | |
|---|---------------|
| COST OF LIVING BONUS | |
| Flying School employees..... | 78 |
| COUNSEL | |
| Notice of retainer..... | 105 |
| Prisoner of war—entitled to..... | 79 |
| COURT OF INQUIRY | |
| Declaration—how admissible..... | 83 |
| Declaration—may be attacked..... | 110 |
| Declaration—to prove continued absence..... | 83 |
| Declaration—when admissible..... | 85 |
| Deficiencies—investigation..... | 85 |
| Deserter or absentee—death..... | 2 |
| Enemy alien—proceedings—disclosure..... | 84 |
| Evidence—rules..... | 84 |
| Evidence—under oath..... | 83 |
| Findings—disclosure..... | 315 |
| Obligation to convene—request of third party..... | 84 |
| Witness—civilian..... | 83 |
| COURTS-MARTIAL—IN GENERAL | |
| Attestation—false answers—status..... | 81 |
| Commanding Officer—disqualification..... | 82 |
| Conscientious objector—subject to..... | 22 |
| Custody under—release..... | 80 |
| Discharge—effect in military law..... | 81 |
| Discharge—after sentence..... | 80 |
| Evidence—rules..... | 80 |
| Flying instructors—trial..... | 62 |
| Law of England—judicial notice..... | 25 |
| Minor—legally attested—liability..... | 265 |
| Petitions—submission..... | 27 |
| "R" recruit—on leave—offence—trial..... | 35 |
| Rules of procedure—effect..... | 81 |
| Summary of Evidence—use..... | 82 |
| For Courts-Martial, see also Addresses, Apprehension, Charges, Composition, Convening Order, Evidence (Defence, Documentary, General, Inadmissible, Insufficient), Findings, Pleas, Procedure. Rules of Procedure, Sentence, Witnesses. | |
| CRIMINAL CODE | |
| Uniform—wearing—ss. 438, 991..... | 171 |
| CROWN | |
| Alcoholic beverages—canteens..... | 52 |
| Buses—operation..... | 172 |
| Claim—against servicemen..... | 172 |
| Claim—recruit from U.S.A..... | 172 |
| Damage—motor cars—naval..... | 172 |
| Deserter—medical expenses..... | 1 |
| Dominion claim—against province—militia aid..... | 57 |
| Employees—day labourers..... | 173 |
| Flying schools—agreement to indemnify..... | 174 |
| Flying schools—cost of living bonus..... | 173 |
| Flying schools—equipment—responsibility..... | 174 |
| Gasoline tax—payment..... | 342 |
| Gifts to units—property of..... | 261 |
| Government vehicles—damage..... | 175 |
| Injury to soldier—no claim against driver..... | 176, 177 |
| Leased lands—taxes..... | 341 |
| Motor accidents—civilian claims..... | 173, 174, 176 |

| | |
|---|----------|
| CROWN (Cont'd) | |
| Necessaries—property of..... | 49 |
| Party to contract—signature..... | 263 |
| Rifle ranges—liability..... | 175 |
| Servants—pay—garnishee..... | 54 |
| Soldier—services—limitation of actions..... | 54 |
| Water rates—compensation..... | 175 |
| CUSTODY | |
| Deserters—civil gaols..... | 183 |
| Forcible feeding..... | 210 |
| Release—Confirming Authority..... | 178 |
| C.W.A.C. | |
| Courts-Martial—member—qualifications..... | 104 |
| Pensions—eligibility..... | 179 |
| DAMAGE | |
| Crown—liability—private vehicle—public business..... | 269 |
| Disciplinary action—immaterial to liability..... | 174 |
| To Crown—property or servant..... | 236, 268 |
| To third parties—by ambulance loaned by R.C.A.F..... | 268 |
| DEATH | |
| Deserter—absentee—burial expenses..... | 185 |
| President—Court-Martial—successor..... | 31 |
| Prisoner of war..... | 306, 307 |
| DEBIT BALANCES | |
| Cancellation..... | 180 |
| DEFICIENCIES | |
| Depreciated rate..... | 50 |
| Due investigation..... | 181 |
| DEFENCE OF CANADA REGULATIONS | |
| Employment of troops—reg. 51 A..... | 182 |
| Prisoners of war—reg. 24..... | 307 |
| DEFENDING OFFICER | |
| Address—plea of guilty..... | 108 |
| Admission by..... | 120 |
| Cross-examination—re-examination..... | 169 |
| Declaration of Court of Inquiry—may attack..... | 110 |
| Legal qualifications—no notice..... | 105 |
| M.F.B. 355—prejudicial entry—warning to Court..... | 115 |
| Motion for dismissal—argument..... | 145 |
| Motion for dismissal—failure to make—subsequent admission..... | 145 |
| Objection to admissibility..... | 87 |
| Objection—where case for prosecution completed at request of Court..... | 126 |
| Officer who took summary..... | 105 |
| Prisoner of war—trial..... | 228 |
| Summary—witness against defendant..... | 104 |
| Witness for prosecution—may call..... | 148 |
| DEPENDENTS' ALLOWANCE | |
| Assignment—pay of rank..... | 203 |
| Marriage—proxy—service personnel..... | 314 |
| Misrepresentation in application..... | 96 |

DESERTERS

| | |
|---------------------------------------|----------|
| Apprehension—R.A.F..... | 185 |
| Civil gaols..... | 183, 184 |
| Clothing allowance—service..... | 184 |
| Funeral expenses—not entitled..... | 185 |
| Medical treatment—during absence..... | 183, 184 |
| O.C. of Unit—jurisdiction..... | 149 |
| Search warrant—cost..... | 335 |
| U.S.A. Armed forces—in Canada..... | 183 |

DESERTION

| | |
|--|-----|
| Absence—proof..... | 185 |
| Attempt—elements..... | 186 |
| Cost of apprehension—R.A.F. personnel..... | 185 |
| Court of Inquiry—declaration..... | 83 |
| Death—funeral expenses..... | 185 |
| Finding—award of costs..... | 50 |
| Intent—change of mind..... | 100 |
| Intent—proof of..... | 186 |
| Medical treatment—during..... | 183 |
| Of service—warning for draft..... | 111 |
| Onus of proof..... | 100 |
| Particulars—to charge..... | 98 |
| Sentence—deficiencies..... | 167 |
| Time—of the essence..... | 187 |
| To avoid special duty—warning..... | 98 |
| Warning Order—lapse..... | 101 |

DIRECT TAXATION

| | |
|--------------------------------|-----|
| Real property—Crown lease..... | 188 |
|--------------------------------|-----|

DISABILITY PENSION

| | |
|-------------|-----|
| Waiver..... | 189 |
|-------------|-----|

DISCHARGE

| | |
|--|-----|
| Attestation—false answer—rehabilitation grant..... | 191 |
| Certificate—delivery..... | 81 |
| Certificate—effective date..... | 190 |
| Claim for—officers..... | 283 |
| Clothing allowance—period of service..... | 64 |
| Conviction—civil..... | 190 |
| Documents—signature..... | 190 |
| Liability to military law—ceases..... | 81 |
| Minor—correct age on attestation..... | 198 |
| Minor—incorrect age on attestation..... | 191 |
| Pay—effect on..... | 190 |
| R.C.A.F. personnel—with ignominy..... | 191 |
| Sentence—served after..... | 190 |

DISCIPLINE

| | |
|---|-----|
| Field punishment—in Canada..... | 192 |
| N.R.M.A. soldier—subject to military law..... | 192 |

DISTRICT OFFICER COMMANDING

| | |
|--|-----|
| Convening order—when out of district..... | 106 |
| Power to discharge—after civil conviction..... | 216 |
| Reduction of N.C.O..... | 37 |

