

Amendments to the *National Defence Act*

Strengthening Military Justice in the Defence of Canada Act



CLAUSE-BY-CLAUSE ANALYSIS

Department of National Defence

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CLAUSE BY CLAUSE ANALYSIS

CLAUSES 1-2

1. This Act may be cited as the *Strengthening Military Justice in the Defence of Canada Act*

2. (1) The definition “Provost Marshal” in subsection 2(1) of the *National Defence Act* is repealed.

(2) The definition “Grievance Board” in subsection 2(1) of the English version of the Act is repealed.

(3) The definition “military judge” in subsection 2(1) of the Act is replaced by the following:

“military judge” includes a reserve force military judge;

(4) The definition “Comité des griefs” in subsection 2(1) of the French version of the Act is replaced by the following:

« Comité des griefs » Le Comité externe d'examen des griefs militaires prorogé par le paragraphe 29.16(1).

(5) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

“military police” means the officers and non-commissioned members appointed under regulations made for the purposes of section 156;

(6) Subsection 2(1) of the English version of the Act is amended by adding the following in alphabetical order:

“Grievances Committee” means the Military Grievances External Review Committee continued by subsection 29.16(1);

1. *Loi visant à renforcer la justice militaire pour la défense du Canada.*

2. (1) La définition de « prévôt », au paragraphe 2(1) de la *Loi sur la défense nationale*, est abrogée.

(2) La définition de « Grievance Board », au paragraphe 2(1) de la version anglaise de la même loi, est abrogée.

(3) La définition de « juge militaire », au paragraphe 2(1) de la même loi, est remplacée par ce qui suit :

« juge militaire » S'entend notamment de tout juge militaire de la force de réserve.

(4) La définition de « Comité des griefs », au paragraphe 2(1) de la version française de la même loi, est remplacée par ce qui suit :

« Comité des griefs » Le Comité externe d'examen des griefs militaires prorogé par le paragraphe 29.16(1).

(5) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« police militaire » Ensemble des officiers et militaires du rang nommés policiers militaires sous le régime de l'article 156.

(6) Le paragraphe 2(1) de la version anglaise de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

“Grievances Committee” means the Military Grievances External Review Committee continued by subsection 29.16(1);

CLAUSE 1 CREATES THE SHORT TITLE

Description

- ◆ Creates the short title for the bill.

Rationale

- ◆ Current drafting norms require amending bills to have a short title.

CLAUSE 2 REPEALS, MODIFIES, ADDS AND MOVES CERTAIN DEFINITIONS IN SUBSECTION 2(1)

Description

- ◆ Repeals the definition “Provost Marshal”;
- ◆ Repeals the definition “Grievance Board” in the English version of the *Act*;
- ◆ Includes a reference to “a reserve force military judge” in the definition “military judge”;
- ◆ Modifies the definition “Comité des griefs” in the French version of the *Act*;
- ◆ Moves the definition “military police” from section 250 to subsection 2(1) and makes technical amendments in the French version; and
- ◆ Adds the definition “Grievances Committee” in the English version of the *Act*.

Rationale

- ◆ The repeal of the definition “Provost Marshal” in subsection 2(1) is necessary as new sections 18.3 to 18.6 will be added in respect of the powers, duties and functions of the Canadian Forces Provost Marshal.
- ◆ The repeal of the English version of the definition “Grievance Board” is necessary in conjunction with the new definition of the grievance body under its new name.
- ◆ The amended section 165.22 will provide for the naming of officers of the Reserve Force to the Reserve Force Military Judges Panel. An officer named to the panel will be referred to in the *Act* as a “reserve force military judge”. The amendment to the definition “military judge” in subsection 2(1) will ensure that reserve force military judges have the powers and authority to perform the duties and functions of military judges under the *Act*.
- ◆ The amendments to the French version of the definition “Comité des griefs” reflect the new name of the grievance body.
- ◆ Moving the definition “military police” from section 250 to subsection 2(1) will permit it to have application to all Parts of the *National Defence Act*, including the new sections 18.3 to 18.6 dealing with the Canadian Forces Provost Marshal and the responsibilities of this officer with respect to the military police. The technical amendments are made in the French version to reflect current drafting norms.
- ◆ The new definition “Grievances Committee” reflects the new name of the “Military Grievances External Review Committee”, formerly the “Canadian Forces Grievance Board”.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 3

3. (1) Paragraph 12(3)(a) of the Act is replaced by the following:

(a) prescribing the rates and conditions of issue of pay of military judges, the Director of Military Prosecutions and the Director of Defence Counsel Services;

(2) Section 12 of the Act is amended by adding the following after subsection (3):

(4) Regulations made under paragraph (3)(a) may, if they so provide, have retroactive effect. However, regulations that prescribe the rates and conditions of issue of pay of military judges may not have effect

(a) in the case of an inquiry under section 165.34, before the day referred to in subsection 165.34(3) on which the inquiry that leads to the making of the regulations is to commence; or

(b) in the case of an inquiry under section 165.35, before the day on which the inquiry that leads to the making of the regulations commences.

3. (1) L'alinéa 12(3)a) de la même loi est remplacé par ce qui suit :

a) fixer les taux et conditions de versement de la solde des juges militaires, du directeur des poursuites militaires et du directeur du service d'avocats de la défense;

(2) L'article 12 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

(4) Tout règlement pris en vertu de l'alinéa (3)a) peut avoir un effet rétroactif s'il comporte une disposition en ce sens; il ne peut toutefois, dans le cas des juges militaires, avoir d'effet :

a) dans le cas de l'examen prévu à l'article 165.34, avant la date prévue au paragraphe 165.34(3) pour le commencement des travaux qui donnent lieu à la prise du règlement;

b) dans le cas de l'examen prévu à l'article 165.35, avant la date du début de l'examen qui donne lieu à la prise du règlement.

CLAUSE 3 PAY OF MILITARY JUDGES, THE DIRECTOR OF MILITARY PROSECUTIONS, AND THE DIRECTOR OF DEFENCE COUNSEL SERVICES

Description

- ◆ Provides for Treasury Board to prescribe the rates and conditions of issue of pay of the Director of Military Prosecutions and the Director of Defence Counsel Services [par. 12(3)(a)]
- ◆ Provides for the pay regulations of military judges, the Director of Military Prosecutions and the Director of Defence Counsel Services to have retroactive effect, but the pay regulations of military judges will not have effect for any period before the day on which the inquiry conducted by the Military Judges Compensation Committee that leads to the making of the regulations is to commence in the case of an inquiry under section 165.34 or the day on which the inquiry that leads to the making of the regulations commences in the case of an inquiry under section 165.35 [ss. 12(4)]

Rationale

- ◆ The amendment to paragraph 12(3)(a) will enhance the perception of the independence of the Director of Military Prosecutions and the Director of Defence Counsel Services by providing authority for the Treasury Board to prescribe the rates and conditions of issue of their pay in regulations. The formal regulation-making process to establish their pay is more appropriate for these key actors in the military justice system.
- ◆ The new subsection 12(4) provides authority in the *National Defence Act* for the making of pay regulations with retroactive effect in the case of military judges, the Director of Military Prosecutions and the Director of Defence Counsel Services. Pay adjustments are routinely implemented retroactively for civilian judges, as well as for employees of the public service and other members of the Canadian Forces.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 4

4. The Act is amended by adding the following after section 18.2:

CANADIAN FORCES PROVOST MARSHAL

18.3 (1) The Chief of the Defence Staff may appoint an officer who has been a member of the military police for at least 10 years to be the Canadian Forces Provost Marshal (in this Act referred to as the "Provost Marshal").

(2) The Provost Marshal holds a rank that is not less than colonel.

(3) The Provost Marshal holds office during good behaviour for a term not exceeding four years. The Chief of the Defence Staff may remove the Provost Marshal from office for cause on the recommendation of an inquiry committee established under regulations made by the Governor in Council.

(4) An inquiry committee has the same powers, rights and privileges — other than the power to punish for contempt— as are vested in a superior court of criminal jurisdiction with respect to

(a) the attendance, swearing and examination of witnesses;

(b) the production and inspection of documents;

(c) the enforcement of its orders; and

(d) all other matters necessary or proper for the due exercise of its jurisdiction.

(5) The Provost Marshal is eligible to be reappointed on the expiry of a first or subsequent term of office.

4. La même loi est modifiée par adjonction, après l'article 18.2, de ce qui suit :

GRAND PRÉVÔT DES FORCES CANADIENNES

18.3 (1) Le chef d'état-major de la défense peut nommer un officier qui est policier militaire depuis au moins dix ans pour remplir les fonctions de grand prévôt des Forces canadiennes (appelé « grand prévôt » dans la présente loi).

(2) Le grand prévôt détient au moins le grade de colonel.

(3) Il occupe son poste à titre inamovible pour un mandat maximal de quatre ans, sous réserve de révocation motivée que prononce le chef d'état-major de la défense sur recommandation d'un comité d'enquête établi par règlement du gouverneur en conseil.

(4) Le comité d'enquête a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, ainsi que pour la production et l'examen des pièces, l'exécution de ses ordonnances et toute autre question relevant de sa compétence, les mêmes attributions qu'une cour supérieure de juridiction criminelle, sauf le pouvoir de punir l'outrage au tribunal.

(5) Le mandat du grand prévôt est renouvelable.

CLAUSE 4 CANADIAN FORCES PROVOST MARSHAL QUALIFICATIONS AND TERMS OF OFFICE

Description

- ◆ Adds the heading “Canadian Forces Provost Marshal” before section 18.3
- ◆ Sets out the qualifications and terms of office of the Canadian Forces Provost Marshal, including that he or she:
 - Is appointed by the Chief of the Defence Staff [ss. 18.3(1)];
 - Has been a member of the military police for at least ten years [ss. 18.3(1)];
 - Holds a rank that is not less than colonel [ss. 18.3(2)];
 - Holds office during good behaviour for a term not exceeding four years [ss. 18.3(3)];
 - May be removed from office for cause by the Chief of the Defence Staff on the recommendation of an inquiry committee, which the has the same powers, rights and privileges, other than the power to punish for contempt, as are vested in a superior court of criminal jurisdiction with respect to certain matters [ss. 18.3(3) and (4)]; and
 - May be re-appointed on the expiry of a first or subsequent term of office [ss. 18.3(5)].

Rationale

- ◆ Investigative independence is a basic element in protecting the integrity of the investigative process.
- ◆ The appointment of the Canadian Forces Provost Marshal with security of tenure will provide greater assurance that investigations will be seen to be carried out in a manner that is consistent with Canadian legal standards and expectations.
- ◆ Providing for removal of the Canadian Forces Provost Marshal for cause on the recommendation of an inquiry committee will enhance the perception of independence of the Canadian Forces Provost Marshal.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 4

18.4 The Provost Marshal's responsibilities include

(a) investigations conducted by any unit or other element under his or her command;

(b) the establishment of selection and training standards applicable to candidates for the military police and the ensuring of compliance with those standards;

(c) the establishment of training and professional standards applicable to the military police and the ensuring of compliance with those standards; and

(d) investigations in respect of conduct that is inconsistent with the professional standards applicable to the military police or the *Military Police Professional Code of Conduct*.

18.5 (1) The Provost Marshal acts under the general supervision of the Vice Chief of the Defence Staff in respect of the responsibilities described in paragraphs 18.4(a) to (d).

(2) The Vice Chief of the Defence Staff may issue general instructions or guidelines in writing in respect of the responsibilities described in paragraphs 18.4(a) to (d). The Provost Marshal shall ensure that they are available to the public.

(3) The Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation.

(4) The Provost Marshal shall ensure that instructions and guidelines issued under subsection (3) are available to the public.

(5) Subsection (4) does not apply in respect of an instruction or guideline, or of a part of one, if the Provost Marshal considers that it would not be in the best interests of the administration of justice for the instruction or guideline, or that part of it, to be available to the public.

18.6 The Provost Marshal shall, within three months after the end of each fiscal year, submit to the Chief of the Defence Staff a report concerning the activities of the Provost Marshal and the military police during the year. The Chief of the Defence Staff shall submit the report to the Minister.

18.4 Le grand prévôt est notamment responsable

a) des enquêtes menées par toute unité ou tout autre élément sous son commandement;

b) de l'établissement des normes de sélection et de formation applicables aux candidats policiers militaires et de l'assurance du respect de ces normes;

c) de l'établissement des normes professionnelles et de formation applicables aux policiers militaires et de l'assurance du respect de ces normes;

d) des enquêtes relatives aux manquements à ces normes professionnelles ou au *Code de déontologie de la police militaire*.

18.5 (1) Le grand prévôt exerce les fonctions visées aux alinéas 18.4a) à d) sous la direction générale du vice-chef d'état-major de la défense.

(2) Le vice-chef d'état-major de la défense peut, par écrit, établir des lignes directrices ou donner des instructions générales concernant les fonctions visées aux alinéas 18.4a) à d). Le grand prévôt veille à les rendre accessibles au public.

(3) Le vice-chef d'état-major de la défense peut aussi, par écrit, établir des lignes directrices ou donner des instructions à l'égard d'une enquête en particulier.

(4) Le grand prévôt veille à rendre accessibles au public les lignes directrices ou instructions visées au paragraphe (3).

(5) Le paragraphe (4) ne s'applique pas à l'égard de toute ligne directrice ou instruction, ou partie de celle-ci, dont le grand prévôt estime qu'il n'est pas dans l'intérêt de la bonne administration de la justice de la rendre accessible.

18.6 Dans les trois mois suivant la fin de chaque exercice, le grand prévôt présente au chef d'état-major de la défense le rapport de ses activités et des activités de la police militaire au cours de l'exercice. Celui-ci présente le rapport au ministre.

CLAUSE 4 CANADIAN FORCES PROVOST MARSHAL RESPONSIBILITIES, SUPERVISION AND ANNUAL REPORT

Description

- ◆ Provides that the Provost Marshal is responsible for:
 - Investigations conducted by any unit or other element under his or her command [par. 18.4(a)];
 - The establishment of selection and training standards applicable to candidates for the military police and ensuring compliance with those standards [par. 18.4(b)];
 - The establishment of training and professional standards applicable to the military police and ensuring compliance with those standards [par. 18.4(c)]; and
 - Investigations in respect of conduct that is inconsistent with professional standards applicable to the military police or the Military Police Professional Code of Conduct [par. 18.4(d)].
- ◆ Provides that the Canadian Forces Provost Marshal acts under the general supervision of the Vice Chief of the Defence Staff with respect to his or her responsibilities [ss. 18.5(1)];
- ◆ Provides that the Vice Chief of the Defence Staff may issue general instructions or guidelines in writing in respect of the responsibilities of the Canadian Forces Provost Marshal and that the Canadian Forces Provost Marshal shall ensure they are available to the public. [ss. 18.5(2)];
- ◆ Provides that the Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation and that the Canadian Forces Provost Marshal shall ensure they are available to the public unless he or she considers that it would not be in the best interests of the administration of justice to do so [ss. 18.5(3), (4) and (5)]; and
- ◆ Provides that the Canadian Forces Provost Marshal shall submit an annual report to the Chief of the Defence Staff, and that the Chief of the Defence Staff shall submit the report to the Minister of National Defence [s. 18.6].

Rationale

- ◆ Investigative independence is a basic element in protecting the integrity of the investigative process.
- ◆ The appointment of the Canadian Forces Provost Marshal with security of tenure, under the general supervision of the Vice Chief of the Defence Staff, and the responsibility of the Canadian Forces Provost Marshal for investigations conducted by the military police, the National Investigation Service and any other unit under his or her command, will provide greater assurance that investigations will be seen to be carried out in a manner that is consistent with Canadian legal standards and expectations.
- ◆ These amendments will also enhance the accountability and transparency of the military police by setting out the legislative framework governing the relationship between the Provost Marshal, the Vice Chief of Defence Staff, the military police and the National Investigation Service and by ensuring that instructions and guidelines issued are made available to the public.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 5-7

5. Section 29 of the Act is amended by adding the following after subsection (2):

(2.1) A military judge may not submit a grievance in respect of a matter that is related to the exercise of his or her judicial duties.

6. Section 29.11 of the Act is replaced by the following:

29.101 Despite subsection 29.1(1), a grievance submitted by a military judge shall be considered and determined by the Chief of the Defence Staff.

29.11 The Chief of the Defence Staff is the final authority in the grievance process and shall deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit.

7. (1) Subsection 29.12(1) of the Act is replaced by the following:

29.12 (1) The Chief of the Defence Staff shall refer every grievance that is of a type prescribed in regulations made by the Governor in Council, and every grievance submitted by a military judge, to the Grievances Committee for its findings and recommendations before the Chief of the Defence Staff considers and determines the grievance. The Chief of the Defence Staff may refer any other grievance to the Grievances Committee.

(2) Paragraph 29.12(2)(b) of the English version of the Act is replaced by the following:

(b) any decision made by an authority in respect of the grievance; and

5. L'article 29 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

(2.1) Le juge militaire ne peut déposer un grief à l'égard d'une question liée à l'exercice de ses fonctions judiciaires.

6. L'article 29.11 de la même loi est remplacé par ce qui suit :

29.101 Malgré le paragraphe 29.1(1), le grief déposé par le juge militaire est étudié et réglé par le chef d'état-major de la défense.

29.11 Le chef d'état-major de la défense est l'autorité de dernière instance en matière de griefs. Dans la mesure où les circonstances et l'équité le permettent, il agit avec célérité et sans formalisme.

7. (1) Le paragraphe 29.12(1) de la même loi est remplacé par ce qui suit :

29.12 (1) Avant d'étudier et de régler tout grief d'une catégorie prévue par règlement du gouverneur en conseil ou tout grief déposé par le juge militaire, le chef d'état-major de la défense le soumet au Comité des griefs pour que celui-ci lui formule ses conclusions et recommandations. Il peut également renvoyer tout autre grief à ce comité.

(2) L'alinéa 29.12(2)(b) de la version anglaise de la même loi est remplacé par ce qui suit :

(b) any decision made by an authority in respect of the grievance; and

CLAUSE 5 MILITARY JUDGES – GRIEVANCE SUBMISSION

Description

- ◆ Provides that a military judge may not submit a grievance related to the exercise of judicial duties.

Rationale

- ◆ This amendment will enhance the perception of the judicial independence of military judges by not permitting the submission of a grievance in respect of a judicial matter and the subsequent review of the grievance by the chain of command.
- ◆ Military judges will still have the right to submit grievances on other matters relating to their service in the Canadian Forces.

CLAUSE 6 MILITARY JUDGES – CONSIDERATION AND DETERMINATION OF GRIEVANCES

Description

- ◆ Provides that a grievance submitted by a military judge shall only be considered and determined by the Chief of the Defence Staff [s. 29.101]; and
- ◆ Provides that the Chief of the Defence Staff shall deal with grievances as informally and expeditiously as the circumstances and the considerations of fairness permit [s. 29.11].

Rationale

- ◆ The new section 29.101 will enhance the perception of the judicial independence of military judges by ensuring that an initial authority does not deal with their grievances. Rather, such a grievance would be submitted to the Chief of the Defence Staff, who would immediately refer it to the Grievances Committee for review to produce findings and recommendations. At the completion of its review, the Grievances Committee would return the grievance to the Chief of the Defence Staff for consideration and determination.
- ◆ The amendment to section 29.11 will impose a duty on the Chief of the Defence Staff to deal promptly with all grievances and should therefore reduce delay in their resolution.

CLAUSE 7 MILITARY JUDGES – REFERRAL OF GRIEVANCES

Description

- ◆ Provides that a grievance submitted by a military judge shall be referred to the Grievances Committee [ss. 29.12(1)]; and
- ◆ Makes a technical amendment to the English version of paragraph 29.12(2)(b).

Rationale

- ◆ The amendment to subsection 29.12(1) will enhance the perception of the judicial independence of military judges by ensuring that their grievances are referred to the Grievances Committee for review to produce findings and recommendations before consideration and determination by the Chief of the Defence Staff.
- ◆ The technical amendment to paragraph 29.12(2)(b) of the English version clarifies that there may not be a decision by an initial grievance authority to provide to the Grievances Committee, i.e., in the case of a grievance submitted by a military judge.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 8-9

8. Subsection 29.13(2) of the Act is replaced by the following:

(2) The Chief of the Defence Staff shall provide reasons for his or her decision in respect of a grievance if

(a) the Chief of the Defence Staff does not act on a finding or recommendation of the Grievances Committee; or

(b) the grievance was submitted by a military judge.

9. Section 29.14 of the Act is replaced by the following:

29.14 (1) The Chief of the Defence Staff may delegate any of his or her powers, duties or functions as final authority in the grievance process to an officer who is directly responsible to the Chief of the Defence Staff, except that

(a) a grievance submitted by an officer may be delegated only to an officer of equal or higher rank; and

(b) a grievance submitted by a military judge may not be delegated.

(2) An officer who is placed in a real, apparent or potential conflict of interest as a result of a delegation may not act as final authority in respect of the grievance and shall advise the Chief of the Defence Staff in writing without delay.

(3) The Chief of the Defence Staff may not delegate the power to delegate under subsection (1).

8. Le paragraphe 29.13(2) de la même loi est remplacé par ce qui suit :

(2) Il motive sa décision s'il s'écarte des conclusions et recommandations du Comité des griefs ou si le grief a été déposé par un juge militaire.

9. L'article 29.14 de la même loi est remplacé par ce qui suit :

29.14 (1) Le chef d'état-major de la défense peut déléguer à tout officier qui relève directement de lui ses attributions à titre d'autorité de dernière instance en matière de griefs, sauf dans les cas suivants :

a) le délégataire a un grade inférieur à celui de l'officier ayant déposé le grief;

b) le grief a été déposé par un juge militaire.

(2) Le délégataire ne peut agir si, de ce fait, il se trouve en situation de conflit d'intérêts réel, apparent ou possible. Le cas échéant, il avise sans délai le chef d'état-major de la défense par écrit.

(3) Le chef d'état-major de la défense ne peut déléguer le pouvoir de délégation que lui confère le paragraphe (1).

CLAUSE 8 MILITARY JUDGES – REQUIREMENT FOR REASONS FOR A GRIEVANCE

Description

- ◆ Requires the Chief of the Defence Staff to provide reasons in respect of any grievance submitted by a military judge

Rationale

- ◆ This amendment will enhance the perception of the judicial independence of military judges by ensuring that the Chief of the Defence Staff provides reasons in respect of any grievance submitted by a military judge. The current provision already requires the Chief of the Defence Staff to provide reasons if a finding or recommendation of the Grievances Committee is not acted upon.

CLAUSE 9 FINAL GRIEVANCE AUTHORITY – DELEGATION

Description

- ◆ Permits the Chief of the Defence Staff to delegate to an officer, who is directly responsible to the Chief of the Defence Staff, the powers, duties or functions of final grievance authority [ss. 29.14(1)];
- ◆ Provides that a grievance submitted by an officer may only be delegated to an officer of equal or higher rank than the person who submitted the grievance [par. 29.14(1)(a)];
- ◆ Provides that the Chief of the Defence Staff may not delegate a grievance submitted by a military judge [par. 29.14(1)(b)];
- ◆ Requires that an officer who is placed in a conflict of interest as a result of a delegation may not act as final authority and shall advise the Chief of the Defence Staff in writing without delay [ss. 29.14(2)]; and
- ◆ Provides that the Chief of the Defence Staff may not delegate the power to delegate [ss. 29.14(3)].

Rationale

- ◆ The Chief of the Defence Staff has many responsibilities in respect of the control and administration of the Canadian Forces. By permitting the delegation of grievances by the Chief of the Defence Staff to an officer who is directly responsible to him or her, delay in the consideration of grievances at the final authority level should be reduced.
- ◆ The perception of probity and impartiality in the adjudication of grievances by a delegated officer is enhanced by requiring the officer to be directly responsible to the Chief of the Defence Staff and by not permitting the delegated officer to consider grievances submitted by an officer of higher rank.
- ◆ In order to enhance the perception of the judicial independence of military judges, the delegation of final authority over their grievances must rest with the Chief of the Defence Staff. As such, an exception to the general ability of the Chief of the Defence Staff to delegate this authority is required in this circumstance.
- ◆ The new provision in respect of conflict of interest provides greater certainty for the action to be taken by the delegated officer in such cases.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 10-11

10. The heading before section 29.16 of the Act is replaced by the following:

MILITARY GRIEVANCES EXTERNAL REVIEW
COMMITTEE

11. (1) Subsection 29.16(1) of the Act is replaced by the following:

29.16 (1) The Canadian Forces Grievance Board is continued as the Military Grievances External Review Committee, consisting of a Chairperson, at least two Vice-Chairpersons and any other members appointed by the Governor in Council that are required to allow it to perform its functions.

(2) Subsection 29.16(10) of the English version of the Act is replaced by the following:

(10) An officer or a non-commissioned member who is appointed as a member of the Grievances Committee shall be seconded to the Grievances Committee in accordance with section 27.

(3) Subsection 29.16(11) of the Act is replaced by the following:

(11) Every member shall, before commencing the duties of office, take the following oath of office:

I,, do solemnly swear (or affirm) that I will faithfully and honestly fulfil my duties as a member of the Military Grievances External Review Committee in conformity with the requirements of the National Defence Act, and of all rules and instructions under that Act applicable to the Military Grievances External Review Committee, and that I will not disclose or make known to any person not legally entitled to it any knowledge or information obtained by me by reason of my office. (And in the case of an oath: So help me God.)

10. L'intertitre précédant l'article 29.16 de la même loi est remplacé par ce qui suit :

COMITÉ EXTERNE D'EXAMEN DES GRIEFS MILITAIRES

11. (1) Le paragraphe 29.16(1) de la même loi est remplacé par ce qui suit :

29.16 (1) Le Comité des griefs des Forces canadiennes, composé d'un président, d'au moins deux vice-présidents et des autres membres nécessaires à l'exercice de ses fonctions, tous nommés par le gouverneur en conseil, est prorogé sous le nom de Comité externe d'examen des griefs militaires.

(2) Le paragraphe 29.16(10) de la version anglaise de la même loi est remplacé par ce qui suit :

(10) An officer or a non-commissioned member who is appointed as a member of the Grievances Committee shall be seconded to the Grievances Committee in accordance with section 27.

(3) Le paragraphe 29.16(11) de la même loi est remplacé par ce qui suit :

(11) Avant d'entrer en fonctions, les membres prêtent le serment suivant :

Moi,, je jure (ou j'affirme solennellement) que j'exercerai fidèlement et honnêtement les devoirs qui m'incombent en ma qualité de membre du Comité externe d'examen des griefs militaires en conformité avec les prescriptions de la Loi sur la défense nationale applicables à celui-ci, ainsi que toutes règles et instructions établies sous son régime, et que je ne révélerai ni ne ferai connaître, sans y avoir été dûment autorisé(e), rien de ce qui parviendra à ma connaissance en raison de mes fonctions. (Dans le cas du serment, ajouter : Ainsi Dieu me soit en aide.)

CLAUSE 10 CANADIAN FORCES GRIEVANCE BOARD – RENAMING

Description

- ◆ Changes the heading before section 29.16 from “Canadian Forces Grievance Board” to “Military Grievances External Review Committee”.

Rationale

- ◆ The heading is changed to reflect the new name of the board continued by section 29.16.

CLAUSE 11 CANADIAN FORCES GRIEVANCE BOARD – RENAMING

Description

- ◆ The Canadian Forces Grievance Board is continued as the Military Grievances External Review Committee [ss. 29.16(1)];
- ◆ Changes the short form of the name in the English version from “Grievance Board” to “Grievances Committee” [ss. 29.16(10)]; and
- ◆ Reflects the new name of the committee in the English and French versions and makes two technical amendments to the French version of the oath of office for committee members [ss. 29.16(11)].

Rationale

- ◆ The Canadian Forces Grievance Board’s current name gives the incorrect impression that it is an organization internal to National Defence that manages the military’s grievance process. The name change will clarify that the Grievances Committee is a review organization that is external to the Department of National Defence and the Canadian Forces.
- ◆ The changes under subsection 29.16(10) are consequent to the name change of the committee. In the English version both the long and short forms of the name are changed while in the French version only the long form of the name is changed.
- ◆ The amendment to the oath of office in the French version of subsection 29.16(11) will provide consistency in the introductory words of the oath of office for military judges, reserve force military judges and members of the Military Grievances External Review Committee (reflecting the name change of the committee) and the Military Police Complaints Commission.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 12-14

12. Subsection 30(4) of the Act is replaced by the following:

(4) Subject to regulations made by the Governor in Council, the Chief of the Defence Staff may cancel the release or transfer of an officer or non-commissioned member if the officer or non-commissioned member consents and the Chief of the Defence Staff is satisfied that the release or transfer was improper.

(5) An officer or non-commissioned member whose release or transfer is cancelled is, except as provided in regulations made by the Governor in Council, deemed for the purpose of this Act or any other Act not to have been released or transferred.

13. Subsection 35(1) of the Act is replaced by the following:

35. (1) The rates and conditions of issue of pay of officers and non-commissioned members, other than those mentioned in paragraph 12(3)(a), shall be established by the Treasury Board.

14. Paragraph 66(1)(b) of the Act is replaced by the following:

(b) has been found guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence and has been either punished in accordance with the sentence or discharged absolutely or on conditions.

12. Le paragraphe 30(4) de la même loi est remplacé par ce qui suit :

(4) Sous réserve des règlements du gouverneur en conseil, le chef d'état-major de la défense peut, avec le consentement de l'officier ou du militaire du rang, annuler la libération ou le transfert de celui-ci, s'il est convaincu que la libération ou le transfert est entaché d'irrégularités.

(5) Si la libération ou le transfert est annulé, l'officier ou le militaire du rang est réputé, sous réserve des règlements du gouverneur en conseil et pour l'application de la présente loi ou de toute autre loi, ne pas avoir été libéré ou transféré.

13. Le paragraphe 35(1) de la même loi est remplacé par ce qui suit :

35. (1) Les taux et conditions de versement de la solde des officiers et militaires du rang, autres que ceux visés à l'alinéa 12(3)a), sont établis par le Conseil du Trésor.

14. L'alinéa 66(1)b) de la même loi est remplacé par ce qui suit :

b) elle a été déclarée coupable de cette infraction par un tribunal civil ou militaire ou par un tribunal étranger et a été soit punie conformément à la sentence, soit absoute inconditionnellement ou sous condition.

CLAUSE 12 CANCELLATION OF RELEASE OR TRANSFER

Description

- ◆ Permits the Chief of the Defence Staff, subject to regulations made by the Governor in Council, to cancel the release or transfer of a member if the member consents to the cancellation and the Chief of the Defence Staff is satisfied that the release or transfer was improper [ss. 30(4)]; and
- ◆ Deems a member whose release or transfer is cancelled not to have been released or transferred, except as provided in regulations made by the Governor in Council [ss. 30(5)].

Rationale

- ◆ Current provisions only permit the cancellation of a release or transfer after a sentence of dismissal, or a finding of guilty by a service tribunal or civil court, ceases to have force and effect. There is no authority to cancel releases or transfers outside of this narrow context, such as when an error occurs in an administrative context.
- ◆ Providing for any improper release or transfer to be cancelled will permit pay, seniority and pension entitlement to be fully restored in all cases of improper release or transfer, thereby ensuring that Canadian Forces members are treated in a fair and consistent manner.
- ◆ Employment and benefits can similarly be reinstated for employees in the public service.

CLAUSE 13 DETERMINATION OF PAY ISSUES FOR THE DIRECTOR OF MILITARY PROSECUTIONS AND THE DIRECTOR OF DEFENCE COUNSEL SERVICES

Description

- ◆ Excludes the application of subsection 35(1) to persons mentioned in paragraph 12(3)(a).

Rationale

- ◆ Subsection 35(1) provides that the rates and conditions of the issue of pay of Canadian Forces members is established by the Treasury Board. The only exception to this are military judges.
- ◆ This amendment will similarly exclude two other key actors of the military justice system – the Director of Military Prosecutions and the Director of Defence Counsel Services – from the application of subsection 35(1) for the same reason.
- ◆ This provision will require the rates and conditions of issue of pay of the Director of Military Prosecutions and the Director of Defence Counsel Services to be made under the more formal regulation-making process under paragraph 12(3)(a), as opposed to instructions made under subsection 35(1).

CLAUSE 14 SUBSEQUENT TRIALS AND DISCHARGES

Description

- ◆ Provides that a person may not be tried or tried again in respect of an offence if an accused has been discharged absolutely or on conditions.

Rationale

- ◆ This amendment is consequential to the introduction of the absolute discharge under section 203.9 and will take into account the use of absolute and conditional discharges by civil and foreign courts.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 15-17

15. The Act is amended by adding the following after section 72:

Civil Defences

72.1 All rules and principles that are followed from time to time in the civil courts and that would render any circumstance a justification or excuse for any act or omission or a defence to any charge are applicable in any proceedings under the Code of Service Discipline.

Ignorance of the Law

72.2 The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by the person.

16. Section 101.1 of the Act is replaced by the following:

101.1 Every person who, without lawful excuse, fails to comply with a condition imposed under this Division or Division 3 or 8, or a condition of an undertaking given under Division 3 or 10, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

17. Subsection 118(1) of the Act is replaced by the following:

118. (1) For the purposes of this section and section 119, "tribunal" includes, in addition to a service tribunal, the Grievances Committee, the Military Judges Inquiry Committee, the Military Police Complaints Commission, a board of inquiry, a commissioner taking evidence under this Act and any inquiry committee established under regulations.

15. La même loi est modifiée par adjonction, après l'article 72, de ce qui suit :

Moyens de défense civils

72.1 Les règles et principes applicables dans les procès tenus devant des tribunaux civils selon lesquels des circonstances données pourraient justifier ou excuser un acte ou une omission ou offrir un moyen de défense sont également opérants dans le cas de toute accusation fondée sur le code de discipline militaire.

Ignorance de la loi

72.2 L'ignorance des dispositions de la présente loi, des règlements ou des ordonnances ou directives dûment notifiées sous son régime n'excuse pas la perpétration d'une infraction.

16. L'article 101.1 de la même loi est remplacé par ce qui suit :

101.1 Quiconque, sans excuse légitime, omet de se conformer à une condition imposée sous le régime de la présente section ou des sections 3 ou 8 ou à une condition d'une promesse remise sous le régime de la section 3 ou d'un engagement pris sous le régime de la section 10 commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale un emprisonnement de moins de deux ans.

17. Le paragraphe 118(1) de la même loi est remplacé par ce qui suit :

118. (1) Pour l'application du présent article et de l'article 119, « tribunal » s'entend, outre d'un tribunal militaire, du Comité des griefs, du comité d'enquête sur les juges militaires, de la Commission d'examen des plaintes concernant la police militaire, de toute commission d'enquête, de tout commissaire recueillant des témoignages sous le régime de la présente loi ou de tout comité d'enquête établi par règlement.

CLAUSE 15 MOVE CIVIL DEFENCES AND IGNORANCE OF THE LAW PROVISIONS

Description

- ◆ Renumbers section 151 dealing with civil defences as a new section 72.1; and
- ◆ Renumbers section 150 dealing with ignorance of the law as a new section 72.2.

Rationale

- ◆ Sections 150 and 151 in Division 2 have been renumbered as sections 72.2 and 72.1 respectively and moved to the beginning of that Division as these sections have general application to all services offences set out in that Division.

CLAUSE 16 FAILURE TO COMPLY WITH CONDITIONS AS A SERVICE OFFENCE

Description

- ◆ Adds failure to comply with a condition imposed under Divisions 2, 3 or 8 as a service offence under section 101.1.

Rationale

- ◆ This amendment will complete the new schemes for conditions of an intermittent sentence under section 148 in Division 2 and conditions of a suspended sentence under section 215 in Division 8.

CLAUSE 17 MILITARY JUDGES – INQUIRY COMMITTEE

Description

- ◆ Changes the name in the English version from “Grievance Board” to “Grievances Committee”;
- ◆ Replaces “Inquiry Committee established for the purposes of subsection 165.1(2) or 165.21(2)” with “Military Judges Inquiry Committee”; and
- ◆ Adds “any inquiry committee established under regulations” to the list of tribunals for purposes of sections 118 and 119.

