RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Amendments to the

National Defence Act

Clause by Clause Analysis

June 1998

A0351338_1-000001

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1st Session, 36th Parliament,
46-47 Elizabeth II, 1997-98

THE HOUSE OF COMMONS OF CANADA

BILL C-25

An Act to amend the National Defence Act and to make consequential amendments to other Acts

1re session, 36e législature,
46-47 Elizabeth II, 1997-98

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-25

Loi modifiant la Loi sur la défense nationale et d'autres lois en conséquence

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

NATIONAL DEFENCE ACT

R.S., c. N-5; R.S., cc. 27, 31, 41 (1st Supp.), c. 34 (3rd Supp.), cc. 6, 22 (4th Supp.); 1990, c. 14; 1991, c. 43; 1992, cc. 16, 20; 1993, c. 34; 1995, cc. 11, 39; 1996, c. 19; 1997, c. 18

LOI SUR LA DÉFENSE NATIONALE

L.R., ch. N-5; L.R., ch. 27, 31, 41 (1er suppl.), ch. 34 (3e suppl.), ch. 6, 22 (4e suppl.); 1990, ch. 14; 1991, ch 43; 1992 ch. 16, 20; 1993, ch. 34; 1995, ch. 11, 39; 1996, ch. 19; 1997, ch. 18

1. (1) The definitions "Code of Service Discipline", "materiel" and "service convict" in section 2 of the *National Defence Act* are replaced by the following:

1. (1) Les définitions de « code de discipline militaire », « condamné militaire » et « matériels », à l'article 2 de la *Loi sur la défense nationale*, sont remplacées par ce qui suit :

"Code of Service Discipline" means the provisions of Part III;

« code de discipline militaire » Les dispositions de la partie III.

"Code of Service Discipline"
« *code de discipline militaire* »

"materiel" means all public property, other than real property, immovables and money, provided for the Canadian Forces or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;

« condamné militaire » Personne condamnée à une peine, comportant un emprisonnement à perpétuité ou de deux ans ou plus, infligée en application du code de discipline militaire.

« matériels » Biens publics mobiliers ou personnels — à l'exclusion de toute somme d'argent — fournis pour les Forces canadiennes ou à toute autre fin dans le cadre de la présente loi. Sont visés par la présente définition les navires, véhicules, aéronefs,

"materiel"
« *matériels* »

"service convict" means a person who is under a sentence that includes a punishment of imprisonment for life or for two years or more imposed on that person pursuant to the Code of Service Discipline;

"service convict"
« *condamné militaire* »

« code de discipline militaire »
"*Code of Service Discipline*"

« condamné militaire »
"*service convict*"

« matériels »
"*materiel*"

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Clause 1	*Amends definitions of* "Code of Service Discipline", "materiel", "service convict", "penitentiary", *and* "possession" *in section 2, adds new definitions,* "criminal organization", "criminal organization offence", "Grievance Board", *and* "military judge"	

What the amendment does

- replaces a reference to "Parts IV to IX" in the definition "*Code of Service Discipline*" with "Part III"
- deletes a reference to the Defence Research Board in the definition "materiel" and makes a linguistic change to reflect civil law terminology
- includes in the definitions "service convict" and "penitentiary" references to punishments of imprisonment for life

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III of the *Act*, that deals with the Defence Research Board, is being repealed. The substitution of Part numbers and the deletion of a reference to the Defence Research Board are consequential to those changes.

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(2) Paragraphs (*b*) and (*c*) of the definition "penitentiary" in section 2 of the Act are replaced by the following:

(*b*) includes, in respect of any punishment of imprisonment for life or for two years or more imposed outside Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for life or for two years or more by a civil court having jurisdiction in the place where the sentence is imposed can for the time being be confined, and

(*c*) means, in any place outside Canada where there is no prison or place for the confinement of persons sentenced to imprisonment for life or for two years or more, a civil prison;

(3) The portion of the definition "possession" in section 2 of the Act before paragraph (*a*) is replaced by the following:

"possession" *« possession »*

"possession" by any person, for the purposes of the Code of Service Discipline and Part VII, includes

(4) Section 2 of the Act is amended by adding the following in alphabetical order:

"criminal organization" *« gang »*

"criminal organization" means any group, association or other body consisting of five or more persons, whether formally or informally organized,

(*a*) having as one of its primary activities the commission of an offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, and

(*b*) any or all of the members of which engage in or have, within the preceding five years, engaged in the commission of a series of such offences;

"criminal organization offence" *« acte de gangstérisme »*

"criminal organization offence" means

animaux, missiles, armes, munitions, provisions, équipements, effets ou vivres.

(2) Les alinéas *b*) et *c*) de la définition de « pénitencier », à l'article 2 de la même loi, sont remplacés par ce qui suit :

b) prison ou tout autre lieu où peut être incarcérée une personne condamnée à l'étranger, en application du code de discipline militaire, à un emprisonnement à perpétuité ou un emprisonnement de deux ans ou plus par un tribunal civil compétent au lieu où la peine est infligée;

c) prison civile, en l'absence de tout autre lieu, à l'étranger, pour l'incarcération de condamnés à un emprisonnement à perpétuité ou un emprisonnement de deux ans ou plus.

(3) Le passage de la définition de « possession », à l'article 2 de la même loi, précédant l'alinéa *a*) est remplacé par ce qui suit :

« possession » "possession"

« possession » Pour l'application du code de discipline militaire et de la partie VII, s'entend notamment du fait, pour une personne :

(4) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

« acte de gangstérisme » "criminal organization offence"

« acte de gangstérisme »

a) Soit une infraction prévue à l'article 467.1 du *Code criminel*;

b) soit une infraction à la présente loi, au *Code criminel* ou à toute autre loi fédérale, passible d'un emprisonnement maximal de cinq ans ou plus et commis au profit ou sous la direction d'un gang, ou en association avec lui;

c) soit le complot ou la tentative de commettre un acte prévu aux alinéas *a*) ou *b*), la complicité après le fait à tel égard ou le fait de conseiller de le commettre.

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Clause 1	*Amends definitions of* "Code of Service Discipline", "materiel", "service convict", "penitentiary", *and* "possession" *in section 2, adds new definitions,* "criminal organization", "criminal organization offence", "Grievance Board", *and* "military judge"	**Continued**

What the amendment does

- includes in the definitions "service convict" and "penitentiary" references to punishments of imprisonment for life
- replaces a reference to "Part XII" in the definition "possession" with "Part VII"
- adds four new definitions, "criminal organization", criminal organization offence", "Grievance Board", and "military judge"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III of the *Act*, that deals with the Defence Research Board, is being repealed. The substitution of Part numbers is consequential to those changes.

The changes to the definitions of "service convict" and "penitentiary" are consequential to the replacement of the death penalty with imprisonment for life in the scale of punishments, in section 139 of the *Act*, that may be imposed by a service tribunal.

The two new definitions of "criminal organization" and "criminal organization offence" are consequential to the new parole eligibility provisions contained in section 140.4. These definitions parallel similar provisions contained in the *Criminal Code*.

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(*a*) an offence under section 467.1 of the *Criminal Code*,

(*b*) an offence under this Act, the *Criminal Code* or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more and that is committed for the benefit of, at the direction of or in association with a criminal organization, or

(*c*) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, any offence referred to in paragraph (*a*) or (*b*);

"Grievance Board" « *Comité des griefs* »

"Grievance Board" means the Canadian Forces Grievance Board established by subsection 29.16(1);

"military judge" « *juge militaire* »

"military judge" means a military judge appointed under subsection 165.21(1);

« Comité des griefs » Le Comité des griefs des Forces canadiennes constitué par le paragraphe 29.16(1). « Comité des griefs » "*Grievance Board*"

« gang » Groupe, association ou autre organisation d'au moins cinq personnes, constitué de façon formelle ou non et qui remplit les conditions suivantes : « gang » "*criminal organization*"

a) l'une de ses principales activités consiste à commettre des infractions définies par la présente loi ou une autre loi fédérale et passibles d'un emprisonnement maximal de cinq ans ou plus;

b) ses membres ou certains d'entre eux commettent ou ont commis, au cours des cinq dernières années, une série d'infractions passibles d'un emprisonnement maximal de cinq ans ou plus.

« juge militaire » La personne nommée à ce titre aux termes du paragraphe 165.21(1). « juge militaire » "*military judge*"

1995, c. 39, s. 175(3)

(5) The portion of subsection 2(2) of the Act before paragraph (*a*), as enacted by subsection 175(3) of the *Firearms Act*, being chapter 39 of the Statutes of Canada, 1995, is replaced by the following:

(5) Le passage du paragraphe 2(2) de la même loi précédant l'alinéa *a*), édicté par le paragraphe 175(3) de la *Loi sur les armes à feu*, chapitre 39 des Lois du Canada (1995), est remplacé par ce qui suit : 1995, ch. 39, par. 175(3)

Meaning of "possession"

(2) For the purposes of the Code of Service Discipline and Part VII,

(2) Pour l'application du code de discipline militaire et de la partie VII : Sens de « possession »

2. Sections 9 and 10 of the Act are replaced by the following:

2. Les articles 9 et 10 de la même loi sont remplacés par ce qui suit :

Appointment

9. (1) The Governor in Council may appoint an officer who is a barrister or advocate with at least ten years standing at the bar of a province to be the Judge Advocate General of the Canadian Forces.

9. (1) Le gouverneur en conseil nomme un officier qui est un avocat inscrit au barreau d'une province depuis au moins dix ans pour remplir les fonctions de juge-avocat général des Forces canadiennes. Nomination

Tenure of office

(2) The Judge Advocate General holds office during pleasure for a term not exceeding four years.

(2) Le juge-avocat général occupe son poste à titre amovible pour un mandat d'une durée maximale de quatre ans. Durée du mandat

Re-appointment

(3) The Judge Advocate General is eligible to be re-appointed on the expiry of a first or subsequent term of office.

(3) Son mandat est renouvelable. Nouveau mandat

Legal adviser

9.1 The Judge Advocate General acts as legal adviser to the Governor General, the Minister, the Department and the Canadian Forces in matters relating to military law.

9.1 Le juge-avocat général agit à titre de conseiller juridique du gouverneur général, du ministre, du ministère et des Forces canadiennes pour les questions de droit militaire. Conseiller juridique

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What the amendment does

- adds four new definitions, "criminal organization", criminal organization offence", "Grievance Board", and "military judge"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III of the *Act*, that deals with the Defence Research Board, is being repealed. The substitution of Part numbers is consequential to those changes.

The two new definitions of "criminal organization" and "criminal organization offence" are consequential to the new parole eligibility provisions contained in section 140.4. These definitions parallel similar provisions contained in the *Criminal Code*.

The two new definitions of "Grievance Board" and "military judge" describe entities referred to in the *National Defence Act* and indicate where in the *Act* they are established or appointed.

Clause 2	*Amends sections 9 and 10, adds new sections 9.1 to 9.4*	

What the amendment does

- sets out the qualifications, terms of office and responsibilities of the Judge Advocate General, including that the Judge Advocate General
  - must be an officer and have at least 10 years standing as a barrister or advocate at the bar of a province [s. 9]
  - holds office during pleasure for a term not exceeding four years that is renewable [s. 9]
  - acts as legal advisor to the Governor General, the Minister of National Defence, the Department of National Defence and the Canadian Forces in matters related to military law [s. 9.1]

Reasons for the change

These changes clarify the role and responsibilities of the Judge Advocate General and strengthen the Judge Advocate General's independence from the chain of command. [ss. 9 to 9.4]

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Superintendence of military justice

9.2 (1) The Judge Advocate General has the superintendence of the administration of military justice in the Canadian Forces.

Autorité

9.2 (1) Le juge-avocat général exerce son autorité sur tout ce qui touche à l'administration de la justice militaire au sein des Forces canadiennes.

Regular reviews

(2) The Judge Advocate General shall conduct, or cause to be conducted, regular reviews of the administration of military justice.

Examen périodique

(2) Il procède ou fait procéder périodiquement à un examen de l'administration de la justice militaire.

Responsible to Minister

9.3 (1) The Judge Advocate General is responsible to the Minister in the performance of the Judge Advocate General's duties and functions.

Responsabilité

9.3 (1) Le juge-avocat général rend compte au ministre de l'exercice de ses attributions.

Annual report

(2) The Judge Advocate General shall report annually to the Minister on the administration of military justice in the Canadian Forces.

Rapport annuel

(2) Il lui présente un rapport annuel sur l'administration de la justice militaire au sein des Forces canadiennes.

Tabling in Parliament

(3) The Minister shall have a copy of the report laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Dépôt

(3) Le ministre fait déposer le rapport devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

Rank

9.4 The Judge Advocate General holds a rank that is not less than brigadier-general.

Grade

9.4 Le juge-avocat général détient au moins le grade de brigadier-général.

Authority to act for Judge Advocate General

10. The powers of the Judge Advocate General may be exercised, and the duties and functions of the Judge Advocate General may be performed, by any other officer who has the qualifications set out in subsection 9(1) that the Minister may authorize to act for the Judge Advocate General for that purpose.

Fonctions

10. Le ministre peut autoriser un officier remplissant les critères énoncés au paragraphe 9(1) à exercer de façon intérimaire les fonctions du juge-avocat général.

Non-derogation

10.1 For greater certainty, section 9.1 is not in derogation of the authority of the Minister of Justice and Attorney General of Canada under the *Department of Justice Act*.

Effet

10.1 Il est entendu que l'article 9.1 ne modifie en rien les attributions du ministre de la Justice et procureur général du Canada que lui confère la *Loi sur le ministère de la Justice*.

3. Section 11 of the Act is replaced by the following:

3. L'article 11 de la même loi est remplacé par ce qui suit :

Delivery of materiel for sale or disposal

11. The Governor in Council may authorize the Minister to deliver to any department or agency of the Government of Canada, for sale or disposal to any countries or international welfare organizations and on any terms that the Governor in Council may determine, any materiel that has not been declared surplus and is not immediately required for the use of the Canadian Forces or for any other purpose under this Act.

Livraison de matériel en vue de l'aliénation

11. Le gouverneur en conseil peut autoriser le ministre à livrer à un ministère ou organisme fédéral, en vue de l'aliénation, par vente ou autrement, aux pays ou organismes internationaux de protection sociale et aux conditions que fixe le gouverneur en conseil, tout matériel qui n'a pas été déclaré excédentaire et qui n'est pas nécessaire dans l'immédiat pour l'usage des Forces canadiennes, ou à toute autre fin prévue par la présente loi.

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Clause 2	*Amends sections 9 and 10, adds new sections 9.1 to 9.4*	Continued

What the amendment does

- sets out the qualifications, terms of office and responsibilities of the Judge Advocate General, including that the Judge Advocate General
  - has the superintendence of the administration of military justice in the Canadian Forces and is charged with conducting regular reviews of that administration [s. 9.2]
  - reports directly to the Minister [s. 9.3]
  - must submit an annual report to the Minister on the administration of justice in the Canadian Forces [s. 9.3]
  - holds a rank that is not less than brigadier-general [s. 9.4]
- provides that a person authorized by the Minister to act for the Judge Advocate General must have the same qualifications as the Judge Advocate General under s. 9(1) [s. 10]
- provides that the role of the Judge Advocate General is not in derogation of the authority of the Minister of Justice and Attorney General of Canada under the *Department of Justice Act* [s. 10.1]

Reasons for the change

These changes clarify the role and responsibilities of the Judge Advocate General and strengthen the Judge Advocate General's independence from the chain of command. [ss. 9 to 9.4]

The amendment to section 10 flows from the amendment to section 9 of the *Act*. An officer who is authorized to act for the Judge Advocate General shall have the same qualifications as the Judge Advocate General. [s. 10]

The new section 10.1 provides greater certainty that the authority of the Minister of Justice and Attorney General of Canada are not diminished by section 9.1. [s. 10.1]

Clause 3	*Amends section 11*	

What the amendment does

- deletes a reference to the Defence Research Board
- expands the existing authority of the Minister to arrange for the "sale" of certain materiel to arrange for the "sale or disposal" of that materiel

Reasons for the change

Section 11 of the *Act* gives the Governor in Council power to authorize the Minister of National Defence to deliver certain materiel to any Government department or agency for sale to another country or international welfare organization. That authority has been broadened to include the "disposal" of materiel to take into account situations where the materiel is to be donated or traded.

The deletion of the reference to the Defence Research Board is consequential to the repeal of the provisions of the *Act* that deal with the Defence Research Board.

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R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 2)

4. Subsection 12(3) of the Act is replaced by the following:

Treasury Board's power to make regulations

(3) The Treasury Board may make regulations

(*a*) prescribing the rates and conditions of issue of pay of military judges;

(*b*) prescribing the forfeitures and deductions to which the pay and allowances of officers and non-commissioned members are subject; and

(*c*) providing for any matter concerning the pay, allowances and reimbursement of expenses of officers and non-commissioned members for which the Treasury Board considers regulations are necessary or desirable to carry out the purposes or provisions of this Act.

5. The Act is amended by adding the following after section 13:

Military Police Professional Code of Conduct

13.1 The Governor in Council may make regulations, to be known as the *Military Police Professional Code of Conduct*, to govern the conduct of members of the military police.

6. The Act is amended by adding the following after section 18:

Vice Chief of the Defence Staff

18.1 There shall be an officer appointed by the Chief of the Defence Staff to be the Vice Chief of the Defence Staff.

Absence or incapacity of Chief of the Defence Staff

18.2 In the event of the absence or incapacity of the Chief of the Defence Staff, the Vice Chief of the Defence Staff, or any other officer that is specified by the Minister or the Chief of the Defence Staff, has the control and administration of the Canadian Forces.

R.S., c. 31 (1st Supp.), s. 43

7. Section 29 of the Act and the heading before it are replaced by the following:

4. Le paragraphe 12(3) de la même loi est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 2

Conseil du Trésor

(3) Le Conseil du Trésor peut, par règlement :

a) fixer les taux et conditions de versement de la solde des juges militaires;

b) fixer, en ce qui concerne la solde et les indemnités des officiers et militaires du rang, les suppressions et retenues;

c) prendre toute mesure concernant la rémunération ou l'indemnisation des officiers et militaires du rang qu'il juge nécessaire ou souhaitable de prendre par règlement pour l'application de la présente loi.

5. La même loi est modifiée par adjonction, après l'article 13, de ce qui suit :

Code de déontologie de la police militaire

13.1 Le gouverneur en conseil peut prendre des règlements, appelés *Code de déontologie de la police militaire*, pour régir la conduite des policiers militaires.

6. La même loi est modifiée par adjonction, après l'article 18, de ce qui suit :

Vice-chef d'état-major de la défense

18.1 Le vice-chef d'état-major de la défense est nommé, par le chef d'état-major, parmi les officiers.

Absence ou empêchement du chef d'état-major de la défense

18.2 En cas d'absence ou d'empêchement du chef d'état-major de la défense, c'est le vice-chef d'état-major de la défense qui, sauf désignation contraire par le chef d'état-major de la défense ou le ministre, assure la direction et la gestion des Forces canadiennes.

L.R., ch. 31 (1er suppl.), art. 43

7. L'article 29 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

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Clause 4	*Amends subsection 12(3)*	

What the amendment does

- authorizes the Treasury Board to make regulations prescribing the rates and conditions of issue of pay of military judges
- authorizes the Treasury Board to prescribe the forfeiture and deductions to which the pay and allowances of officers and non-commissioned members are subject
- provides a residual authority for the Treasury Board to make regulations relating to the pay, allowances and reimbursement of expenses of officers and non-commissioned members in cases where it is necessary or desirable

Reasons for the change

Present subsection 12(3) authorizes the Treasury Board to make regulations respecting both the condition and rates of pay and forfeitures and deductions from that pay of officers and non-commissioned members. The Treasury Board has been authorized under an amended section 35 to deal with rates and conditions of issue of pay of these members and with expenses and allowances by administrative directives, a more flexible and responsive method than regulations.

The more formal process of regulation-making is more appropriate to establish the rates and conditions of pay of military judges.

Clause 5	*Adds new section 13.1*	

What the amendment does

- authorizes the Governor in Council to make regulations—the *Military Police Professional Code of Conduct*—governing the conduct of the military police

Reasons for the change

The *Code* will establish professional standards to guide members of the military police in the conduct of their duties. A professional code of conduct is a feature of most Canadian police forces.

Clause 6	*Adds new sections 18.1 and 18.2*	

What the amendment does

- provides that there shall be an officer appointed by the Chief of the Defence Staff to be the Vice Chief of the Defence Staff [s. 18.1]
- provides that the Vice Chief of the Defence Staff, or other officer specified by the Minister or the Chief of the Defence Staff, has the control and administration of the Canadian Forces if the Chief of the Defence Staff is absent or unable to act [s. 18.2]

Reasons for the change

These amendments provide a legislative framework for existing practice.

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Grievances

Right to grieve

29. (1) An officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the Canadian Forces for which no other process for redress is provided under this Act is entitled to submit a grievance.

Exceptions

(2) There is no right to grieve in respect of

(*a*) a decision of a court martial or the Court Martial Appeal Court;

(*b*) a decision of a board, commission, court or tribunal established other than under this Act; or

(*c*) a matter or case prescribed by the Governor in Council in regulations.

Manner and conditions

(3) A grievance must be submitted in the manner and in accordance with the conditions prescribed in regulations made by the Governor in Council.

No penalty for grievance

(4) An officer or non-commissioned member may not be penalized for exercising the right to submit a grievance.

Correction of error

(5) Notwithstanding subsection (4), any error discovered as a result of an investigation of a grievance may be corrected, even if correction of the error would have an adverse effect on the officer or non-commissioned member.

Authorities for determination of grievances

29.1 (1) The initial authority and subsequent authorities who may consider and determine grievances are the authorities designated in regulations made by the Governor in Council.

Different authorities

(2) The regulations may provide that different types of grievances may be considered and determined by different authorities.

Final authority

29.11 The Chief of the Defence Staff is the final authority in the grievance process.

Referral to Grievance Board

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 to the Grievance Board for its findings and recommendations before the Chief of the Defence Staff considers and determines the grievance. The Chief of the

Griefs

Droit de déposer des griefs

29. (1) Tout officier ou militaire du rang qui s'estime lésé par une décision, un acte ou une omission dans les affaires des Forces canadiennes a le droit de déposer un grief dans le cas où aucun autre recours de réparation ne lui est ouvert sous le régime de la présente loi.

Exceptions

(2) Ne peuvent toutefois faire l'objet d'un grief :

a) les décisions d'une cour martiale ou de la Cour d'appel de la cour martiale;

b) les décisions d'un tribunal, office ou organisme créé en vertu d'une autre loi;

c) les questions ou les cas exclus par règlement du gouverneur en conseil.

Modalités de présentation

(3) Les griefs sont déposés selon les modalités et conditions fixées par règlement du gouverneur en conseil.

Aucune sanction

(4) Le dépôt d'un grief ne doit entraîner aucune sanction contre le plaignant.

Correction d'erreur

(5) Par dérogation au paragraphe (4), toute erreur qui est découverte à la suite d'une enquête sur un grief peut être corrigée, même si la mesure corrective peut avoir un effet défavorable sur le plaignant.

Autorités compétentes

29.1 (1) Les autorités qui sont initialement saisies d'un grief et qui peuvent ensuite en connaître sont désignées par règlement du gouverneur en conseil.

Règlements

(2) Les règlements peuvent désigner différentes autorités selon les catégories de griefs.

Dernier ressort

29.11 Le chef d'état-major de la défense est l'autorité de dernière instance en matière de griefs.

Renvoi au Comité des griefs

29.12 (1) Avant d'étudier un grief d'une catégorie prévue par règlement du gouverneur en conseil, 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 devant le Comité.

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	

What the amendment does

- excludes from the process
  - a decision of a court martial or the Court Martial Appeal Court
  - a decision of a board, commission, court or tribunal established outside of the *National Defence Act*
  - a matter or case prescribed in regulations made by the Governor in Council [subs. 29(2)]
- prohibits a member of the Canadian Forces from being penalized for exercising the right to grieve [subs. 29(4)]
- identifies the authorities who may consider and determine grievances as the authorities designated in regulations [s. 29.1]
- provides that the Chief of the Defence Staff is the final authority in the grievance process [s. 29.11]
- requires the Chief of the Defence Staff to refer certain specified grievances to the Grievance Board for its findings and recommendations, authorizes the Chief of the Defence Staff to refer any other grievances to the Board and describes the material to be submitted to the Board [s. 29.12]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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Defence Staff may refer any other grievance to the Grievance Board.

Material to be provided to Board

(2) When referring a grievance to the Grievance Board, the Chief of the Defence Staff shall provide the Grievance Board with a copy of

(*a*) the written submissions made to each authority in the grievance process by the officer or non-commissioned member presenting the grievance;

(*b*) the decision made by each authority in respect of the grievance; and

(*c*) any other information under the control of the Canadian Forces that is relevant to the grievance.

Documents à communiquer au Comité

(2) Le cas échéant, il lui transmet copie :

a) des argumentations écrites présentées par l'officier ou le militaire du rang à chacune des autorités ayant eu à connaître du grief;

b) des décisions rendues par chacune d'entre elles;

c) des renseignements pertinents placés sous la responsabilité des Forces canadiennes.

Chief of the Defence Staff not bound

29.13 (1) The Chief of the Defence Staff is not bound by any finding or recommendation of the Grievance Board.

Décision du Comité non obligatoire

29.13 (1) Le chef d'état-major de la défense n'est pas lié par les conclusions et recommandations du Comité des griefs.

Reasons

(2) If the Chief of the Defence Staff does not act on a finding or recommendation of the Grievance Board, the Chief of the Defence Staff shall include the reasons for not having done so in the decision respecting the disposition of the grievance.

Motifs

(2) S'il choisit de s'en écarter, il doit toutefois motiver son choix dans sa décision.

Delegation

29.14 The Chief of the Defence Staff may delegate to any officer any of the Chief of the Defence Staff's powers, duties or functions as final authority in the grievance process, except

(*a*) the duty to act as final authority in respect of a grievance that must be referred to the Grievance Board; and

(*b*) the power to delegate under this section.

Délégation

29.14 Le chef d'état-major de la défense peut déléguer à tout officier le pouvoir de décision définitive que lui confère l'article 29.11, sauf pour les griefs qui doivent être soumis au Comité des griefs; il ne peut toutefois déléguer le pouvoir de délégation que lui confère le présent article.

Decision is final

29.15 A decision of a final authority in the grievance process is final and binding and, except for judicial review under the *Federal Court Act*, is not subject to appeal or to review by any court.

Décision définitive

29.15 Les décisions du chef d'état-major de la défense ou de son délégataire sont définitives et exécutoires et, sous réserve du contrôle judiciaire prévu par la *Loi sur la Cour fédérale*, ne sont pas susceptibles d'appel ou de révision en justice.

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- requires the Chief of the Defence Staff to refer certain specified grievances to the Grievance Board for its findings and recommendations, authorizes the Chief of the Defence Staff to refer any other grievances to the Board and describes the material to be submitted to the Board [s. 29.12]
- provides that the Chief of the Defence Staff is not bound by a finding or recommendation of the Board but must provide reasons for not acting on a finding or recommendation [s. 29.13]
- authorizes the Chief of the Defence Staff to delegate his or her powers, duties or functions as final authority with certain exceptions [s. 29.14]
- provides that a decision as final authority is only subject to judicial review under the *Federal Court Act* [s. 29.15]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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Canadian Forces Grievance Board

Canadian Forces Grievance Board established

29.16 (1) There is established a board, called the Canadian Forces Grievance Board, 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.

Full- or part-time

(2) The Chairperson and one Vice-Chairperson are each full-time members and the other members may be appointed as full-time or part-time members.

Tenure and removal

(3) Each member holds office during good behaviour for a term not exceeding four years but may be removed by the Governor in Council for cause.

Re-appointment

(4) A member is eligible to be re-appointed on the expiry of a first or subsequent term of office.

Duties of full-time members

(5) Full-time members shall devote the whole of their time to the performance of their duties under this Act.

Conflict of interest — part-time members

(6) Part-time members may not accept or hold any office or employment during their term of office that is inconsistent with their duties under this Act.

Remuneration

(7) Members who are not officers or non-commissioned members are entitled to be paid for their services the remuneration and allowances fixed by the Governor in Council.

Travel and living expenses

(8) Members who are not officers or non-commissioned members are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties while absent from their ordinary place of work, if full-time members, or their ordinary place of residence, if part-time members, subject to any applicable Treasury Board directives.

Status of members

(9) Members who are not officers or non-commissioned members are deemed

(*a*) to be employed in the Public Service for the purposes of the *Public Service Superannuation Act*;

Comité des griefs des Forces canadiennes

Constitution du Comité des griefs

29.16 (1) Est constitué 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.

Temps plein ou temps partiel

(2) Le président et l'un des vice-présidents occupent leur charge à temps plein. Les autres membres sont nommés à temps plein ou à temps partiel.

Durée du mandat et révocation

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

Mandat renouvelable

(4) Leur mandat est renouvelable.

Fonctions des membres à temps plein

(5) Les membres à temps plein se consacrent exclusivement à l'exécution des fonctions qui leur sont conférées par la présente loi.

Conflits d'intérêts : membres à temps partiel

(6) Les membres à temps partiel ne peuvent accepter ni occuper de charge ou d'emploi incompatible avec les fonctions que leur confère la présente loi.

Rémunération des membres

(7) Pour leur participation aux travaux du Comité des griefs, les membres qui ne sont ni officiers ni militaires du rang reçoivent la rémunération et les allocations fixées par le gouverneur en conseil.

Frais

(8) Ils 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 soit de travail, s'ils sont à temps plein, soit de résidence, s'ils sont à temps partiel.

Statut des membres

(9) Ils sont en outre réputés :

a) faire partie de la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*;

b) être des agents de l'État pour l'application de la *Loi sur l'indemnisation des agents de l'État*;

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Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- establishes a Canadian Forces Grievance Board with fully tenured full-time and part-time members and sets out their terms of employment [s. 29.16]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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(*b*) to be employees for the purposes of the *Government Employees Compensation Act*; and

(*c*) to be employed in the public service of Canada for the purposes of any regulations made pursuant to section 9 of the *Aeronautics Act*.

c) appartenir à l'administration publique fédérale pour l'application des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*.

Secondment

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

(10) L'officier ou le militaire du rang qui est nommé membre du Comité des griefs y est détaché en conformité avec l'article 27.

Détachement

Oath of office

(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 Canadian Forces Grievance Board in conformity with the requirements of the *National Defence Act*, and of all rules and instructions under that Act applicable to the Canadian Forces Grievance Board, 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.)

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

Je, ..., jure (*ou* affirme) solennellement que j'exercerai fidèlement et honnêtement les devoirs qui m'incombent en ma qualité de membre du Comité des griefs des Forces canadiennes 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.)

Serment

Chairperson

29.17 (1) The Chairperson is the chief executive officer of the Grievance Board and has supervision over and direction of its work and staff.

29.17 (1) Le président est le premier dirigeant du Comité des griefs; à ce titre, il en assure la direction et contrôle la gestion de son personnel.

Premier dirigeant

Absence or incapacity

(2) In the event of the absence or incapacity of the Chairperson or if that office is vacant, the Minister may authorize a Vice-Chairperson to exercise the powers and perform the duties and functions of the Chairperson.

(2) En cas d'absence ou d'empêchement du président ou de vacance de son poste, le ministre peut autoriser un des vice-présidents à le remplacer.

Absence ou empêchement

Delegation

(3) The Chairperson may delegate to a Vice-Chairperson any of the Chairperson's powers, duties or functions under this Act, except the power to delegate under this subsection and the duty to submit an annual report under subsection 29.28(1).

(3) Le président du Comité des griefs peut déléguer à un vice-président les pouvoirs et fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe et de l'obligation que lui impose le paragraphe 29.28(1) de présenter un rapport.

Délégation

Head office

29.18 The head office of the Grievance Board shall be at the place in Canada designated by the Governor in Council.

29.18 Le siège du Comité des griefs est fixé, au Canada, au lieu désigné par le gouverneur en conseil.

Siège

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Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- establishes a Canadian Forces Grievance Board with fully tenured full-time and part-time members and sets out their terms of employment [s. 29.16]
- provides that the Chairperson of the Grievance Board is the chief executive officer and has supervision over and direction of its work and staff [s. 29.17]
- authorizes the Vice-Chairperson to carry out duties of the Chairperson in certain circumstances [s. 29.17]
- provides that the head office of the Grievance Board will be at a place in Canada designated by the Governor in Council [s. 29.18]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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Staff

29.19 (1) The employees that are necessary for the proper conduct of the work of the Grievance Board shall be appointed in accordance with the *Public Service Employment Act*.

Experts

(2) The Grievance Board may, with the approval of the Treasury Board, engage on a temporary basis the services of counsel and other persons having technical or specialized knowledge to assist the Grievance Board in its work, establish the terms and conditions of their engagement and fix and pay their remuneration and expenses.

Duties and functions

29.2 (1) The Grievance Board shall review every grievance referred to it by the Chief of the Defence Staff and provide its findings and recommendations in writing to the Chief of the Defence Staff and the officer or non-commissioned member who submitted the grievance.

Duty to act expeditiously

(2) The Grievance Board shall deal with all matters before it as informally and expeditiously as the circumstances and the considerations of fairness permit.

Powers

29.21 The Grievance Board has, in relation to the review of a grievance referred to it, the power

(*a*) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things under their control that it considers necessary to the full investigation and consideration of matters before it;

(*b*) to administer oaths; and

(*c*) to receive and accept any evidence and information that it sees fit, whether admissible in a court of law or not.

Restriction

29.22 The Grievance Board may not receive or accept any evidence or other information that would be inadmissible in a court of law by reason of any privilege under the law of evidence.

Witness not excused from testifying

29.23 (1) No witness shall be excused from answering any question relating to a grievance before the Grievance Board when required to do so by the Grievance Board on the ground

Personnel

29.19 (1) Le personnel nécessaire à l'exécution des travaux du Comité des griefs est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

Expertise

(2) Le Comité des griefs peut, avec l'approbation du Conseil du Trésor, retenir, à titre temporaire, les services des experts, avocats ou autres personnes dont il estime le concours utile pour ses travaux, définir leurs fonctions et leurs conditions d'emploi ainsi que fixer et payer leur rémunération et leurs frais.

Fonctions

29.2 (1) Le Comité des griefs examine les griefs dont il est saisi et transmet, par écrit, ses conclusions et recommandations au chef d'état-major de la défense et au plaignant.

Obligation d'agir avec célérité

(2) Dans la mesure où les circonstances et l'équité le permettent, il agit avec célérité et sans formalisme.

Pouvoir du Comité

29.21 Le Comité des griefs dispose, relativement à la question dont il est saisi, des pouvoirs suivants :

a) assigner des témoins, les contraindre à témoigner sous serment, oralement ou par écrit, et à produire les documents et pièces sous leur responsabilité et qu'il estime nécessaires à une enquête et étude complètes;

b) faire prêter serment;

c) recevoir et accepter les éléments de preuve et renseignements qu'il estime indiqués, qu'ils soient ou non recevables devant un tribunal.

Restriction

29.22 Le Comité des griefs ne peut recevoir ou accepter des éléments de preuve ou autres renseignements non recevables devant un tribunal du fait qu'ils sont protégés par le droit de la preuve.

Obligation des témoins

29.23 (1) Tout témoin est tenu de répondre aux questions sur le grief lorsque le Comité des griefs l'exige et ne peut se soustraire à cette obligation au motif que sa réponse peut

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Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- authorizes the appointment of necessary employees and the engagement, on a temporary basis, of counsel or other persons with specialized knowledge [s. 29.19]
- requires the Grievance Board to review all grievances submitted to it and to submit findings and recommendations to the Chief of the Defence Staff and to the grievor [s. 29.2]
- authorizes the Grievance Board, in reviewing a grievance, to summon witnesses, administer oaths and admit evidence [s. 29.21]
- provides that the Grievance Board may not receive nor accept any evidence or other information that would be inadmissible in a court of law by reason of privilege [s. 29.22]
- provides that a witness cannot be excused from answering a question before the Grievance Board on the ground that the answer may tend to criminate the witness [s. 29.23]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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that the answer to the question may tend to criminate the witness or subject the witness to any proceeding or penalty.

l'incriminer ou l'exposer à des poursuites ou à une peine.

Answer not receivable

(2) No answer given or statement made by a witness in response to a question described in subsection (1) may be used or receivable against the witness in any disciplinary, criminal, administrative or civil proceeding, other than a hearing or proceeding in respect of an allegation that the witness gave the answer or made the statement knowing it to be false.

(2) Les déclarations ainsi faites en réponse aux questions ne peuvent être utilisées ni ne sont recevables contre le témoin devant une juridiction disciplinaire, criminelle, administrative ou civile, sauf si la poursuite ou la procédure porte sur le fait qu'il les savait fausses.

Non-recevabilité des réponses

Expenses

29.24 Travel and living expenses incurred in appearing before the Grievance Board shall, in the discretion of the Grievance Board, be paid, in accordance with applicable Treasury Board directives, to the officer or non-commissioned member whose grievance is being heard, and to that person's assisting officer or counsel, if the Grievance Board holds a hearing at a place in Canada that is not their ordinary place of residence.

29.24 Lorsque le Comité des griefs siège, au Canada, ailleurs qu'au lieu de leur résidence habituelle, le plaignant et l'officier qui l'assiste ou son avocat, selon le cas, sont indemnisés, selon l'appréciation du comité et en conformité avec les normes établies par le Conseil du Trésor, des frais de déplacement et de séjour exposés pour leur comparution devant le comité.

Frais

Return of documents, etc.

29.25 Documents and things presented to the Grievance Board at a hearing shall, on request, be returned to the person who presented them within a reasonable time after the Grievance Board has provided its findings and recommendations to the Chief of the Defence Staff.

29.25 Les pièces produites devant le Comité des griefs lors d'une audience, sur demande de la personne qui les a produites, lui sont retournées dans un délai raisonnable après la transmission de ses conclusions et recommandations au chef d'état-major de la défense.

Restitution des pièces

Rules

29.26 (1) The Chairperson may make rules respecting

(*a*) the manner of dealing with grievances referred to the Grievance Board, including the conduct of investigations and hearings by the Grievance Board;

(*b*) the apportionment of the work of the Grievance Board among its members and the assignment of members to review grievances; and

(*c*) the performance of the duties and functions of the Grievance Board.

29.26 (1) Le président peut établir des règles pour régir :

a) la procédure d'examen des griefs par le Comité des griefs, notamment quant à la tenue d'enquêtes et d'audiences;

b) la répartition des affaires et du travail entre les membres du comité;

c) la conduite des travaux du comité et de son administration.

Règles

Hearings in private

(2) A hearing of the Grievance Board is to be held in private, unless the Chairperson, having regard to the interests of the persons participating in the hearing and the interest of the public, directs that the hearing or any part of it be held in public.

(2) Sauf instruction contraire du président, eu égard à l'intérêt des personnes prenant part à l'audience et à celui du public, les audiences du comité se tiennent, en tout ou en partie, à huis clos.

Huis clos

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Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- provides that a witness cannot be excused from answering a question before the Grievance Board on the ground that the answer may tend to criminate the witness [s. 29.23]
- provides that an answer or statement made in response to a question cannot be used against a witness in any proceeding except in relation to an allegation that the witness gave the answer knowing it to be false [s. 29.23]
- authorizes the Grievance Board in its discretion to pay the travel and living expenses of a grievor and the grievor's assisting officer or counsel if the Board holds a hearing at a place that is not their ordinary place of residence [s. 29.24]
- requires anything presented at a hearing to be returned, on request, within a reasonable time after the Board has provided its findings and recommendations to the Chief of the Defence Staff [s. 29.25]
- authorizes the Chairperson to make procedural and administrative rules [subs. 29.26(1)]
- requires a Grievance Board hearing to be conducted in private unless the Chairperson directs otherwise [subs. 29.26(2)]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

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Protection of members

29.27 No criminal or civil proceedings lie against any member of the Grievance Board, or against any person acting on its behalf, 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 Grievance Board.

Immunité des membres du Comité

29.27 Les membres du Comité des griefs et les personnes qui agissent en son nom ou sous son autorité 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.

Annual report

29.28 (1) The Chairperson shall, within three months after the end of each year, submit to the Minister a report of the activities of the Grievance Board during that year and its recommendations, if any.

Rapport annuel

29.28 (1) Le président du Comité des griefs présente au ministre, au plus tard le 31 mars de chaque année, le rapport d'activité du comité pour l'année civile précédente, assorti éventuellement de ses recommandations.

Tabling in Parliament

(2) The Minister shall have a copy of the report laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Dépôt

(2) Le ministre le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 15)

8. (1) Paragraph 33(2)(*b*) of the Act is replaced by the following:

(*b*) may be called out on service to perform any lawful duty other than training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council.

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 15

8. (1) L'alinéa 33(2)*b*) de la même loi est remplacé par ce qui suit :

b) soumis à l'obligation de service légitime autre que l'instruction, aux époques et selon les modalités fixées par le gouverneur en conseil par règlement ou toute autre voie.

(2) Section 33 of the Act is amended by adding the following after subsection (3):

(2) L'article 33 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Meaning of "duty"

(4) In this section, "duty" means any duty that is military in nature and includes any duty involving public service authorized under section 273.6.

Définition de « service »

(4) Pour l'application du présent article, « service » s'entend, outre des tâches de nature militaire, de toute tâche de service public autorisée sous le régime de l'article 273.6.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 5)

9. Section 34 of the Act is repealed.

9. L'article 34 de la même loi est abrogé.

L.R., ch. 31 (1er suppl.), art 60, ann. I, art.5

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 16 (E))

10. Section 35 of the Act and the heading before it are replaced by the following:

10. L'article 35 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 16(E)

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Clause 7	*Amends section 29, adds new sections 29.1 to 29.28*	Continued

What the amendment does

- protects members of the Grievance Board or anyone acting on behalf of the Board from civil or criminal proceedings for activities carried out in good faith [s. 29.27]
- requires the Chairperson to submit an annual report to the Minister on the activities of the Grievance Board which is to be tabled in Parliament [s. 29.28]

Reasons for the change

These amendments set out a new process for dealing with grievances from members of the Canadian Forces. The process has four significant differences from the present system:

- it establishes, by statute, that the Chief of the Defence Staff, not the Minister, is the final authority in the process
- it creates an external body, outside the chain of command, with the power to summon witnesses and receive evidence, that may make independent findings and recommendations to the Chief of the Defence Staff in respect of prescribed types of grievances or any other grievance referred to the Board by the Chief of the Defence Staff
- it clarifies that the grievance process is limited to matters that arise from the administration of the affairs of the Canadian Forces
- it clarifies that the grievance process is not available in relation to decisions of tribunals under other Acts

Clause 8	*Amends paragraph 33(2)(b) and adds new subsection 33(4)*	

What the amendment does

- replaces the words "military duty" with "lawful duty" and defines the term "duty"

Reasons for the change

This amendment clarifies that the scope of the duties that members of the Canadian Forces may be required to perform includes, in addition to traditional military duties, any duties involving public service.

Section 273.6 of the *Act* authorizes the Minister or the Governor in Council to authorize the Canadian Forces to perform any duty involving public service.

Clause 9	*Repeals section 34*	

What the amendment does

- repeals section 34

Reasons for the change

Section 34 deals with the special liability of regular force and reserve force members where the Governor in Council has declared that a national disaster exists or is imminent. This section is no longer necessary given the amendments to section 33 which clarify the duty of both regular and reserve force members.

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Pay and Allowances

Treasury Board to establish

35. (1) The rates and conditions of issue of pay of officers and non-commissioned members, other than military judges, shall be established by the Treasury Board.

Reimbursements and allowances

(2) The payments that may be made to officers and non-commissioned members by way of reimbursement for travel or other expenses and by way of allowances in respect of expenses and conditions arising out of their service shall be determined and regulated by the Treasury Board.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 21(3)(E))

11. Paragraphs 42(2)(*d*) and (*e*) of the Act are replaced by the following:

(*d*) personal or movable property, including cash, found on the deceased person or on a defence establishment or otherwise in the care or custody of the Canadian Forces; and

(*e*) in the case of an officer or non-commissioned member dying outside Canada, all other personal or movable property belonging to the deceased and situated outside Canada.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 23)

12. Section 44 of the Act and the heading before it are replaced by the following:

Abandoned or Lost Property

Abandoned or lost property

44. (1) Where it appears to the officer in charge of a defence establishment that personal or movable property found on the defence establishment has been abandoned or lost by its owner or the person entitled to the property, the officer in charge shall ensure that reasonable efforts are taken to find the owner or person entitled to the property.

Disposal

(2) If the owner or person entitled to the property cannot be found or does not claim the property, the officer in charge may dispose of the property in accordance with regulations made by the Governor in Council and the proceeds, if any, from its sale or other disposition shall be paid into the Consolidated Revenue Fund.

13. Subsection 45(2) of the Act is replaced by the following:

Solde et indemnités

Taux et modalités de versement

35. (1) Les taux et conditions de versement de la solde des officiers et militaires du rang, autres que les juges militaires, sont établis par le Conseil du Trésor.

Indemnités

(2) Les indemnités payables aux officiers et militaires du rang au titre soit des frais de déplacement ou autres, soit des dépenses ou conditions inhérentes au service sont fixées et régies par le Conseil du Trésor.

L.R., ch. 31 (1er suppl.), art. 60, ann. I, par. 21(3)(E)

11. Les alinéas 42(2)*d*) et *e*) de la même loi sont remplacés par ce qui suit :

d) les biens meubles ou personnels, y compris le numéraire, soit trouvés sur le défunt ou dans un établissement de défense, soit confiés au soin ou à la garde des Forces canadiennes;

e) dans le cas d'un décès à l'étranger, les autres biens meubles ou personnels du défunt se trouvant hors du Canada.

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 23

12. L'article 44 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

Biens perdus ou abandonnés

Biens perdus ou abandonnés

44. (1) Lorsqu'il lui apparaît que des biens meubles ou personnels trouvés dans un établissement de défense ont été perdus ou abandonnés, l'officier responsable de cet établissement veille à ce que des efforts raisonnables soient faits pour retrouver leur propriétaire ou la personne qui a droit à ces biens.

Aliénation

(2) Il peut aliéner les biens, conformément aux règlements du gouverneur en conseil, lorsque leur propriétaire ou la personne qui y a droit ne les réclament pas ou ne peuvent être retrouvés. Le produit éventuel de l'aliénation, notamment par vente, est versé au Trésor.

13. Le paragraphe 45(2) de la même loi est remplacé par ce qui suit :

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Clause 10	*Amends section 35*	

What the amendment does

- authorizes the Treasury Board to establish the rates and conditions of issue of pay for officers and non-commissioned members, other than military judges, and to determine payments for travel and other expenses for all members of the Canadian Forces
- removes the requirement that these rates and conditions be prescribed by regulations
- provides that payments and allowances for travel or other expenses are to be determined and regulated by the Treasury Board

Reasons for the change

This provision authorizes Treasury Board to deal with pay rates, allowances, and reimbursement for expenses, by way of administrative directives, a more flexible and responsive method than regulations.

Forfeitures and deductions will continue to be prescribed by regulation. The rates and conditions of issue of pay of military judges will also be set by regulation.

Clause 11	*Amends paragraphs 42(2)(d) and(e)*

What the amendment does

- adds a reference to "movable property" to reflect civil law terminology [par. 42(2)(d) and (e)]
- makes stylistic changes and substitutes modern language for "in camp, quarters or otherwise" [par. 42(2)(d)]
- eliminates the monetary limit on what is considered to be included in a "service estate" for those members dying outside of Canada in relation to personal property located outside Canada [par. 42(2)(e)]

Reasons for the change

The removal of the ten thousand dollar limitation on the value of property that can be considered a service estate will enable those persons authorized to administer service estates to better assist the executor or administrator of the estate to settle the estates of members.

Clause 12	*Amends section 44 and the heading before it*

What the amendment does

- broadens the power to dispose of the personal belongings of absentees to a power to dispose of any personal belongings considered by the officer in charge to be abandoned or lost
- adds a reference to "movable" property to reflect civil law terminology

Reasons for the change

This amendment will enable Canadian Forces authorities to better deal with personal and movable property abandoned or lost on defence establishments.

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Powers

(2) A board of inquiry has, in relation to the matter before it, power

(*a*) to summon any person before the board and compel the person to give oral or written evidence on oath and to produce any documents and things under the person's control that it considers necessary for the full investigation and consideration of that matter;

(*b*) to administer oaths;

(*c*) to receive and accept, on oath or by affidavit or otherwise, any evidence and other information the board sees fit, whether or not the evidence or information is or would be admissible in a court of law; and

(*d*) to examine any record and make any inquiry that the board considers necessary.