DIVORCE

| | |
|--|-----|
| Military information—when furnished..... | 193 |
|--|-----|

| | |
|--|-----|
| DOCUMENTARY EVIDENCE | |
| Desertion—certificate of apprehension..... | 194 |
| DURATION OF THE WAR | |
| Definition..... | 195 |
| ELEMENTARY FLYING TRAINING SCHOOLS | |
| Instructors—trial..... | 62 |
| ENEMY ALIEN | |
| Death—information..... | 196 |
| Enlistment—requisites..... | 197 |
| Internees—classes..... | 196 |
| ENLISTMENT | |
| Boy—reversion..... | 197 |
| Enemy aliens—Declaration of Intention..... | 197 |
| Fraudulent—obtaining necessities..... | 49 |
| Fraudulent—proof of signature..... | 101 |
| Indian—Navy applicant..... | 198 |
| Medical students..... | 247 |
| Minor—claim for discharge—parent..... | 198 |
| Minor—correct age stated—discharge..... | 198 |
| Minor—medical treatment..... | 197 |
| Minor—subject to military law..... | 197 |
| Mobilization Instructions—effect on..... | 266 |
| Oath—N.P.A.M..... | 199 |
| U.S. citizen—loss of citizenship..... | 275 |
| ENTERTAINMENTS | |
| Taxation—provincial—military units..... | 68 |
| EVIDENCE—DEFENCE | |
| Accused—cross-examination—confession..... | 107 |
| Drunkenness—as defence..... | 107 |
| Expert witness—remaining in Court..... | 148 |
| Letters received by accused—how admissible..... | 108 |
| M test—how admissible..... | 107 |
| On plea of guilty..... | 108 |
| Restitution—no defence..... | 107 |
| Rules of evidence—latitude..... | 107 |
| EVIDENCE—DOCUMENTARY | |
| Admissible—on production—upon proof..... | 109 |
| Admissibility—time for ruling..... | 111 |
| Certificate of Apprehension—foreign material..... | 109 |
| Certificate—cost of apprehension..... | 109 |
| Certificate—cost of meals—civilian constable..... | 114 |
| Certificate—professional man—where admissible..... | 114 |
| Certified copy—how signed..... | 114 |
| Charge Sheet—civil courts..... | 110 |
| Confessions and admissions..... | 116 |
| Cost of apprehension—proof..... | 112 |
| Declaration—Court of Inquiry—may be attacked..... | 110 |
| Declaration—Court of Inquiry—reproduction..... | 111 |
| Declaration—Court of Inquiry—when admissible..... | 110 |
| Dependents' Allowance—application—signature..... | 141 |
| Document—inadmissible—leeway given accused..... | 115 |
| Document—prejudicial notation..... | 115 |
| Embarkation pass—not regimental book..... | 117 |

EVIDENCE—DOCUMENTARY (Cont'd)

| | |
|--|----------|
| Flight Authorization Form—to identify pilot..... | 136 |
| H.D. Member—document admissible..... | 117 |
| Hospital records—proof of hospitalization and pay..... | 117 |
| Letters—submitted for accused..... | 114, 118 |
| Losing by neglect—proof—forms..... | 111 |
| M test—for accused—not strictly proven..... | 115 |
| Medical certificate—for each day of trial..... | 112 |
| M.F.B. 355—time in civil gaol..... | 118 |
| M.F.M. 2—purposes of..... | 37 |
| "Officer in Charge of Records"—who is..... | 112 |
| Order—District or Garrison—offence prevalent..... | 125 |
| Originals—must be produced..... | 118 |
| Part I and Part II Orders—admissibility..... | 109 |
| Part II Orders—form of introduction..... | 112 |
| Part II Orders—hospital entries..... | 112 |
| Regimental books—Quartermaster..... | 119 |
| Signatures—designated persons—no substitute..... | 113 |
| Statement as to character—conduct prior to attaining status..... | 115 |
| Statement—signed by accused—referred to..... | 115 |
| Summary of Evidence—statement of accused—where read..... | 113 |
| Tattoo and absentee reports..... | 113 |
| Transportation cost—proof..... | 118 |
| When rejected—not an exhibit..... | 119 |
| Written statement of accused—where accused testifies..... | 113 |

EVIDENCE—GENERAL

| | |
|---|-----|
| Absence—continued— <i>prima facie</i> evidence..... | 120 |
| Accomplice—evidence..... | 127 |
| Accused—evidence of own previous offence..... | 121 |
| Admission—Defending Officer..... | 120 |
| Civil rules of evidence—application..... | 121 |
| Confessions and admissions..... | 121 |
| Court of Inquiry—evidence..... | 121 |
| Court of Inquiry—where taken under oath—where not so taken..... | 123 |
| Desertion—intention..... | 124 |
| Desertion—warning for draft..... | 124 |
| Disobedience—proof of charge..... | 125 |
| Documentary vs. parol..... | 125 |
| Law of England..... | 56 |
| New evidence—not after promulgation..... | 123 |
| Orders proving prevalence of crime—admissibility..... | 125 |
| Prosecution—must prove case before closing..... | 126 |
| Questions—by the Court..... | 151 |
| Questions—order..... | 150 |
| Report—long-hand..... | 150 |
| Signature—proof..... | 126 |

EVIDENCE—INADMISSIBLE

| | |
|--|-----|
| Accomplice—confession..... | 127 |
| Accused—not compellable to give further evidence..... | 127 |
| Certificate of Apprehension—foreign material..... | 130 |
| Certificates—cost of apprehension—copies..... | 127 |
| Certificates—professional—for accused..... | 127 |
| Confessions and admissions..... | 128 |
| Costs of apprehension—non-military authorities..... | 129 |
| Court of Inquiry—evidence..... | 129 |
| Court of Inquiry—latitude..... | 84 |
| Defending Officer—time for disputing admissibility..... | 130 |
| Document—not signed in presence of witness offering..... | 130 |
| Embarkation pass—inadmissible, <i>per se</i> | 130 |
| M.F.M. 2—admissible for specific purposes only..... | 130 |

| | |
|---|----------|
| EVIDENCE—INADMISSIBLE (Cont'd) | |
| Notation on certificate—inadmissible..... | 131 |
| Offence charged—evidence restricted..... | 131 |
| Written statement—in accused's evidence..... | 131 |
| EVIDENCE INSUFFICIENT | |
| Desertion—apprehension not proven..... | 132 |
| Disease—concealment—symptoms..... | 132 |
| Disobedience—proof required..... | 132 |
| Failure of prosecution—no new trial..... | 133 |
| FALSE DOCUMENTS | |
| Statements—Army Act—ss. 25, 40..... | 200 |
| FIELD PUNISHMENT | |
| Award—in Canada..... | 201 |
| FINANCIAL REGULATIONS AND INSTRUCTIONS | |
| Absentee—burial—art. 220..... | 205 |
| Air Force Act—provisions..... | 202 |
| Assignment—pay of rank—art. 88 (1) (2)..... | 203 |
| Close arrest—art. 149 and 148 (2)..... | 205 |
| Clothing allowance—length of service—art. 187..... | 64 |
| Confinement under Sentence—deductions—remission—art. 148 (2)..... | 205 |
| Cost of apprehension—definition—art. 172 (8)..... | 204 |
| Deserter or A.W.L.—period of absence—art. 187..... | 205 |
| Fault—no military duty—pay suspended—art. 85..... | 202 |
| Forfeiture—custody—close arrest—art. 149..... | 205 |
| Forfeiture of pay—art. 86..... | 293 |
| Fraudulent Enlistment—obtaining necessities—art. 173 (1)..... | 212 |
| Hospitalization—stoppages—art. 149..... | 33 |
| Liability—officers and soldiers—public and regimental claims— art. 84..... | 202 |
| Necessaries—public property—art. 173 (1)..... | 276 |
| Negligence—degree—art. 82 (s)..... | 49 |
| Officers—A.W.L.—forfeiture—art. 86..... | 286 |
| Officers—marriage during war—art. 178..... | 204 |
| Public Authority—Sessional Indemnities—art. 97 (h)..... | 204 |
| Remission—deduction—arts. 148, 149..... | 263 |
| Stoppages—after acquittal—art. 85..... | 166 |
| Stoppages to reimburse Crown—negligence—arts. 86, 158..... | 7 |
| Suspension from duty—officer's pay—art. 87 (5)..... | 203 |
| FINDING | |
| Charges—inconsistent..... | 135 |
| Civilian Court—admissible..... | 110 |
| Convening Order—unsigned..... | 106 |
| Disclosure..... | 252 |
| Motion to dismiss—effect on..... | 135, 145 |
| Revision of—sentence..... | 135 |
| Special—absence without leave—time..... | 93 |
| Special—date of offence in error..... | 136 |
| Special—deficiencies at depreciated rate..... | 50 |
| Special—error in Certificate of Apprehension..... | 136 |
| Special—mistake in number of aircraft..... | 135 |
| FINES | |
| Civil—collection—pay..... | 207 |
| Military—for drunkenness..... | 207 |