Rationale

- ◆ This amendment has the effect of establishing the Military Judges Inquiry Committee in the *National Defence Act*. It was previously found under regulations.
- ◆ This amendment will ensure that any contempt or giving of false evidence in respect of the Grievances Committee, the Military Judges Inquiry Committee or an inquiry committee established under regulations may be tried as a service offence.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 18-21

18. Section 137 of the English version of the Act is replaced by the following:

137. (1) If the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused person may be found guilty of the attempt.

(2) If, in the case of a summary trial, an attempt to commit an offence is charged but the evidence establishes the commission of the complete offence, the accused person is not entitled to be acquitted, but may be found guilty of the attempt unless the officer presiding at the trial does not make a finding on the charge and directs that the accused person be charged with the complete offence.

(3) An accused person who is found guilty under subsection (2) of an attempt to commit an offence is not liable to be tried again for the offence that they were charged with attempting to commit.

19. Sections 140.3 and 140.4 of the Act are repealed.

20. Subsection 142(2) of the Act is replaced by the following:

(2) A non-commissioned member above the rank of private who is sentenced to detention is deemed to be reduced to the rank of private until the sentence of detention is completed.

21. The Act is amended by adding the following after section 145:

145.1 (1) If an offender is in default of payment of a fine, the Minister may, in addition to any other method provided by law for recovering the fine, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in any court in Canada that has jurisdiction to enter a judgment for that amount.

(2) A judgment that is entered under this section is enforceable in the same manner as if it were a judgment obtained by the Minister in civil proceedings.

18. L'article 137 de la version anglaise de la même loi est remplacé par ce qui suit :

137. (1) If the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused person may be found guilty of the attempt.

(2) If, in the case of a summary trial, an attempt to commit an offence is charged but the evidence establishes the commission of the complete offence, the accused person is not entitled to be acquitted, but may be found guilty of the attempt unless the officer presiding at the trial does not make a finding on the charge and directs that the accused person be charged with the complete offence.

(3) An accused person who is found guilty under subsection (2) of an attempt to commit an offence is not liable to be tried again for the offence that they were charged with attempting to commit.

19. Les articles 140.3 et 140.4 de la même loi sont abrogés.

20. Le paragraphe 142(2) de la même loi est remplacé par ce qui suit :

(2) Le militaire du rang — autre qu'un soldat — qui fait l'objet d'une peine de détention est réputé rétrogradé au grade de soldat jusqu'à ce qu'il ait purgé sa peine.

21. La même loi est modifiée par adjonction, après l'article 145, de ce qui suit :

145.1 (1) Si le contrevenant omet de payer une amende, le ministre, outre qu'il peut se prévaloir des autres recours prévus par la loi, peut, par le dépôt du jugement infligeant l'amende, faire inscrire le montant de l'amende, ainsi que les frais éventuels, au tribunal canadien compétent.

(2) L'inscription vaut jugement exécutoire contre le contrevenant comme s'il s'agissait d'un jugement rendu contre lui, devant ce tribunal, au terme d'une action civile au profit du ministre.

CLAUSE 18 CHANGE TERMINOLOGY: “CONVICTED” TO “FOUND GUILTY”

Description

- ◆ Changes “convicted” to “found guilty” in subsections 137(1) to (2); and
- ◆ Makes several technical amendments.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency in the English version.

CLAUSE 19 CONSOLIDATE IMPRISONMENT PROVISIONS

Description

- ◆ Repeals section 140.3 dealing with sentences of imprisonment for life; and
- ◆ Repeals section 140.4 dealing with the powers of a court martial to delay parole.

Rationale

- ◆ These sections will be renumbered as sections 226.1 and 226.2 respectively and placed in Division 8 to consolidate provisions applicable to imprisonment in that Division.

CLAUSE 20 RANK DURING DETENTION WHILE SERVING AN INTERMITTENT SENTENCE

Description

- ◆ Provides that a non-commissioned member above the rank of private who is sentenced to detention is deemed to be reduced to the rank of private until the sentence of detention is completed.

Rationale

- ◆ While serving an intermittent sentence, the deemed reduction to the rank of private only during the actual periods of confinement, with return to the member’s substantive rank between such periods, would cause confusion as to the reporting responsibility and duties of the member.
- ◆ The reduction in rank will therefore apply during the entire period of the intermittent sentence of detention imposed under section 148.

CLAUSE 21 RECOVERY OF UNPAID FINES

Description

- ◆ Provides that the Minister may, by filing the conviction of an offender who is in default of payment of a fine, enter as a judgment the amount of the fine and costs in any court in Canada that has jurisdiction [ss. 145.1(1)]; and
- ◆ Provides that a judgment is enforceable in the same manner as if it were a judgment obtained by the Minister in civil proceedings [ss. 145.1(2)].

Rationale

- ◆ This amendment will permit the efficient recovery of unpaid fines ordered at service tribunals, similar to the enforcement action permitted under section 734.6 of the *Criminal Code*.
- ◆ This would normally only apply to those cases in which the offender has been released from the Canadian Forces or was not a member of the Canadian Forces – otherwise the pay of the member would be applied towards the payment of the fine.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 22

22. (1) Subsection 147.1(1) of the Act is replaced by the following:

147.1 (1) If a court martial considers it desirable, in the interests of the safety of an offender or of any other person, it shall — in addition to any other punishment that may be imposed for the offence — make an order prohibiting the offender from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, on convicting or discharging absolutely the offender of

(a) an offence in the commission of which violence against a person was used, threatened or attempted;

(b) an offence that involves, or the subject matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance;

(c) an offence relating to the contravention of any of sections 5 to 7 of the Controlled Drugs and Substances Act; or

(d) an offence that is punishable under section 130 and that is described in paragraph 109(1)(b) of the *Criminal Code*.

(2) Subsection 147.1(3) of the Act is replaced by the following:

(3) Unless it specifies otherwise, an order made under subsection (1) does not prohibit an officer or a non-commissioned member from possessing any thing necessary for the performance of their duties.

22. (1) Le paragraphe 147.1(1) de la même loi est remplacé par ce qui suit :

147.1 (1) La cour martiale doit, si elle en arrive à la conclusion qu'il est souhaitable pour la sécurité du contrevenant ou pour celle d'autrui de le faire, en plus de toute autre peine qu'elle lui inflige, rendre une ordonnance lui interdisant d'avoir en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou plusieurs de ces objets, lorsqu'elle le déclare coupable ou l'absout inconditionnellement, selon le cas :

a) d'une infraction perpétrée avec usage, tentative ou menace de violence contre autrui;

b) d'une infraction relative à une arme à feu, une arbalète, une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé, des munitions, des munitions prohibées ou des substances explosives;

c) d'une infraction à l'un des articles 5 à 7 de la Loi réglementant certaines drogues et autres substances;

d) d'une infraction visée à l'alinéa 109(1)b) du *Code criminel* punissable en vertu de l'article 130.

(2) Le paragraphe 147.1(3) de la même loi est remplacé par ce qui suit :

(3) Sauf indication contraire de l'ordonnance, celle-ci n'interdit pas à l'intéressé d'avoir en sa possession les objets nécessaires à son service comme officier ou militaire du rang.

CLAUSE 22 ABSOLUTE DISCHARGES AND WEAPONS PROHIBITION ORDERS

Description

- ◆ Provides that a weapons prohibition order may be made under subsection 147.1(1) if an accused is discharged absolutely at a court martial; and
- ◆ Makes technical amendments to subsection 147.1(3).

Rationale

- ◆ Currently, a weapons prohibition order may be made if a person is convicted at court martial of one of the specific offences listed in subsection 147.1(1). The amendment to subsection 147.1(1) is consequential to the introduction of the absolute discharge under section 203.9.
- ◆ The other amendments are made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 23

23. (1) The portion of section 147.2 of the Act before paragraph (a) is replaced by the following:

147.2 A court martial that makes an order under subsection 147.1(1) may, in the order, require the offender against whom the order is made to surrender to a member of the military police or to the offender's commanding officer

(2) Paragraphs 147.2(a) and (b) of the English version of the Act are replaced by the following:

(a) any thing the possession of which is prohibited by the order that is in the possession of the offender on the commencement of the order; and

(b) every authorization, licence and registration certificate relating to any thing the possession of which is prohibited by the order that is held by the offender on the commencement of the order.

(3) The portion of section 147.2 of the English version of the Act after paragraph (b) is replaced by the following:

The court martial shall specify in the order a reasonable period for surrendering the thing or document, and during that period section 117.01 of the *Criminal Code* does not apply to the offender.

23. (1) Le passage de l'article 147.2 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

147.2 La cour martiale qui rend l'ordonnance peut l'assortir d'une obligation pour la personne visée de remettre à un policier militaire ou à son commandant :

(2) Les alinéas 147.2a) et b) de la version anglaise de la même loi sont remplacés par ce qui suit :

(a) any thing the possession of which is prohibited by the order that is in the possession of the offender on the commencement of the order; and

(b) every authorization, licence and registration certificate relating to any thing the possession of which is prohibited by the order that is held by the offender on the commencement of the order.

(3) Le passage de l'article 147.2 de la version anglaise de la même loi suivant l'alinéa b) est remplacé par ce qui suit :

The court martial shall specify in the order a reasonable period for surrendering the thing or document, and during that period section 117.01 of the *Criminal Code* does not apply to the offender.

CLAUSE 23 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase “an officer or non-commissioned member appointed under the regulations for the purposes of section 156” with “a member of the military police”;
- ◆ Changes the word “person” to “offender” in the English version; and
- ◆ Makes technical amendments to the English version of the portion of section 147.2 following paragraph (b).

Rationale

- ◆ This amendment is consequential to the introduction of the definition “military police” in subsection 2(1).
- ◆ The word “person” is changed to “offender” in the English version of the *Act* for consistency with section 147.1.
- ◆ The amendments are made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 24

24. Section 148 of the Act and the heading before it are replaced by the following:

Intermittent Sentences

148. (1) A service tribunal that sentences an offender to imprisonment or detention for a period of 14 days or less may, on application of the offender and having regard to the offender's age and character, the nature of the offence and the circumstances surrounding its commission, and the availability of appropriate accommodation to ensure compliance with the sentence, order

(a) that the sentence be served intermittently at the times specified in the order; and

(b) that the offender comply with any conditions prescribed in the order when the offender is not in confinement during the period during which the sentence is served.

(2) An offender who is ordered to serve a sentence intermittently may apply to have the sentence served on consecutive days by applying

(a) to their commanding officer, in the case of a sentence imposed by summary trial; or

(b) to a military judge after giving notice to the Director of Military Prosecutions, in the case of a sentence imposed by a court martial.

(3) If a service tribunal imposes a sentence of imprisonment or detention on an offender who is subject to an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days unless the tribunal orders otherwise.

24. L'article 148 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

Peines discontinues

148. (1) Le tribunal militaire qui condamne le contrevenant à une période d'emprisonnement ou de détention maximale de quatorze jours peut, sur demande présentée par celui-ci et compte tenu de son âge, de sa réputation, de la nature de l'infraction, des circonstances dans lesquelles elle a été commise et de la disponibilité d'un établissement adéquat pour purger la peine, ordonner :

a) que la peine soit purgée de façon discontinue aux moments prévus par l'ordonnance;

b) que le contrevenant se conforme aux conditions prévues par l'ordonnance pendant toute période où il purge sa peine alors qu'il n'est pas incarcéré.

(2) Le contrevenant qui purge une peine à exécution discontinue peut demander de la purger de façon continue si :

a) dans le cas où la peine a été infligée dans le cadre d'un procès sommaire, il en fait la demande à son commandant;

b) dans le cas où la peine a été infligée par la cour martiale, il en fait la demande à un juge militaire après en avoir informé le directeur des poursuites militaires.

(3) Dans le cas où le tribunal militaire inflige une peine d'emprisonnement ou de détention au contrevenant purgeant déjà une peine discontinue pour une autre infraction, la partie non purgée de cette peine est, sauf ordonnance contraire du tribunal, purgée de façon continue.

CLAUSE 24 INTERMITTENT SENTENCES (PART 1)

Description

- ◆ Changes the heading before section 148 from “Sentences” to “Intermittent Sentences”;
- ◆ Permits a service tribunal to order the imposition of an intermittent sentence of imprisonment or detention for a period of 14 days or less, and requires an offender to comply with conditions in the order when not in confinement during the period of the sentence [ss. 148(1)];
- ◆ Permits an offender who is ordered to serve a sentence intermittently to apply to have the sentence served on consecutive days [ss. 148(2)]; and
- ◆ Provides that, if a service tribunal imposes a sentence of imprisonment or detention on an offender who is already serving an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days [ss. 148(3)].

Rationale

- ◆ The current section 148 dealing with the passing of one sentence will be renumbered as section 203.96 to consolidate general provisions dealing with sentencing in Division 7.1.
- ◆ The amendment to subsection 148(1) will provide additional flexibility in the military justice system by permitting service tribunals to order the serving of punishments of imprisonment and detention on an intermittent basis, similar to section 732 of the *Criminal Code*. Serving such a punishment on an intermittent basis will minimize the disruption, in appropriate circumstances, to an offender's career, education and family.
- ◆ Providing for the conditions of an intermittent punishment to be varied or substituted on application by an offender under subsection 148(2) will provide flexibility in adapting the conditions to changing circumstances for the offender.
- ◆ Providing for an unexpired portion of an intermittent sentence to be served on consecutive days when an offender is sentenced to imprisonment or detention for another offence will ensure that offenders complete their full custodial sentence for the prior offence.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 24

(4) On application by a representative of the Canadian Forces who is a member of a class designated for that purpose by regulations made by the Governor in Council, a determination of whether an offender has breached a condition imposed under paragraph (1)(b) may be made by

(a) the offender's commanding officer, in the case of a condition imposed by a summary trial; or

(b) a military judge, in the case of a condition imposed by a court martial.

(5) If a person referred to in paragraph (4)(a) or (b) determines, after giving the offender and the applicant an opportunity to make representations, that the offender has breached a condition, the person may

(a) revoke the order made under subsection (1) and order that the offender serve the sentence on consecutive days; or

(b) vary any conditions imposed under paragraph (1)(b) and substitute or add other conditions as they see fit.

(4) Sur demande présentée par un représentant des Forces canadiennes appartenant à une catégorie prévue par règlement du gouverneur en conseil, la personne ci-après peut décider si le contrevenant a enfreint une condition de l'ordonnance :

a) s'agissant d'une ordonnance rendue dans le cadre d'un procès sommaire, le commandant du contrevenant;

b) s'agissant d'une ordonnance rendue par une cour martiale, un juge militaire.

(5) Si elle conclut que le contrevenant a enfreint une condition de l'ordonnance, la personne visée aux alinéas (4)a) ou b) peut, après avoir donné aux intéressés l'occasion de présenter leurs observations :

a) révoquer l'ordonnance et ordonner que le contrevenant purge sa peine de façon continue;

b) modifier ou remplacer toute condition imposée au titre de l'alinéa (1)b) ou ajouter de nouvelles conditions, selon ce qu'elle estime indiqué.

CLAUSE 24 INTERMITTENT SENTENCES (PART 2)

Description

- ◆ Permits a hearing to be held to determine if an offender has breached a condition of an intermittent sentence [ss. 148(4)]; and
- ◆ Provides, if it is found that an offender has breached a condition, that the order of intermittent sentence may either be revoked and the sentence served on consecutive days, or any conditions of the order varied, or a condition substituted or added [ss. 148(5)].

Rationale

- ◆ This amendment will provide that a representative of the Canadian Forces may apply for a hearing before either the offender's commanding officer or a military judge (depending on the type of service tribunal that imposed the condition) to determine whether an offender has breached a condition of an intermittent sentence.
- ◆ Procedural fairness will be afforded by providing for a hearing at which the offender may make representations as to an alleged breach of the condition of an intermittent punishment.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 25-27

25. The heading before section 150 and sections 150 and 151 of the Act are repealed.

26. Paragraph (d) of the definition “infraction désignée” in section 153 of the French version of the Act is replaced by the following:

d) toute infraction d'organisation criminelle punissable aux termes de la présente loi;

27. Section 155 of the Act is amended by adding the following after subsection (2):

(2.1) Unless ordered to do so by a superior officer, an officer or non-commissioned member shall not order the arrest of a person, nor arrest a person, without a warrant for an offence that is not a serious offence if:

(a) they have reasonable grounds to believe that the public interest may be satisfied without so arresting the person, having regard to all the circumstances including the need to

(i) establish the person's identity,

(ii) secure or preserve evidence of or relating to the offence, and

(iii) prevent the continuation or repetition of the offence or the commission of another offence; and

(b) they have no reasonable grounds to believe that, if the person is not so arrested, the person will fail to attend before a service tribunal in order to be dealt with according to law.

25. L'intertitre précédant l'article 150 et les articles 150 et 151 de la même loi sont abrogés.

26. L'alinéa d) de la définition de « infraction désignée », à l'article 153 de la version française de la même loi, est remplacé par ce qui suit :

d) toute infraction d'organisation criminelle punissable aux termes de la présente loi;

27. L'article 155 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

(2.1) Sauf s'il en a reçu l'ordre d'un supérieur, l'officier ou le militaire du rang ne peut arrêter une personne sans mandat, ni ordonner son arrestation sans mandat, pour une infraction qui n'est pas une infraction grave si les conditions ci-après sont réunies :

a) il a des motifs raisonnables de croire que l'intérêt public peut être sauvegardé sans que la personne soit arrêtée sans mandat, eu égard aux circonstances, notamment la nécessité :

(i) d'établir l'identité de la personne,

(ii) de recueillir ou de conserver des éléments de preuve afférents à l'infraction,

(iii) d'empêcher que l'infraction se poursuive ou se répète ou qu'une autre infraction soit commise;

b) il n'a aucun motif raisonnable de croire que, s'il n'arrête pas la personne sans mandat, elle omettra de se présenter devant le tribunal militaire pour être jugée selon la loi.

CLAUSE 25 MOVE CIVIL DEFENCES AND IGNORANCE OF THE LAW PROVISIONS

Description

- ◆ Repeals section 150 dealing with civil defences; and
- ◆ Repeals section 151 dealing with ignorance of the law.

Rationale

- ◆ Sections 150 and 151 will be repealed and renumbered as sections 72.1 and 72.2 respectively – the second and third provisions in Division 2.
- ◆ These provisions have general application to all service offences set out in that Division and should therefore be at the beginning of that Division.
- ◆ Related to Clause 15.

CLAUSE 26 AMEND FRENCH PROVISION WITH “TOUTE INFRACTION D’ORGANISATION CRIMINELLE”

Description

- ◆ Replaces “tout acte de gangstérisme” with “toute infraction d’organisation criminelle” in paragraph (d) of the definition “infraction désignée” in the French version of section 153 .

Rationale

- ◆ This amendment will provide consistency in the French version with amendments made to the *National Defence Act* by sections 67 and 68 of chapter 32 of Statutes of Canada 2001.

CLAUSE 27 UNNECESSARY ARRESTS

Description

- ◆ Sets out the circumstances in which an officer or non-commissioned member, unless ordered to do so by a superior officer, shall not order the arrest of a person without a warrant or arrest a person without a warrant for an offence that is not a serious offence.

Rationale

- ◆ This amendment is similar to subsection 495(2) of the *Criminal Code* and will prevent the unnecessary arrests of persons subject to the *Code of Service Discipline* in the case of service offences which are not serious offences as defined in subsection 2(1) of the *Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 28-30

28. (1) The portion of section 156 of the Act before paragraph (a) is replaced by the following:

156. (1) Officers and non-commissioned members who are appointed as members of the military police under regulations made for the purposes of this section may

(2) Section 156 of the Act is amended by adding the following after subsection (1):

(2) A member of the military police shall not arrest a person without a warrant for an offence that is not a serious offence if paragraphs 155(2.1)(a) and (b) apply.

29. Subsection 158(3) of the Act is replaced by the following:

(3) The officer or non-commissioned member in charge of a guard or a guard-room or a member of the military police shall receive and keep a person under arrest who is committed to their custody.

30. Subsection 158.6(2) of the French version of the Act is replaced by the following:

(2) L'ordonnance de libération, inconditionnelle ou sous condition, rendue par l'officier réviseur peut être révisée par le commandant qui a désigné celui-ci ou, lorsqu'il est lui-même commandant, par l'officier immédiatement supérieur devant lequel il est responsable en matière de discipline.

28. (1) Le passage de l'article 156 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

156. (1) Les officiers et militaires du rang nommés policiers militaires aux termes des règlements d'application du présent article peuvent :

(2) L'article 156 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

(2) Le policier militaire ne peut arrêter une personne sans mandat pour une infraction qui n'est pas une infraction grave si les conditions prévues aux alinéas 155(2.1)a) et b) sont réunies.

29. Le paragraphe 158(3) de la même loi est remplacé par ce qui suit :

(3) L'officier ou le militaire du rang commandant une garde ou un corps de garde ou le policier militaire prend en charge la personne arrêtée qui est confiée à sa garde.

30. Le paragraphe 158.6(2) de la version française de la même loi est remplacé par ce qui suit :

(2) L'ordonnance de libération, inconditionnelle ou sous condition, rendue par l'officier réviseur peut être révisée par le commandant qui a désigné celui-ci ou, lorsqu'il est lui-même commandant, par l'officier immédiatement supérieur devant lequel il est responsable en matière de discipline.

CLAUSE 28 MILITARY POLICE – ARRESTS

Description

- ◆ Makes technical amendments in the English version [ss. 156(1)]; and
- ◆ Sets out the circumstances in which a member of the military police shall not arrest a person without a warrant for an offence that is not a serious offence [ss. 156(2)].

Rationale

- ◆ The amendments to subsection 156(1) will provide consistency in the English version and reflect current drafting norms.
- ◆ The new subsection 156(2) is similar to subsection 495(2) of the *Criminal Code* and will prevent the unnecessary arrests of persons subject to the *Code of Service Discipline* by military police in the case of service offences which are not serious offences as defined in subsection 2(1) of the *Act*.

CLAUSE 29 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase “an officer or non-commissioned member appointed for the purposes of section 156” with “a member of the military police”.

Rationale

- ◆ This amendment is consequential to the introduction of the definition “military police” in subsection 2(1).

CLAUSE 30 REPLACE “MODIFIÉE” WITH “RÉVISÉE”

Description

- ◆ Replaces the word “modifiée” with “révisée”.

Rationale

- ◆ This amendment will provide consistency in the French version.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 31-32

31. The Act is amended by adding the following before section 159:

158.7 (1) A military judge may, on application by counsel for the Canadian Forces or by a person released with conditions and after giving counsel and the released person an opportunity to be heard, review any of the following directions and make any direction that a custody review officer may make under subsection 158.6(1):

(a) a direction that was reviewed under subsection 158.6(2);

(b) a direction that was made under subsection 158.6(3); and

(c) a direction that was made under this section.

(2) A military judge shall not direct that a condition, other than the condition of keeping the peace and being of good behaviour, be imposed unless counsel for the Canadian Forces shows cause why it is necessary that the condition be imposed.

(3) If an application under this section has been heard, another application under this section may not be made with respect to the same person, except with leave of a military judge, before the expiry of 30 days from the day on which a decision was made in respect of the most recent application.

32. Paragraphs 159.2(b) and (c) of the Act are replaced by the following:

(b) custody is necessary for the protection or the safety of the public, having regard to all the circumstances including any substantial likelihood that the person will, if released from custody, commit an offence or interfere with the administration of military justice; and

(c) custody is necessary to maintain public trust in the administration of military justice, having regard to the circumstances including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

31. La même loi est modifiée par adjonction, avant l'article 159, de ce qui suit :

158.7 (1) Le juge militaire peut, sur demande de l'avocat des Forces canadiennes ou de la personne libérée sous condition et après leur avoir donné l'occasion de présenter leurs observations, réviser les ordonnances ci-après et rendre toute ordonnance aux termes du paragraphe 158.6(1) :

a) l'ordonnance révisée au titre du paragraphe 158.6(2);

b) celle rendue au titre du paragraphe 158.6(3);

c) celle rendue au titre du présent article.

(2) Le juge militaire ne peut toutefois imposer de conditions autres que celles de ne pas troubler l'ordre public et d'avoir une bonne conduite que si l'avocat des Forces canadiennes en démontre la nécessité.

(3) Il ne peut être fait, sauf avec l'autorisation d'un juge militaire, de nouvelle demande en vertu du présent article relativement à la même personne avant l'expiration d'un délai de trente jours après la date de la décision relative à la demande précédente.

32. Les alinéas 159.2b) et c) de la même loi sont remplacés par ce qui suit :

b) qu'elle est nécessaire pour assurer la protection ou la sécurité du public, eu égard aux circonstances, notamment toute probabilité marquée que la personne, si elle est mise en liberté, commettra une infraction ou nuira à l'administration de la justice militaire;

c) qu'elle est nécessaire pour maintenir la confiance du public dans l'administration de la justice militaire, eu égard aux circonstances, notamment le fait que l'accusation paraît fondée, la gravité de l'infraction, les circonstances entourant sa perpétration et le fait que la personne encourt, en cas de condamnation, une longue peine d'emprisonnement.

CLAUSE 31 CONDITIONS OF RELEASE REVIEW

Description

- ◆ Provides that a military judge may, on application, review directions on release from custody [ss. 158.7(1)];
- ◆ Provides that a military judge shall not direct that a condition, other than the condition of keeping the peace and being of good behaviour, be imposed unless counsel for the Canadian Forces shows cause [ss. 158.7(2)]; and
- ◆ Prevents another application under this section from being made, except with leave of a military judge, before the expiry of thirty days from the day a decision was made in respect of the last application [ss. 158.7(3)].

Rationale

- ◆ A review by a military judge of conditions of release provides greater protection of individual liberty interests of persons who are arrested and released with conditions, consistent with the *Canadian Charter of Rights and Freedoms*.
- ◆ An accused person's liberty interests are further protected by requiring that counsel for the Canadian Forces show cause why conditions beyond keeping the peace and being of good behaviour are required in the particular circumstances of the individual in question.
- ◆ Preventing repeated applications is consistent with subsections 520(8) and 521(9) of the *Criminal Code*.

CLAUSE 32 CUSTODY REVIEW

Description

- ◆ Adds the word "military" before "justice" in paragraph 159.2(b); and
- ◆ Replaces the words "any other just cause has been shown" with "custody is necessary in order to maintain public trust in the administration of military justice" in paragraph 159.2(c).

Rationale

- ◆ The amendment to paragraph 159.2(b) will ensure consistency in the use of the phrase "administration of military justice" in the *Act*.
- ◆ The amendment to paragraph 159.2(c) is necessary to address the issue of open-ended judicial discretion to deny bail raised in the case of *R. v. Hall*, [2002] 3 S.C.R. 309, in relation to a similar provision in paragraph 515(10)(c) of the *Criminal Code*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 33-35

33. The Act is amended by adding the following after section 159.9:

Direction Cancelled

159.91 A direction to retain a person in custody or impose conditions on their release is cancelled in the circumstances prescribed in regulations made by the Governor in Council.

34. Section 161 of the Act is renumbered as subsection 161(1) and is amended by adding the following:

(2) A charge shall be laid as expeditiously as the circumstances permit against a person who is retained in custody or released from custody with conditions.

35. Subsection 163(1.1) of the Act is replaced by the following:

(1.1) A commanding officer may not try an accused person by summary trial unless the charge is laid within six months after the day on which the service offence is alleged to have been committed and the summary trial commences within one year after that day.

(1.2) The accused person may, in accordance with regulations made by the Governor in Council, waive the application of subsection (1.1).

33. La même loi est modifiée par adjonction, après l'article 159.9, de ce qui suit :

Annulation de l'ordonnance

159.91 L'ordonnance de maintien sous garde ou de libération sous condition est annulée dans les circonstances prévues par règlement du gouverneur en conseil.

34. L'article 161 de la même loi devient le paragraphe 161(1) et est modifié par adjonction de ce qui suit :

(2) Si la personne est en détention préventive ou en liberté sous condition, l'accusation doit être portée avec toute la célérité que les circonstances permettent.

35. Le paragraphe 163(1.1) de la même loi est remplacé par ce qui suit :

(1.1) Le commandant ne peut juger sommairement l'accusé que si l'accusation est portée au plus tard six mois après la perpétration de l'infraction reprochée et que si le procès sommaire commence dans l'année qui suit la perpétration de cette infraction.

(1.2) L'accusé peut choisir, selon les modalités prévues par règlement du gouverneur en conseil, de se soustraire à l'application du paragraphe (1.1).

CLAUSE 33 CUSTODY OR RELEASE ON CONDITIONS – AUTOMATIC CANCELLATION

Description

- ◆ Adds the heading “Direction Cancelled” before section 159.91; and
- ◆ Provides that a direction to retain a person in custody or impose conditions on release from custody is cancelled in circumstances prescribed in regulations made by the Governor in Council [s. 159.91].

Rationale

- ◆ This amendment will ensure greater protection, consistent with the *Canadian Charter of Rights and Freedoms*, of individual liberty interests of persons retained in custody or released on conditions.
- ◆ It will do so by providing for such directions to be automatically cancelled in prescribed circumstances, thereby enhancing the fairness and efficiency of the military justice system.

CLAUSE 34 CUSTODY OR RELEASE ON CONDITIONS – REDUCING DELAY

Description

- ◆ Requires that a charge be laid as expeditiously as the circumstances permit against a person who is retained in custody or released from custody with conditions.

Rationale

- ◆ This amendment will reduce delay in laying charges following the arrest of a person who is retained in custody or released from custody with conditions, similar to the operation of paragraph 505(b) of the *Criminal Code*.
- ◆ Such delay could infringe the person’s right to liberty and security of person under section 7 of the *Canadian Charter of Rights and Freedoms*.

CLAUSE 35 SUMMARY TRIALS – SIX MONTH LIMITATION TO LAY CHARGES

Description

- ◆ Provides, in addition to the existing limitation period, that a commanding officer may not try an accused by summary trial unless the charge is laid within 6 months after the day on which the service offence is alleged to have been committed [ss. 163(1.1)]; and
- ◆ Provides that the limitation periods will not apply if the accused person, in accordance with regulations made by the Governor in Council, waives the application of subsection (1.1) [ss. 163(1.2)].

Rationale

- ◆ Disposal of charges by summary trial afford the accused person more speedy resolution of the charges and provide for limited powers of punishment compared to those at court martial. Summary trials also provide the Canadian Forces with an effective means by which discipline, efficiency and morale may be maintained.
- ◆ The amendments to subsection 163(1.1) will enhance fairness to accused persons by adding a six-month limitation period for the laying of a charge that may be disposed of by summary trial. Such a limitation will ensure the accused is dealt with in a just and timely manner – a timeliness that also provides a benefit to the Canadian Forces by increasing the efficiency of the summary trial system.
- ◆ A charge laid after six months will be referred for disposal by court martial, where the accused is accorded all the attendant procedural and legal guarantees and protections.
- ◆ The new subsection 163(1.2) provides that the limitation periods in subsection 163(1.1) will not apply when waived by an accused person. This will permit the charges to continue to be dealt with by summary trial at the accused person’s discretion.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 36-37

36. (1) Paragraph 164(1)(a) of the Act is replaced by the following:

(a) the accused person is an officer below the rank of colonel or a non-commissioned member above the rank of sergeant;

(2) Subsection 164(1.1) of the Act is replaced by the following:

(1.1) A superior commander may not try an accused person by summary trial unless the charge is laid within six months after the day on which the service offence is alleged to have been committed and the summary trial commences within one year after that day.

(1.2) The accused person may, in accordance with regulations made by the Governor in Council, waive the application of subsection (1.1).

(1.3) Despite paragraph (1)(a), a superior commander may not try a military judge by summary trial and may only try an officer of the rank of lieutenant-colonel by summary trial if the superior commander is of or above the rank of colonel.

(3) Subsection 164(3) of the Act is repealed.

(4) Section 164 of the Act is amended by adding the following after subsection (4):

(5) A superior commander who passes sentence on an officer cadet may include, in addition to the punishments described in subsection (4), minor punishments.

37. Subsection 165(2) of the English version of the Act is replaced by the following:

(2) For the purposes of this Act, a charge is preferred when the charge sheet in respect of the charge is signed by the Director of Military Prosecutions, or an officer authorized by the Director of Military Prosecutions to do so, and filed with the Court Martial Administrator.

36. (1) L'alinéa 164(1)a de la même loi est remplacé par ce qui suit :

a) il s'agit d'un officier d'un grade inférieur à celui de colonel ou d'un militaire du rang d'un grade supérieur à celui de sergent;

(2) Le paragraphe 164(1.1) de la même loi est remplacé par ce qui suit :

(1.1) Le commandant supérieur ne peut juger sommairement l'accusé que si l'accusation est portée au plus tard six mois après la perpétration de l'infraction reprochée et que si le procès sommaire commence dans l'année qui suit la perpétration de cette infraction.

(1.2) L'accusé peut choisir, selon les modalités prévues par règlement du gouverneur en conseil, de se soustraire à l'application du paragraphe (1.1).

(1.3) Malgré l'alinéa (1)a), le commandant supérieur ne peut juger sommairement un lieutenant-colonel que s'il détient lui-même au moins le grade de colonel et il ne peut en aucun cas juger sommairement un juge militaire.

(3) Le paragraphe 164(3) de la même loi est abrogé.

(4) L'article 164 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

(5) Si l'accusé est un élève-officier, le commandant supérieur peut, outre toute peine prévue au paragraphe (4), infliger une peine mineure.

37. Le paragraphe 165(2) de la version anglaise de la même loi est remplacé par ce qui suit :

(2) For the purposes of this Act, a charge is preferred when the charge sheet in respect of the charge is signed by the Director of Military Prosecutions, or an officer authorized by the Director of Military Prosecutions to do so, and filed with the Court Martial Administrator.

CLAUSE 36 SUMMARY TRIALS – SUPERIOR COMMANDER’S POWERS

Description

- ◆ Permits an officer of the rank of lieutenant-colonel to be tried at a summary trial by superior commander [par. 164(1)(a)];
- ◆ Provides, in addition to the existing limitation period, that a superior commander may not try an accused by summary trial unless the charge is laid within six months after the day on which the service offence is alleged to have been committed [ss. 164(1.1)];
- ◆ Provides that the limitation periods will not apply if the accused person, in accordance with regulations made by the Governor in Council, waives their application [ss. 164(1.2)];
- ◆ Provides that a superior commander may not try a military judge and may only try a lieutenant-colonel by summary trial if the superior commander is of or above the rank of colonel [ss. 164(1.3)];
- ◆ Repeals the provision permitting a superior commander to try an officer of the rank of lieutenant-colonel by summary trial in any circumstances that are prescribed by the Governor in Council in regulations [ss. 164(3)]; and
- ◆ Permits a superior commander to impose minor punishments on officer cadets [ss. 164(5)].

Rationale

- ◆ This amendment will provide additional flexibility in the handling of a charge laid against a lieutenant-colonel by permitting the officer to be tried at a summary trial by a superior commander, if appropriate. At present, lieutenant-colonels may only be tried by summary trial if regulations are made, and such regulations have not been made. Therefore the only currently existing option to try a lieutenant-colonel is to proceed by court martial – a situation which may not be in the best interests of the accused.
- ◆ The amendments to subsection 164(1.1) will enhance fairness to accused persons by adding a six-month limitation period for the laying of a charge that may be disposed of by summary trial. A charge laid after six months will be referred for disposal by court martial, where the accused is accorded all the attendant procedural and legal guarantees.
- ◆ The new subsection 164(1.2) provides that the limitation periods in subsection 164(1.1) will not apply when waived by an accused person. This waiver by the accused will permit the charges to remain to be dealt with by summary trial. Disposal of charges by summary trial afford the accused person more speedy resolution of the charges and provide for limited powers of punishment compared to those at court martial.
- ◆ The amendments to 164(1)(a) will permit an officer of the rank of lieutenant-colonel to be tried by summary trial by a superior commander. Military judges hold the rank of lieutenant-colonel and would therefore be otherwise caught by this provision. Excluding military judges from trial by summary trial will protect the perception of their judicial independence.
- ◆ As officers in training, officer cadets normally serve in training and educational environments, and often have limited experience in the Canadian Forces. The flexibility for a superior commander to impose minor punishments appropriate to a training environment – such as confinement to ship or barracks, extra work and drill, stoppage of leave or a caution – will enhance the corrective and rehabilitative effects of punishments in this context.