Pouvoirs de la commission d'enquête

(2) La commission d'enquête dispose, relativement à la question dont elle est saisie, des pouvoirs suivants :

a) assigner des témoins, les contraindre à témoigner sous serment, oralement ou par écrit, et à produire les documents et pièces sous leur responsabilité et qu'elle estime nécessaires à une enquête et étude complètes;

b) faire prêter serment;

c) recevoir et accepter les éléments de preuve et renseignements, fournis sous serment, sous forme d'affidavit ou par tout autre moyen, qu'elle estime indiqués, qu'ils soient ou non recevables devant un tribunal;

d) procéder à l'examen des dossiers ou registres et aux enquêtes qu'elle juge nécessaires.

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

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

Witness not excused from testifying

45.1 (1) No witness shall be excused from answering any question relating to a matter before a board of inquiry when required to do so by the board of inquiry on the ground that the answer to the question may tend to criminate the witness or subject the witness to any proceeding or penalty.

Obligation des témoins de déposer

45.1 (1) Tout témoin est tenu de répondre aux questions portant sur une affaire dont est saisie la commission d'enquête lorsque celle-ci l'exige et ne peut se soustraire à cette obligation au motif que sa réponse peut l'incriminer ou l'exposer à des poursuites ou à une peine.

Answer not receivable

(2) No answer given or statement made by a witness in response to a question described in subsection (1) may be used or receivable against the witness in any disciplinary, criminal or civil proceeding, other than a hearing or proceeding in respect of an allegation that the witness gave the answer or made the statement knowing it to be false.

Non-recevabilité des réponses

(2) Les déclarations faites en réponse aux questions ne peuvent être utilisées ni ne sont recevables contre le témoin devant une juridiction disciplinaire, criminelle ou civile, sauf si la poursuite ou la procédure porte sur le fait qu'il savait ces réponses ou déclarations fausses.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 25)

15. Subsection 47(1) of the Act is replaced by the following:

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 25

15. Le paragraphe 47(1) de la même loi est remplacé par ce qui suit :

Establishment

47. (1) The Governor in Council, and any other authorities that are prescribed or appointed by the Governor in Council for that purpose, may in the interests of national defence establish institutions for the training and education of officers and non-commissioned members, officers and employees of the Department, candidates for enrolment in the Canadian Forces or for employment in the Department and other persons whose atten-

Création

47. (1) Le gouverneur en conseil et les autres autorités qu'il désigne ou nomme à cette fin peuvent, dans l'intérêt de la défense nationale, créer des établissements pour la formation et l'instruction des officiers et militaires du rang, des personnels du ministère, des candidats à l'enrôlement dans les Forces canadiennes ou à un emploi au ministère, ainsi que des autres personnes autorisées à les fréquenter par le ministre ou en son nom.

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Clause 13	*Amends subsection 45(2)*

What the amendment does

- provides that a board of inquiry has the power to
  - summon persons before the board to give evidence and to produce documents and things under the person's control
  - administer oaths
  - receive and accept evidence on oath or otherwise, whether or not it would be accepted in a court of law
  - examine records and make any inquiries it considers necessary

Reasons for the change

These changes provide a more complete set of powers for a board of inquiry. Also, as boards of inquiry investigate matters involving both military and civilian personnel, the changes will enable boards to summon both military and civilian witnesses.

Clause 14	*Adds new section 45.1*

What the amendment does

- provides that a witness before a board of inquiry cannot be excused from answering a question on the ground that the answer may tend to criminate the witness
- provides that an answer or statement made in response to a question cannot be used against a witness in any disciplinary, criminal or civil proceeding except in relation to an allegation that the witness gave the answer knowing it to be false

Reasons for the change

This amendment ensures that the duty of witnesses appearing before a board of inquiry and the protection accorded to such witnesses are consistent with the duty of witnesses appearing before other tribunals under the *Act* and before similar tribunals under other federal Acts.

Clause 15	*Amends subsection 47(1)*

What the amendment does

- deletes a reference to the Defence Research Board

Reasons for the change

This amendment is consequential to the repeal of the provisions of the *Act* that deal with the Defence Research Board.

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dance has been authorized by or on behalf of the Minister.

16. Section 54 of the Act is replaced by the following:

Validity of bonds

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

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 29 (E))

17. Part III of the Act is repealed.

18. The headings before section 60 of the Act are replaced by the following:

PART III

CODE OF SERVICE DISCIPLINE

DIVISION 1

DISCIPLINARY JURISDICTION OF THE CANADIAN FORCES

Application

19. Subparagraphs 60(1)(*c*)(iv) and (v) of the Act are replaced by the following:

(v) called out under Part VI in aid of the civil power,

R.S., c. 31 (1st Supp.), s. 45

20. Subsections 66(1) and (2) of the Act are replaced by the following:

Autrefois acquit and *autrefois convict*

66. (1) A person may not be tried or tried again in respect of an offence or any other substantially similar offence arising out of the facts that gave rise to the offence if, while subject to the Code of Service Discipline in respect of that offence, or if, while liable to be charged, dealt with and tried under the Code in respect of that offence, the person

(*a*) has been found not guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence; or

16. L'article 54 de la même loi est remplacé par ce qui suit :

Validité des cautionnements

54. Tout cautionnement envers Sa Majesté fourni devant un juge, un juge de paix ou un officier des Forces canadiennes, y compris un juge militaire, en garantie du paiement d'une somme d'argent ou de l'exécution d'une obligation ou d'un acte prévus par la présente loi ou par ses règlements, est valide et peut être réalisé en conséquence.

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 29 (E)

17. La partie III de la même loi est abrogée.

18. Les intertitres précédant l'article 60 de la même loi sont remplacés par ce qui suit :

PARTIE III

CODE DE DISCIPLINE MILITAIRE

SECTION 1

COMPÉTENCE DES FORCES CANADIENNES EN MATIÈRE DISCIPLINAIRE

Application

19. Les sous-alinéas 60(1)*c*)(iv) et (v) de la même loi sont remplacés par ce qui suit :

(v) appelés, dans le cadre de la partie VI, pour prêter main-forte au pouvoir civil,

L.R., ch. 31 (1er suppl.), art. 45

20. Les paragraphes 66(1) et (2) de la même loi sont remplacés par ce qui suit :

Exception de chose jugée

66. (1) Ne peut être jugée — ou jugée de nouveau —, pour une infraction donnée ou toute autre infraction sensiblement comparable découlant des faits qui lui ont donné lieu, la personne qui, alors qu'elle est assujettie au code de discipline militaire à l'égard de cette infraction ou susceptible d'être accusée, poursuivie et jugée pour cette infraction sous le régime de ce code, se trouve dans l'une ou l'autre des situations suivantes :

a) elle a été acquittée de cette infraction par un tribunal civil ou militaire ou par un tribunal étranger;

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Clause 16	*Amends section 54*

What the amendment does

- includes a reference to "military judge"

Reasons for the change

This amendment ensures that a payment bond or performance bond to the Crown entered into by a person before a military judge is enforceable.

Clause 17	*Repeals Part III*

What the amendment does

- repeals the provisions of the *Act* that deal with the Defence Research Board

Reasons for the change

The Defence Research Board has not functioned since the late 1970's and its activities have been incorporated into the Department of National Defence.

Clause 18	*Amends headings before section 60*

What the amendment does

- replaces the headings "PART IV: DISCIPLINARY JURISDICTION OF THE CANADIAN FORCES" with "PART III: *CODE OF SERVICE DISCIPLINE*" and "DIVISION I: DISCIPLINARY JURISDICTION OF THE CANADIAN FORCES"

Reasons for the change

The "*Code of Service Discipline*", presently contained in Parts IV to IX.1 of the *National Defence Act*, is being reorganized as one Part with several subdivisions. This amendment is one of a series of amendments to give the *Code* a more cohesive structure and more prominence in the *Act*.

Clause 19	*Amends subparagraphs 60(1)(c)(iv) and (v)*

What the amendment does

- deletes subparagraph 60(1)(c)(iv)
- replaces a reference to "Part XI" of the *Act* with "Part VI" in subparagraph 60(1)(c)(v)

Reasons for the change

Paragraph 60(1)(c)(iv) of the *Act* contains a reference to subsection 34(2) which has been repealed as a result of the amendments dealing with the expanded public service role of regular and reserve force members.

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part with several divisions. Part III of the *Act*, dealing with the Defence Research Board, is being repealed. The amendment to paragraph 60(1)(c)(v) is consequential to those changes.

Clause 20	*Amends subsections 66(1) and (2)*

What the amendment does

- makes stylistic changes to the opening words and deletes paragraph (a) of subsection 66(1)

Reasons for the change

Paragraph 66(1)(a) contains a reference to a dismissal of a charge. This amendment is consequential to other amendments to the *Act* that remove the power of a commanding officer or a superior commander to dismiss a charge.

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(*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 punished in accordance with the sentence.

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

Exception

(2) Nothing in subsection (1) affects the validity of a new trial held pursuant to section 249.11 or 249.16 or a new trial directed by a court having jurisdiction to do so.

(2) Le paragraphe (1) n'a pas pour effet d'entraver la validité d'un nouveau procès tenu aux termes des articles 249.11 ou 249.16 ou ordonné par un tribunal compétent pour ordonner un nouveau procès.

Exception

1990, c. 14, s. 7; 1991, c. 43, s. 12; 1993, c. 34, s. 92

21. Section 69 of the Act and the heading before it are replaced by the following:

21. L'article 69 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

1990, ch. 14, art. 7; 1991, ch. 43, art. 12; 1993, ch. 34, art. 92

Period of Liability

Période d'assujettissement

When person is liable

69. A person who is subject to the Code of Service Discipline at the time of the alleged commission of a service offence may be charged, dealt with and tried at any time under the Code, subject to the following:

(*a*) if the service offence is punishable under section 130 or 132 and the act or omission that constitutes the service offence would have been subject to a limitation period had it been dealt with other than under the Code, that limitation period applies; and

(*b*) the person may not be tried by summary trial unless the trial begins before the expiry of one year after the day on which the service offence is alleged to have been committed.

Prescription

69. Toute personne qui était justiciable du code de discipline militaire au moment où elle aurait commis une infraction d'ordre militaire peut être accusée, poursuivie et jugée pour cette infraction sous le régime de ce code, compte tenu des restrictions suivantes :

a) si le fait reproché est punissable par le droit commun en application des articles 130 ou 132, la prescription prévue par le droit commun pour cette infraction s'applique;

b) nul ne peut être jugé sommairement à moins que le procès sommaire ne commence dans l'année qui suit la prétendue perpétration de l'infraction.

22. Section 70 of the Act is amended by adding the word "or" at the end of paragraph (*b*) and by replacing paragraphs (*c*) to (*f*) with the following:

22. Les alinéas 70*c*) à *f*) de la même loi sont remplacés par ce qui suit :

(*c*) an offence under any of sections 280 to 283 of the *Criminal Code*.

c) infractions visées aux articles 280 à 283 du *Code criminel*.

23. The headings before section 72 of the Act are replaced by the following:

23. Les intertitres précédant l'article 72 de la même loi sont remplacés par ce qui suit :

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Clause 20	*Amends subsections 66(1) and (2)*	Continued

What the amendment does

- changes the cross-references relating to the right to a new trial in subsection 66(2)

Reasons for the change

Subsection 66(2) provides that the restriction on retrying a person for the same offence contained in subsection 66(1) does not affect the validity of a new trial held after the quashing of a finding, or ordered as a result of a petition to the Minister or directed by a court. The changes to this subsection are consequential to the new provisions dealing with the review of findings and sentences of courts martial and summary trials.

Clause 21	*Amends section 69 and the heading before it*	

What the amendment does

- redrafts the heading
- eliminates the three-year limitation period for the trying of service offences with the following exceptions:
  - an accused tried for a civil offence inside or outside of Canada to which a limitation period applies must be tried within that limitation period
  - in order to be tried by summary trial, an accused must be tried within a year from the time the offence is alleged to have been committed

Reasons for the change

Removing the three-year limitation period ensures that serious cases that are slow to come to light or are complex to investigate can be dealt with at any time by courts martial. A one-year limitation period is retained for summary trial proceedings because summary trial matters must be dealt with promptly.

Clause 22	*Amends section 70 of the Act*	

What the amendment does

- deletes the offences dealing with sexual assault from the list of offences that a service tribunal is prohibited from trying

Reasons for the change

Sexual assaults committed in the military context undermine the ability of members of both sexes to contribute equally to the Canadian Forces' mission. Sexual assaults can be highly corrosive of morale and unit cohesion. They result in the diminishing of mutual respect and trust in fellow members which impairs military efficiency.

Repeal of the current limitation on the trial of sexual assaults in Canada would give the Canadian Forces concurrent jurisdiction with civilian authorities in respect of sexual assaults, as is the case for the vast majority of federal offences. This amendment demonstrates the Canadian Forces' commitment to treat sexual violence against members, women in particular, as a serious issue in order to foster equality in the Canadian Forces. Such charges will be triable only by court martial.

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DIVISION 2

SERVICE OFFENCES AND PUNISHMENTS

Responsibility for Offences

24. The portion of section 73 of the Act after paragraph (*g*) is replaced by the following:

is guilty of an offence and on conviction, if the officer acted traitorously, shall be sentenced to imprisonment for life, if the officer acted from cowardice, is liable to imprisonment for life or less punishment, and in any other case, is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

25. The portion of section 74 of the Act after paragraph (*j*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

26. The portion of section 75 of the Act after paragraph (*j*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

27. The portion of section 76 of the Act after paragraph (*c*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

28. Sections 78 to 80 of the Act are replaced by the following:

Offence of being spy

78. Every person who spies for the enemy is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

SECTION 2

INFRACTIONS D'ORDRE MILITAIRE ET PEINES

Responsabilité des infractions

24. Le passage de l'article 73 de la même loi suivant l'alinéa *g*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale s'il a agi par lâcheté, et la destitution ignominieuse du service de Sa Majesté comme peine maximale dans tout autre cas.

25. Le passage de l'article 74 de la même loi suivant l'alinéa *j*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

26. Le passage de l'article 75 de la même loi suivant l'alinéa *j*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

27. Le passage de l'article 76 suivant l'alinéa *c*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

28. Les articles 78 à 80 de la même loi sont remplacés par ce qui suit :

Infraction et peine

78. Quiconque se livre à des activités d'espionnage pour le compte de l'ennemi commet une infraction et, sur déclaration de culpabilité, encourt l'emprisonnement à perpétuité comme peine maximale.

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Clause 23	*Amends headings before section 72*	

What the amendment does

- replaces the heading "PART V" with the subheading "DIVISION 2"
- changes the type face of the remaining subheadings

Reasons for the change

This amendment is one of a series of amendments that reorganizes the Parts of the *Act* which now comprise the *Code of Service Discipline* under one Part with several divisions.

Clause 24	*Amends section 73*	

What the amendment does

- replaces the present mandatory punishment of death with mandatory imprisonment for life for offences dealing with the misconduct of commanders in the presence of the enemy if the officer acted traitorously
- replaces the present discretionary punishment of death with a discretionary imprisonment for life penalty for offences dealing with the misconduct of commanders in the presence of the enemy if the officer acted from cowardice

Reasons for the change

Since the enactment of the *National Defence Act* in 1950, no member of the Canadian Forces has been executed for a service offence under the *Act*. During World War II, three soldiers were sentenced to death by court martial, but only one was executed. The soldier had been convicted of murder

The death penalty was abolished by Canada in the *Criminal Code* in 1976 and in many of the countries with which Canada has strong ties.

The military advice of the Chief of the Defence Staff is that the death penalty is not required under the *Code of Service Discipline* for military purposes. Removal of the death penalty from the *National Defence Act* will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations.

For the most serious offences involving traitorous acts, a substituted punishment of life imprisonment with ineligibility for parole for twenty-five years will provide a sufficient deterrent.

Clause 25	*Amends section 74*	

What the amendment does

- replaces the present mandatory punishment of death with mandatory imprisonment for life for offences dealing with the misconduct of a person in the presence of the enemy if the person acted traitorously
- replaces the present discretionary punishments with a discretionary punishment of imprisonment life for offences dealing with the misconduct of a person in the presence of the enemy in any other case.

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations. For the most serious offences involving traitorous acts, a substituted punishment of life imprisonment with ineligibility for parole for twenty-five years will provide a sufficient deterrent.

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DIVISION 2

SERVICE OFFENCES AND PUNISHMENTS

Responsibility for Offences

24. The portion of section 73 of the Act after paragraph (*g*) is replaced by the following:

is guilty of an offence and on conviction, if the officer acted traitorously, shall be sentenced to imprisonment for life, if the officer acted from cowardice, is liable to imprisonment for life or less punishment, and in any other case, is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

25. The portion of section 74 of the Act after paragraph (*j*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

26. The portion of section 75 of the Act after paragraph (*j*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

27. The portion of section 76 of the Act after paragraph (*c*) is replaced by the following:

is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

28. Sections 78 to 80 of the Act are replaced by the following:

Offence of being spy

78. Every person who spies for the enemy is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

SECTION 2

INFRACTIONS D'ORDRE MILITAIRE ET PEINES

Responsabilité des infractions

24. Le passage de l'article 73 de la même loi suivant l'alinéa *g*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale s'il a agi par lâcheté, et la destitution ignominieuse du service de Sa Majesté comme peine maximale dans tout autre cas.

25. Le passage de l'article 74 de la même loi suivant l'alinéa *j*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

26. Le passage de l'article 75 de la même loi suivant l'alinéa *j*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

27. Le passage de l'article 76 suivant l'alinéa *c*) est remplacé par ce qui suit :

Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.

28. Les articles 78 à 80 de la même loi sont remplacés par ce qui suit :

Infraction et peine

78. Quiconque se livre à des activités d'espionnage pour le compte de l'ennemi commet une infraction et, sur déclaration de culpabilité, encourt l'emprisonnement à perpétuité comme peine maximale.

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Clause 26	*Amends section 75*	

What the amendment does

- replaces the present mandatory punishment of death with mandatory imprisonment for life for offences related to security where a person acted traitorously

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations. For the most serious offences involving traitorous acts, a substituted punishment of life imprisonment with ineligibility for parole for twenty-five years will provide a sufficient deterrent.

Clause 27	*Amends section 76*	

What the amendment does

- replaces the present mandatory punishment of death with mandatory imprisonment for life for offences related to prisoners of war where a person acted traitorously

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations. For the most serious offences involving traitorous acts, a substituted punishment of life imprisonment with ineligibility for parole for twenty-five years will provide a sufficient deterrent.

Clause 28	*Amends section 78 to 80*	

What the amendment does

- replaces the present discretionary punishment of death with a discretionary penalty of imprisonment for life for the following offences
  - spying for the enemy

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations.

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Mutiny

Mutiny with violence

79. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Mutiny without violence

80. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding fourteen years or to less punishment or, in the case of a ringleader of the mutiny, to imprisonment for life or to less punishment.

29. The Act is amended by adding the following after section 101:

Failure to comply with conditions

101.1 Every person who, without lawful excuse, fails to comply with a condition imposed under Division 3, 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.

30. Section 105 of the Act is repealed.

31. Paragraph 117(*b*) of the Act is replaced by the following:

(*b*) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department or the Canadian Forces,

32. The heading before section 118 and sections 118 and 119 of the Act are replaced by the following:

Offences in relation to Tribunals

Definition of "tribunal"

118. (1) For the purposes of this section and section 119, "tribunal" includes, in addition to the tribunals referred to in the definition "service tribunal" in section 2, the Grievance Board, an Inquiry Committee established for the purpose of subsection 165.1(2) or 165.21(2), the Military Police Complaints Commission, a board of inquiry and a commissioner taking evidence under this Act.

Mutinerie

Avec violence

79. Quiconque prend part à une mutinerie perpétrée avec violence commet une infraction et, sur déclaration de culpabilité, encourt l'emprisonnement à perpétuité comme peine maximale.

Sans violence

80. Quiconque prend part à une mutinerie perpétrée sans violence commet une infraction et, sur déclaration de culpabilité, encourt un emprisonnement de quatorze ans comme peine maximale. Tout meneur de la mutinerie est quant à lui passible de l'emprisonnement à perpétuité comme peine maximale.

29. La même loi est modifiée par adjonction, après l'article 101, de ce qui suit :

Défaut de respecter une condition

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

30. L'article 105 de la même loi est abrogé.

31. L'alinéa 117*b*) de la même loi est remplacé par ce qui suit :

b) exige ou accepte, irrégulièrement, une rétribution, une contrepartie ou un avantage personnel pour l'accomplissement d'un devoir militaire ou pour toute question relative au ministère ou aux Forces canadiennes;

32. L'intertitre précédant l'article 118 et les articles 118 et 119 de la même loi sont remplacés par ce qui suit :

Infractions relatives aux tribunaux

Définition de « tribunal »

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, d'un comité d'enquête établi en application des paragraphes 165.1(2) ou 165.21(2), de la Commission d'examen des plaintes concernant la police militaire, de toute commission d'enquête et de tout commissaire recueillant des témoignages sous le régime de la présente loi.

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Clause 28	*Amends section 78 to 80*	Continued

What the amendment does

- replaces the present discretionary punishment of death with a discretionary penalty of imprisonment for life for the following offences
  - mutiny with violence
  - mutiny without violence, if the person convicted was the ringleader
- replaces the present discretionary punishment of death with a discretionary 14-year maximum term of imprisonment for mutiny without violence if the person convicted was not the ringleader

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations.

The 14-year maximum term for the less serious offence of mutiny without violence for a person who is not a ringleader is considered a more appropriate lesser punishment than the existing maximum life imprisonment since life imprisonment is now the maximum penalty for the more serious mutiny offences and more consistent with the approach of most western militaries.

Clause 29	*Adds new section 101.1*	Continued

What the amendment does

- creates a new offence of failure to comply with a condition imposed under Division 3 (Arrest and Pre-Trial Custody) or a condition of an undertaking under Division 3 or 10 (Release Pending Appeal)

Reasons for the change

The offence created by this amendment completes the new scheme dealing with pre-trial custody and release pending appeal by creating a service offence for not complying with a condition imposed by a custody review officer or a condition of an undertaking imposed by a military judge or a judge of the Court Martial Appeal Court on release from custody.

Clause 30	*Repeals section 105*	

What the amendment does

- repeals section 105 of the *Act*

Reasons for the change

Section 105 deals with offences in relation to convoys. The offence provisions in sections 73 and 74 that deal with conduct in the face of the enemy are sufficiently broad to encompass the offences in section 105 dealing with convoys, making the section unnecessary.

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Mutiny

Mutiny with violence

79. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Mutiny without violence

80. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding fourteen years or to less punishment or, in the case of a ringleader of the mutiny, to imprisonment for life or to less punishment.

29. The Act is amended by adding the following after section 101:

Failure to comply with conditions

101.1 Every person who, without lawful excuse, fails to comply with a condition imposed under Division 3, 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.

30. Section 105 of the Act is repealed.

31. Paragraph 117(*b*) of the Act is replaced by the following:

(*b*) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department or the Canadian Forces,

32. The heading before section 118 and sections 118 and 119 of the Act are replaced by the following:

Offences in relation to Tribunals

Definition of "tribunal"

118. (1) For the purposes of this section and section 119, "tribunal" includes, in addition to the tribunals referred to in the definition "service tribunal" in section 2, the Grievance Board, an Inquiry Committee established for the purpose of subsection 165.1(2) or 165.21(2), the Military Police Complaints Commission, a board of inquiry and a commissioner taking evidence under this Act.

Mutinerie

Avec violence

79. Quiconque prend part à une mutinerie perpétrée avec violence commet une infraction et, sur déclaration de culpabilité, encourt l'emprisonnement à perpétuité comme peine maximale.

Sans violence

80. Quiconque prend part à une mutinerie perpétrée sans violence commet une infraction et, sur déclaration de culpabilité, encourt un emprisonnement de quatorze ans comme peine maximale. Tout meneur de la mutinerie est quant à lui passible de l'emprisonnement à perpétuité comme peine maximale.

29. La même loi est modifiée par adjonction, après l'article 101, de ce qui suit :

Défaut de respecter une condition

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

30. L'article 105 de la même loi est abrogé.

31. L'alinéa 117*b*) de la même loi est remplacé par ce qui suit :

b) exige ou accepte, irrégulièrement, une rétribution, une contrepartie ou un avantage personnel pour l'accomplissement d'un devoir militaire ou pour toute question relative au ministère ou aux Forces canadiennes;

32. L'intertitre précédant l'article 118 et les articles 118 et 119 de la même loi sont remplacés par ce qui suit :

Infractions relatives aux tribunaux

Définition de « tribunal »

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, d'un comité d'enquête établi en application des paragraphes 165.1(2) ou 165.21(2), de la Commission d'examen des plaintes concernant la police militaire, de toute commission d'enquête et de tout commissaire recueillant des témoignages sous le régime de la présente loi.

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Clause 31	*Amends paragraph 117(b)*	

What the amendment does

- deletes a reference to the Defence Research Board

Reasons for the change

This amendment is consequential to the repeal of the provisions of the *Act* that deal with the Defence Research Board.

Clause 32	*Amends the heading before section 118 and section 118 and 119, adds new section 118.1*	

What the amendment does

- adds the Military Police Complaints Commission, an Inquiry Committee and the Grievance Board to the list of tribunals to which offences under sections 118 and 119 apply [subs. 118(1)]

Reasons for the change

Any person who fails to attend when ordered to attend the Military Police Complaints Commission or the Grievance Board, or who attends and fails to remain, will be guilty of an offence. [s. 118(1)]

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Contempt

(2) Every person who

(*a*) being duly summoned or ordered to attend as a witness before a tribunal, fails to attend or to remain in attendance,

(*b*) refuses to take an oath or make a solemn affirmation lawfully required by a tribunal to be taken or made,

(*c*) refuses to produce any document in the power or control of, and lawfully required by a tribunal to be produced by, that person,

(*d*) refuses when a witness to answer any question to which a tribunal may lawfully require an answer,

(*e*) uses insulting or threatening language before, or causes any interruption or disturbance in the proceedings of, a tribunal, or

(*f*) commits any other contempt of a tribunal

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Outrage au tribunal

(2) Commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale un emprisonnement de moins de deux ans quiconque :

a) étant régulièrement convoqué ou ayant dûment reçu l'ordre de comparaître comme témoin devant un tribunal, omet d'être présent ou de demeurer présent;

b) refuse de prêter le serment ou de faire l'affirmation solennelle légitimement exigés par un tribunal;

c) refuse de produire, en exécution de l'ordre légitime que lui donne un tribunal, un document qui se trouve sous son autorité ou contrôle;

d) refuse, étant témoin, de répondre à toute question légitimement posée par un tribunal;

e) profère des insultes ou menaces devant un tribunal ou cause une interruption de ses audiences ou en perturbe le déroulement;

f) commet toute autre forme d'outrage au tribunal.

Failure to appear or attend

118.1 Every person who, being duly summoned or ordered to appear as an accused before a service tribunal, fails, without lawful excuse, the proof of which lies on the person, to appear as summoned or ordered, or to remain in attendance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Défaut de comparaître

118.1 Commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale un emprisonnement de moins de deux ans l'accusé qui, sans excuse légitime — dont la preuve lui incombe —, ne comparaît pas devant un tribunal militaire ou ne demeure pas présent alors qu'il est dûment convoqué.

False evidence

119. Every person who, when examined on oath or solemn affirmation before a tribunal, knowingly gives false evidence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

Faux témoignage

119. Quiconque, lors d'un interrogatoire sous serment ou sur affirmation solennelle devant un tribunal, fait sciemment un faux témoignage commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale un emprisonnement de sept ans.

33. (1) Paragraphs 130(1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) that takes place in Canada and is punishable under Part VII, the *Criminal Code* or any other Act of Parliament, or

(*b*) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the *Criminal Code* or any other Act of Parliament,

(2) Subparagraph 130(2)(*a*)(i) of the Act is replaced by the following:

33. (1) Les alinéas 130(1)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

a) survenu au Canada et punissable sous le régime de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale;

b) survenu à l'étranger mais qui serait punissable, au Canada, sous le régime de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale.

(2) Le sous-alinéa 130(2)*a*)(i) de la même loi est remplacé par ce qui suit :

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Clause 32	*Amends the heading before section 118 and section 118 and 119, adds new section 118.1*	Continued

What the amendment does

- makes it an offence for a person not to remain at a tribunal as a witness when ordered to do so [par. 118(2)(a)]
- removes the authority of a court martial to order imprisonment or detention for contempt [present subs. 118(3)]
- provides that it is an offence for an accused not to appear or not to remain at a service tribunal when ordered to do so [s. 118.1]
- deletes an unnecessary cross-reference [s. 119]

Reasons for the change

It is presently an offence for a witness not to attend at a court martial when ordered to do so. The amendment to paragraph 118(2)(a) fills a gap in the law by extending the scope of the offence to a witness who comes to the court martial but does not remain when required to do so. [par. 118(2)(a)]

The power of the court martial to punish in respect of contempt is now found in new subsection 179(1). [present subs. 118(3)]

The amendment dealing with an accused's attendance at a service tribunal fills a gap in the law in relation to accused who are no longer subject to the *Code of Service Discipline* and who fail to appear or remain at a service tribunal. [s.118.1]

Clause 33	*Amends paragraphs 130(1)(a) and (b), subparagraph 130(2)(a)(i), subparagraph 130(2)(b)(i) and subsection 130(3)*	

What the amendment does

- replaces references to "Part XII" of the *Act* with "Part VII" [subs. 130(1) and (2)]

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part, and Part III of the *Act*, that deals with the Defence Research Board, is being repealed. The amendments that change references to Part XII are consequential to those changes.

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(i) committed in Canada under Part VII, the *Criminal Code* or any other Act of Parliament and for which a minimum punishment is prescribed, or

(i) commise au Canada en violation de la partie VII de la présente loi, du *Code criminel* ou de toute autre loi fédérale et pour laquelle une peine minimale est prescrite,

(3) Subparagraph 130(2)(*b*)(i) of the Act is replaced by the following:

(i) impose the punishment prescribed for the offence by Part VII, the *Criminal Code* or that other Act, or

(3) Le sous-alinéa 130(2)*b*)(i) de la même loi est remplacé par ce qui suit :

(i) soit la peine prévue pour l'infraction par la partie VII de la présente loi, le *Code criminel* ou toute autre loi pertinente,

(4) Subsection 130(3) of the Act is replaced by the following:

Code of Service Discipline applies

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under paragraph (2)(*a*) or subparagraph (2)(*b*)(i).

(4) Le paragraphe 130(3) de la même loi est remplacé par ce qui suit :

Application du code de discipline militaire

(3) Toutes les dispositions du code de discipline militaire visant l'emprisonnement à perpétuité, l'emprisonnement de deux ans ou plus, l'emprisonnement de moins de deux ans et l'amende s'appliquent à l'égard des peines infligées aux termes de l'alinéa (2)*a*) ou du sous-alinéa (2)*b*)(i).

34. Subsection 132(3) of the Act is replaced by the following:

Application of Code of Service Discipline

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under subsection (2).

34. Le paragraphe 132(3) de la même loi est remplacé par ce qui suit :

Application du code de discipline militaire

(3) Toutes les dispositions du code de discipline militaire visant l'emprisonnement à perpétuité, l'emprisonnement de deux ans ou plus, l'emprisonnement de moins de deux ans et l'amende s'appliquent à l'égard des peines infligées aux termes du paragraphe (2).

35. Subsection 139(1) of the Act is replaced by the following:

Scale of punishments

139. (1) The following punishments may be imposed in respect of service offences and each of those punishments is a punishment less than every punishment preceding it:

(*a*) imprisonment for life;

(*b*) imprisonment for two years or more;

(*c*) dismissal with disgrace from Her Majesty's service;

(*d*) imprisonment for less than two years;

(*e*) dismissal from Her Majesty's service;

(*f*) detention;

(*g*) reduction in rank;

(*h*) forfeiture of seniority;

(*i*) severe reprimand;

(*j*) reprimand;

35. Le paragraphe 139(1) de la même loi est remplacé par ce qui suit :

Échelle des peines

139. (1) Les infractions d'ordre militaire sont passibles des peines suivantes, énumérées dans l'ordre décroissant de gravité :

a) emprisonnement à perpétuité;

b) emprisonnement de deux ans ou plus;

c) destitution ignominieuse du service de Sa Majesté;

d) emprisonnement de moins de deux ans;

e) destitution du service de Sa Majesté;

f) détention;

g) rétrogradation;

h) perte de l'ancienneté;

i) blâme;

j) réprimande;

k) amende;

l) peines mineures.

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Clause 33	*Amends paragraphs 130(1)(a) and (b), subparagraph 130(2)(a)(i), subparagraph 130(2)(b)(i) and subsection 130(3)*	**Continued**

What the amendment does

- replaces references to "Part XII" of the *Act* with "Part VII" [subs. 130(1) and (2)]
- replaces a reference to the punishment of death with a reference to imprisonment for life [subs. 130(3)]

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act*, is being reorganized as one Part, and Part III of the *Act*, that deals with the Defence Research Board, is being repealed. The amendments that change references to Part XII are consequential to those changes.

Subsection 130(3) of the *Act* provides that all provisions of the *Code of Service Discipline* dealing with the punishments of death, imprisonment, and a fine apply to those punishments when they are imposed for civil offences punishable under subsection 130(1). This amendment is consequential to the replacement of the death penalty in section 139 with life imprisonment as one of the punishments that may be imposed by a service tribunal.

Clause 34	*Amends subsection 132(3)*	

What the amendment does

- replaces a reference to the punishment of death with a reference to imprisonment for life

Reasons for the change

Subsection 132(3) of the *Act* provides that all provisions of the *Code of Service Discipline* dealing with certain punishments apply to those punishments when they are imposed for offences under laws applicable outside Canada. This amendment is consequential to the replacement of the death penalty in section 139 with life imprisonment as one of the punishments that may be imposed by a service tribunal.

Clause 35	*Amends subsection 139(1)*	

What the amendment does

- removes the punishment of death from the scale of punishments that may be imposed in respect of service offences and replaces it with imprisonment for life

Reasons for the change

The death penalty is no longer required for service offences under the *Code of Service Discipline*. This reform will bring Canada's military law in step with its civilian counterpart and with the approach taken by most western nations. For the most serious offences involving traitorous acts, a substituted punishment of life imprisonment with ineligibility for parole for twenty-five years will provide a sufficient deterrent. Life imprisonment is already a punishment for some offences under the *Act*.

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(*k*) fine; and

(*l*) minor punishments.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 39)

36. Section 140 of the Act is replaced by the following:

36. L'article 140 de la même loi est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 39

Imprisonment for shorter term

140. Every person who, on conviction of a service offence, is liable to imprisonment for life, other than as a minimum punishment, or for a term of years or other term may be sentenced to imprisonment for a shorter term.

140. Quiconque est, sur déclaration de culpabilité d'une infraction d'ordre militaire, passible de l'emprisonnement à perpétuité, autrement que comme peine minimale, ou pour toute période déterminée inférieure, peut être condamné à un emprisonnement d'une plus courte durée.

Emprisonnement

Dismissal as accompanying punishment

140.1 (1) Where a court martial imposes a punishment of imprisonment for life or for two years or more on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of dismissal with disgrace from Her Majesty's service or a punishment of dismissal from Her Majesty's service.

140.1 (1) Lorsqu'elle condamne un officier ou un militaire du rang à l'emprisonnement à perpétuité ou à un emprisonnement de deux ans ou plus, la cour martiale peut en outre, malgré toute autre disposition de la présente section, prononcer sa destitution, ignominieuse ou non, du service de Sa Majesté.

Destitution ignominieuse

Dismissal as accompanying punishment

(2) Where a court martial imposes a punishment of imprisonment for less than two years on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of dismissal from Her Majesty's service.

(2) Lorsqu'elle condamne un officier ou un militaire du rang à un emprisonnement de moins de deux ans, elle peut en outre, malgré toute autre disposition de la présente section, prononcer sa destitution du service de Sa Majesté.

Destitution

Reduction in rank as accompanying punishment

140.2 Where a court martial imposes a punishment of imprisonment on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of reduction in rank, that may be

(*a*) in the case of an officer, to the lowest commissioned rank; and

(*b*) in the case of a non-commissioned member, to the lowest rank to which under the regulations the non-commissioned member can be reduced.

140.2 Lorsqu'elle condamne un officier ou un militaire du rang à une peine d'emprisonnement, la cour martiale peut en outre, malgré toute autre disposition de la présente section, prononcer sa rétrogradation :

a) dans le cas d'un officier, jusqu'au grade le plus bas d'officier;

b) dans le cas d'un militaire du rang, jusqu'au grade le plus bas auquel les règlements permettent de le faire reculer.

Rétrogradation

Sentence of imprisonment for life

140.3 (1) Where a court martial imposes a punishment of imprisonment for life, the sentence to be pronounced shall be

(*a*) in respect of a person who has been convicted of having committed traitorously an offence of misconduct in the presence of an enemy contrary to section 73 or 74, an

140.3 (1) Le bénéfice de la libération conditionnelle est subordonné, en cas de condamnation à l'emprisonnement à perpétuité :

a) dans le cas des infractions établies pour manquement au devoir face à l'ennemi par les articles 73 ou 74, et relativement à la

Emprisonnement à perpétuité

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Clause 36	*Amends section 140, adds new sections 140.1 to 140.4*	

What the amendment does

- redrafts present paragraph 140(a) as section 140 [s. 140]
- replaces the word "Part" with the word "Division" [ss. 140.1 and 140.2]
- eliminates the mandatory included punishments of dismissal with disgrace and dismissal from Her Majesty's service for an officer who is sentenced to imprisonment [present par. 140(b) and (c)]
- provides for a discretionary accompanying punishment of dismissal with disgrace from Her Majesty's service where an officer or non-commissioned member is sentenced to imprisonment for life or imprisonment for two years or more and provides for a discretionary accompanying punishment of dismissal from Her Majesty's service where an officer or non-commissioned member is sentenced to imprisonment for less than two years [subs. 140.1(1) and (2)]
- eliminates the mandatory included punishment of reduction in rank to private for a non-commissioned member above the rank of private who has been sentenced to a term of imprisonment [present par. 140(f)]
- authorizes a court martial to impose reduction in rank, that may be to the rank of private for a non-commissioned member, in addition to imprisonment [s. 140.2]
- authorizes a court martial to impose reduction in rank to the lowest commissioned rank for an officer in addition to imprisonment [s. 140.2]
- eliminates the mandatory included punishment of hard labour for a member who is sentenced to a term of imprisonment [present par. 140(g)]
- provides that a person who is sentenced to mandatory imprisonment for life for specific serious offences is not eligible for parole until the person has served 25 years of the sentence [subs. 140.3(1)]

Reasons for the change

The new reference in section 140 to "other than as a minimum punishment" ensures that a person who has been sentenced to a minimum sentence of life imprisonment cannot be given a shorter term of imprisonment. [s. 140]

Eliminating the punishment of hard labour contained in paragraph 140(g) of the *Act* brings military justice more in step with Canadian penal law where that punishment is no longer applied. [present s. 140]

The mandatory included punishments in paragraphs 140(b), (c), (f) and (g) of the *Act* apply without exception when the primary punishment is imposed. As a result, they are arbitrary and, in many circumstances, unduly harsh. Making these punishments discretionary will give a sentencing tribunal the necessary flexibility to tailor its sentence to the particular circumstances of the accused. [ss. 140.1 and 140.2]

The *National Defence Act* currently does not provide authority for the imposition of parole ineligibility at the time of sentencing. This creates disparity of treatment between prisoners who have been convicted by a service tribunal and prisoners convicted by a civil court, particularly where the prisoner convicted by a service tribunal is sentenced in respect of a *Criminal Code* offence, such as murder, under section 130 of the *National Defence Act*. These amendments provide a parole ineligibility scheme similar to that contained in the *Criminal Code*. [ss. 140.3 and 140.4]

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offence related to security contrary to section 75 or an offence in relation to prisoners of war contrary to section 76, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(*b*) in respect of a person who has been convicted of an offence of high treason or an offence of first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(*c*) in respect of a person who has been convicted of an offence of second degree murder if that person has previously been convicted of culpable homicide that is murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(*d*) in respect of a person who has been convicted of an offence of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or any greater number of years, not being more than twenty-five, that has been substituted under subsection (2); and

(*e*) in respect of a person who has been convicted of any other offence, that the person be sentenced to imprisonment for life with normal eligibility for parole.

Provisions of *Criminal Code* apply

(2) Sections 745.1 to 746.1 of the *Criminal Code* apply, with any modifications that the circumstances require, to a sentence of life imprisonment imposed under this Act, and

(*a*) a reference in sections 745.2 and 745.3 of the *Criminal Code* to a jury is deemed to be a reference to the panel of a General Court Martial; and

(*b*) a reference in section 745.6 of the *Criminal Code* to the province in which a conviction took place is deemed, in respect of a conviction that took place outside Canada, to be a reference to the province in

sécurité par l'article 75 ou aux prisonniers de guerre par l'article 76, si la personne s'est conduite en traître, à l'accomplissement d'au moins vingt-cinq ans de la peine;

b) pour haute trahison ou meurtre au premier degré, à l'accomplissement d'au moins vingt-cinq ans de la peine;

c) pour meurtre au deuxième degré, dans le cas d'une personne qui a été reconnue coupable d'avoir causé la mort et qui a déjà été condamnée pour homicide coupable équivalant à un meurtre, à l'accomplissement d'au moins vingt-cinq ans de la peine;

d) pour meurtre au deuxième degré, 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);

e) pour toute autre infraction, à l'application des conditions normalement prévues.

Application de dispositions du *Code criminel*

(2) Les articles 745.1 à 746.1 du *Code criminel* s'appliquent, avec les adaptations nécessaires, à la sentence d'emprisonnement à perpétuité imposée sous le régime de la présente loi et :

a) la mention, aux articles 745.2 et 745.3, des membres du jury vaut mention, sauf indication contraire du contexte, des membres du comité de la cour martiale générale;

b) la mention, à l'article 745.6, 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

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Clause 36	*Amends section 140, adds new sections 140.1 to 140.4*	Continued

What the amendment does

- provides that a person who is sentenced to mandatory imprisonment for life for specific serious offences is not eligible for parole until the person has served 25 years of the sentence [subs. 140.3(1)]
- provides that a person who is sentenced to mandatory imprisonment for life for second degree murder without a previous conviction for murder is not eligible for parole until the person has served at least 10 years but not more than 25 years of the sentence [par. 140.3(1)(d)]
- provides that a person who is sentenced to imprisonment for life for any other offence is subject to normal eligibility for parole [par. 140.3(1)(e)]
- provides that the *Criminal Code* provisions dealing with sentences of imprisonment for life and court-determined eligibility for parole apply to a sentence of imprisonment for life imposed by a court martial [subs. 140.3(2)]

Reasons for the change

The *National Defence Act* currently does not provide authority for the imposition of parole ineligibility at the time of sentencing. This creates disparity of treatment between prisoners who have been convicted by a service tribunal and prisoners convicted by a civil court, particularly where the prisoner convicted by a service tribunal is sentenced in respect of a *Criminal Code* offence, such as murder, under section 130 of the *National Defence Act*. These amendments provide a parole ineligibility scheme similar to that contained in the *Criminal Code*. [ss. 140.3 and 140.4]

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which the offender is incarcerated when the offender makes an application under that section.

province dans laquelle la personne est incarcérée au moment où elle présente sa demande aux termes de cet article.

Power of court martial to delay parole

140.4 (1) Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where 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 ten years, whichever is less.

Pouvoir d'augmentation du temps d'épreuve

140.4 (1) Par dérogation au paragraphe 120(1) 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 minimal 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.

Condition

(2) The court martial may only make an order under subsection (1) if it is satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the person, that the expression of society's denunciation of the offence or the objective of specific or general deterrence requires that the order be made.

Restriction

(2) Elle ne peut rendre l'ordonnance que si elle est convaincue, compte tenu des circonstances de l'infraction, du caractère et des particularités de la personne, que la réprobation de la société à l'égard de l'infraction commise l'exige ou que l'ordonnance aura l'effet dissuasif recherché.

Criminal organization offences

(3) Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where 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 ten years, whichever is less.

Exception dans le cas d'un gang

(3) Par dérogation au paragraphe 120(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition*, la cour martiale peut ordonner que la personne condamnée sous le régime de la présente loi pour un acte de gangstérisme, sur déclaration de culpabilité, à une peine d'emprisonnement minimal 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.

Principles

(4) For greater certainty, the paramount principles that are to guide the court martial under this section are denunciation and specific or general deterrence, with rehabilitation of the person, in all cases, being subordinate to those paramount principles.

Principes devant guider le tribunal

(4) Il est entendu que les principes 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.

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Clause 36	*Amends section 140, adds new sections 140.1 to 140.4*	Continued

What the amendment does

- authorizes a court martial to order a person who receives a sentence of imprisonment for life that is not a minimum sentence or a sentence of two years or more for criminal organization offences and certain other offences to serve one half of the sentence or ten years, whichever is less, before the person may be released on full parole [s. 140.4]

Reasons for the change

The *National Defence Act* currently does not provide authority for the imposition of parole ineligibility at the time of sentencing. This creates disparity of treatment between prisoners who have been convicted by a service tribunal and prisoners convicted by a civil court, particularly where the prisoner convicted by a service tribunal is sentenced in respect of a *Criminal Code* offence, such as murder, under section 130 of the *National Defence Act*. These amendments provide a parole ineligibility scheme similar to that contained in the *Criminal Code*. [ss. 140.3 and 140.4]

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37. Section 141 of the Act is amended by adding the following after subsection (1):

Effective date of dismissal

(1.1) A punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service is deemed to be carried out as of the date on which the release of an officer or a non-commissioned member from the Canadian Forces is effected.

37. L'article 141 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Prise d'effet de la destitution

(1.1) La peine de destitution — ignominieuse ou non — du service de Sa Majesté est réputée prendre effet le jour où l'officier ou le militaire du rang est libéré des Forces canadiennes.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 41)

38. Section 142 of the Act is replaced by the following:

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 41

38. L'article 142 de la même loi est remplacé par ce qui suit :

Detention

142. (1) The punishment of detention is subject to the following conditions:

(*a*) detention may not exceed ninety days and a person sentenced to detention may not be subject to detention for more than ninety days consecutively by reason of more than one conviction; and

(*b*) no officer may be sentenced to detention.

Détention

142. (1) La peine de détention est soumise aux conditions suivantes :

a) elle ne doit pas excéder quatre-vingt-dix jours, et le détenu ne peut purger plus de quatre-vingt-dix jours consécutifs en raison de plusieurs condamnations;

b) aucun officier ne peut y être condamné.

Reduction in rank during detention

(2) If a non-commissioned member above the rank of private is sentenced to detention, that person is deemed, for the period of the detention, to be reduced to the rank of private.

Rétrogradation réputée

(2) Le militaire du rang — autre qu'un soldat — qui fait l'objet d'une sentence de détention est réputé rétrogradé, pour la durée de la détention, au grade de soldat.

R.S., c. 31 (1st Supp.), s. 60 (Sch. I, s. 43)

39. Sections 144 and 145 of the Act are replaced by the following:

L.R., ch. 31 (1er suppl.), art. 60, ann. I, art. 43

39. Les articles 144 et 145 de la même loi sont remplacés par ce qui suit :

Forfeiture of seniority

144. Where a court martial imposes a punishment of forfeiture of seniority on an officer or non-commissioned member, the court martial shall in passing sentence specify the period for which seniority is to be forfeited.

Perte de l'ancienneté

144. Dans son jugement condamnant un officier ou militaire du rang à la perte de l'ancienneté, la cour martiale doit préciser la période visée par la peine.

Fine

145. (1) A fine must be imposed in a stated amount.

Amende

145. (1) Le montant de l'amende infligée doit être précisé.

Terms of payment

(2) The terms of payment of a fine are in the discretion of the service tribunal that imposes the fine.

Modalités

(2) Les modalités de paiement en sont laissées à l'appréciation du tribunal militaire qui l'inflige.

Variation of terms of payment

(3) The terms of payment of a fine may be varied, in the case of a summary trial, by the officer who conducted the trial, and in the case of a court martial, by the military judge who imposed the fine or a military judge designated by the Chief Military Judge.

Modification des modalités

(3) Elles peuvent être modifiées, dans le cas d'un procès sommaire, par l'officier qui l'a présidé, et, dans le cas d'une cour martiale, par le juge militaire qui a présidé le procès ou par celui que désigne le juge militaire en chef.

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Clause 37	*Adds new subsection 141(1.1)*	

What the amendment does

- provides that the effective date of the punishment of dismissal from Her Majesty's service (with disgrace or not) is the same as the effective date of release of the member

Reasons for the change

This subsection was formerly subsection 206(4). Because the rest of section 206 is being repealed, this provision has been relocated.

Clause 38	*Amends section 142*	

What the amendment does

- reduces the period of detention that may be imposed from two years to ninety days
- 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 but only for the period of detention

Reasons for the change

The maximum period of detention that can be imposed by a court martial has been reduced from two years to 90 days. Because the goal of detention is rehabilitation, the present two-year maximum period was considered too severe. Given the disciplinary nature of the summary trial, the maximum period of detention that may be awarded at a summary trial by a commanding officer is also being reduced, in section 163, from 90 days to 30 days.