| | |
|---|---------|
| FINGER PRINTING | |
| Army personnel—identification..... | 208 |
| FLYING REGULATIONS | |
| Breaches—civilian instructors..... | 209 |
| FLYING SCHOOLS | |
| Damage—liability—Crown..... | 276 |
| Employees—Cost of Living Bonus..... | 78 |
| FORCIBLE FEEDING | |
| Soldier—administering to..... | 210 |
| FOREIGN FORCES ORDER | |
| United States Army—personnel in Canada..... | 211 |
| FORFEITURES | |
| Close arrest—time under..... | 205 |
| Illegal absence..... | 293 |
| Officers—absence without leave..... | 286 |
| Stoppages—distinction..... | 33, 293 |
| FORMS | |
| M.F.B. 355 (statement as to character and particulars of service of accused): | |
| Admissibility—reference to civil conviction..... | 115 |
| Time in gaol—Criminal Code..... | 118 |
| M.F.B. 375 (Record of Declaration of Court of Inquiry) | |
| Absence—proof..... | 2 |
| Admissibility—time when court held..... | 85 |
| Attacked by defence..... | 110 |
| Certified copy—admissible..... | 83 |
| Certified copy—proof of absence..... | 83 |
| Losing by neglect—date..... | 132 |
| Losing by neglect—proof..... | 111 |
| Part II Orders—comparison..... | 50 |
| M.F.B. 1481 (Certificate of cost of transportation in apprehension and return) and M.F.B. 1482 (Certificate of cost of meals and incidentals in apprehension and return): | |
| Admissible—to prove certain facts—R.O. 1099..... | 49 |
| Cost of meals and incidentals—to prove..... | 89, 96 |
| N.R.M.A. soldier—admissible against..... | 117 |
| Originals—must be submitted..... | 91 |
| Signature of officer..... | 118 |
| Signed by civil constable..... | 114 |
| M.F.C. 800 (Clothing and equipment statement): | |
| Certified copies—officers signing..... | 119 |
| Losing by neglect..... | 111 |
| M.F.M. 2 (Enrolment and Attestation papers): | |
| Declaration—active service in Canada..... | 11 |
| Evidence—purpose..... | 37 |
| Execution..... | 32 |
| One only signed—irregularities in signature..... | 142 |
| Proof of signature..... | 101 |
| To prove answers of soldier..... | 130 |
| To prove enlistment of soldier..... | 130 |
| M.F.M. 16 (Application for Dependents' Allowance): | |
| False statement..... | 23 |
| Misrepresentation..... | 96 |

FORMS (Cont'd)

| | |
|---|------|
| M.F.M. 215 (Certificate of apprehension or surrender to civil authorities) and M.F.M. 216 (Certificate of apprehension or surrender to military authorities): | |
| Civil charges—notation..... | 115 |
| Distinction—civil and military..... | 88 |
| Error in date..... | 88 |
| Improper contents..... | 88 |
| Naval—invalid—civil used..... | 88 |
| Necessary recitals..... | 89 |
| Originals—must be produced..... | 118 |
| FRANCHISES | |
| Bus—Provincial or Municipal—Dominion rights..... | 71 |
| FRAUDULENT ENLISTMENT | |
| Necessaries—obtaining..... | 212 |
| FUNERAL EXPENSES | |
| Absentee—death during absence..... | 213 |
| FURLOUGH | |
| Injury—no compensation..... | 214 |
| GARNISHMENT | |
| Provincial legislation—Dominion employees..... | 310 |
| Service Pay—not subject..... | 215 |
| GENERAL ORDERS | |
| Active Service—Militia—called for—125, 139, 170..... | 216 |
| Army Council—powers of Minister—93/25..... | 217 |
| Civil conviction—discharge—169/39..... | 216 |
| D.O.C.'s powers—reduction of N.C.O.—G.O. 152/42..... | 216 |
| Officer—retirement—removal—93/25..... | 263 |
| GIFTS TO UNITS | |
| Property of His Majesty..... | 218 |
| GRATUITOUS PASSENGER | |
| Crown—action where soldier injured..... | 219 |
| GRIEVANCES | |
| Officers..... | 220 |
| Other ranks..... | 220 |
| H. D. MEMBER | |
| See N.R.M.A. soldier. | |
| HOSPITALIZATION | |
| Air cadets..... | 13 |
| Cost—self-inflicted injuries..... | 166 |
| Cost—stoppages..... | 33 |
| Deserter—absentee—surrender..... | 184 |
| Deserter or absentee..... | 1, 5 |
| Injury to personnel—Crown's claim..... | 177 |
| Penal deductions—forfeiture of pay..... | 163 |
| Personnel on leave—R.C.A.F..... | 221 |
| Proof of—records—pay..... | 117 |

| | |
|---|-----|
| INDIANS | |
| Canteen privileges—Indian Act..... | 222 |
| Navy applicant—one-twelfth Indian blood..... | 222 |
| Taverns—Indian servicemen..... | 222 |
| INJURY | |
| Army personnel—in course of duty—compensation..... | 214 |
| Disability pension—no waiver..... | 189 |
| INOCULATION | |
| Refusal to take..... | 223 |
| INSTRUCTIONS FOR THE ROYAL CANADIAN ARMY MEDICAL CORPS AND THE CANADIAN DENTAL CORPS | |
| Deserters—leave of absence—para. 365..... | 183 |
| INSURANCE CLAIMS | |
| Suicide—officer—information to insurer..... | 224 |
| INTERNATIONAL CONVENTION | |
| See Prisoners of War. | |
| INTERNATIONAL LAW | |
| Enemy alien—information to protecting power..... | 227 |
| Prisoners of war—trial—procedure..... | 227 |
| INTERNEES | |
| Categories..... | 228 |
| Trial—procedure—counsel..... | 228 |
| War production—employment..... | 228 |
| INTERPRETATION | |
| Act—masculine gender—female..... | 230 |
| Act—officers—marriage during war..... | 204 |
| Notes—Army Act—Rules of Procedure..... | 230 |
| INVENTIONS | |
| By service personnel..... | 231 |
| JUDGE ADVOCATE | |
| Amending charge sheet..... | 99 |
| Assault—defining..... | 144 |
| Error in date of sentence—may initial correction..... | 159 |
| Plea in bar of trial—cautioning court..... | 143 |
| Questioning accused..... | 147 |
| JUDGE ADVOCATE GENERAL | |
| Courts—Martial documents—certifying for Civil Courts..... | 110 |
| Exhibits—rejected—forwarded..... | 119 |
| Negligence—degree determined..... | 25 |
| K.R. (AIR) | |
| Appointment to commission—para. 121..... | 66 |
| Enlistment—foreign citizens—para. 173 (8)..... | 275 |
| Evidence—rules of—para. 1322, App. IA..... | 232 |
| Field Punishment—paras. 493–494..... | 16 |
| Indebtedness—officer—para. 435..... | 235 |
| R.C.A.F. (W.D.) personnel—App. III..... | 234 |
| Stoppages—limitation—para. 516..... | 164 |

K.R. (CAN.)