CLAUSE 37 PREFERRING OF CHARGES – DEFINITION

Description

- ◆ Provides in the English version that a charge is preferred when the charge sheet in respect of the charge is signed by the Director of Military Prosecutions and filed with the Court Martial Administrator

Rationale

- ◆ This amendment will remove any ambiguity in the English version as to when a charge is preferred.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 38

38. (1) Subsection 165.1(2) of the English version of the Act is replaced by the following:

(2) The Director of Military Prosecutions holds office during good behaviour for a term of not more than four years. The Minister may remove the Director of Military Prosecutions from office for cause on the recommendation of an inquiry committee established under regulations made by the Governor in Council.

(2) Subsection 165.1(2.1) of the Act is replaced by the following:

(2.1) An inquiry committee has the same powers, rights and privileges — other than the power to punish for contempt—as are vested in a superior court of criminal jurisdiction with respect to

(a) the attendance, swearing and examination of witnesses;

(b) the production and inspection of documents;

(c) the enforcement of its orders; and

(d) all other matters necessary or proper for the due exercise of its jurisdiction.

38. (1) Le paragraphe 165.1(2) de la version anglaise de la même loi est remplacé par ce qui suit :

(2) The Director of Military Prosecutions holds office during good behaviour for a term of not more than four years. The Minister may remove the Director of Military Prosecutions from office for cause on the recommendation of an inquiry committee established under regulations made by the Governor in Council.

(2) Le paragraphe 165.1(2.1) de la même loi est remplacé par ce qui suit :

(2.1) Le comité d'enquête a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, ainsi que pour la production et l'examen des pièces, l'exécution de ses ordonnances et toute autre question relevant de sa compétence, les mêmes attributions qu'une cour supérieure de juridiction criminelle, sauf le pouvoir de punir l'outrage au tribunal.

CLAUSE 38 INQUIRY COMMITTEE – THE DIRECTOR OF MILITARY PROSECUTIONS

Description

- ◆ Changes the term “Inquiry Committee” to “inquiry committee” in the English version of subsection 165.1(2); and
- ◆ Sets out in subsection 165.1(2.1) that the inquiry committee in respect of the Director of Military Prosecutions has the same powers, rights and privileges, other than the power to punish for contempt, as are vested in a superior court of criminal jurisdiction with respect to certain matters.

Rationale

- ◆ The amendment to subsection 165.1(2) provides consistency in the English version.
- ◆ Setting out the express powers, rights and privileges of the inquiry committee will ensure that any inquiry will be conducted in a fair and efficient manner.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 39-40

39. (1) Section 165.12 of the Act is amended by adding the following after subsection (1):

(1.1) The validity of a charge preferred by the Director of Military Prosecutions is not affected by any irregularity, informality or defect in the charge referred to the Director.

(2) Subsection 165.12(2) of the French version of the Act is replaced by the following:

(2) Le directeur des poursuites militaires peut retirer une mise en accusation déjà prononcée; toutefois, le retrait de la mise en accusation après le début du procès en cour martiale est subordonné à l'autorisation de celle-ci.

(3) Section 165.12 of the Act is amended by adding the following after subsection (3):

(4) A decision not to prefer a charge does not preclude the charge from being preferred at any subsequent time.

40. Section 165.19 of the Act is amended by adding the following after subsection (1):

(1.1) The Court Martial Administrator shall summon the accused person to appear at the court martial.

39. (1) L'article 165.12 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

(1.1) La validité d'une mise en accusation prononcée par le directeur des poursuites militaires n'est pas compromise par une irrégularité, un vice de forme ou un défaut de l'accusation qui lui est transmise.

(2) Le paragraphe 165.12(2) de la version française de la même loi est remplacé par ce qui suit :

(2) Le directeur des poursuites militaires peut retirer une mise en accusation déjà prononcée; toutefois, le retrait de la mise en accusation après le début du procès en cour martiale est subordonné à l'autorisation de celle-ci.

(3) L'article 165.12 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

(4) La décision de ne pas prononcer la mise en accusation d'un accusé n'empêche pas sa mise en accusation ultérieure.

40. L'article 165.19 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

(1.1) Il cite l'accusé à comparaître devant la cour martiale.

CLAUSE 39 CHARGE IRREGULARITY AND DECISIONS TO PREFER CHARGES AT A SUBSEQUENT TIME

Description

- ◆ Provides that the validity of a charge preferred by the Director of Military Prosecutions is not affected by any irregularity, informality or defect in the charge referred to the Director [ss. 165.12(1.1)];
- ◆ Makes a technical amendment to the French version [ss. 165.12(2)]; and
- ◆ Provides that a decision of the Director of Military Prosecutions not to prefer a charge does not preclude the charge from being preferred at any subsequent time [ss. 165.12(4)].

Rationale

- ◆ The new subsection 165.12(1.1) will ensure that any charge preferred by the Director of Military Prosecutions is not affected by any irregularity, informality or defect that may have occurred during the laying of the charge or during the subsequent referral process to the Director.
- ◆ The technical amendment to subsection 165.12(2) of the French version is made to provide consistency in the French version.
- ◆ The new subsection 165.12(4) will provide more certainty as to the authority of the Director of Military Prosecutions to prefer a charge at a later time after deciding earlier not to proceed with the charge (for example, if new evidence is discovered on further investigation of a case).

CLAUSE 40 SUMMONING THE ACCUSED TO APPEAR AT COURT MARTIAL

Description

- ◆ Requires that the Court Martial Administrator summon an accused to appear at the court martial.

Rationale

- ◆ This amendment will ensure that all accused are summoned to appear at their court martial.
- ◆ Failure to then appear would be an offence under section 118.1 and a warrant for their arrest could be ordered under section 249.23.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 41

41. Sections 165.21 and 165.22 of the Act are replaced by the following:

165.21 (1) The Governor in Council may appoint any officer who is a barrister or advocate of at least 10 years' standing at the bar of a province and who has been an officer for at least 10 years to be a military judge.

(2) Every military judge shall, before commencing the duties of office, take the following oath of office:

I solemnly and sincerely promise and swear (or affirm) that I will impartially, honestly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as a military judge. (And in the case of an oath: So help me God.)

(3) A military judge holds office during good behaviour and may be removed by the Governor in Council for cause on the recommendation of the Military Judges Inquiry Committee.

(4) A military judge ceases to hold office on being released at his or her request from the Canadian Forces or on attaining the age of 60 years.

(5) A military judge may resign from office by giving notice in writing to the Minister. The resignation takes effect on the day on which the Minister receives the notice or on a later day that may be specified in the notice.

41. Les articles 165.21 et 165.22 de la même loi sont remplacés par ce qui suit :

165.21 (1) Le gouverneur en conseil peut nommer juge militaire tout officier qui est avocat inscrit au barreau d'une province et qui a été officier et avocat respectivement pendant au moins dix ans.

(2) Avant d'entrer en fonctions, le juge militaire prête le serment suivant :

Moi,, je promets et jure (ou j'affirme solennellement) que j'exercerai fidèlement, sans partialité et de mon mieux les attributions qui me sont dévolues en ma qualité de juge militaire. (Dans le cas du serment, ajouter : Ainsi Dieu me soit en aide.)

(3) Le juge militaire est nommé à titre inamovible, sous réserve de révocation motivée par le gouverneur en conseil sur recommandation du comité d'enquête sur les juges militaires.

(4) Il cesse d'occuper sa charge dès qu'il est, à sa demande, libéré des Forces canadiennes ou qu'il atteint l'âge de soixante ans.

(5) Il peut démissionner de sa charge en avisant par écrit le ministre, la démission prenant effet à la date de réception de l'avis ou, si elle est postérieure, à la date précisée dans celui-ci.

CLAUSE 41 MILITARY JUDGES – APPOINTMENT, RESIGNATION AND RETIREMENT

Description

- ◆ Permits the Governor in Council to appoint an officer who is a barrister or advocate of at least ten years standing at the bar of a province and has been an officer for at least ten years, to be a military judge [ss. 165.21(1)];
- ◆ Provides for a military judge to take an oath of office before commencing duties as a military judge [ss. 165.21(2)];
- ◆ Renumbers subsection 165.21(2) as subsection 165.21(3), changes the name of an “Inquiry Committee” to the “Military Judges Inquiry Committee” and establishes the committee in the *Act* as opposed to regulations;
- ◆ Renumbers subsection 165.21(3) as subsection 165.21(4); and
- ◆ Renumbers subsection 165.21(4) as subsection 165.21(5).

Rationale

- ◆ Requiring a person to have been an officer for at least ten years before appointment as a military judge will ensure that the person understands the importance of discipline in maintaining an operationally ready armed force and appreciates what is required in maintaining that discipline.
- ◆ The current provision already provides that an officer to be appointed as a military judge must be a barrister or advocate of at least ten years standing at the bar of a province, which is consistent with the common standard for the appointment of judges to civilian courts in Canada.
- ◆ The taking of an oath before commencing duties will enhance the perception of the judicial independence of military judges. A similar oath is taken by superior court judges on appointment to office.
- ◆ Subsection 165.21(2) has been renumbered as subsection 165.21(3) and the amendment reflects the new name of the “Military Judges Inquiry Committee”, formerly referred to as an “Inquiry Committee”. Establishing the committee in the *Act* as opposed to regulations will enhance the perception of their judicial independence.
- ◆ Subsections 165.21(3) and (4) have been renumbered as subsections 165.21(4) and (5) respectively.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 41

Reserve Force Military Judges

165.22 (1) There is established a Reserve Force Military Judges Panel to which the Governor in Council may name any officer of the reserve force who has been an officer for at least 10 years and who

(a) is a barrister or advocate of at least 10 years' standing at the bar of a province;

(b) has been a military judge;

(c) has presided at a Standing Court Martial or a Special General Court Martial; or

(d) has been a judge advocate at a court martial.

(2) An officer named to the panel is referred to in this Act as a "reserve force military judge".

(3) Every reserve force military judge shall, before commencing the duties of office, take the following oath of office:

I solemnly and sincerely promise and swear (or affirm) that I will impartially, honestly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as a military judge. (And in the case of an oath: So help me God)

Juges militaires de la force de réserve

165.22 (1) Est constitué le tableau des juges militaires de la force de réserve, auquel le gouverneur en conseil peut inscrire le nom de tout officier de la force de réserve qui a été officier pendant au moins dix ans et, selon le cas :

a) est avocat inscrit au barreau d'une province et l'a été pendant au moins dix ans;

b) a été juge militaire;

c) a présidé une cour martiale permanente ou une cour martiale générale spéciale;

d) a assuré les fonctions de juge-avocat à une cour martiale.

(2) L'officier inscrit au tableau est appelé « juge militaire de la force de réserve ».

(3) Avant d'entrer en fonctions, le juge militaire de la force de réserve prête le serment suivant :

Moi,, je promets et jure (ou j'affirme solennellement) que j'exercerai fidèlement, sans partialité et de mon mieux les attributions qui me sont dévolues en ma qualité de juge militaire. (Dans le cas du serment, ajouter : Ainsi Dieu me soit en aide.)

CLAUSE 41 RESERVE FORCE MILITARY JUDGES - APPOINTMENT

Description

- ◆ Adds the heading “Reserve Force Military Judges” before section 165.22;
- ◆ Establishes the Reserve Force Military Judges Panel to which the Governor in Council may name a reserve force officer who has been an officer for at least ten years and who meets one of the following:
 - Is a barrister or advocate of at least ten years’ standing at the bar of a province,
 - Has been a military judge,
 - Has presided at a Standing Court Martial or a Special General Court Martial, or
 - Has been a judge advocate at a court martial [ss. 165.22(1)]
- ◆ Provides for an officer named to the panel to be referred to in the Act as a “reserve force military judge” [ss. 165.22(2)]; and
- ◆ Provides for a reserve force military judge to take an oath of office before commencing the duties of office [ss. 165.22(3)].

Rationale

- ◆ There is currently no statutory mechanism for augmenting the military judiciary with appropriately qualified reserve force officers to meet sudden changes in the size or operational tempo of the Canadian Forces.
- ◆ The appointment of additional full-time military judges is an option, but it is not a practical response for dealing with temporary or short-term increases in demands on the military justice system, given that security of tenure would require their retention even if the circumstances leading to their appointment were no longer extant.
- ◆ The panel of reserve force military judges will provide the Chief Military Judge with access to appropriately qualified reserve force officers for the performance of judicial duties.
- ◆ This regime will give the military judiciary the same flexibility that is currently available in various forms to other judiciaries in Canada.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 41

165.221 (1) The Governor in Council may for cause remove the name of a reserve force military judge from the Reserve Force Military Judges Panel on the recommendation of the Military Judges Inquiry Committee.

(2) The name of a reserve force military judge shall be removed from the panel on the judge's release, at his or her request, from the Canadian Forces or on the judge attaining the age of 60 years.

(3) A reserve force military judge may request that their name be removed from the panel by giving notice in writing to the Minister. The removal takes effect on the day on which the Minister receives the notice or on a later day that may be specified in the notice.

165.222 (1) The Chief Military Judge may select any reserve force military judge to perform any duties referred to in section 165.23 that may be specified by the Chief Military Judge.

(2) The Chief Military Judge may request a reserve force military judge to undergo any training that may be specified by the Chief Military Judge.

165.223 A reserve force military judge shall not engage in any business or professional activity that is incompatible with the duties that they may be required to perform under this Act.

165.221 (1) Le gouverneur en conseil peut, sur recommandation motivée du comité d'enquête sur les juges militaires, retirer le nom d'un juge militaire de la force de réserve du tableau des juges militaires de la force de réserve.

(2) Le nom du juge militaire de la force de réserve est retiré du tableau dès qu'il est, à sa demande, libéré des Forces canadiennes ou qu'il atteint l'âge de soixante ans.

(3) Le juge militaire de la force de réserve peut aviser par écrit le ministre de son intention de faire retirer son nom du tableau, le retrait prenant effet à la date de réception de l'avis ou, si elle est postérieure, à la date précisée dans celui-ci.

165.222 (1) Le juge militaire en chef peut choisir tout juge militaire de la force de réserve pour exercer telles des fonctions visées à l'article 165.23 qu'il précise.

(2) Il peut demander à tout juge militaire de la force de réserve de suivre tel programme de formation qu'il précise.

165.223 Le juge militaire de la force de réserve ne peut exercer aucune activité commerciale ou professionnelle incompatible avec les fonctions qu'il peut être appelé à exercer sous le régime de la présente loi.

CLAUSE 41 RESERVE FORCE MILITARY JUDGES – REMOVAL

Description

- ◆ Provides that a reserve force military judge may be removed for cause from the panel by the Governor in Council on the recommendation of the Military Judges Inquiry Committee [ss. 165.221(1)];
- ◆ Provides for the name of a reserve force military judge to be removed automatically from the panel in two circumstances - on being released on his or her request from the Canadian Forces or on reaching 60 years of age [ss. 165.221(2)];
- ◆ Permits a reserve force military judge to give notice in writing to the Minister to have their name removed from the panel and that the removal takes effect on the day on which the notice is received by the Minister or on a later day that may be specified in the notice [ss. 165.221(3)];
- ◆ Allows the Chief Military Judge to select any reserve force military judge to perform duties referred to in section 165.23 [ss. 165.222(1)];
- ◆ Permits the Chief Military Judge to request that a reserve force military judge undergo training [ss. 165.222(2)]; and
- ◆ Prohibits a reserve force military judge from engaging in any business or professional activity that is incompatible with their duties under the Act [s. 165.223].

Rationale

- ◆ Fixing the age at which the name of a reserve force military judge is removed from the reserve force military judges' panel enhances security of tenure, a key condition of the judicial independence guarantees provided under paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*. Also, providing that a reserve force military judge's name is removed from the panel on release from the Canadian Forces ensures that a military judge must be a serving officer to be named to the panel.
- ◆ Permitting a reserve force military judge to request that their name be removed from the panel by giving notice to the Minister is consistent with the similar provision for military judges in subsection 165.21(5) and parallels the process in the civilian justice system.
- ◆ Allowing the Chief Military Judge to select a reserve force military judge to perform judicial duties or to request a reserve force military judge to undergo training will ensure the Chief Military Judge has access to appropriately qualified reserve force officers for the performance of judicial duties.
- ◆ Prohibiting a reserve force military judge from engaging in any business or professional activities that are incompatible with their judicial duties parallels similar limits on extra-judicial employment set out in the *Judges Act*.
- ◆ The removal of a reserve force military judge for cause on the recommendation of a Military Judges Inquiry Committee established in the *Act* as opposed to regulations will also enhance the perception of their judicial independence. A similar committee is established in the *Judges Act* to inquire into complaints concerning superior court judges.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 42-44

Duties and Immunity of Military Judges

42. The Act is amended by adding the following after section 165.23:

165.231 A military judge has the same immunity from liability as a judge of a superior court of criminal jurisdiction.

43. Section 165.24 of the Act is replaced by the following:

165.24 (1) The Governor in Council may designate a military judge, other than a reserve force military judge, to be the Chief Military Judge.

(2) The Chief Military Judge holds a rank that is not less than colonel.

44. Section 165.26 of the Act is replaced by the following:

165.26 The Chief Military Judge may authorize any military judge, other than a reserve force military judge, to exercise and perform any of the powers, duties and functions of the Chief Military Judge.

Attributions et immunité des juges militaires

42. La même loi est modifiée par adjonction, après l'article 165.23, de ce qui suit :

165.231 Les juges militaires bénéficient de la même immunité de poursuite que les juges d'une cour supérieure de juridiction criminelle.

43. L'article 165.24 de la même loi est remplacé par ce qui suit :

165.24 (1) Le gouverneur en conseil peut nommer un juge militaire en chef parmi les juges militaires autres que les juges militaires de la force de réserve.

(2) Le juge militaire en chef détient au moins le grade de colonel.

44. L'article 165.26 de la même loi est remplacé par ce qui suit :

165.26 Le juge militaire en chef peut autoriser tout juge militaire, autre qu'un juge militaire de la force de réserve, à exercer telles de ses attributions.

CLAUSE 42 MILITARY JUDGES – IMMUNITY

Description

- ◆ Add the new heading “*Duties and Immunity of Military Judges*” before section 165.23; and
- ◆ Provides that a military judge has the same immunity from liability as a judge of a superior court of criminal jurisdiction.

Rationale

- ◆ Providing military judges with immunity from liability will enhance the perception of their judicial independence and provide them with the same protection afforded to civilian provincial and superior court judges in Canada.

CLAUSE 43 CHIEF MILITARY JUDGE – RANK AND DESIGNATION

Description

- ◆ Provides that the Governor in Council may designate a military judge other than a reserve force military judge to be the Chief Military Judge [ss. 165.24(1)]; and
- ◆ Provides that the Chief Military Judge holds a rank of not less than colonel [ss. 165.24(2)].

Rationale

- ◆ The amendment to subsection 165.24(1) will ensure that only a military judge other than a reserve force military judge may be designated as the Chief Military Judge.
- ◆ The judicial independence of military judges will be enhanced by having the Chief Military Judge hold a rank of not less than colonel.

CLAUSE 44 ACTING CHIEF MILITARY JUDGE – APPOINTMENT

Description

- ◆ Provides that the Chief Military Judge may authorize any military judge other than a reserve force military judge to exercise or perform the powers, duties and functions of the Chief Military Judge.

Rationale

- ◆ This amendment will ensure that only a military judge who is a member of the regular force and therefore on full-time service may be authorized to exercise or perform the powers, duties and functions of the Chief Military Judge.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

45. The Act is amended by adding the following after section 165.27:

165.28 The Governor in Council may designate a military judge, other than a reserve force military judge, to be the Deputy Chief Military Judge.

165.29 In the event that the Chief Military Judge is absent or unable to act or the office of Chief Military Judge is vacant, the Deputy Chief Military Judge shall exercise and perform the powers, duties and functions of the Chief Military Judge that are not otherwise authorized to be exercised or performed by a military judge under section 165.26.

165.3 The Chief Military Judge may, with the Governor in Council's approval and after consulting with a rules committee established under regulations made by the Governor in Council, make rules governing the following:

(a) pre-trial conferences and other preliminary proceedings;

(b) the making of applications under section 158.7;

(c) the bringing of persons before a military judge under section 159;

(d) the scheduling of trials by court martial;

(e) the minutes of proceedings of courts martial and other proceedings;

(f) documents, exhibits or other things connected with any proceeding, including public access to them; and

(g) any other aspects of practice and procedure that are prescribed in regulations made by the Governor in Council.

45. La même loi est modifiée par adjonction, après l'article 165.27, de ce qui suit :

165.28 Le gouverneur en conseil peut nommer un juge militaire en chef adjoint parmi les juges militaires autres que les juges militaires de la force de réserve.

165.29 En cas d'absence ou d'empêchement du juge militaire en chef ou de vacance de son poste, le juge militaire en chef adjoint exerce les attributions du juge militaire en chef qui n'ont pas été conférées à un juge militaire en vertu de l'article 165.26.

165.3 Avec l'approbation du gouverneur en conseil, le juge militaire en chef peut, après avoir consulté un comité des règles établi par règlement du gouverneur en conseil, établir des règles concernant :

a) les conférences préparatoires et toute autre procédure préliminaire;

b) la présentation de toute demande au titre de l'article 158.7;

c) la conduite d'une personne devant un juge militaire en application de l'article 159;

d) le calendrier des procès en cour martiale;

e) les procès-verbaux des procès en cour martiale et de toute autre instance;

f) les documents, pièces et autres choses se rapportant à toute instance, notamment l'accès public à ces documents, pièces et choses;

g) toute autre question relative à la pratique et à la procédure prévue par règlement du gouverneur en conseil.

CLAUSE 45 DEPUTY CHIEF MILITARY JUDGE AND RULES OF COURT MARTIAL PRACTICE

Description

- ◆ Provides that the Governor in Council may designate a military judge, other than a reserve force military judge, to be the Deputy Chief Military Judge [s. 165.28];
- ◆ Provides that the Deputy Chief Military Judge, in the event that the Chief Military Judge is absent or unable to act or the office of the Chief Military Judge is vacant, shall exercise and perform the powers, duties and functions of the Chief Military Judge not otherwise authorized to be exercised or performed by a military judge under section 165.26 [s. 165.29]; and
- ◆ provides that the Chief Military Judge, with the approval of the Governor in Council and in consultation with a rules committee established under regulations made by the Governor in Council, may make rules governing pre-trial conferences, preliminary proceedings and other matters, including aspects of practice or procedure that are prescribed in regulations made by the Governor in Council [s. 165.3].

Rationale

- ◆ The designation of a Deputy Chief Military Judge is similar to the practice in civilian courts and will ensure that a military judge has been designated to exercise and perform the powers, duties and functions of the Chief Military Judge if the latter is absent or unable to act, or the office of the Chief Military Judge is vacant.
- ◆ The new section 165.3 will improve the administration of courts martial by authorizing the Chief Military Judge to make rules governing aspects of court martial practice and procedure. This is similar to the situation in a civilian court in which rules of court would normally be made by or on the recommendation of the chief justice of the court.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

Military Judges Inquiry Committee

165.31 (1) There is established a Military Judges Inquiry Committee to which the Chief Justice of the Court Martial Appeal Court shall appoint three judges of the Court Martial Appeal Court.

(2) The Chief Justice shall appoint one of the judges to act as Chairperson.

(3) The inquiry committee has the same powers, rights and privileges — including the power to punish for contempt—as are vested in a superior court of criminal jurisdiction with respect to

- (a) the attendance, swearing and examination of witnesses;
- (b) the production and inspection of documents;
- (c) the enforcement of its orders; and
- (d) all other matters necessary or proper for the due exercise of its jurisdiction.

165.32 (1) The Military Judges Inquiry Committee shall, on receipt of a request in writing made by the Minister, commence an inquiry as to whether a military judge should be removed from office.

(2) The inquiry committee may, on receipt of any complaint or allegation in writing made in respect of a military judge, commence an inquiry as to whether the military judge should be removed from office.

(3) The Chairperson of the inquiry committee may designate a judge appointed to the committee to examine a complaint or allegation referred to in subsection (2) and to recommend whether an inquiry should be commenced.

(4) The military judge in respect of whom an inquiry is held shall be given reasonable notice of the inquiry's subject matter and of its time and place and shall be given an opportunity, in person or by counsel, to be heard at the inquiry, to cross-examine witnesses and to adduce evidence on his or her own behalf.

Comité d'enquête sur les juges militaires

165.31 (1) Est constitué le comité d'enquête sur les juges militaires, formé de trois juges de la Cour d'appel de la cour martiale nommés par le juge en chef de ce tribunal.

(2) Le juge en chef nomme un des juges à titre de président.

(3) Le comité d'enquête a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, ainsi que pour la production et l'examen des pièces, l'exécution de ses ordonnances et toute autre question relevant de sa compétence, les mêmes attributions qu'une cour supérieure de juridiction criminelle, notamment le pouvoir de punir l'outrage au tribunal.

165.32 (1) Si le ministre lui en fait la demande par écrit, le comité d'enquête sur les juges militaires entreprend une enquête sur la question de savoir si un juge militaire doit être révoqué.

(2) Le comité peut enquêter sur toute plainte ou accusation relative à un juge militaire qui lui est transmise par écrit et qui porte sur la question de savoir si le juge militaire doit être révoqué.

(3) Le président peut charger un des membres du comité d'examiner toute plainte ou accusation transmise au titre du paragraphe (2) et de recommander au comité de procéder ou non à l'enquête.

(4) Le juge militaire en cause doit être informé, suffisamment à l'avance, de l'objet de l'enquête, ainsi que des date, heure et lieu de l'audition, et avoir la possibilité de se faire entendre, de contre-interroger les témoins et de présenter tous éléments de preuve utiles à sa décharge, en personne ou par l'intermédiaire d'un avocat.

CLAUSE 45 MILITARY JUDGES INQUIRY COMMITTEE – COMPOSITION AND PROCESS (PART 1)

Description

- ◆ Adds the new heading “*Military Judges Inquiry Committee*” before section 165.31;
- ◆ Establishes a Military Judges Inquiry Committee of three civilian judges of the Court Martial Appeal Court of Canada appointed by the Chief Justice of that court, with one of the judges appointed to act as Chairperson [ss. 165.31(1) and (2)];
- ◆ Provides that the inquiry committee has the same powers, rights and privileges, including the power to punish for contempt, as are vested in a superior court of criminal jurisdiction with respect to certain matters [ss. 165.31(3)];
- ◆ Requires the inquiry committee if requested in writing by the Minister to commence an inquiry as to whether a military judge should be removed from office [ss. 165.32(1)];
- ◆ Authorizes the inquiry committee on receipt of a complaint made in writing to commence an inquiry as to whether a military judge should be removed from office [ss. 165.32(2)];
- ◆ Provides for the Chairperson to designate a member to the inquiry committee to examine a complaint and recommend whether an inquiry should be commenced [ss. 165.32(3)]; and
- ◆ Permits a military judge who is the subject of an inquiry to have the opportunity to be heard, to cross-examine witnesses and to adduce evidence [ss. 165.32(4)].

Rationale

- ◆ The new provisions beginning at 165.31 will enhance the perception of the judicial independence of military judges by establishing the Military Judges Inquiry Committee and setting out its composition, mandate, procedure and reporting requirements in statute, as opposed to regulations.
- ◆ A similar committee is established in the *Judges Act* to inquire into complaints made concerning superior court judges.
- ◆ There is no provision for remuneration of the judges who are appointed as members of the Military Judges Inquiry Committee as this would be contrary to the *Judges Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

(5) The inquiry committee may hold an inquiry either in public or in private unless the Minister, having regard to the interests of the persons participating in the inquiry and the interests of the public, directs that the inquiry be held in public.

(6) The Chairperson of the inquiry committee may engage on a temporary basis the services of counsel to assist the committee and may, subject to any applicable Treasury Board directives, establish the terms and conditions of the counsel's engagement and fix their remuneration and expenses.

(7) The inquiry committee may recommend to the Governor in Council that the military judge be removed if, in its opinion,

(a) the military judge has become incapacitated or disabled from the due execution of his or her judicial duties by reason of

(i) infirmity,

(ii) having been guilty of misconduct,

(iii) having failed in the due execution of his or her judicial duties, or

(iv) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of his or her judicial duties; or

(b) the military judge does not satisfy the physical and medical fitness standards applicable to officers.

(8) The inquiry committee shall provide to the Minister a record of each inquiry and a report of its conclusions. If the inquiry was held in public, the inquiry committee shall make its report available to the public.

(5) Sauf ordre contraire du ministre fondé sur l'intérêt du public et des personnes prenant part à l'enquête, celle-ci peut se tenir à huis clos.

(6) Le président peut retenir, à titre temporaire, les services d'avocats pour assister le comité et, en conformité avec les instructions du Conseil du Trésor, définir leurs conditions d'emploi et fixer leur rémunération et leurs indemnités.

(7) Le comité peut recommander au gouverneur en conseil de révoquer le juge militaire s'il est d'avis que celui-ci, selon le cas :

a) est inapte à remplir ses fonctions judiciaires pour l'un ou l'autre des motifs suivants :

(i) infirmité,

(ii) manquement à l'honneur et à la dignité,

(iii) manquement aux devoirs de la charge de juge militaire,

(iv) situation d'incompatibilité, qu'elle soit imputable au juge militaire ou à toute autre cause;

b) ne possède pas les aptitudes physiques et l'état de santé exigés des officiers.

(8) Le comité transmet le rapport de ses conclusions et le dossier de l'enquête au ministre et, si l'enquête a été tenue en public, rend le rapport accessible au public.

CLAUSE 45 MILITARY JUDGES INQUIRY COMMITTEE – COMPOSITION AND PROCESS (PART 2)

Description

- ◆ Permits the inquiry committee to hold an inquiry either in public or in private unless the Minister directs that the inquiry be held in public [ss. 165.32(5)];
- ◆ Authorizes the Chairperson to engage the services of counsel to assist the inquiry committee [ss. 165.32(6)];
- ◆ Sets out the grounds upon which the inquiry committee may recommend to the Governor in Council that a military judge be removed from office [ss. 165.32(7)]; and
- ◆ Requires the inquiry committee to provide the Minister with a record of each inquiry and a report of its conclusions, and to make the report available to the public if the inquiry was held in public [ss. 165.32(8)].

Rationale

- ◆ The new provisions beginning at 165.31 will enhance the perception of the judicial independence of military judges by establishing the Military Judges Inquiry Committee and setting out its composition, mandate, procedure and reporting requirements in statute, as opposed to regulations.
- ◆ A similar committee is established in the *Judges Act* to inquire into complaints made concerning superior court judges.
- ◆ There is no provision for remuneration of the judges who are appointed as members of the Military Judges Inquiry Committee as this would be contrary to the *Judges Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

Military Judges Compensation Committee

165.33 (1) There is established a Military Judges Compensation Committee consisting of three part-time members to be appointed by the Governor in Council as follows:

(a) one person nominated by the military judges;

(b) one person nominated by the Minister;
And

(c) one person, who shall act as chairperson, nominated by the members who are nominated under paragraphs (a) and (b).

(2) Each member holds office during good behaviour for a term of four years, and may be removed for cause at any time by the Governor in Council.

(3) A member is eligible to be reappointed for one further term.

(4) In the event of the absence or incapacity of a member, the Governor in Council may appoint, as a substitute temporary member, a person nominated in accordance with subsection (1).

(5) If the office of a member becomes vacant during the member's term, the Governor in Council shall appoint a person nominated in accordance with subsection (1) to hold office for the remainder of the term.

(6) All three members of the compensation committee together constitute a quorum.

(7) The members of the compensation committee shall be paid the remuneration fixed by the Governor in Council and, subject to any applicable Treasury Board directives, the reasonable travel and living expenses incurred by them in the course of their duties while absent from their ordinary place of residence.

Comité d'examen de la rémunération des juges Militaires

165.33 (1) Est constitué le comité d'examen de la rémunération des juges militaires, composé de trois membres à temps partiel nommés par le gouverneur en conseil sur le fondement des propositions suivantes :

a) un membre proposé par les juges militaires;

b) un membre proposé par le ministre;

c) un membre proposé à titre de président par les membres nommés conformément aux alinéas a) et b).

(2) Les membres sont nommés à titre inamovible pour un mandat de quatre ans, sous réserve de révocation motivée du gouverneur en conseil.

(3) Leur mandat est renouvelable une fois.

(4) En cas d'absence ou d'empêchement d'un membre, le gouverneur en conseil peut lui nommer un remplaçant suivant la procédure prévue au paragraphe (1).

(5) Le gouverneur en conseil comble toute vacance suivant la procédure prévue au paragraphe (1). Le mandat du nouveau membre prend fin à la date prévue pour la fin du mandat de l'ancien.

(6) Le quorum est de trois membres.

(7) Les membres ont droit à la rémunération fixée par le gouverneur en conseil et sont indemnisés, en conformité avec les instructions du Conseil du Trésor, des frais de déplacement et de séjour entraînés par l'accomplissement de leurs fonctions hors de leur lieu habituel de résidence.

CLAUSE 45 MILITARY JUDGES COMPENSATION COMMITTEE – COMPOSITION

Description

- ◆ Adds the new heading “Military Judges Compensation Committee” before section 165.33;
- ◆ Establishes a Military Judges Compensation Committee consisting of three part-time members appointed by the Governor in Council [ss. 165.33(1)];
- ◆ Provides that one member of the committee is nominated by the military judges [par. 165.33(1)(a)];
- ◆ Provides that one member of the committee is nominated by the Minister [par. 165.33(1)(b)];
- ◆ Provides that the chairperson of the committee is nominated by the members nominated under paragraphs (a) and (b) [par. 165.33(1)(c)];
- ◆ Provides for the tenure, removal and reappointment of members of the Military Judges Compensation Committee [ss. 165.33(2) and (3)];
- ◆ Permits the appointment of a substitute temporary member in the event or incapacity of a member and the appointment of a member in the event of a vacancy [ss. 165.33(4) and (5)];
- ◆ Provides that all three members constitute a quorum [ss. 165.33(6)]; and
- ◆ Authorizes the payment of remuneration and expenses of members [ss. 165.33(7)].

Rationale

- ◆ The provisions under sections 165.33 to 165.37 will enhance the perception of the judicial independence of military judges by establishing the Military Judges Compensation Committee and setting out its composition, remuneration, mandate, procedure and reporting requirements in statute, as opposed to regulations.
- ◆ A similar committee is established in the *Judges Act* to inquire into the adequacy of the compensation of superior court judges.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

165.34 (1) The Military Judges Compensation Committee shall inquire into the adequacy of the remuneration of military judges.

(2) In conducting its inquiry, the compensation committee shall consider

(a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;

(b) the role of financial security of the judiciary in ensuring judicial independence;

(c) the need to attract outstanding candidates to the judiciary; and

(d) any other objective criteria that the committee considers relevant.

(3) The compensation committee shall commence an inquiry on September 1, 2011, and on September 1 of every fourth year after 2011, and shall submit a report containing its recommendations to the Minister within nine months after the day on which the inquiry commenced.

(4) The compensation committee may, with the consent of the Minister and the military judges, postpone the commencement of a quadrennial inquiry.

165.35 (1) The Minister may at any time refer to the Military Judges Compensation Committee for its inquiry the matter, or any aspect of the matter, mentioned in subsection 165.34(1).

(2) The compensation committee shall submit to the Minister a report containing its recommendations within a period fixed by the Minister after consultation with the compensation committee.

(3) A person who ceases to hold office as a member for any reason other than their removal may carry out and complete their duties in respect of a matter that was referred to the compensation committee under subsection (1) before the person ceased to hold office. While completing those duties, the person is deemed to be a member of the compensation committee.