Reduction in rank to private will still be a mandatory consequence for the period of the detention. Providing that the mandatory accompanying punishment of reduction in rank applies only during the period of detention better reflects the rehabilitative goal of detention as a punishment.

Clause 39	*Amends sections 144 and 145*	

What the amendment does

- replaces the term "service tribunal" with the term "court martial" [s. 144]
- removes restrictions on the amount of the fine that may be imposed by a service tribunal and requires a fine that is imposed to be in a stated amount [s. 145]
- authorizes the officer conducting a summary trial, or a military judge in the case of court martial, to determine the terms of payment of a fine [s. 145]

Reasons for the change

A court martial will be the only service tribunal able to impose a punishment of forfeiture of seniority. This punishment is being removed from the list of punishments that may be imposed at a summary trial as the punishment is not demonstrably necessary for the maintenance of unit discipline.

The present maximum of $500 for fines in respect of civilians is disproportionately low compared to fines that may be imposed on members of the Canadian Forces. This amendment will provide greater sentencing flexibility and bring court martial fines for both members and civilians in line with *Criminal Code* penalties and those of other Commonwealth courts martial.

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40. The headings before section 154 of the Act are replaced by the following:

DIVISION 3

ARREST AND PRE-TRIAL CUSTODY

Interpretation

Definitions

153. The definitions in this section apply in this Division.

"custody review officer" « *officier réviseur* »

"custody review officer", in respect of a person in custody, means

(*a*) the officer who is the person's commanding officer, or an officer who is designated by that officer; or

(*b*) if it is not practical for an officer referred to in paragraph (*a*) to act as the custody review officer, the officer who is the commanding officer of the unit or element where the person is in custody or an officer who is designated by that officer.

"designated offence" « *infraction désignée* »

"designated offence" means

(*a*) an offence that is punishable under section 130 that is

(i) listed in section 469 of the *Criminal Code*,

(ii) contrary to subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act* and punishable by imprisonment for life, or

(iii) an offence of conspiring to commit an offence under any subsection referred to in subparagraph (ii);

(*b*) an offence under this Act where the minimum punishment is imprisonment for life;

(*c*) an offence under this Act for which a punishment higher in the scale of punishments than imprisonment for less than two years may be awarded that is alleged to have been committed while at large after having been released in respect of

40. Les intertitres précédant l'article 154 de la même loi sont remplacés par ce qui suit :

SECTION 3

ARRESTATION ET DÉTENTION AVANT PROCÈS

Définitions

Définitions

153. Les définitions qui suivent s'appliquent à la présente section.

« infraction désignée » "designated offence"

« infraction désignée »

a) Toute infraction punissable aux termes de l'article 130 :

(i) soit mentionnée à l'article 469 du *Code criminel*,

(ii) soit punie de l'emprisonnement à perpétuité aux termes des paragraphes 5(3), 6(3) ou 7(2) de la *Loi réglementant certaines drogues et autres substances*,

(iii) soit tout acte de complot visant à commettre l'une des infractions mentionnées au sous-alinéa (ii);

b) toute infraction à la présente loi comportant comme peine minimale l'emprisonnement à perpétuité;

c) toute infraction à la présente loi passible d'une peine supérieure dans l'échelle des peines à l'emprisonnement de moins de deux ans qui est présumée avoir été commise alors que la personne était en liberté après avoir été libérée relativement à une autre infraction en vertu des dispositions de la présente section ou de la section 10;

d) tout acte de gangstérisme punissable aux termes de la présente loi.

« officier réviseur » "custody review officer"

« officier réviseur » Relativement à une personne en détention préventive, s'entend :

a) de son commandant ou de l'officier qu'il désigne;

b) lorsqu'il est difficilement réalisable pour celui-ci d'agir à ce titre, du com-

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Clause 40	*Amends headings before section 154, adds new section 153*	

What the amendment does

- replaces the heading "PART VI" with the heading "DIVISION 3"
- adds two new definitions, "custody review officers" and "designated offence"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III of the *Act*, dealing with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

The two new definitions are part of the new pre-trial custody regime contained in sections 158 to 159.9.

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another offence pursuant to the provisions of this Division or Division 10; or

(*d*) an offence under this Act that is a criminal organization offence.

mandant de l'unité ou de l'élément où elle est détenue ou de l'officier qu'il désigne.

Authority to Arrest

Pouvoir d'arrestation

R.S., c. 31 (1st Supp.), s. 49 and s. 60 (Sch. I, s. 45)

41. The portion of section 156 of the Act before paragraph (*b*) is replaced by the following:

41. Le passage de l'article 156 de la même loi précédant l'alinéa *b*) est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), art. 49 et 60, ann. I, art. 45

Powers of military police

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

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

Pouvoirs des policiers militaires

(*a*) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the person's rank or status, who has committed, is found committing, is believed on reasonable grounds to be about to commit or to have committed a service offence or who is charged with having committed a service offence; and

a) détenir ou arrêter sans mandat tout justiciable du code de discipline militaire — quel que soit son grade ou statut — qui a commis, est pris en flagrant délit de commettre ou est accusé d'avoir commis une infraction d'ordre militaire, ou encore est soupçonné, pour des motifs raisonnables, d'être sur le point de commettre ou d'avoir commis une telle infraction;

R.S., c. 31 (1st Supp.), ss. 51 to 56 and 60 (Sch. I, ss. 47 to 50); 1991, c. 43, ss. 14 to 16; 1992, c. 16, ss. 2 to 7; 1993, c. 34, s. 93(F)

42. Sections 158 to 179 of the Act are replaced by the following:

42. Les articles 158 à 179 de la même loi sont remplacés par ce qui suit :

L.R., ch. 31 (1er suppl.), ch., 51 à 56 et 60, ann. I, art. 47 à 50; 1991, ch. 43, art. 14 à 16; 1992, ch. 16, art. 2 à 7; 1993, ch. 34, art. 93 (F)

Release from custody

158. (1) A person arrested under this Act shall, as soon as is practicable, be released from custody by the person making the arrest, unless the person making the arrest believes on reasonable grounds that it is necessary that the person under arrest be retained in custody having regard to all the circumstances, including

158. (1) Dès que les circonstances le permettent, la personne effectuant une arrestation sous le régime de la présente loi est tenue de remettre en liberté la personne arrêtée, sauf si elle a des motifs raisonnables de croire que cela est contre-indiqué dans les circonstances à cause, notamment :

Mise en liberté

(*a*) the gravity of the offence alleged to have been committed;

a) de la gravité de l'infraction reprochée;

(*b*) the need to establish the identity of the person under arrest;

b) de la nécessité d'établir l'identité de la personne arrêtée;

(*c*) the need to secure or preserve evidence of or relating to the offence alleged to have been committed;

c) de la nécessité de recueillir ou conserver des éléments de preuve afférents à cette infraction;

(*d*) the need to ensure that the person under arrest will appear before a service tribunal or civil court to be dealt with according to law;

d) de la nécessité d'assurer la comparution de la personne arrêtée devant le tribunal militaire ou civil pour qu'elle soit jugée selon la loi;

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Clause 41	*Amends section 156*	

What the amendment does

- extends the grounds for the power to arrest without a warrant to a person who is believed on reasonable grounds *to be about to commit* a service offence
- makes stylistic changes

Reasons for the change

At present, military police may arrest a person who is subject to the *Code of Service Discipline* if that person has committed, is found committing, is believed on reasonable grounds to have committed, or who is charged with having committed a service offence. This amendment makes the grounds for arrest without warrant consistent with those contained in the *Criminal Code*.

Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	

What the amendment does

- requires a person arrested under the *Act* to be released as soon as practicable unless the person making the arrest believes on reasonable grounds that the person should be retained in custody for certain specified reasons [subs. 158(1)]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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(*e*) the need to prevent the continuation or repetition of the offence alleged to have been committed or the commission of any other offence; and

(*f*) the necessity to ensure the safety of the person under arrest or any other person.

e) de la nécessité de prévenir la continuation ou la répétition de l'infraction ou la perpétration de toute autre infraction;

f) de la nécessité d'assurer la sécurité de la personne arrêtée ou de toute autre personne.

Retention in custody

(2) If an arrested person is to be retained in custody, the person shall be placed in service custody or civil custody. Such force as is reasonably necessary for the purpose may be used.

(2) Si elle conclut que la personne arrêtée doit être mise en détention préventive, elle la place sous garde militaire ou civile en recourant, s'il y a lieu, à la force raisonnablement nécessaire.

Sort de la personne arrêtée

Duty to receive into service custody

(3) The officer or non-commissioned member in charge of a guard or a guard-room or an officer or non-commissioned member appointed for the purposes of section 156 shall receive and keep a person under arrest who is committed to his or her custody.

(3) L'officier ou le militaire du rang commandant une garde ou un corps de garde, ou nommé sous le régime de l'article 156, prend en charge la personne arrêtée qui est confiée à sa garde.

Obligation de prendre en charge

Account in writing

(4) The person who commits a person under arrest to service custody shall, at the time of committal, deliver to the officer or non-commissioned member into whose custody the person under arrest is committed a signed account in writing setting out why the person under arrest is being committed to custody.

(4) La personne qui lui confie la garde lui remet à cette occasion un exposé, signé par elle, motivant le placement en détention.

Exposé écrit

Report of custody

158.1 (1) The officer or non-commissioned member into whose custody a person under arrest is committed shall, as soon as practicable, and in any case within twenty-four hours after the arrest of the person committed to custody, deliver a report of custody, in writing, to the custody review officer.

158.1 (1) La personne à qui est confiée la garde est tenue de remettre à l'officier réviseur, dans les meilleurs délais et au plus tard dans les vingt-quatre heures suivant l'arrestation, un rapport de détention.

Rapport de garde

Contents

(2) The report of custody must set out the name of the person in custody, an account of the offence alleged to have been committed by that person so far as it is known and the name and rank, if any, of the person who committed the person into service custody.

(2) Dans son rapport, elle donne la description de l'infraction reprochée, pour autant qu'on en sache, et précise le nom de son auteur, ainsi que les nom et grade de la personne qui lui en a confié la garde.

Contenu du rapport

Representations concerning release

(3) Before the report of custody is delivered to the custody review officer,

(*a*) a copy of the report and the account in writing must be provided to the person in custody; and

(*b*) the person in custody must be given the opportunity to make representations concerning the person's release from custody.

(3) Avant de remettre son rapport à l'officier réviseur, elle en communique une copie, accompagnée de l'exposé, à la personne détenue et donne à celle-ci l'occasion de présenter ses observations quant à sa remise en liberté.

Observations

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9,. 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires a person arrested under the *Act* to be released as soon as practicable unless the person making the arrest believes on reasonable grounds that the person should be retained in custody for certain specified reasons [subs. 158(1)]
- requires the person who commits the arrested person into custody to give to the custodian an account setting out the reasons why [subs. 158(4)]
- requires the custodian to submit a custody report to the custody review officer within 24 hours after the arrest which includes representations of the arrested person [s. 158.1]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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Representations to be reduced to writing

(4) Representations concerning release made by or on behalf of the person in custody must be reduced to writing or recorded by any other means.

Accompanying documents

(5) When the report of custody is delivered, it must be accompanied by the account in writing and any representations made by or on behalf of the person in custody or a statement confirming that the person was given the opportunity to make representations but did not do so.

Observations consignées par écrit

(4) Les observations, faites par la personne détenue ou en son nom, sont consignées par écrit ou par tout autre moyen.

Documents à transmettre

(5) Le rapport de détention est accompagné des documents suivants :

a) l'exposé motivant la détention;

b) les observations de la personne arrêtée ou faites en son nom ou la mention que celle-ci n'a pas présenté d'observations malgré l'occasion qui lui en a été fournie.

Initial Review

Révision de la détention

Review of report of custody

158.2 (1) The custody review officer shall review the report of custody and the accompanying documents as soon as practicable after receiving them and in any case within forty-eight hours after the arrest of the person committed to custody.

Révision du rapport

158.2 (1) L'officier réviseur de la détention étudie le rapport de détention et les documents l'accompagnant dans les meilleurs délais suivant leur réception et au plus tard dans les quarante-huit heures suivant l'arrestation de la personne sous garde.

Duty to release

(2) After reviewing the report of custody and the accompanying documents, the custody review officer shall direct that the person committed to custody be released immediately unless the officer believes on reasonable grounds that it is necessary that the person be retained in custody, having regard to all the circumstances, including those set out in subsection 158(1).

Ordonnance de mise en liberté

(2) Son examen terminé, il ordonne la mise en liberté de la personne détenue, sauf s'il croit, pour des motifs raisonnables, que cela est contre-indiqué dans les circonstances, notamment pour les raisons énoncées au paragraphe 158(1).

Continuing duty to release

158.3 If, at any time after receiving the report of custody and before the person in custody is brought before a military judge, the custody review officer no longer believes that the grounds to retain the person in custody exist, the custody review officer shall direct that the person be released from custody.

Mise en liberté

158.3 Si, à tout moment après réception du rapport et avant que la personne détenue ne soit conduite devant un juge militaire, il estime que les motifs justifiant le maintien sous garde n'existent plus, l'officier réviseur ordonne la remise en liberté.

Duty to retain in custody if designated offence

158.4 Notwithstanding subsection 158.2(2) and section 158.3, if the person in custody is charged with having committed a designated offence, the custody review officer shall direct that the person be retained in custody.

Détention — infraction désignée

158.4 Malgré le paragraphe 158.2(2) et l'article 158.3, l'officier réviseur ordonne le maintien sous garde de la personne si elle est accusée d'avoir commis une infraction désignée.

Duty to review where charge not laid

158.5 If a charge is not laid within seventy-two hours after the person in custody was arrested, the custody review officer shall determine why a charge has not been laid and reconsider whether it remains necessary to retain the person in custody.

Révision de la mise sous garde

158.5 Lorsque aucune accusation n'est portée dans les soixante-douze heures suivant l'arrestation d'une personne sous garde, l'officier réviseur en détermine la raison et vérifie s'il est nécessaire de la maintenir sous garde.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires the custodian to submit a custody report to the custody review officer within 24 hours after the arrest which includes representations of the arrested person [s. 158.1]
- requires the custody review officer to review the custody report within 48 hours after the arrest and direct the arrested person to be released immediately unless the officer believes on reasonable grounds that the person's retention is necessary for certain specified reasons [s. 158.2]
- requires the custody review officer to direct that the arrested person be released from custody if, at any time before the person is brought before a military judge, the officer no longer believes that the reasons for retaining the person exist [s. 158.3]
- requires the custody review officer to keep the arrested person in custody if the person is charged with having committed a designated offence [s. 158.4]
- requires the custody review officer to reconsider the arrested person's custody if a charge is not laid within 72 hours after the arrest [s. 158.5]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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Release with or without conditions

158.6 (1) The custody review officer may direct that the person be released without conditions or that the person be released and, as a condition of release, direct the person to comply with any of the following conditions:

(*a*) remain under military authority;

(*b*) report at specified times to a specified military authority;

(*c*) remain within the confines of a specified defence establishment or at a location within a geographical area;

(*d*) abstain from communicating with any witness or specified person, or refrain from going to any specified place; and

(*e*) comply with such other reasonable conditions as are specified.

Review

(2) A direction to release a person with or without conditions may, on application, be reviewed by

(*a*) if the custody review officer is an officer designated by a commanding officer, that commanding officer; or

(*b*) if the custody review officer is a commanding officer, the next superior officer to whom the commanding officer is responsible in matters of discipline.

Powers

(3) After giving a representative of the Canadian Forces and the released person an opportunity to be heard, the officer conducting the review may make any direction respecting conditions that a custody review officer may make under subsection (1).

Conditions éventuelles de mise en liberté

158.6 (1) L'officier réviseur peut soit ordonner la libération inconditionnelle de la personne sous garde, soit ordonner sa libération pourvu qu'elle respecte l'une ou l'autre des conditions suivantes qu'il précise :

a) demeurer sous autorité militaire;

b) se présenter aux heures et aux autorités qu'il précise;

c) rester dans l'établissement de défense ou à l'intérieur de la région qu'il précise;

d) s'abstenir de communiquer avec tout témoin ou toute autre personne expressément nommée, ou éviter tout lieu expressément nommé;

e) observer telles autres conditions raisonnables qu'il précise.

Révision

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

Pouvoirs

(3) Après avoir donné à la personne libérée et au représentant des Forces canadiennes l'occasion de présenter leurs observations, l'officier qui a effectué une révision aux termes du paragraphe (2) peut rendre toute ordonnance aux termes du paragraphe (1).

Review by Military Judge

Révision par le juge militaire

Hearing by military judge

159. (1) A custody review officer who does not direct the release of a person from custody shall, as soon as practicable, cause the person to be taken before a military judge for the purpose of a hearing to determine whether the person is to be retained in custody.

Applicable operational considerations

(2) In determining when it is practicable to cause the person to be taken before a military judge, the custody review officer may have regard to the constraints of military operations, including the location of the unit or element where the person is in custody and the circumstances under which it is deployed.

Audition par le juge militaire

159. (1) En l'absence de toute ordonnance de mise en liberté, l'officier réviseur fait conduire, dans les meilleurs délais, la personne sous garde devant un juge militaire pour une audition visant à déterminer si elle doit être maintenue sous garde.

Facteurs liés aux opérations

(2) Afin de la faire conduire devant le juge militaire dans les meilleurs délais, il peut prendre en compte les contraintes liées aux opérations militaires, notamment le lieu et les circonstances du déploiement de l'unité ou de l'élément dans lequel la personne est détenue.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- authorizes the custody review officer to release the arrested person with or without conditions and sets out those conditions [subs. 158.6(1)]
- authorizes a review of the custody review officer's direction to release [subs. 158.6(2) and (3)]
- requires a review of the arrested person's custody as soon as practicable by a military judge if the person is not released by a custody review officer [s. 159]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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Onus on Canadian Forces

159.1 When the person retained in custody is taken before a military judge, the military judge shall direct that the person be released from custody unless counsel for the Canadian Forces, or in the absence of counsel a person appointed by the custody review officer, shows cause why the continued retention of the person in custody is justified or why any other direction under this Division should be made.

Ordonnance de mise en liberté

159.1 Le juge militaire devant qui est conduite la personne détenue ordonne sa mise en liberté, sauf si l'avocat des Forces canadiennes ou, en l'absence d'un avocat, la personne désignée par l'officier réviseur lui fait valoir des motifs justifiant son maintien sous garde.

Justification for retention in custody

159.2 For the purposes of sections 159.1 and 159.3, the retention of a person in custody is only justified when one or more of the following grounds have been established to the satisfaction of the military judge:

(*a*) custody is necessary to ensure the person's attendance before a service tribunal or a civil court to be dealt with according to law;

(*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 justice; and

(*c*) any other just cause has been shown, 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.

Motifs justifiant la détention

159.2 Pour l'application des articles 159.1 et 159.3, la détention préventive d'une personne n'est justifiée que si le juge militaire est convaincu, selon le cas :

a) qu'elle est nécessaire pour assurer sa comparution devant le tribunal militaire ou civil pour qu'elle y soit jugée selon la loi;

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

c) d'une autre juste cause, 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.

Onus on person in custody

159.3 (1) Notwithstanding section 159.1, if the person in custody is charged with having committed a designated offence, the military judge shall direct that the person be retained in custody until dealt with according to law, unless the person shows cause why the person's retention in custody is not justified.

Ordonnance de détention — infraction désignée

159.3 (1) Malgré l'article 159.1, le juge militaire ordonne le maintien en détention lorsque la personne est accusée d'avoir commis une infraction désignée, et ce jusqu'à ce qu'elle soit traitée selon la loi, à moins qu'elle ne lui fasse valoir l'absence de fondement de cette mesure.

Release on undertaking

(2) If the person in custody shows cause why the person's retention in custody is not justified, the military judge shall direct that the person be released from custody on giving any undertaking to comply with any of the conditions referred to in section 158.6 that the military judge considers appropriate, unless the person in custody shows cause why the giving of an undertaking is not justified.

Mise en liberté sous condition

(2) Lorsque la personne lui fait valoir l'absence de fondement de sa détention, il ordonne sa mise en liberté, pourvu qu'elle remette une promesse assortie des conditions mentionnées à l'article 158.6 qu'il estime indiquées, à moins qu'elle ne fasse valoir des arguments contre l'application des conditions.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires the military judge to direct that the arrested person be released unless the judge is satisfied that the person should be retained for certain specified reasons [ss. 159.1 and 159.2]
- requires the military judge to direct that the arrested person be retained in custody if the person is charged with having committed a designated offence unless the person shows why that is not justified [s. 159.3]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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Release with or without undertaking

159.4 (1) The military judge may direct that the person be released without conditions or that the person be released on the giving of an undertaking to comply with any of the conditions referred to in section 158.6 that the military judge considers appropriate.

Conditions éventuelles de mise en liberté

159.4 (1) Le juge militaire peut soit ordonner la libération inconditionnelle de la personne détenue, soit ordonner sa libération pourvu qu'elle remette une promesse assortie des conditions mentionnées à l'article 158.6 qu'il estime indiquées.

Variation of undertaking

(2) The undertaking under which a person is released may be varied

(*a*) by direction of a military judge on application with reasonable notice being given; or

(*b*) with the written consent of the person and the Director of Military Prosecutions.

Modification des conditions

(2) Les conditions de libération peuvent être modifiées soit par ordonnance d'un juge militaire, sur demande présentée avec un préavis raisonnable, soit avec le consentement écrit de la personne mise en liberté et du directeur des poursuites militaires.

Hearing may be adjourned

159.5 The military judge may adjourn the hearing on the military judge's own motion or on application, but the adjournment may not be for more than three clear days except with the consent of the person in custody.

Ajournement des procédures

159.5 Le juge militaire peut ajourner l'audition d'office ou sur demande; l'ajournement ne peut excéder trois jours francs, sauf avec le consentement de la personne détenue.

Alternate means of hearing

159.6 (1) The military judge may direct that the hearing be conducted wholly or in part by the means of a telecommunications device, including by telephone, if the military judge is satisfied that the benefit of a hearing by that device outweighs the potential prejudice to the person in custody of conducting a hearing by that device.

Comparution par télécommunication

159.6 (1) Le juge militaire peut ordonner la tenue de l'audition, en tout ou en partie, par tout moyen de télécommunication, y compris le téléphone, qu'il estime indiqué, s'il est convaincu que les avantages de cette mesure l'emportent sur tout éventuel préjudice pour la personne détenue.

Representations and factors to be considered

(2) In deciding whether to make the direction, the military judge shall take into account

(*a*) the location of the person in custody;

(*b*) the gravity of the offence;

(*c*) the circumstances under which the unit or element detaining the person in custody is deployed;

(*d*) the availability of counsel for the Canadian Forces and the person in custody;

(*e*) the limitations of available telecommunications devices;

(*f*) the time required to bring the person in custody and the person's counsel before the military judge; and

(*g*) any other matter that the military judge considers relevant.

Facteurs à prendre en compte

(2) Il prend en compte, dans sa décision, les facteurs suivants :

a) le lieu de détention;

b) la gravité de l'infraction reprochée;

c) les circonstances du déploiement de l'unité ou de l'élément dans lequel la personne est détenue;

d) la disponibilité d'un avocat pour la personne détenue ou pour les Forces canadiennes;

e) les contraintes imposées par les moyens de télécommunication accessibles;

f) le délai nécessaire pour la comparution en personne des parties et de leurs représentants;

g) toute autre question que le juge militaire estime indiquée.

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- authorizes the military judge to release the arrested person without conditions or on giving certain specified undertakings and allows an undertaking to be varied [s. 159.4]
- authorizes the military judge to adjourn the custody review hearing for a limited time [s. 159.5]
- authorizes the military judge to have the hearing conducted by a telecommunications device if the benefits of holding the hearing in that manner outweigh the potential prejudice to the accused [s. 159.6]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

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Reasons

159.7 The military judge shall include in the minutes of any proceedings under this Division the reasons for any direction.

Motifs

159.7 Les motifs de la décision du juge militaire sont consignés au procès-verbal de l'audition tenue aux termes de la présente section.

Duty of Director of Military Prosecutions

Obligation du directeur des poursuites militaires

Review after 90 days

159.8 If the trial of a person who has been retained in custody has not commenced within ninety days after the day that person was last taken before a military judge, the Director of Military Prosecutions shall cause the person to be brought before a military judge to determine whether the continued retention of the person in custody is justified under section 159.2.

Période maximale de garde sans procès

159.8 Lorsque le procès de la personne en détention préventive n'a pas débuté dans les quatre-vingt-dix jours suivant sa dernière comparution devant un juge militaire, le directeur des poursuites militaires la fait conduire devant un juge militaire pour qu'il soit décidé si le maintien en détention est justifié aux termes de l'article 159.2.

Review by Court Martial Appeal Court

Révision par la Cour d'appel de la cour martiale

Review of direction

159.9 (1) At any time before the commencement of a person's trial, a judge of the Court Martial Appeal Court may, on application, review any direction of a military judge under this Division to release the person from custody with or without an undertaking or to retain the person in custody.

Révision

159.9 (1) Sur demande, un juge de la Cour d'appel de la cour martiale peut, à tout moment avant le début du procès, réviser la décision du juge militaire de mettre l'accusé en liberté — inconditionnelle ou sous condition — ou en détention préventive, selon le cas.

Application of provisions

(2) The provisions of this Division apply, with any modifications that the circumstances require, to any review under this section.

Dispositions applicables

(2) Les dispositions de la présente section s'appliquent, avec les adaptations nécessaires, à la révision effectuée en vertu du présent article.

DIVISION 4

COMMENCEMENT OF PROCEEDINGS

SECTION 4

DÉBUT DES POURSUITES

Interpretation

Définition

Definition of "commanding officer"

160. In this Division, "commanding officer", in respect of an accused person, means the commanding officer of the accused person and includes an officer who is empowered by regulations made by the Governor in Council to act as the commanding officer of the accused person.

Définition de « commandant »

160. Pour l'application de la présente section, « commandant », en ce qui concerne une personne accusée d'une infraction d'ordre militaire, s'entend de son commandant ou de l'officier que les règlements du gouverneur en conseil habilitent à agir à ce titre.

Laying of Charge

Accusations

Laying of charge

161. Proceedings against a person who is alleged to have committed a service offence are commenced by the laying of a charge in accordance with regulations made by the Governor in Council.

Accusation portée

161. La poursuite contre une personne à qui il est reproché d'avoir commis une infraction d'ordre militaire est entamée par une accusation portée conformément aux règlements du gouverneur en conseil.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires the military judge to include the reasons for any direction in the minutes of proceedings [s. 159.7]
- requires the Director of Military Prosecutions to have a person retained in custody brought before a military judge for a custody review if the person's trial has not commenced within 90 days after the person's last hearing before a military judge [s. 159.8]
- authorizes a judge of the Court Martial Appeal Court to review a release direction of a military judge at any time before an arrested person's trial [s. 159.9]

Reasons for the change

The action-after-arrest provisions will more closely align pre-trial custody review within the military justice system with the current pre-trial custody provisions under the *Criminal Code* while incorporating features that will maintain its workability in military operations. These features will include initial review by unit authorities, review by a military judge who is, where necessary, deployable into a theater of operations, and authority to conduct judicial hearings by a suitable telecommunications device.

The custody review officer will be obligated to direct the release of any person retained in custody unless the officer believes on reasonable grounds that the person's retention is necessary or the person has been charged with a designated offence. A person retained in custody will have to be brought before a military judge as soon as practicable. At a judicial hearing the onus to justify the retention of a person in custody will be on the prosecution except where a person has been charged with having committed a designated offence. [ss. 158 to 159.9]

DIVISION 4
COMMENCEMENT OF PROCEEDINGS

What the amendment does

- redrafts subsection 160(1)of the present *Act* to provide a definition of "commanding officer" for Division 4 [s. 160]
- requires that proceedings against a person who is alleged to have committed a service offence be commenced by the laying of a charge [s. 161]

Reasons for the change

These amendments replace sections 160 to 162 of the *Act*.

The amendments add precision to the charge-laying process by providing for the commencement of proceedings through the laying of a charge and its referral to the accused's commanding officer. The removal of the requirement for an investigation after the charge is laid was made because investigation before the laying of a charge accords with current military and civilian practice. [ss. 161 and 161.1]

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Referral to commanding officer

161.1 After a charge is laid, it shall be referred to an officer who is a commanding officer in respect of the accused person.

Déféré

161.1 Après qu'elle a été portée, l'accusation est déférée au commandant de l'accusé.

Duty to Act Expeditiously

Obligation d'agir avec célérité

Duty to act expeditiously

162. Charges under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit.

Obligation d'agir avec célérité

162. Une accusation aux termes du code de discipline militaire est traitée avec toute la célérité que les circonstances permettent.

Right to Trial by Court Martial

Droit à un procès devant une cour martiale

Election

162.1 Except in the circumstances prescribed in regulations made by the Governor in Council, an accused person who is triable by summary trial has the right to elect to be tried by court martial.

Choix

162.1 Sauf dans les cas prévus par règlement du gouverneur en conseil, un accusé qui peut être jugé sommairement peut choisir d'être jugé devant une cour martiale.

Referral of charge

162.2 When an accused person elects to be tried by court martial, the charge in respect of the accused person shall be referred to the Director of Military Prosecutions in accordance with regulations made by the Governor in Council.

Transmission de l'accusation

162.2 Lorsque l'accusé choisit d'être jugé par une cour martiale, l'accusation est transmise au directeur des poursuites militaires conformément aux règlements du gouverneur en conseil.

Division 5

Summary Trials

Section 5

Procès sommaires

Interpretation

Définitions

Definitions

162.3 The definitions in this section apply in this Division.

Définitions

162.3 Les définitions qui suivent s'appliquent à la présente section.

"commanding officer" *« commandant »*

"commanding officer", in respect of an accused person, means an officer who is a commanding officer within the meaning of section 160.

« commandant » En ce qui concerne une personne accusée d'une infraction d'ordre militaire, s'entend de son commandant au sens de l'article 160.

« commandant » *"commanding officer"*

"superior commander" *« commandant supérieur »*

"superior commander" means an officer of or above the rank of brigadier-general, or any other officer appointed by the Chief of the Defence Staff as a superior commander.

« commandant supérieur » Tout officier détenant au moins le grade de brigadier-général ou nommé à ce titre par le chef d'état-major de la défense.

« commandant supérieur » *"superior commander"*

Summary Trials by Commanding Officers

Procès sommaire devant commandant

Jurisdiction

163. (1) A commanding officer may try an accused person by summary trial if all of the following conditions are satisfied:

(*a*) the accused person is either an officer cadet or a non-commissioned member below the rank of warrant officer;

(*b*) having regard to the gravity of the offence, the commanding officer considers that his or her powers of punishment are adequate;

Compétence

163. (1) Un commandant peut juger sommairement l'accusé si les conditions suivantes sont réunies :

a) il s'agit d'un élève-officier ou d'un militaire du rang d'un grade inférieur à celui d'adjudant;

b) il estime que ses pouvoirs de punition sont suffisants, eu égard à la gravité de l'infraction;

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	Continued

What the amendment does

- requires the charge, once laid, to be referred to the person's commanding officer [s. 161.1]
- removes the requirement to conduct an investigation after a charge is laid [s. 161.1]
- removes the power of a commanding officer to dismiss a charge and provides that a charge must be dealt with as expeditiously as the circumstances permit [s. 162]
- provides that an accused who can be tried by summary trial has the right to elect to be tried by court martial except in the circumstances prescribed by regulation [s. 162.1]
- requires a charge to be referred to the Director of Military Prosecutions if an accused elects to be tried by court martial [s. 162.2]

Reasons for the change

These amendments replace sections 160 to 162 of the *Act*.

The amendments add precision to the charge-laying process by providing for the commencement of proceedings through the laying of a charge and its referral to the accused's commanding officer. The removal of the requirement for an investigation after the charge is laid was made because investigation before the laying of a charge accords with current military and civilian practice. [ss. 161 and 161.1]

A statutory duty to deal expeditiously with charges under the *Code of Service Discipline* exists in the present *Act*. [s. 162]

The current right to dismiss a charge without a trial gives broad discretion to the commanding officer to make a final decision concerning not only minor offences but also offences that implicate interests well beyond the individual unit. It is also inconsistent with civilian criminal law practice. Elimination of the authority to dismiss a charge will improve transparency and accountability [s. 162].

While the right to court martial election is mentioned indirectly in the current *Act*, this new provision specifically provides for the election except in circumstances prescribed in regulations. If an accused makes an election to be tried by court martial, the charge must be referred to the newly created Director of Military Prosecutions, an officer outside the chain of command who has responsibility for the conduct of all prosecutions before courts martial. [ss. 162.1 and 162.2]

DIVISION 5
SUMMARY TRIALS

What the amendment does

- provides for the appointment of superior commanders by the Chief of the Defence Staff, instead of the Minister [s. 162.3]
- makes stylistic changes to subsections 163(1), (2) and (4) [s. 163]

What the amendment does

These amendments replace section 163 of the *Act*.

The Minister's present power to appoint superior commanders is being eliminated as one of a series of amendments that eliminate the Minister's duties and responsibilities for the detailed administration of individual cases under the *Code of Service Discipline*. [s. 162.3]

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(*c*) if the accused person has the right to elect to be tried by court martial, the accused person has not elected to be so tried;

(*d*) the offence is not one that, according to regulations made by the Governor in Council, the commanding officer is precluded from trying; and

(*e*) the commanding officer does not have reasonable grounds to believe that the accused person is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence.

Prohibition on presiding

(2) Unless it is not practical, having regard to all the circumstances, for any other commanding officer to conduct the summary trial, a commanding officer may not preside at the summary trial of a person charged with an offence if

(*a*) the commanding officer carried out or directly supervised the investigation of the offence;

(*b*) the summary trial relates to an offence in respect of which a warrant was issued under section 273.3 by the commanding officer; or

(*c*) the commanding officer laid the charge or caused it to be laid.

Sentences

(3) Subject to the conditions set out in Division 2 relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included:

(*a*) detention for a period not exceeding thirty days;

(*b*) reduction in rank by one rank;

(*c*) severe reprimand,

(*d*) reprimand,

(*e*) a fine not exceeding basic pay for one month, and

(*f*) minor punishments.

c) l'accusé n'a pas choisi d'être jugé devant une cour martiale, dans les cas où ce choix est prévu;

d) l'infraction ne fait pas partie de celles que les règlements du gouverneur en conseil excluent de sa compétence;

e) il n'a aucun motif raisonnable de croire que l'accusé est inapte à subir son procès ou était atteint de troubles mentaux au moment de la perpétration de l'infraction reprochée.

Restriction

(2) Le commandant ne peut, dans les cas suivants, juger sommairement l'accusé, à moins que, dans les circonstances, aucun autre commandant ne soit en mesure de le faire :

a) il a mené ou supervisé directement l'enquête relative à l'accusation;

b) il a délivré en application de l'article 273.3 un mandat relativement à l'infraction en cause;

c) il a porté — directement ou indirectement — les accusations.

Sentences

(3) Sous réserve des conditions énoncées à la section 2 en matière de peines, le commandant présidant un procès sommaire peut prononcer une sentence comportant une ou plusieurs des peines suivantes, énumérées dans l'ordre décroissant de gravité :

a) détention pour une période maximale de trente jours;

b) rétrogradation d'un grade;

c) blâme;

d) réprimande;

e) amende n'excédant pas un mois de solde de base;

f) peines mineures.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- makes stylistic changes to subsections 163(1), (2) and (4) [s. 163]
- removes the requirement for approval by a senior military authority of the imposition of detention or reduction in rank [present par. 163(2)(a)]
- removes the power of a commanding officer to impose forfeiture of seniority as a punishment [present par. 163(2)(c)]
- precludes a commanding officer, unless it is not practicable having regard to all the circumstances, from presiding at a summary trial if, among other things, the commanding officer either laid the charge or had the charge laid [subs. 163(2)]
- reduces the maximum period of detention that may be imposed at a summary trial from 90 days to 30 days [subs. 163(3)]
- limits reduction in rank as a punishment to one rank only [subs. 163(3)]

What the amendment does

These amendments replace section 163 of the *Act*.

The Minister's present power to appoint superior commanders is being eliminated as one of a series of amendments that eliminate the Minister's duties and responsibilities for the detailed administration of individual cases under the *Code of Service Discipline*. [s. 162.3]

Precluding the commanding officer from trying a charge where he or she laid the charge or had it laid further separates commanding officers from active involvement in cases over which they could preside. [subs. 163(2)]

The two most severe punishments that a commanding officer can currently impose at summary trial are 90 days detention and reduction in rank of two ranks from sergeant to private. Both sentences currently require approval by higher authority. As a summary trial is a disciplinary proceeding designed to deal only with more minor service offences, a reduced period of detention of 30 days and reduction of only one rank are more appropriate punishments. Prior approval of these punishments is no longer considered necessary, given the reductions to summary trial punishments. [subs. 163(3)]

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Delegation

(4) A commanding officer may, subject to regulations made by the Governor in Council and to the extent that the commanding officer deems fit, delegate powers to try an accused person by summary trial to any officer under the commanding officer's command, but an officer to whom powers are delegated may not be authorized to impose punishments other than the following:

(*a*) detention not exceeding fourteen days;

(*b*) severe reprimand;

(*c*) reprimand;

(*d*) a fine not exceeding basic pay for fifteen days; and

(*e*) minor punishments.

Délégation

(4) Le commandant peut, sous réserve des règlements du gouverneur en conseil et dans la mesure où il le juge à propos, déléguer à un officier sous ses ordres le pouvoir de juger sommairement un accusé, ce pouvoir ne permettant de prononcer que les peines suivantes :

a) détention pour une période maximale de quatorze jours;

b) blâme;

c) réprimande;

d) amende n'excédant pas quinze jours de solde de base;

e) peines mineures.

When no summary trial

163.1 (1) A commanding officer who determines that a charge is to proceed but who does not try the accused person by summary trial shall refer the charge, in accordance with regulations made by the Governor in Council, to

(*a*) another officer who has jurisdiction to try the accused person by summary trial; or

(*b*) an officer who is authorized by regulations made by the Governor in Council to refer charges to the Director of Military Prosecutions.

Décision de ne pas juger

163.1 (1) S'il décide qu'il y a lieu de donner suite à l'accusation mais qu'il ne procède pas au procès sommaire, le commandant, conformément aux règlements du gouverneur en conseil :

a) soit défère l'accusation à un autre officier ayant le pouvoir de juger sommairement l'accusé;

b) soit la transmet à l'officier habilité par règlement du gouverneur en conseil à saisir en l'espèce le directeur des poursuites militaires.

Subsequent proceedings not precluded

(2) A decision of a commanding officer that a charge should not proceed does not preclude proceeding with the charge at any subsequent time.

Poursuite ultérieure

(2) La décision de ne pas donner suite à l'accusation n'empêche pas l'exercice ultérieur d'une poursuite à son égard.

Charge may be referred

(3) If a commanding officer decides that a charge should not be proceeded with, the person who laid the charge may, in circumstances prescribed by the Governor in Council in regulations, refer it to an officer referred to in paragraph (1)(*b*).

Transmission de l'accusation

(3) Dans le cas où le commandant décide de ne pas donner suite à l'accusation, la personne qui a porté l'accusation peut, dans les cas prévus par règlement du gouverneur en conseil, la transmettre à l'officier visé à l'alinéa (1)*b*).

Summary Trial by Superior Commanders

Procès sommaire devant des commandants supérieurs

Jurisdiction

164. (1) A superior commander may try an accused person by summary trial if all of the following conditions are satisfied:

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

Compétence

164. (1) Le commandant supérieur peut juger sommairement l'accusé si les conditions suivantes sont réunies :

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

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- makes stylistic changes to subsections 163(1), (2) and (4) [s. 163]
- requires a commanding officer who determines that a charge is to proceed but who does not try the accused by summary trial to refer the charge to another officer who has jurisdiction to try the accused, or to an officer who is authorized by regulations to refer charges to the Director of Military Prosecutions [subs. 163.1(1)]
- provides that a decision by a commanding officer not to proceed with a charge does not preclude proceeding with the charge at a later time [subs. 163.1(2)]
- authorizes the person who laid a charge to refer the charge to an officer who is authorized by regulations to refer charges to the Director of Military Prosecutions if the commanding officer decides that the charge should not proceed [subs. 163.1(3)]
- removes the power of a superior commander to dismiss a charge [s. 164]
- authorizes a superior commander to try an accused person if the following conditions are satisfied:
  - the accused is an officer below the rank of lieutenant-colonel or a non-commissioned member above the rank of sergeant
  - the powers of punishment of the superior commander are adequate
  - the accused has not elected to be tried by court martial
  - the offence is not one which the superior commander is precluded from trying according to the regulations
  - the superior commander does not have reasonable grounds to believe that the accused is unfit to stand trial [subs. 164(1)]

Reasons for the change

These amendments replace section 163 of the *Act*.

Currently the commanding officer has a broad discretion to make a final decision concerning not only minor offences but also offences that implicate interests well beyond the individual unit. A commanding officer will no longer have the power to dismiss a charge. As well, a commanding officer's decision not to proceed with a charge will not be a bar to proceeding with the charge at any other time. Notwithstanding these changes and the authority of the new independent military prosecutor, the chain of command will still be involved in the disposal of charges but with reduced and restructured powers. [s. 163.1]

These amendments replace section 164 of the *Act* and mirror the changes made in sections 163 and 163.1 to the summary trial process by commanding officers. [ss. 164 and 164.1]

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(*b*) having regard to the gravity of the offence, the superior commander considers that his or her powers of punishment are adequate;

(*c*) if the accused person has the right to elect to be tried by court martial, the accused person has not elected to be so tried;

(*d*) the offence is not one that, according to regulations made by the Governor in Council, the superior commander is precluded from trying; and

(*e*) the superior commander does not have reasonable grounds to believe that the accused person is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence.

b) il estime que ses pouvoirs de punition sont suffisants, eu égard à la gravité de l'infraction;

c) l'accusé n'a pas choisi d'être jugé devant une cour martiale, dans les cas où ce choix est prévu;

d) l'infraction ne fait pas partie de celles que les règlements du gouverneur en conseil excluent de sa compétence;

e) il n'a aucun motif raisonnable de croire que l'accusé est inapte à subir son procès ou était atteint de troubles mentaux au moment de la perpétration de l'infraction reprochée.

Prohibition on presiding

(2) Unless it is not practical, having regard to all the circumstances, for any other superior commander to conduct the summary trial, a superior commander may not preside at the summary trial of a person charged with an offence if

(*a*) the superior commander carried out or directly supervised the investigation of the offence;

(*b*) the summary trial relates to an offence in respect of which a warrant was issued under section 273.3 by the superior commander as a commanding officer; or

(*c*) the superior commander laid the charge or caused it to be laid.

Restriction

(2) Le commandant supérieur ne peut, dans les cas suivants, juger sommairement l'accusé, à moins que, dans les circonstances, aucun autre commandant supérieur ne soit en mesure de le faire :

a) il a mené ou supervisé directement l'enquête relative à l'accusation;

b) il a délivré en application de l'article 273.3 un mandat relativement à l'infraction en cause;

c) il a porté — directement ou indirectement — les accusations.

Exception

(3) A superior commander may try an accused person who is of the rank of lieutenant-colonel by summary trial in any circumstances that are prescribed by the Governor in Council in regulations.

Exception

(3) Le commandant supérieur peut juger sommairement un accusé détenant le grade de lieutenant-colonel dans les cas prévus par règlement du gouverneur en conseil.

Sentences

(4) Subject to the conditions set out in Division 2 relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included:

(*a*) severe reprimand;

(*b*) reprimand; and

(*c*) fine.

Sentences

(4) Sous réserve des conditions énoncées à la section 2 en matière de peines, le commandant supérieur présidant un procès sommaire peut prononcer une sentence comportant une ou plusieurs des peines suivantes :

a) blâme;

b) réprimande;

c) amende.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- removes the power of a superior commander to dismiss a charge [s. 164]
- authorizes a superior commander to try an accused person if the following conditions are satisfied:
  - the accused is an officer below the rank of lieutenant-colonel or a non-commissioned member above the rank of sergeant
  - the powers of punishment of the superior commander are adequate
  - the accused has not elected to be tried by court martial
  - the offence is not one which the superior commander is precluded from trying according to the regulations
  - the superior commander does not have reasonable grounds to believe that the accused is unfit to stand trial [subs. 164(1)]
- sets out the circumstances where a superior commander cannot preside at a summary trial [subs. 164(2)]
- removes the power of a superior commander to impose forfeiture of seniority as a punishment [subs. 164(4)]

Reasons for the change

These amendments replace section 164 of the *Act* and mirror the changes made in sections 163 and 163.1 to the summary trial process by commanding officers. [ss. 164 and 164.1]

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DIVULGUÉ EN VERTU DE LA LAI - RENSEIGNEMENTS NON CLASSIFIÉS

When no summary trial

164.1 (1) A superior commander who determines that a charge should proceed but who does not try an accused person by summary trial shall refer the charge, in accordance with regulations made by the Governor in Council, to

(*a*) another officer who has jurisdiction to try the accused person by summary trial; or

(*b*) an officer who is authorized by regulations made by the Governor in Council to refer charges to the Director of Military Prosecutions.

Subsequent proceedings not precluded

(2) A decision by a superior commander that a charge should not proceed does not preclude proceeding with the charge at any subsequent time.

Charge may be referred

(3) If a superior commander decides that a charge should not be proceeded with, the person who laid the charge may, in circumstances prescribed by the Governor in Council in regulations, refer it to an officer referred to in paragraph (1)(*b*).

Décision de ne pas juger

164.1 (1) S'il décide qu'il y a lieu de donner suite à l'accusation mais qu'il ne procède pas au procès sommaire, le commandant supérieur, conformément aux règlements du gouverneur en conseil :

a) soit défère l'accusation à un autre officier ayant le pouvoir de juger sommairement l'accusé;

b) soit la transmet à l'officier habilité par règlement du gouverneur en conseil à saisir en l'espèce le directeur des poursuites militaires.

Poursuite ultérieure

(2) La décision de ne pas donner suite à l'accusation n'empêche pas l'exercice ultérieur d'une poursuite à son égard.

Transmission de l'accusation

(3) Dans le cas où le commandant supérieur décide de ne pas donner suite à l'accusation, la personne qui a porté l'accusation peut, dans les cas prévus par règlement du gouverneur en conseil, la transmettre à l'officier visé à l'alinéa (1)*b*).

Referral to Director of Military Prosecutions

Duty to refer

164.2 (1) Subject to subsection (2), an officer to whom a charge is referred under paragraph 163.1(1)(*b*), subsection 163.1(3), paragraph 164.1(1)(*b*) or subsection 164.1(3) shall forward it to the Director of Military Prosecutions, with any recommendations regarding its disposal that the officer considers appropriate.

Exception

(2) Where the charge was referred by a commanding officer or superior commander, the officer to whom the charge was referred may direct the commanding officer or superior commander to try the accused by summary trial if

(*a*) the charge was referred because the commanding officer or superior commander did not consider his or her powers of punishment to be adequate to try the accused person by summary trial; and

(*b*) the officer is of the opinion that the commanding officer or superior commander has adequate powers of punishment to try the accused by summary trial.

Saisine du directeur des poursuites militaires

Obligation de saisine

164.2 (1) Sauf dans le cas prévu au paragraphe (2), l'officier saisi d'une accusation aux termes de l'alinéa 163.1(1)*b*), du paragraphe 163.1(3), de l'alinéa 164.1(1)*b*) et du paragraphe 164.1(3) doit lui-même en saisir le directeur des poursuites militaires en formulant les recommandations sur le sort à lui réserver qu'il juge pertinentes.

Exception

(2) Si l'accusation lui a été transmise par un commandant ou un commandant supérieur au motif qu'il croyait ses pouvoirs de punitions insuffisants pour juger sommairement l'accusé, l'officier, s'il estime lui-même ces pouvoirs suffisants, peut lui enjoindre de juger sommairement l'accusé.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires a superior commander who determines that a charge is to proceed but who does not try the accused by summary trial to refer the charge to another officer who has jurisdiction to try the accused, or to an officer who is authorized by regulations to refer charges to the Director of Military Prosecutions [subs. 164.1(1)]
- provides that a decision by a superior commander not to proceed with a charge does not preclude proceeding with the charge at a later time [subs. 164.1(2)]
- authorizes the person who laid a charge to refer the charge to an officer who is authorized by regulations to refer charges to the Director of Military Prosecutions, if the superior commander decides that the charge should not proceed [subs. 164.1(3)]
- requires the authority to whom a charge is referred to forward it to the Director of Military Prosecutions [subs. 164.2(1)]
- authorizes the authority to direct a commanding officer or a superior commander to try the accused by summary trial in certain circumstances [subs. 164.2(2)]

Reasons for the change

These amendments replace section 164 of the *Act* and mirror the changes made in sections 163 and 163.1 to the summary trial process by commanding officers. [ss. 164 and 164.1]

When an officer refers a charge to the Director of Military Prosecutions, the officer may make a recommendation regarding its disposal. This process retains the valuable input of the chain of command in the military justice system while permitting the Director of Military Prosecutions to exercise prosecutorial discretion when deciding on what charges, if any, proceed to court martial.