| | |
|---|----------|
| Accused—discharge—detention—reversion—para. 597..... | 161 |
| Accused—release—para. 599..... | 29 |
| Accused—release before promulgation—para. 567..... | 148 |
| Attestation—Active Militia—paras. 280-302..... | 233 |
| Attestation—Permanent Force—para. 295..... | 41 |
| Boy—enlistment—reverting—paras. 296, 304..... | 234 |
| Close arrest—duties—para. 452 (h)..... | 236 |
| Court of Inquiry—Declaration admissible—para. 1513..... | 37 |
| Court of Inquiry—time for—Declaration—para. 743 A..... | 85 |
| Custody—deserter—civil gaol—para. 451 (f)..... | 184 |
| Damage to Government-owned vehicles—fire—paras. 539A-914..... | 236 |
| Defaulter—proof against accused—para. 559..... | 236 |
| Deserters and absentees—in civil custody—para. 451 (f)..... | 235 |
| Deserters—medical treatment—para. 962..... | 5 |
| Desertion or absence without leave—particulars—para. 539..... | 98 |
| Discharge with ignominy—imprisonment—para. 563 (k)..... | 27 |
| D.O.C.—order given while out of district—paras. 30, 31..... | 106 |
| Enlistment—validity—Mobilization Instructions—para. 302..... | 266 |
| Gifts to units—property of Crown—paras. 1007, 1040..... | 261 |
| Grievances—redress—paras. 417 and 419..... | 220 |
| Medals—disposal on death—para. 1359..... | 238 |
| Negligence—claim for—limits—para. 539 A..... | 300 |
| New evidence—petition—para. 574..... | 237 |
| O.C.—convening G.C.M., D.C.M.—paras. 525, 526..... | 106 |
| O.C.—power to remit, mitigate—not commute—para. 599..... | 238 |
| O.C.—summary jurisdiction—para. 459..... | 143 |
| Officer—indebtedness—para. 425..... | 235 |
| Officer—oath on attestation—paras. 280 and 295..... | 32 |
| Officer—removal, retirement or reversion to Reserve status— paras. 267 and 268 and App. XII..... | 233 |
| Penal deductions—damage to public property—paras. 539 A and 914..... | 34 |
| Petition—after trial—para. 574..... | 237 |
| Plea of guilty—procedure—para. 563..... | 87 |
| President of Court-Martial—para. 554..... | 31 |
| Procedure for introducing certified copy of order—para. 560..... | 237 |
| Public gaols—consent of C.O.—para. 451 (f)..... | 316 |
| Rank—reversion—para. 471..... | 236 |
| Redress of grievances—para. 417 (h)..... | 234, 235 |
| Reduction—N.C.O.—para. 329..... | 234 |
| Sentence—discharge—remission—para. 597..... | 35 |
| Sentences—Courts—Martial—para. 563 (m)..... | 237 |
| Stoppage—limitation—para. 539 (a)..... | 164 |

LANCE RANK

| | |
|----------------------------|-----|
| Appointment—reversion..... | 29 |
| Definition..... | 239 |

LICENSES

| | |
|-------------------------------------|-----|
| Alcohol—transportation of..... | 312 |
| Chauffeurs—military—provincial..... | 240 |
| D.N.D. vehicle—provincial..... | 71 |

MARRIAGE

| | |
|-------------------------|-----|
| Officer—during war..... | 204 |
| Proxy—no provision..... | 241 |

MARRIED ESTABLISHMENT

| | |
|--|-----|
| Permanent Force—effect of F.R. and I. 178..... | 242 |
|--|-----|

| | |
|--|-----|
| MASCULINE GENDER | |
| Includes female..... | 243 |
| MEDALS | |
| Disposal on death..... | 244 |
| MEDICAL ATTENTION | |
| Air-cadets..... | 13 |
| Civilian doctor—account..... | 7 |
| Deserters or absentees—whether entitled..... | 245 |
| Forcible feeding..... | 245 |
| Injury to personnel—claim by Crown..... | 177 |
| Minor—parents' consent..... | 245 |
| On leave of absence or furlough..... | 183 |
| MEDICAL OFFICER | |
| Adverse report—Divisional Advisory Committee..... | 246 |
| Disease—symptoms—testimony..... | 132 |
| Liability—professional negligence..... | 246 |
| Medical students—enlistment..... | 247 |
| Narcotics—prescribed to civilians..... | 246 |
| Private practice..... | 246 |
| Provincial legislation—not subject..... | 247 |
| MEDICAL STUDENTS | |
| Pay and allowances..... | 294 |
| MEMBER—COURT-MARTIAL | |
| Court-Martial—present at view..... | 138 |
| Qualification—Army—C.W.A.C.—N.P.A.M.—R.C.A.F. (W.D.).. | 104 |
| Qualification—Army Court—R.C.A.F. Officers..... | 105 |
| Liable to action—when..... | 104 |
| MEMBERS OF PARLIAMENT | |
| Officers—position..... | 248 |
| Sessional indemnity..... | 294 |
| MESSES | |
| Alcoholic beverages—sale..... | 249 |
| MILITARY AUTHORITIES | |
| Discretionary power—disciplinary action..... | 250 |
| Treatment of soldier on bail..... | 59 |
| MILITARY DOCUMENTS | |
| Information—personal disclosure..... | 251 |
| Information—state and departmental files..... | 251 |
| MILITARY INFORMATION | |
| Confidential—service personnel..... | 252 |
| Personal—furnishing—legal process..... | 252 |
| Suicide—disclosure..... | 224 |
| MILITARY LAW | |
| Application—to civilians..... | 254 |
| Complaint in Civil Courts..... | 345 |
| Minor—enlisted—subject to..... | 254 |
| Soldier subject—until discharged..... | 254 |

| | |
|--|----------|
| MILITARY PERSONNEL | |
| Information—concerning..... | 255 |
| MILITARY SERVICE | |
| Duration—officers—other ranks..... | 256 |
| Incapacity—suspension of pay..... | 256 |
| MILITIA | |
| Aid to civil power—expense..... | 12 |
| Members of—status..... | 257 |
| On “Active Service”..... | 10 |
| On active service in Canada..... | 11 |
| MILITIA ACT | |
| Active service—call for—ss. 63, 64..... | 257 |
| Active service—definition of—ss. 2 (g), 69..... | 258 |
| Active service—duties—s. 64..... | 236 |
| Appointment to commission—s. 33..... | 66 |
| Army Act—application—s. 69..... | 260 |
| Army Act—relation to..... | 38 |
| Defence of Canada Regulations—troops employed—s. 63..... | 260 |
| Deficiencies—damage to public property—ss. 44, 127..... | 259 |
| Deficiencies—investigation—ss. 44 and 127..... | 181 |
| Emergency—definition—s. 2..... | 258 |
| Employment of troops—interpretation—s. 63..... | 182 |
| Evidence—rules of—s. 169..... | 45 |
| Gifts to Units—property of Crown—s. 129..... | 261 |
| Interruption of Militia—traffic—s. 116..... | 261 |
| Militia—called out under—ss. 63, 64..... | 260 |
| Minor—age—discharge—s. 8..... | 258, 259 |
| Reserve Army—absence without leave—s. 115..... | 326 |
| Rifle ranges—damage—s. 54..... | 259 |
| MINISTER OF NATIONAL DEFENCE | |
| Army Council—power vested in..... | 263 |
| Army Court—R.C.A.F. officers—approval..... | 105 |
| Assistant Provost Marshal—appointment..... | 313 |
| Complaint—s. 42 A.A..... | 26, 27 |
| Court of Inquiry—convening..... | 84 |
| Debit balance—cancellation..... | 262 |
| Designates areas—where Provost can arrest..... | 62 |
| Discretion to withhold pay—art. 85 (2) F.R. & I..... | 262 |
| Forfeiture of pay—officer—powers..... | 296 |
| Officer—disposal..... | 286 |
| Remission of deduction..... | 263 |
| Remission of forfeiture..... | 296 |
| Signing documents for..... | 263 |
| Stoppages—after acquittal..... | 166 |
| Stoppages—where servicemen incapacitated..... | 297 |
| MINOR | |
| Age mis-stated—discharge..... | 258 |
| Attestation—correct age given—discharge..... | 265 |
| Medical operation—no consent of parents..... | 265 |
| Military law—subject..... | 265 |
| MOBILIZATION INSTRUCTIONS | |
| Effect on enlistment procedure..... | 266 |
| MORATORIUM | |
| For service personnel..... | 267 |

MOTOR VEHICLES

| | |
|---|----------|
| Accidental claims—Reserve Army..... | 270 |
| Convoys—local traffic regulations..... | 268 |
| Damage to property—Crown—soldier driving own car..... | 268 |
| Flying school—damage to third parties..... | 268 |
| Government—purchase of gasoline—provincial tax..... | 269 |
| Negligence—reimbursement to Crown..... | 174, 176 |
| Negligent operation—s. 40 A.A..... | 269 |
| Owned by service personnel—Crown liability—public business..... | 269 |
| Privately owned—compensation for use..... | 270 |
| Privately owned—no military duty..... | 270 |
| Registration—provincial..... | 348 |
| Reserve Army..... | 270 |

MUNICIPAL TAXATION

| | |
|----------------------------------|-----|
| Residence—members of forces..... | 328 |
| Service personnel—liability..... | 271 |
| Water rates..... | 70 |

NARCOTICS

| | |
|--|-----|
| Medical officers—prescribing to civilians..... | 272 |
|--|-----|