165.34 (1) Le comité d'examen de la rémunération des juges militaires est chargé d'examiner la question de savoir si la rémunération des juges militaires est satisfaisante.

(2) Le comité fait son examen en tenant compte des facteurs suivants :

a) l'état de l'économie au Canada, y compris le coût de la vie, ainsi que la situation économique et financière globale de l'administration fédérale;

b) le rôle de la sécurité financière des juges militaires dans la préservation de l'indépendance judiciaire;

c) le besoin de recruter les meilleurs officiers pour la magistrature militaire;

d) tout autre facteur objectif qu'il considère comme important.

(3) Il commence ses travaux le 1er septembre 2011 et remet un rapport faisant état de ses recommandations au ministre dans les neuf mois qui suivent. Il refait le même exercice, dans le même délai, à partir du 1er septembre tous les quatre ans par la suite.

(4) Il peut, avec le consentement du ministre et des juges militaires, reporter le début de ses travaux.

165.35 (1) Le ministre peut en tout temps demander au comité d'examen de la rémunération des juges militaires d'examiner la question visée au paragraphe 165.34(1) ou un aspect de celle-ci.

(2) Le comité remet au ministre, dans le délai que ce dernier fixe après l'avoir consulté, un rapport faisant état de ses recommandations.

(3) Le membre dont le mandat se termine pour tout motif autre que la révocation motivée peut continuer d'exercer ses fonctions à l'égard de toute question dont l'examen a été demandé, au titre du paragraphe (1), avant la fin de son mandat; il est alors réputé être membre du comité

CLAUSE 45 MILITARY JUDGES COMPENSATION COMMITTEE – MANDATE AND OTHER INQUIRIES

Description

- ◆ Provides that the compensation committee shall inquire into the adequacy of the remuneration of military judges and shall consider specific factors in conducting the inquiry [ss. 165.34(1) and (2)];
- ◆ Provides that the compensation committee shall consider specific factors in conducting the inquiry [par. 165.34(2)(d)];
- ◆ Requires that an inquiry commence on September 1, 2011 and every fourth year after 2011 and that a report be submitted to the Minister within nine months of the commencement of a quadrennial inquiry [ss. 165.34(3)];
- ◆ Permits the date of commencement of the inquiry to be postponed with the consent of the Minister and the military judges [ss. 165.34(4)];
- ◆ Authorizes the Minister to refer remuneration matters at any time to the compensation committee for inquiry and provides for a report with recommendations to be submitted to the Minister by the committee [ss. 165.35(1) and (2)]; and
- ◆ Permits a member who ceases to hold office for any reason, other than removal, to carry out and complete any duties in respect of a matter referred to the compensation committee before his or her term ended and provides that such a person while completing these duties is deemed to be a member of the compensation committee [ss. 165.35(3)].

Rationale

- ◆ The provisions under sections 165.33 to 165.37 will enhance the perception of the judicial independence of military judges by establishing the Military Judges Compensation Committee by setting out its composition, remuneration, mandate, procedure and reporting requirements in statute, as opposed to regulations.
- ◆ A similar committee is established in the *Judges Act* to inquire into the adequacy of the compensation of superior court judges.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 45

165.36 The Governor in Council may, on the request of the Military Judges Compensation Committee, extend the time for the submission of a report.

165.37 (1) Within 30 days after receiving a report, the Minister shall notify the public and facilitate public access to the report in any manner that the Minister considers appropriate.

(2) The Minister shall respond to a report within six months after receiving it.

165.36 Le gouverneur en conseil peut, à la demande du comité d'examen de la rémunération des juges militaires, permettre à celui-ci de remettre tout rapport à une date ultérieure.

165.37 (1) Le ministre est tenu, dans les trente jours suivant la réception de tout rapport, d'en donner avis public et d'en faciliter l'accès par le public de la manière qu'il estime indiquée.

(2) Il donne suite au rapport au plus tard six mois après l'avoir reçu.

CLAUSE 45 MILITARY JUDGES COMPENSATION COMMITTEE – EXTENSION AND MINISTER'S DUTIES

Description

- ◆ Permits the Governor in Council to extend the time for the submission of a report [s. 165.36]; and
- ◆ Requires the Minister to make a report available to the public within 30 days after receiving it and to respond to it within six months [ss. 165.37(1) and (2)].

Rationale

- ◆ The provisions under sections 165.33 to 165.37 will enhance the perception of the judicial independence of military judges by establishing the Military Judges Compensation Committee by setting out its composition, remuneration, mandate, procedure and reporting requirements in statute, as opposed to regulations.
- ◆ A similar committee is established in the *Judges Act* to inquire into the adequacy of the compensation of superior court judges.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 46-47

46. The Act is amended by adding the following after section 165.37:

165.38 If the military judges are represented at an inquiry of the Military Judges Compensation Committee, the costs of representation shall be paid in the amount and manner, and according to the terms and conditions, prescribed by regulations made by the Governor in Council.

47. (1) Subsections 167(2) and (3) of the Act are replaced by the following:

(2) The senior member of the panel must be an officer of or above the rank of lieutenant-colonel.

(2) Subsections 167(5) to (7) of the Act are replaced by the following:

(5) If the accused person is of the rank of colonel, the senior member of the panel must be an officer of or above the rank of the accused person and the other members of the panel must be of or above the rank of lieutenant-colonel.

(6) If the accused person is an officer of or below the rank of lieutenant-colonel, the members of the panel other than the senior member must be of or above the rank of the accused person.

(7) If the accused person is a non-commissioned member, the panel is composed of the senior member, one other officer and three non-commissioned members who are of or above both the rank of the accused person and the rank of sergeant.

46. La même loi est modifiée par adjonction, après l'article 165.37, de ce qui suit :

165.38 Si les juges militaires se font représenter à une enquête devant le comité d'examen de la rémunération des juges militaires, des dépens sont versés. Le montant de ces dépens et leurs modalités de versement sont prévus par règlement du gouverneur en conseil.

47. (1) Les paragraphes 167(2) et (3) de la même loi sont remplacés par ce qui suit :

(2) Le plus haut gradé des membres du comité détient au moins le grade de lieutenant colonel.

(2) Les paragraphes 167(5) à (7) de la même loi sont remplacés par ce qui suit :

(5) Lorsque l'accusé est un colonel, le plus haut gradé des membres détient un grade au moins égal au sien et les autres membres détiennent au moins le grade de lieutenant colonel.

(6) Lorsque l'accusé est un lieutenant-colonel ou un officier d'un grade inférieur, les membres autres que le plus haut gradé détiennent un grade au moins égal au sien.

(7) Lorsque l'accusé est un militaire du rang, le comité se compose du plus haut gradé, d'un autre officier et de trois militaires du rang qui détiennent, à la fois, un grade au moins égal au sien et au moins le grade de sergent.

CLAUSE 46 MILITARY JUDGES COMPENSATION COMMITTEE – COSTS

Description

- ◆ Provides, if the military judges are represented at an inquiry of the Military Judges Compensation Committee, for the costs of representation to be paid in the amount and manner, and according to the terms and conditions, prescribed by regulations made by the Governor in Council.

Rationale

- ◆ The payment of costs under section 165.38 is necessary to ensure that military judges have effective representation at the compensation committee.
- ◆ The payment of costs is provided for under the *Judges Act* for representatives of superior court judges at inquiries into their compensation.

CLAUSE 47 COURT MARTIAL PANEL – COMPOSITION

Description

- ◆ Provides that the senior member of the panel must be an officer of or above the rank of lieutenant-colonel [ss. 167(2)];
- ◆ Repeals subsection 167(3) requiring that all of the members of the panel must be officers when the accused person is an officer;
- ◆ Provides that if the accused person is an officer of the rank of colonel, the senior member of the panel must be of or above the rank of the accused person and the other members of the panel must be of or above the rank of lieutenant-colonel [ss. 167(5)];
- ◆ Provides that if the accused person is an officer of or below the rank of lieutenant-colonel, the members of the panel, other than the senior member, must be of or above the rank of the accused person [ss. 167(6)]; and
- ◆ Provides that if the accused person is a non-commissioned member, the panel is composed of the senior member, one other officer and three non-commissioned members of or above the rank of the accused person and at least of or above the rank of sergeant [ss. 167(7)].

Rationale

- ◆ By lowering the rank of the senior member of the panel from colonel to lieutenant-colonel, subsection 167(2) will provide access to a larger number of officers for the senior member position. This will provide additional flexibility in the composition of court martial panels and alleviate the administrative burden on the Canadian Forces arising from the limited pool of colonels available to serve as the senior member.
- ◆ Subsection 167(3) will become unnecessary by virtue of the amendments in section 167 that will provide that a non-commissioned member may be a member of a panel only when the accused person is a non-commissioned member.
- ◆ Subsection 167(5) makes technical amendments to the text.
- ◆ Subsection 167(6) will be amended to provide greater opportunity to CF members to sit as a member of a court martial panel. The minimum rank for an officer remains the rank of captain.
- ◆ Subsection 167(7) will be amended to change the composition of courts martial panels trying a non-commissioned member to allow for one additional non-commissioned member to sit on the panel.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 48-49

48. Paragraph 168(d) of the Act is replaced by the following:

(d) a member of the military police;

49. Subsection 179(1) of the English version of the Act is replaced by the following:

179. (1) A court martial has the same powers, rights and privileges — including the power to punish for contempt—as are vested in a superior court of criminal jurisdiction with respect to

(a) the attendance, swearing and examination of witnesses;

(b) the production and inspection of documents;

(c) the enforcement of its orders; and

(d) all other matters necessary or proper for the due exercise of its jurisdiction.

48. L'alinéa 168d) de la même loi est remplacé par ce qui suit :

d) les policiers militaires;

49. Le paragraphe 179(1) de la version anglaise de la même loi est remplacé par ce qui suit :

179. (1) A court martial has the same powers, rights and privileges — including the power to punish for contempt—as are vested in a superior court of criminal jurisdiction with respect to

(a) the attendance, swearing and examination of witnesses;

(b) the production and inspection of documents;

(c) the enforcement of its orders; and

(d) all other matters necessary or proper for the due exercise of its jurisdiction.

CLAUSE 48 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase “an officer or non-commissioned member appointed for the purposes of section 156” with “a member of the military police” [par. 168(d)].

Rationale

- ◆ This amendment is consequential to the introduction of the definition “military police”.

CLAUSE 49 MOVE THE PHRASE “INCLUDING THE POWER OF CONTEMPT”

Description

- ◆ Moves the phrase “including the power of contempt” from paragraph 179(1)(d) to the portion of subsection 179(1) before paragraph (a).

Rationale

- ◆ This amendment is made to provide consistency in the English version.

CLAUSE BY CLAUSE ANALYSIS **CLAUSES 50-51**

50. Section 180 of the Act and the heading before it are replaced by the following:

Admission to Courts Martial and Certain Proceedings Before Military Judges

180. (1) Subject to subsections (2) and (3), courts martial, and proceedings before military judges under section 148, 158.7, 159, 187, 215.2 or 248.81, shall be public and, to the extent that accommodation permits, the public shall be admitted to the proceedings.

(2) A court martial or military judge, as the case may be, may order that the public be excluded during the whole or any part of the proceedings if the court martial or military judge considers that it is necessary

(a) in the interests of public safety or public morals;

(b) for the maintenance of order or the proper administration of military justice; or

(c) to prevent injury to international relations, national defence or national security.

(3) Witnesses are not to be admitted to the proceedings except when under examination or by specific leave of the court martial or military judge, as the case may be.

(4) For the purpose of any deliberation, a court martial or military judge, as the case may be, may cause the place where the proceedings are being held to be cleared.

51. Section 181 of the Act is replaced by the following:

181. (1) Subject to this Act, the Governor in Council may make rules of evidence to be applicable at trials by court martial.

(2) No rule made under this section is effective until it has been published in the *Canada Gazette*, and every rule shall be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the day on which it is made.

50. L'article 180 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

Admission en cour martiale et aux autres procédures judiciaires devant un juge militaire

180. (1) Sous réserve des paragraphes (2) et (3), les débats de la cour martiale et les procédures devant un juge militaire prévues aux articles 148, 158.7, 159, 187, 215.2 et 248.81 sont publics, dans la mesure où la salle d'audience le permet.

(2) La cour martiale ou le juge militaire, selon le cas, qui le juge nécessaire, soit dans l'intérêt de la sécurité publique ou de la moralité publique, soit dans l'intérêt du maintien de l'ordre ou de la bonne administration de la justice militaire, soit pour éviter de nuire aux relations internationales ou à la défense ou à la sécurité nationales, peut ordonner le huis clos total ou partiel.

(3) Les témoins ne sont admis que pour interrogatoire ou avec la permission expresse de la cour martiale ou du juge militaire, selon le cas.

(4) La cour martiale ou le juge militaire, selon le cas, peut ordonner l'évacuation de la salle d'audience pour ses délibérations.

51. L'article 181 de la même loi est remplacé par ce qui suit :

181. (1) Sous réserve des autres dispositions de la présente loi, le gouverneur en conseil peut établir les règles de preuve applicables dans un procès en cour martiale.

(2) Les règles établies sous le régime du présent article n'ont d'effet qu'à compter de leur publication dans la *Gazette du Canada*; elles doivent être déposées devant chacune des chambres du Parlement dans les quinze premiers jours de séance de celle-ci suivant leur établissement.

CLAUSE 50 ADMISSION TO COURTS MARTIAL

Description

- ◆ Replaces the heading “Admission to Courts Martial” before section 180 with “Admission to Courts Martial and Certain Proceedings Before Military Judges”;
- ◆ Provides that certain proceedings before military judges shall be public and, to the extent that accommodation permits, the public shall be admitted to these proceedings [ss. 180(1)]; and
- ◆ Provides that both a court martial and a military judge may order that the public be excluded from proceedings, provide special leave to admit witnesses to proceedings when not being examined, and cause the place where the proceedings are being held to be cleared [ss. 180(2) to (4)].

Rationale

- ◆ The revised heading before section 180 will better reflect the subject matter of that section.
- ◆ The other amendments to section 180 will clarify that both courts martial and military judges have powers in respect of the admission of the public at courts martial and other proceedings at which military judges preside.

CLAUSE 51 MILITARY RULES OF EVIDENCE – TECHNICAL AMENDMENT

Description

- ◆ Makes technical amendments to subsections 181(1) and (2) by removing references to the rules of evidence being established by “regulations”.

Rationale

- ◆ Removing the references to “regulations” clarifies that Governor in Council will make “rules of evidence” not “regulations” in respect of evidence at trials by courts martial.
- ◆ The requirement will remain to have the rules of evidence published in the Canada Gazette in order that the rules be effective.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 52-53

52. (1) Subsection 182(1) of the Act is replaced by the following:

182. (1) Documents and records of the classes that are prescribed in rules made under section 181 may be admitted, as evidence of the facts stated in them, at trials by court martial or in any proceedings before civil courts arising out of those trials, and the conditions governing the admissibility of the documents and records — or copies of them — in those classes shall be as prescribed in those rules.

(2) Subsection 182(2) of the English version of the Act is replaced by the following:

(2) A court martial may receive, as evidence of the facts stated in them, statutory declarations made in the manner prescribed by the *Canada Evidence Act*, subject to the following conditions:

(a) if the declaration is one that the prosecutor wishes to introduce, a copy shall be served on the accused person at least seven days before the trial;

(b) if the declaration is one that the accused person wishes to introduce, a copy shall be served on the prosecutor at least three days before the trial; and

(c) at any time before the trial, the party served with a copy of the declaration under paragraph (a) or (b) may notify the opposite party that the party so served will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.

53. Subsection 184(3) of the Act is replaced by the following:

(3) If, in the opinion of a court martial, a witness whose evidence has been taken on commission should, in the interests of military justice, appear and give evidence before the court martial, and the witness is not too ill to attend the trial and is not outside the country in which the trial is held, the court martial may require the attendance of that witness.

52. (1) Le paragraphe 182(1) de la même loi est remplacé par ce qui suit :

182. (1) Les dossiers et autres documents des catégories prévues dans les règles établies au titre de l'article 181 peuvent être admis, à titre de preuve des faits qui y sont énoncés, dans les procès en cour martiale ou dans les affaires qui en découlent et dont est saisi un tribunal civil. Les conditions régissant leur admissibilité ou celle de leurs copies doivent être conformes à ces règles.

(2) Le paragraphe 182(2) de la version anglaise de la même loi est remplacé par ce qui suit :

(2) A court martial may receive, as evidence of the facts stated in them, statutory declarations made in the manner prescribed by the *Canada Evidence Act*, subject to the following conditions:

(a) if the declaration is one that the prosecutor wishes to introduce, a copy shall be served on the accused person at least seven days before the trial;

(b) if the declaration is one that the accused person wishes to introduce, a copy shall be served on the prosecutor at least three days before the trial; and

(c) at any time before the trial, the party served with a copy of the declaration under paragraph (a) or (b) may notify the opposite party that the party so served will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.

53. Le paragraphe 184(3) de la même loi est remplacé par ce qui suit :

(3) Dans le cas où la cour martiale est d'avis que le témoin dont la déposition a été recueillie par commission rogatoire devrait, dans l'intérêt de la justice militaire, déposer devant elle, elle peut exiger sa comparution s'il n'est pas trop malade pour se rendre au procès et ne se trouve pas hors du pays où le procès a lieu.

CLAUSE 52 ADMISSION OF DOCUMENTS AND RECORDS

Description

- ◆ Replaces the phrase “regulations made by Governor in Council” with “rules made under section 181” [ss. 182(1)]; and
- ◆ Makes technical amendments to the text in the English version [ss. 182(2)].

Rationale

- ◆ This amendment is consequential to the amendment of section 181 (see Clause 51).
- ◆ The technical amendments in subsection 182(2) of the English version are made to reflect current drafting norms.

CLAUSE 53 APPENDING THE WORD “MILITARY” TO “JUSTICE”

Description

- ◆ Adds the word “military” before “justice”; and
- ◆ Makes a technical amendment to the text.

Rationale

- ◆ The addition of the word “military” will provide consistency in the use of the phrase “in the interests of military justice” in the *Act*.
- ◆ The technical amendment is made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 54

54. The Act is amended by adding the following after section 194:

Absconding Accused

194.1 (1) An accused person who absconds during the course of their trial by court martial, whether or not the person is charged jointly with another person, is deemed to have waived their right to be present at their trial.

(2) A military judge presiding at the court martial of an accused person who absconds may

(a) continue the trial and proceed to a judgment or verdict and, if the accused person is found guilty, impose a sentence in their absence; or

(b) if a warrant is issued under section 249.23, adjourn the trial to await the appearance of the accused person.

(3) A military judge who adjourns a court martial may at any time continue the court martial if he or she is satisfied that it is no longer in the interests of military justice to await the appearance of the accused person.

(4) A court martial may draw an inference adverse to the accused person from the fact that the accused person has absconded.

(5) An accused person who reappears at their trial is not entitled to have any part of the proceedings that were conducted in their absence reopened unless the court martial is satisfied that because of exceptional circumstances it is in the interests of military justice to reopen the proceedings.

(6) Counsel for an accused person who absconds is not deprived, as result of the absconding, of any authority he or she may have to continue to represent the accused person.

54. La même loi est modifiée par adjonction, après l'article 194, de ce qui suit :

Absence de l'accusé

194.1 (1) L'accusé, inculpé conjointement avec un autre ou non, qui s'esquive au cours de son procès est réputé avoir renoncé à son droit d'y assister.

(2) Le juge militaire qui préside la cour martiale peut alors :

a) poursuivre le procès et rendre un jugement ou un verdict et, s'il déclare l'accusé coupable, prononcer une sentence contre lui, en son absence;

b) en cas de délivrance d'un mandat en vertu de l'article 249.23, ajourner le procès jusqu'à la comparution de l'accusé.

(3) En cas d'ajournement, la cour martiale peut poursuivre le procès dès que le juge militaire qui la préside estime qu'il est dans l'intérêt de la justice militaire de le faire.

(4) La cour martiale peut tirer une conclusion défavorable à l'accusé du fait qu'il s'est esquivé.

(5) L'accusé qui, après s'être esquivé, comparaît de nouveau à son procès ne peut faire rouvrir les procédures menées en son absence que si la cour martiale est convaincue qu'il est dans l'intérêt de la justice militaire de le faire en raison de circonstances exceptionnelles.

(6) Si l'accusé qui s'est esquivé au cours de son procès ne comparaît pas, son avocat conserve le pouvoir de le représenter.

CLAUSE 54 ABSCONDING ACCUSED

Description

- ◆ Adds the new heading “Absconding Accused” before section 194.1;
- ◆ Provides that an accused person, who absconds during the course of their trial by court martial, is deemed to have waived their right to be present at trial [ss. 194.1(1)];
- ◆ Permits the military judge presiding at the court martial of an accused person who absconds to continue the court martial and proceed to a judgment or verdict or, if a warrant is issued, to adjourn the trial [ss. 194.1(2)];
- ◆ Permits a military judge who adjourns a court martial to continue it at a later time without the accused if it is in the interests of military justice to do so [ss. 194.1(3)];
- ◆ Provides for a court martial to draw an inference adverse to the accused person from the fact that the accused person has absconded [ss. 194.1(4)];
- ◆ Prevents an accused person who reappears from having the proceedings reopened unless exceptional circumstances exists [ss. 194.1(5)]; and
- ◆ Permits counsel for an accused person who absconds to continue to represent the accused person [ss. 194.1(6)].

Rationale

- ◆ The *Criminal Code* permits a trial to proceed once it has commenced and the accused person absconds during the trial.
- ◆ Case law has held that the accused person’s failure to remain at trial may lead to an inference that the accused has waived his or her rights to be present.
- ◆ Introducing this concept in the military justice system will improve the administration of justice at courts martial and will remove the perception that a military accused could avoid justice by being absent.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 55-57

55. Paragraph (b) of the definition “peace officer” in section 196.11 of the Act is replaced by the following:

(b) an officer or a non-commissioned member of the Canadian Forces who is

(i) a member of the military police, or

(ii) employed on duties that the Governor in Council has prescribed in the regulations to be of such a kind as to necessitate that the officer or non-commissioned member performing them has the powers of a peace officer.

56. The portion of subsection 196.12(1) of the Act before paragraph (a) is replaced by the following:

196.12 (1) A military judge, on *ex parte* application in the prescribed form, may issue a warrant in the prescribed form authorizing the taking for the purpose of forensic DNA analysis, from a person subject to the Code of Service Discipline, of any number of samples of bodily substances that is reasonably required for that purpose, if the military judge is satisfied by information on oath that it is in the best interests of the administration of military justice to do so and that there are reasonable grounds to believe

57. Subsection 202.12(1.1) of the Act is replaced by the following:

(1.1) Despite paragraph (1)(a), the Chief Military Judge may extend the period for holding an inquiry if he or she is satisfied on the basis of an application by the Director of Military Prosecutions or the accused person that the extension is necessary for the proper administration of military justice.

55. Le sous-alinéa b)(i) de la définition de « agent de la paix », à l'article 196.11 de la même loi, est remplacé par ce qui suit :

(i) soit policiers militaires,

56. Le passage du paragraphe 196.12(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

196.12 (1) Sur demande *ex parte* présentée selon le formulaire réglementaire, le juge militaire peut délivrer un mandat — rédigé selon le formulaire réglementaire — autorisant le prélèvement sur une personne justiciable du code de discipline militaire, pour analyse génétique, du nombre d'échantillons de substances corporelles jugé nécessaire à cette fin s'il est convaincu, sur la foi d'une dénonciation faite sous serment, que cela servirait au mieux l'administration de la justice militaire et qu'il existe des motifs raisonnables de croire :

57. Le paragraphe 202.12(1.1) de la même loi est remplacé par ce qui suit :

(1.1) Par dérogation à l'alinéa (1)a), le juge militaire en chef peut proroger le délai pour tenir l'audience s'il est d'avis, en se fondant sur la demande du directeur des poursuites militaires ou de l'accusé, que cela servirait la bonne administration de la justice militaire.

CLAUSE 55 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase “an officer or non-commissioned member appointed for the purposes of section 156” with “a member of the military police”; and
- ◆ Creates subparagraphs (i) and (ii) in paragraph (b) of the English version of the *Act*.

Rationale

- ◆ The amendment with respect to the “military police” is consequential to the introduction of the definition “military police” in subsection 2(1).
- ◆ The creation of two subparagraphs in the English version, similar to those in the current French version, will improve clarity and reflect current drafting norms.

CLAUSE 56 APPENDING THE WORD “MILITARY” TO “JUSTICE”

Description

- ◆ Adds the word “military” before “justice”.

Rationale

- ◆ This amendment will provide consistency in the use of the phrase “the administration of military justice” in the *Act*.

CLAUSE 57 APPENDING THE WORD “MILITARY” TO “JUSTICE”

Description

- ◆ Adds the word “military” before “justice”.

Rationale

- ◆ This amendment will provide consistency in the use of the phrase “the administration of military justice” in the *Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 58

58. (1) Paragraph 202.121(7)(c) of the Act is replaced by the following:

(c) that a stay is in the interests of the proper administration of military justice.

(2) The portion of subsection 202.121(8) of the Act before paragraph (a) is replaced by the following:

(8) To determine whether a stay of proceedings is in the interests of the proper administration of military justice, the court martial shall consider any submissions of the prosecutor, the accused person and all other parties and the following factors:

(3) Paragraph 202.121(8)(b) of the Act is replaced by the following:

(b) the salutary and deleterious effects of the order for a stay of proceedings, including the effect on public confidence in the administration of military justice;

58. (1) L'alinéa 202.121(7)c) de la même loi est remplacé par ce qui suit :

c) que la mesure servirait la bonne administration de la justice militaire.

(2) Le passage du paragraphe 202.121(8) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

(8) Pour décider si la suspension de l'instance servirait la bonne administration de la justice militaire, la cour martiale prend en compte les observations présentées par le procureur de la poursuite, l'accusé ou toute autre partie ainsi que les facteurs suivants :

(3) L'alinéa 202.121(8)b) de la même loi est remplacé par ce qui suit :

b) les effets bénéfiques et les effets préjudiciables de l'ordonnance, notamment en ce qui a trait à la confiance du public envers l'administration de la justice militaire;

CLAUSE 58 APPENDING THE WORD “MILITARY” TO “JUSTICE”

Description

- ◆ Adds the word “military” before “justice” in paragraph 202.121(7)(c);
- ◆ Adds the word “military” in the portion of subsection 202.121(8) before paragraph (a); and
- ◆ Adds the word “military” in paragraph 202.121(8)(b).

Rationale

- ◆ These amendments will provide consistency in the use of the phrase “the administration of military justice” in the *Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 59

59. The Act is amended by adding the following after section 202.2:

202.201 (1) A hearing by a court martial under subsection 200(2) or 202.15(1) to make or review a disposition in respect of an accused person shall be held in accordance with this section.

(2) The hearing may be conducted in as informal a manner as is appropriate in the circumstances.

(3) The court martial may designate as a party any person who has a substantial interest in protecting the accused person's interests, if the court martial is of the opinion that it is just to do so.

(4) The court martial shall give notice of the hearing to the parties.

(5) The court martial shall, at the request of a victim of the offence, give the victim notice of the hearing and of the relevant provisions of this Act.

(6) If the court martial considers it to be in the accused person's best interests and not contrary to the public interest, it may order the public or any members of the public to be excluded from the hearing or any part of it.

(7) The accused person or any other party has the right to be represented by counsel.

(8) A court martial shall, either before or at the time of the hearing of an accused person who is not represented by counsel, direct that counsel be provided by the Director of Defence Counsel Services if the accused person has been found unfit to stand trial or the interests of military justice require that counsel be provided.

(9) Subject to subsection (10), the accused person has the right to be present during the entire hearing.

59. La même loi est modifiée par adjonction, après l'article 202.2, de ce qui suit :

202.201 (1) Le présent article s'applique à l'audience que tient la cour martiale au titre des paragraphes 200(2) ou 202.15(1) en vue de rendre ou de réviser une décision à l'égard d'un accusé.

(2) L'audience peut être aussi informelle que le permettent les circonstances.

(3) Si elle est d'avis que la justice l'exige, la cour martiale peut accorder le statut de partie à toute personne qui possède un intérêt réel dans la protection des intérêts de l'accusé.

(4) La cour martiale donne un avis de l'audience à toutes les parties.

(5) Elle fournit à la victime qui en fait la demande un avis de l'audience et des dispositions pertinentes de la présente loi.

(6) L'audience peut, en totalité ou en partie, avoir lieu à huis clos si la cour martiale considère que cela est dans l'intérêt de l'accusé et n'est pas contraire à l'intérêt public.

(7) L'accusé et toutes les parties ont le droit d'être représentés par avocat.

(8) Si l'accusé a été déclaré inapte à subir son procès ou si l'intérêt de la justice militaire l'exige, la cour martiale ordonne, dans le cas où l'accusé n'est pas représenté par avocat, que le directeur du service d'avocats de la défense lui en désigne un, avant l'audience ou au moment de celle-ci.

(9) Sous réserve du paragraphe (10), l'accusé a le droit d'être présent durant toute l'audience.

CLAUSE 59 MENTAL DISORDER – DISPOSITION HEARING (PART 1)

Description

- ◆ Requires a disposition hearing by a court martial in respect of an accused person who has been found unfit to stand trial or not responsible on account of mental disorder to be held in accordance with this section [ss. 202.201(1)];
- ◆ Provides for the hearing to be conducted in as informal a manner as is appropriate in the circumstances [ss. 202.201(2)];
- ◆ Permits the court martial to designate as a party any person who has a substantial interest in protecting the interests of the accused person [ss. 202.201(3)];
- ◆ Requires the court martial to give notice of the hearing to the parties [ss. 202.201(4)];
- ◆ Provides for the court martial, at the victim's request, to give the victim notice of the hearing and of the relevant provisions of the Act [ss. 202.201(5)];
- ◆ Permits the court martial to order the public or any members of the public to be excluded from the hearing [ss. 202.201(6)];
- ◆ Provides that the accused person or any other party has the right to be represented by counsel [ss. 202.201(7)];
- ◆ Requires a court martial to direct that counsel be provided by the Director of Defence Counsel Services if an unrepresented accused person has been found unfit to stand trial or if the interests of military justice require that counsel be provided [ss. 202.201(8)]; and
- ◆ Provides a right for an accused person to be present during the hearing [ss. 202.201(9)].

Rationale

- ◆ This amendment will establish necessary procedures to be followed at courts martial when making a disposition after a finding that an accused is unfit to stand trial or is not responsible on account of mental disorder.
- ◆ These provisions are similar to those in sections 672.5 and 672.541 of the *Criminal Code*.
- ◆ The procedures include the use of victim impact statements to afford a voice to victims in the disposition of an accused person who has been found unfit to stand trial or an offender who has been found not responsible on account of mental disorder.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 59

(10) The court martial may permit the accused person to be absent during the entire hearing or any part of it on any conditions that the court martial considers appropriate. The court martial may also cause the accused person to be removed and barred from re-entry for the entire hearing or any part of it for any of the following reasons:

(a) the accused person is interrupting the hearing and it is not feasible to continue it in the accused person's presence;

(b) the court martial is satisfied that the accused person's presence would likely endanger the life or safety of another person or would seriously impair the treatment or recovery of the accused person; or

(c) the court martial is satisfied that the accused person should not be present for the hearing of evidence, oral or written submissions, or the cross-examination of any witness respecting the existence of grounds for removing the accused person under paragraph (b).

(11) Any party may adduce evidence, make oral or written submissions, call witnesses and cross-examine any witness called by any other party and, on application, cross-examine any person who made an assessment report that was submitted in writing to the court martial.

(12) A party may not compel the attendance of witnesses, but may request the court martial to do so.

(13) If the accused person agrees, the court martial may permit them to appear by closed circuit television or any other means that allows the court martial and the accused person to engage in simultaneous visual and oral communication, for any part of the hearing, so long as the accused person is given the opportunity to communicate privately with counsel if they are represented by counsel.

(10) La cour martiale peut soit permettre à l'accusé d'être absent pendant la totalité ou une partie de l'audience aux conditions qu'elle juge indiquées, soit l'exclure pendant la totalité ou une partie de l'audience dans les cas suivants :

a) l'accusé interrompt l'audience au point qu'il serait difficile de la continuer en sa présence;

b) la cour martiale est convaincue que sa présence mettrait vraisemblablement en danger la vie ou la sécurité d'un tiers ou aurait un effet préjudiciable grave sur le traitement ou la guérison de l'accusé;

c) la cour martiale est convaincue qu'il ne devrait pas être présent pour l'audition de la preuve, la présentation des observations orales ou écrites ou le contre-interrogatoire des témoins relativement à l'existence des circonstances visées à l'alinéa b).

(11) Toute partie peut présenter des éléments de preuve, faire des observations, oralement ou par écrit, appeler des témoins et contre-interroger ceux appelés par les autres parties et, si un rapport d'évaluation a été présenté par écrit à la cour martiale, peut en contre-interroger l'auteur après en avoir demandé l'autorisation.

(12) Une partie ne peut ordonner la présence d'un témoin à l'audience, mais peut demander à la cour martiale de le faire.

(13) La cour martiale peut autoriser l'accusé, avec son consentement, à être présent par télévision en circuit fermé ou par tout autre moyen leur permettant, à elle et à l'accusé, de se voir et de communiquer simultanément durant toute partie de l'audience, pourvu qu'il ait la possibilité, s'il est représenté par un avocat, de communiquer en privé avec lui.

CLAUSE 59 MENTAL DISORDER – DISPOSITION HEARING (PART 2)

Description

- ◆ Provides that an accused person may be absent during the hearing, and also to be removed and barred from re-entry for any of three specified reasons [ss. 202.201(10)];
- ◆ Provides for the adducing of evidence, making of submissions, and calling and questioning of witnesses at hearings [ss. 202.201(11)];
- ◆ Provides that a party may not compel the attendance of witnesses, but may request the court martial to do so [ss. 202.201(12)]; and
- ◆ Authorizes the court martial, if the accused person agrees, to permit the accused person to appear by closed-circuit television or other means [ss. 202.201(13)].

Rationale

- ◆ This amendment will establish necessary procedures to be followed at courts martial when making a disposition after a finding that an accused is unfit to stand trial or is not responsible on account of mental disorder.
- ◆ These provisions are similar to those in sections 672.5 and 672.541 of the *Criminal Code*.
- ◆ The procedures include the use of victim impact statements to afford a voice to victims in the disposition of an accused person who has been found unfit to stand trial or an offender who has been found not responsible on account of mental disorder.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 59

(14) A court martial that reviews a disposition shall, on receipt of an assessment report, determine if there has been any change in the accused person's mental condition since the disposition was made or last reviewed that may provide grounds for the accused person's release from custody under subsection 201(1) or section 202.16. If the court martial determines that there has been such a change, it shall notify every victim of the offence that they may prepare a statement.

(15) For the purpose of making or reviewing a disposition in respect of an accused person, a court martial shall consider the statement of any victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(16) A victim's statement must be prepared in the form, and filed in accordance with the procedures, provided for by regulations made by the Governor in Council.

(17) Unless the court martial considers that it would not be in the best interests of the administration of military justice, the court martial shall, at the victim's request, permit the victim to read their statement or to present the statement in any other manner that the court martial considers appropriate.

(18) Whether or not a statement has been prepared and filed, the court martial may consider any other evidence concerning any victim of the offence for the purpose of making or reviewing the disposition.

(19) The Court Martial Administrator shall, as soon as feasible after receiving a victim's statement, ensure that a copy is provided to the prosecutor and to the accused person or their counsel.

(20) As soon as feasible after a finding of not responsible on account of mental disorder is made and before making a disposition, the court martial shall inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim has been advised that they may prepare a statement.

(14) La cour martiale qui reçoit un rapport d'évaluation établit si, depuis la date de la décision rendue à l'égard de l'accusé ou de sa dernière révision, l'état mental de celui-ci a subi un changement pouvant justifier sa libération aux termes du paragraphe 201(1) ou de l'article 202.16; le cas échéant, elle avise chacune des victimes de la possibilité de rédiger une déclaration.