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Division 6

Trial by Court Martial

Charge must be Preferred

Charge must be preferred

165. (1) A person may be tried by court martial only if a charge against the person is preferred by the Director of Military Prosecutions.

Meaning of "prefer"

(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 referred to the Court Martial Administrator.

Director of Military Prosecutions

Appointment

165.1 (1) The Minister may appoint an officer who is a barrister or advocate with at least ten years standing at the bar of a province to be the Director of Military Prosecutions.

Tenure of office and removal

(2) The Director of Military Prosecutions holds office during good behaviour for a term not exceeding 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.

Powers of Inquiry Committee

(2.1) The Inquiry Committee is deemed to have the powers of a court martial.

Re-appointment

(3) The Director of Military Prosecutions is eligible to be re-appointed on the expiry of a first or subsequent term of office.

Duties and functions

165.11 The Director of Military Prosecutions is responsible for the preferring of all charges to be tried by court martial and for the conduct of all prosecutions at courts martial. The Director of Military Prosecutions also acts as counsel for the Minister in respect of appeals when instructed to do so.

Preferring charges

165.12 (1) When a charge is referred to the Director of Military Prosecutions, the Director of Military Prosecutions may

(*a*) prefer the charge; or

(*b*) prefer any other charge that is founded on facts disclosed by evidence in addition to or in substitution for the charge.

Section 6

Procès devant une cour martiale

Mise en accusation nécessaire

Mise en accusation nécessaire

165. (1) La cour martiale ne peut juger une personne sans une mise en accusation formelle de celle-ci par le directeur des poursuites militaires.

Dépôt de l'acte d'accusation

(2) Pour l'application de la présente loi, la mise en accusation est prononcée lorsque est déposé auprès de l'administrateur de la cour martiale un acte d'accusation signé par le directeur des poursuites militaires ou un officier dûment autorisé par lui à le faire.

Directeur des poursuites militaires

Nomination

165.1 (1) Le ministre peut nommer directeur des poursuites militaires un officier qui est un avocat inscrit au barreau d'une province depuis au moins dix ans.

Durée du mandat et révocation

(2) Le directeur des poursuites militaires 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.

Pouvoirs du comité d'enquête

(2.1) Le comité d'enquête est réputé avoir les pouvoirs d'une cour martiale.

Nouveau mandat

(3) Le mandat du directeur des poursuites militaires est renouvelable.

Fonctions

165.11 Le directeur des poursuites militaires prononce les mises en accusation des personnes jugées par les cours martiales et mène les poursuites devant celles-ci; en outre, il représente le ministre dans les appels lorsqu'il reçoit des instructions à cette fin.

Prononciation des mises en accusation

165.12 (1) Le directeur des poursuites militaires peut donner suite à toute accusation qui lui est transmise en prononçant la mise en accusation d'un accusé, ou à toute autre accusation, fondée sur les faits révélés par la preuve, qu'il ajoute ou substitue à celle-ci.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

DIVISION 6
TRIAL BY COURT MARTIAL

What the amendment does

- provides that a person may be tried by court martial only if a charge against the person is preferred by the Director of Military Prosecutions [s. 165]
- provides that a charge is preferred when the charge sheet has been signed by the Director of Military Prosecutions or an officer authorized by the Director of Military Prosecutions and referred to the Court Martial Administrator [s. 165]
- sets out the qualifications, terms of office, duties and functions of the Director of Military Prosecutions, including that the Director of Military Prosecutions
  - must be an officer who is a barrister or advocate with at least 10 years standing at the bar of a province [s. 165.1]
  - holds office during good behaviour for a maximum term of four years [s. 165.1]
  - is appointed by the Minister [s.165.1]
  - may be removed for cause by the Minister on the recommendation of an Inquiry Committee, established under regulations made by the Governor in Council, and which is deemed to have the powers of a court martial [s. 165.1]
  - is responsible for the preferring of all charges to be tried by court martial and the conduct of all prosecutions at courts martial [s. 165.11]
  - acts as counsel for the Minister in respect of appeals when instructed to do so [s. 165.11]
- provides that the Director of Military Prosecutions may prefer any charge received by him or her or may withdraw any charge that has been preferred before the commencement of the trial, and, with the consent of the court martial, after the commencement of the trial. [s. 165.12]
- provides that the withdrawal of a charge does not preclude it from being proceeded with at a later date [s. 165.12]

Reasons for the change

Before a person may be tried by a court martial convened on the request of the Director of Military Prosecutions a charge must be preferred by the Director. As the Director is outside the chain of command, conflicts of interests in the convening process will be avoided. [s. 165]

Prosecutorial independence is a basic element in protecting the integrity of the criminal process. Currently the military prosecutor is the direct agent of the senior military authority who convenes courts martial and has no independent authority to amend charges or proceed or not proceed to trial. Providing for the appointment of a Director of Military Prosecutions, under the general supervision of the Judge Advocate General, with security of tenure, who will be responsible for the prosecution of all charges to be tried by court martial, will provide greater assurance that prosecutorial discretion will be exercised free of inappropriate influences. [ss. 165.1 to 165.17]

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Withdrawing charges

(2) The Director of Military Prosecutions may withdraw a charge that has been preferred, but if a trial by court martial has commenced, the Director of Military Prosecutions may do so only with leave of the court martial.

Retrait de l'accusation

(2) Il 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.

Effect of withdrawing charge

(3) Withdrawing a charge does not preclude it from being proceeded with at any subsequent time.

Reprise des procédures

(3) Le retrait de la mise en accusation n'empêche pas l'exercice ultérieur d'une poursuite à son égard.

Referral of charge

165.13 If the Director of Military Prosecutions is satisfied that a charge should not be proceeded with by court martial, the Director of Military Prosecutions may refer it for disposal by an officer who has jurisdiction to try the accused person by summary trial.

Renvoi de l'accusation

165.13 S'il estime que la cour martiale ne devrait pas être saisie de l'accusation, le directeur des poursuites militaires peut déférer celle-ci à un officier ayant le pouvoir de juger sommairement l'accusé.

Director to determine type of court martial

165.14 When the Director of Military Prosecutions prefers a charge, the Director of Military Prosecutions shall also determine the type of court martial that is to try the accused person and inform the Court Martial Administrator of that determination.

Type de cour martiale

165.14 Dans la mise en accusation, le directeur des poursuites militaires détermine le type de cour martiale devant juger l'accusé. Il informe l'administrateur de la cour martiale de sa décision.

Barristers and advocates to assist

165.15 The Director of Military Prosecutions may be assisted and represented, to the extent determined by the Director of Military Prosecutions, by officers who are barristers or advocates with standing at the bar of a province.

Avocats

165.15 Le directeur des poursuites militaires peut être assisté et représenté, dans la mesure qu'il précise, par des officiers qui sont avocats inscrits au barreau d'une province.

Acting Director of Military Prosecutions

165.16 The powers of the Director of Military Prosecutions may be exercised, and the duties and functions of the Director of Military Prosecutions may be performed, by any officer who is a barrister or advocate with standing at the bar of a province and who is authorized by the Minister.

Directeur intérimaire

165.16 Le ministre peut autoriser un officier qui est un avocat inscrit au barreau d'une province à exercer, de façon intérimaire, les fonctions du directeur des poursuites militaires.

Relationship to Judge Advocate General

165.17 (1) The Director of Military Prosecutions acts under the general supervision of the Judge Advocate General.

Subordination

165.17 (1) Le directeur des poursuites militaires exerce ses fonctions sous la direction générale du juge-avocat général.

General instructions

(2) The Judge Advocate General may issue general instructions or guidelines in writing in respect of prosecutions. The Director of Military Prosecutions shall ensure that they are available to the public.

Lignes directrices et instructions générales

(2) Le juge-avocat général peut établir par écrit des lignes directrices ou donner des instructions concernant les poursuites. Le directeur des poursuites militaires veille à les rendre accessibles au public.

Specific instructions

(3) The Judge Advocate General may issue instructions or guidelines in writing in respect of a particular prosecution.

Lignes directrices et instructions spécifiques

(3) Le juge-avocat général peut, par écrit, établir des lignes directrices ou donner des instructions en ce qui concerne une poursuite en particulier.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- provides that the Director of Military Prosecutions may prefer any charge received by him or her or may withdraw any charge that has been preferred before the commencement of the trial, and, with the consent of the court martial, after the commencement of the trial. [s. 165.12]
- provides that the withdrawal of a charge does not preclude it from being proceeded with at a later date [s. 165.12]
- authorizes the Director of Military Prosecutions to refer a charge back to an officer to deal with it by summary trial [s. 165.13]
- requires the Director of Military Prosecutions to determine the type of court martial which will try the accused [s. 165.14]
- provides that the Director of Military Prosecutions may be assisted and represented by officers who are barristers or advocates with standing at the bar of a province [s. 165.15]
- provides that the powers of the Director of Military Prosecutions may be exercised by an officer who is a barrister or advocate with standing at the bar of a province and authorized to do so by the Minister [s. 165.16]
- provides that the Director of Military Prosecutions acts under the general supervision of the Judge Advocate General [subs. 165.17(1)]
- authorizes the Judge Advocate General to issue instructions and guidelines in respect of prosecutions generally or in respect of a particular prosecution [subs. 165.17(2) and (3)]
- requires the Director of Military Prosecutions to ensure that the instructions and guidelines are available to the public except for instructions and guidelines respecting a particular prosecution if in the opinion of the Director the best interests of the administration of military justice would not be served by the disclosure [subs. 165.17(2) to (5)]

Reasons for the change

Prosecutorial independence is a basic element in protecting the integrity of the criminal process. Currently the military prosecutor is the direct agent of the senior military authority who convenes courts martial and has no independent authority to amend charges or proceed or not proceed to trial. Providing for the appointment of a Director of Military Prosecutions, under the general supervision of the Judge Advocate General, with security of tenure, who will be responsible for the prosecution of all charges to be tried by court martial, will provide greater assurance that prosecutorial discretion will be exercised free of inappropriate influences. [ss. 165.1 to 165.17]

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Availability to public

(4) The Director of Military Prosecutions shall ensure that instructions and guidelines issued under subsection (3) are available to the public.

Exception

(5) Subsection (4) does not apply where the Director of Military Prosecutions considers that it would not be in the best interests of the administration of military justice for any instruction or guideline, or any part of it, to be available to the public.

Copies to Minister

(6) The Judge Advocate General shall provide the Minister with a copy of every instruction and guideline made under this section.

Accessibilité

(4) Le directeur des poursuites militaires veille à rendre accessibles au public les lignes directrices ou instructions visées au paragraphe (3).

Exception

(5) Le paragraphe (4) ne s'applique pas lorsque le directeur des poursuites militaires estime qu'il n'est pas dans l'intérêt de la bonne administration de la justice militaire de rendre les lignes directrices ou instructions, ou une partie de celles-ci, accessibles.

Copies au ministre

(6) Le juge-avocat général transmet au ministre une copie des lignes directrices et instructions.

Court Martial Administrator

Administrateur de la cour martiale

Appointment

165.18 There shall be a person appointed to be the Court Martial Administrator.

Nomination

165.18 Il est nommé un administrateur de la cour martiale.

Duties and functions

165.19 (1) When a charge is preferred, the Court Martial Administrator shall convene a court martial in accordance with the determination of the Director of Military Prosecutions under section 165.14 and, in the case of a General Court Martial or a Disciplinary Court Martial, shall appoint its members.

Fonctions

165.19 (1) L'administrateur de la cour martiale, conformément à la décision du directeur des poursuites militaires prise aux termes de l'article 165.14, convoque la cour martiale sélectionnée et, dans le cas d'une cour martiale générale ou d'une cour martiale disciplinaire, en nomme les membres.

Other duties

(2) The Court Martial Administrator performs such other duties as may be specified by this Act or prescribed by the Governor in Council in regulations.

Fonctions additionnelles

(2) Il exerce toute autre fonction qui lui est conférée par la présente loi ou que lui confie par règlement le gouverneur en conseil.

Relationship to Chief Military Judge

(3) The Court Martial Administrator acts under the general supervision of the Chief Military Judge.

Subordination

(3) Il exerce ses fonctions sous la direction générale du juge militaire en chef.

Acting Court Martial Administrator

165.2 The duties and functions of the Court Martial Administrator may be performed by any person authorized by the Court Martial Administrator.

Administrateur intérimaire

165.2 L'administrateur de la cour martiale peut autoriser toute personne à exercer de façon intérimaire les fonctions d'administrateur de la cour martiale.

Military Judges

Juges militaires

Appointment

165.21 (1) The Governor in Council may appoint officers who are barristers or advocates of at least ten years standing at the bar of a province to be military judges.

Nomination

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

Tenure of office and removal

(2) A military judge holds office during good behaviour for a term of five years but may be removed by the Governor in Council for cause on the recommendation of an Inquiry Committee established under regulations made by the Governor in Council.

Durée du mandat et révocation

(2) Un juge militaire est nommé à titre inamovible pour un mandat de cinq ans, sous réserve de révocation motivée par le gouverneur en conseil sur recommandation d'un comité d'enquête établi par règlement du gouverneur en conseil.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- requires the Director of Military Prosecutions to ensure that the instructions and guidelines are available to the public except for instructions and guidelines respecting a particular prosecution if in the opinion of the Director the best interests of the administration of military justice would not be served by the disclosure [subs. 165.17(2) to (5)]
- requires the Judge Advocate General to provide the Minister with a copy of every instruction and guideline [subs. 165.17(6)]
- authorizes the appointment of a person to be the Court Martial Administrator [s. 165.18]
- provides that the Court Martial Administrator convenes courts martial and in the case of a General Court Martial or a Disciplinary Court Martial, appoints its members [s. 165.19]
- provides that the Court Martial Administrator performs other duties under the *Act* or prescribed in regulations by the Governor in Council [s. 165.19]
- provides that the Court Martial Administrator acts under the general supervision of the Chief Military Judge [s. 165.19]
- provides that the duties and functions of the Court Martial Administrator may be performed by any person authorized by the Court Martial Administrator [s. 165.2]
- sets out the qualifications, terms of office duties and functions of military judges including that a military judge
  - must be an officer who is a barrister or advocate of at least ten years standing at the bar of a province [s. 165.21]
  - holds office during good behaviour for a term of five years [s. 165.21]
  - is appointed by the Governor in Council and may be removed by the Governor in Council for cause on the recommendation of an Inquiry Committee established under regulations made by the Governor in Council [s. 165.21]

Reasons for the change

Prosecutorial independence is a basic element in protecting the integrity of the criminal process. Currently the military prosecutor is the direct agent of the senior military authority who convenes courts martial and has no independent authority to amend charges or proceed or not proceed to trial. Providing for the appointment of a Director of Military Prosecutions, under the general supervision of the Judge Advocate General, with security of tenure, who will be responsible for the prosecution of all charges to be tried by court martial, will provide greater assurance that prosecutorial discretion will be exercised free of inappropriate influences. [ss. 165.1 to 165.17]

At present, the members of courts martial are appointed by the Chief Military Judge. This administrative duty may be perceived as conflicting with the judicial duties of the Chief Military Judge. This amendment provides for the appointment of a Court Martial Administrator who will be responsible for convening courts martial, appointing members of the court martial panel and other functions under this *Act* and prescribed in regulations. [ss. 165.18 to 165.2]

The provisions dealing with military judges establish a solid statutory basis for the independence of military judges. [ss. 165.21 to 165.27]

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Powers of Inquiry Committee

(2.1) The Inquiry Committee is deemed to have the powers of a court martial.

(2.1) Le comité d'enquête est réputé avoir les pouvoirs d'une cour martiale.

Pouvoirs du comité d'enquête

Re-appointment

(3) A military judge is eligible to be re-appointed on the expiry of a first or subsequent term of office on the recommendation of a Renewal Committee established under regulations made by the Governor in Council.

(3) Le mandat des juges militaires est renouvelable sur recommandation d'un comité d'examen établi par règlement du gouverneur en conseil.

Nouveau mandat

Retirement age

(4) A military judge ceases to hold office on reaching the retirement age prescribed by the Governor in Council in regulations.

(4) Le juge militaire cesse d'occuper sa charge dès qu'il atteint l'âge fixé par règlement du gouverneur en conseil pour la retraite.

Âge de la retraite

Remuneration

165.22 (1) The rates and conditions of issue of pay of military judges shall be prescribed by the Treasury Board in regulations.

165.22 (1) Les taux et conditions de versement de la solde des juges militaires sont fixés par règlement du Conseil du Trésor.

Rémunération

Review of remuneration

(2) The remuneration of military judges shall be reviewed regularly by a Compensation Committee established under regulations made by the Governor in Council.

(2) La rémunération des juges militaires est révisée régulièrement par un comité établi à cette fin par règlement du gouverneur en conseil.

Révision de la rémunération

Judicial duties and functions

165.23 (1) Military judges shall preside at courts martial and shall perform other judicial duties under this Act that are required to be performed by military judges.

165.23 (1) Les juges militaires président les cours martiales et exercent les autres fonctions judiciaires qui leur sont conférées sous le régime de la présente loi.

Fonctions

Other duties and functions

(2) In addition to their judicial duties, military judges shall perform any other duties that the Chief Military Judge may direct, but those other duties may not be incompatible with their judicial duties.

(2) Ils exercent en outre toute autre fonction que leur confie le juge militaire en chef et qui n'est pas incompatible avec leurs fonctions judiciaires.

Fonctions additionnelles

Boards of inquiry

(3) Military judges may, with the concurrence of the Chief Military Judge, be appointed as a board of inquiry.

(3) Ils peuvent, avec l'agrément du juge militaire en chef, être nommés pour agir à titre de commission d'enquête.

Commission d'enquête

Chief Military Judge

Juge militaire en chef

Chief Military Judge

165.24 The Governor in Council may designate a military judge to be the Chief Military Judge.

165.24 Le gouverneur en conseil peut nommer, parmi les juges militaires, un juge militaire en chef.

Juge militaire en chef

Duties and functions

165.25 The Chief Military Judge assigns military judges to preside at courts martial and to perform other judicial duties under this Act.

165.25 Le juge militaire en chef désigne un juge militaire pour chaque cour martiale et lui confie les fonctions judiciaires prévues sous le régime de la présente loi.

Attributions

Acting Chief Military Judge

165.26 The Chief Military Judge may authorize any military judge to perform the duties and functions of the Chief Military Judge.

165.26 Le juge militaire en chef peut autoriser un juge militaire à assurer l'intérim de ses fonctions.

Juge en chef intérimaire

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- sets out the qualifications, terms of office duties and functions of military judges including that a military judge
  - must be an officer who is a barrister or advocate of at least ten years standing at the bar of a province [s. 165.21]
  - holds office during good behaviour for a term of five years [s. 165.21]
  - is appointed by the Governor in Council [s. 165.21]
  - may be removed by the Governor in Council for cause on the recommendation of an Inquiry Committee, established under regulations made by the Governor in Council, and which is deemed to have the powers of a court martial [s. 165.21]
  - has rates and conditions of issue of pay prescribed by regulation by the Treasury Board and reviewed regularly by a Compensation Committee [s. 165.22]
  - presides at courts martial and may perform other duties as directed by Chief Military Judge, including being appointed as a board of inquiry [s. 165.23]
- authorizes the Governor in Council to designate a military judge to be the Chief Military Judge [s. 165.24]
- provides that the Chief Military Judge assigns military judges to preside at courts martial [s. 165.25]
- provides that the Chief Military Judge may authorize any military judge to perform the duties and functions of the Chief Military Judge [s. 165.26]

Reasons for the change

The provisions dealing with military judges establish a solid statutory basis for the independence of military judges. [ss. 165.21 to 165.27]

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Delegation

165.27 The Chief Military Judge may delegate any of the Chief Military Judge's duties and functions to a military judge.

Délégation

165.27 Le juge militaire en chef peut déléguer à un juge militaire les pouvoirs et fonctions que lui attribue la présente loi.

General Courts Martial

Cour martiale générale

Jurisdiction

166. A General Court Martial may try any person who is liable to be charged, dealt with and tried on a charge of having committed a service offence.

Compétence

166. La cour martiale générale a compétence en matière d'infractions d'ordre militaire imputées aux personnes justiciables du code de discipline militaire.

Composition

167. (1) A General Court Martial is composed of a military judge and a panel of five members.

Composition

167. (1) La cour martiale générale se compose d'un juge militaire et d'un comité de cinq membres.

Rank of senior member

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

Membre le plus haut gradé

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

Rank for trial of officer

(3) If the accused person is an officer, all of the members of the panel must be officers.

Procès d'un officier

(3) Lorsque l'accusé est un officier, le comité n'est composé que d'officiers.

Ranks for trial of brigadier-general or above

(4) If the accused person is of or above the rank of brigadier-general, 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 colonel.

Procès d'un brigadier-général

(4) Lorsque l'accusé est un brigadier-général ou un officier d'un grade supérieur, le plus haut gradé des membres détient un grade au moins égal au sien et les autres membres détiennent au moins le grade de colonel.

Rank for trial of colonel

(5) If the accused person is of the rank of colonel, all of the members of the panel, except the senior member, must be of or above the rank of lieutenant-colonel.

Procès d'un colonel

(5) Lorsque l'accusé est un colonel, tous les membres, sans compter le plus haut gradé, détiennent au moins le grade de lieutenant-colonel.

Rank for trial of lieutenant-colonel

(6) If the accused person is of the rank of lieutenant-colonel, at least two of the members of the panel must be of or above the rank of lieutenant-colonel.

Procès d'un lieutenant-colonel

(6) Lorsque l'accusé est un lieutenant-colonel, au moins deux des membres détiennent un grade au moins égal au sien.

Rank for trial of non-commissioned member

(7) If the accused person is a non-commissioned member, two non-commissioned members who are of the rank of warrant officer or above must be appointed as members of the panel and the other three members must be officers.

Procès d'un militaire du rang

(7) Lorsque l'accusé est un militaire du rang, trois membres sont des officiers et les deux autres détiennent au moins le grade d'adjudant.

Ineligibility to serve

168. None of the following persons may sit as a member of the panel of a General Court Martial:

(*a*) an officer or non-commissioned member who is a lawyer or notary;

(*b*) a witness for the prosecution or the accused person;

(*c*) the commanding officer of the accused person;

Inhabilité à siéger

168. Ne peuvent être membres du comité de la cour martiale générale :

a) les officiers ou militaires du rang qui sont avocats ou notaires;

b) les témoins;

c) le commandant de l'accusé;

d) les officiers ou militaires du rang nommés sous le régime de l'article 156;

e) les officiers d'un grade inférieur à celui de capitaine;

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	Continued

What the amendment does

- authorizes the Chief Military Judge to delegate any of his or her duties to a military judge [s. 165.27]
- provides that a General Court Martial may try any person liable to be charged and tried for a service offence [s. 166]
- replaces the terms "visées à la partie IV" with the terms "justiciables du code de discipline militaire" in the French version of the *Act* [s. 166]
- provides that a General Court Martial is composed of a military judge and a panel of five members [s. 167]
- replaces references to the "president" of a General Court Martial with references to the "senior member" [s. 167]
- sets out the required composition of a General Court Martial if the accused is an officer [s. 167]
- provides that if the accused is a non-commissioned member, two non-commissioned members who are of the rank of warrant officer or above must be appointed as members of the panel and that the other three members must be officers [subs. 167(7)]
- removes from the list of persons who are ineligible to serve on a General Court Martial
  - the officer who convened the court martial
  - the officer who appointed the members of the court martial
  - the prosecutor
  - a provost officer [s. 168]
- adds to the list of persons who are ineligible to serve on a General Court Martial
  - an officer or non-commissioned member who is a lawyer or a notary
  - an officer or non-commissioned member appointed under s. 156 (military police)
  - members of any armed force who are attached, seconded or on loan to the Canadian Forces [s. 168]

Reasons for the change

The provisions dealing with military judges establish a solid statutory basis for the independence of military judges. [ss. 165.21 to 165.27]

The jurisdiction of General Courts Martial, presently contained in section 166 of the *Act*, remains unchanged. [s. 166]

Specifically including a military judge as a member of a General Court Martial puts in statutory form what is current practice. [s. 167]

Currently only officers may sit as members of a General Court Martial panel. By authorizing senior non-commissioned members to sit as members of a panel where the accused is a non-commissioned member, panels will better represent the personnel responsible for the maintenance of discipline, efficiency and morale. [subs. 167(7)]

The references to the officers who convened the court martial and who appointed the members of the court martial are being deleted from the list of persons who are ineligible to sit on a court martial because duties related to the convening of courts martial are being transferred from the chain of command to a Court Martial Administrator. The prosecutor will be excluded under paragraph 168(a) since the prosecutor will be a Canadian Forces member who is a lawyer. A provost officer is covered under the more precise reference to military police under paragraph 168(d) as "an officer or non-commissioned member appointed under section 156". Members of any armed forces attached to the Canadian Forces are being excluded to reflect current practice. The exclusion of all members who are lawyers or notaries is consistent with provincial jury statutes. The exclusion of members of the military police who are appointed under s. 156 is necessary given their involvement in the military justice system. [s. 168]

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(*d*) an officer or non-commissioned member appointed for the purposes of section 156;

(*e*) an officer below the rank of captain;

(*f*) any person who, before the court martial, participated in any investigation respecting the matters on which a charge against the accused person is founded; or

(*g*) an officer or non-commissioned member of any armed force who is attached, seconded or on loan to the Canadian Forces.

f) quiconque, avant le procès en cour martiale, a participé à une enquête concernant les questions sur lesquelles se fonde l'accusation;

g) les officiers ou militaires du rang appartenant à d'autres forces armées et affectés ou prêtés aux Forces canadiennes, ou détachés auprès d'elles.

Disciplinary Courts Martial

Cour martiale disciplinaire

Jurisdiction

169. A Disciplinary Court Martial may try any officer of or below the rank of major or any non-commissioned member who is liable to be charged, dealt with and tried on a charge of having committed a service offence.

Compétence

169. La cour martiale disciplinaire a compétence en matière d'infractions d'ordre militaire imputées aux officiers détenant un grade inférieur à celui de lieutenant-colonel et aux militaires du rang justiciables du code de discipline militaire.

Composition

170. (1) A Disciplinary Court Martial is composed of a military judge and a panel of three members.

Composition

170. (1) La cour martiale disciplinaire se compose d'un juge militaire et d'un comité de trois membres.

Rank of senior member

(2) The senior member of the panel must be an officer of or above the rank of major or of or above any higher rank that may be prescribed by the Governor in Council in regulations.

Membre le plus haut gradé

(2) Le plus haut gradé des membres du comité détient au moins soit le grade de major, soit le grade supérieur fixé par règlement du gouverneur en conseil.

Rank for trial of officer

(3) If the accused person is an officer, all of the members of the panel must be officers.

Procès d'un officier

(3) Lorsque l'accusé est un officier, le comité n'est composé que d'officiers.

Rank for trial of non-commissioned member

(4) If the accused person is a non-commissioned member, one of the members of the panel must be a non-commissioned member who is of the rank of warrant officer or above and the other two members must be officers.

Procès d'un militaire du rang

(4) Lorsque l'accusé est un militaire du rang, le comité est composé de deux officiers et d'un militaire du rang détenant au moins le grade d'adjudant.

Ineligibility to serve

171. None of the following persons may sit as a member of the panel of a Disciplinary Court Martial:

(*a*) an officer or non-commissioned member who is a lawyer or notary;

(*b*) a witness for the prosecution or for the accused person;

(*c*) the commanding officer of the accused person;

(*d*) an officer or non-commissioned member appointed for the purposes of section 156;

Inhabilité à siéger

171. Ne peuvent être membres du comité de la cour martiale disciplinaire :

a) les officiers ou militaires du rang qui sont avocats ou notaires;

b) les témoins;

c) le commandant de l'accusé;

d) les officiers ou militaires du rang nommés sous le régime de l'article 156;

e) les élèves-officiers;

f) quiconque, avant le procès devant la cour martiale disciplinaire, a participé à une

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	Continued

What the amendment does

- removes from the list of persons who are ineligible to serve on a General Court Martial
  - the officer who convened the court martial
  - the officer who appointed the members of the court martial
  - the prosecutor
  - a provost officer [s. 168]
- adds to the list of persons who are ineligible to serve on a General Court Martial
  - an officer or non-commissioned member who is a lawyer or a notary
  - an officer or non-commissioned member appointed under s. 156 (military police)
  - members of any armed force who are attached, seconded or on loan to the Canadian Forces [s. 168]
- provides that a Disciplinary Court Martial may try any officer of or below the rank of major or any non-commissioned member for a service offence [s. 169]
- provides that a Disciplinary Court Martial be composed of a military judge and three members and sets out its composition where the accused is an officer or a non-commissioned member [s. 170]
- requires that the senior member of the panel be an officer of or above the rank of major or of or above such rank as may be prescribed in regulations [s. 170]
- requires that a panel for a non-commissioned accused have one non-commissioned member of the rank of warrant officer or above [s. 170]
- removes from the list of persons who are ineligible to serve on a Disciplinary Court Martial
  - the officer who convened the court martial
  - the officer who appointed members of the court martial
  - the prosecutor
  - a provost officer [s. 171]
- adds to the list of persons who are ineligible to serve on a Disciplinary Court Martial
  - an officer or non-commissioned member who is a lawyer or a notary
  - an officer or non-commissioned member appointed under s. 156 (military police)
  - an officer cadet
  - members of any armed force who are attached, seconded or on loan to the Canadian Forces [s. 171]

Reasons for the change

The references to the officers who convened the court martial and who appointed the members of the court martial are being deleted from the list of persons who are ineligible to sit on a court martial because duties related to the convening of courts martial are being transferred from the chain of command to a Court Martial Administrator. The prosecutor will be excluded under paragraph 168(a) and 171(a) since the prosecutor will be a Canadian Forces member who is a lawyer. A provost officer is covered under the more precise reference to military police under paragraph 168(d) and 171(d) as "an officer or non-commissioned member appointed under section 156". Members of any armed forces attached to the Canadian Forces are being excluded to reflect current practice. The exclusion of all members who are lawyers or notaries is consistent with provincial jury statutes. The exclusion of members of the military police who are appointed under s. 156 is necessary given their involvement in the military justice system. [s. 168 and s. 171]

The jurisdiction of a Disciplinary Courts Martial, presently contained in section 171 of the *Act*, has been changed to reflect its actual jurisdiction, now contained in regulations. [s. 169]

Currently only officers may sit as members of a Disciplinary Court Martial panel. By authorizing non-commissioned members to sit as members of a panel where the accused is a non-commissioned member, panels will better represent the personnel responsible for the maintenance of discipline, efficiency and morale. [subs. 170(4)]

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(*e*) an officer cadet;

(*f*) any person who, before the court martial, participated in any investigation respecting the matters on which a charge against the accused person is founded; or

(*g*) an officer or non-commissioned member of any armed force who is attached, seconded or on loan to the Canadian Forces.

enquête concernant les questions sur lesquelles se fonde l'accusation;

g) les officiers ou militaires du rang appartenant à d'autres forces armées et affectés ou prêtés aux Forces canadiennes, ou détachés auprès d'elles.

Punishment limitation

172. A Disciplinary Court Martial may not pass a sentence that includes a punishment higher in the scale of punishments than dismissal with disgrace from Her Majesty's service.

Restriction quant à la peine

172. La peine maximale que la cour martiale disciplinaire peut infliger dans sa sentence est la destitution ignominieuse du service de Sa Majesté.

Standing Courts Martial

Cour martiale permanente

Jurisdiction

173. A Standing Court Martial may try any officer or non-commissioned member who is liable to be charged, dealt with and tried on a charge of having committed a service offence.

Compétence

173. La cour martiale permanente a compétence en matière d'infractions d'ordre militaire imputées aux officiers et militaires du rang justiciables du code de discipline militaire.

Composition

174. Every military judge is authorized to preside at a Standing Court Martial, and a military judge who does so constitutes the Standing Court Martial.

Composition

174. La cour martiale permanente est constituée par un seul juge militaire.

Punishment limitation

175. A Standing Court Martial may not pass a sentence that includes a punishment higher in the scale of punishments than dismissal with disgrace from Her Majesty's service.

Restriction quant à la peine

175. La peine maximale que la cour martiale permanente peut infliger dans sa sentence est la destitution ignominieuse du service de Sa Majesté.

Special General Courts Martial

Cour martiale générale spéciale

Jurisdiction

176. A Special General Court Martial may try any person, other than an officer or non-commissioned member, who is liable to be charged, dealt with and tried on a charge of having committed a service offence.

Compétence

176. La cour martiale générale spéciale a compétence en matière d'infractions d'ordre militaire imputées aux personnes justiciables du code de discipline militaire, à l'exception des officiers et militaires du rang.

Composition

177. Every military judge is authorized to preside at a Special General Court Martial, and a military judge who does so constitutes the Special General Court Martial.

Composition

177. La cour martiale générale spéciale est constituée par un seul juge militaire.

Punishment limitation

178. A Special General Court Martial may only pass a sentence that includes a punishment of imprisonment or a fine.

Restriction quant à la peine

178. La cour martiale générale spéciale ne peut infliger que l'emprisonnement ou l'amende.

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- removes the power to make regulations limiting the punishment that may be awarded by a Disciplinary Court Martial [present s. 172]
- provides that a Standing Court Martial may try any an officer or non-commissioned member for a service offence [s. 173]
- authorizes a military judge to preside at and constitute a Standing Court Martial [s. 174]
- makes stylistic changes and provides that the Standing Court Martial may not pass a sentence that includes a punishment higher in the scale of punishments than dismissal with disgrace [s. 175]
- provides that a Special General Court Martial may try any person, other than a Canadian Forces member, for a service offence [s. 176]
- authorizes a military judge to preside at and constitute a Special General Court Martial [s. 177]
- removes the Minister's power to designate the judge of a superior court to be a Special General Court Martial [present s. 178]
- restricts the punishments which may be awarded in a sentence by a Special General Court Martial to a fine or imprisonment [s. 178]

Reasons for the change

The amendment to section 172 ensures that the maximum punishment that may be imposed by a Disciplinary Court Martial is fixed by statute. [s. 172]

The jurisdiction of a Standing Court Martial, presently contained in section 177 of the *Act*, was subject to limitations prescribed in regulations. The amendment authorizes the trial of any officer or non-commissioned member by military judge alone. [ss. 173 and 174]

The description of the person presiding at a Standing Court Martial as a military judge is consistent with the use of "military judge" throughout the amendments to the *Code of Service Discipline*. [s. 174]

The maximum punishment that may be awarded by a Standing Court Martial has been increased from imprisonment for less than two years to dismissal with disgrace for consistency with that of a Disciplinary Courts Martial. [s. 175]

The jurisdiction of a Special General Court Martial, presently contained in section 178 of the *Act*, remains unchanged. [s. 176]

The description of the person presiding at a Special General Court Martial as a military judge is consistent with the use of "military judge" throughout the amendments to the *Code of Service Discipline*. [s. 177]

Many of the Minister's quasi-judicial roles and discretionary oversight duties are being eliminated. The assignment of judges to preside at courts martial will be handled by the Chief Military Judge. The appointment of judges will be by the Governor in Council. [present s. 178]

The punishments that may be imposed by a Special General Court Martial, imprisonment and a fine, are currently set out in regulations and not in the *Act*. [s. 178]

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Powers

Courts martial

179. (1) A court martial has the same powers, rights and privileges 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, including the power to punish for contempt.

Military judges

(2) Subsection (1) applies to a military judge performing a judicial duty under this Act other than presiding at a court martial.

43. (1) Subsection 180(1) of the English version of the Act is replaced by the following:

Trials public

180. (1) Subject to subsections (2) and (3), courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the proceedings.

1992, c. 16, s. 8

(2) Subsections 180(2) to (4) of the Act are replaced by the following:

Exception

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

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

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

Witnesses

(3) Witnesses are not to be admitted to the proceedings of a court martial except when under examination or by specific leave of the court martial.

Clearing court

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

44. Subsections 183(1) to (3) of the Act are replaced by the following:

Pouvoirs

Cour martiale

179. (1) La cour martiale 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 toutes autres questions relevant de sa compétence, les mêmes attributions qu'une cour supérieure de juridiction criminelle, notamment le pouvoir de punir l'outrage au tribunal.

Juge militaire

(2) Chaque juge militaire a ces mêmes attributions pour l'exercice des fonctions judiciaires que lui confie la présente loi, sauf lorsqu'il préside une cour martiale.

43. (1) Le paragraphe 180(1) de la version anglaise de la même loi est remplacé par ce qui suit :

Trials public

180. (1) Subject to subsections (2) and (3), courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the proceedings.

1992, ch. 16, art. 8

(2) Les paragraphes 180(2) à (4) de la même loi sont remplacés par ce qui suit :

Exception

(2) Lorsqu'elle le juge nécessaire soit dans l'intérêt de la sécurité publique, de la défense ou de la moralité publique, soit dans l'intérêt du maintien de l'ordre ou de la bonne administration de la justice militaire, la cour martiale peut ordonner le huis clos total ou partiel.

Témoins

(3) Les témoins ne sont admis en cour martiale que pour interrogatoire ou avec sa permission expresse.

Évacuation de la salle

(4) La cour martiale peut ordonner l'évacuation de la salle d'audience pour ses délibérations.

44. Les paragraphes 183(1) à (3) de la même loi sont remplacés par ce qui suit :

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Clause 42	*Amends sections 158 to 179, adds new sections 158.1 to 158.6, 159.1 to 159.9, 161.1, 162.1 to 162.3. 163.1, 164.1 and 164.2, 165.11 to 165.27*	**Continued**

What the amendment does

- provides a court martial with the same powers, rights and privileges as are vested in a superior court of criminal jurisdiction and extends those powers to a military judge performing a judicial duty under the *Act* other than presiding at a court martial [s. 179]

Reasons for the change

Section 179 will more closely align the powers of courts martial to control proceedings and exercise contempt powers with those of civilian courts. [s. 179]

Clause 43	*Amends subsection 180(1) of the English version and subsections 180(2) to (4)*	

What the amendment does

- replaces the word "trial" with the word "proceedings" [subs180(1)]
- substitutes "court martial" for the president of a court martial as the authority who decides to exclude the public during the whole or part of a trial or to clear the court during any deliberation [subs. 180(2) and (4)]
- adds the maintenance of order or the proper administration of justice as reasons for exclusion of the public from a court martial [subs. 180(2)]
- deletes a reference to the prosecutor, the accused and his representative [subs. 180(3)]

Reasons for the change

The change in wording in subsection 180(1) clarifies that the public is allowed access to a court martial throughout its proceedings, including pre-trial motions, and not only after the trial has begun. [subs. 180(1)]

The authority of the president of a court martial to make what would, in criminal law, be considered judicial decisions is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. The reasons for excluding the public are being changed to more clearly reflect the practice in civil criminal courts under the *Criminal Code*. [subs. 180(2) and (4)]

The amendment to subsection (3) is a technical change. The prosecutor and accused are presently specifically excluded from the prohibition on witnesses being present during the trial. Since neither the prosecutor nor the accused are considered witnesses, this exclusion is unnecessary.

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Procurement of attendance of witnesses

183. (1) The commanding officer of an accused person shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured.

Citation des témoins

183. (1) Le commandant de l'accusé doit prendre les mesures nécessaires pour faire comparaître les témoins dont le procureur de la poursuite et l'accusé demandent la citation et dont la présence ne pose pas de problèmes excessifs eu égard aux exigences du service.

Exception

(1.1) Nothing in subsection (1) requires the procurement of the attendance of any witness, the request for whose attendance is considered by the commanding officer to be frivolous or vexatious.

Exception

(1.1) Il n'est toutefois pas tenu de faire comparaître les témoins dont il juge la demande de citation futile ou vexatoire.

Procurement of attendance in exceptional cases

(2) Where a commanding officer considers to be frivolous or vexatious a request by the accused person for the attendance of a witness whose attendance, having regard to the exigencies of the service, can reasonably be procured, the attendance of that witness shall be procured if the accused person pays in advance the fees and expenses of the witness in accordance with section 251.2.

Citation de témoins dans des cas exceptionnels

(2) Cependant, lorsque la chose ne pose pas de problèmes excessifs eu égard aux exigences du service, il doit être acquiescé à la demande jugée futile ou vexatoire de l'accusé de citer un témoin à comparaître pourvu que l'accusé acquitte d'avance les frais de comparution du témoin prévus à l'article 251.2.

Reimbursement of accused for fees and expenses

(3) Where the evidence of a witness whose attendance is procured under subsection (2) proves to be relevant and material at the trial, the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses paid to the witness.

Remboursement de l'accusé

(3) Si, au procès, la déposition du témoin se révèle pertinente et substantielle, la cour martiale ordonne que l'accusé soit remboursé des frais exposés pour la comparution de ce témoin.

45. (1) Subsection 184(1) of the Act is replaced by the following:

45. (1) Le paragraphe 184(1) de la même loi est remplacé par ce qui suit :

Appointment of commissioner to take evidence

184. (1) The Chief Military Judge, or any military judge designated by the Chief Military Judge, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take, under oath, the evidence of any person required as a witness at a court martial

(*a*) who is, by reason of physical disability arising out of illness, not likely to be able to attend at the time the trial is held;

(*b*) who is absent from the country in which the trial is held; or

(*c*) whose attendance is not readily obtainable for a good and sufficient reason.

Nomination d'un commissaire

184. (1) Le juge militaire en chef ou le juge militaire qu'il désigne peut charger une personne compétente — officier ou non —, appelée « commissaire » au présent article, de recueillir le témoignage, sous serment, d'un témoin lorsque, selon le cas :

a) celui-ci se trouvera vraisemblablement dans l'impossibilité d'être présent au moment du procès en raison d'une incapacité physique résultant d'une maladie;

b) il est absent du pays où le procès a lieu;

c) il paraît difficile d'obtenir sa comparution pour toute autre cause valable et suffisante.

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

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

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Clause 44	*Amends subsection 183(1) to (3)*	

What the amendment does

- removes references to the convening authority and the president of a court martial, where these entities
  - are required to take all necessary action to procure the attendance of witnesses
  - may determine that a request for attendance of a witness is frivolous or vexatious
  - must order that the accused be reimbursed for the fees and expenses he or she paid personally to a witness [subs 183(1) to (3)]
- redrafts the closing words of subsection (1) as new subsection (1.1)
- adds a reference to a new provision dealing with witness fees and allowances [subs. 183(2)]

Reasons for the change

The authority of the president of a court martial to make what would, in criminal practice, be considered judicial decisions, is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge.

The reference to "convening authority" is being deleted because duties related to the convening of courts martial are being transferred from the convening authorities in the chain of command to a Court Martial Administrator.

Clause 45	*Amends subsections 184(1) and (3)*	

What the amendment does

- replaces a reference to the president of a court martial with a reference to the court martial itself [subs. 184(3)]

Reasons for the change

The authority of the president of a court martial to make what would, in criminal practice, be considered judicial decisions, is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. [subs. 184(3)]

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Power to require personal attendance of witness

(3) Where, in the opinion of a court martial, a witness whose evidence has been taken on commission should, in the interests of 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.

Comparution des témoins en personne

(3) Lorsque, à son avis, un témoin dont la déposition a été recueillie par commission rogatoire devrait, dans l'intérêt de la justice, déposer devant la cour martiale, celle-ci peut exiger sa comparution si le témoin n'est pas trop malade pour se rendre au procès et ne se trouve pas hors du pays où le procès a lieu.

1992, c. 16, ss. 9 to 11

46. The heading before section 186 and sections 186 to 194 of the Act are replaced by the following:

1992, ch. 16, art. 9 à 11

46. L'intertitre précédant l'article 186 et les articles 186 à 194 de la même loi sont remplacés par ce qui suit :

Objections

186. (1) When a court martial is assembled, the names of the military judge and the members, if any, must be read to the accused person and the prosecutor, who shall then be asked if they object to the constitution of the court martial and, in the event of an objection, the decision as to whether to allow the objection is to be made in accordance with the procedure prescribed in regulations.

Récusation

186. (1) Dès que la cour martiale commence à siéger, les noms du juge militaire et, le cas échéant, des membres du comité sont lus à l'accusé et au procureur de la poursuite auxquels il est demandé s'ils s'opposent à ce que l'un d'eux siège au procès; la recevabilité de la demande de récusation est décidée conformément à la procédure réglementaire.

Replacements

(2) The procedure for the replacement of a person in respect of whom an objection has been allowed shall be as prescribed in regulations.

Remplacements

(2) Le remplacement du juge ou d'un membre récusé est effectué conformément à la procédure réglementaire.

Preliminary Proceedings

Procédures préliminaires

Preliminary proceedings

187. At any time after a General Court Martial or Disciplinary Court Martial is convened but before the panel of the court martial assembles, the military judge assigned to preside over the court martial may, on application,

(*a*) hear and determine any question, matter or objection for which the presence of the panel of the court martial is not required; and

(*b*) receive the accused person's plea of guilty in respect of any charge and, if there are no other charges remaining before the court martial to which pleas of not guilty have been recorded, determine the sentence.

Procédures préliminaires

187. À tout moment après la convocation de la cour martiale générale ou la cour martiale disciplinaire et avant que le comité de la cour martiale ne commence à siéger, le juge militaire la présidant peut, sur demande :

a) entendre et statuer sur toute question ou objection pour laquelle il a le pouvoir d'entendre seul;

b) accepter le plaidoyer de culpabilité de l'accusé à l'égard d'une accusation et, lorsque celui-ci n'a pas plaidé non coupable à l'égard d'autres accusations, décider de la sentence.

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Clause 45	*Amends subsections 184(1) and (3)*	Continued

What the amendment does

- replaces a reference to the president of a court martial with a reference to the court martial itself [subs. 184(3)]

Reasons for the change

The authority of the president of a court martial to make what would, in criminal practice, be considered judicial decisions, is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. [subs. 184(3)]

Clause 46	*Amends the heading before section 186 and sections 186 to 194*	

What the amendment does

- removes references to the President of a court martial [ss. 186, 188 to 190]
- authorizes the military judge, in the absence of the court martial panel, to deal with preliminary matters, and to sentence an accused if the accused has pleaded guilty [s. 187]

Reasons for the change

The authority of the president and members of a court martial to make what would, in criminal practice, be considered judicial decisions is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. [ss. 186, 188 to 190, 194]

Providing for a judge to hear preliminary motions after charges are laid but before the court assembles prevents the delays and inconvenience involved in requiring the full panel to assemble and then wait while these issues are resolved. [s. 187]

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Amendment of Charges

Amendment if defence not prejudiced

188. (1) Where it appears to a court martial that there is a technical defect in a charge that does not affect the substance of the charge, the court martial, if of the opinion that the conduct of the accused person's defence will not be prejudiced by an amendment of the charge, shall make the order for the amendment of the charge that it considers necessary to meet the circumstances of the case.

Adjournment on amendment of charge

(2) Where a charge is amended by a court martial, the court martial shall, if the accused person so requests, adjourn its proceedings for any period that it considers necessary to enable the accused person to meet the charge so amended.

Minute of amendment

(3) Where a charge is amended by a court martial, a minute of the amendment shall be endorsed on the charge sheet.

Adjournments

Adjournment

189. A court martial may adjourn its proceedings whenever the court martial considers adjournment desirable.

Views

Authority for viewing

190. A court martial may view any place, thing or person.

Decisions by General or Disciplinary Court Martial

Questions of law

191. The military judge presiding at a General Court Martial or a Disciplinary Court Martial determines all questions of law or mixed law and fact arising before or after the commencement of the trial.

Decisions of panel

192. (1) The members of the panel of a General Court Martial or a Disciplinary Court Martial determine the court martial's finding and its decision in respect of any other matter or question arising after the commencement of the trial that is not a question of law or mixed law and fact.

Majority vote

(2) The decisions of the panel of a General Court Martial or a Disciplinary Court Martial are determined by the vote of a majority of its members.

Modification des accusations

Modification ne lésant pas la défense

188. (1) Lorsqu'elle constate l'existence d'un vice de forme qui ne touche pas au fond de l'accusation, la cour martiale doit, si elle juge que la défense de l'accusé ne sera pas compromise par cette décision, ordonner que soit modifiée l'accusation et rendre l'ordonnance qu'elle estime nécessaire en l'occurrence.

Procédure

(2) En cas de modification de l'accusation, la cour martiale doit, si l'accusé en fait la demande, ajourner les procédures le temps qu'elle juge nécessaire pour permettre à celui-ci de répondre à l'accusation dans sa nouvelle forme.