NATIONAL RESOURCES MOBILIZATION ACT (N.R.M.A.)

| | |
|----------------------|-----|
| Aliens—call..... | 274 |
| Persons subject..... | 273 |

N.R.M.A. SOLDIERS

| | |
|-------------------------------------|-----|
| Convoy to U.S.A.—not in..... | 324 |
| Duties—under arrest..... | 324 |
| M.F.B. 1481—admissible against..... | 117 |
| Military law—subject..... | 324 |
| Offence by—Court-Martial..... | 192 |

NATIONAL SELECTIVE SERVICE MOBILIZATION REGULATIONS (N.S.S.M.R.)

| | |
|---------------------------------|-----|
| Officers—Reserve Army—call..... | 326 |
|---------------------------------|-----|

NATURALIZATION

| | |
|---|-----|
| Acquired through father..... | 274 |
| Aliens—enlistment—capture..... | 274 |
| British nationality—oath of allegiance..... | 274 |
| Oath of allegiance—not conferred by..... | 275 |

NEGLECT TO OBEY ORDER

| | |
|-----------------------------|-----|
| Prosecution must prove..... | 126 |
|-----------------------------|-----|

NEGLECT

| | |
|---|-----|
| Aircraft—charge against pilot—captain..... | 93 |
| Civilian claims—reimbursement by Crown..... | 300 |
| Crown—liability—damage by flying schools..... | 276 |
| Crown liability—private vehicle..... | 276 |
| Degree—art. 85 (5) F.R. & I..... | 276 |
| D.N.D. and civilian vehicles—accident—charge..... | 97 |
| D.N.D. vehicle—permission..... | 131 |
| Due investigation..... | 85 |
| Gratuitous passenger—injury—no claim..... | 126 |
| Injury to personnel—Crown's right of action..... | 177 |
| Medical—professional..... | 246 |
| Member of armed forces—government vehicles..... | 236 |
| Neglect—distinguished..... | 277 |
| Penal deductions—limitations..... | 34 |

| | |
|--|--------------|
| NEGLIGENCE (Cont'd) | |
| Penal deductions—to reimburse Crown..... | 33 |
| Stoppages—reimbursement..... | 24 |
| Suspension of pay..... | 256 |
| NEW TRIAL | |
| New evidence—none permitted—petition..... | 123 |
| Where prosecution fails to prove case..... | 133 |
| NEXT-OF-KIN | |
| Attestation papers—entries..... | 278 |
| Death—disposal of medals..... | 244 |
| NON-COMMISSIONED OFFICER (N.C.O.) | |
| Accused—commissioned after offence—trial..... | 159 |
| Acting rank..... | 294 |
| Reduction..... | 37 |
| Reversion..... | 9 |
| Sentence—leading naval airman..... | 166 |
| NON-PERMANENT ACTIVE MILITIA (N.P.A.M.) | |
| Courts-Martial—members—qualifications..... | 104 |
| Enlistment—oath required..... | 199 |
| NOTES | |
| Army Act—Rules of Procedure..... | 279 |
| NURSING SISTERS | |
| Status..... | 280 |
| OATH | |
| Attestation—officer administering..... | 281 |
| Attestation—U.S. citizen..... | 281 |
| R.C.A.F. officer—administering..... | 281 |
| OATH OF ALLEGIANCE | |
| On enlistment—British subject..... | 274 |
| On enlistment—U.S. citizen..... | 275 |
| OFFENCES | |
| Civil—s. 41 A.A..... | 282 |
| OFFICER | |
| Absence without leave—forfeiture..... | 286 |
| Accused—commissioned after offence..... | 159 |
| Acting rank..... | 9 |
| Appointment—effective date..... | 66 |
| As members of parliament..... | 285 |
| Attestation—authority..... | 32, 281, 283 |
| Civilian occupation—medical practice..... | 283 |
| Commission—during H.M. pleasure..... | 283 |
| Commission—in Active Militia—not corps..... | 283 |
| Complaints..... | 284 |
| Cost of apprehending..... | 94 |
| Courts-Martial—instruction..... | 155 |
| Courts-Martial—member—Army..... | 104 |
| Courts-Martial—member—C.W.A.C..... | 104 |
| Courts-Martial—member—N.P.A.M..... | 104 |
| Courts-Martial—member—R.C.A.F. (W.D.)..... | 104 |

OFFICER (Cont'd)

| | |
|--|----------|
| Documents—admissible under Army Act—signature..... | 113 |
| Grievances..... | 285 |
| Indebtedness..... | 235 |
| Liability to meet public claims..... | 85 |
| Naval—sentence..... | 284 |
| Pay—during suspension..... | 287 |
| Pay—stoppages for civil debt..... | 297 |
| R.C.A.F.—administering oath outside Canada..... | 287 |
| Records—charge of..... | 112 |
| Reduction in rank..... | 286 |
| Removal, retirement, reversion to reserve..... | 263, 286 |
| Reserve Army—liability for call..... | 326 |
| Substantive rank..... | 284 |
| Taking summary—need not be posted to accused's unit..... | 146 |
| Transfer..... | 66 |

ORDERS-IN-COUNCIL

| | |
|--|---------|
| Air cadets—organization—P.C. 6647..... | 13 |
| Air cadets—pensions—medical care—P.C. 95/6991..... | 332 |
| Aliens—call—P.C. 5842..... | 290 |
| Assistant Provost Marshal—appointment—P.C. 5824..... | 313 |
| Certificate of apprehension or surrender—admissibility—recitals— P.C. 2797..... | 88, 89 |
| Certifying cost of meals—P.C. 58/4015..... | 96 |
| Conscientious objector—P.C. 10924..... | 22 |
| Contracts—Crown—signature—P.C. 6186..... | 263 |
| Cost of apprehension—P.C. 1099, 3464..... | 89, 90 |
| Cost of living bonus—flying schools—P.C. 8253, 9298..... | 78 |
| Crown—action where soldier injured—P.C. 3167..... | 219 |
| C.W.A.C.—pensions—P.C. 4/7635..... | 289 |
| Foreign Forces Order—deserter P.C. 2813..... | 211 |
| Inoculation—refusal—P.C. 634..... | 288 |
| Inventions—service personnel—P.C. 9750..... | 231 |
| Medical students—enlistment—P.C. 69/3546..... | 291 |
| Militia—called out—P.C. 2396/39..... | 288 |
| Naturalization—P.C. 5842..... | 290 |
| Negligence—Crown—reimbursement—P.C. 59/7305..... | 290 |
| Negligence—stoppages—distinction between P.C. 59/7305 and F.R. & I..... | 174 |
| Nursing sisters—commission—P.C. 4059..... | 289 |
| Oath—officer administering—P.C. 9161..... | 281 |
| Oath of allegiance—dispensed with—P.C. 3294..... | 281 |
| Permanent force—politics—P.C. 3205..... | 289 |
| Political conventions—candidates—P.C. 3205..... | 289 |
| Provost—arrest of civilians—P.C. 4179..... | 313 |
| Public service of Canada—cost of living bonus—P.C. 1/4456..... | 78 |
| R.A.F.—attachment to R.C.A.F.—appropriate law—P.C. 5836..... | 148 |
| R.C.A.F. (W.D.)—on active service—P.C. 1658..... | 288 |
| R.C.A.F. (W.D.)—pensions—P.C. 4/7635..... | 289 |
| Rehabilitation grant—service for—false answer—P.C. 7521..... | 19, 291 |
| Reserve Army—accident claims—P.C. 80/1045, 59/7305..... | 270 |
| Sentence—discharge—continuing liability—P.C. 60/6567..... | 36 |
| University Air Training Corps—pensions—P.C. 2938..... | 347 |
| U.S. citizen—enlistment—P.C. 3294..... | 275 |
| War Measures Act—effect..... | 351 |

PART I ORDERS

| | |
|---|-----|
| Admissible as evidence of facts therein stated..... | 49 |
| How certified..... | 112 |

PART II ORDERS

| | |
|---|-----|
| Admissible as evidence of facts therein stated..... | 49 |
| Deserter—taken on strength..... | 149 |
| Evidence of absence—M.F.B. 375 compared..... | 50 |
| Hospitalization—evidence..... | 112 |
| How certified..... | 112 |
| Proof of absence..... | 2 |