(15) Pour rendre ou réviser une décision à l'égard de l'accusé, la cour martiale prend en considération la déclaration de toute victime sur les dommages ou les pertes qui lui ont été causés par la perpétration de l'infraction.

(16) La rédaction et le dépôt de la déclaration de la victime se font selon la forme et suivant la procédure prévues par règlement du gouverneur en conseil.

(17) Sur demande de la victime, la cour martiale lui permet de lire sa déclaration ou d'en faire la présentation de toute autre façon qu'elle juge indiquée, sauf si elle est d'avis que cette mesure nuirait à la bonne administration de la justice militaire.

(18) Qu'il y ait ou non rédaction et dépôt d'une déclaration, la cour martiale peut prendre en considération tout autre élément de preuve qui concerne toute victime pour rendre ou réviser une décision à l'égard de l'accusé.

(19) Dans les meilleurs délais après la réception de la déclaration de toute victime, l'administrateur de la cour martiale veille à ce qu'une copie en soit fournie au procureur de la poursuite et à l'accusé ou à son avocat.

(20) Dans les meilleurs délais après avoir rendu un verdict de non-responsabilité pour cause de troubles mentaux et avant de rendre une décision, la cour martiale est tenue de s'enquérir auprès du procureur de la poursuite ou de toute victime — ou de toute personne la représentant — si elle a été informée de la possibilité de rédiger une déclaration.

CLAUSE 59 MENTAL DISORDER – DISPOSITION HEARING (PART 3)

Description

- ◆ Requires the court martial, on receiving an assessment report, to determine if there has been any change in the mental condition of the accused person that may provide grounds for the release from custody, and to notify every victim that he or she may prepare a victim impact statement if there has been a change [ss. 202.201(14)];
- ◆ Requires a court martial to consider a victim impact statement [ss. 202.201(15)];
- ◆ Requires that a victim impact statement be prepared in the form, and filed in accordance with the procedures, provided for by regulations [ss. 202.201(16)];
- ◆ Permits a victim to read their victim impact statement or to present it in any other manner that the court martial considers appropriate [ss. 202.201(17)];
- ◆ Authorizes the court martial to consider any other evidence concerning a victim [ss. 202.201(18)];
- ◆ Requires the Court Martial Administrator to ensure that a copy of a victim impact statement is provided to the prosecutor and the accused or counsel for the accused [ss. 202.201(19)]; and
- ◆ Requires the court martial to inquire if a victim has been advised that he or she may prepare a victim impact statement [ss. 202.201(20)].

Rationale

- ◆ This amendment will establish necessary procedures to be followed at courts martial when making a disposition after a finding that an accused is unfit to stand trial or is not responsible on account of mental disorder.
- ◆ These provisions are similar to those in sections 672.5 and 672.541 of the *Criminal Code*.
- ◆ The procedures include the use of victim impact statements to afford a voice to victims in the disposition of an accused person who has been found unfit to stand trial or an offender who has been found not responsible on account of mental disorder.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 59-60

(21) On application of the prosecutor or a victim or on its own motion, the court martial may adjourn the hearing to permit a victim to prepare a statement or to present evidence referred to in subsection (18) if it is satisfied that the adjournment would not interfere with the proper administration of military justice.

(21) La cour martiale peut, si elle est convaincue que cela ne nuira pas à la bonne administration de la justice militaire, de sa propre initiative ou à la demande de toute victime ou du procureur de la poursuite, ajourner l'audience pour permettre à la victime de rédiger sa déclaration ou de présenter tout élément de preuve au titre du paragraphe (18).

(22) In this section, "victim" has the same meaning as in section 203.

(22) Au présent article, « victime » s'entend au sens de l'article 203.

60. (1) The portion of subsection 202.23(2) of the Act before paragraph (a) is replaced by the following:

60. (1) Le passage du paragraphe 202.23(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

(2) A member of the military police or any other peace officer within the meaning of the *Criminal Code* may arrest an accused person without a warrant if he or she has reasonable grounds to believe that the accused person

(2) Le policier militaire ou tout autre agent de la paix au sens du *Code criminel* peut arrêter sans mandat l'accusé qu'il croit, pour des motifs raisonnables :

(2) Subsection 202.23(2.1) of the Act is replaced by the following:

(2) Le paragraphe 202.23(2.1) de la même loi est remplacé par ce qui suit :

(2.1) The member of the military police or other peace officer who makes an arrest under subsection (2) may release an accused person arrested under that subsection who is subject to a disposition made by a court martial under paragraph 201(1)(a) or 202.16(1)(b), a disposition made by a Review Board under paragraph 672.54(b) of the *Criminal Code* or an assessment order and deliver the accused person to the place specified in the disposition or assessment order.

(2.1) Le policier militaire ou l'agent de la paix qui procède à l'arrestation peut mettre en liberté l'accusé arrêté en vertu du paragraphe (2) et à l'égard duquel une décision a été rendue par une cour martiale en vertu des alinéas 201(1)a) ou 202.16(1)b) ou par une commission d'examen en vertu de l'alinéa 672.54b) du *Code criminel* ou à l'égard duquel une ordonnance d'évaluation a été rendue et le livrer au lieu mentionné dans la décision ou l'ordonnance d'évaluation.

(3) The portion of subsection 202.23(2.2) of the English version of the Act before paragraph (a) is replaced by the following:

(3) Le passage du paragraphe 202.23(2.2) de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

(2.2) The member of the military police or other peace officer shall not release the accused person if he or she has reasonable grounds to believe

(2.2) The member of the military police or other peace officer shall not release the accused person if he or she has reasonable grounds to believe

CLAUSE 59 MENTAL DISORDER – DISPOSITION HEARING (PART 4)

Description

- ◆ Permits the court martial to adjourn the hearing to permit the victim to prepare a victim impact statement or present evidence [ss. 202.201(21)]; and
- ◆ Incorporates the definition "victim" from section 203 [ss. 202.201(22)].

Rationale

- ◆ This amendment will establish necessary procedures to be followed at courts martial when making a disposition after a finding that an accused is unfit to stand trial or is not responsible on account of mental disorder.
- ◆ These provisions are similar to those in sections 672.5 and 672.541 of the *Criminal Code*.
- ◆ The procedures include the use of victim impact statements to afford a voice to victims in the disposition of an accused person who has been found unfit to stand trial or an offender who has been found not responsible on account of mental disorder.
- ◆ This amendment will provide consistency in the meaning of the word "victim" in the *Act*.

CLAUSE 60 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase "An officer, a non-commissioned member appointed for the purposes of section 156," with "A member of the military police" [ss. 202.23(2)];
- ◆ Replaces the phrase "An officer, a non-commissioned member or another" with "The member of the military police or other" [ss. 202.23(2.1)]; and
- ◆ Replaces the phrase "officer, non-commissioned member" with "member of the military police" in the English version and makes a technical amendment to the text [ss. 202.23(2.2)].

Rationale

- ◆ The amendment with respect to the "military police" is consequential to the introduction of the definition "military police" in subsection 2(1).
- ◆ The technical amendment is made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 61-62

61. Subsection 202.25(1) of the Act is replaced by the following:

202.25 (1) Review Boards and their chairpersons may exercise the powers and shall perform the duties assigned to them under the *Criminal Code*, with any modifications that the circumstances require and unless the context otherwise requires, in relation to findings made by courts martial of unfit to stand trial or not responsible on account of mental disorder, and in relation to dispositions made under section 201 or 202.16, except for the powers and duties referred to in subsections 672.5(8.1) and (8.2) and sections 672.851 and 672.86 to 672.89 of the *Criminal Code*.

(1.1) For the application of subsection (1), a reference to the attorney general of a province in which a hearing is held under subsection 672.5(3) of the *Criminal Code* shall be read as a reference to the Director of Military Prosecutions.

62. The Act is amended by adding the following after section 202.26:

DIVISION 7.1

SENTENCING

Interpretation

203. The following definitions apply in this Division.

“common-law partner” means, in relation to an individual, a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.

“victim”, in relation to an offence, means

(a) a person to whom harm was done or who suffered loss as a direct result of the commission of the offence; and

(b) if the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection 203.6(1), the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any of their dependants.

61. Le paragraphe 202.25(1) de la même loi est remplacé par ce qui suit :

202.25 (1) Les commissions d'examen et leurs présidents exercent, avec les adaptations nécessaires et sauf indication contraire du contexte, les pouvoirs et fonctions qui leur sont attribués en vertu du *Code criminel* à l'égard des verdicts d'inaptitude à subir un procès ou de non-responsabilité pour cause de troubles mentaux que rendent les cours martiales et des décisions qu'elles prennent au titre des articles 201 ou 202.16, sauf ceux attribués par les paragraphes 672.5(8.1) et (8.2) et les articles 672.851 et 672.86 à 672.89 de cette loi.

(1.1) Pour l'application du paragraphe (1), la mention du procureur général de la province où se tient l'audience au paragraphe 672.5(3) du *Code criminel* vaut mention du directeur des poursuites militaires.

62. La même loi est modifiée par adjonction, après l'article 202.26, de ce qui suit :

SECTION 7.1

DÉTERMINATION DE LA PEINE

Définitions

203. Les définitions qui suivent s'appliquent à la présente section.

« conjoint de fait » S'entend de la personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an.

« victime » S'entend :

a) de la personne qui a subi des dommages ou des pertes directement imputables à la perpétration de l'infraction;

b) si la personne visée à l'alinéa a) est décédée, malade ou incapable de faire la déclaration visée au paragraphe 203.6(1), soit de son époux ou conjoint de fait, soit d'un parent, soit de quiconque en a la garde, en droit ou en fait, soit de toute personne aux soins de laquelle elle est confiée ou qui est chargée de son entretien, soit d'une personne à sa charge.

CLAUSE 61 MENTAL DISORDER – REVIEW BOARDS

Description

- ◆ Makes changes to references to sections of the *Criminal Code* [ss. 202.25(1)]; and
- ◆ Provides that a reference to the attorney general of a province in which a hearing is held under subsection 672.5(3) of the *Criminal Code* shall be read as a reference to the Director of Military Prosecutions [ss. 202.25(1.1)].

Rationale

- ◆ The amendment to subsection 202.25(1) will clarify the appropriate sections of the *Criminal Code* which will apply to mental disorder procedures held under the *National Defence Act*.
- ◆ The new subsection 202.25(1.1) will ensure that the Director of Military Prosecutions is designated as a party at a disposition hearing held by a court or Review Board.

CLAUSE 62 SENTENCING – INTERPRETATION

Description

- ◆ Adds Division 7.1 with the heading “Sentencing” after section 202.26;
- ◆ Adds the new heading “Interpretation” before section 203; and
- ◆ Defines the term “common-law partner” and “victim” for the purposes of Division 8 [s. 203].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ By setting out the fundamental purposes and principles of sentencing at service tribunals, and the objectives to be achieved by imposing just sanctions, taking into account the military context, detailed guidance will be provided to officers presiding at summary trials, military judges at courts martial, and judges of the Court Martial Appeal Court and the Supreme Court of Canada on the hearing of appeals. This will assist in the determination of consistent, just and appropriate sentences in the military justice system.
- ◆ The *Criminal Code* similarly sets out fundamental purposes, principles and factors to be taken into consideration on sentencing in the context of the civilian criminal justice system.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

Purposes and Principles of Sentencing by Service Tribunals

203.1 (1) The fundamental purposes of sentencing Are

(a) to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and

(b) to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

(2) The fundamental purposes shall be achieved by imposing just sanctions that have one or more of the following objectives:

(a) to promote a habit of obedience to lawful commands and orders;

(b) to maintain public trust in the Canadian Forces as a disciplined armed force;

(c) to denounce unlawful conduct;

(d) to deter offenders and other persons from committing offences;

(e) to assist in rehabilitating offenders;

(f) to assist in reintegrating offenders into military service;

(g) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;

(h) to provide reparations for harm done to victims or to the community; and

(i) to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

203.2 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Objectifs et principes de la détermination de la peine applicables aux tribunaux militaires

203.1 (1) La détermination de la peine a pour objectifs essentiels de favoriser l'efficacité opérationnelle des Forces canadiennes en contribuant au maintien de la discipline, de la bonne organisation et du moral, et de contribuer au respect de la loi et au maintien d'une société juste, paisible et sûre.

(2) L'atteinte de ces objectifs essentiels se fait par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants :

a) renforcer le devoir d'obéissance aux ordres légitimes;

b) maintenir la confiance du public dans les Forces canadiennes en tant que force armée disciplinée;

c) dénoncer les comportements illégaux;

d) dissuader les contrevenants et autres personnes de commettre des infractions;

e) favoriser la réinsertion sociale des contrevenants;

f) favoriser la réinsertion des contrevenants dans la vie militaire;

g) isoler, au besoin, les contrevenants des autres officiers et militaires du rang ou de la société en général;

h) assurer la réparation des torts causés aux victimes ou à la collectivité;

i) susciter le sens des responsabilités chez les contrevenants, notamment par la reconnaissance des dommages causés à la victime et à la collectivité.

203.2 La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du contrevenant.

CLAUSE 62 SENTENCING – PURPOSES AND FUNDAMENTAL PRINCIPLE

Description

- ◆ Sets out the heading “Purposes and Principles of Sentencing by Service Tribunals” before section 203.1;
- ◆ Provides that the fundamental purposes of sentencing are to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and the maintenance of a just, peaceful and safe society [ss. 203.1(1)];
- ◆ Provides that the fundamental purposes of sentencing shall be achieved by imposing just sanctions that have one or more of nine specific objectives [ss. 203.1(2)]; and
- ◆ Provides that, as a fundamental principle, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender [s. 203.2].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ By setting out the fundamental purposes and principles of sentencing at service tribunals, and the objectives to be achieved by imposing just sanctions, taking into account the military context, detailed guidance will be provided to officers presiding at summary trials, military judges at courts martial, and judges of the Court Martial Appeal Court and the Supreme Court of Canada on the hearing of appeals. This will assist in the determination of consistent, just and appropriate sentences in the military justice system.
- ◆ The *Criminal Code* similarly sets out fundamental purposes, principles and factors to be taken into consideration on sentencing in the context of the civilian criminal justice system.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

203.3 A service tribunal that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and aggravating circumstances include, but are not restricted to, evidence establishing that

(i) the offender, in committing the offence, abused their rank or other position of trust or authority,

(ii) the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability or sexual orientation, or any other similar factor,

(iii) the offender, in committing the offence, abused their spouse or common-law partner,

(iv) the offender, in committing the offence, abused a person under the age of 18 years,

(v) the commission of the offence resulted in substantial harm to the conduct of a military operation,

(vi) the offence was committed in a theatre of hostilities,

(vii) the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(viii) the offence was a terrorism offence;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances;

(d) a sentence should be the least severe sentence required to maintain discipline, efficiency and morale; and

(e) any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

203.3 Le tribunal militaire détermine la peine à infliger compte tenu également des principes suivants :

a) l'adaptation de la peine aux circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation du contrevenant, étant notamment considérés comme des circonstances aggravantes les éléments de preuve établissant que l'infraction, selon le cas :

(i) comporte une utilisation abusive de son grade ou un autre abus de confiance ou d'autorité,

(ii) est motivée par des préjugés ou de la haine fondés sur des facteurs tels que la race, l'origine nationale ou ethnique, la langue, la couleur, la religion, le sexe, l'âge, la déficience mentale ou physique ou l'orientation sexuelle,

(iii) comporte des mauvais traitements infligés par le contrevenant à son époux ou conjoint de fait,

(iv) comporte des mauvais traitements infligés par le contrevenant à une personne âgée de moins de dix-huit ans,

(v) a eu un effet nuisible important sur la conduite d'une opération militaire,

(vi) a été commise sur un théâtre d'hostilités,

(vii) a été commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle,

(viii) est une infraction de terrorisme;

b) l'harmonisation des peines, c'est-à-dire l'infliction de peines semblables à celles infligées à des contrevenants pour des infractions semblables commises dans des circonstances semblables;

c) l'obligation, avant d'envisager la privation de liberté par l'emprisonnement ou la détention, d'examiner la possibilité de sanctions moins contraignantes lorsque les circonstances le justifient;

d) l'infliction de la peine la moins sévère possible qui permette de maintenir la discipline, la bonne organisation et le moral;

e) la prise en compte des conséquences indirectes du verdict de culpabilité ou de la sentence.

CLAUSE 62 SENTENCING – OTHER SENTENCING PRINCIPLES

Description

- ◆ Provides that a service tribunal that imposes a sentence shall also take into consideration five specific principles, including mitigating and specific aggravating circumstances [s. 203.3].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ By setting out the fundamental purposes and principles of sentencing at service tribunals, and the objectives to be achieved by imposing just sanctions, taking into account the military context, detailed guidance will be provided to officers presiding at summary trials, military judges at courts martial, and judges of the Court Martial Appeal Court and the Supreme Court of Canada on the hearing of appeals. This will assist in the determination of consistent, just and appropriate sentences in the military justice system.
- ◆ The *Criminal Code* similarly sets out fundamental purposes, principles and factors to be taken into consideration on sentencing in the context of the civilian criminal justice system.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

203.4 When a service tribunal imposes a sentence for an offence that involved the abuse of a person under the age of 18 years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

Facts Relevant to the Determination of a Sentence

203.5 (1) If there is a dispute with respect to any fact that is relevant to the determination of a sentence,

(a) the court martial shall request that evidence be adduced as to the existence of the fact unless it is satisfied that sufficient evidence was adduced at trial;

(b) subject to paragraph (c), the court martial shall be satisfied on a balance of probabilities of the existence of the disputed fact before relying on it in determining the sentence; and

(c) the prosecutor shall establish, by proof beyond a reasonable doubt, the existence of any aggravating fact or any previous conviction of the accused person.

(2) In the case of a General Court Martial, the court martial

(a) shall accept as proven all facts, express or implied, that are essential to the court martial panel's finding of guilty; and

(b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

203.4 Le tribunal militaire qui détermine la peine à infliger pour une infraction qui constitue un mauvais traitement à l'égard d'une personne âgée de moins de dix-huit ans accorde une attention particulière aux objectifs de dénonciation et de dissuasion d'un tel comportement.

Faits relatifs à la détermination de la peine

203.5 (1) Les règles ci-après s'appliquent en cas de contestation d'un fait relatif à la détermination de la peine :

a) la cour martiale exige que le fait soit établi en preuve, sauf si elle est convaincue que des éléments de preuve suffisants ont été présentés lors du procès;

b) sous réserve de l'alinéa c), elle doit être convaincue, par une preuve prépondérante, de l'existence du fait contesté sur lequel elle se fonde pour déterminer la peine;

c) le procureur de la poursuite doit prouver hors de tout doute raisonnable tout fait aggravant ou toute condamnation antérieure de l'accusé.

(2) La cour martiale générale :

a) considère comme prouvés tous les faits, exprès ou implicites, essentiels au verdict de culpabilité que les membres du comité de la cour martiale ont rendu;

b) peut accepter comme prouvés les autres faits pertinents qui ont été révélés lors du procès ou permettre aux parties d'en faire la preuve.

CLAUSE 62 SENTENCING – PERSONS UNDER 18 AND FACTS RELEVANT TO DETERMINATION

Description

- ◆ Provides that a service tribunal that imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years shall give primary consideration to the objectives of denunciation and deterrence of such conduct [s. 203.4];
- ◆ Add a new heading “Facts Relevant to the Determination of a Sentence” before section 203.5;
- ◆ Provides for the adducing of evidence related to sentencing and sets out the burden of proof if there is a dispute with respect to any fact that is relevant to the determination of sentence [ss. 203.5(1)]; and
- ◆ Provides that a General Court Martial shall accept as proven certain facts and may find other relevant facts [ss. 203.5(2)].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ By setting out the fundamental purposes and principles of sentencing at service tribunals, and the objectives to be achieved by imposing just sanctions, taking into account the military context, detailed guidance will be provided to officers presiding at summary trials, military judges at courts martial, and judges of the Court Martial Appeal Court and the Supreme Court of Canada on the hearing of appeals. This will assist in the determination of consistent, just and appropriate sentences in the military justice system.
- ◆ The *Criminal Code* similarly sets out fundamental purposes, principles and factors to be taken into consideration on sentencing in the context of the civilian criminal justice system.
- ◆ The policy in the new section 203.4 dealing with the abuse of persons under the age of eighteen is consistent with section 718.01 in the *Criminal Code* which came into force on 1 November 2005.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

Victim Impact Statement

203.6 (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged absolutely in respect of any offence, a court martial shall consider the statement of any victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A victim's statement must be prepared in the form, and submitted in accordance with the procedures, provided for by regulations made by the Governor in Council.

(3) Unless the court martial considers that it would not be in the best interests of the administration of military justice, the court martial shall, at the victim's request, permit them to read their statement or to present the statement in any other manner that the court martial considers appropriate.

(4) Whether or not a statement has been prepared and submitted, the court martial may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or if the offender should be discharged absolutely.

203.7 (1) As soon as feasible after a finding of guilty and in any event before imposing sentence, the court martial shall inquire of the prosecutor or any victim of the offence, or any person representing a victim of the offence, whether the victim has been advised that they may prepare a statement.

(2) On application of the prosecutor or a victim or on its own motion, the court martial may adjourn the proceedings to permit a victim to prepare a statement or to present evidence in accordance with subsection 203.6(4), if the court martial is satisfied that the adjournment would not interfere with the proper administration of military justice.

Déclaration de la victime

203.6 (1) Pour déterminer la peine à infliger au contrevenant ou pour décider si celui-ci devrait être absous inconditionnellement, la cour martiale prend en considération la déclaration de toute victime sur les dommages ou les pertes qui lui ont été causés par la perpétration de l'infraction.

(2) La rédaction et la présentation de la déclaration de la victime se font selon la forme et suivant la procédure prévues par règlement du gouverneur en conseil.

(3) Sur demande de la victime, la cour martiale lui permet de lire sa déclaration ou d'en faire la présentation de toute autre façon qu'elle juge indiquée, sauf si elle est d'avis que cette mesure nuirait à la bonne administration de la justice militaire.

(4) Qu'il y ait ou non rédaction et présentation d'une déclaration, la cour martiale peut prendre en considération tout autre élément de preuve qui concerne toute victime pour déterminer la peine à infliger au contrevenant ou pour décider si celui-ci devrait être absous inconditionnellement.

203.7 (1) Dans les meilleurs délais après la déclaration de culpabilité et, en tout état de cause, avant le prononcé de la sentence, la cour martiale est tenue de s'enquérir auprès du procureur de la poursuite ou de toute victime — ou de toute personne la représentant — si elle a été informée de la possibilité de rédiger une déclaration.

(2) La cour martiale peut, si elle est convaincue que cela ne nuira pas à la bonne administration de la justice militaire, de sa propre initiative ou à la demande de toute victime ou du procureur de la poursuite, ajourner l'instance pour permettre à la victime de rédiger sa déclaration ou de présenter tout élément de preuve au titre du paragraphe 203.6(4).

CLAUSE 62 SENTENCING – VICTIM IMPACT STATEMENT

Description

- ◆ Sets out the heading “Victim Impact Statement” before section 203.6;
- ◆ Requires a court martial to consider a victim impact statement for the purpose of determining the sentence to be imposed [ss. 203.6(1)];
- ◆ Requires that a victim impact statement be prepared in the form, and submitted in accordance with the procedures, provided for by regulations [ss. 203.6(2)];
- ◆ Permits a victim to read their victim impact statement or to present it in any other manner that the court martial considers appropriate [ss. 203.6(3)];
- ◆ Permits the court martial to consider any other evidence concerning a victim for the purpose of determining the sentence to be imposed [ss. 203.6(4)];
- ◆ Requires that the court martial inquire if a victim has been advised that he or she may prepare a victim impact statement [ss. 203.7(1)]; and
- ◆ Permits the court martial to adjourn the proceedings to permit the victim to prepare a victim impact statement or present evidence [ss. 203.7(2)].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ The introduction of victim impact statements in sections 203.6 and 203.7 will permit individual victims of offences, particularly those who have experienced significant physical, emotional or financial harm, to have a voice in the sentencing process.
- ◆ This amendment will permit the use of victim impact statements at courts martial, similar to the provisions in sections 722, 722.1 and 722.2 of the *Criminal Code*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

Absolute Discharge

203.8 (1) If an accused person pleads guilty to or is found guilty of an offence — other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life — the service tribunal before which the accused appears may, if it considers it to be in the accused person's best interests and not contrary to the public interest, instead of convicting the accused person, direct that they be discharged absolutely.

(2) If a service tribunal directs that an offender be discharged absolutely of an offence, the offender is deemed not to have been convicted of the offence, except that

(a) they may appeal from the determination of guilt as if it were a conviction in respect of the offence;

(b) in the case of a direction to discharge made by a court martial, the Minister may appeal from the decision not to convict the offender of the offence as if that decision were a finding of not guilty in respect of the offence; and

(c) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

(3) A reference in any Act of Parliament to a discharge under section 730 of the *Criminal Code* is deemed to include an absolute discharge under subsection (1).

Absolution inconditionnelle

203.8 (1) Le tribunal militaire devant lequel comparait l'accusé qui plaide coupable ou est reconnu coupable d'une infraction pour laquelle la loi ne prescrit pas de peine minimale ou qui n'est pas punissable d'un emprisonnement de quatorze ans ou de l'emprisonnement à perpétuité peut, s'il considère qu'il y va de l'intérêt véritable de l'accusé sans nuire à l'intérêt public, l'absoudre inconditionnellement au lieu de le condamner.

(2) Le contrevenant qui est absous inconditionnellement est réputé ne pas avoir été condamné à l'égard de l'infraction; toutefois, les règles suivantes s'appliquent :

a) le contrevenant peut interjeter appel du verdict de culpabilité comme s'il s'agissait d'une condamnation à l'égard de l'infraction à laquelle se rapporte l'absolution;

b) le ministre peut interjeter appel de la décision de la cour martiale de ne pas condamner le contrevenant à l'égard de l'infraction à laquelle se rapporte l'absolution comme s'il s'agissait d'un verdict de nonculpabilité;

c) le contrevenant peut plaider *autrefois convict* relativement à toute inculpation subséquente relative à l'infraction.

(3) Dans toute autre loi fédérale, la mention de l'absolution inconditionnelle visée à l'article 730 du *Code criminel* vise également l'absolution prononcée au titre du paragraphe (1).

CLAUSE 62 SENTENCING – ABSOLUTE DISCHARGE

Description

- ◆ Adds a new heading “Absolute Discharge” before section 203.8;
- ◆ Provides that a service tribunal may, instead of convicting the accused, direct that the accused be discharged absolutely [ss. 203.8(1)];
- ◆ Provides that an offender who is discharged absolutely is deemed not to have been convicted of the offence except in specific circumstances [ss. 203.8(2)]; and
- ◆ Deems a reference in any *Act* to a discharge under section 730 of the *Criminal Code* to include an absolute discharge under subsection 203.8(1) [ss. 203.8(3)].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ The ordering of an absolute discharge under section 203.8, similar to that under section 730 of the *Criminal Code*, will provide additional flexibility in sentencing in the military justice system, particularly if the offence is a first offence or is of a relatively minor nature;
- ◆ The deeming of a reference in an *Act* to a discharge under section 730 of the *Criminal Code* to include an absolute discharge under subsection 203.8(1) of the *National Defence Act* will ensure that an absolute discharge directed by a service tribunal will be treated the same as a discharge under section 730. For example, subsection 6.1 of the *Criminal Records Act* prohibits the disclosure of a discharge under section 730 by any department or agency of the Government of Canada in certain circumstances – this prohibition will apply to an absolute discharge ordered under section 203.8 of the *National Defence Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 62

Restitution

203.9 A court martial that imposes a sentence on an offender or directs that an offender be discharged absolutely may, on application of the Director of Military Prosecutions or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount that is not more than the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, if the amount is readily ascertainable;

(b) in the case of bodily or psychological harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount that is not more than all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable; and

(c) in the case of bodily harm or threat of bodily harm to a person — who at the relevant time was the offender's spouse, common-law partner or child or any other member of the offender's household — as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount that is not more than the actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, if the amount is readily ascertainable.

Dédommagement

203.9 Si le contrevenant est condamné ou absous inconditionnellement, la cour martiale qui inflige la peine ou prononce l'absolution peut, en plus de toute autre mesure, à la demande du directeur des poursuites militaires ou de sa propre initiative, ordonner au contrevenant :

a) dans le cas où la perte ou la destruction des biens d'une personne — ou le dommage qui leur a été causé — est imputable à la perpétration de l'infraction ou à l'arrestation ou à la tentative d'arrestation du contrevenant, de verser à cette personne une somme non supérieure à la valeur de remplacement des biens à la date de l'ordonnance moins la valeur — à la date de la restitution — de la partie des biens qui a été restituée à celle-ci, si cette valeur peut être déterminée facilement;

b) dans le cas où les blessures corporelles ou les dommages psychologiques infligés à une personne sont imputables à la perpétration de l'infraction ou à l'arrestation ou à la tentative d'arrestation du contrevenant, de verser à cette personne une somme non supérieure à la valeur des dommages pécuniaires, notamment la perte de revenu, imputables aux blessures corporelles ou aux dommages psychologiques, si cette valeur peut être déterminée facilement;

c) dans le cas où les blessures corporelles ou la menace de blessures corporelles infligées par le contrevenant à une personne demeurant avec lui au moment considéré, notamment son époux ou conjoint de fait ou un de ses enfants, sont imputables à la perpétration de l'infraction ou à l'arrestation ou à la tentative d'arrestation du contrevenant, de verser à cette personne, indépendamment des versements prévus aux alinéas a) ou b), une somme non supérieure aux frais raisonnables d'hébergement, d'alimentation, de transport et de garde d'enfant qu'une telle personne a réellement engagés pour demeurer ailleurs provisoirement, si ces frais peuvent être déterminés facilement.

CLAUSE 62 SENTENCING – RESTITUTION ORDERS (IMPOSITION)

Description

- ◆ Adds a new heading “*Restitution*” before section 203.9; and
- ◆ Provides that a court martial that imposes a sentence or directs that an offender be discharged absolutely may order that the offender make restitution in cases of damage to property, or bodily or psychological harm [s. 203.9].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ Additional flexibility on sentencing at courts martial will be afforded by permitting restitution orders to be made under section 203.9, similar to orders made under section 738 of the *Criminal Code*. This will permit restitution to victims of service offences without their resort to actions in civil court. Given the complexity surrounding restitution orders and their enforcement, such orders would not be appropriate at summary trials. Under section 249.25 of the *Act*, service tribunals continue to have the power to order the restitution of property obtained by the commission of an offence to be restored to the person apparently entitled to it.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 62-63

203.91 If an amount that is ordered to be paid as restitution is not paid without delay, the person to whom the amount was ordered to be paid may, by filing the order, enter as a judgment the amount ordered to be paid in any court that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

203.92 All or any part of an amount that is ordered to be paid as restitution may be taken out of moneys found in the offender's possession and seized at the time of their arrest if the court martial making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, directs it to be taken.

203.93 A court martial that makes an order of restitution shall cause notice of the content of the order, or a copy of the order, to be given to the person to whom the restitution is ordered to be paid.

203.94 A civil remedy for an act or omission is not affected by reason only that an order of restitution has been made in respect of that act or omission.

Passing of Sentence

203.95 Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, if the offender is convicted of more than one offence, the sentence is good if any one of the offences would have justified it.

63. Subsection 204(1) of the Act is replaced by the following:

204. (1) Subject to subsections (3) and 148(1) and sections 215 to 217, the term of a punishment of imprisonment or detention shall commence on the day on which the service tribunal pronounces sentence on the offender.

203.91 Faute par le contrevenant de payer immédiatement la somme visée par l'ordonnance de dédommagement, le destinataire de cette somme peut, par le dépôt de l'ordonnance, faire inscrire la somme au tribunal compétent. L'inscription vaut jugement exécutoire contre le contrevenant comme s'il s'agissait d'un jugement rendu contre lui, devant ce tribunal, au terme d'une action civile au profit du destinataire.

203.92 La cour martiale peut ordonner que toute somme trouvée en la possession du contrevenant et saisie au moment de son arrestation soit, en tout ou en partie, affectée au paiement des sommes visées par l'ordonnance de dédommagement, si elle est convaincue que personne d'autre que le contrevenant n'en réclame la propriété ou la possession.

203.93 La cour martiale qui rend une ordonnance de dédommagement est tenue d'en faire notifier le contenu ou une copie à la personne qui en est le bénéficiaire.

203.94 L'ordonnance de dédommagement rendue à l'égard d'un acte ou d'une omission ne porte pas atteinte au recours civil fondé sur cet acte ou cette omission.

Prononcé de la sentence

203.95 Dans un procès intenté sous le régime du code de discipline militaire, une seule sentence peut être prononcée contre le contrevenant; lorsque celui-ci est reconnu coupable de plusieurs infractions, la sentence est valable si elle est justifiée par l'une des infractions.

63. Le paragraphe 204(1) de la même loi est remplacé par ce qui suit :

204. (1) Sous réserve des paragraphes (3) et 148(1) et des articles 215 à 217, toute peine d'emprisonnement ou de détention commence à courir au prononcé de la sentence par le tribunal militaire.

CLAUSE 62 SENTENCING – RESTITUTION ORDERS (ENFORCEMENT) AND PASSING OF SENTENCE

Description

- ◆ Permits a person who is not paid restitution to enter the amount ordered as a judgement in a court that has jurisdiction to enter a judgment [s. 203.91];
- ◆ Provides for any unpaid amount that is ordered as restitution to be taken out of moneys found in the possession of the offender and seized at the time of the arrest of the offender [s. 203.92];
- ◆ Requires a court martial that makes an order of restitution to cause notice to be given to the person to whom the restitution is ordered to be paid. [s. 203.93];
- ◆ Permits a person to pursue a remedy in civil court even if an order of restitution has been made. [s. 203.94];
- ◆ Adds a new heading "*Passing of Sentence*" before section 203.95; and
- ◆ Requires that only one sentence be passed on an offender at a trial under the *Code of Service Discipline* and, if the offender is convicted of more than one offence, the sentence is good if any one of the offences would have justified it [s. 203.95].

Rationale

- ◆ These amendments will consolidate new provisions relating to sentencing, along with the current section 148 renumbered as section 203.95, in Division 7.1.
- ◆ This will set out sentencing provisions in a single Division after the other Divisions dealing with summary trial and court martial trial processes.
- ◆ Additional flexibility on sentencing at courts martial will be afforded by permitting restitution orders to be made under section 203.9, similar to orders made under section 738 of the *Criminal Code*. This will permit restitution to victims of service offences without their resort to actions in civil court. Given the complexity surrounding restitution orders and their enforcement, such orders would not be appropriate at summary trials. Under section 249.25 of the *Act*, service tribunals continue to have the power to order the restitution of property obtained by the commission of an offence to be restored to the person apparently entitled to it.
- ◆ Section 148 dealing with the passing of only one sentence will be renumbered as section 203.95 to consolidate sentencing provisions in Division 7.1.

CLAUSE 63 SENTENCING – INTERMITTENT SENTENCES (CONSEQUENTIAL AMENDMENT)

Description

- ◆ Adds a cross reference to subsection 148(1) and removes a cross reference to section 218.

Rationale

- ◆ These amendments are consequential to the introduction of intermittent sentences under section 148 and the repeal of section 218 respectively.

CLAUSE BY CLAUSE ANALYSIS	CLAUSE 64
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64. Section 215 of the Act is replaced by the following:

215. (1) If an offender is sentenced to imprisonment or detention, the execution of the punishment may be suspended by the service tribunal that imposes the punishment or, if the offender's sentence is affirmed or substituted on appeal, by the Court Martial Appeal Court.

(2) In suspending the execution of a punishment, the service tribunal or the Court Martial Appeal Court, as the case may be, shall impose the following conditions on the offender:

- (a) to keep the peace and be of good behaviour;
- (b) to attend any hearing under section 215.2 when ordered to do so by the appropriate person referred to in any of paragraphs 215.2(1)(a) to (c); and

(c) in the case of a person who is not an officer or a non-commissioned member, to notify the Provost Marshal in advance of any change of name or address, and to promptly notify the Provost Marshal of any change of employment or occupation.