Inscription de la modification

(3) La modification est consignée sur l'acte d'accusation.

Ajournements

Ajournement

189. La cour martiale peut ajourner les procédures chaque fois qu'elle le juge souhaitable.

Examen

Examen

190. La cour martiale peut visiter un lieu, examiner un objet ou rencontrer une personne.

Décisions par la cour martiale générale ou disciplinaire

Questions de droit

191. Le juge militaire qui préside la cour martiale générale ou la cour martiale disciplinaire statue sur les questions de droit ou sur les questions mixtes de droit et de fait survenant avant ou après l'ouverture du procès.

Décision du comité

192. (1) Le comité de la cour martiale générale et de la cour martiale disciplinaire décide du verdict et statue sur toute autre matière ou question, autre qu'une question de droit ou une question mixte de droit et de fait, survenant après l'ouverture du procès.

Majorité des membres

(2) Les décisions du comité se prennent à la majorité de ses membres.

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Clause 46	*Amends the heading before section 186 and sections 186 to 194*	Continued

What the amendment does

- removes references to the President of a court martial [ss. 186, 188 to 190]
- deletes present section 188
- makes stylistic changes in the French version of the *Act* [s. 189]
- replaces the term "judge advocate" with "judge presiding at the court martial" [s. 191]
- authorizes the military judge presiding at a General or Disciplinary Court Martial to determine questions of law or mixed law and fact, and the members of the panel to determine the findings and other matters [ss. 191 and 192]
- deletes present subsection 192(2) and section 193 of the *Act*

Reasons for the change

The authority of the president and members of a court martial to make what would, in criminal practice, be considered judicial decisions is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. [ss. 186, 188 to 190, 194]

The provisions dealing with the taking of oaths are now found in new sections 251.1 and 251.2. [present s. 188]

The term "judge advocate" is being replaced throughout the *Act* with "military judge" to accord more closely with practice at civil courts of criminal jurisdiction. [s. 191]

Subsection 192(2) requires an accused to be found not guilty when the votes of a court martial are equal. The provision is no longer required because amendments to sections 167 and 170 of the *Act* provide that the panel of a General Court Martial and a Disciplinary Courts Martial is composed of an odd number of members. The other two types of courts martial comprise a military judge sitting alone. [present subs. 192(2)]

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Sentence

193. The military judge presiding at a General Court Martial or a Disciplinary Court Martial determines the sentence.

Sentence

193. Le juge qui préside la cour martiale générale ou la cour martiale disciplinaire fixe la sentence.

Similar Offences

Infractions semblables

Similar offences may be considered in imposing sentence

194. (1) A court martial may, on the request of a person who is found guilty and who admits to having committed service offences similar in character to an offence of which the person is found guilty, take those service offences into consideration for the purposes of the sentence as if the person had been charged with, tried for and found guilty of those service offences.

Infractions semblables

194. (1) À la demande du contrevenant, la cour martiale peut tenir compte, en vue de la sentence à rendre, des autres infractions d'ordre militaire de nature semblable à celle dont le contrevenant a été déclaré coupable et dont il reconnaît être l'auteur comme s'il en avait été accusé, jugé et déclaré coupable.

Restriction

(2) If a court martial takes an admitted service offence into consideration for the purposes of the sentence, the sentence may not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the person is found guilty.

Sentence

(2) Le cas échéant, la sentence ne doit pas comporter de peine plus élevée que celle pouvant être infligée à l'égard de l'infraction dont le contrevenant a été déclaré coupable.

47. Section 196 of the Act and the heading before it are replaced by the following:

47. L'article 196 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :

Death or Incapacity

Décès ou incapacité en cours d'instance

Death or incapacity to continue of judge

196. (1) Where the military judge presiding at a court martial dies or is for any reason unable to continue, the proceedings of the court martial are deemed to be adjourned. The proceedings may be continued with another military judge, in this section referred to as the "replacement judge", assigned by the Chief Military Judge.

Décès ou incapacité du juge

196. (1) En cas de décès ou d'empêchement du juge militaire qui préside une cour martiale, l'instance est réputée ajournée. Elle peut être poursuivie devant un juge militaire suppléant désigné par le juge militaire en chef.

When finding not pronounced

(2) If the court martial has not pronounced its finding before the presiding military judge dies or becomes unable to continue, the replacement judge

(*a*) in the case of a General Court Martial or Disciplinary Court Martial, may order that the court martial

(i) continue from the stage at which it was when it was deemed to be adjourned, or

(ii) commence again, at the stage immediately following the plea of the accused person, as if no evidence had been taken; and

(*b*) in the case of a Standing Court Martial or Special General Court Martial, shall

Absence de verdict avant l'ajournement

(2) Lorsque la cour martiale n'a pas prononcé le verdict, le juge militaire suppléant :

a) dans un procès en cour martiale générale ou cour martiale disciplinaire, peut soit le poursuivre, soit le recommencer à l'étape suivant la réponse de l'accusé à l'accusation comme si aucune preuve n'avait été présentée;

b) dans un procès en cour martiale permanente ou cour martiale générale spéciale, doit le recommencer à l'étape suivant la réponse de l'accusé à l'accusation comme si aucune preuve n'avait été présentée.

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Clause 46	*Amends the heading before section 186 and sections 186 to 194*	Continued

What the amendment does

- deletes present subsection 192(2) and section 193 of the *Act*
- authorizes the military judge to determine the sentence at General and Disciplinary Courts Martial [s. 193]
- makes stylistic changes [s. 194]

Reasons for the change

The authority of the president and members of a court martial to make what would, in criminal practice, be considered judicial decisions is being transferred throughout the *Act* to the court martial and will be exercised by the presiding military judge. [ss. 186, 188 to 190, 194]

The deletion of section 193 is consequential to the elimination of the death penalty. [present s. 193]

This change is for clarity. [s. 194]

Clause 47	*Amends section 196 and the heading before it*	

What the amendment does

- deletes present section 196 of the *Act*
- provides that the proceedings of a court martial are deemed to be adjourned but may be continued with a replacement judge presiding if the original presiding judge dies or is unable to continue [s. 196]

Reasons for the change

The present section 196 authorizes a court martial to recommend clemency under certain circumstances, including where it has found a person guilty for an offence for which a punishment of death is mandatory. That provision is no longer required because the death penalty is being eliminated for service offences and because the military judge who presides at a court martial will determine the punishment when sentencing an accused. It is also inconsistent with civil criminal court practices to permit the military judge to recommend clemency. The accused will have a right to appeal the severity of the sentence.

The amendments dealing with the death or incapacity of the military judge presiding at a court martial complement existing provisions which deal with the death or incapacity of members of a court martial panel. [s. 196]

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commence the court martial again at the stage immediately following the plea of the accused person, as if no evidence had been taken.

Adjudications and evidence

(3) In the case of a court martial continued under subparagraph (2)(*a*)(i),

(*a*) if an adjudication was made before the adjournment but no order was made, the replacement judge shall make any order that is authorized by law and required in the circumstances; and

(*b*) if any evidence was adduced before the adjournment, the evidence is deemed to have been adduced before the replacement judge but, if the prosecutor and the accused so agree, any part of that evidence may be adduced again.

When finding pronounced

(4) If the court martial pronounced its finding before the presiding military judge died or became unable to continue, the replacement judge shall determine the sentence.

Dissolution when number of members reduced

196.1 (1) Where, after an accused person has made a plea but before the court martial pronounces its finding, a member of the panel of the court martial dies or is for any reason unable to continue to act, the court martial is dissolved.

Illness of accused

(2) Where, on account of the illness of an accused person, it is impossible to continue the trial of that person, the court martial is dissolved.

Unfit to stand trial

(3) Where a court martial finds, under subsection 198(2), that an accused person is unfit to stand trial and it completes the proceedings under subsection 200(2), the court martial is dissolved.

Effect of dissolution

(4) Where a court martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced.

1991, c. 43, s. 18

48. The headings before section 197 of the Act are replaced by the following:

Décision rendue avant l'ajournement

(3) Dans le cas où l'instance est poursuivie aux termes de l'alinéa 2*a*) :

a) si le juge devant qui elle a débuté a déjà rendu une décision, le juge militaire suppléant rend l'ordonnance que la loi autorise dans les circonstances;

b) la preuve présentée devant le juge devant qui l'instance a débuté est réputée avoir été présentée au juge militaire suppléant, à moins que le procureur de la poursuite et l'accusé ne consentent à la présenter de nouveau, en tout ou en partie.

Prononcé du verdict avant l'ajournement

(4) Dans le cas où la cour martiale a déjà prononcé le verdict, le juge militaire suppléant fixe la sentence.

Dissolution

196.1 (1) En cas de décès ou d'incapacité d'agir d'un membre du comité après la réponse à l'accusation mais avant le prononcé du verdict, la cour martiale est dissoute.

Maladie de l'accusé

(2) En cas de maladie de l'accusé rendant impossible la poursuite du procès, la cour martiale est dissoute.

Inaptitude à subir son procès

(3) Est dissoute la cour martiale qui décide, en vertu du paragraphe 198(2), que l'accusé est inapte à subir son procès et qui a complété les procédures en conformité avec le paragraphe 200(2).

Effet de la dissolution

(4) Lorsque la cour martiale a été dissoute en application du présent article, le procès, en ce qui concerne l'accusé, est censé ne pas avoir commencé.

1991, ch. 43, art. 18

48. Les intertitres précédant l'article 197 de la même loi sont remplacés par ce qui suit :

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Clause 47	*Amends section 196 and the heading before it*	Continued

What the amendment does

- provides that the proceedings of a court martial are deemed to be adjourned but may be continued with a replacement judge presiding if the original presiding judge dies or is unable to continue [s. 196]
- provides that a court martial is dissolved if a member of the panel dies or is unable to continue to act after the accused has made a plea but before the court martial pronounces its finding [s. 196.1]

Reasons for the change

The amendments dealing with the death or incapacity of the military judge presiding at a court martial complement existing provisions which deal with the death or incapacity of members of a court martial panel. [s. 196]

Section 196.1 was formerly subsections 190(2) to (5). The new section clarifies that the incapacity of any member of the panel after the accused has entered a plea will cause the court martial to be dissolved. [s. 196.1]

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DIVISION 7

MENTAL DISORDER

Interpretation

1991, c. 43, s. 18

49. Subsections 202.1(1) to (3) of the Act are replaced by the following:

Where Review Board or chairperson sends accused back to court martial

202.1 (1) Where a Review Board or the chairperson of a Review Board, in exercising a power under section 202.25, orders that the accused person be sent back to a court martial for trial of the issue of whether the accused person is fit to stand trial, the Review Board or chairperson shall, immediately after making the order, cause a copy of it to be sent to the Chief Military Judge.

Convening court martial

(2) On receipt of a copy of the order, the Chief Military Judge shall cause the Court Martial Administrator to convene a court martial to try the issue and make a finding of whether the accused person is fit to stand trial and, where the court martial finds the accused person fit, to try the accused person as if the issue had never arisen.

Custody in hospital

(3) Notwithstanding the opinion of a Review Board or the chairperson of a Review Board that an accused person is fit to stand trial, the Chief Military Judge or a military judge assigned by the Chief Military Judge may, on application, order the accused person to be detained in custody in a hospital or other appropriate place until a court martial makes a finding under subsection (2) if satisfied that there are reasonable grounds to believe that the accused person will become unfit to stand trial unless so detained.

1997, c. 18, s. 132

50. Subsection 202.12(1) of the Act is replaced by the following:

Prima facie case to be made every two years

202.12 (1) Where a finding of unfit to stand trial is made by a court martial in respect of an accused person, the Chief Military Judge shall cause the Court Martial Administrator to convene a Standing Court Martial, where the accused person is an officer or a non-commissioned member, or a Special General Court Martial in any other case, to hold an inquiry and determine whether sufficient admissible evidence can be adduced at that time to put the accused person on trial

SECTION 7

TROUBLES MENTAUX

Définitions

1991, ch. 43, art. 18

49. Les paragraphes 202.1(1) à (3) de la même loi sont remplacés par ce qui suit :

Renvoi de l'accusé devant une cour martiale

202.1 (1) La commission d'examen ou son président qui, dans l'exercice du pouvoir que leur confère l'article 202.25, ordonnent que l'accusé soit renvoyé devant une cour martiale pour que celle-ci détermine son aptitude à subir son procès sont tenus de faire sans délai parvenir une copie de l'ordonnance au juge militaire en chef.

Convocation de la cour martiale

(2) Dès qu'il reçoit la copie de l'ordonnance, le juge militaire en chef fait convoquer une cour martiale par l'administrateur de la cour martiale afin qu'elle se saisisse de la question et rende un verdict sur l'aptitude de l'accusé à subir son procès et, s'il est décidé que celui-ci est apte à le subir, qu'elle juge l'accusé comme si la question n'avait pas été soulevée.

Détention dans un hôpital

(3) Même si la commission d'examen ou son président sont d'avis que l'accusé est apte à subir son procès, le juge militaire en chef ou un juge militaire désigné par lui, s'il a des motifs raisonnables de croire que l'accusé deviendra inapte à subir son procès s'il n'est pas détenu, peut, sur demande, ordonner qu'il soit détenu dans un hôpital ou autre lieu indiqué jusqu'à ce que la cour martiale rende un verdict en conformité avec le paragraphe (2).

1997, ch. 18, art. 132

50. Le paragraphe 202.12(1) de la même loi est remplacé par ce qui suit :

Preuve *prima facie*

202.12 (1) Lorsqu'une cour martiale a déclaré un accusé inapte à subir son procès, le juge militaire en chef fait convoquer une cour martiale permanente par l'administrateur de la cour martiale, dans le cas d'un officier ou d'un militaire du rang, ou une cour martiale générale spéciale, dans les autres cas, pour qu'elle tienne une audition et détermine s'il existe toujours suffisamment d'éléments de preuve admissibles pour ordonner que l'accu-

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Clause 48	*Replaces the headings before section 197*	

What the amendment does

- replaces the heading "PART VII.1" with the heading "DIVISION 7"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. This amendment is consequential to those changes.

Clause 49	*Amends subsections 202.1(1) to (3)*	**Continued**

What the amendment does

- requires a Review Board or its chairperson to send a copy of an order under section 202.25 to the Chief Military Judge instead of the authority that convened the court martial [subs. 202.1(1)]
- replaces the reference to the convening authority and makes provision for the Chief Military Judge to direct the Court Martial Administrator to convene a court martial [subs. 202.1(2)]
- empowers the Chief Military Judge or a military judge assigned by him instead of the convening authority to order detention of an accused [subs. 202.1(3)]

Reasons for the change

At present, courts martial are convened by senior officers in the chain of command. To avoid potential conflicts of interest, amendments to the *Act* will authorize the Court Martial Administrator, who acts under the general supervision of the Chief Military Judge, to convene a court martial when requested to do so by the Director of Military Prosecutions. These amendments are consequential to these changes.

Clause 50	*Amends subsection 202.12(1)*	

What the amendment does

- replaces references to the "authority that convened the court martial" with the "Court Martial Administrator" or "Chief Military Judge"
- makes stylistic changes to the opening words of the subsection

Reasons for the change

At present, courts martial are convened by senior officers in the chain of command. To avoid potential conflicts of interest, amendments to the *Act* will authorize the Court Martial Administrator, who acts under the general supervision of the Chief Military Judge, to convene a court martial when requested to do so by the Director of Military Prosecutions.

Given that the determination of whether there is reason to doubt if there is a prima facie case against the accused is a judicial determination in criminal practice, it is being transferred from the convening authority to the Chief Military Judge.

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(*a*) not later than two years after that finding and every two years thereafter until the accused person is tried or found not guilty in respect of the offence; or

(*b*) at any other time that the Chief Military Judge may order, where the Chief Military Judge is satisfied on the basis of an application and any other written material submitted by the accused person that there is reason to doubt that there is a *prima facie* case against the accused person.

sé subisse son procès; il s'acquitte de cette obligation :

a) au plus tard deux ans après la détermination à l'égard de l'accusé de l'inaptitude à subir son procès et tous les deux ans par la suite jusqu'à ce qu'il subisse son procès à l'égard de l'infraction ou qu'il soit déclaré non coupable;

b) à tout autre moment qu'il peut décider s'il est convaincu, en se fondant sur la demande et les documents écrits que lui présente l'accusé, qu'il y a des motifs de douter qu'il existe toujours suffisamment d'éléments de preuve pour ordonner que l'accusé subisse son procès.

1991, c. 43, s. 18

51. (1) Paragraph 202.14(2)(*c*) of the Act is replaced by the following:

(*c*) any service tribunal or the Court Martial Appeal Court may consider the finding in considering an application for release pending appeal under Division 10 or in considering the dispositions to make or sentence to impose against that person for any other offence;

1991, ch. 43, art. 18

51. (1) L'alinéa 202.14(2)*c*) de la même loi est remplacé par ce qui suit :

c) un tribunal militaire ou la Cour d'appel de la cour martiale peut prendre en considération le verdict lors d'une demande de mise en liberté pendant l'appel en vertu de la section 10 ou lors de l'étude des décisions à prendre ou de la sentence à infliger à l'égard d'une autre infraction;

1991, c. 43, s. 18

(2) Paragraph 202.14(2)(*d*) of the Act is repealed.

1991, ch. 43, art. 18

(2) L'alinéa 202.14(2)*d*) de la même loi est abrogé.

1991, c. 43, s. 18

(3) Paragraph 202.14(2)(*e*) and (*f*) of the Act are replaced by the following:

(*e*) the finding may be considered in making an order under Division 3 in respect of that person;

(*f*) the finding may be considered in determining, under section 249.13 or 249.14, whether to substitute, mitigate, commute or remit a punishment included in a sentence imposed against that person for any other offence;

1991, ch. 43, art. 18

(3) Les alinéas 202.14(2)*e*) et *f*) de la même loi sont remplacés par ce qui suit :

e) le verdict peut être pris en considération dans la décision, sous le régime de la section 3, de maintenir sous garde ou de libérer la personne visée par le verdict;

f) le verdict peut être pris en considération lorsqu'il s'agit de déterminer, sous le régime des articles 249.13 ou 249.14, s'il y a lieu de procéder à une substitution, mitigation, commutation ou remise de toute peine comprise dans une sentence infligée à cette personne à l'égard d'une autre infraction;

1991, c. 43, s. 18

52. The portion of subsection 202.17(1) of the English version of the Act before paragraph (*a*) is replaced by the following:

Conditions for custody

202.17 (1) An accused person shall not be placed in custody pursuant to an assessment order made under this Division unless

1991, ch. 43, art. 18

52. Le passage du paragraphe 202.17(1) de la version anglaise de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Conditions for custody

202.17 (1) An accused person shall not be placed in custody pursuant to an assessment order made under this Division unless

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Clause 50	*Amends subsection 202.12(1)*	

What the amendment does

- replaces references to the "authority that convened the court martial" with the "Court Martial Administrator" or "Chief Military Judge"
- makes stylistic changes to the opening words of the subsection

Reasons for the change

At present, courts martial are convened by senior officers in the chain of command. To avoid potential conflicts of interest, amendments to the *Act* will authorize the Court Martial Administrator, who acts under the general supervision of the Chief Military Judge, to convene a court martial when requested to do so by the Director of Military Prosecutions.

Given that the determination of whether there is reason to doubt if there is a prima facie case against the accused is a judicial determination in criminal practice, it is being transferred from the convening authority to the Chief Military Judge.

Clause 51	*Amends paragraph 202.14(2)(c), repeals paragraph 202.14(2)(d), amends paragraphs 202.14(2)(e) and (f)*	

What the amendment does

- replaces the reference to "Part IX.1" and "Part VII" with "Division 10" and "Division 3" respectively
- repeals paragraph 202.14(2)(d)
- substitutes new section numbers for the cross-references to provisions dealing with substituting, mitigating, committing or remitting a sentence

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. The amendments to paragraphs (c) and (e) are consequential to those changes.

The repeal of paragraph (d) is consequential to the elimination of the requirement for military authorities to approve the imposition of certain punishments.

Clause 52	*Amends subsection 202.17(1)of the English version*	

What the amendment does

- replaces a reference to "Part" with a reference to "Division"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

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1991, c. 43, s. 18

53. Subsection 202.18(1) of the Act is replaced by the following:

53. Le paragraphe 202.18(1) de la même loi est remplacé par ce qui suit :

1991, ch. 43, art. 18

No custody or release orders during assessment

202.18 (1) During the period that an assessment order made under this Division is in force, no order may be made for custody or release from custody of the accused person under any provision of Division 3 or for release from detention or imprisonment under any provision of Division 10 in respect of that offence or an included offence.

Primauté du renvoi

202.18 (1) Pendant qu'une ordonnance d'évaluation rendue en vertu de la présente section est en vigueur, aucune des ordonnances prévues pour la détention préventive ou la remise en liberté par la section 3 ou pour la libération par la section 10 ne peut être rendue à l'égard de l'infraction qui est reprochée à l'accusé ou d'une infraction incluse.

1991, c. 43, s. 18

54. Paragraph 202.26(*d*) of the Act is replaced by the following:

54. L'alinéa 202.26*d*) de la même loi est remplacé par ce qui suit :

1991, ch. 43, art. 18

(*d*) a reference in section 754 of the *Criminal Code* to the Attorney General of the province in which the accused person was tried is deemed to be a reference to the Minister;

d) un renvoi, à l'article 754 du *Code criminel*, au procureur général de la province où l'accusé a été jugé s'entend d'un renvoi au ministre;

55. Section 203 of the Act and the headings before it are replaced by the following:

55. L'article 203 de la même loi et les intertitres le précédant sont remplacés par ce qui suit :

DIVISION 8

PROVISIONS APPLICABLE TO IMPRISONMENT AND DETENTION

SECTION 8

DISPOSITIONS APPLICABLES À L'EMPRISONNEMENT ET À LA DÉTENTION

56. The heading before section 204 of the Act is replaced by the following:

56. L'intertitre précédant l'article 204 de la même loi est remplacé par ce qui suit :

Computation of Term

Calcul de la peine

57. Subsections 204(1) and (2) of the Act are replaced by the following:

57. Les paragraphes 204(1) et (2) de la même loi sont remplacés par ce qui suit :

Commencement of term

204. (1) Subject to subsection (3) and sections 215 to 218, the term of a punishment of imprisonment or detention shall commence on the date on which the service tribunal pronounces sentence on the offender.

Commencement de la peine

204. (1) Sous réserve du paragraphe (3) et des articles 215 à 218, toute peine d'emprisonnement ou de détention commence à courir au prononcé de la sentence par le tribunal militaire.

Time counted

(2) The only time that shall be reckoned toward the completion of a term of a punishment of imprisonment or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

Imputation du temps de garde

(2) Seul le temps passé sous garde, civile ou militaire, par un individu sous le coup d'une condamnation comportant une peine d'emprisonnement ou de détention s'impute sur cette peine.

58. The Act is amended by adding the following before section 205:

58. La même loi est modifiée par adjonction, après l'article 204, de ce qui suit :

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Clause 53	*Amends subsection 202.18(1)*	

What the amendment does

- replaces references to numbered "Parts" with references to numbered "Divisions"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

Clause 54	*Amends paragraph 202.26(d)*	

What the amendment does

- replaces a reference to "the authority that convened the court martial" with a reference to the "Minister"

Reasons for the change

Section 202.26 provides that certain sections of the *Criminal Code*, which deal with applications to the Attorney General of a province in relation to dangerously mentally disordered accused, apply to findings of a court martial. The reference to convening authority has been replaced by a reference to the Minister in relation to these applications to ensure that the decision-maker has an appropriate level of accountability.

Clause 55	*Amends section 203 and the headings before it*	

What the amendment does

- replaces the headings "Part VIII" and "PROVISIONS APPLICABLE TO FINDING AFTER TRIAL" with "DIVISION 8" and "PROVISIONS APPLICABLE TO IMPRISONMENT AND DETENTION" respectively
- removes the heading "*Execution of Punishment of Death*"
- deletes section 203

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. The replacement of the headings are consequential to those changes.

The heading dealing with punishment of death has been deleted as a result of the elimination of the death penalty from the *Code of Service Discipline*.

Section 203 of the *Act* deals with the execution of the death penalty. The provision is no longer necessary because the death penalty has been eliminated from the *Code of Service Discipline*.

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1991, c. 43, s. 18

53. Subsection 202.18(1) of the Act is replaced by the following:

53. Le paragraphe 202.18(1) de la même loi est remplacé par ce qui suit :

1991, ch. 43, art. 18

No custody or release orders during assessment

202.18 (1) During the period that an assessment order made under this Division is in force, no order may be made for custody or release from custody of the accused person under any provision of Division 3 or for release from detention or imprisonment under any provision of Division 10 in respect of that offence or an included offence.

202.18 (1) Pendant qu'une ordonnance d'évaluation rendue en vertu de la présente section est en vigueur, aucune des ordonnances prévues pour la détention préventive ou la remise en liberté par la section 3 ou pour la libération par la section 10 ne peut être rendue à l'égard de l'infraction qui est reprochée à l'accusé ou d'une infraction incluse.

Primauté du renvoi

1991, c. 43, s. 18

54. Paragraph 202.26(*d*) of the Act is replaced by the following:

54. L'alinéa 202.26*d*) de la même loi est remplacé par ce qui suit :

1991, ch. 43, art. 18

(*d*) a reference in section 754 of the *Criminal Code* to the Attorney General of the province in which the accused person was tried is deemed to be a reference to the Minister;

d) un renvoi, à l'article 754 du *Code criminel*, au procureur général de la province où l'accusé a été jugé s'entend d'un renvoi au ministre;

55. Section 203 of the Act and the headings before it are replaced by the following:

55. L'article 203 de la même loi et les intertitres le précédant sont remplacés par ce qui suit :

DIVISION 8

PROVISIONS APPLICABLE TO IMPRISONMENT AND DETENTION

SECTION 8

DISPOSITIONS APPLICABLES À L'EMPRISONNEMENT ET À LA DÉTENTION

56. The heading before section 204 of the Act is replaced by the following:

56. L'intertitre précédant l'article 204 de la même loi est remplacé par ce qui suit :

Computation of Term

Calcul de la peine

57. Subsections 204(1) and (2) of the Act are replaced by the following:

57. Les paragraphes 204(1) et (2) de la même loi sont remplacés par ce qui suit :

Commencement of term

204. (1) Subject to subsection (3) and sections 215 to 218, the term of a punishment of imprisonment or detention shall commence on the date on which the service tribunal pronounces sentence on the offender.

204. (1) Sous réserve du paragraphe (3) et des articles 215 à 218, toute peine d'emprisonnement ou de détention commence à courir au prononcé de la sentence par le tribunal militaire.

Commencement de la peine

Time counted

(2) The only time that shall be reckoned toward the completion of a term of a punishment of imprisonment or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

(2) Seul le temps passé sous garde, civile ou militaire, par un individu sous le coup d'une condamnation comportant une peine d'emprisonnement ou de détention s'impute sur cette peine.

Imputation du temps de garde

58. The Act is amended by adding the following before section 205:

58. La même loi est modifiée par adjonction, après l'article 204, de ce qui suit :

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Clause 56	*Amends the heading before section 204*	

What the amendment does

- replaces the heading "Imprisonment and Detention" with "Computation of Term"

Reasons for the change

The new heading better reflects the contents of section 204 which directly follows it.

Clause 57	*Amends subsection 204(1) and (2)*	

What the amendment does

- makes stylistic changes and changes a cross-reference

Reasons for the change

This amendment removes a cross-reference to section 214 in the "subject to" clause. Section 214 is renumbered as section 249.24. A cross-reference to it is no longer considered necessary.

Clause 58	*Adds a new heading before section 205*	

What the amendment does

- adds new heading, "Service Prisons and Detention Barracks" before section 205

Reasons for the change

This change is for clarity.

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Service Prisons and Detention Barracks

1991, c. 43, s. 19

59. The heading before section 206 and sections 206 to 214 of the Act are repealed.

60. Sections 215 and 216 of the Act are replaced by the following:

Service tribunal may suspend

215. Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

Definition of "suspending authority"

216. (1) In this section and sections 217 and 218, "suspending authority" means any authority prescribed to be a suspending authority by the Governor in Council in regulations.

Suspension of imprisonment or detention

(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.

Committing authority may postpone committal

(3) Where an offender has been sentenced to imprisonment or detention and suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as the case may be, may postpone committal until directions of a suspending authority have been obtained.

Mandatory suspension of detention

(4) A suspending authority shall suspend a punishment of detention in the circumstances prescribed by the Governor in Council in regulations.

Effect of suspension before committal

216.1 (1) Where a punishment is suspended before committal to undergo the punishment, the offender shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

Effect of suspension after committal

(2) Where a punishment is suspended after committal to undergo the punishment, the offender shall be discharged from the place in which the offender is incarcerated and the currency of the punishment shall be arrested after the day of that discharge until the offender is again ordered to be committed to undergo that punishment.

Prisons militaires et casernes disciplinaires

1991, ch. 43, art. 19

59. L'intertitre précédant l'article 206 et les articles 206 à 214 de la même loi sont abrogés.

60. Les articles 215 et 216 de la même loi sont remplacés par ce qui suit :

Suspension par le tribunal militaire

215. Le tribunal militaire peut suspendre l'exécution de la peine d'emprisonnement ou de détention à laquelle il a condamné le contrevenant.

Définition de « autorité sursoyante »

216. (1) Pour l'application du présent article et des articles 217 et 218, « autorité sursoyante » s'entend de toute autorité désignée à ce titre par règlement du gouverneur en conseil.

Suspension

(2) L'autorité sursoyante peut, dans le cas d'un contrevenant condamné à une peine d'emprisonnement ou de détention, suspendre la peine, que le contrevenant ait ou non déjà commencé à la purger.

Incarcération différée

(3) Lorsqu'une suspension de peine a été recommandée, l'autorité habilitée à faire incarcérer le contrevenant dans un pénitencier, une prison civile, une prison militaire ou une caserne disciplinaire, selon le cas, peut différer l'incarcération jusqu'à la réception des instructions de l'autorité sursoyante.

Suspension obligatoire

(4) L'autorité sursoyante suspend une peine de détention dans les cas prévus par règlement du gouverneur en conseil.

Effets de la suspension avant incarcération

216.1 (1) Lorsqu'une peine est suspendue avant qu'il ait commencé à la purger, le contrevenant, s'il est en détention, doit être libéré. Le cas échéant, la peine ne commence à courir qu'au moment où est donné l'ordre d'incarcération.

Effets de la suspension après incarcération

(2) Si la suspension intervient après son incarcération, le contrevenant doit être libéré de l'endroit où il a commencé à purger sa peine, laquelle cesse de courir de sa libération jusqu'à l'ordre de réincarcération.

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Clause 58	*Adds a new heading before section 205*	Continued

What the amendment does
- adds new heading, "Service Prisons and Detention Barracks" before section 205

Reasons for the change
This change is for clarity.

Clause 59	*Repeals the heading before section 206 and sections 206 to 214*	

What the amendment does
- repeals the heading before 206 and sections 206 and 214 of the *Act*
- relocates the essence of sections 208 to 214 to new sections 249.11 to 249.16 and 249.24

Reasons for the change
Subsection 206(1) and (2) provides that the imposition of the death penalty requires the approval of the Governor in Council and dismissal from Her Majesty's service (with or without disgrace) requires approval by the Minister or an authority prescribed by regulation. Because the death penalty and the requirement for ministerial approval are being eliminated, this provision is no longer required.

Subsection 206(4) has been relocated as new subsection 141(1.1).

Section 207 provides for the substitution of new punishment where others, that require previous approval, have not been approved. Because the requirement for approval in each case has been eliminated, this provision is no longer required.

The powers of review of the findings and sentences of service tribunals are being restructured so that only the Governor in Council can review the findings and sentences of courts martial. This remedy would be an extraordinary measure available only on application. Military authorities would retain a restructured power to review the findings and sentences awarded at summary trials.

Clause 60	*Amends sections 215 and 216, and adds new section 216.1*	

What the amendment does
- eliminates the Minister's power to suspend punishments and to prescribe or appoint suspending authorities [s. 215]
- makes drafting and structural changes
- redefines "suspending authority" as any authority prescribed by the Governor in Council in regulations [subs. 216(1)]
- requires a suspending authority to suspend a punishment of detention in circumstances prescribed by regulation [subs. 216(4)]
- makes stylistic changes to present subsections 216(2) and 216(3) [s. 216.1]

Reasons for the change
The Minister is being removed from the day-to-day administration of cases under the *Code of Service Discipline*. Service tribunals are being given the power to suspend a punishment they impose, a power they now have in regulations.

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61. Subsection 217(3) of the Act is replaced by the following:

Automatic remission of detention

(3) A punishment of detention that has been suspended is deemed to be wholly remitted on the expiration of one year commencing on the day the suspension was ordered, unless the punishment has been put into execution prior to the expiration of that period.

62. Subsection 220(1) of the Act is replaced by the following:

Committal of service convicts

220. (1) A service convict whose punishment of imprisonment for life or for two years or more is to be put into execution shall as soon as practicable be committed to a penitentiary to undergo punishment according to law, except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service convict be committed to a service prison to undergo the punishment or any part of the punishment.

1992, c. 20, par. 215(1)(*d*)

63. Subsection 222(2) of the Act is replaced by the following:

Jurisdiction and discretion of National Parole Board

(2) Where the punishment of a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison is not suspended, mitigated, commuted or remitted under this Act within six months after the date of the committal of that convict or prisoner to that penitentiary or civil prison, the National Parole Board has, subject to Part II of the *Corrections and Conditional Release Act*, exclusive jurisdiction and absolute discretion to grant, refuse to grant or revoke the parole of that convict or prisoner.

64. Paragraph 226(3)(*b*) of the Act is replaced by the following:

(*b*) if sentenced by the civil court to imprisonment for life or a term of two years or more, be transferred under subsection (1) without the consent of the Attorney General of Canada.

65. Section 227 of the Act and the heading before it are repealed.

61. Le paragraphe 217(3) de la même loi est remplacé par ce qui suit :

Remise automatique des peines de détention

(3) Toute peine de détention ayant fait l'objet d'une suspension est réputée entièrement remise au bout d'un an à compter du jour où l'ordre de suspension a été donné, sauf si elle a été mise à exécution avant l'expiration de cette période.

62. Le paragraphe 220(1) de la même loi est remplacé par ce qui suit :

Pénitencier pour les condamnés militaires

220. (1) Les condamnés militaires astreints à une peine d'emprisonnement à perpétuité ou de deux ans ou plus sont, lorsqu'elle est mise à exécution, envoyés le plus tôt possible dans un pénitencier pour la purger conformément à la loi. L'autorité incarcérante peut toutefois, aux termes des règlements pris par le gouverneur en conseil, ordonner qu'ils soient incarcérés dans une prison militaire pour y purger leur peine, en tout ou en partie.

1992, ch. 20, al. 215(1)*d*)

63. Le paragraphe 222(2) de la même loi est remplacé par ce qui suit :

Compétence de la Commission nationale des libérations conditionnelles

(2) Faute, dans les six mois suivant l'incarcération, de suspension, mitigation, commutation ou remise, sous le régime de la présente loi, de la peine purgée par un condamné militaire dans un pénitencier — ou par un prisonnier militaire dans une prison civile —, la Commission nationale des libérations conditionnelles a, sous réserve de la partie II de la *Loi sur le système correctionnel et la mise en liberté sous condition*, compétence exclusive et tout pouvoir pour accorder, refuser ou révoquer la libération conditionnelle de cette personne.

64. L'alinéa 226(3)*b*) de la même loi est remplacé par ce qui suit :

b) du procureur général du Canada, dans le cas d'une condamnation à l'emprisonnement à perpétuité ou de deux ans ou plus.

65. L'article 227 de la même loi et l'intertitre le précédant sont abrogés.

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Clause 61	*Amends subsection 217 (3)*	

What the amendment does

- removes the words, "not exceeding thirty days"

Reasons for the change

Subsection 217(3) currently provides for the automatic remission after one year of a punishment of detention not exceeding 30 days that has been suspended.

Removing the reference to 30 days detention provides uniformity for the automatic remission of any period of detention that has been suspended. The remission will take place on the expiration of one year commencing on the day the suspension was ordered for any period of detention.

Clause 62	*Amends subsection 220(1)*	

What the amendment does

- adds a reference to life imprisonment

Reasons for the change

Subsection 220(1) deals with the committal to a penitentiary of service convicts with a punishment of imprisonment for two years or more. The addition of life imprisonment in this section is consequential to its addition, in section 139, to the scale of punishments that may be imposed in respect of service offences.

Clause 63	*Amends subsection 222(2)*	

What the amendment does

- removes the words "notwithstanding anything in this Act"

Reasons for the change

New sections 140.3 and 140.4 of the *Act* introduce a parole regime in the *National Defence Act* parallel to that contained under the *Criminal Code*. As a result of the new parole regime, the jurisdiction of the National Parole Board to deal with service convicts and service prisoners will be subject only to Part II of the *Corrections and Conditional Release Act* as it is under the *Criminal Code*.

Clause 64	*Amends paragraph 226(3)(b)*	

What the amendment does

- adds a reference to life imprisonment
- makes stylistic changes at the end of the paragraph in the French version

Reasons for the change

Subsection 226(3) requires the consent of the Attorney General of Canada to the transfer of a person who has been sentenced to a term of imprisonment of two years or more to the custody of appropriate civil or military authorities in Canada for incarceration. The addition of life imprisonment in this provision is consequential to the addition of that punishment to the scale of punishments that may be imposed in respect of service offences in section 139.

Clause 65	*Repeals section 227 and the heading before it*	

What the amendment does

- repeals section 227 of the *Act* and the heading before it

Reasons for the change

The provision dealing with the restitution of property has been relocated as new section 249.25

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66. The headings before section 228 of the Act are replaced by the following:

DIVISION 9

APPEALS

General Provisions

67. Section 229 of the Act is repealed.

1991, c. 43, s. 23(2)

68. Paragraph 238(3)(*b*) of the Act is replaced by the following:

(*b*) substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 24

69. Paragraph 239(2)(*b*) of the Act is replaced by the following:

(*b*) substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 26

70. Section 240 of the Act is replaced by the following:

Substitution of new sentence where illegal sentence set aside

240. On the hearing of an appeal respecting the legality of a sentence imposed by a court martial, the Court Martial Appeal Court, if it allows the appeal, may substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 27

71. Section 241.2 of the Act is repealed.

72. (1) Subsection 244(1) of the Act is amended by adding the following after paragraph (*c*):

(*c*.1) the conduct of reviews of directions made under Division 3;

(2) Paragraphs 244(1)(*g*) and (*h*) of the Act are replaced by the following:

(*g*) the circumstances in which, on the hearing of an appeal, the appellant may attend or appear before the Court;

(*h*) the provision for and the payment of fees of counsel for an appellant or a respondent, other than the Minister;

(*h*.1) the awarding and regulating of costs in the Court in favour of or against appellants and respondents; and

66. Les intertitres précédant l'article 228 de la même loi sont remplacés par ce qui suit :

SECTION 9

APPELS

Dispositions générales

67. L'article 229 de la même loi est abrogé.

1991, ch. 43, par. 23(2)

68. L'alinéa 238(3)*b*) de la même loi est remplacé par ce qui suit :

b) soit substituer à la sentence infligée par la cour martiale la sentence qui est justifiée en droit.

1991, ch. 43, art. 24

69. L'alinéa 239(2)*b*) de la même loi est remplacé par ce qui suit :

b) soit substituer à la sentence infligée par la cour martiale la sentence qui est justifiée en droit.

1991, ch. 43, art. 26

70. L'article 240 de la même loi est remplacé par ce qui suit :

Substitution d'une nouvelle sentence en cas de rejet d'une sentence illégale

240. Si elle fait droit à un appel concernant la légalité d'une sentence infligée par la cour martiale, la Cour d'appel de la cour martiale peut substituer à cette sentence la sentence qui est justifiée en droit.

1991, ch. 43, art. 27

71. L'article 241.2 de la même loi est abrogé.

72. (1) Le paragraphe 244(1) de la même loi est modifié par adjonction, après l'alinéa *c*), de ce qui suit :

c.1) la conduite des révisions des ordonnances aux termes de la section 3;

(2) Les alinéas 244(1)*g*) et *h*) de la même loi sont remplacés par ce qui suit :

g) les cas de présence ou de comparution de l'appelant devant la Cour d'appel lors de l'audition de son appel;

h) l'établissement et le paiement des honoraires de l'avocat d'un appelant ou d'un intimé, autre que le ministre;

h.1) les dépens et leur adjudication tant en ce qui concerne les appelants que les intimés;

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Clause 66	*Amends the headings before section 228*	

What the amendment does

- replaces the heading "Part IX" with "Division 9"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

Clause 67	*Repeals section 229*	

What the amendment does

- repeals section 229 of the *Act*

Reasons for the change

Section 229, which is an interpretive provision, is no longer considered to be necessary in light of other amendments.

Clause 68	*Amends paragraph 238(3)(b)*	

What the amendment does

- deletes the words "subject to section 213"

Reasons for the change

Paragraph 238(3)(b) enables the Court Martial Appeal Court to substitute a sentence where a finding of guilty for one offence has been set aside, but a finding of guilty for another offence remains. Section 213 establishes limitations on new punishments that would apply to a sentence substituted by the Minister or service authorities. These limitations on the power of the Minister and service authorities to impose new punishments are not appropriate for an appellate court.

Clause 69	*Amends paragraph 239(2)(b)*	

What the amendment does

- deletes the words "subject to section 213"

Reasons for the change

Paragraph 239(2)(b) permits the Court Martial Appeal Court to substitute a sentence after it has substituted for a finding of guilt for one offence, a finding of guilt for another offence. Section 213 establishes limitations on new punishments that would apply to a sentence substituted by the Minister or service authorities. These limitations on the power of the Minister and service authorities to impose new punishments are not appropriate for an appellate court.

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66. The headings before section 228 of the Act are replaced by the following:

DIVISION 9

APPEALS

General Provisions

67. Section 229 of the Act is repealed.

1991, c. 43, s. 23(2)

68. Paragraph 238(3)(*b*) of the Act is replaced by the following:

(*b*) substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 24

69. Paragraph 239(2)(*b*) of the Act is replaced by the following:

(*b*) substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 26

70. Section 240 of the Act is replaced by the following:

Substitution of new sentence where illegal sentence set aside

240. On the hearing of an appeal respecting the legality of a sentence imposed by a court martial, the Court Martial Appeal Court, if it allows the appeal, may substitute for the sentence imposed by the court martial a sentence that is warranted in law.

1991, c. 43, s. 27

71. Section 241.2 of the Act is repealed.

72. (1) Subsection 244(1) of the Act is amended by adding the following after paragraph (*c*):

(*c*.1) the conduct of reviews of directions made under Division 3;

(2) Paragraphs 244(1)(*g*) and (*h*) of the Act are replaced by the following:

(*g*) the circumstances in which, on the hearing of an appeal, the appellant may attend or appear before the Court;

(*h*) the provision for and the payment of fees of counsel for an appellant or a respondent, other than the Minister;

(*h*.1) the awarding and regulating of costs in the Court in favour of or against appellants and respondents; and

66. Les intertitres précédant l'article 228 de la même loi sont remplacés par ce qui suit :

SECTION 9

APPELS

Dispositions générales

67. L'article 229 de la même loi est abrogé.

1991, ch. 43, par. 23(2)

68. L'alinéa 238(3)*b*) de la même loi est remplacé par ce qui suit :

b) soit substituer à la sentence infligée par la cour martiale la sentence qui est justifiée en droit.

1991, ch. 43, art. 24

69. L'alinéa 239(2)*b*) de la même loi est remplacé par ce qui suit :

b) soit substituer à la sentence infligée par la cour martiale la sentence qui est justifiée en droit.

1991, ch. 43, art. 26

70. L'article 240 de la même loi est remplacé par ce qui suit :

Substitution d'une nouvelle sentence en cas de rejet d'une sentence illégale

240. Si elle fait droit à un appel concernant la légalité d'une sentence infligée par la cour martiale, la Cour d'appel de la cour martiale peut substituer à cette sentence la sentence qui est justifiée en droit.

1991, ch. 43, art. 27

71. L'article 241.2 de la même loi est abrogé.

72. (1) Le paragraphe 244(1) de la même loi est modifié par adjonction, après l'alinéa *c*), de ce qui suit :

c.1) la conduite des révisions des ordonnances aux termes de la section 3;

(2) Les alinéas 244(1)*g*) et *h*) de la même loi sont remplacés par ce qui suit :

g) les cas de présence ou de comparution de l'appelant devant la Cour d'appel lors de l'audition de son appel;

h) l'établissement et le paiement des honoraires de l'avocat d'un appelant ou d'un intimé, autre que le ministre;

h.1) les dépens et leur adjudication tant en ce qui concerne les appelants que les intimés;

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Clause 70	*Amends section 240*	

What the amendment does

- deletes the words "subject to section 213"

Reasons for the change

Section 240 permits the Court Martial Appeal Court to substitute a sentence warranted in law for an illegal sentence on a sentence appeal. Section 213 establishes limitations on new punishments that would apply to a sentence substituted by the Court Martial Appeal Court under this provision.

The limitations in section 213, originally designed to fetter the power of other service tribunals to impose new punishments, are not appropriate for an appellate court.

Clause 71	*Repeals section 241.2*	

What the amendment does

- repeals section 241.2 of the *Act*

Reasons for the change

Section 241.2 incorporates the limitations on new punishments that are set out in section 214. The limitations are designed to fetter the power of service tribunals in the imposition of new punishments, and are not appropriate for an appellate court.

Clause 72	*Adds new paragraph 244(1)(c.1), amends paragraphs 244(1)(g) and (h), adds new paragraph 244(1)(h.1)*	

What the amendment does

- authorizes the Chief Justice of the Court Martial Appeal Court to make rules respecting
  - the conduct of the review of directions to release an accused before trial [par. 244(1)(c.1)]
  - the payment of fees of counsel for a respondent other than the Minister [par. 244(1)(h)]
  - the awarding and regulating of costs in the favour of or against appellants and respondents [par. 244(1)(h.1)]
- eliminates a reference to a sentence of death [par. 244(1)(g)]

Reasons for the change

Paragraph 244(1)(g) precludes a rule of court from not allowing an appellant to be present at an appeal from a death sentence. The deletion of the reference to the death penalty in that paragraph is consequential to the amendments that eliminate the death penalty. [par. 244(1)(g)]

As the Crown now has a right of appeal, the amendment to paragraph 244(1)(h) permits the Chief Justice of the Court Martial Appeal Court to make rules for the payment of fees of counsel for an appellant as well as for a respondent other than the Minister.

Awarding costs in the favour of and against appellants and respondents parallels equivalent authority in civilian criminal appeals. [par. 244(1)(h.1)]

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73. The heading before section 246 of the Act and sections 246 to 248 are repealed.

73. L'intertitre précédant l'article 246 et les articles 246 à 248 de la même loi sont abrogés.

R.S., c. 31 (1st Supp.), s. 57

74. The headings before section 248.1 and sections 248.1 and 248.2 of the Act are replaced by the following:

L.R., ch. 31 (1er suppl.), art. 57

74. Les intertitres précédant l'article 248.1 et les articles 248.1 et 248.2 de la même loi sont remplacés par ce qui suit :

DIVISION 10

RELEASE PENDING APPEAL

SECTION 10

MISE EN LIBERTÉ PENDANT L'APPEL

Release by court martial

248.1 Every person sentenced to a period of detention or imprisonment by a court martial has, within twenty-four hours after being so sentenced, the right to apply to that court martial or, in any circumstances that may be provided for by regulations made by the Governor in Council, to a military judge, for a direction that the person be released from detention or imprisonment until the expiration of the time to appeal referred to in subsection 232(3) and, if there is an appeal, until the determination of the appeal.

Mise en liberté par la cour martiale

248.1 Toute personne condamnée à une période de détention ou d'emprisonnement par la cour martiale a, dans les vingt-quatre heures suivant sa condamnation, le droit de demander à la cour martiale ou, dans les cas prévus par règlement du gouverneur en conseil, au juge militaire une ordonnance de libération jusqu'à l'expiration du délai d'appel visé au paragraphe 232(3) et, en cas d'appel, jusqu'à ce qu'il soit statué sur celui-ci.

Release by judge of the CMAC

248.2 Every person sentenced to a period of detention or imprisonment by a court martial who appeals under Division 9 has the right, if the person has not applied under section 248.1, to apply to a judge of the Court Martial Appeal Court or, in any circumstances that may be provided for by regulations made by the Governor in Council, to a military judge, for a direction that the person be released from detention or imprisonment until the determination of the appeal.

Mise en liberté par un juge de la CACM

248.2 Toute personne condamnée à une période de détention ou d'emprisonnement par la cour martiale a, si elle a interjeté appel en vertu de la section 9 mais n'a pas présenté la demande visée à l'article 248.1, le droit de demander à un juge de la Cour d'appel de la cour martiale ou, dans les cas prévus par règlement du gouverneur en conseil, au juge militaire une ordonnance de libération jusqu'à ce qu'il soit statué sur l'appel.