PATENTS

| | |
|---------------------------------|-----|
| Service personnel—grantees..... | 292 |
|---------------------------------|-----|

PAY

| | |
|--|-----|
| Absence without leave—forfeiture..... | 293 |
| Acting rank—effect on..... | 294 |
| Civil debts—not recoverable from..... | 293 |
| Command and Training Allowances..... | 296 |
| Debit balance—cancellation..... | 180 |
| Deductions of pay—damage to government vehicles..... | 175 |
| Discharge—effective date..... | 190 |
| Fine—unstated amount..... | 297 |
| Fine—collection by civil power..... | 298 |
| Garnishee orders—effect on..... | 294 |
| Garnishment—private indebtedness..... | 215 |
| Indemnity—parliamentary—distinguished..... | 294 |
| Medical students..... | 294 |
| Naval—claim affecting..... | 172 |
| Negligence—in performance of duty..... | 202 |
| Officers—forfeiture—absence—Air Force Act..... | 16 |
| Officers—suspended from duty or A.W.L..... | 296 |
| “Pay of rank”—defined..... | 295 |
| Reserve Army—period of training..... | 299 |
| Soldier—under close arrest..... | 296 |
| “Stoppages” and “forfeitures” distinguished..... | 293 |
| Stoppages—for civil debt..... | 297 |
| Stoppages—for damage or injury..... | 174 |
| Stoppages—drunkenness..... | 207 |
| Stoppages—negligence—reimbursement..... | 24 |
| Suspension—incapacity..... | 297 |
| War substantive ranks..... | 295 |

PAY AND ALLOWANCE REGULATIONS

| | |
|--|-----|
| Command and Training allowances—art. 227, 230..... | 299 |
| Cost of apprehension—escort—art. 90..... | 90 |
| Officer—changing station—arts. 92, 93..... | 299 |
| Private vehicle—compensation—on duty—art. 100 (6)..... | 270 |
| Private vehicle—injury—not on duty—art. 100 (6)..... | 270 |

PAY AND ALLOWANCES

| | |
|---|-----|
| Injury to personnel—claim by Crown..... | 177 |
| Officers and airmen—regulations..... | 202 |
| Relation to rank..... | 9 |
| Suspension from duty—officer..... | 203 |

PENAL DEDUCTIONS

| | |
|---------------------------------|-----|
| Negligence—civilian claims..... | 300 |
|---------------------------------|-----|

PENAL SERVITUDE

| | |
|-----------------------------|-----|
| Served after discharge..... | 190 |
| Under Army Act..... | 301 |

PENSIONS

| | |
|--|----------|
| Air cadets..... | 302 |
| Aircraft accidents—Army personnel..... | 302 |
| C.W.A.C. and R.C.A.F. (W.D.)..... | 302 |
| Day labourers—employees of Crown..... | 173 |
| Furlough—injury on—no compensation..... | 214 |
| R.C.A.F. personnel—enlisted—posted to leave without pay..... | 302 |
| University Air Training Corps..... | 303 |
| Right to..... | 303 |
| Waiver of..... | 303, 304 |

PENSIONS ACT

| | |
|---|-----|
| Air cadets—s. 2 (1)..... | 332 |
| University Air Training Corps—s. 2 (1)..... | 333 |

PERMANENT FORCE

| | |
|---------------------------|-----|
| Gratuities—officers..... | 305 |
| Marriage—officers..... | 305 |
| Political activities..... | 305 |

PERMITS

| | |
|---|----|
| Building—Municipal—for Dominion Government..... | 68 |
|---|----|

PETITION

| | |
|--|-----|
| Accused—after trial..... | 123 |
| Grievance—Court-Martial—K.R. (Can.) para. 574..... | 27 |

PLEAS

| | |
|--|-----|
| Change—record of proceedings..... | 137 |
| Drunkenness pleaded in mitigation—entry of “not guilty”..... | 137 |

POLITICAL ACTIVITIES

| | |
|-----------------------------|-----|
| Members of Parliament..... | 248 |
| Permanent Force..... | 305 |
| Prospective candidates..... | 289 |

POLL TAX

| | |
|-------------------------------|-----|
| Claim against serviceman..... | 341 |
|-------------------------------|-----|

POST MORTEM

| | |
|-----------------------|-----|
| Prisoners of War..... | 307 |
|-----------------------|-----|

PRESIDENT

| | |
|---|-----|
| Absence—procedure..... | 141 |
| Changing convening order..... | 106 |
| Error in date of sentence—may correct..... | 159 |
| Motion for dismissal—attempted finding..... | 145 |
| Questioning accused..... | 147 |

PRISONERS OF WAR

| | |
|---|-----|
| Alien Nationals—in Canadian Forces..... | 306 |
| Discipline..... | 306 |
| Enemy Alien—classes of..... | 307 |
| Post Mortem examinations on..... | 307 |

PRISONERS OF WAR (Cont'd)

| | |
|---|-----|
| Property..... | 307 |
| Returned—Court of Inquiry..... | 83 |
| Shot in attempted escape—Court of Inquiry—disclosure..... | 306 |
| Trial—in civil courts..... | 226 |
| Trial of—regulations..... | 308 |
| Stoppages..... | 307 |

PRIVILEGE

| | |
|--|-----|
| Qualified—Divisional Advisory Committee..... | 309 |
|--|-----|

PROCEDURE

| | |
|--|-----|
| Accused—where represented—cannot cross-examine..... | 138 |
| Addresses—on plea of "Guilty"..... | 138 |
| Adjournment—to fixed day and time..... | 139 |
| Adjournment—to another place..... | 138 |
| Attestation—proof..... | 142 |
| Cadets—not to be sworn under instruction..... | 139 |
| Charge—amended—election..... | 143 |
| Charge sheet—error—special finding..... | 139 |
| Charges—particulars in one may refer to the other..... | 139 |
| Charges—superseded orders..... | 139 |
| Civilian witnesses—compelled to attend—in Canada..... | 140 |
| Commencement of trial—where several accused..... | 140 |
| Confirmation of finding—mitigation of sentence..... | 141 |
| Convening Order—publication..... | 141 |
| Court closing..... | 140 |
| Deserter—still under C.O..... | 149 |
| Document—exhibit—introduction..... | 142 |
| Document—inadmissible—not exhibit..... | 142 |
| Evidence—report—long-hand..... | 150 |
| Expert witness—remaining in court..... | 148 |
| Investigation by Commanding Officer—judicial hearing..... | 143 |
| Judge Advocate—defining charge—Army Act..... | 144 |
| Judge Advocate—to caution court..... | 143 |
| Mitigation—confirmation first..... | 144 |
| Motion for dismissal—allowed—subsequent admission..... | 146 |
| Motion for dismissal—consideration—closing..... | 145 |
| Motion for dismissal—none made—conviction on defence evidence..... | 145 |
| Motion for dismissal—sequence of argument..... | 145 |
| Motion for dismissal—wrongly disallowed—subsequent admission..... | 146 |
| Name of accused—mis-spelled..... | 144 |
| New evidence—after promulgation—petition..... | 146 |
| Plea of Guilty—summary inconsistent..... | 147 |
| President—Court-Martial—appointment..... | 141 |
| President—Judge Advocate—questioning accused..... | 147 |
| Promulgation—time—R.A.F..... | 147 |
| Prosecutor—attitude..... | 143 |
| Prosecutor—substitute..... | 147 |
| Prosecutor—time for re-examination..... | 150 |
| R.A.F.—R.C.A.F.—application of respective laws..... | 148 |
| Release from custody—pending confirmation..... | 148 |
| Remission—superior military authority—independent commander..... | 150 |
| Signatures—proof..... | 141 |
| Summary Trial—defence witnesses..... | 149 |
| Summary Trial—no defending officer..... | 149 |
| Theft—definition—Army—Air..... | 150 |
| Withdrawal of charge—reference to Convening Officer..... | 151 |
| Witnesses for prosecution—called by defence..... | 148 |
| Witnesses—questioned by Court..... | 151 |

PROFESSIONS

Practice—service personnel.....246, 247

PROSECUTOR

Accomplice—cross-examining..... 127
Attitude—fairness..... 87
Cross-examination—re-examination..... 169
Cross-examining accused—on alleged confession..... 107
Disqualified for sitting in Courts-Martial..... 82
Duty to prove apprehension..... 120
Motion for dismissal—impartial attitude..... 156
Present at view..... 138
Questioning—assistance by court..... 170
Re-examination—time for..... 150
Request for exceptional punishment..... 87, 237
Substitute for..... 147
Withdrawing charge..... 103
Witness—hostile—procedure..... 168