(3) A service tribunal or the Court Martial Appeal Court may, in addition to the conditions described in subsection (2), impose any reasonable conditions.

(4) If a punishment that has been suspended under subsection (1) is put into execution, the term of the punishment is deemed to commence on the day on which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following the pronouncement of the sentence.

215.1 On application by an offender, a condition imposed under subsection 215(3) may be varied, or another condition substituted for that condition, by

- (a) the offender's commanding officer, in the case of a condition imposed by a summary trial;
- (b) a military judge, in the case of a condition imposed by a court martial; or
- (c) a judge of the Court Martial Appeal Court, in the case of a condition imposed by that Court.

64. L'article 215 de la même loi est remplacé par ce qui suit :

215. (1) L'exécution de la peine d'emprisonnement ou de détention peut être suspendue par le tribunal militaire qui l'a infligée ou par la Cour d'appel de la cour martiale qui a confirmé la sentence ou lui en a substitué une autre.

(2) Le tribunal militaire ou la Cour d'appel de la cour martiale, selon le cas, assortit l'ordonnance de suspension des conditions suivantes :

- a) ne pas troubler l'ordre public et avoir une bonne conduite;
- b) répondre à toute convocation de se présenter à l'audience visée à l'article 215.2 lorsque l'ordre lui en est donné par la personne visée à l'un des alinéas 215.2(1)a) à c);

c) dans le cas où le contrevenant n'est pas un officier ou militaire du rang, prévenir le grand prévôt de tout changement d'adresse ou de nom et l'aviser rapidement de tout changement d'emploi ou d'occupation.

(3) Le tribunal militaire ou la Cour d'appel de la cour martiale, selon le cas, peut assortir l'ordonnance de suspension de toute autre condition raisonnable.

(4) Toute peine suspendue au titre du paragraphe (1) est censée commencer le jour où elle est mise ou remise à exécution; dans ce dernier cas, toutefois, on doit en retrancher le temps d'incarcération postérieur au prononcé de la sentence.

215.1 Sur demande présentée par le contrevenant, les personnes ci-après peuvent modifier toute condition imposée au titre du paragraphe 215(3) ou y substituer toute autre condition :

- a) s'agissant d'une ordonnance rendue dans le cadre d'un procès sommaire, le commandant du contrevenant;
- b) s'agissant d'une ordonnance rendue par une cour martiale, tout juge militaire;
- c) s'agissant d'une ordonnance rendue par la Cour d'appel de la cour martiale, tout juge de ce tribunal.

CLAUSE 64 SENTENCING – SUSPENDED PUNISHMENT AND VARYING CONDITIONS

Description

- ◆ Provides authority for the Court Martial Appeal Court of Canada to suspend the execution of a punishment of imprisonment or detention if the Court affirms or substitutes a sentence on appeal [ss. 215(1)];
- ◆ Requires the service tribunal or the Court Martial Appeal Court of Canada when suspending a punishment to impose specific conditions on the offender [ss. 215(2)];
- ◆ Permits a service tribunal or the Court Martial Appeal Court of Canada to impose other reasonable conditions on the offender [ss. 215(3)];
- ◆ Deems a term of the punishment, that has been suspended but is put into execution, to commence on the date on which it is put into execution, less a deduction for any time served following pronouncement of the sentence [ss. 215(4)]; and
- ◆ Permits an offender to apply to vary condition imposed under section 215 or to have another condition substituted [s. 215.1]

Rationale

- ◆ Providing authority for the Court Martial Appeal Court of Canada to suspend a punishment of imprisonment or detention will afford additional flexibility to the Court in the determination of an appropriate sentence on an appeal.
- ◆ Setting out mandatory and other reasonable conditions during the period of the suspension of a sentence will provide clear standards for the offender to observe and for chain of command authorities to enforce.
- ◆ Providing for the conditions of suspension to be varied or substituted on application by an offender under section 215.1 will provide flexibility in adapting the conditions to changing circumstances for the offender.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 64

215.2 (1) On application by a representative of the Canadian Forces who is a member of a class designated for that purpose by regulations made by the Governor in Council, a determination of whether an offender has breached a condition imposed under section 215 may be made by

(a) the offender's commanding officer, in the case of a condition imposed by a summary trial;

(b) a military judge, in the case of a condition imposed by a court martial; or

(c) a judge of the Court Martial Appeal Court, in the case of a condition imposed by that Court.

(2) If a person referred to in any of paragraphs (1)(a) to (c) determines, after giving the offender and the applicant an opportunity to make representations, that the offender has breached a condition, the person may

(a) revoke the suspension of a punishment and commit the offender or, if the person is not empowered to commit the offender, direct an authority so empowered to do so; or

(b) vary any conditions imposed under subsection 215(3) or section 215.1 and add or substitute other conditions as he or she sees fit.

215.3 A person who orders an offender to attend for a hearing under section 215.2 may, if the offender fails to attend as ordered, issue a warrant for the offender's arrest in the form prescribed in regulations made by the Governor in Council.

215.2 (1) Sur demande présentée par un représentant des Forces canadiennes appartenant à une catégorie prévue par règlement du gouverneur en conseil, les personnes ci-après peuvent décider si le contrevenant a enfreint les conditions de l'ordonnance de suspension :

a) s'agissant d'une ordonnance rendue dans le cadre d'un procès sommaire, le commandant du contrevenant;

b) s'agissant d'une ordonnance rendue par une cour martiale, tout juge militaire;

c) s'agissant d'une ordonnance rendue par la Cour d'appel de la cour martiale, tout juge de ce tribunal.

(2) Si elle conclut que le contrevenant a enfreint une condition de l'ordonnance de suspension, la personne visée à l'un des alinéas (1)a) à c) peut, après avoir donné aux intéressés l'occasion de présenter leurs observations :

a) révoquer l'ordonnance et soit incarcérer le contrevenant, soit, si elle ne peut l'incarcérer elle-même, ordonner à l'autorité compétente de le faire;

b) modifier ou remplacer toute condition imposée au titre du paragraphe 215(3) ou de l'article 215.1, ou ajouter de nouvelles conditions, selon ce qu'elle estime indiqué.

215.3 La personne qui a convoqué le contrevenant pour l'audience visée à l'article 215.2 peut délivrer un mandat, selon le formulaire établi par règlement du gouverneur en conseil, pour l'arrestation du contrevenant qui, ayant dûment reçu l'ordre de comparaître, ne se présente pas.

CLAUSE 64 SENTENCING – BREACH OF CONDITIONS HEARING AND NON-APPEARANCE

Description

- ◆ Permits a representative of the Canadian Forces to apply to have a determination made as to whether an offender has breached a condition of a suspended punishment and identifies the authorities who may make that determination [ss. 215.2(1)];
- ◆ Provides, if determined that the offender has breached a condition, that the suspension may be revoked or a condition varied, added or substituted [ss. 215.2(2)]; and
- ◆ Provides that an arrest warrant may be issued if an offender fails to attend as ordered for a hearing [s. 215.3].

Rationale

- ◆ Procedural fairness will be afforded by providing for a hearing and the making of representations by an offender as to any alleged breach of conditions of a suspended punishment.
- ◆ Providing for the issue of a warrant in the case of an offender who fails to attend for a hearing as to a possible breach of a condition ensures the proper administration of military justice.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 65-67

65. Subsections 216(1) and (2) of the Act are replaced by the following:

216. (1) In this section and section 217, “suspending authority” means any authority prescribed to be a suspending authority in regulations made by the Governor in Council.

(2) A suspending authority may suspend a punishment of imprisonment or detention, whether or not the offender has already been committed to undergo that punishment, if there are imperative reasons relating to military operations or the offender’s welfare.

(2.1) A suspending authority that suspends a punishment shall, unless the punishment was included in a sentence that was imposed at a summary trial, provide written reasons for the suspension to any person prescribed in regulations made by the Governor in Council.

(2.2) A suspending authority may — if the reasons described in subsection (2) no longer apply or if the offender’s conduct is inconsistent with the reasons for which the punishment was suspended — revoke the suspension of a punishment and commit the offender or, if the person is not empowered to commit the offender, direct an authority so empowered to do so.

66. Subsection 217(1) of the Act is replaced by the following:

217. (1) If a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority. The suspending authority may, at the time of the review and in accordance with regulations made by the Governor in Council, remit the punishment.

67. Section 218 of the Act is repealed.

65. Les paragraphes 216(1) et (2) de la même loi sont remplacés par ce qui suit :

216. (1) Pour l’application du présent article et de l’article 217, « autorité sursoyante » s’entend de toute autorité désignée à ce titre par règlement du gouverneur en conseil.

(2) L’autorité sursoyante peut suspendre la peine d’emprisonnement ou de détention, que le contrevenant ait ou non déjà commencé à la purger, si des impératifs opérationnels ou le bien-être de celui-ci l’exigent.

(2.1) Elle avise par écrit des motifs de sa décision de suspendre la peine d’un contrevenant les personnes visées par règlement du gouverneur en conseil, sauf dans les cas où celle-ci a été infligée dans le cadre d’un procès sommaire.

(2.2) Elle peut, dans les cas ci-après, révoquer la suspension et incarcérer le contrevenant ou, si elle ne peut l’incarcérer elle-même, ordonner à l’autorité compétente de le faire :

a) les conditions prévues au paragraphe (2) ne s’appliquent plus;

b) la conduite du contrevenant n’est pas compatible avec le motif pour lequel sa peine a été suspendue.

66. Le paragraphe 217(1) de la même loi est remplacé par ce qui suit :

217. (1) L’autorité sursoyante est tenue de réviser la suspension trimestriellement, mais peut le faire plus souvent. À cette occasion, elle peut, conformément aux règlements du gouverneur en conseil, procéder à une remise de peine.

67. L’article 218 de la même loi est abrogé.

CLAUSE 65 SENTENCING – SUSPENSION OF IMPRISONMENT OR DETENTION

Description

- ◆ Removes a cross reference to section 218 [ss. 216(1)];
- ◆ Provides that a suspending authority may suspend a punishment of imprisonment or detention if there are imperative reasons relating to military operations or the welfare of the offender [ss. 216(2)];
- ◆ Imposes a duty on a suspending authority to provide written reasons to persons prescribed in regulations for any suspension of a punishment not imposed at summary trial [ss. 216(2.1)];
- ◆ Permits a suspending authority to revoke the suspension of a punishment and commit the offender or direct an authority empowered to do so to commit the offender [ss. 216(2.2)];

Rationale

- ◆ Removal of the cross reference to section 218 in subsection 216(1) is consequential to the repeal of section 218.
- ◆ The amendment to section 216 will only permit suspending authorities to suspend punishments in specified extraordinary circumstances, as opposed to suspensions under subsection 215(1). The duration of suspensions under section 216 for welfare reasons should normally be relatively short (for example, to permit an offender to travel to attend the funeral of a close family member).
- ◆ Requiring a suspending authority to provide written reasons will serve to ensure transparency in the exercise of the suspending power.
- ◆ Providing for a suspending authority to revoke a suspension in certain circumstances will encourage offenders to maintain appropriate conduct during the suspension. Given the expectation that these suspensions will be for relatively short periods, no provision similar to section 215.2 has been made for a hearing into the breach of a condition of the suspension.

CLAUSE 66 SENTENCING – REVIEW AND REMISSION OF PUNISHMENT

Description

- ◆ Provides that a punishment that has been suspended may be remitted by a suspending authority in accordance with regulations made by the Governor in Council.

Rationale

- ◆ This amendment will provide more consistency in the remission of punishments by setting out the conditions for remission in regulations.

CLAUSE 67 SENTENCING – SUSPENSION HEARING (CONSEQUENTIAL AMENDMENT)

Description

- ◆ Repeals section 218 dealing with committal after suspension and the term of the suspended punishment.

Rationale

- ◆ The repeal of section 218 is consequential to the creation of the new section 215.2 which provides for a hearing before a suspension is revoked.
- ◆ See Clause 64.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 68

68. The Act is amended by adding the following after section 226:

Parole Eligibility

226.1 (1) A court martial that imposes a punishment of imprisonment for life shall pronounce the following sentence:

(a) in the case of a person who has been convicted of having committed traitorously an offence of misconduct in the presence of an enemy (section 73 or 74), an offence related to security (section 75) or an offence in relation to prisoners of war (section 76), imprisonment for life without eligibility for parole until the person has served 25 years of the sentence;

(b) in the case of a person who has been convicted of an offence of high treason or an offence of first degree murder, imprisonment for life without eligibility for parole until the person has served 25 years of the sentence;

(c) in the case of a person who has been convicted of an offence of second degree murder and has previously been convicted of culpable homicide that is murder, imprisonment for life without eligibility for parole until the person has served 25 years of the sentence;

(d) in the case of a person who has been convicted of an offence of second degree murder, imprisonment for life without eligibility for parole until the person has served at least 10 years of the sentence or any greater number of years, not being more than 25, that has been substituted under subsection (2); or

(e) in the case of a person who has been convicted of any other offence, imprisonment for life with normal eligibility for parole.

(2) Sections 745.1 to 746.1 of the *Criminal Code* apply, with any modifications that the circumstances require, to a sentence of imprisonment for life that is imposed under this Act, and for that purpose

(a) a reference in sections 745.2 and 745.3 of the *Criminal Code* to a jury shall be read as a reference to the panel of a General Court Martial; and

(b) in the case of a conviction that took place outside Canada, a reference in section 745.6 of the *Criminal Code* to the province in which a conviction took place shall be read as a reference to the province in which the offender is incarcerated when they make an application under that section.

68. La même loi est modifiée par adjonction, après l'article 226, de ce qui suit :

Admissibilité à la libération conditionnelle

226.1 (1) En cas de condamnation à l'emprisonnement à perpétuité, le bénéfice de la libération conditionnelle est subordonné :

a) à l'accomplissement d'au moins vingt-cinq ans de la peine, s'agissant d'un manquement au devoir face à l'ennemi (articles 73 ou 74) ou d'une infraction relative à la sécurité (article 75) ou aux prisonniers de guerre (article 76), si la personne s'est conduite en traître;

b) à l'accomplissement d'au moins vingt-cinq ans de la peine, s'agissant de haute trahison ou meurtre au premier degré;

c) à l'accomplissement d'au moins vingt-cinq ans de la peine, s'agissant du meurtre au deuxième degré, si la personne a été reconnue coupable d'avoir causé la mort et a déjà été condamnée pour homicide coupable équivalant à un meurtre;

d) à l'accomplissement d'au moins dix ans de la peine, période qui peut être portée à un maximum de vingt-cinq ans en vertu du paragraphe (2), s'agissant du meurtre au deuxième degré;

e) à l'application des conditions normalement prévues, s'agissant de toute autre infraction.

(2) Les articles 745.1 à 746.1 du *Code criminel* s'appliquent, avec les adaptations nécessaires, à la peine d'emprisonnement à perpétuité imposée sous le régime de la présente loi et :

a) la mention, aux articles 745.2 et 745.3 du *Code criminel*, du jury vaut mention du comité de la cour martiale générale;

b) la mention, à l'article 745.6 de cette loi, de la province où a lieu la déclaration de culpabilité vaut mention, dans le cas où la déclaration de culpabilité a lieu à l'étranger, de la province dans laquelle la personne est incarcérée au moment où elle présente sa demande en vertu de cet article.

CLAUSE 68 SENTENCING – PAROLE ELIGIBILITY

Description

- ◆ Adds the heading "*Parole Eligibility*" before section 226.1;
- ◆ Renumbers section 140.3 dealing with eligibility for parole when sentenced to life imprisonment as a new section 226.1; and
- ◆ Makes several technical amendments.

Rationale

- ◆ Sections 140.3 and 140.4 relate only to a sentence of imprisonment and will be renumbered as sections 226.1 and 226.2 respectively.
- ◆ This amendment moves these provisions applicable to the sentence of imprisonment that were in Division 2 to Division 8, leaving provisions in Division 2 dealing only with service offences and punishments, not sentences.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 68

226.2 (1) Despite section 120 of the *Corrections and Conditional Release Act*, if a person receives a sentence of imprisonment for life that is imposed otherwise than as a minimum punishment or a sentence of imprisonment for two years or more on conviction for an offence set out in Schedule I or II to that Act that is punishable under section 130 of this Act, a court martial may order that the portion of the sentence that must be served before the person may be released on full parole is one half of the sentence or 10 years, whichever is less.

(2) The court martial may only make the order if it is satisfied, having regard to the circumstances of the commission of the offence and the person's character and circumstances, that the expression of society's denunciation of the offence or the objective of specific or general deterrence requires that the order be made.

(3) Despite section 120 of the *Corrections and Conditional Release Act*, if a person receives a sentence of imprisonment for life that is imposed otherwise than as a minimum punishment or a sentence of imprisonment for two years or more on conviction under this Act for a criminal organization offence, the court martial may order that the portion of the sentence that must be served before the person may be released on full parole is one half of the sentence or 10 years, whichever is less.

(4) Despite section 120 of the *Corrections and Conditional Release Act*, if a person receives a sentence of imprisonment of two years or more, including a sentence of imprisonment for life, on conviction under this Act for a terrorism offence, the court martial shall order that the portion of the sentence that must be served before the person may be released on full parole is one half of the sentence or 10 years, whichever is less, unless the court martial is satisfied, having regard to the circumstances of the commission of the offence and the person's character and circumstances, that the expression of society's denunciation of the offence and the objectives of specific or general deterrence would be adequately served by a period of parole ineligibility determined in accordance with the *Corrections and Conditional Release Act*.

(5) The paramount objectives that are to guide the court martial under this section are denunciation and specific or general deterrence, with the rehabilitation of the person, in all cases, being subordinate to those paramount objectives.

226.2 (1) Par dérogation à l'article 120 de la *Loi sur le système correctionnel et la mise en liberté sous condition*, la cour martiale peut ordonner que la personne condamnée, sur déclaration de culpabilité, à une peine d'emprisonnement minimale de deux ans — y compris une peine d'emprisonnement à perpétuité à condition que cette peine n'ait pas constitué un minimum en l'occurrence — pour toute infraction mentionnée aux annexes I ou II de cette loi qui est punissable en vertu de l'article 130 de la présente loi purge, avant d'être admissible à la libération conditionnelle totale, la moitié de sa peine jusqu'à concurrence de dix ans.

(2) Elle ne peut rendre l'ordonnance que si elle est convaincue, compte tenu des circonstances de l'infraction et du caractère et des particularités de la personne condamnée, que la réprobation de la société à l'égard de l'infraction l'exige ou que l'ordonnance aura l'effet dissuasif recherché.

(3) Par dérogation à l'article 120 de la *Loi sur le système correctionnel et la mise en liberté sous condition*, la cour martiale peut ordonner que la personne condamnée, sur déclaration de culpabilité sous le régime de la présente loi pour une infraction d'organisation criminelle, à une peine d'emprisonnement minimale de deux ans — y compris une peine d'emprisonnement à perpétuité à condition que cette peine n'ait pas constitué un minimum en l'occurrence — purge, avant d'être admissible à la libération conditionnelle totale, la moitié de sa peine jusqu'à concurrence de dix ans.

(4) Par dérogation à l'article 120 de la *Loi sur le système correctionnel et la mise en liberté sous condition*, la cour martiale est tenue, sauf si elle est convaincue, compte tenu des circonstances de l'infraction et du caractère et des particularités de la personne condamnée, que la réprobation de la société à l'égard de l'infraction et l'effet dissuasif de l'ordonnance auraient la portée voulue si la période d'inadmissibilité était déterminée conformément à cette loi, d'ordonner que la personne condamnée sous le régime de la présente loi à une peine d'emprisonnement minimale de deux ans — y compris une peine d'emprisonnement à perpétuité — pour une infraction de terrorisme purge, avant d'être admissible à la libération conditionnelle totale, la moitié de sa peine jusqu'à concurrence de dix ans.

(5) Les objectifs suprêmes qui doivent guider la cour martiale dans l'application du présent article sont la réprobation de la société et l'effet dissuasif, la réadaptation de la personne leur étant dans tous les cas subordonnée.

CLAUSE 68 SENTENCING – DELAYING PAROLE

Description

- ◆ Renumbers section 140.4 dealing with the power of a court martial to delay parole as a new section 226.2; and
- ◆ Makes several technical amendments.

Rationale

- ◆ Sections 140.3 and 140.4 relate only to a sentence of imprisonment and will be renumbered as sections 226.1 and 226.2 respectively.
- ◆ This amendment moves these provisions applicable to the sentence of imprisonment that were in Division 2 to Division 8, leaving provisions in Division 2 dealing only with service offences and punishments, not sentences.
- ◆ The amendment to the word “principles” that was in subsection 140.4(4) is consequential to the amendment setting out the “objectives” to achieve the purposes of sentencing in the new section 203.1.
- ◆ The technical amendments are made to reflect current drafting norms and provide consistency of language.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 69-70

69. Section 230 of the Act is amended by striking out “or” at the end of paragraph (f) and by adding the following after paragraph (g):

(h) the legality of an order made under section 147.1 or 226.2 and, with leave of the Court or a judge of the Court, the reasonableness of any period imposed under section 147.2;

(i) the legality of an order made under section 148 and the legality or, with leave of the Court or a judge of the Court, the severity of any condition imposed under that section;

(j) the legality or, with leave of the Court or a judge of the Court, the severity of a restitution order made under section 203.9 or the legality of an order made under section 249.25; or

(k) the legality of a suspension of a sentence of imprisonment or detention and the legality or, with leave of the Court or a judge of the Court, the severity of any condition imposed under subsection 215(3).

70. Section 230.1 of the Act is amended by striking out “or” at the end of paragraph (g) and by adding the following after paragraph (h):

(i) the legality of an order made under section 147.1 or 226.2 and, with leave of the Court or a judge of the Court, the reasonableness of any period imposed under section 147.2;

(j) the legality of an order made under section 148 and the legality or, with leave of the Court or a judge of the Court, the severity of any condition imposed under that section;

(k) the legality or, with leave of the Court or a judge of the Court, the severity of a restitution order made under section 203.9 or the legality of an order made under section 249.25; or

(l) the legality of a suspension of a sentence of imprisonment or detention and the legality or, with leave of the Court or a judge of the Court, the severity of any condition imposed under subsection 215(3).

69. L'article 230 de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :

h) la légalité de toute ordonnance rendue au titre des articles 147.1 ou 226.2 ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, le caractère raisonnable du délai imposé au titre de l'article 147.2;

i) la légalité de toute ordonnance rendue au titre de l'article 148 ou la légalité de toute condition imposée au titre de cet article ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité;

j) la légalité de toute ordonnance de dédommagement rendue au titre de l'article 203.9 ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité, ou la légalité de toute ordonnance de restitution rendue au titre de l'article 249.25;

k) la légalité de toute suspension d'une peine d'emprisonnement ou de détention ou la légalité de toute condition imposée au titre du paragraphe 215(3) ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité.

70. L'article 230.1 de la même loi est modifié par adjonction, après l'alinéa h), de ce qui suit :

i) la légalité de toute ordonnance rendue au titre des articles 147.1 ou 226.2 ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, le caractère raisonnable du délai imposé au titre de l'article 147.2;

j) la légalité de toute ordonnance rendue au titre de l'article 148 ou la légalité de toute condition imposée au titre de cet article ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité;

k) la légalité de toute ordonnance de dédommagement rendue au titre de l'article 203.9 ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité, ou la légalité de toute ordonnance de restitution rendue au titre de l'article 249.25;

l) la légalité de toute suspension d'une peine d'emprisonnement ou de détention ou la légalité de toute condition imposée au titre du paragraphe 215(3) ou, avec l'autorisation de la Cour d'appel ou de l'un de ses juges, sa sévérité.

CLAUSE 69 APPEAL – GROUNDS FOR AN OFFENDER

Description

- ◆ Adds four new matters in respect of which an offender may appeal to the Court Martial Appeal Court of Canada.

Rationale

- ◆ This amendment will ensure that there is a right to appeal in respect of prohibition orders and orders delaying parole, and the new provisions concerning intermittent sentences, restitution orders and suspensions of sentence.

CLAUSE 70 APPEAL – GROUNDS FOR THE MINISTER

Description

- ◆ Adds four new matters in respect of which the Minister, or counsel instructed by the Minister, may appeal to the Court Martial Appeal Court of Canada.

Rationale

- ◆ This amendment will improve the administration of military justice by providing for a right of appeal to the Court Martial Appeal Court of Canada by the Minister or counsel instructed by the Minister in four new matters which mirror those set out in the amended section 230 of the *Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 71-73

71. (1) Subsection 249.18(2) of the Act is replaced by the following:

(2) The Director of Defence Counsel Services holds office during good behaviour for a term of not more than four years. The Minister may remove the Director of Defence Counsel Services from office for cause on the recommendation of an inquiry committee established under regulations made by the Governor in Council.

(2.1) An inquiry committee has the same powers, rights and privileges — other than the power to punish for contempt—as are vested in a superior court of criminal jurisdiction with respect to

(a) the attendance, swearing and examination of witnesses;

(b) the production and inspection of documents;

(c) the enforcement of its orders; and

(d) all other matters necessary or proper for the due exercise of its jurisdiction.

(2) Subsection 249.18(3) of the French version of the Act is replaced by the following:

(3) Le mandat du directeur du service d'avocats de la défense est renouvelable.

72. Subsection 249.21(1) of the French version of the Act is replaced by the following:

249.21 (1) Le directeur du service d'avocats de la défense peut être assisté par des avocats inscrits au barreau d'une province.

73. The Act is amended by adding the following after section 249.21:

249.211 (1) The Governor in Council may by regulation establish a committee to determine, on the basis of the factors prescribed in regulations made by the Governor in Council, whether legal services should be provided by the Director of Defence Counsel Services to a person who exercises the right to appeal under section 230 or 245.

(2) No criminal or civil proceedings lie against a member of the committee for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of the committee.

71. (1) Le paragraphe 249.18(2) de la même loi est remplacé par ce qui suit :

(2) Le directeur du service d'avocats de la défense est nommé à titre inamovible pour un mandat maximal de quatre ans, sous réserve de révocation motivée que prononce le ministre sur recommandation d'un comité d'enquête établi par règlement du gouverneur en conseil.

(2.1) Le comité d'enquête a, pour la comparution, la prestation de serment et l'interrogatoire des témoins, ainsi que pour la production et l'examen des pièces, l'exécution de ses ordonnances et toute autre question relevant de sa compétence, les mêmes attributions qu'une cour supérieure de juridiction criminelle, sauf le pouvoir de punir l'outrage au tribunal.

(2) Le paragraphe 249.18(3) de la version française de la même loi est remplacé par ce qui suit :

(3) Le mandat du directeur du service d'avocats de la défense est renouvelable.

72. Le paragraphe 249.21(1) de la version française de la même loi est remplacé par ce qui suit :

249.21 (1) Le directeur du service d'avocats de la défense peut être assisté par des avocats inscrits au barreau d'une province.

73. La même loi est modifiée par adjonction, après l'article 249.21, de ce qui suit :

249.211 (1) Le gouverneur en conseil peut, par règlement, établir un comité et le charger de décider, sur la base de critères que le gouverneur en conseil établit par règlement, si des services juridiques devraient être fournis par le directeur du service d'avocats de la défense à la personne qui exerce son droit d'appel au titre des articles 230 ou 245.

(2) Les membres du comité bénéficient de l'immunité en matière civile ou pénale pour les actes accomplis, les rapports ou comptes rendus établis et les paroles prononcées de bonne foi dans l'exercice effectif ou censé tel des pouvoirs et fonctions qui leur sont conférés en vertu de la présente loi.

CLAUSE 71 DIRECTOR OF DEFENCE COUNSEL SERVICES – REMOVAL FOR CAUSE

Description

- ◆ Provides that the Minister may remove the Director of Defence Counsel Services from office for cause on the recommendation of an inquiry committee established under regulations made by the Governor in Council [ss. 249.18(2)];
- ◆ Provides that the inquiry committee has the same powers, rights and privileges, other than the power to punish for contempt, as are vested in a superior court of criminal jurisdiction with respect to certain matters [ss. 249.18(2.1)]; and
- ◆ Makes technical amendments to the French version [ss. 249.18(3)].

Rationale

- ◆ The amendment to subsection 249.18(2) will enhance the perception of the independence of the Director of Defence Counsel Services by requiring the recommendation of an inquiry committee prior to his or her removal from office, similar to the current provisions in respect of the Director of Military Prosecutions in subsection 165.1(2).
- ◆ Setting out the express powers, rights and privileges of the inquiry committee in subsection 249.18(2.1) will ensure that any inquiry may be conducted in a fair and efficient manner.
- ◆ The amendments to subsection 249.18(3) are made to reflect current drafting norms in the French version.

CLAUSE 72 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Adds the words “de la défense” to subsection 249.21(1).

Rationale

- ◆ This amendment will provide consistency in the French version.

CLAUSE 73 APPEAL COMMITTEE – ESTABLISHMENT AND IMMUNITY

Description

- ◆ Provides authority for the Governor in Council to establish an appeal committee to determine if legal services should be provided by the Director of Defence Counsel Services to a person who exercises a right of appeal to the Court Martial Appeal Court or the Supreme Court of Canada [ss. 249.211(1)]; and
- ◆ Provides members of the committee with immunity from criminal or civil proceedings [ss. 249.211(2)].

Rationale

- ◆ This amendment will improve the transparency of the military justice system by providing expressly in the *Act* for an appeal committee to be established to determine if the Director of Defence Counsel Services should provide legal services to a person who exercises his or her right of appeal to the Court Martial Appeal Court of Canada or the Supreme Court of Canada.
- ◆ This committee is currently established by regulations made under the authority of subsection 12(1), the general regulatory-making power in the *Act* for the Governor in Council.
- ◆ This amendment will provide members of the appeal committee with the same immunity already provided to the members of the Military Grievances External Review Committee and the Military Police Complaints Commission.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 74-76

74. Subsection 249.25(1) of the Act is replaced by the following:

249.25 (1) A service tribunal that convicts or discharges absolutely a person of an offence shall order that any property obtained by the commission of the offence shall be restored to the person apparently entitled to it if, at the time of the trial, the property is before the service tribunal or has been detained so that it can be immediately restored under the order to the person so entitled.

75. The Act is amended by adding the following after section 249.26:

Criminal Record

249.27 (1) A person who is convicted of any of the following offences, or who has been convicted of any of them before the coming into force of this section, has not been convicted of a criminal offence:

(a) an offence described in section 85, 86, 90, 97 or 129 for which the offender is sentenced to a minor punishment or a fine of \$500 or less, or both;

(b) an offence under section 130 that constitutes a contravention within the meaning of the *Contraventions Act*.

(2) An offence referred to in paragraph (1)(a) or (b) does not constitute an offence for the purposes of the *Criminal Records Act*.

76. (1) The definition “military police” in section 250 of the Act is repealed.

(2) The definition “plainte pour inconduite” in section 250 of the French version of the Act is replaced by the following:

« plainte pour inconduite » Plainte déposée aux termes du paragraphe 250.18(1) contre un policier militaire concernant sa conduite.

74. Le paragraphe 249.25(1) de la même loi est remplacé par ce qui suit :

249.25 (1) Le tribunal militaire qui prononce une déclaration de culpabilité ou qui rend une ordonnance d'absolution inconditionnelle ordonne que tout bien obtenu par la perpétration de l'infraction soit restitué à qui y a apparemment droit, si, lors du procès, le bien se trouve devant lui ou a été détenu de façon à pouvoir être immédiatement rendu à cette personne en vertu de l'ordonnance.

75. La même loi est modifiée par adjonction, après l'article 249.26, de ce qui suit :

Casier judiciaire

249.27 (1) Quiconque est déclaré coupable de l'une ou l'autre des infractions ci-après, ou l'a été avant l'entrée en vigueur du présent article, n'est pas coupable d'une infraction criminelle :

a) l'infraction désignée à l'un des articles 85, 86, 90, 97 ou 129 et pour laquelle l'accusé a été condamné à une peine mineure et à une amende maximale de 500 \$ ou à l'une de ces peines;

b) l'infraction prévue à l'article 130 qui est une contravention au titre de la *Loi sur les contraventions*.

(2) L'infraction visée aux alinéas (1)a) ou b) ne constitue pas une infraction pour l'application de la *Loi sur le casier judiciaire*.

76. (1) La définition de « police militaire », à l'article 250 de la même loi, est abrogée.

(2) La définition de « plainte pour inconduite », à l'article 250 de la version française de la même loi, est remplacée par ce qui suit :

« plainte pour inconduite » Plainte déposée aux termes du paragraphe 250.18(1) contre un policier militaire concernant sa conduite.

CLAUSE 74 ABSOLUTE DISCHARGES – CONSEQUENTIAL AMENDMENT

Description

- ◆ Provides that a service tribunal shall also order that any property obtained by the commission of the offence shall be restored to the person apparently entitled to it in the event that an accused is discharged absolutely.

Rationale

- ◆ This amendment is consequential to the introduction of the absolute discharge under section 203.9.
-

CLAUSE 75 CRIMINAL RECORDS

Description

- ◆ Adds a new heading "*Criminal Record*" before section 249.27;
- ◆ Provides that a person has not been convicted of a criminal offence if convicted or if convicted before the coming into force of this section of:
 - A service offence under section 85, 86, 90, 97 or 129 and sentenced to a minor punishment or a fine of \$500 or less, or both;
 - An offence tried under section 130 that constitutes a contravention within the meaning of the *Contraventions Act* [ss. 249.27(1)].
- ◆ Provides that an offence referred to in paragraph (1)(a) or (b) does not constitute an offence for the purposes of the *Criminal Records Act* [ss. 249.27(2)].

Rationale

- ◆ Under section 63 of the *Contraventions Act*, a person who has been convicted of a contravention or has been convicted of a contravention before the coming into force of section 249.27, except in the case of a conviction for a contravention that is entered after a trial on an indictment, has not been convicted of a criminal offence and the contravention does not constitute an offence for the purpose of the *Criminal Records Act*. Examples of these offences include traffic violations on federal property, violations of boating requirements and restrictions, and certain fish and wildlife offences. These are often referred to as "regulatory offences" in order to distinguish them from true criminal offences.
 - ◆ Likewise, when an accused is convicted of a service offence and receives a minor punishment or a relatively small fine, or is convicted of an offence that would be a contravention under the *Contraventions Act*, there is no disciplinary interest served or societal benefit gained from having the member acquire a record within the meaning of the *Criminal Records Act* and having to apply for a record suspension under that *Act*.
 - ◆ The amendment set out in paragraph 249.27(2) will ensure that persons convicted of the offences set out in paragraphs 249.27(a) and (b) before or after the coming into force of section 249.27, will not have been convicted of criminal offences and will not have to seek record suspensions.
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CLAUSE 76 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Repeals the definitions of "military police" in section 250; and
- ◆ Amends the French version of the definition "plainte pour inconduite".

Rationale

- ◆ The repeal of the definition is consequential to the amendment moving the definition of "military police" from section 250 to subsection 2(1).
- ◆ The amendment of the French version of the definition "plainte pour inconduite" is made for consistency between the English and French versions.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 77-80

77. Subsection 250.1(11) of the French version of the Act is replaced by the following:

(11) Avant d'entrer en fonctions, les membres prêtent le serment suivant :

Moi,, je jure (ou j'affirme solennellement) que j'exercerai fidèlement et honnêtement les devoirs qui m'incombent en ma qualité de membre de la Commission d'examen des plaintes concernant la police militaire en conformité avec les prescriptions de la *Loi sur la défense nationale* applicables à celle-ci, ainsi que toutes règles et instructions établies sous son régime, et que je ne révélerai ni ne ferai connaître, sans y avoir été dûment autorisé(e), rien de ce qui parviendra à ma connaissance en raison de mes fonctions. (*Dans le cas du serment, ajouter : Ainsi Dieu me soit en aide.*)

78. (1) Subsection 250.18(2) of the French version of the Act is replaced by the following:

(2) La plainte peut être déposée même en l'absence de préjudice pour le plaignant.