R.S., c. 31 (1st Supp.), s. 57

75. (1) The portion of section 248.3 of the Act before paragraph (*a*) is replaced by the following:

L.R., ch. 31 (1er suppl.), art. 57

75. (1) Le passage de l'article 248.3 de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Court may direct release

248.3 On hearing an application to be released from detention or imprisonment, the court martial, the military judge or the judge of the Court Martial Appeal Court, as the case may be, may direct that the person making the application be released as provided for in sections 248.1 and 248.2 if the person establishes

Ordonnance de libération

248.3 À l'audition de la demande de libération, la cour martiale, le juge militaire ou le juge de la Cour d'appel de la cour martiale, selon le cas, peut ordonner que l'auteur de la demande soit remis en liberté conformément aux articles 248.1 et 248.2 si celui-ci établit :

R.S., c. 31 (1st Supp.), s. 57

(2) Subparagraph 248.3(*a*)(ii) of the Act is replaced by the following:

L.R., ch. 31 (1er suppl.), art. 57

(2) Le sous-alinéa 248.3*a*)(ii) de la même loi est remplacé par ce qui suit :

(ii) if the appeal is against sentence only, that it would cause unnecessary hardship if the person were placed or retained in detention or imprisonment,

(ii) lorsqu'il s'agit d'un appel de la sentence, qu'il subirait un préjudice inutile s'il était détenu ou emprisonné ou s'il était maintenu dans cet état,

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Clause 73	*Repeals the heading before section 246 and sections 246 to 248*	

What the amendment does

- deletes section 246, 247 and 248 of the *Act*

Reasons for the change

Sections 246 and 247 of the *National Defence Act* ensure that a legal officer examines the legality of court martial proceedings in cases where no appeal is made. These provisions are no longer considered necessary because court martial decisions are fully open to appeal by the accused and the Crown.

Section 248 has been amended and relocated as section 249.16 of the *Act*.

Clause 74	*Amends the heading before section 248.1 and sections 248.1 and 248.2*	

What the amendment does

- replaces the heading "Part IX.1" with "DIVISION 10"
- replaces a reference to "Part IX" with "Division 9"
- replaces references to a "Standing Courts Martial" with references to a "Military Judge" [ss.248.1 and 248.2]

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. The amendments to the heading and Part numbers are consequential to those changes.

Given that military judges will be available on a full time basis, there is no reason for a Standing Court Martial to be convened to deal with a release pending appeal issue. [ss. 248.1 and 248.2]

Clause 75	*Amends section 248.3*	

What the amendment does

- adds a reference to "military judge" and "judge of the Court Martial Appeal Court"
- limits the applicability of subparagraphs 248.3(a)(ii) and 248.3(b)(ii) to the situation where a sentence is being appealed

Reasons for the change

Section 248.3 sets out the grounds that a person who has been sentenced to a period of detention or imprisonment must establish to be released pending an appeal. One of those grounds is that it would cause unnecessary hardship. The amendment limits that ground to an appeal of sentence only. This change makes section 248.3 consistent with the sentence appeal provisions of section 679 of the *Criminal Code*.

The references to "judge" and "judge of the Court Martial Appeal Court" are added as a consequence of the amendment, in section 248.1, entitling a person who has been sentenced to imprisonment or detention to apply, in prescribed circumstances, to a military judge to be released pending appeal.

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R.S., c. 31 (1st Supp.), s. 57

(3) Subparagraph 248.3(*b*)(ii) of the Act is replaced by the following:

(ii) if the appeal is against sentence only, that it would cause unnecessary hardship if the person were placed or retained in detention or imprisonment,

L.R., ch. 31 (1er suppl.), art. 57

(3) Le sous-alinéa 248.3*b*)(ii) de la même loi est remplacé par ce qui suit :

(ii) lorsqu'il s'agit d'un appel de la sentence, qu'il subirait un préjudice inutile s'il était détenu ou emprisonné ou s'il était maintenu dans cet état,

R.S., c. 31 (1st Supp.), s. 57

76. Section 248.4 of the French version of the Act is replaced by the following:

Droit de l'avocat des Forces canadiennes d'être entendu

248.4 À l'audition de la demande de libération, l'avocat des Forces canadiennes a le droit de présenter ses observations s'il le désire, une fois reçues les observations faites par l'auteur de la demande ou en son nom.

L.R., ch. 31 (1er suppl.), art. 57

76. L'article 248.4 de la version française de la même loi est remplacé par ce qui suit :

Droit de l'avocat des Forces canadiennes d'être entendu

248.4 À l'audition de la demande de libération, l'avocat des Forces canadiennes a le droit de présenter ses observations s'il le désire, une fois reçues les observations faites par l'auteur de la demande ou en son nom.

R.S., c. 31 (1st Supp.), s. 57

77. Section 248.5 of the Act is replaced by the following:

Undertaking if application granted

248.5 If an application for release is granted, the court martial, the military judge or the judge of the Court Martial Appeal Court, as the case may be, may direct that the person making the application be released on giving an undertaking to

(*a*) remain under military authority;

(*b*) surrender himself or herself into custody when directed to do so; and

(*c*) comply with any other reasonable conditions that are stipulated.

L.R., ch. 31 (1er suppl.), art. 57

77. L'article 248.5 de la même loi est remplacé par ce qui suit :

Engagement en cas de libération

248.5 Si la demande de libération est accordée, la cour martiale, le juge militaire ou le juge de la Cour d'appel de la cour martiale, selon le cas, peut ordonner la libération de l'auteur de la demande sur prise par celui-ci de l'engagement suivant :

a) demeurer sous autorité militaire;

b) se livrer lui-même quand l'ordre lui en sera donné;

c) respecter toutes autres conditions raisonnables énoncées dans l'ordonnance.

R.S., c. 31 (1st Supp.), s. 57

78. The portion of subsection 248.8(1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Examen des conditions

248.8 (1) Les conditions de l'engagement visé à l'article 248.5 peuvent, sur demande de la personne qui a pris l'engagement ou de l'avocat des Forces canadiennes, être examinées par la Cour d'appel de la cour martiale; celle-ci peut, selon le cas :

L.R., ch. 31 (1er suppl.), art. 57

78. Le passage du paragraphe 248.8(1) de la version française de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Examen des conditions

248.8 (1) Les conditions de l'engagement visé à l'article 248.5 peuvent, sur demande de la personne qui a pris l'engagement ou de l'avocat des Forces canadiennes, être examinées par la Cour d'appel de la cour martiale; celle-ci peut, selon le cas :

R.S., c. 31 (1st Supp.), s. 57

79. (1) The portion of subsection 248.81(1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Violation de l'engagement

248.81 (1) Si elle est convaincue que l'engagement pris par une personne en vertu de l'article 248.5 a été violé ou le sera vraisemblablement, l'autorité visée au paragraphe (2) peut, pour des motifs valables, sur demande de l'avocat des Forces canadiennes :

L.R., ch. 31 (1er suppl.), art. 57

79. (1) Le passage du paragraphe 248.81(1) de la version française de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Violation de l'engagement

248.81 (1) Si elle est convaincue que l'engagement pris par une personne en vertu de l'article 248.5 a été violé ou le sera vraisemblablement, l'autorité visée au paragraphe (2) peut, pour des motifs valables, sur demande de l'avocat des Forces canadiennes :

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Clause 75	*Amends section 248.3*	Continued

What the amendment does

- limits the applicability of subparagraphs 248.3(a)(ii) and 248.3(b)(ii) to the situation where a sentence is being appealed

Reasons for the change

Section 248.3 sets out the grounds that a person who has been sentenced to a period of detention or imprisonment must establish to be released pending an appeal. One of those grounds is that it would cause unnecessary hardship. The amendment limits that ground to an appeal of sentence only. This change makes section 248.3 consistent with the sentence appeal provisions of section 679 of the *Criminal Code*.

Clause 76	*Amends section 248.4 of the French version*	

What the amendment does

- replaces, in the French version, the word "représentant" with "avocat"

Reasons for the change

This amendment clarifies that it is legal counsel who may make representations in relation to an application to be released pending appeal.

Clause 77	*Amends section 248.5*	

What the amendment does

- adds references to "military judge" and "Court Martial Appeal Court"

Reasons for the change

These amendments are consequential to the amendments to section 248.3 of the *Act*.

Clause 78	*Amends 248.8(1)of the French version*	

What the amendment does

- replaces, in the French version, the word "représentant" with "avocat"

Reasons for the change

This amendment clarifies that it is legal counsel who may an application for a review of the conditions of an undertaking.

Clause 79	*Amends subsection 248.81(1) of the French version, amends paragraphs 248.81(2)(a) to (c), and subsection 248.81(3)*	

What the amendment does

- replaces, in the French version, the word "représentant" with "avocat"

Reasons for the change

The change to the French version clarifies that it is a legal counsel who makes the application in relation to a breach of an undertaking given under section 248.5.

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R.S., c. 31 (1st Supp.), s. 57

(2) Paragraphs 248.81(2)(*a*) to (*c*) of the Act are replaced by the following:

(*a*) where the undertaking was given in respect of a direction made pursuant to an application under section 248.1, a military judge; or

(*b*) subject to subsection (3), where the undertaking was given in respect of a direction made pursuant to an application under section 248.2, a judge of the Court Martial Appeal Court.

L.R., ch. 31 (1er suppl.), art. 57

(2) Les alinéas 248.81(2)*a*) à *c*) de la même loi sont remplacés par ce qui suit :

a) soit, dans le cas d'un engagement pris à l'égard d'une ordonnance rendue aux termes d'une demande présentée en vertu de l'article 248.1, un juge militaire;

b) soit, sous réserve du paragraphe (3), dans le cas d'un engagement pris à l'égard d'une ordonnance rendue aux termes d'une demande présentée en vertu de l'article 248.2, un juge de la Cour d'appel de la cour martiale.

R.S., c. 31 (1st Supp.), c. 57; 1993, c. 34, s. 95 (F)

(3) Subsection 248.81(3) of the Act is replaced by the following:

(3) Le paragraphe 248.81(3) de la même loi est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), ch. 57; 1993, ch. 34, art. 95 (F)

Exception

(3) In the circumstances provided for in regulations made by the Governor in Council, the authority to whom an application under subsection (1) may be made in respect of a direction made pursuant to an application under section 248.2 is a military judge.

Exception

(3) Dans les cas prévus par règlement du gouverneur en conseil, la demande à l'égard d'une ordonnance rendue aux termes d'une demande présentée en vertu de l'article 248.2 peut être présentée à un juge militaire.

R.S., c. 31 (1st Supp.), s. 57

80. Subsection 248.9(4) of the Act is replaced by the following:

80. Le paragraphe 248.9(4) de la même loi est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), art. 57

Application of provisions

(4) The provisions of this Division apply, with such modifications as the circumstances require, to any appeal under this section.

Dispositions applicables

(4) La présente section s'applique, avec les adaptations nécessaires, aux appels interjetés en vertu du présent article.

81. The Act is amended by adding the following after section 248.9:

81. La même loi est modifiée par adjonction, après l'article 248.9, de ce qui suit :

Surrender into custody

248.91 A person released pending appeal under this Division may surrender himself or herself into custody at any time to serve a sentence of detention or imprisonment imposed on the person.

Mise sous garde volontaire

248.91 Une personne mise en liberté pendant l'appel aux termes de la présente section peut se livrer afin de purger la peine d'emprisonnement ou de détention qui lui a été infligée.

82. The headings before section 249 and sections 249 to 251 of the Act are replaced by the following:

82. Les intertitres précédant l'article 249 et les articles 249 à 251 de la même loi sont remplacés par ce qui suit :

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Clause 79	*Amends subsection 248.81(1) of the French version, amends paragraphs 248.81(2)(a) to (c), and subsection 248.81(3)*	

What the amendment does

- deletes subparagraph 248.81(2)(b)
- replaces the term "Standing Court Martial" with "military judge" [par. 248.81(2)(a)]

Reasons for the change

The reference to military judge is consequential to the amendment contained in section 248.1. The contents of current paragraphs 248.81(2)(a) and (b) have been consolidated in one paragraph 248.81(2)(a).

The amendment to subsection 248.81(3) is consequential to the amendment of paragraph 248.81(2)(a).

Clause 80	*Amends subsection 248.9(4)*	

What the amendment does

- replaces the reference to "Part IX" with "this Division"

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts of the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

Clause 81	*Adds new section 248.91*	

What the amendment does

- provides that persons released pending appeal of a sentence of detention or imprisonment may surrender themselves into custody at any time to serve the sentence

Reasons for the change

The *Code of Service Discipline* currently authorizes the court martial or the Court Martial Appeal Court to order persons into custody, but makes no provision for surrender into custody. This provision would provide specifically for this eventuality.

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DIVISION 11

REVIEW

Review Authorities

Governor in Council

249. (1) The review authority in respect of findings of guilty made and punishments imposed by courts martial is the Governor in Council.

Application necessary

(2) The review of a finding of guilty made and any punishment imposed by a court martial must be on application of the person found guilty or the Chief of the Defence Staff.

Chief of the Defence Staff and other military authorities

(3) The review authorities in respect of findings of guilty made and punishments imposed by persons presiding at summary trials are the Chief of the Defence Staff and such other military authorities as are prescribed by the Governor in Council in regulations.

When authorities may act

(4) A review authority in respect of any finding of guilty made and any punishment imposed by a person presiding at a summary trial may act on its own initiative or on application of the person found guilty made in accordance with regulations made by the Governor in Council.

Royal prerogative

249.1 Nothing in this Division in any manner limits or affects Her Majesty's royal prerogative of mercy.

Quashing of Findings

Authority to quash

249.11 (1) Any finding of guilty made by a service tribunal may be quashed by a review authority.

Effect of complete quashing

(2) Where no other finding of guilty remains after a finding of guilty has been quashed under subsection (1), the whole of the sentence ceases to have force and effect and the person who had been found guilty may be tried as if no previous trial had been held.

Effect of partial quashing

(3) Where another finding of guilty remains after a finding of guilty has been quashed under subsection (1) and any punishment included in the sentence is in excess of the punishment authorized in respect of any remaining finding of guilty or is, in the opinion of the review authority that made the decision to quash, unduly severe, the review authority shall substitute for that punishment any new punishment or punishments that it considers appropriate.

SECTION 11

RÉVISION DU VERDICT ET DE LA PEINE

Autorités compétentes

Gouverneur en conseil

249. (1) Le gouverneur en conseil est l'autorité compétente pour réviser les verdicts et peines prononcés par une cour martiale.

Demandes

(2) Il ne peut procéder à la révision que sur demande de la personne déclarée coupable ou du chef d'état-major de la défense.

Chef d'état-major de la défense et autres autorités

(3) Les autorités compétentes pour réviser les verdicts et peines prononcés par une personne présidant un procès sommaire sont le chef d'état-major de la défense ainsi que toute autre autorité désignée par règlement du gouverneur en conseil.

Pouvoir de révision

(4) L'autorité compétente peut procéder à la révision d'office ou sur demande — faite conformément aux règlements du gouverneur en conseil — de la personne déclarée coupable.

Prérogative royale

249.1 La présente section n'a pas pour effet de limiter, de quelque manière, la prérogative royale de clémence que possède Sa Majesté.

Annulation de verdicts

Pouvoir d'annulation

249.11 (1) L'autorité compétente peut annuler tout verdict de culpabilité prononcé par le tribunal militaire.

Annulation intégrale

(2) Le cas échéant, en l'absence de tout autre verdict de culpabilité, la sentence prononcée cesse d'avoir effet et un nouveau procès peut être tenu comme s'il n'y avait pas eu de procès antérieur.

Annulation partielle

(3) Dans le cas où l'annulation laisse subsister un autre verdict de culpabilité et où la sentence comporte une peine excédant celle qui est permise par rapport à ce verdict ou, à son avis, indûment sévère, l'autorité qui a procédé à l'annulation y substitue la nouvelle peine, simple ou multiple, qu'elle juge indiquée.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	

What the amendment does

- relocates present Part X of the *Act*
- authorizes the Governor in Council to be the review authority in respect of the findings and punishments imposed by courts martial, and the Chief of the Defence Staff and other military authorities prescribed by the Governor in Council to be the review authorities in respect of the findings and punishments imposed at summary trials [s. 249]
- provides that nothing in Division 11 limits the royal prerogative of mercy [s. 249.1]
- authorizes the quashing of a finding by a review authority and, if a finding is quashed, authorizes proceeding with a new trial as if no previous trial had been held [subs. 249.11(1) and (2)]
- authorizes a review authority to substitute a new, more proportional punishment for any remaining findings of guilty [subs. 249.11(3)]

Reasons for the change

Present sections 249 to 251 of the *Act*, which deal with witnesses summoned before courts martial, misconduct of counsel, and oaths, are being amended and relocated as sections 249.22 and 249.23 and Part V.

The review provisions remove the present powers of the Minister and prescribed or appointed military authorities to review the findings and punishments of courts martial and authorize the Governor in Council, on application by the person found guilty or the Chief of the Defence Staff, to quash findings, substitute findings and punishments, and mitigate, commute and remit punishments. Applications to the Governor in Council are likely to be made only in exceptional circumstances. The normal avenue of review would be through the appeal process. [subs. 249(1)]

The Chief of the Defence Staff and military authorities prescribed by the Governor in Council will have the same review powers in relation to the findings and punishments of summary trials. The provisions retain the role of military authorities in the review summary proceedings. [subs. 249(3)]

The provision dealing with the royal prerogative of mercy has been added for clarity [s. 249.1]

Outside of authorizing different authorities to review findings of service tribunals, new sections 249.11 to 249.15 reflect generally the present contents of sections 208, 209 and 211 to 213 of the *Act*.
[ss. 249.11 to 249.15]

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Substitution of Findings

Substitution of illegal and unsubstantiated findings

249.12 (1) A review authority may substitute a new finding for any finding of guilty that is made by a service tribunal and that is illegal or cannot be supported by the evidence if the new finding could validly have been made on the charge to which the new finding relates and it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding.

Substitution of finding in relation to other offence

(2) A review authority may substitute for a finding of guilty made by a service tribunal a new finding of guilty of an offence, other than that of which the service tribunal found the offender guilty, if it appears that the facts proved the offender guilty of the other offence and the service tribunal could have found the offender guilty of the other offence on the charge under section 133, 134 or 136 or on any alternative charge that was laid.

Effect on sentence

(3) Where a new finding has been substituted under this section for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized in respect of the new finding or is, in the opinion of the review authority that substituted the new finding, unduly severe, the review authority shall substitute for that punishment any new punishment or punishments that it considers appropriate.

Substitution de verdicts

Verdict illégal ou non justifié

249.12 (1) L'autorité compétente peut substituer un nouveau verdict de culpabilité au verdict de culpabilité, illégal ou non justifié par la preuve, rendu par le tribunal militaire, lorsque celui-ci aurait pu validement le prononcer sur la base de l'accusation et qu'il était manifestement convaincu des faits établissant l'infraction visée par le nouveau verdict.

Verdict à l'égard d'une autre infraction

(2) L'autorité compétente peut substituer un nouveau verdict de culpabilité, pour une autre infraction, à celui rendu par le tribunal militaire, s'il apparaît que les faits ont démontré la culpabilité du contrevenant à l'égard de cette autre infraction et que le tribunal aurait pu le déclarer coupable de celle-ci, sur la base de l'accusation portée, selon les articles 133, 134 ou 136, ou sur tout chef d'accusation subsidiaire porté contre lui.

Effet sur la sentence

(3) Lorsqu'elle remplace par un nouveau verdict un verdict comportant une peine trop forte par rapport à celui-ci aux termes de la présente loi ou, à son avis, indûment sévère, l'autorité compétente substitue également la nouvelle peine, simple ou multiple, qu'elle juge indiquée.

Substitution of Punishments

Authority to substitute punishment

249.13 A review authority may substitute for a sentence passed by a service tribunal in which is included an illegal punishment any new punishment or punishments that it considers appropriate.

Substitution de peines

Nouvelle peine

249.13 L'autorité compétente peut substituer à la peine illégale infligée par le tribunal militaire la nouvelle peine, simple ou multiple, qu'elle juge indiquée.

Mitigation, Commutation and Remission of Punishments

Authority to mitigate, commute and remit punishments

249.14 A review authority may mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.

Mitigation, commutation et remise de peines

Autorité

249.14 L'autorité compétente peut mitiger, commuer ou remettre tout ou partie des peines prononcées par le tribunal militaire.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- authorizes a review authority in certain circumstances to substitute a new finding for any finding of guilty made by a service tribunal that is illegal or cannot be supported by the evidence [subs. 249.12(1)]
- authorizes a review authority in certain circumstances to substitute for a finding of guilty a new finding of guilty if the service tribunal could have found the offender guilty under s. 133, 134 or 136 , and it appears that the facts proved the offender guilty of the other offence [subs. 249.12(2)]
- authorizes a review authority to substitute a new punishment for an illegal punishment in sentence passed by a service tribunal [subs. 249.13]
- authorizes a review authority to mitigate, commute or remit any or all of the punishments imposed by a service tribunal [s. 249.14]

Reasons for the change

Outside of authorizing different authorities to review findings of service tribunals, new sections 249.11 to 249.15 reflect generally the present contents of sections 208, 209 and 211 to 213 of the *Act*.
[ss. 249.11 to 249.15]

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Conditions Applicable to New Punishments

Conditions

249.15 The following conditions apply where a new punishment under this Division replaces, by way of substitution or commutation, a punishment imposed by a service tribunal:

(*a*) the new punishment may not be a punishment that could not legally have been imposed on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;

(*b*) the new punishment may not be higher in the scale of punishments than the punishment imposed in the first instance and, if the sentence passed included a punishment of incarceration, the new punishment may not involve a period of incarceration exceeding the period of incarceration included in that sentence;

(*c*) where the new punishment is detention and the punishment that it replaces is imprisonment, the term of the detention after the date of alteration may in no case exceed the term of the imprisonment remaining to be served and, in any event, may not exceed ninety days; and

(*d*) where the offence of which a person has been found guilty is an offence for which the punishment of imprisonment for life is mandatory under section 73, 74, 75 or 76, for which the punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service is mandatory under section 92 or to which paragraph 130(2)(*a*) applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in that section or any other enactment prescribing the offence.

Conditions applicables à la nouvelle peine

Restrictions

249.15 Les conditions suivantes s'appliquent dans les cas où une peine est substituée ou commuée aux termes de la présente section :

a) le verdict de culpabilité initial ne peut avoir fait l'objet ni d'une annulation ni d'une substitution et justifie la nouvelle peine;

b) la nouvelle peine ne peut pas être supérieure, dans l'échelle des peines, à celle infligée en premier lieu, ni plus longue dans le cas d'une peine d'incarcération;

c) lorsque la nouvelle peine remplace un emprisonnement par la détention, la durée de celle-ci, à compter de la date de substitution, ne peut excéder la période d'emprisonnement restant à purger, et ce jusqu'à concurrence de quatre-vingt-dix jours;

d) lorsque le verdict de culpabilité vise une infraction pour laquelle est obligatoire soit l'emprisonnement à perpétuité, aux termes des articles 73, 74, 75 ou 76, soit la peine de destitution — ignominieuse ou non — du service de Sa Majesté, aux termes de l'article 92, ou encore une infraction à laquelle s'applique l'alinéa 130(2)*a*), il peut être, sous réserve des autres dispositions du présent article, substituer à la peine que prévoit la disposition relative à l'infraction une ou plusieurs peines inférieures.

Petition for New Trial

Right to petition on new evidence

249.16 (1) Every person who has been tried and found guilty by a court martial has a right, on grounds of new evidence discovered subsequent to the trial, to petition the Minister for a new trial.

Nouveau procès

Nouveaux éléments de preuve

249.16 (1) Quiconque a été jugé et déclaré coupable par une cour martiale peut demander au ministre la tenue d'un nouveau procès en cas de découverte, après son procès, d'éléments de preuve nouveaux.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- provides that the following conditions apply in respect of new punishments:
  - the new punishment may not be a punishment that could not legally have been imposed for the offence;
  - the new punishment may not be higher in the scale of punishments than the punishment imposed in the first instance, and the term of any punishment of incarceration imposed may not exceed any term of incarceration included in the punishment substituted for;
  - where the new punishment is detention and the punishment that it replaces is imprisonment, the term of the detention after the date of alteration may in no case exceed the term of the imprisonment remaining to be served and, in any event, may not exceed ninety days; and
  - where a punishment of life imprisonment, dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service is mandatory for any offence, the punishment may be altered to any one or more of the punishments lower in the scale of punishments. [s. 249.15]
- provides for a person who has been found guilty by a court martial to petition the Minister for a new trial on the grounds of new evidence discovered subsequent to trial [subs. 249.16(1)]

Reasons for the change

Outside of authorizing different authorities to review findings of service tribunals, new sections 249.11 to 249.15 reflect generally the present contents of sections 208, 209 and 211 to 213 of the *Act*. [ss. 249.11 to 249.15]

The Minister may order a new trial if new evidence is discovered subsequent to the trial, a power previously exercised by the Chief of Defence Staff. The ministerial exercise of this power is analogous to that of the Minister of Justice under s. 690 of the *Criminal Code*. [s. 249.16]

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Reference to CMAC for determination

(2) The Minister may refer a petition to the Court Martial Appeal Court for a hearing and determination by that Court as if it were an appeal by the petitioner.

Renvoi à la Cour d'appel de la cour martiale

(2) Le ministre peut renvoyer la demande devant la Cour d'appel de la cour martiale qui dès lors tranche la question comme s'il s'agissait d'un appel.

Reference to CMAC for opinion

(3) The Minister may refer a petition or any question relating to a petition to the Court Martial Appeal Court for its opinion and the Court shall furnish its opinion accordingly.

Consultation de la Cour d'appel de la cour martiale

(3) Il peut consulter, sur la demande ou toute question qui y est liée, la Cour d'appel de la cour martiale; celle-ci est tenue de donner son avis.

New trial

(4) If the Minister is of the opinion that a petition should be granted, the Minister may order a new trial and the petitioner may be tried again as if no trial had been held.

Nouveau procès

(4) S'il estime que la demande devrait être agréée, il peut ordonner un nouveau procès, auquel cas le requérant peut être jugé à nouveau comme s'il n'y avait pas eu de premier procès.

Division 12

Miscellaneous Provisions

Right to be Represented

Right to be represented

249.17 A person who is liable to be charged, dealt with and tried under the Code of Service Discipline has the right to be represented in the circumstances and in the manner prescribed in regulations made by the Governor in Council.

Section 12

Dispositions diverses

Représentation de l'accusé

Droit d'être représenté

249.17 Tout justiciable du code de discipline militaire a le droit d'être représenté dans les cas et de la manière prévus par règlement du gouverneur en conseil.

Defence Counsel Services

Appointment

249.18 (1) The Minister may appoint an officer who is a barrister or advocate with at least ten years standing at the bar of a province to be the Director of Defence Counsel Services.

Nomination

249.18 (1) Le ministre peut nommer directeur du service d'avocats de la défense un officier qui est un avocat inscrit au barreau d'une province depuis au moins dix ans.

Tenure of office

(2) The Director of Defence Counsel Services holds office during good behaviour for a term not exceeding four years.

Durée du mandat

(2) Le directeur du service d'avocats de la défense est nommé à titre inamovible pour un mandat maximal de quatre ans.

Re-appointment

(3) The Director of Defence Counsel Services is eligible to be re-appointed on the expiration of a first or subsequent term of office.

Nouveau mandat

(3) Son mandat est renouvelable.

Duties and functions

249.19 The Director of Defence Counsel Services provides, and supervises and directs the provision of, legal services prescribed in regulations made by the Governor in Council to persons who are liable to be charged, dealt with and tried under the Code of Service Discipline.

Fonctions

249.19 Le directeur du service d'avocats de la défense dirige la prestation des services juridiques prévus par règlement du gouverneur en conseil aux justiciables du code de discipline militaire et fournit lui-même de tels services.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- permits the Minister to refer a petition for a new trial to the Court Martial Appeal Court for a determination or an opinion [subs. 249.16(2) and (3)]
- authorizes the Minister to grant the petition and order a new trial [subs. 249.16(4)]
- provides that a person who is liable to be charged, dealt with and tried under the *Code of Service Discipline* has the right to be represented in the circumstances and in the manner prescribed in regulations made by the Governor in Council [s. 249.17]
- sets out the qualifications, terms of office, duties and functions of the Director of Defence Counsel Services, including that the Director:
  - must be an officer who is a barrister or advocate with at least ten years standing at the bar of a province [s. 249.18]
  - holds office during good behaviour for a term not exceeding four years [s. 249.18]
  - is appointed by the Minister [s. 249.18]
  - is responsible to provide, supervise and direct the provision of legal services prescribed in regulations made by the Governor in Council to persons who are liable to be charged, dealt with and tried under the *Code of Service Discipline* [s. 249.19]

Reasons for the change

The Minister may order a new trial if new evidence is discovered subsequent to the trial, a power previously exercised by the Chief of Defence Staff. The ministerial exercise of this power is analogous to that of the Minister of Justice under s. 690 of the *Criminal Code*. [s. 249.16]

An accused's right to be represented by counsel is presently contained in section 179 of the *Act*. These amendments expand that right to persons who are liable to be charged and dealt with under the *Code of Service Discipline*. In addition, the appointment of a new Director of Defence Counsel Services will serve to provide a clearly defined institutional separation between the prosecution and defence functions. [ss. 249.17 to 249.21]

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Relationship to Judge Advocate General

249.2 (1) The Director of Defence Counsel Services acts under the general supervision of the Judge Advocate General.

Subordination

249.2 (1) Le directeur du service d'avocats de la défense exerce ses fonctions sous la direction générale du juge-avocat général.

General instructions

(2) The Judge Advocate General may issue general instructions or guidelines in writing in respect of defence counsel services.

Lignes directrices et instructions générales

(2) Le juge-avocat général peut, par écrit, établir des lignes directrices ou donner des instructions concernant les services d'avocats de la défense.

Instructions must be public

(3) The Director of Defence Counsel Services shall ensure that the general instructions and guidelines are available to the public.

Accessibilité

(3) Le directeur du service d'avocats de la défense veille à rendre accessibles au public les lignes directrices ou instructions.

Barristers and advocates to assist

249.21 (1) The Director of Defence Counsel Services may be assisted by persons who are barristers or advocates with standing at the bar of a province.

Avocats

249.21 (1) Le directeur du service d'avocats peut être assisté et représenté par des avocats inscrits au barreau d'une province.

Counsel

(2) The Director of Defence Counsel Services may engage on a temporary basis the services of counsel to assist the Director of Defence Counsel Services.

Avocats

(2) Il peut retenir, à titre temporaire, les services d'avocats pour l'assister.

Remuneration

(3) The Director of Defence Counsel Services may, subject to any applicable Treasury Board directives, establish the terms and conditions of engagement and fix the remuneration and expenses of counsel engaged under subsection (2).

Rémunération

(3) Il peut, en conformité avec les instructions du Conseil du Trésor, définir les fonctions et les conditions d'emploi des avocats dont il retient les services aux termes du paragraphe (2), ainsi que fixer leur rémunération et leurs frais.

Witnesses at Courts Martial and before Commissioners

Témoins devant la cour martiale ou le commissaire

Summonses to witnesses

249.22 (1) Every person required to give evidence before a court martial may be summoned by a military judge, the Court Martial Administrator or the court martial.

Citation de témoins

249.22 (1) Quiconque est tenu de témoigner devant la cour martiale peut être cité à comparaître par un juge militaire, l'administrateur de la cour martiale ou la cour martiale.

Summonses to witnesses

(2) Every person required to give evidence before a commissioner taking evidence under this Act may be summoned by a military judge, the Court Martial Administrator or the commissioner.

Témoins devant le commissaire

(2) Quiconque est tenu de témoigner devant un commissaire chargé de recueillir un témoignage sous le régime de la présente loi peut être cité à comparaître par un juge militaire, l'administrateur de la cour martiale ou le commissaire.

Production of documents

(3) A person summoned under this section may be required to bring and produce at the court martial or before the commissioner taking evidence under this Act any documents in the possession or under the control of the person that relate to the matters in issue.

Production de documents

(3) Les personnes citées à comparaître aux termes du présent article peuvent être tenues de produire devant la cour martiale ou le commissaire tout document dont elles ont la possession ou la responsabilité et se rapportant aux points en litige.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- sets out the qualifications, terms of office, duties and functions of the Director of Defence Counsel Services, including that the Director:
  - acts under the general supervision of the Judge Advocate General [s. 249.2]
- authorizes the Judge Advocate General to issue general instructions or guidelines to the Director that must be made available to the public [s. 249.2]
- provides that the Director of Defence Counsel Services may be assisted by persons who are barristers or advocates with standing at the bar of a province [subs. 249.21(1)]
- authorizes the Director of Defence Counsel Services to engage the services of defence counsel on a temporary basis [subs. 249.21(2)]
- provides that every person required to give evidence before a court martial or a commissioner taking evidence may be summoned by a military judge, the Court Martial Administrator or the court martial, and may be required to produce documents. [s. 249.22]

Reasons for the change

An accused's right to be represented by counsel is presently contained in section 179 of the *Act*. These amendments expand that right to persons who are liable to be charged and dealt with under the *Code of Service Discipline*. In addition, the appointment of a new Director of Defence Counsel Services will serve to provide a clearly defined institutional separation between the prosecution and defence functions. [ss. 249.17 to 249.21]

The provisions dealing with summoning witnesses to courts martial or to a commissioner taking evidence under the *Act* differs from present section 183 of the *Act* in that it is a military judge, the Court Martial Administrator, or a commissioner who has exclusive power to summon witnesses and require the production of documents. The present duties of the president of a court martial and the convening authority have been removed as a consequence of the changes to the structure of courts martial. [s. 249.22]

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Warrant for Arrest on Non-Appearance of Accused

Non-appearance of accused

249.23 Where an accused person has been duly summoned or ordered to appear before a court martial, the court martial may issue a warrant in the form prescribed in regulations made by the Governor in Council for the arrest of the accused person if the accused person

(*a*) fails to appear as summoned or ordered; or

(*b*) having appeared before the court martial, fails to attend before the court martial as required.

Mandat d'arrestation pour défaut de comparaître

Défaut de comparaître

249.23 La cour martiale peut, en la forme prescrite par règlement du gouverneur en conseil, délivrer un mandat pour l'arrestation de l'accusé qui, étant régulièrement convoqué ou ayant dûment reçu l'ordre de comparaître devant elle, ne s'y présente pas.

Effect of New Punishment

Force and effect

249.24 Where a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment has force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline apply accordingly but, where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be.

Effet des nouvelles peines

Valeur et effet de la nouvelle peine

249.24 La peine remplaçant, après substitution ou commutation, celle infligée par un tribunal militaire a la même valeur et le même effet que si elle avait été imposée en premier lieu par celui-ci, et le code de discipline militaire s'applique en conséquence. S'il s'agit d'une peine comportant l'incarcération, elle commence à courir à compter de la date de substitution ou commutation, selon le cas.

Restitution of Property

Restitution of property in case of conviction

249.25 (1) Where a person is convicted of an offence under the Code of Service Discipline, the service tribunal 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.

Restitution where no conviction, but offence committed

(2) Where an accused person is tried for an offence but is not convicted and it appears to the service tribunal that an offence has been committed, the service tribunal may 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.

Restitution de biens

Déclaration de culpabilité

249.25 (1) Le tribunal militaire qui prononce une déclaration de culpabilité à l'égard d'une infraction visée par le code de discipline militaire doit ordonner 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.

Perpétration d'infraction sans déclaration de culpabilité

(2) Dans le cas où il ne prononce pas de déclaration de culpabilité mais est convaincu qu'une infraction a été commise, le tribunal militaire peut également procéder de la manière et dans les conditions prévues au paragraphe (1).

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- permits a warrant for arrest to be issued by a court martial if an accused fails to appear or attend as ordered [s. 249.23]
- provides that if a punishment is substituted or commuted by a service tribunal, it is effective as if it had been imposed by the original tribunal but a new punishment of incarceration is effective as of the date of substitution or commutation [s. 249.24]
- provides a scheme for the restoration of property in relation to an offence where the property is before a service tribunal, or has been detained [s. 249.25]

Reasons for the change

The authority to issue a warrant for the arrest of an accused who fails to appear or attend before a court martial complements the new offence in section 118.1 of failure to appear or attend before a service tribunal. [s. 249.23]

The provision dealing with the effect of a new punishment reflects the contents of present section 214 with minor drafting changes. [s. 249.24]

The provision dealing with the restitution of property reflects the contents of present section 227. [s. 249.25]

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Exceptions

(3) An order shall not be made in respect of

(*a*) property to which an innocent purchaser for value has acquired lawful title;

(*b*) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it; or

(*c*) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed.

Execution of order for restitution

(4) An order made under this section shall be executed by the persons by whom the process of the service tribunal is ordinarily executed.

Reference to Ranks

Reference to ranks

249.26 Every reference in this Part to the rank of an officer or non-commissioned member includes a person who holds any equivalent relative rank, whether that person is attached, seconded or on loan to the Canadian Forces.

PART IV

COMPLAINTS ABOUT OR BY MILITARY POLICE

Interpretation

Definitions

250. The definitions in this section apply in this Part.

"Chairperson" means the Chairperson of the Complaints Commission.

"Chairperson"
« *Président* »

"Complaints Commission" means the Military Police Complaints Commission established by subsection 250.1(1).

"Complaints Commission"
« *Commission* »

"conduct complaint" means a complaint about the conduct of a member of the military police made under subsection 250.18(1).

"conduct complaint"
« *plainte pour inconduite* »

"interference complaint" means a complaint about interference with a military police investigation made under subsection 250.19(1).

"interference complaint"
« *plainte pour ingérence* »

Exceptions

(3) Le présent article ne permet toutefois pas de prendre une ordonnance à l'égard :

a) de biens pour lesquels un acheteur de bonne foi a acquis contre paiement un titre légitime;

b) d'une valeur payée ou acquittée de bonne foi par une personne qui y était tenue;

c) d'un effet de commerce, acquis ou reçu de bonne foi, par voie de transfert ou remise, à titre onéreux, par une personne n'ayant pas connaissance de l'infraction ni d'aucun motif raisonnable de soupçonner qu'elle avait été commise.

Exécution de l'ordonnance de restitution

(4) L'ordonnance prise sous le régime du présent article est exécutée par les personnes qui sont habituellement chargées de donner effet aux décisions du tribunal militaire.

Mention d'un grade

Mention d'un grade

249.26 Toute mention, dans la présente partie, du grade d'un officier ou militaire du rang vaut mention d'une personne d'un grade reconnu comme équivalent, que cette personne soit affectée ou prêtée aux Forces canadiennes, ou détachée auprès d'elles.

PARTIE IV

PLAINTES CONCERNANT LA POLICE MILITAIRE

Définitions

Définitions

250. Les définitions qui suivent s'appliquent à la présente partie.

« Commission » "*Complaints Commission*"

« Commission » La Commission d'examen des plaintes concernant la police militaire constituée par le paragraphe 250.1(1).

« plainte pour inconduite » "*conduct complaint*"

« plainte pour inconduite » Plainte déposée aux termes du paragraphe 250.18(1) contre un membre de la police militaire concernant sa conduite.

« plainte pour ingérence » "*interference complaint*"

« plainte pour ingérence » Plainte déposée aux termes du paragraphe 250.19(1) pour ingérence dans une enquête de la police militaire.

« police militaire » "*military police*"

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

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- provides a scheme for the restoration of property in relation to an offence where the property is before a service tribunal, or has been detained [s. 249.25]
- provides that every reference to rank in Part III includes a person who holds any equivalent relative rank, whether that person is attached, seconded or on loan to the Canadian Forces. [s. 249.26]

Reasons for the change

The provision dealing with the restitution of property reflects the contents of present section 227. [s. 249.25]

The provision dealing with references to rank repeats present subsection 160(2) of the *Act*. [s. 249.26]

PART IV
COMPLAINTS ABOUT OR BY MILITARY POLICE

What the amendment does

- defines "Chairperson", "Complaints Commission", "conduct complaint" and "interference complaint" [s. 250]

Reasons for the change

The definitions are consequential to the establishment of a Military Police Complaints Commission.

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"military police" means the officers and non-commissioned members appointed under regulations for the purposes of section 156.

"military police" « *police militaire* »

"Provost Marshal" means the Canadian Forces Provost Marshal.

"Provost Marshal" « *prévôt* »

« police militaire » Les officiers et militaires du rang nommés pour l'application de l'article 156.

« prévôt » Le prévôt des Forces canadiennes.

« prévôt » "*Provost Marshal*"

DIVISION 1

MILITARY POLICE COMPLAINTS COMMISSION

Establishment and Organization

Commission established

250.1 (1) There is established a commission, called the Military Police Complaints Commission, consisting of a Chairperson and not more than six other members to be appointed by the Governor in Council.

Full- or part-time

(2) Each member holds office as a full-time or a part-time member.

Tenure of office and removal

(3) Each member holds office during good behaviour for a term not exceeding five years but may be removed by the Governor in Council for cause.

Re-appointment

(4) A member is eligible to be re-appointed on the expiration of a first or subsequent term of office.

Duties of full-time members

(5) Full-time members shall devote the whole of their time to the performance of their duties under this Act.

Conflict of interest — part-time members

(6) Part-time members may not accept or hold any office or employment during their term of office that is inconsistent with their duties under this Act.

Eligibility

(7) An officer, a non-commissioned member or an employee of the Department is not eligible to be a member of the Complaints Commission.

Remuneration

(8) The members are entitled to be paid for their services the remuneration and allowances fixed by the Governor in Council.

Travel and living expenses

(9) The members are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties while absent from their ordinary place of work, if

SECTION 1

COMMISSION D'EXAMEN DES PLAINTES CONCERNANT LA POLICE MILITAIRE

Constitution et organisation de la Commission

Constitution de la Commission

250.1 (1) Est constituée la Commission d'examen des plaintes concernant la police militaire composée d'au plus sept membres, dont le président, nommés par le gouverneur en conseil.

Temps plein ou temps partiel

(2) Ses membres exercent leur charge à temps plein ou à temps partiel.

Durée du mandat et révocation

(3) Les membres de la Commission sont nommés, à titre inamovible, pour un mandat maximal de cinq ans, sous réserve de révocation motivée par le gouverneur en conseil.

Nouveau mandat

(4) Le mandat des membres de la Commission est renouvelable.

Fonctions des membres à temps plein

(5) Les membres à temps plein se consacrent exclusivement à l'exécution des fonctions qui leur sont conférées par la présente loi.

Conflits d'intérêts : membres temporaires

(6) Les membres à temps partiel ne peuvent accepter ni occuper de charge ou d'emploi incompatible avec les fonctions que leur confère la présente loi.

Admissibilité

(7) Sont inhabiles à siéger à la Commission les officiers et militaires du rang ainsi que les employés du ministère.

Rémunération des membres

(8) Pour leur participation aux travaux de la Commission, les membres reçoivent la rémunération et les allocations fixées par le gouverneur en conseil.

Frais

(9) Les membres de la Commission sont indemnisés, en conformité avec les instructions du Conseil du Trésor, des frais de déplacement et de séjour entraînés par l'ac-

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- defines "military police" and "Provost Marshal" [s. 250]
- establishes the Military Police Complaints Commission, with the following features:
  - fully tenured full time and part time members (who are not members of the Canadian Forces or the Department) appointed by the Governor in Council [s. 250.1]
  - a Chairperson who is the chief executive officer [s. 250.11]
  - a head office located at a place in Canada designated by the Governor in Council [s. 250.12]
  - authority to appoint necessary staff [s. 250.13]
  - a duty to act expeditiously [s. 250.14]
  - authority to make procedural and administrative rules [s. 250.15]
  - protection of members from criminal or civil proceedings in relation to their duties [s. 250.16]
  - a requirement to submit an annual report to the Minister which is to be tabled in Parliament [s. 250.17]

Reasons for the change

The definitions complement the establishment of a Military Police Complaints Commission.

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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full-time members, or their ordinary place of residence, if part-time members, subject to any applicable Treasury Board directives.

complissement de leurs fonctions hors de leur lieu habituel soit de travail, s'ils sont à temps plein, soit de résidence, s'ils sont à temps partiel.

Status of members

(10) The members are deemed

(*a*) to be employed in the Public Service for the purposes of the *Public Service Superannuation Act*;

(*b*) to be employees for the purposes of the *Government Employees Compensation Act*; and

(*c*) to be employed in the public service of Canada for the purposes of any regulations made pursuant to section 9 of the *Aeronautics Act*.

(10) Ils sont réputés :

a) faire partie de la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*;

b) être des agents de l'État pour l'application de la *Loi sur l'indemnisation des agents de l'État*;

c) appartenir à l'administration publique fédérale pour l'application des règlements pris en vertu de l'article 9 de la *Loi sur l'aéronautique*.

Statut des membres

Oath of office

(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 Police Complaints Commission in conformity with the requirements of the *National Defence Act*, and of all rules and instructions under that Act applicable to the Military Police Complaints Commission, 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.)

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

Je, ..., jure (*ou* 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.)

Serment

Chairperson

Président

Chief executive officer

250.11 (1) The Chairperson is the chief executive officer of the Complaints Commission and has supervision over and direction of its work and staff.

250.11 (1) Le président est le premier dirigeant de la Commission; à ce titre, il en assure la direction et contrôle la gestion de son personnel.

Premier dirigeant

Absence or incapacity

(2) In the event of the absence or incapacity of the Chairperson or if the office of Chairperson is vacant, the Minister may authorize any member of the Complaints Commission to exercise the powers and perform the duties and functions of the Chairperson.

(2) En cas d'absence ou d'empêchement du président ou de vacance de son poste, le ministre peut autoriser un membre à le remplacer.

Absence ou empêchement

Delegation

(3) The Chairperson may delegate to a member of the Complaints Commission any of the Chairperson's powers, duties or functions under this Act, except the power to delegate under this subsection and the duty to

(3) Le président de la Commission peut déléguer à un membre les pouvoirs et fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe et de l'obliga-

Délégation

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- establishes the Military Police Complaints Commission, with the following features:
  - fully tenured full time and part time members (who are not members of the Canadian Forces) appointed by the Governor in Council [s. 250.1]
  - a Chairperson who is the chief executive officer [s. 250.11]
  - a head office located at a place in Canada designated by the Governor in Council [s. 250.12]
  - authority to appoint necessary staff [s. 250.13]
  - a duty to act expeditiously [s. 250.14]
  - authority to make procedural and administrative rules [s. 250.15]
  - protection from criminal or civil proceedings [s. 250.16]
  - a requirement to submit an annual report to the Minister which is to be tabled in Parliament [s. 250.17]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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submit an annual report under subsection 250.17(1).

tion que lui impose le paragraphe 250.17(1) de présenter un rapport.

Head Office

Head Office

250.12 The head office of the Complaints Commission shall be at the place in Canada designated by the Governor in Council.

Siège

Siège

250.12 Le siège de la Commission est fixé, au Canada, au lieu désigné par le gouverneur en conseil.

Staff

Staff

250.13 (1) The employees that are necessary for the proper conduct of the work of the Complaints Commission shall be appointed in accordance with the *Public Service Employment Act*.

Experts

(2) The Complaints Commission may, with the approval of the Treasury Board, engage on a temporary basis the services of counsel and other persons having technical or specialized knowledge to assist the Complaints Commission in its work, establish the terms and conditions of their engagement and fix and pay their remuneration and expenses.

Personnel

Personnel

250.13 (1) Le personnel nécessaire à l'exécution des travaux de la Commission est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

Expertise

(2) La Commission peut, avec l'approbation du Conseil du Trésor, retenir, à titre temporaire, les services des experts, avocats ou autres personnes dont elle estime le concours utile pour ses travaux, définir leurs fonctions et leurs conditions d'emploi ainsi que fixer et payer leur rémunération et leurs frais.

Duty to Act Expeditiously

Duty to act expeditiously

250.14 The Complaints Commission shall deal with all matters before it as informally and expeditiously as the circumstances and the considerations of fairness permit.

Obligation d'agir avec célérité

Obligation d'agir avec célérité

250.14 Dans la mesure où les circonstances et l'équité le permettent, la Commission donne suite aux plaintes dont elle est saisie avec célérité et sans formalisme.

Rules

Rules

250.15 The Chairperson may make rules respecting

(*a*) the manner of dealing with matters and business before the Complaints Commission, including the conduct of investigations and hearings by the Complaints Commission;

(*b*) the apportionment of the work of the Complaints Commission among its members and the assignment of members to review complaints; and

(*c*) the performance of the duties and functions of the Complaints Commission.