PROTECTING POWER

Request for information—enemy alien..... 84

PROVINCIAL LEGISLATION

Garnishee—Dominion employees..... 310
Intoxicants—Indian serviceman..... 310
Medical officer—registration..... 311
Moratorium—service personnel..... 267
Service barber—Provincial regulations..... 311
Service entertainments..... 311
Taxation—Service personnel..... 310
Traffic laws—Service vehicles..... 312
Transportation—alcohol—licence..... 312
Vehicle registration..... 348

PROVOST

Appointment—Assistant Provost Marshal..... 313
Arrest—civil lock-up..... 313
Arrest of civilians—designated areas..... 313
Authority to apprehend deserter..... 61

PROXY

Marriage..... 314

PUBLIC AUTHORITY

Defined..... 204

PUBLIC DOCUMENTS

Court of Inquiry—disclosure to insurer..... 315

PUBLIC GAOLS

Provost—lodging in..... 316

PUBLIC REVENUE

Fines—not part..... 317

PUNISHMENT

Escaped prisoner of war..... 225
N.C.O.—prisoner of war..... 225

"R" RECRUITS

| | |
|--|-----|
| Convoy to U.S.A.—not to participate..... | 324 |
| Duties—under arrest..... | 324 |
| Military law—subject to..... | 324 |

RANK

| | |
|--|-----|
| Acting—defined..... | 294 |
| Acting—reversion—C.O..... | 29 |
| Change—pending trial..... | 97 |
| Escort—variation in costs of apprehension..... | 90 |
| Lance—deprivation—definition..... | 318 |
| Officer—reduction..... | 318 |
| Prisoners of war—N.C.O..... | 306 |
| Reduction of N.C.O..... | 318 |
| Reduction of W.O..... | 165 |
| Reversion to "boy"..... | 234 |
| Substantive—definition..... | 319 |
| War substantive—temporary—defined..... | 319 |

REDRESS

| | |
|---------------------------------------|---------|
| Grievances—other ranks—procedure..... | 320 |
| Officer—complaint..... | 26, 320 |

RE-ENLISTMENT

| | |
|--------------------------------|-----|
| Attestation—false answers..... | 321 |
|--------------------------------|-----|

REGULAR FORCES

| | |
|------------------------------------|-----|
| Active service personnel—part..... | 322 |
| Civil process—against members..... | 58 |

REHABILITATION GRANT

| | |
|---|-----|
| False answers on enlistment—effect..... | 323 |
| Qualification—period of service..... | 323 |

REMISSION

| | |
|-------------------|-----|
| Power of C.O..... | 238 |
|-------------------|-----|

RESERVE ARMY

| | |
|---|-----|
| Absence without leave..... | 326 |
| Command and Training allowances..... | 326 |
| Motor vehicle accidents—personnel of..... | 326 |
| Officers—liability for call..... | 326 |

RESIDENCE

| | |
|--------------------------------|-----|
| Members of forces—defined..... | 328 |
|--------------------------------|-----|

RESTITUTION

| | |
|------------------------|-----|
| Effect on offence..... | 329 |
|------------------------|-----|

RETIREMENT

| | |
|------------------------|-----|
| Officer—complaint..... | 233 |
| Officer—procedure..... | 233 |

REVERSION

| | |
|-----------------------|-----|
| Boy..... | 234 |
| From acting rank..... | 236 |

RIFLE RANGES

Damage—from use..... 330

ROYAL AIR FORCE (R.A.F.)

Absence without leave or desertion—cost of apprehension..... 331
Attachment—R.C.A.F.—appropriate law..... 331
Officer—dismissal—promulgation..... 147
R.C.A.F. personnel—attached to—discharged with ignominy..... 40

ROYAL CANADIAN AIR FORCE (R.C.A.F.)

Air Cadets—pensions for..... 332
Attachment to R.A.F.—appropriate law..... 148, 349
Civil servants..... 61
Courts-Martial—law of evidence..... 80
Equipment—on loan from Crown..... 174
Officers—members—Army Court..... 105
Pensions—leave without pay..... 332
Personnel—attached to R.A.F.—discharge with ignominy..... 40
R.A.F. personnel—cost of apprehension..... 1
R.A.F. personnel in U.K.—serving with..... 332
University Air Training Corps—pensions for..... 333

R.C.A.F. ACT

Application of Air Force Act to civilians—s. 11..... 61
Civil servants—s. 6..... 254
Regulations made under—effect on Air Force Act (Imp.) s. 16..... 70

R.C.A.F. REGULATIONS

R.A.F. deserter—cost of apprehension..... 185

R.C.A.F. (WOMEN'S DIVISION)

Courts-martial—members—qualifications..... 104
On active service..... 334
Pensions—eligibility..... 334

ROYAL CANADIAN MOUNTED POLICE (R.C.M.P.)

Apprehension—proof of expense..... 48

RULES OF PROCEDURE

Adjournment to another place—R.P. 79..... 156
Cadet—attending Court—R.P. 56..... 155
Change in date of offence—special finding—R.P. 44..... 155
Charges—alternative—one conviction—R.P. 37..... 154
Charges—drunkenness—R.P. 10..... 207
Charges—two—particulars—references—R.P. 13 (E)..... 153
Charge-sheet—error in number of aircraft—discovered after court begun—R.P. 33..... 154
Charge-sheet—error in spelling—R.P. 33..... 154
Complaint—other ranks—R.P. 126 (A)..... 27
Confirmation—technical error—other deviation—R.P. 56..... 155
Court of Inquiry—declaration—variation in entry—R.P. 125..... 157
Court of Inquiry—declaration—when admissible—R.P. 125..... 157
Court of Inquiry—oath—procedure—R.P. 4, 83, 124..... 83
Evidence—report—long-hand—R.P. 83..... 150
Failure of Commanding Officer to sign charge sheet or of Convening Officer to sign order for trial—R.P. 56..... 92

RULES OF PROCEDURE (Cont'd)

| | |
|--|-----|
| Fine—unstated amount—R.P. 10..... | 297 |
| Giving false evidence—Court of Inquiry—R.P. 12..... | 84 |
| Investigation by O.C.—R.P. 2..... | 152 |
| Motion for dismissal—must be considered—R.P. 40..... | 155 |
| Motion for dismissal—order of argument—R.P. 70..... | 156 |
| Negligence—D.N.D. vehicle—permission—R.P. 80 (D)..... | 131 |
| New charge—after Summary—new election—R.P. 5..... | 152 |
| Notes to..... | 81 |
| O.C. convening G.C.M., D.C.M.—R.P. 129..... | 106 |
| O.C.—power to remit, mitigate—not commute—R.P. 6..... | 165 |
| O.C.—qualification for Court-Martial—for summary trial— R.P. 19 (B) (ii)..... | 65 |
| Order for trial—signature—defect—R.P. 11, 56..... | 106 |
| Particulars—how phrased—R.P. 13..... | 97 |
| Plea of guilty—procedure—R.P. 46..... | 87 |
| President—absence—R.P. 65, 66..... | 156 |
| Prosecution—must complete case—R.P. 86..... | 126 |
| Prosecutor—attitude—R.P. 60..... | 87 |
| Redress of grievances—soldier—R.P. 126 (A)..... | 234 |
| Reversion in rank from acting rank—R.P. 10..... | 236 |
| Reversion of N.C.O.—R.P. 10..... | 9 |
| Sentence, mitigated or remitted—R.P. 6 (a)..... | 29 |
| Summary of Evidence—annexed to proceedings—R.P. 17..... | 113 |
| Summary of Evidence—where under oath—R.P. 4..... | 134 |
| Summary Trial—accused may call any witness—R.P. 9..... | 153 |
| Theft or improper possession—date—special finding—R.P. 44 (D)..... | 136 |
| Warning—accused—Summary of Evidence—R.P. 4..... | 152 |
| Withdrawal of charges—R.P. 35, 62..... | 154 |
| Witnesses—civilian—Courts-Martial—compelling—R.P. 78..... | 168 |
| Witnesses—civilian—Summary of Evidence—R.P. 4 (H)..... | 32 |
| Witnesses—court recalling—R.P. 86..... | 157 |