(2) Section 250.18 of the Act is amended by adding the following after subsection (2):

(3) A person may not be penalized for exercising the right to make a conduct complaint so long as the complaint is made in good faith.

79. Section 250.19 of the Act is amended by adding the following after subsection (2):

(3) A person may not be penalized for exercising the right to make an interference complaint so long as the complaint is made in good faith.

80. Subparagraphs 250.21(2)(c)(ii) and (iii) of the French version of the Act are replaced by the following:

(ii) le président, le chef d'état-major de la défense, le juge-avocat général et le grand prévôt dans le cas d'une plainte pour ingérence dont fait l'objet un officier ou militaire du rang,

(iii) le président, le sous-ministre, le juge-avocat général et le grand prévôt dans le cas d'une plainte pour ingérence dont fait l'objet un cadre supérieur du ministère.

77. Le paragraphe 250.1(11) de la version française de la même loi est remplacé par ce qui suit :

(11) Avant d'entrer en fonctions, les membres prêtent le serment suivant :

Moi,, je jure (ou j'affirme solennellement) que j'exercerai fidèlement et honnêtement les devoirs qui m'incombent en ma qualité de membre de la Commission d'examen des plaintes concernant la police militaire en conformité avec les prescriptions de la *Loi sur la défense nationale* applicables à celle-ci, ainsi que toutes règles et instructions établies sous son régime, et que je ne révélerai ni ne ferai connaître, sans y avoir été dûment autorisé(e), rien de ce qui parviendra à ma connaissance en raison de mes fonctions. (*Dans le cas du serment, ajouter : Ainsi Dieu me soit en aide.*)

78. (1) Le paragraphe 250.18(2) de la version française de la même loi est remplacé par ce qui suit :

(2) La plainte peut être déposée même en l'absence de préjudice pour le plaignant.

(2) L'article 250.18 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

(3) Le dépôt d'une plainte pour inconduite n'entraîne aucune sanction contre le plaignant si elle est déposée de bonne foi.

79. L'article 250.19 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

(3) Le dépôt d'une plainte pour ingérence n'entraîne aucune sanction contre le plaignant si elle est déposée de bonne foi.

80. Les sous-alinéas 250.21(2)c)(ii) et (iii) de la version française de la même loi sont remplacés par ce qui suit

(ii) le président, le chef d'état-major de la défense, le juge-avocat général et le grand prévôt dans le cas d'une plainte pour ingérence dont fait l'objet un officier ou militaire du rang,

(iii) le président, le sous-ministre, le juge-avocat général et le grand prévôt dans le cas d'une plainte pour ingérence dont fait l'objet un cadre supérieur du ministère.

CLAUSE 77 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Makes two technical amendment to the French version of the oath of office for Commission members.

Rationale

- ◆ The amendment to the oath of office in the French version will provide consistency in the introductory words of the oath of office for military judges, reserve force military judges and members of the Grievances Committee and Military Police Complaints Commission.

CLAUSE 78 CONDUCT COMPLAINTS – GOOD FAITH

Description

- ◆ Makes technical amendments in the French version [ss. 250.18(2)]; and
- ◆ Provides that a person may not be penalized for exercising the right to make a conduct complaint made in good faith [ss. 250.18(3)].

Rationale

- ◆ The amendment to subsection 250.18(2) will provide consistency between the French and English versions.
- ◆ The new subsection 250.18(3) will strengthen the operation of Part IV by expressly providing that persons who make conduct complaints in good faith are not to be penalized.

CLAUSE 79 INTERFERENCE COMPLAINTS – GOOD FAITH

Description

- ◆ Provides that a person may not be penalized for exercising the right to make an interference complaint made in good faith [ss. 250.19(3)].

Rationale

- ◆ This amendment will strengthen the operation of Part IV by expressly providing that persons who make interference complaints in good faith are not to be penalized.

CLAUSE 80 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mettant en cause” with “dont fait l’objet” and “prévôt” with “grand prévôt”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 81-84

81. Section 250.22 of the French version of the Act is replaced by the following:

250.22 Dans les meilleurs délais après la réception ou la notification d'une plainte pour inconduite, le grand prévôt avise par écrit la personne qui en fait l'objet de sa teneur, pour autant que cela, à son avis, ne risque pas de nuire à la tenue d'une enquête sous le régime de la présente loi.

82. Subsection 250.24(2) of the French version of the Act is replaced by the following:

(2) Le cas échéant, le président en avise aussitôt, par écrit, le grand prévôt et la personne qui fait l'objet de la plainte.

83. The Act is amended by adding the following after section 250.26:

250.261 The Provost Marshal shall resolve or dispose of a conduct complaint — other than a complaint that results in an investigation of an alleged criminal or service offence — within one year after receiving or being notified of it.

84. (1) Subsection 250.27(1) of the French version of the Act is replaced by the following:

250.27 (1) Dès réception ou notification de la plainte pour inconduite, le grand prévôt décide si elle peut être réglée à l'amiable; avec le consentement du plaignant et de la personne qui en fait l'objet, il peut alors tenter de la régler.

(2) Subsection 250.27(3) of the French version of the Act is replaced by the following:

(3) Les réponses ou déclarations faites, dans le cadre d'une tentative de règlement amiable, par le plaignant ou par la personne qui fait l'objet de la plainte ne peuvent être utilisées devant une juridiction disciplinaire, criminelle, administrative ou civile, sauf si leur auteur les a faites, tout en les sachant fausses, dans l'intention de tromper.

(3) Subsection 250.27(6) of the French version of the Act is replaced by the following:

(6) Tout règlement amiable doit être consigné en détail, approuvé par écrit par le plaignant et la personne qui fait l'objet de la plainte et notifié par le grand prévôt au président.

81. L'article 250.22 de la version française de la même loi est remplacé par ce qui suit :

250.22 Dans les meilleurs délais après la réception ou la notification d'une plainte pour inconduite, le grand prévôt avise par écrit la personne qui en fait l'objet de sa teneur, pour autant que cela, à son avis, ne risque pas de nuire à la tenue d'une enquête sous le régime de la présente loi.

82. Le paragraphe 250.24(2) de la version française de la même loi est remplacé par ce qui suit :

(2) Le cas échéant, le président en avise aussitôt, par écrit, le grand prévôt et la personne qui fait l'objet de la plainte.

83. La même loi est modifiée par adjonction, après l'article 250.26, de ce qui suit :

250.261 Le grand prévôt dispose, pour régler la plainte pour inconduite, d'un délai maximal d'un an après sa réception ou sa notification, sauf si elle donne lieu à une enquête à l'égard d'une infraction militaire ou d'une infraction criminelle reprochées.

84. (1) Le paragraphe 250.27(1) de la version française de la même loi est remplacé par ce qui suit :

250.27 (1) Dès réception ou notification de la plainte pour inconduite, le grand prévôt décide si elle peut être réglée à l'amiable; avec le consentement du plaignant et de la personne qui en fait l'objet, il peut alors tenter de la régler.

(2) Le paragraphe 250.27(3) de la version française de la même loi est remplacé par ce qui suit :

(3) Les réponses ou déclarations faites, dans le cadre d'une tentative de règlement amiable, par le plaignant ou par la personne qui fait l'objet de la plainte ne peuvent être utilisées devant une juridiction disciplinaire, criminelle, administrative ou civile, sauf si leur auteur les a faites, tout en les sachant fausses, dans l'intention de tromper.

(3) Le paragraphe 250.27(6) de la version française de la même loi est remplacé par ce qui suit :

(6) Tout règlement amiable doit être consigné en détail, approuvé par écrit par le plaignant et la personne qui fait l'objet de la plainte et notifié par le grand prévôt au président.

CLAUSE 81 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mise en cause” with “qui en fait l’objet” and “prévôt” with “grand prévôt”; and
- ◆ Makes technical amendments.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 82 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt” and “mise en cause” with “qui fait l’objet de la plainte”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 83 CONDUCT COMPLAINT TIME LIMIT

Description

- ◆ Requires that the Canadian Forces Provost Marshal resolve or dispose of conduct complaints, other than those that result in investigations of an alleged criminal or service offence, within one year.

Rationale

- ◆ This amendment will enhance the effectiveness of the complaint system by providing a deadline for the resolution or disposition of complaints.

CLAUSE 84 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt”, “mise en cause” with “qui en fait l’objet” and makes technical amendments to the French version [ss. 250.27(1)];
- ◆ Replaces “mise en cause” with “qui fait l’objet de la plainte” and “dans” by “devant” [ss. 250.27(3)]; and
- ◆ Replaces “prévôt” with “grand prévôt” and “mise en cause” with “qui en fait l’objet” [ss. 250.27(6)]

Rationale

- ◆ The amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 85-89

85. Subsection 250.28(3) of the French version of the Act is replaced by the following:

(3) Le cas échéant, il avise par écrit de sa décision le plaignant, ainsi que, si elle a déjà reçu notification de la plainte en application de l'article 250.22, la personne qui en fait l'objet, en faisant état à la fois des motifs de sa décision et du droit du plaignant de renvoyer sa plainte devant la Commission pour examen.

86. The portion of section 250.29 of the French version of the Act before paragraph (a) is replaced by the following:

250.29 Au terme de l'enquête, le grand prévôt transmet au plaignant, à la personne qui fait l'objet de la plainte et au président un rapport comportant les éléments suivants :

87. Subsection 250.3(1) of the French version of the Act is replaced by the following:

250.3 (1) Au plus tard soixante jours après la réception ou la notification de la plainte et, par la suite, tous les trente jours, le grand prévôt transmet au plaignant, à la personne qui fait l'objet de la plainte et au président un rapport écrit sur l'état d'avancement de l'affaire.

88. Subsection 250.35(3) of the French version of the Act is replaced by the following:

(3) Le cas échéant, il avise par écrit de sa décision le plaignant, la personne qui fait l'objet de la plainte, le chef d'état-major de la défense ou le sous-ministre, selon le cas, le juge-avocat général et le grand prévôt. L'avis fait mention des motifs de sa décision.

89. Paragraphs 250.36(b) and (c) of the French version of the Act are replaced by the following:

b) le chef d'état-major de la défense, dans le cas où un officier ou militaire du rang fait l'objet de la plainte;

c) le sous-ministre, dans le cas où un cadre supérieur du ministère fait l'objet de la plainte;

85. Le paragraphe 250.28(3) de la version française de la même loi est remplacé par ce qui suit :

(3) Le cas échéant, il avise par écrit de sa décision le plaignant, ainsi que, si elle a déjà reçu notification de la plainte en application de l'article 250.22, la personne qui en fait l'objet, en faisant état à la fois des motifs de sa décision et du droit du plaignant de renvoyer sa plainte devant la Commission pour examen.

86. Le passage de l'article 250.29 de la version française de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

250.29 Au terme de l'enquête, le grand prévôt transmet au plaignant, à la personne qui fait l'objet de la plainte et au président un rapport comportant les éléments suivants :

87. Le paragraphe 250.3(1) de la version française de la même loi est remplacé par ce qui suit :

250.3 (1) Au plus tard soixante jours après la réception ou la notification de la plainte et, par la suite, tous les trente jours, le grand prévôt transmet au plaignant, à la personne qui fait l'objet de la plainte et au président un rapport écrit sur l'état d'avancement de l'affaire.

88. Le paragraphe 250.35(3) de la version française de la même loi est remplacé par ce qui suit :

(3) Le cas échéant, il avise par écrit de sa décision le plaignant, la personne qui fait l'objet de la plainte, le chef d'état-major de la défense ou le sous-ministre, selon le cas, le juge-avocat général et le grand prévôt. L'avis fait mention des motifs de sa décision.

89. Les alinéas 250.36b) et c) de la version française de la même loi sont remplacés par ce qui suit :

b) le chef d'état-major de la défense, dans le cas où un officier ou militaire du rang fait l'objet de la plainte;

c) le sous-ministre, dans le cas où un cadre supérieur du ministère fait l'objet de la plainte;

CLAUSE 85 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mise en cause” with “qui en fait l’objet” and makes technical amendments to the French version.

Rationale

- ◆ The technical amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 86 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt” and “mise en cause” with “qui fait l’objet de la plainte”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 87 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt” and “mise en cause” with “qui fait l’objet de la plainte”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 88 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mise en cause” with “qui fait l’objet de la plainte” and “prévôt” with “grand prévôt”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 89 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “est mis en cause” with “fait l’objet de la plainte”.

Rationale

- ◆ This amendment is made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 90-94

90. Subsection 250.38(3) of the French version of the Act is replaced by the following:

(3) S'il décide de faire tenir une enquête, il transmet un avis écrit motivé de sa décision au plaignant, à la personne qui fait l'objet de la plainte, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au grand prévôt.

91. Subsection 250.4(1) of the French version of the Act is replaced by the following:

250.4 (1) Le président, s'il décide de convoquer une audience, désigne le ou les membres de la Commission qui la tiendront et transmet un avis écrit motivé de sa décision au plaignant, à la personne qui fait l'objet de la plainte, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au grand prévôt.

92. Subsection 250.43(1) of the French version of the Act is replaced by the following:

250.43 (1) Le plus tôt possible avant le début de l'audience, la Commission signifie au plaignant et à la personne qui fait l'objet de la plainte un avis écrit en précisant les date, heure et lieu.

93. Section 250.44 of the French version of the Act is replaced by the following:

250.44 Le plaignant, la personne qui fait l'objet de la plainte et toute autre personne qui convainc la Commission qu'elle a un intérêt direct et réel dans celle-ci doivent avoir toute latitude de présenter des éléments de preuve à l'audience, d'y contre-interroger les témoins et d'y faire des observations, en personne ou par l'intermédiaire d'un avocat.

94. Subsection 250.49(2) of the French version of the Act is replaced by the following:

(2) Dans le cas où le grand prévôt fait l'objet de la plainte, c'est le chef d'état-major de la défense qui est chargé de la révision.

90. Le paragraphe 250.38(3) de la version française de la même loi est remplacé par ce qui suit :

(3) S'il décide de faire tenir une enquête, il transmet un avis écrit motivé de sa décision au plaignant, à la personne qui fait l'objet de la plainte, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au grand prévôt.

91. Le paragraphe 250.4(1) de la version française de la même loi est remplacé par ce qui suit :

250.4 (1) Le président, s'il décide de convoquer une audience, désigne le ou les membres de la Commission qui la tiendront et transmet un avis écrit motivé de sa décision au plaignant, à la personne qui fait l'objet de la plainte, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au grand prévôt.

92. Le paragraphe 250.43(1) de la version française de la même loi est remplacé par ce qui suit :

250.43 (1) Le plus tôt possible avant le début de l'audience, la Commission signifie au plaignant et à la personne qui fait l'objet de la plainte un avis écrit en précisant les date, heure et lieu.

93. L'article 250.44 de la version française de la même loi est remplacé par ce qui suit :

250.44 Le plaignant, la personne qui fait l'objet de la plainte et toute autre personne qui convainc la Commission qu'elle a un intérêt direct et réel dans celle-ci doivent avoir toute latitude de présenter des éléments de preuve à l'audience, d'y contre-interroger les témoins et d'y faire des observations, en personne ou par l'intermédiaire d'un avocat.

94. Le paragraphe 250.49(2) de la version française de la même loi est remplacé par ce qui suit :

(2) Dans le cas où le grand prévôt fait l'objet de la plainte, c'est le chef d'état-major de la défense qui est chargé de la révision.

CLAUSE 90 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Makes a technical amendment; and
- ◆ Replaces “mise en cause” with “qui fait l’objet de la plainte” and “prévôt” with “grand prévôt”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 91 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mise en cause” with “qui fait l’objet de la plainte” and “prévôt” with “grand prévôt”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 92 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Makes a technical amendment; and
- ◆ Replaces “mise en cause” with “qui fait l’objet de la plainte”.

Rationale

- ◆ These amendments are made to reflect current drafting norms.

CLAUSE 93 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mise en cause ainsi que” with “qui fait l’objet de la plainte et”.

Rationale

- ◆ This amendment is made to reflect current drafting norms.

CLAUSE 94 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt” and “est mis en cause par” with “fait l’objet de”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 95-97

95. Section 250.5 of the French version of the Act is replaced by the following:

250.5 (1) Sur réception du rapport établi au titre des articles 250.36, 250.39 ou 250.48, la plainte pour ingérence est révisée à la lumière des conclusions et recommandations qu'il contient par le chef d'état-major de la défense, dans le cas où la personne qui en fait l'objet est un officier ou militaire du rang, ou par le sousministre, dans le cas où elle est un cadre supérieur du ministère.

(2) Dans le cas où le chef d'état-major de la défense ou le sous-ministre fait l'objet de la plainte, c'est le ministre qui est chargé de la révision.

96. Subsection 250.53(2) of the French version of the Act is replaced by the following:

(2) Il en transmet copie au ministre, au sousministre, au chef d'état-major de la défense, au juge-avocat général, au grand prévôt, au plaignant, à la personne qui fait l'objet de la plainte ainsi qu'à toute personne qui a convaincu la Commission qu'elle a un intérêt direct et réel dans la plainte.

97. Section 251.2 of the Act is replaced by the following:

251.2 A person, other than an officer or non-commissioned member or an officer or employee of the Department, summoned or attending to give evidence before a court martial, the Grievances Committee, the Military Judges Inquiry Committee, the Military Police Complaints Commission, a board of inquiry, a commissioner taking evidence under this Act or any inquiry committee established under the regulations is entitled in the discretion of that body to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

95. L'article 250.5 de la version française de la même loi est remplacé par ce qui suit :

250.5 (1) Sur réception du rapport établi au titre des articles 250.36, 250.39 ou 250.48, la plainte pour ingérence est révisée à la lumière des conclusions et recommandations qu'il contient par le chef d'état-major de la défense, dans le cas où la personne qui en fait l'objet est un officier ou militaire du rang, ou par le sousministre, dans le cas où elle est un cadre supérieur du ministère.

(2) Dans le cas où le chef d'état-major de la défense ou le sous-ministre fait l'objet de la plainte, c'est le ministre qui est chargé de la révision.

96. Le paragraphe 250.53(2) de la version française de la même loi est remplacé par ce qui suit :

(2) Il en transmet copie au ministre, au sousministre, au chef d'état-major de la défense, au juge-avocat général, au grand prévôt, au plaignant, à la personne qui fait l'objet de la plainte ainsi qu'à toute personne qui a convaincu la Commission qu'elle a un intérêt direct et réel dans la plainte.

97. L'article 251.2 de la même loi est remplacé par ce qui suit :

251.2 La cour martiale, le Comité des griefs, le comité d'enquête sur les juges militaires, la Commission d'examen des plaintes concernant la police militaire, toute commission d'enquête, tout commissaire recueillant des témoignages sous le régime de la présente loi et tout comité d'enquête établi par règlement peuvent, selon leur appréciation, accorder à toute personne assignée devant eux, à l'exception d'un officier ou militaire du rang ou d'un employé du ministère, des indemnités comparables à celles accordées aux témoins assignés devant la Cour fédérale, que la personne ait été citée ou non.

CLAUSE 95 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “mis en cause” with “qui en fait l’objet” and makes technical amendments [ss. 250.5(1)]; and
- ◆ Replaces “est mis en cause” with “fait l’objet de” [ss. 250.5(2)].

Rationale

- ◆ These amendments are made to reflect current drafting norms.

CLAUSE 96 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Replaces “prévôt” with “grand prévôt” and “mise en cause” with “qui fait l’objet de la plainte”.

Rationale

- ◆ These amendments are made to reflect current drafting norms and provide consistency between the French and English versions.

CLAUSE 97 INQUIRY COMMITTEES – PAYMENT OF WITNESS FEES AND ALLOWANCES

Description

- ◆ Changes the name in the English version from “Grievance Board” to “Grievances Committee”;
- ◆ Adds the “Military Judges Inquiry Committee” and “any inquiry committee established under the regulations”; and
- ◆ Makes technical amendments in the French version.

Rationale

- ◆ These amendments will provide for the payment of witness fees and allowances at the Military Judges Inquiry Committee and any inquiry committee established under regulations.
- ◆ The technical amendments are made to provide consistency in the French version.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 98-100

98. The heading before section 267 of the Act is replaced by the following:

LIMITATION OR PRESCRIPTION PERIODS,
LIABILITY AND EXEMPTIONS

99. Subsection 269(1) of the Act is replaced by the following:

269. (1) Unless an action or other proceeding is commenced within two years after the day on which the act, neglect or default complained of occurred, no action or other proceeding lies against Her Majesty or any person for

(a) an act done in pursuance or execution or intended execution of this Act or any regulations or military or departmental duty or authority;

(b) any neglect or default in the execution of this Act or any regulations or military or departmental duty or authority; or

(c) an act or any neglect or default that is incidental to an act, neglect or default described in paragraph (a) or (b).

(1.1) A prosecution in respect of an offence — other than an offence under this Act, the *Geneva Conventions Act* or the *Crimes Against Humanity and War Crimes Act* — relating to an act, neglect or default described in subsection (1) may not be commenced after six months from the day on which the act, neglect or default occurred.

100. Section 272 of the Act is replaced by the following:

272. The dependants, as defined by regulation, of officers and non-commissioned members on service or active service in any place out of Canada who are alleged to have committed an offence under the laws applicable in that place may be arrested by a member of the military police and may be handed over to the appropriate authorities of that place.

98. L'intertitre précédant l'article 267 de la même loi est remplacé par ce qui suit :

PRESCRIPTION, RESPONSABILITÉ ET EXEMPTION

99. Le paragraphe 269(1) de la même loi est remplacé par ce qui suit :

269. (1) Se prescrivent par deux ans à compter de l'acte, de la négligence ou du manquement les actions :

a) pour tout acte accompli en exécution — ou en vue de l'application — de la présente loi, de ses règlements ou de toute fonction ou autorité militaire ou ministérielle;

b) pour toute négligence ou tout manquement dans l'exécution de la présente loi, de ses règlements ou de toute fonction ou autorité militaire ou ministérielle;

c) pour tout acte, négligence ou manquement accessoire à tout acte, négligence ou manquement visé aux alinéas a) ou b), selon le cas.

(1.1) Les poursuites visant une infraction prévue par une loi autre que les lois ci-après se prescrivent par six mois à compter de l'acte, de la négligence ou du manquement visé au paragraphe (1) qui y donne lieu :

a) la présente loi;

b) la *Loi sur les conventions de Genève*;

c) la *Loi sur les crimes contre l'humanité et les crimes de guerre*.

100. L'article 272 de la même loi est remplacé par ce qui suit :

272. Les personnes à charge — au sens des règlements — des officiers et militaires du rang affectés ou en service actif à l'étranger qui auraient commis une infraction au droit du lieu peuvent être arrêtées par tout policier militaire et livrées aux autorités locales compétentes.

CLAUSE 98 LIMITATION PERIODS – CHANGE HEADING

Description

- ◆ Replaces the heading “Limitation of Civil Liabilities” before section 267 with “Limitation or Prescription Periods, Liabilities and Exemptions”.

Rationale

- ◆ The revised heading will better reflect the subject matter of sections 267 to 270.
-

CLAUSE 99 LIMITATION PERIODS – APPLICATION

Description

- ◆ Changes the length of the limitation period from six months to two years in respect of actions or other proceedings [ss. 269(1)];
- ◆ Removes the ceasing of a continuing injury or damage as a consideration in the commencement of the limitation period [ss. 269(1)];
- ◆ Provides in the English version that the limitation period also applies to Her Majesty [ss. 269(1)];
- ◆ Sets out the specific circumstances in three paragraphs as to when the limitation period applies [par. 269(1)(a) to (c)];
- ◆ Adds a new provision for an act or any neglect or default that is incidental to an act, neglect or default described in paragraphs 269(1)(a) and (b) [par. 269(1)(c)]; and
- ◆ Adds the *Geneva Conventions Act* and the *Crimes Against Humanity and War Crimes Act* as statutes to which the six-month limitation period for the prosecution of an offence does not apply [ss. 269(1.1)].

Rationale

- ◆ Courts question whether section 269 only applies to Crown servants and not the Crown itself because the English version of subsection 269(1) only purports to bar claims against “any person”. Courts have also held that section 269 only applies to departmental and military activities that are public in nature, as opposed to those considered private or incidental. Claims arising from a motor vehicle accident of a Canadian Forces member who was driving on duty to attend military training, failure to properly maintain a military base pathway and failure to establish policies to protect cadets from sexual misconduct, have all been held to arise from incidental duties and thus outside the ambit of section 269. In addition, the six-month limitation period in section 269 is inconsistent with the two-year limitation period for claims generally applicable in most provinces.
 - ◆ Removing the ceasing of a continuing injury or damage as a point of reference for the commencement of the limitation period will remove uncertainty for defendants, as commented upon by the Federal Court Trial Division in *Way v. Canada*, [1993] F.C.J. No. 374.
 - ◆ The six-month limitation for prosecutions relating to an act, neglect or default in subsection 269(1) will be maintained. The new subsection 269(1.1) will ensure that this limitation does not apply to offences under the *National Defence Act*, the *Geneva Conventions Act* or the *Crimes Against Humanity and War Crimes Act*, in relation to an act, neglect or default described in section 269 (1). Current subsection 269(2), which is a saving provision, will remain in the *National Defence Act* to provide the required restriction for *Code of Service Discipline* proceedings.
-

CLAUSE 100 MILITARY POLICE – CONSEQUENTIAL AMENDMENTS TO THE ADDITION OF THE DEFINITION

Description

- ◆ Replaces the phrase “members of the Canadian Forces” with “officers and non-commissioned members”; and
- ◆ Replaces the phrase “officers and non-commissioned members appointed as described in section 156” with “a member of the military police”.

Rationale

- ◆ The first amendment provides consistency in the English version, while the second amendment is consequential to the introduction of the definition “military police” in subsection 2(1).
-

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 101-103

101. The Act is amended by adding the following after section 273.6:

INDEPENDENT REVIEW

273.601 (1) The Minister shall cause an independent review of the following provisions, and their operation, to be undertaken:

(a) sections 18.3 to 18.6;

(b) sections 29 to 29.28;

(c) Parts III and IV; and

(d) sections 251, 251.2, 256, 270, 272, 273 to 273.5 and 302.

(2) The Minister shall cause a report of a review to be laid before each House of Parliament within seven years after the day on which this section comes into force, and within every seven-year period after the tabling of a report under this subsection.

(3) However, if an Act of Parliament amends this Act based on an independent review, the next report shall be tabled within seven years after the day on which the amending Act is assented to.

102. Subsection 273.63(1) of the French version of the Act is replaced by the following:

273.63 (1) Le gouverneur en conseil peut nommer, à titre inamovible pour une période maximale de cinq ans, un juge surnuméraire ou un juge à la retraite d'une juridiction supérieure qu'il charge de remplir les fonctions de commissaire du Centre de la sécurité des télécommunications.

103. Subsection 299(2) of the Act is replaced by the following:

(2) A certificate that appears to have been signed by the Judge Advocate General, or by any person whom the Judge Advocate General may appoint for that purpose, attesting that an officer or non-commissioned member was convicted or discharged absolutely under this Act of desertion or absence without leave or that the officer or non-commissioned member was or has been continuously absent without leave for six months or more, and setting out the date of commencement and, if applicable, the duration of the desertion, absence without leave or continuous absence without leave, is for the purposes of proceedings under this section evidence of the facts attested to in that certificate.

101. La même loi est modifiée par adjonction, après l'article 273.6, de ce qui suit :

EXAMEN INDÉPENDANT

273.601 (1) Le ministre fait procéder à un examen indépendant des dispositions ci-après et de leur application:

a) les articles 18.3 à 18.6;

b) les articles 29 à 29.28;

c) les parties III et IV;

d) les articles 251, 251.2, 256, 270, 272, 273 à 273.5 et 302.

(2) Au plus tard sept ans après la date d'entrée en vigueur du présent article et, par la suite, au plus tard sept ans après le dépôt du rapport précédent, le ministre fait déposer le rapport d'examen devant chacune des chambres du Parlement.

(3) Toutefois, si une loi modifie la présente loi pour donner suite à l'examen, le rapport subséquent est déposé au plus tard sept ans après la date de sanction de la loi modificative.

102. Le paragraphe 273.63(1) de la version française de la même loi est remplacé par ce qui suit :

273.63 (1) Le gouverneur en conseil peut nommer, à titre inamovible pour une période maximale de cinq ans, un juge surnuméraire ou un juge à la retraite d'une juridiction supérieure qu'il charge de remplir les fonctions de commissaire du Centre de la sécurité des télécommunications.

103. Le paragraphe 299(2) de la même loi est remplacé par ce qui suit :

(2) Le certificat paraissant signé par le juge-avocat général ou son délégué attestant qu'un officier ou militaire du rang, sous le régime de la présente loi, soit a été reconnu coupable de désertion ou d'absence sans permission ou absous de l'une de ces infractions, soit a été absent sans permission, de façon continue, pendant six mois ou plus, soit est absent sans permission depuis six mois ou plus, et précisant la date à laquelle a commencé la désertion ou l'absence sans permission et sa durée, le cas échéant, fait foi des faits qui y sont énoncés, pour les poursuites intentées en application du présent article.

CLAUSE 101 INDEPENDENT REVIEW

Description

- ◆ Sets out the heading “Independent Review” before section 273.601;
- ◆ Requires the Minister to cause an independent review of specific provisions of the Act and their operation, and to have a report of the review tabled in each House of Parliament every seven years [ss. 273.601(1) and (2)]; and
- ◆ Provides that, if the *National Defence Act* is amended based on an independent review, the next report shall be tabled within seven years after the day on which the amending Act is assented to [ss. 273.601(3)].

Rationale

- ◆ Section 96 of chapter 35 of Statutes of Canada 1998 currently requires that an independent review of the provisions and operation of that Act be undertaken from time to time and that the Minister shall cause a report to be laid before Parliament within five years of the day on which the Act is assented to and within every five year period following the tabling of the report.
- ◆ Given the importance of the military justice system, the military police complaints process and the grievance system in maintaining the effectiveness of the Canadian Forces, and to ensure a sufficient period of time for the review of the operation of the new amendments and other related provisions in the Act after they come into force and also, for the actual conduct of the review, the amendments will provide for a new recurring seven-year review. This review will encompass the new provisions relating to the Canadian Forces Provost Marshal, the military justice system, the military police complaints process, the grievance system and other related miscellaneous provisions, and will commence with the coming into force of the new review section.
- ◆ The amendments provide that if an amending Act based on independent review is assented to, the next report shall be tabled within seven years after the day on which the amending Act received Royal Assent to ensure sufficient time for the operation of the amendments.

CLAUSE 102 TECHNICAL AMENDMENT TO THE FRENCH VERSION

Description

- ◆ Adds the words “ou un juge”.

Rationale

- ◆ This amendment provides consistency between the French and English versions.

CLAUSE 103 ABSOLUTE DISCHARGE – CONSEQUENTIAL AMENDMENT

Description

- ◆ Provides that a certificate as to desertion or absence may be used if an accused is discharged absolutely; and
- ◆ Makes technical amendments.

Rationale

- ◆ The addition of the words “or discharged absolutely” are consequential to the introduction of the absolute discharge under section 203.9.
- ◆ Other amendments are made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 104-105

104. Paragraph 302(d) of the Act is replaced by the following:

(d) prints observations or uses words likely to bring a proceeding under Part II, III or IV into disrepute or likely to influence improperly a board of inquiry, the Grievances Committee, the Military Judges Inquiry Committee, a service tribunal, a commissioner taking evidence under this Act, the Military Police Complaints Commission, an inquiry committee established under the regulations or a witness at a proceeding under Part II, III or IV; or

105. The Act is amended by adding the following after section 306:

307. Every person who uses or authorizes the use of an application form, for or relating to any of the following matters, that contains a question that by its terms requires the applicant to disclose a conviction for an offence referred to in paragraph 249.27(1)(a) or (b) is guilty of an offence and liable on summary conviction to a fine of not more than \$500 or to imprisonment for a term of not more than six months, or to both:

(a) employment in any department set out in Schedule I to the *Financial Administration Act*;

(b) employment by any Crown corporation, as defined in subsection 83(1) of the *Financial Administration Act*;

(c) enrolment in the Canadian Forces; or

(d) employment in or in connection with the operation of any work, undertaking or business that is within the legislative authority of Parliament.

104. L'alinéa 302d) de la même loi est remplacé par ce qui suit :

d) imprime des remarques ou tient des propos de nature à exercer une influence indue sur une commission d'enquête, le Comité des griefs, le comité d'enquête sur les juges militaires, un tribunal militaire, un commissaire recueillant des témoignages sous le régime de la présente loi, la Commission d'examen des plaintes concernant la police militaire, les témoins comparissant lors d'une procédure visée aux parties II, III ou IV ou un comité d'enquête établi par règlement, ou de nature à jeter le discrédit sur le déroulement de toute procédure visée à l'une de ces parties;

105. La même loi est modifiée par adjonction, après l'article 306, de ce qui suit :

307. Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 500 \$ et un emprisonnement maximal de six mois, ou l'une de ces peines, quiconque utilise, dans les contextes mentionnés ci-après, une demande d'emploi comportant une question qui oblige le demandeur à révéler qu'il a été déclaré coupable d'une infraction visée aux alinéas 249.27(1)a) ou b), ou permet une telle utilisation :

a) l'emploi dans un ministère figurant à l'annexe I de la *Loi sur la gestion des finances publiques*;

b) l'emploi dans une société d'État, au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques*;

c) l'enrôlement dans les Forces canadiennes;

d) l'emploi dans une entreprise qui relève de la compétence législative du Parlement ou en rapport avec un ouvrage ou une entreprise qui relève de cette compétence.

CLAUSE 104 CONTEMPT – APPLICATION

Description

- ◆ Changes the name in the English version from “Grievance Board” to “Grievances Committee”;
- ◆ Adds the “Military Judges Inquiry Committee” and “an inquiry committee established under the regulations”; and
- ◆ Makes technical amendments.

Rationale

- ◆ This amendment will ensure that the contempt offence provisions under section 302 also apply to conduct at the Military Judges Inquiry Committee or any inquiry committee established under the regulations.
- ◆ Other amendments are made to reflect current drafting norms.

CLAUSE 105 DISCLOSURE OF CONVICTIONS

Description

- ◆ Creates a new offence in Part VII of the *Act*, punishable on summary conviction by a fine of \$500 or six months imprisonment or both, wherein every person is guilty of an offence who uses or authorizes the use of an application form for federal employment that requires the applicant to disclose a conviction for an offence described in paragraphs 249.27(1)(a) or (b) of the *Act*.

Rationale

- ◆ This amendment will prevent federal employers from asking an applicant about any conviction of a service offence with a sentence of a minor punishment or a fine of \$500 or less, or both, or convictions that would be a contravention under the *Contraventions Act*.
- ◆ As these offences are not considered criminal offences by virtue of subsection 249.27(1), it is unfair to members of the Canadian Forces that any stigma be attached to the conviction of such offences incurred during their military service and that could therefore bar further federal employment.
- ◆ There is a similar prohibition in section 64 of the *Contraventions Act* in respect of convictions under that *Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 106-108

106. The English version of the Act is amended by replacing “Grievance Board” with “Grievances Committee” in the following provisions:

- (a) sections 29.12 and 29.13;
- (b) subsection 29.17(1);
- (c) sections 29.18 to 29.28;
- (d) subsection 118(1);
- (e) section 251.2; and
- (f) paragraph 302(d).

107. The French version of the Act is amended by replacing “prévôt” with “grand prévôt” in the following provisions:

- (a) subsection 227.04(3);
- (b) subparagraph 227.05(1)(d)(iii);
- (c) subsection 227.07(1);
- (d) subsection 227.08(4);
- (e) section 227.11;
- (f) subsection 227.13(3);
- (g) subsections 227.15(4) and (5);
- (h) subsection 227.16(3);
- (i) subsections 227.18(1) and (2);
- (j) subsections 227.19(1) and (2);
- (k) section 227.21;
- (l) subsection 240.5(3);
- (m) subsection 250.21(1) and subparagraph 250.21(2)(c)(i);
- (n) sections 250.25 and 250.26;
- (o) subsection 250.27(4);
- (p) subsection 250.28(1);
- (q) subsection 250.31(2);
- (r) subsection 250.32(3);
- (s) subsections 250.34(2) and (3);
- (t) subsection 250.35(1);
- (u) paragraph 250.36(e);
- (v) paragraph 250.37(1)(d);
- (w) subsection 250.38(5);
- (x) section 250.39;
- (y) section 250.48; and
- (z) subsection 250.49(1).