Règles

Règles

250.15 Le président peut établir des règles concernant :

a) le mode de règlement des questions dont est saisie la Commission, notamment en ce qui touche à la procédure et conduite des enquêtes et des audiences;

b) la répartition des affaires et du travail entre les membres de la Commission;

c) la conduite des travaux de la Commission et de son administration.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- establishes the Military Police Complaints Commission, with the following features:
  - fully tenured full time and part time members (who are not members of the Canadian Forces) appointed by the Governor in Council [s. 250.1]
  - a Chairperson who is the chief executive officer [s. 250.11]
  - a head office located at a place in Canada designated by the Governor in Council [s. 250.12]
  - authority to appoint necessary staff [s. 250.13]
  - a duty to act expeditiously [s. 250.14]
  - authority to make procedural and administrative rules [s. 250.15]
  - protection from criminal or civil proceedings [s. 250.16]
  - a requirement to submit an annual report to the Minister which is to be tabled in Parliament [s. 250.17]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Immunity

Protection of members

250.16 No criminal or civil proceedings lie against any member of the Complaints Commission, or against any person acting on behalf of the Complaints Commission, 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 Complaints Commission.

Immunité

Immunité des membres de la Commission

250.16 Les membres de la Commission et les personnes qui agissent en son nom ou sous son autorité 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.

Annual Report

Annual Report

250.17 (1) The Chairperson shall, within three months after the end of each year, submit to the Minister a report of the Complaints Commission's activities during that year and its recommendations, if any.

Tabling in Parliament

(2) The Minister shall have a copy of the report laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

Rapport annuel

Rapport annuel

250.17 (1) Le président présente au ministre, au plus tard le 31 mars de chaque année, le rapport d'activité de la Commission pour l'année civile précédente, ainsi que ses recommandations, le cas échéant.

Dépôt

(2) Le ministre fait déposer le rapport annuel devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

DIVISION 2

COMPLAINTS

Subdivision 1

Right to Complain

Conduct Complaints

Complaints about military police

250.18 (1) Any person, including any officer or non-commissioned member, may make a complaint under this Division about the conduct of a member of the military police in the performance of any of the policing duties or functions that are prescribed for the purposes of this section in regulations made by the Governor in Council.

Complainant need not be affected

(2) A conduct complaint may be made whether or not the complainant is affected by the subject-matter of the complaint.

SECTION 2

PLAINTES

Sous-section 1

Droit de déposer une plainte

Plainte pour inconduite

Plainte contre un policier militaire

250.18 (1) Quiconque — y compris un officier ou militaire du rang — peut, dans le cadre de la présente section, déposer une plainte portant sur la conduite d'un policier militaire dans l'exercice des fonctions de nature policière qui sont déterminées par règlement du gouverneur en conseil pour l'application du présent article.

Absence de préjudice

(2) Elle peut déposer une plainte qu'elle en ait ou non subi un préjudice.

Interference Complaints

Plainte pour ingérence

Complaints by military police

250.19 (1) Any member of the military police who conducts or supervises a military police investigation, or who has done so, and who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with the investigation may

Plainte d'un policier militaire

250.19 (1) Le policier militaire qui mène ou supervise une enquête, ou qui l'a menée ou supervisée, peut, dans le cadre de la présente section, porter plainte contre un officier ou un militaire du rang ou un cadre supérieur du ministère s'il est fondé à croire, pour des motifs raisonnables, que celui-ci a entravé l'enquête.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- establishes the Military Police Complaints Commission, with the following features:
  - fully tenured full time and part time members (who are not members of the Canadian Forces) appointed by the Governor in Council [s. 250.1]
  - a Chairperson who is the chief executive officer [s. 250.11]
  - a head office located at a place in Canada designated by the Governor in Council [s. 250.12]
  - authority to appoint necessary staff [s. 250.13]
  - a duty to act expeditiously [s. 250.14]
  - authority to make procedural and administrative rules [s. 250.15]
  - protection from criminal or civil proceedings [s. 250.16]
  - a requirement to submit an annual report to the Minister which is to be tabled in Parliament [s. 250.17]
- provides that any person, including members of the Canadian Forces, may make a complaint about conduct of the Military Police in the performance of prescribed police duties or functions [s. 250.18]
- provides that any member of the military police who conducts or supervises a military police investigation or who has done so may make a complaint about a member of the Canadian Forces or senior official of the Department who has improperly interfered in the investigation [s. 250.19]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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make a complaint about that person under this Division.

Improper interference

(2) For the purposes of this section, improper interference with an investigation includes intimidation and abuse of authority.

Entrave

(2) Sont assimilés à l'entrave l'intimidation et l'abus d'autorité.

Time Limit

Time limit

250.2 No complaint may be made more than one year after the event giving rise to the complaint unless the Chairperson, at the request of the complainant, decides that it is reasonable in the circumstances to extend the time.

Prescription

Prescription

250.2 Les plaintes se prescrivent, sauf dispense accordée par le président à la requête du plaignant, par un an à compter de la survenance du fait qui en est à l'origine.

To Whom Complaint May be Made

To whom complaint may be made

250.21 (1) A conduct complaint or an interference complaint may be made, either orally or in writing, to the Chairperson, the Judge Advocate General or the Provost Marshal. A conduct complaint may also be made to any member of the military police.

Réception des plaintes

Destinataires possibles

250.21 (1) Les plaintes sont adressées, par écrit ou oralement, au président, au juge-avocat général ou au prévôt. Elles peuvent aussi, quand elle visent une inconduite, être adressée à un policier militaire.

Acknowledgement and notice of complaint

(2) The person who receives a complaint shall

(*a*) if the complaint is not in writing, put it in writing;

(*b*) ensure that an acknowledgement of its receipt is sent as soon as practicable to the complainant; and

(*c*) ensure that notice of the complaint is sent as soon as practicable

(i) in the case of a conduct complaint, to the Chairperson and the Provost Marshal,

(ii) in the case of an interference complaint concerning an officer or a non-commissioned member, to the Chairperson, the Chief of the Defence Staff, the Judge Advocate General and the Provost Marshal, and

(iii) in the case of an interference complaint concerning a senior official of the Department, to the Chairperson, the Deputy Minister, the Judge Advocate General and the Provost Marshal.

Accusé de réception et avis

(2) Sur réception de la plainte, le destinataire :

a) la consigne par écrit, si elle lui est faite oralement;

b) veille à ce qu'il en soit accusé réception par écrit dans les meilleurs délais;

c) veille à ce qu'en soient avisés, dans les meilleurs délais :

(i) le président et le prévôt dans le cas d'une plainte pour inconduite,

(ii) le président, le chef d'état-major de la défense, le juge-avocat général et le prévôt dans le cas d'une plainte pour ingérence mettant en cause un officier ou un militaire du rang,

(iii) le président, le sous-ministre, le juge-avocat général et le prévôt dans le cas d'une plainte pour ingérence mettant en cause un cadre supérieur du ministère.

Notice to subject of conduct complaint

250.22 As soon as practicable after receiving or being notified of a conduct complaint, the Provost Marshal shall send a written notice of the substance of the complaint to the person

Avis — plainte pour inconduite

250.22 Dans les meilleurs délais suivant la réception ou la notification d'une plainte pour inconduite, le prévôt avise par écrit la personne mise en cause de la teneur de celle-ci, pour

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- provides that any member of the military police who conducts or supervises a military police investigation or who has done so may make a complaint about a member of the Canadian Forces or senior official of the Department who has improperly interfered in the investigation [s. 250.19]
- provides that a complaint may not be made more than one year after the event giving rise to it unless the Chairperson decides that it is reasonable to extend the time [s. 250.2]
- sets out the procedures for initiating a complaint [s. 250.21]
- requires the Canadian Forces Provost Marshal to send written notice of the substance of a conduct complaint to the person whose conduct is the subject of the complaint unless the notice might adversely affect or hinder an investigation under the *Act* [s. 250.22]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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whose conduct is the subject of the complaint unless, in the Provost Marshal's opinion, to do so might adversely affect or hinder any investigation under this Act.

Notice to subject of interference complaint

250.23 As soon as practicable after receiving or being notified of an interference complaint, the Chairperson shall send a written notice of the substance of the complaint to the person who is the subject of the complaint unless, in the Chairperson's opinion, to do so might adversely affect or hinder any investigation under this Act.

autant que cela, à son avis, ne risque pas de nuire à la tenue d'une enquête sous le régime de la présente loi.

Avis — plainte pour ingérence

250.23 Dans les meilleurs délais suivant la réception ou la notification d'une plainte pour ingérence, le président avise par écrit la personne mise en cause de la teneur de celle-ci, 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.

Withdrawal of Complaint

Retrait

Withdrawal

250.24 (1) A complainant may withdraw a complaint by sending a written notice to the Chairperson.

Retrait

250.24 (1) Le plaignant peut retirer sa plainte par avis écrit en ce sens au président.

Notice of withdrawal

(2) The Chairperson shall send a notice in writing of the withdrawal to the Provost Marshal and the person who was the subject of the complaint.

Avis du retrait

(2) Le cas échéant, le président en avise aussitôt, par écrit, le prévôt et la personne mise en cause.

Record of Complaints

Dossiers

Record of complaints

250.25 The Provost Marshal shall establish and maintain a record of all complaints received under this Division and, on request, make available any information contained in that record to the Complaints Commission.

Dossier

250.25 Le prévôt établit et conserve un dossier de toutes les plaintes reçues en application de la présente section et fournit à la Commission, à sa demande, tout renseignement contenu dans le dossier.

Subdivision 2

Sous-section 2

Disposal of Conduct Complaints

Plaintes pour inconduite

Provost Marshal responsible

250.26 (1) The Provost Marshal is responsible for dealing with conduct complaints.

Responsabilité du prévôt

250.26 (1) Le prévôt est responsable du traitement des plaintes pour inconduite.

Complaint about Provost Marshal

(2) If a conduct complaint is about the conduct of the Provost Marshal, the Chief of the Defence Staff is responsible for dealing with the complaint and has all the powers and duties of the Provost Marshal under this Division.

Plainte visant le prévôt

(2) Dans le cas où la plainte met en cause le prévôt, son traitement incombe au chef d'état-major de la défense, qui, à cet effet, exerce les pouvoirs et fonctions qu'attribue la présente section à celui-ci.

Informal resolution

250.27 (1) On receiving or being notified of a conduct complaint, the Provost Marshal shall consider whether it can be disposed of informally and, with the consent of the complainant and the person who is the subject of the complaint, the Provost Marshal may attempt to resolve it informally.

Règlement amiable

250.27 (1) Dès réception ou notification d'une plainte pour inconduite, le prévôt détermine si elle peut être réglée à l'amiable; avec le consentement du plaignant et de la personne mise en cause, il peut alors tenter de la régler.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Canadian Forces Provost Marshal to send written notice of the substance of a conduct complaint to the person whose conduct is the subject of the complaint unless the notice might adversely affect or hinder an investigation under the *Act* [s. 250.22]
- requires the Chairperson to send written notice of the substance of an interference complaint to the member whose conduct is the subject of the complaint unless the notice might adversely affect or hinder any investigation under the *Act* [s. 250.23]
- sets out the procedure for withdrawing a complaint [s. 250.24]
- requires the Canadian Forces Provost Marshal to establish and maintain a record of all complaints received and make the information available to the Complaints Commission on request [s. 250.25]
- provides that the Canadian Forces Provost Marshal is responsible for dealing with conduct complaints unless the complaint is about his or her conduct [s. 250.26]
- sets out procedures for informal resolution of conduct complaints [s. 250.27]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Restriction

(2) Subsection (1) does not apply if the complaint is of a type prescribed in regulations made by the Governor in Council.

Exceptions

(2) Ne peuvent toutefois être réglées à l'amiable les plaintes relevant des catégories précisées par règlement du gouverneur en conseil.

Statements not admissible

(3) No answer given or statement made by the complainant or the person who is the subject of the complaint in the course of attempting to resolve a complaint informally may be used in any disciplinary, criminal, civil or administrative proceedings, other than a hearing or proceeding in respect of an allegation that, with intent to mislead, the complainant or the person who is the subject of the complaint gave an answer or made a statement knowing it to be false.

Déclarations inadmissibles

(3) Les réponses ou déclarations faites, dans le cadre d'une tentative de règlement à l'amiable, par le plaignant ou par la personne mise en cause ne peuvent être utilisées dans une juridiction disciplinaire, criminelle, administrative ou civile, sauf si leur auteur les a faites, tout en les sachant fausses, dans l'intention de tromper.

Right to refuse or end informal resolution

(4) The Provost Marshal may direct that no attempt at informal resolution be started or that an attempt be ended if, in the opinion of the Provost Marshal,

(*a*) the complaint is frivolous, vexatious or made in bad faith; or

(*b*) the complaint is one that could more appropriately be dealt with according to a procedure provided under another Part of this Act or under any other Act of Parliament.

Refus de résoudre à l'amiable

(4) Le prévôt peut refuser de tenter de résoudre à l'amiable une plainte ou mettre fin à toute tentative en ce sens si, à son avis :

a) soit la plainte est futile ou vexatoire ou a été portée de mauvaise foi;

b) soit il est préférable de recourir à une procédure prévue par une autre loi fédérale ou une autre partie de la présente loi.

Notice

(5) If a direction is made under subsection (4), the Provost Marshal shall send to the complainant and the person who is the subject of the complaint a notice in writing setting out

(*a*) the direction and the reasons why it was made; and

(*b*) the right of the complainant to refer the complaint to the Complaints Commission for review if the complainant is not satisfied with the direction.

Avis

(5) Le cas échéant, il avise par écrit le plaignant et la personne mise en cause de sa décision en faisant état des motifs de celle-ci ainsi que du droit du plaignant de renvoyer sa plainte devant la Commission pour examen, en cas de désaccord.

Record of informal resolution

(6) If a conduct complaint is resolved informally,

(*a*) the details of its resolution must be set out in writing;

(*b*) the complainant and the person who is the subject of the complaint must give their written agreement to the resolution of the complaint; and

(*c*) the Provost Marshal must notify the Chairperson of the resolution of the complaint.

Consignation du règlement amiable

(6) Tout règlement amiable doit être consigné en détail, approuvé par écrit par le plaignant et la personne mise en cause et notifié par le prévôt au président.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- sets out procedures for informal resolution of conduct complaints [s. 250.27]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Duty to investigate

250.28 (1) Subject to any attempts at informal resolution, the Provost Marshal shall investigate a conduct complaint as soon as practicable.

Right to refuse or end investigation

(2) The Provost Marshal may direct that no investigation of a conduct complaint be started or that an investigation be ended if, in the opinion of the Provost Marshal,

(*a*) the complaint is frivolous, vexatious or made in bad faith;

(*b*) the complaint is one that could more appropriately be dealt with according to a procedure provided under another Part of this Act or under any other Act of Parliament; or

(*c*) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

Notice

(3) If a direction is made under subsection (2), the Provost Marshal shall send to the complainant and, if the person who is the subject of the complaint was notified of the complaint under section 250.22, to that person, a notice in writing setting out

(*a*) the direction and the reasons why it was made; and

(*b*) the right of the complainant to refer the complaint to the Complaints Commission for review if the complainant is not satisfied with the direction.

Report on investigation

250.29 On the completion of an investigation into a conduct complaint, the Provost Marshal shall send to the complainant, the person who is the subject of the complaint and the Chairperson a report setting out

(*a*) a summary of the complaint;

(*b*) the findings of the investigation;

(*c*) a summary of any action that has been or will be taken with respect to disposition of the complaint; and

(*d*) the right of the complainant to refer the complaint to the Complaints Commission for review if the complainant is not satisfied with the disposition of the complaint.

Enquête

250.28 (1) Sauf tentative de règlement amiable, le prévôt fait enquête dans les meilleurs délais sur la plainte pour inconduite dont il est saisi.

Droit de refuser une enquête

(2) Il peut toutefois à tout moment refuser d'ouvrir l'enquête ou ordonner d'y mettre fin si, à son avis :

a) la plainte est futile ou vexatoire ou a été portée de mauvaise foi;

b) il est préférable de recourir à une procédure prévue par une autre loi fédérale ou une autre partie de la présente loi;

c) compte tenu des circonstances, il est inutile ou exagérément difficile de procéder à l'enquête ou de la poursuivre.

Avis

(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 mise en cause, en faisant état des motifs de sa décision et du droit du plaignant de renvoyer sa plainte devant la Commission pour examen, en cas de désaccord.

Rapport d'enquête

250.29 Au terme de l'enquête, le prévôt transmet au plaignant, à la personne mise en cause et au président un rapport comportant les éléments suivants :

a) un résumé de la plainte;

b) les conclusions de l'enquête;

c) un résumé des mesures prises ou projetées pour régler la plainte;

d) la mention du droit du plaignant de renvoyer sa plainte devant la Commission pour examen, en cas de désaccord.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Canadian Forces Provost Marshal to investigate all conduct complaints and sets out his or her responsibilities and the procedure for doing so. (A conduct complaint about the Canadian Forces Provost Marshal is dealt with by the Chief of the Defence Staff.) [ss. 250.28]
- requires the Canadian Forces Provost Marshal to prepare a report on completion of a conduct complaint investigation and to report regularly on the status of the complaint until the complaint has been disposed of [ss. 250.29 and 250.3]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Status reports

250.3 (1) Within sixty days after receiving or being notified of a conduct complaint, the Provost Marshal shall, if the complaint has not been resolved or disposed of before that time, and then each thirty days afterwards until the complaint is dealt with, send to the following persons a report on the status of the complaint:

(*a*) the complainant;

(*b*) the person who is the subject of the complaint; and

(*c*) the Chairperson.

Six-month report

(2) If a conduct complaint has not been resolved or disposed of within six months, the Provost Marshal shall in each report sent after that period explain why not.

Exception

(3) No report shall be sent to the person who is the subject of a conduct complaint if, in the opinion of the Provost Marshal, sending the report might adversely affect or hinder any investigation under this Act.

Rapports provisoires

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 prévôt transmet au plaignant, à la personne mise en cause et au président un rapport écrit sur l'état d'avancement de l'affaire.

Respect des délais

(2) Au bout de six mois, il doit justifier toute prolongation de l'affaire dans tout rapport qu'il transmet après cette période.

Exception

(3) Il est relevé de l'obligation de faire rapport à la personne mise en cause lorsqu'il est d'avis qu'une telle mesure risque de nuire à la conduite d'une enquête dans le cadre de la présente loi.

Review by Complaints Commission

Reference to Complaints Commission

250.31 (1) A complainant who is dissatisfied with a direction under subsection 250.27(4) or 250.28(2) in respect of a conduct complaint or the disposition of a conduct complaint as set out in a report under section 250.29 may refer the complaint in writing to the Complaints Commission for review.

Information to be provided

(2) If a complainant refers a complaint to the Complaints Commission under subsection (1),

(*a*) the Chairperson shall send to the Provost Marshal a copy of the complaint; and

(*b*) the Provost Marshal shall provide the Chairperson with a copy of the notice sent under subsection 250.27(5) or 250.28(3), or of the report sent under section 250.29, in respect of the complaint and all information and materials relevant to the complaint.

Review by Chairperson

250.32 (1) The Chairperson shall review the complaint to which a request for review relates as soon as practicable after receiving the request.

Renvoi devant la Commission

Renvoi devant la Commission

250.31 (1) Le plaignant insatisfait de la décision prise aux termes des paragraphes 250.27(4) ou 250.28(2) ou des conclusions du rapport visé à l'article 250.29 peut, par écrit, renvoyer la plainte devant la Commission pour examen.

Documents à transmettre

(2) Le cas échéant, le président transmet une copie de la plainte au prévôt, lequel, en retour, lui communique une copie de l'avis donné au titre des paragraphes 250.27(5) ou 250.28(3) ou du rapport transmis au titre du paragraphe 250.29 ainsi que tout renseignement ou document pertinent.

Examen par le président

250.32 (1) Dans les meilleurs délais suivant sa réception, le président examine la plainte renvoyée devant la Commission.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Canadian Forces Provost Marshal to prepare a report on completion of a conduct complaint investigation and to report regularly on the status of the complaint until the complaint has been disposed of [ss. 250.29 and 250.3]
- entitles a complainant who is dissatisfied with the disposition of a complaint by the Canadian Forces Provost Marshal to refer the complaint to the Military Police Complaints Commission [s. 250.31]
- requires the Chairperson of the Military Police Complaints Commission to review the conduct complaint and sets out the procedure for doing so [ss. 250.32 and 250.33]

Reasons for the change

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken. [ss. 250 to 250.53]

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Chairperson may investigate

(2) In conducting a review of a complaint, the Chairperson may investigate any matter relating to the complaint.

Enquête du président

(2) Il peut, en cours d'examen, enquêter sur toute question concernant la plainte.

Report

(3) At the completion of the review, the Chairperson shall send a report to the Minister, the Chief of the Defence Staff and the Provost Marshal setting out the Chairperson's findings and recommendations with respect to the complaint.

Rapport

(3) Au terme de son examen, il établit et transmet au ministre, au chef d'état-major de la défense et au prévôt un rapport écrit énonçant ses conclusions et recommandations.

Status reports

250.33 (1) Within sixty days after a complaint is referred to the Commission for a review, the Chairperson shall, if the review has not been completed, and then each thirty days afterwards until it is completed, send a report on the status of the complaint to the complainant and the person who is the subject of the complaint.

Rapports provisoires

250.33 (1) Tant qu'il n'a pas terminé son examen, le président transmet, au plus tard soixante jours après le renvoi de la plainte devant la Commission et, par la suite, tous les trente jours, un rapport écrit au plaignant et à la personne mise en cause sur l'état d'avancement de l'affaire.

Six-month report

(2) If the review has not been completed within six months, the Chairperson shall in each report sent after that period explain why not.

Respect des délais

(2) Au bout de six mois, il doit justifier toute prolongation de l'examen dans tout rapport qu'il transmet après cette période.

Exception

(3) No report shall be sent to the person who is the subject of a conduct complaint if, in the Chairperson's opinion, sending the report might adversely affect or hinder any investigation under this Act.

Exception

(3) Il est relevé de l'obligation de faire rapport à la personne mise en cause par la plainte lorsqu'il est d'avis qu'une telle mesure risque de nuire à la conduite d'une enquête dans le cadre de la présente loi.

Subdivision 3

Disposal of Interference Complaints

Sous-section 3

Plaintes pour ingérence

Responsibility

250.34 (1) The Chairperson is responsible for dealing with interference complaints.

Responsabilité du président

250.34 (1) Le président est responsable du traitement des plaintes pour ingérence.

Investigation may be by Provost Marshal

(2) If the Chairperson considers it appropriate to do so, the Chairperson may ask the Provost Marshal to investigate an interference complaint.

Enquête par le prévôt

(2) Il peut, s'il l'estime indiqué, confier l'enquête sur une plainte au prévôt.

Reasons for refusal

(3) If the Provost Marshal does not consent to investigate, the Provost Marshal shall notify the Chairperson in writing of the reason why the consent was not given.

Motifs du refus du prévôt

(3) S'il décline la requête du président, le prévôt doit lui donner par écrit les motifs de son refus.

Duty to investigate

250.35 (1) The Chairperson or the Provost Marshal, as the case may be, shall investigate an interference complaint as soon as practicable.

Obligation de tenir une enquête

250.35 (1) Le président ou le prévôt, selon le cas, veille à ce que la plainte fasse l'objet d'une enquête dans les meilleurs délais.

Right to refuse or end investigation

(2) The Chairperson may direct that no investigation of an interference complaint be started or that an investigation be ended if, in the Chairperson's opinion,

Droit de refuser une enquête

(2) Le président peut toutefois à tout moment refuser d'ouvrir l'enquête ou ordonner d'y mettre fin si, à son avis :

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Chairperson of the Military Police Complaints Commission to review the conduct complaint and sets out the procedure for doing so [ss. 250.32 and 250.33]
- provides that the Chairperson is responsible for dealing with interference complaints, but may ask the Canadian Forces Provost Marshal to investigate a complaint [s. 250.34]
- requires the Chairperson or the Canadian Forces Provost Marshal to investigate an interference complaint as soon as practicable and sets out the responsibilities and procedure for doing so [s. 250.35]

Reasons for the change

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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(*a*) the complaint is frivolous, vexatious or made in bad faith;

(*b*) the complaint is one that could more appropriately be dealt with according to a procedure provided under another Part of this Act or under any other Act of Parliament; or

(*c*) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

a) la plainte est futile ou vexatoire ou a été portée de mauvaise foi;

b) il est préférable de recourir à une procédure prévue par une autre loi fédérale ou une autre partie de la présente loi;

c) compte tenu des circonstances, il est inutile ou exagérément difficile de procéder à l'enquête ou de la poursuivre.

Notice

(3) If the Chairperson makes a direction, the Chairperson shall send to the complainant, the person who is the subject of the complaint, the Chief of the Defence Staff or the Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal a notice in writing setting out the direction and the reasons why it was made.

Avis

(3) Le cas échéant, il avise par écrit de sa décision le plaignant, la personne mise en cause, le chef d'état-major de la défense ou le sous-ministre, selon le cas, le juge-avocat général et le prévôt. L'avis fait mention des motifs de sa décision.

Report on investigation

250.36 On the completion of an investigation into an interference complaint, the Chairperson shall prepare and send a report setting out a summary of the complaint and the Chairperson's findings and recommendations to

(*a*) the Minister;

(*b*) the Chief of the Defence Staff, in the case of a complaint against an officer or a non-commissioned member;

(*c*) the Deputy Minister, in the case of a complaint against a senior official of the Department;

(*d*) the Judge Advocate General; and

(*e*) the Provost Marshal.

Rapport

250.36 Au terme de l'enquête, le président établit un rapport écrit comportant un résumé de la plainte ainsi que ses conclusions et recommandations et le transmet aux personnes suivantes :

a) le ministre;

b) le chef d'état-major de la défense, dans le cas où un officier ou un militaire du rang est mis en cause;

c) le sous-ministre, dans le cas où un cadre supérieur du ministère est mis en cause;

d) le juge-avocat général;

e) le prévôt.

Status reports

250.37 (1) Within sixty days after being notified of an interference complaint, the Chairperson shall, if the complaint has not been resolved, disposed of or otherwise dealt with before that time, and then each thirty days afterwards until the complaint is dealt with, send a report on the status of the complaint to

(*a*) the complainant;

(*b*) the person who is the subject of the complaint;

(*c*) the Judge Advocate General; and

(*d*) the Provost Marshal.

Rapports provisoires

250.37 (1) Au plus tard soixante jours après la réception ou la notification de la plainte et, par la suite, tous les trente jours, le président transmet aux personnes suivantes un rapport écrit sur l'état d'avancement de l'affaire :

a) le plaignant;

b) la personne mise en cause;

c) le juge-avocat général;

d) le prévôt.

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DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Chairperson or the Canadian Forces Provost Marshal to investigate an interference complaint as soon as practicable and sets out the responsibilities and procedure for doing so [s. 250.35]
- requires the Chairperson to prepare a report on the completion of an interference complaint investigation and to report regularly on the status of the complaint until the complaint has been disposed of [ss. 250.36 and 250.37]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Six-month report

(2) If a complaint has not been dealt with within six months, the Chairperson shall in each report sent after that period explain why not.

Exception

(3) No report shall be sent to the person who is the subject of a complaint if, in the Chairperson's opinion, sending the report might adversely affect or hinder any investigation under this Act.

Respect des délais

(2) Au bout de six mois, il doit justifier toute prolongation de l'affaire dans tout rapport qu'il transmet après cette période.

Exception

(3) Il est relevé de l'obligation de faire rapport à la personne mise en cause par la plainte lorsqu'il est d'avis qu'une telle mesure risque de nuire à la conduite d'une enquête dans le cadre de la présente loi.

Division 3

Investigations and Hearings by Complaints Commission

Section 3

Enquête et audience publique de la Commission

Public interest

250.38 (1) If at any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.

Withdrawn complaint

(2) The Chairperson may cause an investigation to be held in respect of a complaint even if it has been withdrawn.

Notice

(3) If the Chairperson decides to cause an investigation to be held, the Chairperson shall send a notice in writing of the decision and the reasons for the decision to the complainant, the person who is the subject of the complaint, the Minister, the Chief of the Defence Staff or the Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal.

Exception

(4) No notice shall be sent to the person who is the subject of the complaint if, in the Chairperson's opinion, sending the notice might adversely affect or hinder any investigation under this Act.

Duties suspended

(5) If the Chairperson acts in respect of a conduct complaint under subsection (1), the Provost Marshal is not required to investigate, report on or otherwise deal with the complaint until the Provost Marshal receives a report under section 250.53 with respect to the complaint.

Intérêt public

250.38 (1) S'il l'estime préférable dans l'intérêt public, le président peut, à tout moment en cours d'examen d'une plainte pour inconduite ou d'une plainte pour ingérence, faire tenir une enquête par la Commission et, si les circonstances le justifient, convoquer une audience pour enquêter sur cette plainte.

Retrait de la plainte

(2) Il peut faire tenir une enquête malgré le retrait de la plainte.

Avis

(3) S'il décide de faire tenir un enquête, il transmet un avis écrit motivé de sa décision au plaignant, à la personne mise en cause, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au prévôt.

Exception

(4) Il est relevé de l'obligation de faire rapport à la personne mise en cause lorsqu'il est d'avis qu'une telle mesure risque de nuire à la conduite d'une enquête dans le cadre de la présente loi.

Suspension des obligations

(5) La décision du président de faire tenir une enquête ou de convoquer une audience sur une plainte pour inconduite libère le prévôt de toute obligation d'enquêter ou de produire un rapport sur la même plainte, ou de prendre quelque autre mesure à cet égard, et ce tant qu'il n'a pas reçu le rapport visé à l'article 250.53.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Chairperson to prepare a report on the completion of an interference complaint investigation and to report regularly on the status of the complaint until the complaint has been disposed of [ss. 250.36 and 250.37]
- authorizes the Chairperson of the Commission to conduct an investigation and hold a hearing into a complaint at any time it considers it advisable in the public interest [s. 250.38]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss 250 to 250.53]

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Report on investigation

250.39 On completion of an investigation under subsection 250.38(1), the Chairperson shall prepare and send to the Minister, the Chief of the Defence Staff or the Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal a report in writing setting out the Chairperson's findings and recommendations with respect to the complaint, unless the Chairperson has caused, or intends to cause, a hearing to be held to inquire into the complaint.

Rapport

250.39 Au terme de l'enquête prévue au paragraphe 250.38(1), le président établit et transmet au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au prévôt un rapport écrit énonçant ses conclusions et recommandations, à moins qu'il n'ait déjà convoqué une audience ou se propose de le faire.

Assignment of members to conduct hearing

250.4 (1) If the Chairperson decides to cause a hearing to be held, the Chairperson shall

(*a*) assign one or more members of the Complaints Commission to conduct the hearing; and

(*b*) send a notice in writing of the decision and the reasons for the decision to the complainant, the person who is the subject of the complaint, the Minister, the Chief of the Defence Staff or the Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal.

Audience

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 mise en cause, au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au prévôt.

Deeming

(2) For the purposes of this Part, the member or members of the Complaints Commission who conduct a hearing are deemed to be the Complaints Commission.

Assimilation à la Commission

(2) Pour l'application de la présente partie, le ou les membres qui tiennent l'audience sont réputés être la Commission.

Powers

250.41 (1) When conducting a hearing, the Complaints Commission has, in relation to the complaint before it, power

(*a*) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things under their control that it considers necessary to the full investigation and consideration of matters before it;

(*b*) to administer oaths; and

(*c*) to receive and accept any evidence and information that it sees fit, whether admissible in a court of law or not.

Pouvoirs de la Commission

250.41 (1) La Commission dispose, relativement à la plainte dont elle est saisie, des pouvoirs suivants :

a) assigner des témoins, les contraindre à témoigner sous serment, oralement ou par écrit, et à produire les documents et pièces sous leur responsabilité et qu'elle estime nécessaires à une enquête et étude complètes;

b) faire prêter serment;

c) recevoir et accepter les éléments de preuve et renseignements qu'elle estime indiqués, qu'ils soient ou non recevables devant un tribunal.

Restriction

(2) Notwithstanding subsection (1), the Complaints Commission may not receive or accept

(*a*) any evidence or other information that would be inadmissible in a court of law by

Restriction

(2) Par dérogation au paragraphe (1), la Commission ne peut recevoir ou accepter :

a) des éléments de preuve ou autres renseignements non recevables devant un tribunal du fait qu'ils sont protégés par le droit de la preuve;

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the Chairperson to prepare a report setting out the findings and recommendations of the investigation and to send the report to the specified authorities unless the Chairperson holds or intends to hold a hearing [s. 250.39]
- sets out the powers of the Commission in relation to and the procedure for conducting a hearing [ss. 250.4 to 250.48]
  - requires the Chairperson to assign the members of the Commission who are to conduct the hearing and to send a notice to interested parties [s. 250.4]
  - authorizes the Commission to summon and enforce the attendance of witnesses, administer oaths, and receive and accept evidence and certain information [s. 250.41]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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reason of any privilege under the law of evidence;

(*b*) any answer given or statement made before a board of inquiry or summary investigation;

(*c*) any answer or statement that tends to criminate the witness or subject the witness to any proceeding or penalty and that was in response to a question at a hearing under this Division into another complaint;

(*d*) any answer given or statement made before a court of law or tribunal; or

(*e*) any answer given or statement made while attempting to resolve a conduct complaint informally under subsection 250.27(1).

b) les réponses ou déclarations faites devant une commission d'enquête ou dans le cadre d'une enquête sommaire;

c) les réponses ou déclarations d'un témoin faites au cours de toute audience tenue en vertu de la présente section pour enquêter sur une autre plainte qui peuvent l'incriminer ou l'exposer à des poursuites ou à une peine;

d) les réponses ou déclarations faites devant un tribunal;

e) les réponses ou déclarations faites dans le cadre d'une tentative de règlement amiable en vertu du paragraphe 250.27(1).

Hearing in public

250.42 A hearing is to be held in public, except that the Complaints Commission may order the hearing or any part of the hearing to be held in private if it is of the opinion that during the course of the hearing any of the following information will likely be disclosed:

(*a*) information that, if disclosed, could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;

(*b*) information that, if disclosed, could reasonably be expected to be injurious to the administration of justice, including law enforcement; and

(*c*) information affecting a person's privacy or security interest, if that interest outweighs the public's interest in the information.

Caractère public des audiences

250.42 Les audiences sont publiques; toutefois, la Commission peut ordonner le huis clos pendant tout ou partie d'une audience si elle estime qu'au cours de celle-ci seront probablement révélés des renseignements :

a) dont la divulgation risquerait vraisemblablement de porter préjudice à la défense du Canada ou d'États alliés ou associés avec le Canada ou à la détection, à la prévention ou à la répression d'activités hostiles ou subversives;

b) qui risquent d'entraver la bonne administration de la justice, notamment l'application des lois;

c) qui concernent les ressources pécuniaires ou la vie privée d'une personne dans le cas où l'intérêt ou la sécurité de cette personne l'emporte sur l'intérêt du public à les connaître.

Notice of hearing

250.43 (1) As soon as practicable before the commencement of a hearing, the Complaints Commission shall serve a notice in writing of the time and place appointed for the hearing on the complainant and the person who is the subject of the complaint.

Avis de l'audience

250.43 (1) Le plus tôt possible avant le début de l'audience, la Commission signifie au plaignant et à la personne mise en cause un avis écrit en précisant la date, l'heure et le lieu.

Convenience to be considered

(2) If a person on whom a notice is served wishes to appear before the Complaints Commission, the Complaints Commission must consider the convenience of that person in fixing the time and the place for the hearing.

Situation de l'intéressé

(2) Lorsque le destinataire de l'avis souhaite comparaître devant elle, la Commission fixe la date, l'heure et le lieu de l'audience en tenant compte de la situation de l'intéressé.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- sets out the powers of the Commission in relation to and the procedure for conducting a hearing [ss. 250.4 to 250.48]
  - authorizes the Commission to summon and enforce the attendance of witnesses, administer oaths, and receive and accept evidence and certain information [s. 250.41]
  - provides that the hearing be held in public except in specified circumstances [s. 250.42]
  - requires the Commission to serve notice of the time and place for the hearing and to consider the convenience of any person wishing to appear in fixing the time and place [s. 250.43]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Delay of hearing

(3) If the complaint relates to conduct that is also the subject of disciplinary or criminal proceedings before a court or tribunal of first instance, the hearing may not take place until the disciplinary or criminal proceedings are completed.

Sursis des procédures

(3) Toute procédure disciplinaire ou procédure criminelle devant un tribunal de première instance pour l'objet de la plainte tient, jusqu'à sa conclusion, toute audience publique de la Commission en état.

Rights of persons interested

250.44 The Complaints Commission shall afford a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the hearing to

(*a*) the complainant and the person who is the subject of the complaint, if they wish to appear; and

(*b*) any other person who satisfies the Complaints Commission that the person has a substantial and direct interest in the hearing.

Droits des intéressés

250.44 Le plaignant et la personne mise en cause ainsi que toute autre personne qui convainc la Commission qu'elle a un intérêt direct et réel dans la plainte dont celle-ci est saisie 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.

Witness not excused from testifying

250.45 (1) In a hearing, no witness shall be excused from answering any question relating to the complaint before the Complaints Commission when required to do so by the Complaints Commission on the ground that the answer to the question may tend to criminate the witness or subject the witness to any proceeding or penalty.

Obligation des témoins de déposer

250.45 (1) Au cours de l'audience, tout témoin est tenu de répondre aux questions sur la plainte lorsque la Commission l'exige, et ne peut se soustraire à cette obligation au motif que sa réponse peut l'incriminer ou l'exposer à des poursuites ou à une peine.

Answer not receivable

(2) No answer given or statement made by a witness in response to a question described in subsection (1) may be used or receivable against the witness in any disciplinary, criminal, administrative or civil proceeding, other than a hearing or proceeding in respect of an allegation that the witness gave the answer or made the statement knowing it to be false.

Non-recevabilité des réponses

(2) Les déclarations faites en réponse aux questions ne peuvent être utilisées ni ne sont recevables contre le témoin devant une juridiction administrative, civile, criminelle ou disciplinaire, sauf si la poursuite ou la procédure porte sur le fait qu'il les savait fausses.

Expenses

250.46 Travel and living expenses incurred in appearing before the Complaints Commission shall, in the discretion of the Complaints Commission, be paid in accordance with applicable Treasury Board directives, to the complainant and to the person who is the subject of the complaint, and to their counsel, if the Complaints Commission holds a hearing at a place in Canada that is not their ordinary place of residence.

Frais

250.46 Lorsque la Commission siège, au Canada, ailleurs qu'au lieu de leur résidence habituelle, le plaignant, la personne mise en cause et leurs avocats sont indemnisés, selon l'appréciation de la Commission et en conformité avec les normes établies par le Conseil du Trésor, des frais de déplacement et de séjour exposés pour leur comparution devant la Commission.

Return of documents, etc.

250.47 Documents and things presented to the Complaints Commission at a hearing shall, on request, be returned to the person who presented them within a reasonable time

Restitution des pièces

250.47 Les pièces produites devant la Commission lors d'une audience, sur demande de la personne qui les a produites, lui sont retournées dans un délai raisonnable après l'établissement du rapport final.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- sets out the powers of the Commission in relation to and the procedure for conducting a hearing [ss. 250.4 to 250.48]
  - requires the Commission to serve notice of the time and place for the hearing and to consider the convenience of any person wishing to appear in fixing the time and place [s. 250.43]
  - provides that the hearing may not take place until disciplinary or criminal proceedings related to the same conduct are completed [s. 250.43(3)]
  - requires the Commission to give the complainant, the person who is the subject of the complaint and any other person with a substantial and direct interest full opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the hearing [s. 250.44]
  - provides that a witness cannot be excused from answering any question relating to the complaint on the ground that the answer may tend to criminate the witness [subs. 250.45(1)]
  - provides that an answer or statement made in response to a question cannot be used against a witness in any proceeding except in relation to an allegation that the witness gave the answer knowing it to be false [subs. 250.45(2)]
  - authorizes the Commission in its discretion to pay travel and living expenses of the complainant, the subject of the complaint or their counsel if the hearing is held in a place in Canada that is not their ordinary place of residence [s. 250.46]
  - requires documents and things presented at a hearing to be returned on request to the person who presented them [s. 250.47]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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after completion of the Complaints Commission's report on the complaint.

Report

250.48 On completion of a hearing, the Complaints Commission shall prepare and send to the Minister, the Chief of the Defence Staff or the Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal a report in writing setting out its findings and recommendations with respect to the complaint.

Rapport

250.48 Au terme de l'audience, la Commission établit et transmet au ministre, au chef d'état-major de la défense ou au sous-ministre, selon le cas, au juge-avocat général et au prévôt un rapport écrit énonçant ses conclusions et recommandations.

DIVISION 4

REVIEW AND FINAL REPORT

SECTION 4

RÉVISION ET RAPPORT FINAL

Review — conduct complaint

250.49 (1) On receipt of a report under subsection 250.32(3) or section 250.39 or 250.48 in respect of a conduct complaint, the Provost Marshal shall review the complaint in light of the findings and recommendations set out in the report.

Révision — plainte pour inconduite

250.49 (1) Sur réception du rapport établi sur une plainte pour inconduite aux termes du paragraphe 250.32(3) ou des articles 250.39 ou 250.48, le prévôt révise la plainte à la lumière des conclusions et recommandations qu'il contient.

Exception

(2) If the Provost Marshal is the subject of the complaint, the review shall be conducted by the Chief of the Defence Staff.

Exception

(2) Dans le cas où le prévôt est mis en cause par la plainte, c'est le chef d'état-major de la défense qui est chargé de la révision.

Review — interference complaint

250.5 (1) On receipt of a report under section 250.36, 250.39 or 250.48 in respect of an interference complaint, the complaint shall be reviewed in light of the findings and recommendations set out in the report by

(*a*) the Chief of the Defence Staff, if the person who is the subject of the complaint is an officer or a non-commissioned member; and

(*b*) the Deputy Minister, if the person who is the subject of the complaint is a senior official of the Department.

Révision — plainte pour ingérence

250.5 (1) Sur réception du rapport établi sur elle aux termes 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 mise en cause est un officier ou un militaire du rang, ou par le sous-ministre, dans les cas où elle est un cadre supérieur du ministère.

Exception

(2) If the Chief of the Defence Staff or the Deputy Minister is the subject of the complaint, the review shall be conducted by the Minister.

Exception

(2) Dans le cas où le chef d'état-major de la défense ou le sous-ministre est mis en cause par la plainte, c'est le ministre qui est chargé de la révision.

Notice of action

250.51 (1) The person who reviews a report under section 250.49 or 250.5 shall notify in writing the Minister and the Chairperson of any action that has been or will be taken with respect to the complaint.

Notification

250.51 (1) La personne qui procède à la révision du rapport prévue aux articles 250.49 ou 250.5 notifie au ministre et au président toute mesure prise ou projetée concernant la plainte.

Reasons

(2) If the person decides not to act on any findings or recommendations set out in the report, the reasons for not so acting must be included in the notice.

Motifs

(2) Si elle choisit de s'écarter des conclusions ou recommandations énoncées au rapport, elle motive son choix dans la notification.

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- sets out the powers of the Commission in relation to and the procedure for conducting a hearing [ss. 250.4 to 250.48]
  - requires documents and things presented at a hearing to be returned on request to the person who presented them [s. 250.47]
  - requires the Commission to send a report in writing with its findings and recommendations to specified authorities [s. 250.48]
- requires the Canadian Forces Provost Marshal (or where the complaint is in regard to the Canadian Forces Provost Marshal, the Chief of the Defence Staff) to review a conduct complaint in light of the findings and recommendations of the Commission's report [s. 250.49]
- requires the Chief of the Defence Staff, the Deputy Minister, or the Minister (depending on who is the subject of the complaint) to review an interference complaint in light of the findings and recommendations of the Commission's report [s. 250.5]
- requires the authority who reviews the report to notify specified persons in writing of any further action taken or to be taken in relation to the complaint [ss. 250.51 and 250.52]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

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Notice of action

250.52 (1) If the Minister reviews a report by reason of subsection 250.5(2), the Minister shall notify the Chairperson in writing of any action that has been or will be taken with respect to the complaint.

Reasons

(2) If the Minister decides not to act on any findings or recommendations set out in the report, the reasons for not so acting must be included in the notice.

Final report by Chairperson

250.53 (1) After receiving and considering a notice sent under section 250.51 or 250.52, the Chairperson shall prepare a final report in writing setting out the Chairperson's findings and recommendations with respect to the complaint.

Recipients of report

(2) A copy of the final report shall be sent to the Minister, the Deputy Minister, the Chief of the Defence Staff, the Judge Advocate General, the Provost Marshal, the complainant, the person who is the subject of the complaint and all persons who have satisfied the Complaints Commission that they have a substantial and direct interest in the complaint.

Notification

250.52 (1) S'il a révisé le rapport aux termes du paragraphe 250.5(2), le ministre notifie au président toute mesure prise ou projetée concernant la plainte.

Motifs

(2) S'il choisit de s'écarter des conclusions ou recommandations énoncées au rapport, il motive son choix dans la notification.

Rapport final du président

250.53 (1) Après étude de la notification reçue en application des articles 250.51 et 250.52, le président établit un rapport final énonçant ses conclusions et recommandations.

Destinataires

(2) Il en transmet copie au ministre, au sous-ministre, au chef d'état-major de la défense, au juge-avocat général, au prévôt, au plaignant, à la personne mise en cause ainsi qu'à toute personne qui a convaincu la Commission qu'elle a un intérêt direct et réel dans la plainte.

PART V

MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATION

Oaths

Oaths

251. At summary trials and courts martial, and at proceedings before a board of inquiry or a commissioner taking evidence under this Act, an oath shall be taken by or administered to the following persons in the manner and in the forms prescribed in regulations made by the Governor in Council:

(*a*) the officer presiding at the summary trial;

(*b*) the judge presiding at the court martial;

(*c*) each member of the panel of the court martial;

(*d*) each member of the board of inquiry;

(*e*) the commissioner;

(*f*) court reporters;

(*g*) interpreters; and

PARTIE V

DISPOSITIONS DIVERSES D'APPLICATION GÉNÉRALE

Serments

Personnes tenues de prêter serment

251. À l'occasion de chaque procès sommaire ou en cour martiale, ou de procédure devant une commission d'enquête ou devant le commissaire recueillant un témoignage aux termes de la présente loi, les personnes suivantes prêtent serment selon les modalités fixées par règlement du gouverneur en conseil :

a) l'officier qui préside le procès sommaire;

b) le juge militaire qui préside la cour martiale;

c) tout membre du comité de la cour martiale;

d) tout membre de la commission d'enquête;

e) le commissaire;

f) le sténographe;

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires the authority who reviews the report to notify specified persons in writing of any further action taken or to be taken in relation to the complaint [ss. 250.51 and 250.52]
- requires the Chairperson, after receiving and considering notices sent under sections 250.51 and 250.52, to prepare a final report in writing setting out the Chairperson's findings and recommendations with respect to the complaint and forward copies of the final report to the specified persons. [s. 250.53]

Reasons for the change

The Military Police Complaints Commission, established by these provisions, is external to the Department and the Canadian Forces and is also fully independent. It will review both complaints of military police misconduct and complaints by military police concerning improper interference by Canadian Forces members and senior officials of the Department into military police investigations. The Commission will make independent findings and recommendations through either informal review or full investigation with the power to conduct hearings. Although the findings and recommendations will not be binding, the prescribed reviewing authorities within the Department must report back to the Chairperson of the Commission on any action taken.

The creation of the Commission and a new complaints process will provide for greater transparency and accountability of the military police and the chain of command in relation to military police investigations. [ss. 250 to 250.53]

PART V
MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATIONS

What the amendment does

- requires specified persons to take an oath in accordance with the regulations at summary trials, courts martial, proceedings before a board of inquiry or a commissioner taking evidence [s. 251]

Reasons for the change

Part V consolidates the requirements for the taking of oaths under the *Act* and provides for the payment of fees to witnesses.

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(*h*) subject to section 16 of the *Canada Evidence Act*, witnesses.

g) l'interprète;

h) sous réserve de l'article 16 de la *Loi sur la preuve au Canada*, tout témoin.

Solemn affirmation instead of oath

251.1 (1) A person who is required to take an oath under this Act may, instead of taking an oath, make a solemn affirmation.

251.1 (1) Toute personne peut, au lieu de prêter serment, choisir de faire une affirmation solennelle.

Affirmation solennelle

Effect

(2) A solemn affirmation has the same force and effect as an oath.

(2) Lorsque cette personne a fait l'affirmation solennelle, sa déposition est reçue et a le même effet que si elle avait prêté serment.

Effet

Prosecutions under the *Criminal Code*

(3) An oath or a solemn affirmation under this Act has, in respect of any prosecution under the *Criminal Code*, the same force and effect as an oath taken before a civil court.

(3) Le serment ou l'affirmation solennelle a, quant aux poursuites intentées sous le régime du *Code criminel*, la même valeur qu'un serment prêté devant un tribunal civil.