SALARIES

| | |
|--|----|
| Provincial Tax Deductions—no obligation on Crown (Dominion)..... | 73 |
|--|----|

SEARCH WARRANT

| | |
|-----------|-----|
| Cost..... | 335 |
|-----------|-----|

SENTENCE

| | |
|---|-----|
| Admissible—civil courts..... | 110 |
| Admonition—soldier..... | 159 |
| Air Force—date from which reckoned..... | 159 |
| Alternative charges—stoppages..... | 160 |
| Confinement—under Criminal Code—"awaiting trial on the present charges"..... | 160 |
| Confirmation—mitigation..... | 160 |
| Conviction—civil power—discharge..... | 190 |
| Cost of apprehension and return—award permissive..... | 161 |
| Cost of apprehension—improper charges..... | 161 |
| Cost of apprehension—incidentals—deduction..... | 163 |
| Deficiencies—value—discretion of Court..... | 167 |
| Detention—discharge—serving time—remission..... | 161 |
| Discharge—liability continuing..... | 36 |
| Discharge—R.C.A.F. attached to R.A.F..... | 162 |
| Discharge with ignominy—detention—illegal..... | 27 |
| Disclosure..... | 252 |
| Escape—how calculated after..... | 161 |
| Field punishment—commutation of detention—"first"..... | 162 |

SENTENCE (Cont'd)

| | |
|--|----------|
| Hospitalization—penal deductions—forfeiture..... | 163 |
| Increase..... | 163 |
| Inoperative—acting rank..... | 28 |
| Leading Naval Airman—reprimand..... | 166 |
| M.F.B. 355—civil conviction before enlistment..... | 165 |
| Mitigation or remission..... | 29 |
| Naval officers—effective time of..... | 167 |
| New—cancels stoppages—under old..... | 31 |
| O.C.—power to remit, mitigate or commute..... | 165 |
| Penal servitude..... | 164 |
| Prisoners of war—summary..... | 307 |
| R.A.F. officer—dismissal—promulgation..... | 162 |
| Rank—at date of award..... | 159 |
| Reduction—from acting rank..... | 164 |
| Reduction to ranks..... | 165 |
| Release from custody after..... | 148, 178 |
| Remission—confirming authority—confirms first..... | 144 |
| Remission—confirming authority—delegation..... | 166 |
| Remission—by C.O..... | 65 |
| Remission—inferior authority..... | 31 |
| Self-inflicted injuries—cost of hospitalization..... | 166 |
| Severe—offence prevalent..... | 125 |
| Stoppages—after trial F.R. & I..... | 166 |
| Stoppages—Army..... | 159 |
| Stoppages—limitations..... | 164 |
| Where convening order unsigned..... | 106 |

STATION STANDING ORDERS

| | |
|------------------------------|-----|
| Summary—how certified..... | 114 |
| Superseded—charge under..... | 99 |

STATUTES

| | |
|---|-----|
| Orders-in-Council—War Measures Act..... | 336 |
|---|-----|

STOPPAGES

| | |
|--|--------|
| After acquittal..... | 166 |
| Alternative charges—particulars to first only—failure of first charge..... | 160 |
| Army—amount—may be reduced..... | 159 |
| Civil judgment..... | 54 |
| Hospitalization—cost—self-inflicted injuries..... | 166 |
| Private debt..... | 54 |
| Reimbursement to Crown—disciplinary action distinguished..... | 7, 337 |
| Unstated amount..... | 297 |
| Where no service—fault of serviceman..... | 297 |

STRIKES

| | |
|--|-----|
| Costs of assistance by Militia—when province liable..... | 338 |
|--|-----|

SUBPOENA

| | |
|---|-----|
| Information relating to service personnel—when furnished..... | 339 |
|---|-----|

SUICIDE

| | |
|---|-----|
| Service personnel—insurance claims..... | 224 |
|---|-----|

SUMMARY OF EVIDENCE

| | |
|--|-----|
| Accused—statement—after additional evidence..... | 134 |
| Accused—statement—inconsistent with guilty plea..... | 137 |

SUMMARY OF EVIDENCE (Cont'd)

| | |
|-------------------------------------|-----|
| Accused—statement—made part of..... | 115 |
| Officer taking—posting..... | 134 |
| Under oath—witness to sign..... | 134 |

SUMMARY TRIAL

| | |
|---|-----|
| Accused—representation..... | 149 |
| Defence—witnesses..... | 149 |
| O.C.—witness of offence—trial by..... | 340 |
| Witness—civilian—compelling attendance..... | 340 |

TAXATION

| | |
|--|----------|
| Amusement—provincial—service shows..... | 342 |
| Gasoline—purchase for government-owned vehicles..... | 342 |
| Land—leased by Crown..... | 341 |
| Members of forces—liability..... | 271, 341 |
| Sales tax—provincial—military canteens..... | 72 |
| Tobacco—provincial—Auxiliary Services..... | 343 |
| Wage deductions—Province—Dominion..... | 341 |
| Water rates—municipal..... | 342 |

THEFT

| | |
|---|-----|
| Date—charge—special finding..... | 136 |
| Definition—army—air..... | 150 |
| Military law—whether complainant subject..... | 103 |
| On city streets—by soldier—how charged..... | 99 |
| Public property—described..... | 102 |

TRAFFIC LAWS

| | |
|----------------------------------|----|
| Observance—military convoys..... | 77 |
|----------------------------------|----|

TRANSPORTATION

| | |
|--|-----|
| Alcohol—by military..... | 312 |
| Buses operated by Crown—franchise..... | 344 |
| P. & A. regulations—arts. 92, 93..... | 299 |
| Private car—injuries..... | 344 |
| Private car—whether on duty..... | 344 |

TRIAL

| | |
|---|-----|
| Criminal—military..... | 345 |
| Military—complaint in civil courts..... | 345 |
| Prisoner of war—procedure..... | 227 |

UNIFORM

| | |
|------------------------------------|-----|
| Discharge—Criminal Code..... | 171 |
| Wearing of—power to authorize..... | 346 |

UNITED STATES OF AMERICA

| | |
|--|-----|
| Armed forces—power over personnel in Canada..... | 5 |
| Oath of allegiance—by citizen of..... | 281 |

UNIVERSITY AIR TRAINING CORPS

| | |
|---|-----|
| Pensions for..... | 333 |
| Personnel of—members of the forces..... | 347 |

VACCINATION

| | |
|----------------------|----|
| Refusal to take..... | 21 |
|----------------------|----|

| | |
|--|-----|
| VEHICLE REGISTRATION | |
| Provinces—cannot require..... | 348 |
| VISITING FORCES | |
| Power of arrest—Visiting Forces Act..... | 39 |
| R.A.F.—R.C.A.F.—attachment—Visiting Forces Act (Can.) and (U.K.)..... | 349 |
| U.S. Armed Forces—trial of personnel in Canada..... | 5 |
| WAGES | |
| Deductions—provincial law—Dominion..... | 341 |
| WAIVER | |
| Of pension..... | 350 |
| WAR MEASURES ACT | |
| Documents—Order-in-Council..... | 36 |
| “Duration of the war” defined..... | 351 |
| Statutes—effect..... | 351 |
| WAR SUBSTANTIVE RANK | |
| Definition..... | 352 |
| WHITE RACE | |
| Applicant to Navy—one-twelfth Indian blood..... | 51 |
| WILLS | |
| Naming next of kin—not a will..... | 353 |
| WITNESSES | |
| Accused—cross-examination—extent..... | 168 |
| Adverse—procedure for impeaching..... | 168 |
| Civilian—compellable in Canada—at court-martial..... | 168 |
| Civilian—court of inquiry..... | 168 |
| Civilian—summary trial..... | 340 |
| Cross-examination—extent..... | 169 |
| Evidence—reading over..... | 150 |
| Evidence—when signed..... | 76 |
| Examination of—away from courtroom..... | 169 |
| Expert—may remain in court..... | 169 |
| For prosecution—called by defence..... | 148 |
| Objection to question—should be made before answer..... | 169 |
| Of offence—O.C.—trial..... | 340 |
| Privileges and obligations—rules of evidence..... | 45 |
| Questioning of—by court..... | 169 |
| Recall by court—where prosecution negligent..... | 157 |