108. The French version of the Act is amended by replacing “mise en cause” and “mise en cause par la plainte” with “qui fait l’objet de la plainte” in the following provisions:

- (a) section 250.23;
- (b) subsection 250.27(5);
- (c) subsection 250.3(3);
- (d) subsections 250.33(1) and (3);
- (e) paragraph 250.37(1)(b) and subsection 250.37(3);
- (f) subsection 250.38(4); and
- (g) section 250.46.

106. Dans les passages ci-après de la version anglaise de la même loi, « Grievance Board » est remplacé par « Grievances Committee » :

- a) les articles 29.12 et 29.13;
- b) le paragraphe 29.17(1);
- c) les articles 29.18 à 29.28;
- d) le paragraphe 118(1);
- e) l’article 251.2;
- f) l’alinéa 302d).

107. Dans les passages ci-après de la version française de la même loi, « prévôt » est remplacé par « grand prévôt » :

- a) le paragraphe 227.04(3);
- b) le sous-alinéa 227.05(1)d)(iii);
- c) le paragraphe 227.07(1);
- d) le paragraphe 227.08(4);
- e) l’article 227.11;
- f) le paragraphe 227.13(3);
- g) les paragraphes 227.15(4) et (5);
- h) le paragraphe 227.16(3);
- i) les paragraphes 227.18(1) et (2);
- j) les paragraphes 227.19(1) et (2);
- k) l’article 227.21;
- l) le paragraphe 240.5(3);
- m) le paragraphe 250.21(1) et le sousalinéa 250.21(2)c)(i);
- n) les articles 250.25 et 250.26;
- o) le paragraphe 250.27(4);
- p) le paragraphe 250.28(1);
- q) le paragraphe 250.31(2);
- r) le paragraphe 250.32(3);
- s) les paragraphes 250.34(2) et (3);
- t) le paragraphe 250.35(1);
- u) l’alinéa 250.36e);
- v) l’alinéa 250.37(1)d);
- w) le paragraphe 250.38(5);
- x) l’article 250.39;
- y) l’article 250.48;
- z) le paragraphe 250.49(1).

108. Dans les passages ci-après de la version française de la même loi, « mise en cause » ou « mise en cause par la plainte » sont remplacés par « qui fait l’objet de la plainte » :

- a) l’article 250.23;
- b) le paragraphe 250.27(5);
- c) le paragraphe 250.3(3);
- d) les paragraphes 250.33(1) et (3);
- e) l’alinéa 250.37(1)b) et le paragraphe 250.37(3);
- f) le paragraphe 250.38(4);
- g) l’article 250.46.

CLAUSE 106 TERMINOLOGY CHANGE

Description

- ◆ Replaces “Grievance Board” with “Grievances Committee” in specified places in the English version of the *Act*.

Rationale

- ◆ This amendment reflects the new short version of the English name, established in subsections 2(2) and 2(6) of the bill, of the Military Grievances External Review Committee.

CLAUSE 107 TERMINOLOGY CHANGE

Description

- ◆ Replaces “prévôt” with “grand prévôt” in specified places in the French version of the *Act*.

Rationale

- ◆ These amendments will provide consistency between the French and English versions.

CLAUSE 108 TERMINOLOGY CHANGE

Description

- ◆ Replaces “mise en cause” and “mise en cause par la plainte” with “qui fait l’objet de la plainte” in specified places in the French version of the *Act*.

Rationale

- ◆ These amendments are made to reflect current drafting norms.

CLAUSE BY CLAUSE ANALYSIS **CLAUSES 109-114**

109. A person who, immediately before the coming into force of this section, held office as a military judge shall continue in office as if the person had been appointed under subsection 165.21(1) of the *National Defence Act*, as enacted by section 41.

109. Les juges militaires qui sont en fonctions à l'entrée en vigueur du présent article continuent d'exercer leur charge comme s'ils avaient été nommés en vertu du paragraphe 165.21(1) de la *Loi sur la défense nationale*, édicté par l'article 41.

110. A person who, immediately before the coming into force of this section, held office as a member of an Inquiry Committee established under subsection 165.21(2) of the *National Defence Act*, as it read before the coming into force of section 41, shall continue in office as if the person had been appointed under subsection 165.31(1) of the *National Defence Act*, as enacted by section 45.

110. Les membres du comité d'enquête établi sous le régime du paragraphe 165.21(2) de la *Loi sur la défense nationale*, dans sa version antérieure à l'entrée en vigueur de l'article 41, qui sont en fonctions à l'entrée en vigueur du présent article continuent d'exercer leur charge comme s'ils avaient été nommés en vertu du paragraphe 165.31(1) de la *Loi sur la défense nationale*, édicté par l'article 45.

111. A person who, immediately before the coming into force of this section, held office as a member of a Compensation Committee established under subsection 165.22(2) of the *National Defence Act*, as it read before the coming into force of section 41, shall continue in office as if the person had been appointed under subsection 165.33(1) of the *National Defence Act*, as enacted by section 45.

111. Les membres du comité établi sous le régime du paragraphe 165.22(2) de la *Loi sur la défense nationale*, dans sa version antérieure à l'entrée en vigueur de l'article 41, qui sont en fonctions à l'entrée en vigueur du présent article continuent d'exercer leur charge comme s'ils avaient été nommés en vertu du paragraphe 165.33(1) de la *Loi sur la défense nationale*, édicté par l'article 45.

112. An inquiry under subsection 165.21(2) of the *National Defence Act*, as it read before the coming into force of section 41, that, immediately before the coming into force of this section, had not been completed shall be continued as an inquiry under sections 165.31 and 165.32 of the *National Defence Act*, as enacted by section 45.

112. Toute enquête commencée par le comité d'enquête établi sous le régime du paragraphe 165.21(2) de la *Loi sur la défense nationale*, dans sa version antérieure à l'entrée en vigueur de l'article 41, et en instance à la date d'entrée en vigueur du présent article est poursuivie et menée conformément aux articles 165.31 et 165.32 de la *Loi sur la défense nationale*, édictés par l'article 45.

113. A review under subsection 165.22(2) of the *National Defence Act*, as it read before the coming into force of section 41, that, immediately before the coming into force of this section, had not been completed shall be continued as an inquiry under sections 165.33 to 165.37 of the *National Defence Act*, as enacted by section 45.

113. Tout examen commencé par le comité d'enquête établi sous le régime du paragraphe 165.22(2) de la *Loi sur la défense nationale*, dans sa version antérieure à l'entrée en vigueur de l'article 41, et en instance à la date d'entrée en vigueur du présent article est poursuivi et mené conformément aux articles 165.33 à 165.37 de la *Loi sur la défense nationale*, édictés par l'article 45.

114. The limitation or prescription period set out in subsection 269(1) of the *National Defence Act*, as enacted by section 99, applies only in respect of an act, neglect or default that occurs after the coming into force of section 99.

114. La prescription prévue au paragraphe 269(1) de la *Loi sur la défense nationale*, édicté par l'article 99, ne s'applique qu'à l'égard des actes, négligences ou manquements commis après l'entrée en vigueur de celui-ci.

CLAUSE 109 TRANSITIONAL PROVISION – MILITARY JUDGES

Description and Rationale

- ◆ Provides that a military judge holding office before the coming into force of this section shall continue in office as if appointed under the *National Defence Act* as amended.

CLAUSE 110 TRANSITIONAL PROVISION – INQUIRY COMMITTEE MEMBER

Description and Rationale

- ◆ Provides that a member of an Inquiry Committee established under subsection 165.21(2) before the coming into force of this section shall continue as a member of the Military Judges Inquiry Committee established by the *National Defence Act* as amended.

CLAUSE 111 TRANSITIONAL PROVISION – COMPENSATION COMMITTEE MEMBER

Description and Rationale

- ◆ Provides that a member of a Compensation Committee established under subsection 165.22(2) before the coming into force of this section shall continue as a member of the Military Judges Compensation Committee established by the *National Defence Act* as amended.

CLAUSE 112 TRANSITIONAL PROVISION – CONTINUATION OF AN INQUIRY

Description and Rationale

- ◆ Provides that an inquiry that is not completed before the coming into force of this section shall be continued as a Military Judges Inquiry Committee inquiry under sections 165.31 and 165.32.

CLAUSE 113 TRANSITIONAL PROVISION – COMPENSATION REVIEW

Description and Rationale

- ◆ Provides that a military judges compensation review that is not completed before the coming into force of this section shall be continued as an inquiry under sections 165.33 to 165.37.

CLAUSE 114 TRANSITIONAL PROVISION – LIMITATION PERIOD CHANGES

Description

- ◆ Clarifies that the amended limitation period in subsection 269(1) applies only in respect of an act, neglect or default that occurs after the coming into force of this amended subsection.

Rationale

- ◆ This transitional provision will ensure that changes to the limitation period in respect of civil proceedings are not applied retroactively to past acts, neglects or defaults.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 115-119

ACCESS TO INFORMATION ACT

115. Schedule I to the *Access to Information Act* is amended by striking out the following under the heading “OTHER GOVERNMENT INSTITUTIONS”:

Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

116. Schedule I to the Act is amended by adding the following in alphabetical order under the heading “OTHER GOVERNMENT INSTITUTIONS”:

Military Grievances External Review Committee
Comité externe d'examen des griefs militaires

CRIMINAL CODE

117. The French version of the *Criminal Code* is amended by replacing “prévôt” with “grand prévôt” in the following provisions:

(a) section 5 of Form 52 in Part XXVIII; and

(b) section 5 of Form 53 in Part XXVIII.

FINANCIAL ADMINISTRATION ACT

118. Schedule I.1 to the *Financial Administration Act* is amended by striking out the reference in column I to

Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

and the corresponding reference in column II to “Minister of National Defence”.

119. Schedule I.1 to the Act is amended by adding, in alphabetical order in column I, a reference to

Military Grievances External Review Committee
Comité externe d'examen des griefs militaires

and a corresponding reference in column II to “Minister of National Defence”.

LOI SUR L'ACCÈS À L'INFORMATION

115. L'annexe I de la *Loi sur l'accès à l'information* est modifiée par suppression, sous l'intertitre « AUTRES INSTITUTIONS FÉDÉRALES », de ce qui suit :

Comité des griefs des Forces canadiennes
Canadian Forces Grievance Board

116. L'annexe I de la même loi est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « AUTRES INSTITUTIONS FÉDÉRALES », de ce qui suit :

Comité externe d'examen des griefs militaires
Military Grievances External Review Committee

CODE CRIMINEL

117. Dans les passages ci-après de la version française du *Code criminel*, « prévôt » est remplacé par « grand prévôt » :

a) l'article 5 de la formule 52 de la partie XXVIII;

b) l'article 5 de la formule 53 de la partie XXVIII.

LOI SUR LA GESTION DES FINANCES PUBLIQUES

118. L'annexe I.1 de la *Loi sur la gestion des finances publiques* est modifiée par suppression, dans la colonne I, de ce qui suit :

Comité des griefs des Forces canadiennes
Canadian Forces Grievance Board

ainsi que de la mention « Le ministre de la Défense nationale », dans la colonne II, en regard de ce secteur.

119. L'annexe I.1 de la même loi est modifiée par adjonction, dans la colonne I, selon l'ordre alphabétique, de ce qui suit :

Comité externe d'examen des griefs militaires
Military Grievances External Review Committee

ainsi que de la mention « Le ministre de la Défense nationale », dans la colonne II, en regard de ce secteur.

CLAUSE 115 CONSEQUENTIAL AMENDMENT – ACCESS TO INFORMATION ACT

Description

- ◆ Amends Schedule I to the *Access to Information Act* by striking out the Canadian Forces Grievance Board.

Rationale

- ◆ The name of the Canadian Forces Grievance Board has changed.

CLAUSE 116 CONSEQUENTIAL AMENDMENT – ACCESS TO INFORMATION ACT

Description

- ◆ Amends Schedule I to the *Access to Information Act* by adding the Military Grievances External Review Committee

Rationale

- ◆ The new name under which the Canadian Forces Grievance Board is continued is added.

CLAUSE 117 CONSEQUENTIAL AMENDMENT – CRIMINAL CODE

Description

- ◆ Replaces “prévôt” with “grand prévôt” in the French version of section 5 of Forms 52 and 53 in Part XXVIII of the *Criminal Code*.

Rationale

- ◆ These amendments will provide consistency between the French and English versions.

CLAUSE 118 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Schedule I.1 to the *Financial Administration Act* by striking out the Canadian Forces Grievance Board and the corresponding reference to the “Minister of National Defence”

Rationale

- ◆ The name of the Canadian Forces Grievance Board has changed.

CLAUSE 119 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Schedule I.1 to the *Financial Administration Act* by adding the Military Grievances External Review Committee and the corresponding reference to the “Minister of National Defence”

Rationale

- ◆ The new name under which the Canadian Forces Grievance Board is continued is added.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 120-125

120. Schedule IV to the Act is amended by striking out the following:

Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

121. Schedule IV to the Act is amended by adding the following in alphabetical order:

Military Grievances External Review Committee
Comité externe d'examen des griefs militaires

122. Part III of Schedule VI to the Act is amended by striking out the reference in column I to

Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

and the corresponding reference in column II to "Chairperson".

123. Part III of Schedule VI to the Act is amended by adding a reference to

Military Grievances External Review Committee
Comité externe d'examen des griefs militaires

in alphabetical order in column I and a corresponding reference in column II to "Chairperson".

PRIVACY ACT

124. The schedule to the *Privacy Act* is amended by striking out the following under the heading "OTHER GOVERNMENT INSTITUTIONS":

Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

125. The schedule to the Act is amended by adding the following in alphabetical order under the heading "OTHER GOVERNMENT INSTITUTIONS":

Military Grievances External Review Committee
Comité externe d'examen des griefs militaires

120. L'annexe IV de la même loi est modifiée par suppression de ce qui suit :

Comité des griefs des Forces canadiennes
Canadian Forces Grievance Board

121. L'annexe IV de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit

Comité externe d'examen des griefs militaires
Military Grievances External Review Committee

122. La partie III de l'annexe VI de la même loi est modifiée par suppression, dans la colonne I, de ce qui suit :

Comité des griefs des Forces canadiennes
Canadian Forces Grievance Board

ainsi que de la mention « Président », dans la colonne II, en regard de ce ministère.

123. La partie III de l'annexe VI de la même loi est modifiée par adjonction, dans la colonne I, selon l'ordre alphabétique, de ce qui suit :

Comité externe d'examen des griefs militaires
Military Grievances External Review Committee

ainsi que de la mention « Président », dans la colonne II, en regard de ce ministère.

LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

124. L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par suppression, sous l'intertitre « AUTRES INSTITUTIONS FÉDÉRALES », de ce qui suit :

Comité des griefs des Forces canadiennes
Canadian Forces Grievance Board

125. L'annexe de la même loi est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « AUTRES INSTITUTIONS FÉDÉRALES », de ce qui suit :

Comité externe d'examen des griefs militaires
Military Grievances External Review Committee

CLAUSE 120 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Schedule IV to the *Financial Administration Act* by striking out the Canadian Forces Grievance Board.

Rationale

- ◆ The name of the Canadian Forces Grievance Board has changed.

CLAUSE 121 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Schedule IV to the *Financial Administration Act* by adding the Military Grievances External Review Committee.

Rationale

- ◆ The new name under which the Canadian Forces Grievance Board is continued is added.

CLAUSE 122 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Part III of Schedule VI to the *Financial Administration Act* by striking out the Canadian Forces Grievance Board and the corresponding reference to "Chairperson".

Rationale

- ◆ The name of the Canadian Forces Grievance Board has changed.

CLAUSE 123 CONSEQUENTIAL AMENDMENT – FINANCIAL ADMINISTRATION ACT

Description

- ◆ Amends Part III of Schedule VI to the *Financial Administration Act* by adding the Military Grievances External Review Committee and the corresponding reference to "Chairperson".

Rationale

- ◆ The new name under which the Canadian Forces Grievance Board is continued is added.

CLAUSE 124 CONSEQUENTIAL AMENDMENT – PRIVACY ACT

Description

- ◆ Amends the Schedule to the *Privacy Act* by striking out the Canadian Forces Grievance Board.

Rationale

- ◆ The name of the Canadian Forces Grievance Board has changed.

CLAUSE 125 CONSEQUENTIAL AMENDMENT – PRIVACY ACT

Description

- ◆ Amends the Schedule to the *Privacy Act* by adding the Military Grievances External Review Committee.

Rationale

- ◆ The new name under which the Canadian Forces Grievance Board is continued is added.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 126-128

**CORRECTIONS AND CONDITIONAL
RELEASE ACT**

126. Subsection 120(1) of the *Corrections and Conditional Release Act* is replaced by the following:

120. (1) Subject to sections 746.1 and 761 of the *Criminal Code* and to any order made under section 743.6 of that Act, to subsection 226.1(2) of the *National Defence Act* and to any order made under section 226.2 of that Act, and to subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, an offender is not eligible for full parole until the day on which the offender has served a period of ineligibility of the lesser of one third of the sentence and seven years.

127. The Act is amended by replacing every reference to section 140.3 of the *National Defence Act* with a reference to section 226.1 of the *National Defence Act* wherever it occurs in the following provisions:

(a) the portion of subsection 17(1) after paragraph (d) and before paragraph (e);

(b) the portion of subsection 18(2) before paragraph (a);

(c) the portion of subsection 119(1) before paragraph (a);

(d) subsections 119(1.1) and (1.2);

(e) subsection 120.2(3); and

(f) section 120.3.

128. The Act is amended by replacing every reference to section 140.4 of the *National Defence Act* with a reference to section 226.2 of the *National Defence Act* wherever it occurs in the following provisions:

(a) subsection 120(2);

(b) subparagraph 120.2(1)(b)(i); and

(c) the portion of subsection 121(1) before paragraph (a).

**LOI SUR LE SYSTÈME CORRECTIONNEL ET
LA MISE EN LIBERTÉ SOUS CONDITION**

126. Le paragraphe 120(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* est remplacé par ce qui suit :

120. (1) Sous réserve des articles 746.1 et 761 du *Code criminel* et de toute ordonnance rendue en vertu de l'article 743.6 de cette loi, du paragraphe 226.1(2) de la *Loi sur la défense nationale* et de toute ordonnance rendue en vertu de l'article 226.2 de cette loi, et du paragraphe 15(2) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*, le temps d'épreuve pour l'admissibilité à la libération conditionnelle totale est d'un tiers de la peine à concurrence de sept ans.

127. Dans les passages ci-après de la même loi, la mention de l'article 140.3 de la *Loi sur la défense nationale* est remplacée par la mention de l'article 226.1 :

a) le passage du paragraphe 17(1) précédant l'alinéa a);

b) le passage du paragraphe 18(2) précédant l'alinéa a);

c) le passage du paragraphe 119(1) précédant l'alinéa a);

d) les paragraphes 119(1.1) et (1.2);

e) le paragraphe 120.2(3);

f) l'article 120.3.

128. Dans les passages ci-après de la même loi, la mention de l'article 140.4 de la *Loi sur la défense nationale* est remplacée par la mention de l'article 226.2 :

a) le paragraphe 120(2);

b) l'alinéa 120.2(1)b);

c) le passage du paragraphe 121(1) précédant l'alinéa a).

CLAUSE 126 CONSEQUENTIAL AMENDMENT – CORRECTIONS AND CONDITIONAL RELEASE ACT

Description

- ◆ Modifies subsection 120(1) of the *Corrections and Conditional Release Act* such that references to subsection 140.3(2) and section 140.4 of the *National Defence Act* are replaced by references to subsection 226.1(2) and section 226.2.

Rationale

- ◆ These consequential amendments are required as sections 140.3 and 140.4 of the *National Defence Act* will be renumbered, respectively, as sections 226.1 and 226.2.

CLAUSE 127 CONSEQUENTIAL AMENDMENT – CORRECTIONS AND CONDITIONAL RELEASE ACT

Description

- ◆ Replaces references to section 140.3 of the *National Defence Act* in the *Corrections and Conditional Release Act* with a reference to section 226.1.

Rationale

- ◆ These consequential amendments are required as section 140.3 of the *National Defence Act* will be renumbered as section 226.1.

CLAUSE 128 CONSEQUENTIAL AMENDMENT – CORRECTIONS AND CONDITIONAL RELEASE ACT

Description

- ◆ Replaces references to section 140.4 of the *National Defence Act* in the *Corrections and Conditional Release Act* with a reference to section 226.2.

Rationale

- ◆ These consequential amendments are required as section 140.4 of the *National Defence Act* will be renumbered as section 226.2.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 129-131

AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

129. Section 96 of *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, chapter 35 of the Statutes of Canada, 1998, is repealed.

SEX OFFENDER INFORMATION REGISTRATION ACT

130. The French version of the *Sex Offender Information Registration Act* is amended by replacing “prévôt” with “grand prévôt” in the following provisions:

- (a) subsections 8.2(1) to (7); and
- (b) subsection 12(2).

PUBLIC SAFETY ACT, 2002

131. Section 77 of the *Public Safety Act, 2002* is repealed.

LOI MODIFIANT LA LOI SUR LA DÉFENSE NATIONALE ET D'AUTRES LOIS EN CONSÉQUENCE

129. L'article 96 de la *Loi modifiant la Loi sur la défense nationale et d'autres lois en conséquence*, chapitre 35 des Lois du Canada (1998), est abrogé.

LOI SUR L'ENREGISTREMENT DE RENSEIGNEMENTS SUR LES DÉLINQUANTS SEXUELS

130. Dans les passages ci-après de la version française de la *Loi sur l'enregistrement de renseignements sur les délinquants sexuels*, « prévôt » est remplacé par « grand prévôt » :

- a) les paragraphes 8.2(1) à (7);
- b) le paragraphe 12(2).

LOI DE 2002 SUR LA SÉCURITÉ PUBLIQUE

131. L'article 77 de la *Loi de 2002 sur la sécurité publique* est abrogé.

CLAUSE 129 CONSEQUENTIAL AMENDMENT – AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Description

- ◆ Repeals section 96 of the *Act to Amend the National Defence Act and to make consequential amendments to other Acts*, chapter 35 of the Statutes of Canada 1998.

Rationale

- ◆ The repeal of section 96 will conclude the recurring five year reviews of the provisions and operation of Bill C-25, given the amended independent review provision under the new section 273.601.

CLAUSE 130 CONSEQUENTIAL AMENDMENT – SEX OFFENDER INFORMATION REGISTRATION ACT

Description

- ◆ Replaces “prévôt” with “grand prévôt” in the French version of the *Sex Offender Information Registration Act* in subsections 8.2(1) to (7), and subsection 12(2).

Rationale

- ◆ These amendments will provide consistency between the French and English versions.

CLAUSE 131 CONSEQUENTIAL AMENDMENT – PUBLIC SAFETY ACT, 2002

Description

- ◆ Repeals section 77 of the *Public Safety Act, 2002*.

Rationale

- ◆ Section 77 dealing with the “Reserve Military Judges Panel” is no longer required given the amendments proposed in section 165.22 to 165.224 in respect of reserve force military judges.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 132

132. (1) In this section, “other Act” means the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act*.

(2) If section 6 of the other Act comes into force before section 68 of this Act, then, on the day on which that section 68 comes into force, paragraph 226.1(2)(a) of the *National Defence Act* is replaced by the following:

(a) a reference in sections 745.2 to 745.3 of the *Criminal Code* to a jury shall be read as a reference to the panel of a General Court Martial; and

(3) If section 68 of this Act comes into force before section 6 of the other Act, then that section 6 is replaced by the following:

6. Paragraph 226.1(2)(a) of the *National Defence Act* is replaced by the following:

(a) a reference in sections 745.2 to 745.3 of the *Criminal Code* to a jury shall be read as a reference to the panel of a General Court Martial; and

(4) If section 6 of the other Act comes into force on the same day as section 68 of this Act, then that section 6 is deemed to have come into force before that section 68 and subsection (2) applies as a consequence.

132. (1) Au présent article, « autre loi » s'entend de la *Loi protégeant les Canadiens en mettant fin aux peines à rabais en cas de meurtres multiples*.

(2) Si l'article 6 de l'autre loi entre en vigueur avant l'article 68 de la présente loi, à la date d'entrée en vigueur de cet article 68, l'alinéa 226.1(2)a) de la *Loi sur la défense nationale* est remplacé par ce qui suit :

a) la mention, aux articles 745.2 à 745.3 du *Code criminel*, du jury vaut mention du comité de la cour martiale générale;

(3) Si l'article 68 de la présente loi entre en vigueur avant l'article 6 de l'autre loi, cet article 6 est remplacé par ce qui suit :

6. L'alinéa 226.1(2)a) de la *Loi sur la défense nationale* est remplacé par ce qui suit :

a) la mention, aux articles 745.2 à 745.3 du *Code criminel*, du jury vaut mention du comité de la cour martiale générale;

(4) Si l'entrée en vigueur de l'article 6 de l'autre loi et celle de l'article 68 de la présente loi sont concomitantes, cet article 6 est réputé être entré en vigueur avant cet article 68, le paragraphe (2) s'appliquant en conséquence.

CLAUSE 132 COORDINATING AMENDMENT – *PROTECTING CANADIANS BY ENDING SENTENCE DISCOUNTS FOR MULTIPLE MURDERS ACT*

Description

- ◆ Makes coordinating amendments in respect of the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act*.

Rationale

- ◆ The coordinating amendments will ensure that the correct amendments are made to the *National Defence Act* depending on the coming into force dates of the two *Acts*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 133

133. (1) Subsections (2) to (11) apply if Bill C-10, introduced in the 1st session of the 41st Parliament and entitled the *Safe Streets and Communities Act* (in this section referred to as the “other Act”), receives royal assent.

(2) If subsection 22(1) of this Act comes into force before section 50 of the other Act, then that section 50 is repealed.

(3) If section 50 of the other Act comes into force on the same day as subsection 22(1) of this Act, then that section 50 is deemed to have come into force before that subsection 22(1).

(4) On the first day on which both section 76 of the other Act and section 19 of this Act are in force, the reference to section 140.4 of the *National Defence Act* in paragraph 120.1(1)(a) of the *Corrections and Conditional Release Act* is replaced by a reference to section 226.2 of the *National Defence Act*.

(5) If section 127 of this Act comes into force before section 76 of the other Act, then, on the day on which that section 76 comes into force, the *Corrections and Conditional Release Act* is amended by replacing the reference to section 140.3 of the *National Defence Act* with a reference to section 226.1 of the *National Defence Act* in the following provisions:

(a) subsection 120.2(3); and

(b) section 120.3.

(6) If section 76 of the other Act comes into force on the same day as section 127 of this Act, then that section 76 is deemed to have come into force before that section 127.

(7) If section 128 of this Act comes into force before section 76 of the other Act, then, on the day on which that section 76 comes into force, subparagraph 120.2(1)(b)(i) of the *Corrections and Conditional Release Act* is amended by replacing the reference to section 140.4 of the *National Defence Act* with a reference to section 226.2 of the *National Defence Act*.

133. (1) Les paragraphes (2) à (11) s'appliquent en cas de sanction du projet de loi C-10, déposé au cours de la 1re session de la 41e législature et intitulé *Loi sur la sécurité des rues et des communautés* (appelé « autre loi » au présent article).

(2) Si le paragraphe 22(1) de la présente loi entre en vigueur avant l'article 50 de l'autre loi, cet article 50 est abrogé.

(3) Si l'entrée en vigueur de l'article 50 de l'autre loi et celle du paragraphe 22(1) de la présente loi sont concomitantes, cet article 50 est réputé être entré en vigueur avant ce paragraphe 22(1).

(4) Dès le premier jour où l'article 76 de l'autre loi et l'article 19 de la présente loi sont tous deux en vigueur, la mention de l'article 140.4 de la *Loi sur la défense nationale*, à l'alinéa 120.1(1)a) de la *Loi sur le système correctionnel et la mise en liberté sous condition*, est remplacée par la mention de l'article 226.2.

(5) Si l'article 127 de la présente loi entre en vigueur avant l'article 76 de l'autre loi, à la date d'entrée en vigueur de cet article 76, dans les passages ci-après de la *Loi sur le système correctionnel et la mise en liberté sous condition*, la mention de l'article 140.3 de la *Loi sur la défense nationale* est remplacée par la mention de l'article 226.1 :

a) le paragraphe 120.2(3);

b) l'article 120.3.

(6) Si l'entrée en vigueur de l'article 76 de l'autre loi et celle de l'article 127 de la présente loi sont concomitantes, cet article 76 est réputé être entré en vigueur avant cet article 127.

(7) Si l'article 128 de la présente loi entre en vigueur avant l'article 76 de l'autre loi, à la date d'entrée en vigueur de cet article 76, la mention de l'article 140.4 de la *Loi sur la défense nationale*, à l'alinéa 120.2(1)b) de la *Loi sur le système correctionnel et la mise en liberté sous condition*, est remplacée par la mention de l'article 226.2.

CLAUSE 133 COORDINATING AMENDMENT – *SAFE STREETS AND COMMUNITIES ACT* (PART 1)

Description

- ◆ Makes coordinating amendments in respect of Bill C-10 entitled the *Safe Streets and Communities Act*.

Rationale

- ◆ These coordinating amendments are required if Bill C-10 receives royal assent.
- ◆ The coordinating amendments will ensure that the correct amendments are made to the *Safe Streets and Communities Act*, the *National Defence Act* and the *Corrections and Conditional Release Act*, depending on the coming into force dates of specified sections and subsections of the *Safe Streets and Communities Act* and the *National Defence Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSE 133

(8) If section 76 of the other Act comes into force on the same day as section 128 of this Act, then that section 76 is deemed to have come into force before that section 128.

(9) If subsection 77(1) of the other Act comes into force before section 19 of this Act, then, on the day on which that section 19 comes into force, the portion of subsection 121(1) of the *Corrections and Conditional Release Act* before paragraph (a) is amended by replacing the reference to section 140.3 of the *National Defence Act* with a reference to section 226.1 of the *National Defence Act*.

(10) If section 19 of this Act comes into force before subsection 77(1) of the other Act, then, on the day on which that subsection 77(1) comes into force, the portion of subsection 121(1) of the *Corrections and Conditional Release Act* before paragraph (a) is amended by replacing the references to sections 140.3 and 140.4 of the *National Defence Act* with references to sections 226.1 and 226.2 of the *National Defence Act*, respectively.

(11) If subsection 77(1) of the other Act comes into force on the same day as section 19 of this Act, then that subsection 77(1) is deemed to have come into force before that section 19 and subsection (9) applies as a consequence.

(8) Si l'entrée en vigueur de l'article 76 de l'autre loi et celle de l'article 128 de la présente loi sont concomitantes, cet article 76 est réputé être entré en vigueur avant cet article 128.

(9) Si le paragraphe 77(1) de l'autre loi entre en vigueur avant l'article 19 de la présente loi, à la date d'entrée en vigueur de cet article 19, la mention de l'article 140.3 de la *Loi sur la défense nationale*, dans le passage du paragraphe 121(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* précédant l'alinéa a), est remplacée par la mention de l'article 226.1.

(10) Si l'article 19 de la présente loi entre en vigueur avant le paragraphe 77(1) de l'autre loi, à la date d'entrée en vigueur de ce paragraphe 77(1), les mentions des articles 140.3 et 140.4 de la *Loi sur la défense nationale*, dans le passage du paragraphe 121(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* précédant l'alinéa a), sont respectivement remplacées par les mentions des articles 226.1 et 226.2.

(11) Si l'entrée en vigueur du paragraphe 77(1) de l'autre loi et celle de l'article 19 de la présente loi sont concomitantes, ce paragraphe 77(1) est réputé être entré en vigueur avant cet article 19, le paragraphe (9) s'appliquant en conséquence.

CLAUSE 133 COORDINATING AMENDMENT – SAFE STREETS AND COMMUNITIES ACT (PART 2)

Description

- ◆ Makes coordinating amendments in respect of Bill C-10 entitled the *Safe Streets and Communities Act*.

Rationale

- ◆ These coordinating amendments are required if Bill C-10 receives royal assent.
- ◆ The coordinating amendments will ensure that the correct amendments are made to the *Safe Streets and Communities Act*, the *National Defence Act* and the *Corrections and Conditional Release Act*, depending on the coming into force dates of specified sections and subsections of the *Safe Streets and Communities Act* and the *National Defence Act*.

CLAUSE BY CLAUSE ANALYSIS

CLAUSES 134-135

134. (1) Subsections (2) and (3) apply if a Bill entitled the *Security of Tenure of Military Judges Act* (in this section referred to as the “other Act”) is introduced in the 1st session of the 41st Parliament and receives royal assent.

(2) If section 41 of this Act comes into force before section 2 of the other Act, then that section 2 is deemed never to have come into force and the other Act is repealed.

(3) If section 2 of the other Act comes into force on the same day as section 41 of this Act, then that section 2 is deemed to have come into force before that section 41.

135. (1) Subject to subsection (2), the provisions of this Act, other than subsections 2(2) to (4) and (6) and sections 3, 10, 11, 41 to 45, 106, 109 to 116, 118 to 125 and 132 to 134, come into force on a day or days to be fixed by order of the Governor in Council.

(2) Sections 19, 68 and 126 to 128 come into force on a day to be fixed by order of the Governor in Council.

134. (1) Les paragraphes (2) et (3) s'appliquent si le projet de loi intitulé *Loi sur l'inamovibilité des juges militaires* (appelé « autre loi » au présent article) est déposé au cours de la 1re session de la 41e législature et reçoit la sanction royale.

(2) Si l'article 41 de la présente loi entre en vigueur avant l'article 2 de l'autre loi, cet article 2 est réputé ne pas être entré en vigueur et l'autre loi est abrogée.

(3) Si l'entrée en vigueur de l'article 2 de l'autre loi et celle de l'article 41 de la présente loi sont concomitantes, cet article 2 est réputé être entré en vigueur avant cet article 41.

135. (1) Sous réserve du paragraphe (2) et exception faite des paragraphes 2(2) à (4) et (6) et des articles 3, 10, 11, 41 à 45, 106, 109 à 116, 118 à 125 et 132 à 134, les dispositions de la présente loi entrent en vigueur à la date ou aux dates fixées par décret.

(2) Les articles 19, 68 et 126 à 128 entrent en vigueur à la date fixée par décret.

CLAUSE 134 COORDINATING AMENDMENT – SECURITY OF TENURE OF MILITARY JUDGES ACT

Description

- ◆ Makes coordinating amendments in respect of Bill C-16 entitled the *Security of Tenure of Military Judges Act*.

Rationale

- ◆ These coordinating amendments are required since Bill C-16, *Security of Tenure of Military Judges Act* received royal assent.
- ◆ Bill C-15 addresses the same security of tenure issues as dealt with in Bill C-16 and proposes broader, more systemic changes.
- ◆ Coordinating amendments are added to ensure that it will be the provisions of Bill C-15 that take effect.

CLAUSE 135 COMING INTO FORCE

Description

- ◆ Provides that the provisions of this *Act*, other than subsections 2(2) to (4) and (6), and sections 3, 10, 11, 41 to 45, 106, 109 to 116, 118 to 125, 132 to 134 come into force on a day or days to be fixed by order of the Governor in Council; and
- ◆ Provides that sections 19, 68 and 126 to 128 of this *Act* come into force together on a day to be fixed by order of the Governor in Council.

Rationale

- ◆ This provision allows the *Act* as a whole to come into force on a specific day or individual provisions of the *Act* to come into force on separate days.
- ◆ Some sections which require the making of regulations may have to come into force later given the consultation that occurs with the development of regulations.
- ◆ Sections 19, 68 and 126 to 128 of this *Act* are mentioned separately as they have to come into force simultaneously.