Poursuites criminelles

Witness Fees and Allowances

Frais et indemnités des témoins

Witness fees and allowances

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 Grievance Board, an Inquiry Committee established for the purpose of subsection 165.1(2) or 165.21(2), the Military Police Complaints Commission, a board of inquiry or a commissioner taking evidence under this Act 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.

251.2 La cour martiale, le Comité des griefs, un comité d'enquête établi en application des paragraphes 165.1(2) ou 165.21(2), la Commission d'examen des plaintes concernant la police militaire, une commission d'enquête ou un commissaire recueillant des témoignages, sous le régime de la présente loi, peuvent, selon leur appréciation, accorder à toute personne assignée devant eux, à l'exception d'un officier ou d'un militaire du rang ou d'un employé du ministère, les frais et indemnités accordés aux témoins assignés devant la Cour fédérale, que la personne ait été citée ou non.

Frais et indemnités des témoins

83. The portion of subsection 271(1) of the Act after paragraph (*c*) is replaced by the following:

83. Le passage du paragraphe 271(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

and performing any function in relation to the Canadian Forces or any forces cooperating with the Canadian Forces, if the injury or disease or aggravation thereof arose out of or was directly connected with the performance of that function.

271. (1) Une indemnité dont le montant, le mode de versement et les bénéficiaires peuvent être déterminés par règlement du gouverneur en conseil peut être versée à l'égard de l'invalidité ou d'un décès résultant d'une blessure ou d'une maladie — ou de leur aggravation — subie ou contractée par une personne dans l'accomplissement de fonctions relatives aux Forces canadiennes ou à des forces coopérant avec l'un ou l'autre de ces organismes alors qu'elle était employée :

Indemnité à certains agents de l'administration publique

R.S., c. 31 (1st Supp.), s. 59

84. Subparagraph 273.1(*b*)(ii) of the Act is replaced by the following:

84. Le sous-alinéa 273.1*b*)(ii) de la même loi est remplacé par ce qui suit :

L.R., ch. 31 (1er suppl.), ch. 59

(ii) requiring any person, as a condition of being given access to that place or materiel, to submit, on demand, to a

(ii) exiger d'une personne, comme condition d'accès à ces lieux ou à ce matériel, qu'elle se soumette, sur demande, à une

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Clause 82	*Amends the headings before section 249, and sections 249 to 251*	Continued

What the amendment does

- requires specified persons to take an oath in accordance with the regulations at summary trials, courts martial, proceedings before a board of inquiry or a commissioner taking evidence [s. 251]
- enables a person to make a solemn affirmation instead of taking an oath and provides that a solemn affirmation has the same force and effect under the *Act* and in any criminal prosecutions under the *Criminal Code* as if it were an oath [s. 251.1]
- entitles persons, other than Canadian Forces members or Department employees, appearing before a court martial, the Grievance Board, an Inquiry Committee, the Military Police Complaints Commission, a board of inquiry or a commissioner taking evidence under the *Act* to be paid witness fees [s. 251.2]
- provides that the entitlement is in the discretion of the body before which the witness appears and is consistent with fees receivable for appearances before the Federal Court [s. 251.2]

Reasons for the change

Part V consolidates the requirements for the taking of oaths under the *Act* and provides for the payment of fees to witnesses.

Clause 83	*Amends subsection 271(1)*	

What the amendment does

- deletes a reference to the Defence Research Board

Reasons for the change

Section 271 of the *Act* authorizes compensation for disability or death suffered during employment for the Canadian Forces, the Defence Research Board or any other forces cooperating with the Canadian Forces or the Defence Research Board. The provisions of the *National Defence Act* dealing with the Defence Research Board are being repealed. Since the Board's activities have been incorporated into the Department of National Defence, it no longer needs to be listed as a separate entity for compensation purposes.

Clause 84	*Amends subparagraph 273.1(b)(ii)*	

What the amendment does

- adds the word "movable" in relation to "property"
- makes stylistic changes

Reasons for the change

The description "movable property" reflects civil law terminology.

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search of the person and the person's personal or movable property while entering or exiting that place or materiel or any restricted area within that place or materiel.

fouille d'elle-même ou de ses biens meubles ou personnels à l'entrée ou à la sortie de ces lieux ou de ce matériel ou de toute zone d'accès limité dans ces lieux ou ce matériel.

R.S., c. 31 (1st Supp.), s. 59

85. Paragraph 273.2(*b*) of the Act is replaced by the following:

(*b*) the personal or movable property of any person subject to the Code of Service Discipline located in, on or about any defence establishment, work for defence or materiel,

L.R., ch. 31 (1er suppl.), ch. 59

85. L'alinéa 273.2*b*) de la même loi est remplacé par ce qui suit :

b) les biens meubles ou personnels d'un justiciable du code de discipline militaire qui se trouvent dans un établissement ou ouvrage de défense ou du matériel ou dans leur voisinage immédiat.

R.S., c. 31 (1st Supp.), s. 59

86. (1) The portion of section 273.3 of the Act before paragraph (*a*) is replaced by the following:

Warrant by commanding officer

273.3 Subject to sections 273.4 and 273.5, a commanding officer who is satisfied by information on oath that there is in any quarters, locker, storage space or personal or movable property referred to in section 273.2

L.R., ch. 31 (1er suppl.), ch. 59

86. (1) Le passage de l'article 273.3 de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Délivrance du mandat

273.3 Sous réserve des articles 273.4 et 273.5, le commandant qui conclut, sur la foi d'une dénonciation faite sous serment, à la présence dans les logements, cases, espaces de rangement ou biens meubles ou personnels visés à l'article 273.2 de tout objet répondant à l'un des critères ci-dessous peut signer un mandat autorisant l'officier ou le militaire du rang qui y est nommé, aidé au besoin d'autres officiers ou militaires du rang se trouvant sous son autorité, ou un agent de la paix, à perquisitionner dans ces lieux ou biens, afin de trouver, saisir et lui apporter l'objet :

R.S., c. 31 (1st Supp.), s. 59

(2) The portion of section 273.3 of the English version of the Act after paragraph (*c*) is replaced by the following:

may issue a warrant authorizing any officer or non-commissioned member named in the warrant, assisted by such other officers and non-commissioned members as are necessary, or a peace officer, to search the quarters, locker, storage space or personal or movable property for any such thing, and to seize and carry it before that commanding officer.

L.R., ch. 31 (1er suppl.), ch. 59

(2) Le passage de l'article 273.3 de la version anglaise de la même loi suivant l'alinéa *c*) est remplacé par ce qui suit :

may issue a warrant authorizing any officer or non-commissioned member named in the warrant, assisted by such other officers and non-commissioned members as are necessary, or a peace officer, to search the quarters, locker, storage space or personal or movable property for any such thing, and to seize and carry it before that commanding officer.

87. The Act is amended by adding the following after section 273.5:

87. La même loi est modifiée par adjonction, après l'article 273.5, de ce qui suit :

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Clause 84	*Amends subparagraph 273.1(b)(ii)*	Continued

What the amendment does

- adds the word "movable" in relation to "property"
- makes stylistic changes

Reasons for the change

The description "movable property" reflects civil law terminology.

Clause 85	*Amends subparagraph 273.2(b)*	

What the amendment does

- adds the word "movable" in relation to property

Reasons for the change

The description "movable property" reflects civil law terminology.

Clause 86	*Amends subsection 273.3*	

What the amendment does

- adds the word "movable" in relation to property
- makes a stylistic change in the English version

Reasons for the change

The description "movable property" reflects civil law terminology.

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Public Service

Public service

273.6 (1) Subject to subsection (2), the Governor in Council or the Minister may authorize the Canadian Forces to perform any duty involving public service.

Law enforcement assistance

(2) The Governor in Council, or the Minister on the request of the Solicitor General of Canada or any other Minister, may issue directions authorizing the Canadian Forces to provide assistance in respect of any law enforcement matter if the Governor in Council or the Minister, as the case may be, considers that

(*a*) the assistance is in the national interest; and

(*b*) the matter cannot be effectively dealt with except with the assistance of the Canadian Forces.

Exception

(3) Subsection (2) does not apply in respect of assistance that is of a minor nature and limited to logistical, technical or administrative support.

Restriction

(4) The authority of the Minister under this section is subject to any directions issued by the Governor in Council.

88. Part XI of the Act is renumbered as Part VI.

89. Part XII of the Act is renumbered as Part VII.

90. Section 302 of the Act is replaced by the following:

Offences of contempt

302. Every person is guilty of an offence and liable, on summary conviction, to a fine of not more than five hundred dollars or to imprisonment for a term of not more than six months or to both, where the person

(*a*) on being duly summoned as a witness under Part II, III or IV makes default in attending;

(*b*) being in attendance as a witness in any proceeding under Part II, III or IV,

(i) refuses to take an oath or make a solemn affirmation legally required of that person,

Service public

Service public

273.6 (1) Le gouverneur en conseil ou le ministre peut autoriser les Forces canadiennes à accomplir des tâches de service public.

Question d'application de la loi

(2) En matière d'application de la loi, toutefois, le gouverneur en conseil ou, sur demande du solliciteur général du Canada ou d'un autre ministre, le ministre peut donner des instructions autorisant les Forces canadiennes à prêter assistance lorsqu'il estime cette mesure souhaitable dans l'intérêt national et nécessaire pour remédier efficacement à la situation.

Exception

(3) Est soustraite à l'application du paragraphe (2) l'assistance secondaire qui se limite à un soutien logistique, technique ou administratif.

Restrictions

(4) Le pouvoir conféré au ministre par le présent article est subordonné aux instructions éventuellement données par le gouverneur en conseil.

88. La partie XI de la même loi devient la partie VI.

89. La partie XII de la même loi devient la partie VII.

90. L'article 302 de la même loi est remplacé par ce qui suit :

Outrage

302. Commet une infraction et encourt, sur déclaration de culpabilité, par procédure sommaire, une amende maximale de cinq cents dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, quiconque :

a) étant dûment cité à comparaître comme témoin sous le régime des parties II, III ou IV, omet de se présenter;

b) comparaissant comme témoin lors de toute procédure visée aux parties II, III ou IV, refuse, alors qu'il est légalement tenu :

(i) de prêter serment ou de faire une affirmation solennelle,

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Clause 87	*Adds new section 273.6*	

What the amendment does

- provides that the Canadian Forces may be authorized by the Governor in Council or the Minister to perform any duty involving public service [subs. 273.6(1)]
- authorizes the Governor in Council, or the Minister on the request of the Solicitor General or any other Minister, to issue directions authorizing the Canadian Forces to provide law enforcement assistance in certain circumstances [subs. 273.6(2)]
- provides that directions are not required in respect of assistance of a minor nature and limited to logistical, technical or administrative support [subs. 273.6(3)]
- provides that the authority of the Minister under this section is subject to any Governor in Council directions [subs. 273.6(4)]

Reasons for the change

This provision sets out the parameters of public service duties which may be carried out by the Canadian Forces. The scope of the duties of the Canadian Forces and its members are clarified in the definition of "duty" in new subsection 33(4).

Clause 88	*Amends the heading, "PART XI"*	

What the amendment does

- renumbers Part XI of the *Act* as Part VI

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

Clause 89	*Amends the heading, "PART XII"*	

What the amendment does

- renumbers Part XII of the *Act* as Part VII

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. Part III, that deals with the Defence Research Board, is being repealed. This amendment is consequential to those changes.

Clause 90	*Amends section 302*	

What the amendment does

- broadens the applicability of the contempt provisions to include all proceedings under the *Code of Service Discipline* and proceedings before the Grievance Board, an Inquiry Committee, the Military Police Complaints Commission and a board of inquiry
- eliminates the requirement for a certificate to be prepared for purposes of civil prosecutions

Reasons for the change

The amendment ensures that contempt proceedings are available to the new entities created under the *Act* as well as to service tribunals and a board of inquiry.

The requirement for a certificate for prosecutions serves no useful purpose and is therefore being eliminated.

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(ii) refuses to produce any document or thing under that person's control and required to be produced by that person, or

(iii) refuses to answer any question that requires an answer;

(*c*) at any proceeding under Part II, III or IV, uses insulting or threatening language or causes any interference or disturbance;

(*d*) prints observations or uses words likely to influence improperly a board of inquiry, the Grievance Board, an Inquiry Committee established for the purpose of subsection 165.1(2) or 165.21(2), a service tribunal, a commissioner taking evidence under this Act or the Military Police Complaints Commission or any witness at any proceeding under Part II, III or IV, or to bring a proceeding under any of those Parts into disrepute; or

(*e*) displays contempt, in any other manner whatever, at any proceeding under Part II, III or IV.

(ii) de produire un document ou une pièce sous sa responsabilité,

(iii) de répondre à une question qui exige une réponse;

c) lors de toute procédure visée aux parties II, III ou IV, profère des propos insultants ou menaçants ou fait obstruction d'une manière ou d'une autre;

d) imprime des remarques ou tient des propos de nature à exercer une influence indue sur une commission d'enquête, le Comité des griefs, un comité d'enquête établi en application des paragraphes 165.1(2) ou 165.21(2), 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, ou les témoins comparaissant lors d'une procédure visée aux parties II, III ou IV, ou de nature à jeter le discrédit sur le déroulement des procédures;

e) a de quelque autre manière un comportement outrageant, lors d'une procédure visée aux parties II, III ou IV.

91. The portion of items 5 to 11 of the schedule to the French version of the Act in column II are replaced by the following:

Article	Colonne II
5.	Capitaine de vaisseau
6.	Capitaine de frégate
7.	Capitaine de corvette
8.	Lieutenant de vaisseau
9.	Enseigne de vaisseau de 1re classe
10.	Enseigne de vaisseau de 2e classe
11.	Aspirant de marine

91. La colonne II des articles 5 à 11 de l'annexe de la version française de la même loi est remplacée par ce qui suit :

Article	Colonne II
5.	Capitaine de vaisseau
6.	Capitaine de frégate
7.	Capitaine de corvette
8.	Lieutenant de vaisseau
9.	Enseigne de vaisseau de 1re classe
10.	Enseigne de vaisseau de 2e classe
11.	Aspirant de marine

References to "this Part"

92. The Act is amended by replacing the words "this Part" with the words "this Division" in the following provisions:

(*a*) the portion of subsection 130(1) after paragraph (*b*);

(*b*) subsection 132(1);

(*c*) subsection 141(1);

(*d*) subsection 154(2);

Terminologie

92. Dans les passages suivants de la même loi, « présente partie » est remplacé par « présente section » :

***a*) le passage du paragraphe 130(1) précédant l'alinéa *a*);**

***b*) le paragraphe 132(1);**

***c*) le paragraphe 141(1);**

***d*) le paragraphe 154(2);**

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Clause 90	*Amends section 302*	Continued

What the amendment does

- broadens the applicability of the contempt provisions to include all proceedings under the *Code of Service Discipline* and proceedings before the Grievance Board, the Military Police Complaints Commission and a board of inquiry
- eliminates the requirement for a certificate to be prepared for purposes of civil prosecutions

Reasons for the change

The amendment ensures that contempt proceedings are available to the new entities created under the *Act* as well as to service tribunals and a board of inquiry.

The requirement for a certificate for prosecutions serves no useful purpose and is therefore being eliminated.

Clause 91	*Amends the French version of the schedule to the Act*	

What the amendment does

- substitutes terms for certain naval designations of rank

Reasons for the change

This amendment provides linguistically correct French versions of certain naval designations of rank.

Clause 92	*Amends provisions throughout the Act*	

What the amendment does

- replaces the words "this Part" with the words "this Division" in specified places in the *Act*

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. These amendments are consequential to that change.

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(*e*) the portion of section 197 before the definition "appropriate province";

(*f*) subsection 202.17(3);

(*g*) subsection 202.18(2);

(*h*) subsection 202.24(1);

(*i*) subsection 226(2);

(*j*) section 228;

(*k*) subsection 232(1);

(*l*) subsection 232(3);

(*m*) subsection 234(1);

(*n*) section 241;

(*o*) sections 248.6 and 248.7;

(*p*) paragraph 248.9(1)(*a*); and

(*q*) subsection 248.9(2).

e) le passage de l'article 197 précédant la définition de « commission d'examen »;

f) le paragraphe 202.17(3);

g) le paragraphe 202.18(2);

h) le paragraphe 202.24(1);

i) le paragraphe 226(2);

j) l'article 228;

k) le paragraphe 232(1);

l) le paragraphe 232(3);

m) le paragraphe 234(1);

n) l'article 241;

o) les articles 248.6 et 248.7;

p) l'alinéa 248.9(1)*a*);

q) le paragraphe 248.9(2).

Change to headings

93. The headings before sections 66, 67, 68, 70, 71, 73, 74, 75, 76, 77, 78, 82, 83, 88, 90, 92, 99, 104, 107, 111, 113, 120, 121, 124, 129, 130, 133, 139, 148, 149, 150, 151, 158, 180, 181, 183, 184, 195, 198, 202.13, 202.17, 202.24, 202.25, 215, 219, 221, 222, 223, 224, 226, 230, 232, 233, 234, 238, 244 and 245 of the Act are converted from italics to roman type to conform with the format of the new division headings enacted by this Act.

Modifications des intertitres

93. Afin d'uniformiser le style des caractères avec ceux découlant de la nouvelle division du texte, le caractère italique des intertitres précédant les articles 66, 67, 68, 70, 71, 73, 74, 75, 76, 77, 78, 82, 83, 88, 90, 92, 99, 104, 107, 111, 113, 120, 121, 124, 129, 130, 133, 139, 148, 149, 150, 151, 158, 180, 181, 183, 184, 195, 198, 202.13, 202.17, 202.24, 202.25, 215, 219, 221, 222, 223, 224, 226, 230, 232, 233, 234, 238, 244, et 245 de la même loi devient caractère romain.

Change to heading

94. The heading before section 147.1 of the Act, as enacted by section 176 of the *Firearms Act*, being chapter 39 of the Statutes of Canada, 1995, is converted from italics to roman type to conform with the format of the new division headings enacted by this Act.

Modifications des intertitres

94. Afin d'uniformiser le style des caractères avec ceux découlant de la nouvelle division du texte, édictée par la présente loi, le caractère italique de l'intertitre précédant l'article 147.1 de la même loi, édicté par l'article 176 de la *Loi sur les armes à feu*, chapitre 39 des Lois du Canada (1995) devient caractère romain.

Change to heading

95. The heading before section 149.1 of the Act, as enacted by section 13 of *An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act in consequence thereof*, being chapter 43 of the Statutes of Canada, 1991, is converted from italics to roman type to conform with the format of the new division headings enacted by this Act.

Modifications des intertitres

95. Afin d'uniformiser le style des caractères avec ceux découlant de la nouvelle division du texte, édictée par la présente loi, le caractère italique de l'intertitre précédant l'article 149.1 de la même loi, édicté par l'article 13 de la *Loi modifiant le Code criminel (troubles mentaux) et modifiant en conséquence la Loi sur la défense nationale et la Loi sur les jeunes contrevenants*, chapitre 43 des Lois du Canada (1991) devient caractère romain.

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Clause 92	*Amends provisions throughout the Act*	Continued

What the amendment does

- replaces the words "this Part" with the words "this Division" in specified places in the *Act*

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. These amendments are consequential to that change.

Clause 93	*Amends subheadings throughout the Act*	

What the amendment does

- converts the headings in various locations in the *Act* from italics to roman type

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. These amendments are consequential to that change.

Clause 94	*Amends the heading before section 147.1 of the Act as enacted by section 176 of the Firearms Act*	

What the amendment does

- converts the heading from italics to roman type

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. These amendments are consequential to that change.

The amendment to the *Firearms Act*, which will add a new section 147.1, is not yet in force.

Clause 95	*Amends the heading before section 149.1 of the Act as enacted by section 13 of An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act*	

What the amendment does

- converts the heading from italics to roman type

Reasons for the change

The *Code of Service Discipline*, presently contained in eight separate Parts to the *National Defence Act* is being reorganized as one Part with several divisions in order to give the *Code* a more cohesive structure and prominence in the *Act*. These amendments are consequential to that change.

The amendment to *An Act to amend the Criminal Code (mental disorder) and to amend the National Defence Act and the Young Offenders Act*, which will add a section 149.1, is not yet in force

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Review and report

96. The Minister shall undertake a review of the provisions and operation of this Act and shall cause a report on the review to be laid before each House of Parliament within five years after the coming into force of this section.

Examen et rapport

96. Le ministre procède à l'examen des dispositions et de l'application de la présente loi et fait déposer son rapport devant chaque chambre du Parlement dans les cinq ans suivant l'entrée en vigueur du présent article.

TRANSITIONAL PROVISIONS

DISPOSITIONS TRANSITOIRES

Definitions

97. The definitions in this section apply in sections 98 to 100.

Définitions

"former Code of Service Discipline" *« ancien code »*

"former Code of Service Discipline" means the Code of Service Discipline within the meaning of section 2 of the Act as that definition read immediately before the coming into force of this section.

« ancien code » Le code de discipline militaire au sens de l'article 2 de la même loi dans sa version antérieure à l'entrée en vigueur du présent article.

« ancien code » *"former Code of Service Discipline"*

"new Code of Service Discipline" *« nouveau code »*

"new Code of Service Discipline" means the Code of Service Discipline within the meaning of section 2 of the Act as that definition reads immediately after the coming into force of this section.

« nouveau code » Le code de discipline militaire au sens de l'article 2 de la même loi dans sa version à l'entrée en vigueur du présent article.

« nouveau code » *"new Code of Service Discipline"*

Continuing liability

98. Every person liable to be charged, dealt with and tried under the former Code of Service Discipline immediately before the coming into force of this section may be charged, dealt with and tried under the new Code of Service Discipline.

Maintien du statut de justiciable

98. Toute personne qui, avant l'entrée en vigueur du présent article, était susceptible d'être accusée, poursuivie et jugée sous le régime de l'ancien code l'est également sous le régime du nouveau code.

Proceedings

99. (1) Proceedings under the former Code of Service Discipline commenced before the coming into force of this section are to be taken up and continued under and in conformity with the new Code of Service Discipline without any further formality and with any modifications that the circumstances require.

Poursuites

99. (1) Les poursuites entamées sous le régime de l'ancien code avant l'entrée en vigueur du présent article se poursuivent sous le régime du nouveau code, avec les adaptations nécessaires, sans formalité additionnelle.

Courts martial

(2) For the purposes of subsection (1), court martial proceedings are deemed to be commenced when the court martial is convened.

Cour martiale

(2) Pour l'application du paragraphe (1), une poursuite devant la cour martiale est réputée entamée lorsque la cour martiale est convoquée.

Judge advocate of court martial

100. Every person who is a judge advocate of a court martial on the coming into force of this section is deemed to be a military judge presiding at the court martial under the new Code of Service Discipline.

Juge-avocat de la cour martiale

100. Toute personne qui, à la date d'entrée en vigueur du présent article, est juge-avocat d'une cour martiale est réputée être, sous le régime du nouveau code, un juge militaire présidant une cour martiale.

Members of court martial

101. Every person who is a member of a court martial on the coming into force of this section is deemed to be a member of the panel of the court martial.

Membres de la cour martiale

101. Toute personne qui, à la date d'entrée en vigueur du présent article, est membre de la cour martiale est réputée être, sous le régime du nouveau code, membre du comité de la cour martiale.

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RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 96	*Adds a review and reporting requirement*	

What the provision does

- requires the Minister to undertake a review of the provisions and operation of the *Act* and to table the report of the review in Parliament within five years

Reasons for the provision

The review will ensure that the provisions of the *National Defence Act*, along with the proposed amendments, are reviewed by the Minister and Parliament within five years.

Clause 97	*Adds a transitional provision*	

What the provision does

- provides for definitions of "former *Code of Service Discipline*" and "new *Code of Service Discipline*"

Reasons for the provision

These definitions are required for the interpretation of several of the transitional provisions.

Clause 98	*Adds a transitional provision*	

What the provision does

- provides that anyone liable to be charged under the former *Code of Service Discipline* before the coming into force of the provision may be charged, dealt with and tried under the new *Code of Service Discipline*

Reasons for the provision

This transitional provision enables anyone liable under the *Code of Service Discipline* before the amendments come into force to be charged, dealt with and tried in accordance with the provisions of the amended *Code of Service Discipline*.

Clause 99	*Adds a transitional provision*	

What the provision does

- provides that any proceedings commenced under the *Code of Service Discipline* before the provision comes into force will be continued under the new *Code of Service Discipline* when the provision comes into force
- provides that, for the purpose of the provision, court martial proceedings are deemed to commence when the court martial is convened

Reasons for the provision

This transitional provision enables the continuing of proceedings commenced before the amendments come into force under the amended *Code of Service Discipline*.

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RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Review and report

96. The Minister shall undertake a review of the provisions and operation of this Act and shall cause a report on the review to be laid before each House of Parliament within five years after the coming into force of this section.

Examen et rapport

96. Le ministre procède à l'examen des dispositions et de l'application de la présente loi et fait déposer son rapport devant chaque chambre du Parlement dans les cinq ans suivant l'entrée en vigueur du présent article.

TRANSITIONAL PROVISIONS

DISPOSITIONS TRANSITOIRES

Definitions

97. The definitions in this section apply in sections 98 to 100.

Définitions

"former Code of Service Discipline" « *ancien code* »

"former Code of Service Discipline" means the Code of Service Discipline within the meaning of section 2 of the Act as that definition read immediately before the coming into force of this section.

« ancien code » *"former Code of Service Discipline"*

« ancien code » Le code de discipline militaire au sens de l'article 2 de la même loi dans sa version antérieure à l'entrée en vigueur du présent article.

"new Code of Service Discipline" « *nouveau code* »

"new Code of Service Discipline" means the Code of Service Discipline within the meaning of section 2 of the Act as that definition reads immediately after the coming into force of this section.

« nouveau code » *"new Code of Service Discipline"*

« nouveau code » Le code de discipline militaire au sens de l'article 2 de la même loi dans sa version à l'entrée en vigueur du présent article.

Continuing liability

98. Every person liable to be charged, dealt with and tried under the former Code of Service Discipline immediately before the coming into force of this section may be charged, dealt with and tried under the new Code of Service Discipline.

Maintien du statut de justiciable

98. Toute personne qui, avant l'entrée en vigueur du présent article, était susceptible d'être accusée, poursuivie et jugée sous le régime de l'ancien code l'est également sous le régime du nouveau code.

Proceedings

99. (1) Proceedings under the former Code of Service Discipline commenced before the coming into force of this section are to be taken up and continued under and in conformity with the new Code of Service Discipline without any further formality and with any modifications that the circumstances require.

Poursuites

99. (1) Les poursuites entamées sous le régime de l'ancien code avant l'entrée en vigueur du présent article se poursuivent sous le régime du nouveau code, avec les adaptations nécessaires, sans formalité additionnelle.

Courts martial

(2) For the purposes of subsection (1), court martial proceedings are deemed to be commenced when the court martial is convened.

Cour martiale

(2) Pour l'application du paragraphe (1), une poursuite devant la cour martiale est réputée entamée lorsque la cour martiale est convoquée.

Judge advocate of court martial

100. Every person who is a judge advocate of a court martial on the coming into force of this section is deemed to be a military judge presiding at the court martial under the new Code of Service Discipline.

Juge-avocat de la cour martiale

100. Toute personne qui, à la date d'entrée en vigueur du présent article, est juge-avocat d'une cour martiale est réputée être, sous le régime du nouveau code, un juge militaire présidant une cour martiale.

Members of court martial

101. Every person who is a member of a court martial on the coming into force of this section is deemed to be a member of the panel of the court martial.

Membres de la cour martiale

101. Toute personne qui, à la date d'entrée en vigueur du présent article, est membre de la cour martiale est réputée être, sous le régime du nouveau code, membre du comité de la cour martiale.

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 100	*Adds a transitional provision*	

What the provision does

- deems the judge advocate of a court martial on the date the provision comes into force to be a military judge presiding at the court martial under the new *Code of Service Discipline*

Reasons for the provision

This transitional provision enables the continuing of proceedings commenced before the amendments come into force under the amended *Code of Service Discipline*.

Clause 101	*Adds a transitional provision*	

What the provision does

- deems a member of a court martial on the date the provision comes into force to be a member of a court martial panel under the new *Code of Service Discipline*

Reasons for the provision

This transitional provision enables the continuing of proceedings commenced before the amendments come into force under the amended *Code of Service Discipline*

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Military judges

102. (1) Every officer appointed under section 177 of the Act who holds office immediately before this section comes into force is deemed to be a military judge for the unexpired term of the officer's appointment as if the officer had been appointed for that term by the Governor in Council under section 165.21(1) of the Act, as enacted by section 42 of this Act.

Juges militaires

102. (1) Tout officier nommé en vertu de l'article 177 de la même loi dont le mandat n'est pas, à la date de l'entrée en vigueur du présent article, expiré est réputé être un juge militaire nommé par le gouverneur en conseil aux termes du paragraphe 165.21(1) de la même loi, édicté par l'article 42 de la présente loi, pour le reste de son mandat.

Chief Military Judge

(2) The officer who holds office as the Chief Military Trial Judge immediately before this section comes into force is the Chief Military Judge.

Juge militaire en chef

(2) Est le juge militaire en chef l'officier qui, à la date de l'entrée en vigueur du présent article, occupe cette charge de juge militaire en chef.

Grievances

103. A grievance that is considered by the Chief of the Defence Staff in accordance with regulations made by the Governor in Council for the purpose of providing redress and that is determined by the Chief of the Defence Staff within ninety days before section 29.11 of the Act, as enacted by section 7 of this Act, comes into force may be considered by the Minister if an application is made within ninety days after the determination.

Griefs

103. Toute décision du chef d'état-major de la défense, sur un grief dont il a été saisi conformément aux règlements du gouverneur en conseil, rendue dans les quatre-vingt-dix jours précédant la date de l'entrée en vigueur de l'article 29.11 de la même loi, édicté par l'article 7 de la présente loi, peut, sur demande présentée dans les quatre-vingt-dix jours suivant la date de la décision, être révisée par le ministre.

Part IV

104. Part IV of the Act does not apply in respect of events that took place before that Part or any of its provisions came into force.

Partie IV

104. La partie IV de la même loi ne s'applique pas aux faits survenus avant la date d'entrée en vigueur de cette partie ou de telle de ses dispositions.

Transitional regulations

105. The Governor in Council may make regulations providing for any other transitional matters.

Règlements

105. Le gouverneur en conseil peut, par règlement, prévoir toute mesure transitoire.

CONSEQUENTIAL AMENDMENTS

MODIFICATIONS CORRÉLATIVES

R.S., c. A-1

Access to Information Act

L.R. ch. A-1

Loi sur l'accès à l'information

106. Schedule I to the *Access to Information Act* is amended by adding the following in alphabetical order under the heading "*Other Government Institutions*":

Canadian Forces Grievance Board

Comité des griefs des Forces canadiennes

Military Police Complaints Commission

Commission d'examen des plaintes concernant la police militaire

106. L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « *Autres institutions fédérales* », de ce qui suit :

Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

Commission d'examen des plaintes concernant la police militaire.

Military Police Complaints Commission

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RELEASED UNDER THE ATI – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 102	*Adds a transitional provision*	

What the provision does

- deems every officer appointed by the Minister to be a president of a Standing Court Martial, and who holds such office immediately before the provision comes into force, to be a military judge for the unexpired period of the officer's appointment as if the officer had been appointed under the new *Code of Service Discipline*
- provides that the officer holding the office of Chief Military Trial Judge on the date the amendments come into force is the Chief Military Judge

Reasons for the provision

This transitional provision enables the continuing of proceedings commenced before the new *Code of Service Discipline* comes into force as well as the continuity of those who are currently military judges and the Chief Military Trial Judge.

Clause 103	*Adds a transitional provision*	

What the provision does

- provides that a grievance which is determined by the Chief of the Defence Staff within ninety days before new section 29.11 comes into force may be considered by the Minister if the grievor applies within ninety days after the determination of the Chief of the Defence Staff

Reasons for the provision

This provision provides a transition from the current grievance regulations permitting final adjudication by the Minister to the regime under the amended *Act* by clearly indicating the limited circumstances under which grievances currently in the process may receive ministerial review.

Clause 104	*Adds a transitional provision*	

What the provision does

- limits the application of Part IV: COMPLAINTS ABOUT OR BY MILITARY POLICE, to events which occur after the coming into force of Part IV or its provisions

Reasons for the provision

This provision enables a smooth transition from the current processes for military police complaints to the regime under the amended *Act* through the limitation of Part IV's application to incidents arising after its coming into force.

Clause 105	*Adds a transitional provision*	

What the provision does

- authorizes the Governor in Council to make regulations providing for any other transitional matters

Reasons for the provision

This provision will ensure that regulations may be made to deal with issues of a transitional nature.

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Military judges

102. (1) Every officer appointed under section 177 of the Act who holds office immediately before this section comes into force is deemed to be a military judge for the unexpired term of the officer's appointment as if the officer had been appointed for that term by the Governor in Council under section 165.21(1) of the Act, as enacted by section 42 of this Act.

Juges militaires

102. (1) Tout officier nommé en vertu de l'article 177 de la même loi dont le mandat n'est pas, à la date de l'entrée en vigueur du présent article, expiré est réputé être un juge militaire nommé par le gouverneur en conseil aux termes du paragraphe 165.21(1) de la même loi, édicté par l'article 42 de la présente loi, pour le reste de son mandat.

Chief Military Judge

(2) The officer who holds office as the Chief Military Trial Judge immediately before this section comes into force is the Chief Military Judge.

Juge militaire en chef

(2) Est le juge militaire en chef l'officier qui, à la date de l'entrée en vigueur du présent article, occupe cette charge de juge militaire en chef.

Grievances

103. A grievance that is considered by the Chief of the Defence Staff in accordance with regulations made by the Governor in Council for the purpose of providing redress and that is determined by the Chief of the Defence Staff within ninety days before section 29.11 of the Act, as enacted by section 7 of this Act, comes into force may be considered by the Minister if an application is made within ninety days after the determination.

Griefs

103. Toute décision du chef d'état-major de la défense, sur un grief dont il a été saisi conformément aux règlements du gouverneur en conseil, rendue dans les quatre-vingt-dix jours précédant la date de l'entrée en vigueur de l'article 29.11 de la même loi, édicté par l'article 7 de la présente loi, peut, sur demande présentée dans les quatre-vingt-dix jours suivant la date de la décision, être révisée par le ministre.

Part IV

104. Part IV of the Act does not apply in respect of events that took place before that Part or any of its provisions came into force.

Partie IV

104. La partie IV de la même loi ne s'applique pas aux faits survenus avant la date d'entrée en vigueur de cette partie ou de telle de ses dispositions.

Transitional regulations

105. The Governor in Council may make regulations providing for any other transitional matters.

Règlements

105. Le gouverneur en conseil peut, par règlement, prévoir toute mesure transitoire.

CONSEQUENTIAL AMENDMENTS

MODIFICATIONS CORRÉLATIVES

R.S., c. A-1

Access to Information Act

L.R. ch. A-1

Loi sur l'accès à l'information

106. Schedule I to the *Access to Information Act* is amended by adding the following in alphabetical order under the heading "*Other Government Institutions*":

Canadian Forces Grievance Board

Comité des griefs des Forces canadiennes

Military Police Complaints Commission

Commission d'examen des plaintes concernant la police militaire

106. L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « *Autres institutions fédérales* », de ce qui suit :

Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

Commission d'examen des plaintes concernant la police militaire.

Military Police Complaints Commission

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

CONSEQUENTIAL AMENDMENTS

Clause 106	*Amends Schedule I to the Access to Information Act*	

What the amendment does

- adds the "Canadian Forces Grievance Board" and "Military Police Complaints Commission" to schedule I to the *Access to Information Act*

Reasons for the change

This amendment makes the Canadian Forces Grievance Board and the Military Police Complaints Commission subject to the *Access to Information Act*.

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

R.S., c. C-17 *Canadian Forces Superannuation Act* *Loi sur la pension de retraite des Forces canadiennes* L.R. ch. C-17

107. The definition "pay" in subsection 2(1) of the *Canadian Forces Superannuation Act* is replaced by the following:

"pay"
« *solde* »

"pay", as applied to the Canadian Forces, means pay at the rates prescribed or established under the *National Defence Act* for the rank held by the person in respect of whom the expression is being applied, together with the allowances prescribed by the regulations made under this Act for that rank, and, as applied to the Public Service or the Royal Canadian Mounted Police, means the salary or pay and allowances, as the case may be, applicable in the case of that person, as determined under the *Public Service Superannuation Act* or the *Royal Canadian Mounted Police Superannuation Act*;

107. La définition de « solde », au paragraphe 2(1) de la *Loi sur la pension de retraite des Forces canadiennes*, est remplacée par ce qui suit :

« solde »
"pay"

« solde » Relativement aux Forces canadiennes, la solde aux taux prescrits par les règlements d'application de la *Loi sur la défense nationale* ou fixés aux termes de cette loi pour le grade détenu par la personne visée, ainsi que les allocations prescrites par les règlements pris selon la présente loi pour ce grade. L'expression « traitement », appliquée à la fonction publique, ou « solde », appliquée à la Gendarmerie royale du Canada, s'entend respectivement du traitement ou de la solde et des allocations, selon le cas, applicables à cette personne conformément à la *Loi sur la pension de la fonction publique* ou à la *Loi sur la pension de retraite de la Gendarmerie royale du Canada*.

1992, c. 20 *Corrections and Conditional Release Act* *Loi sur le système correctionnel et la mise en liberté sous condition* 1992, ch. 20

1995, c. 22, s. 13 (Sch. II, item 2)

108. The portion of subsection 17(1) of the *Corrections and Conditional Release Act* after paragraph (*d*) and before paragraph (*e*) is replaced by the following:

the absence may, subject to section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*, be authorized by the institutional head

108. Le passage du paragraphe 17(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* précédant l'alinéa *a*) est remplacé par ce qui suit :

1995, ch. 22, art. 13, ann. II, art. 2

Permission de sortir avec escorte

17. (1) Sous réserve de l'article 746.1 du *Code criminel* et du paragraphe 140.3(2) de la *Loi sur la défense nationale*, le directeur du pénitencier peut autoriser un délinquant à sortir si celui-ci est escorté d'une personne — agent ou autre — habilitée à cet effet par lui lorsque, à son avis :

1995, c. 22, s. 13 (Sch. II, item 3)

109. The portion of subsection 18(2) of the Act before paragraph (*a*) is replaced by the following:

Work releases may be authorized

(2) Where an inmate is eligible for unescorted temporary absences under Part II or pursuant to section 746.1 of the *Criminal Code* or subsection 140.3(2) of the *National Defence Act*, and, in the opinion of the institutional head,

109. Le passage du paragraphe 18(2) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

1995, ch. 22, art. 13, ann. II, art. 3

Autorisation de placement à l'extérieur

(2) Le directeur peut faire bénéficier le détenu qui est admissible à une permission de sortir sans escorte en application de la partie II, de l'article 746.1 du *Code criminel* ou du paragraphe 140.3(2) de la *Loi sur la défense nationale* d'un placement à l'extérieur pour la période qu'il détermine — sous réserve de l'approbation du commissaire lorsqu'elle excède soixante jours — si, à son avis :

RELEASED UNDER THE AIA - UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

Clause 107	*Amends subsection 2(1) of the Canadian Forces Superannuation Act*	

What the amendment does

- broadens the definition of pay by referring to pay rates that may be "established" under the *National Defence Act*

Reasons for the change

This amendment is consequential to the amendment to section 35 which authorizes Treasury Board to deal with rates and condition of issue of pay and allowances by administrative directives.

Clause 108	*Amends subsection 17(1) of the Corrections and Conditional Release Act*	

What the amendment does

- makes the authorization of unescorted temporary absences by an institution head subject to both section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*

Reasons for the change

This amendment is consequential to the implementation, in section 140.3, of a parole regime for life imprisonment sentences parallel to that under the *Criminal Code*.

Clause 109	*Amends subsection 18(2) of the Corrections and Conditional Release Act*	

What the amendment does

- authorizes unescorted temporary absence for reasons of work or community service where the inmate is eligible for unescorted temporary absences under both section 746.1 of the *Criminal Code* and new subsection 140.3(2) of the *National Defence Act*

Reasons for the change

This amendment is consequential to the implementation, in section 140.3, of a parole regime for life imprisonment sentences parallel to that under the *Criminal Code*.

RELEASED UNDER THE AIA – UNCLASSIFIED INFORMATION
DIVULGUÉ EN VERTU DE LA LAI – RENSEIGNEMENTS NON CLASSIFIÉS

110. The portion of subsection 107(1) of the Act before paragraph (*a*) is replaced by the following:

Jurisdiction of Board

107. (1) Subject to this Act, the *Prisons and Reformatories Act*, the *Transfer of Offenders Act*, the *National Defence Act* and the *Criminal Code*, the Board has exclusive jurisdiction and absolute discretion

110. Le passage du paragraphe 107(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Compétence

107. (1) Sous réserve de la présente loi, de la *Loi sur les prisons et les maisons de correction*, de la *Loi sur le transfèrement des délinquants*, de la *Loi sur la défense nationale* et du *Code criminel*, la Commission a toute compétence et latitude pour :

1995, c. 22, s. 13 (Sch. II, item 6)

111. (1) The portion of subsection 119(1) of the Act before paragraph (*a*) is replaced by the following:

Time when eligible for day parole

119. (1) Subject to section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*, the portion of a sentence that must be served before an offender may be released on day parole is

111. (1) Le passage du paragraphe 119(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

1995, ch. 22, art. 13, ann. II, art. 6

Temps d'épreuve pour la semi-liberté

119. (1) Sous réserve de l'article 746.1 du *Code criminel* et du paragraphe 140.3(2) de la *Loi sur la défense nationale*, le temps d'épreuve pour l'admissibilité à la semi-liberté est :

1997, c. 17, par. 20(4)(*a*)

(2) Subsection 119(1.1) of the Act is replaced by the following:

(2) Le paragraphe 119(1.1) de la même loi est remplacé par ce qui suit :

1997, ch. 17, al. 20(4)*a*)

Time when eligible for day parole

(1.1) Notwithstanding section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*, an offender described in subsection 746.1(1) or (2) of the *Criminal Code* or to whom those subsections apply pursuant to subsection 140.3(2) of the *National Defence Act*, shall not, in the circumstances described in subsection 120.2(2) or (3), be released on day parole until three years before the day that is determined in accordance with subsection 120.2(2) or (3).

Temps d'épreuve pour la semi-liberté

(1.1) Par dérogation à l'article 746.1 du *Code criminel* et du paragraphe 140.3(2) de la *Loi sur la défense nationale*, dans les cas visés aux paragraphes 120.2(2) ou (3), le temps d'épreuve pour l'admissibilité à la semi-liberté est, dans le cas du délinquant visé aux paragraphes 746.1(1) ou (2) du *Code criminel* ou auquel l'une ou l'autre de ces dispositions s'appliquent aux termes du paragraphe 140.3(2) de la *Loi sur la défense nationale*, la période qui se termine trois ans avant la date déterminée conformément aux paragraphes 120.2(2) ou (3).

1997, c. 17, s. 20(4)(*b*)

(3) The portion of subsection 119(1.2) of the Act before paragraph (*a*) is replaced by the following:

When eligible for day parole — young offender sentenced to life imprisonment

(1.2) Notwithstanding section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*, in the circumstances described in subsection 120.2(2), the portion of the sentence of an offender described in subsection 746.1(3) of the *Criminal Code* or to whom that subsection applies pursuant to subsection 140.3(2) of the *National Defence Act* that must be served before the offender may be released on day parole is the longer of

(3) Le paragraphe 119(1.2) de la même loi est remplacé par ce qui suit :

1997, ch. 17, al. 20(4)*b*)

Temps d'épreuve pour la semi-liberté — personne âgée de moins de dix-huit ans

(1.2) Par dérogation à l'article 746.1 du *Code criminel* et au paragraphe 140.3(2) de la *Loi sur la défense nationale*, dans les cas visés au paragraphe 120.2(2), le temps d'épreuve pour l'admissibilité à la semi-liberté est la période qui se termine, dans le cas d'un délinquant visé au paragraphe 746.1(3) du *Code criminel* ou auquel ce paragraphe s'applique aux termes du paragraphe 140.3(2) de la *Loi sur la défense nationale*, au dernier cinquième du délai préalable à l'admissibilité à la libération conditionnelle ou, si elle est supérieure, la période qui se termine trois ans

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Clause 110	*Amends subsection 107(1) of the Corrections and Conditional Release Act*	

What the amendment does

- makes the National Parole Board's exclusive jurisdiction and absolute discretion in matters concerning parole subject not only to the *Criminal Code*, the *Prison and Reformatories Act*, the *Transfer of Offenders Act*, but also to the *National Defence Act*

Reasons for the change

This amendment is consequential to section 140.3 which provides for the implementation of a parole regime concerning life imprisonment sentences parallel to that under the *Criminal Code* and new section 140.4, which, parallel to section 743.6 of the *Criminal Code*, enables a military judge to restrict the eligibility for parole for sentences in the case of certain serious offences.

Clause 111	*Amends subsections 119(1), 119(1.1) and 119(1.2) of the Corrections and Conditional Release Act*	

What the amendment does

- makes the eligibility of an offender for day parole subject to both section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act* [s. 119]
- applies restrictions on the eligibility for day parole for offenders described in both section 746.1 of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act* [s. 119(1.1)]
- applies restrictions on the eligibility for day parole for young offenders described at subsection 746.1(3) of the *Criminal Code* or to whom that subsection applies pursuant to subsection 140.3(2) of the *Act* [s. 119(1.2)]

Reasons for the change

This amendment is consequential to the implementation at new section 140.3 of a parole regime for life imprisonment sentences parallel to that under the *Criminal Code*.

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avant l'admissibilité à la libération conditionnelle totale déterminée conformément au paragraphe 120.2(2).

1995, c. 22, s. 13 (Sch. II, item 7), c. 42, s. 34

112. Section 120 of the Act is replaced by the following:

112. L'article 120 de la même loi est remplacé par ce qui suit :

1995, ch. 22, art. 13, ann. II, art.7, ch. 42, art. 34

Time when eligible for full parole

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 and subject to subsection 140.3(2) of the *National Defence Act* and to any order made under section 140.4 of that 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.

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 et du paragraphe 140.3(2) de la *Loi sur la défense nationale* et de toute ordonnance rendue en vertu de l'article 140.4 de cette loi, le temps d'épreuve pour l'admissibilité à la libération conditionnelle totale est d'un tiers de la peine à concurrence de sept ans.

Temps d'épreuve pour la libération conditionnelle totale

Life sentence

(2) Subject to any order made under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, an offender who is serving a life sentence, imposed otherwise than as a minimum punishment, is not eligible for full parole until the day on which the offender has served a period of ineligibility of seven years less any time spent in custody between the day on which the offender was arrested and taken into custody, in respect of the offence for which the sentence was imposed, and the day on which the sentence was imposed.

(2) Dans le cas d'une condamnation à l'emprisonnement à perpétuité et à condition que cette peine n'ait pas constitué un minimum en l'occurrence, le temps d'épreuve pour l'admissibilité à la libération conditionnelle totale est, sous réserve de toute ordonnance rendue en vertu de l'article 743.6 du *Code criminel* ou en vertu de l'article 140.4 de la *Loi sur la défense nationale*, de sept ans moins le temps de détention compris entre le jour de l'arrestation et celui de la condamnation à cette peine.

Cas particulier : perpétuité

1995, c. 42, s. 34; 1997, c. 17, s. 23(2)(F)

113. (1) Subparagraph 120.2(1)(*b*)(i) of the Act is replaced by the following:

(i) the period of ineligibility in relation to any portion of the sentence that includes the additional sentence as provided by subsection 139(1) and that is subject to an order under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, and

113. (1) L'alinéa 120.2(1)*b*) de la même loi est remplacé par ce qui suit :

b) la date à laquelle il a accompli, d'une part, le temps d'épreuve requis par rapport à la partie de la période globale d'emprisonnement, déterminée conformément au paragraphe 139(1), qui est visée par une ordonnance rendue en vertu de l'article 743.6 du *Code criminel* ou de l'article 140.435 de la *Loi sur la défense nationale* et, d'autre part, le temps d'épreuve requis par rapport à toute autre partie de cette période globale d'emprisonnement.

1995, ch. 42, art. 34; 1997, ch. 17, div. 23(2)F)

1995, c. 22, s. 18 (Sch. IV, item 44), c. 42, s. 34

(2) The portion of subsection 120.2(3) of the Act before paragraph (*a*) is replaced by the following:

(2) Le paragraphe 120.2(3) de la même loi est remplacé par ce qui suit :

1995, ch. 22, art. 18, ann. IV, art. 44, ch. 42, art. 34

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Clause 112	*Amends section 120 of the Corrections and Conditional Release Act*	

What the amendment does

- makes the eligibility of an offender for full parole subject to sections 746.1 and 761of the *Criminal Code* and subsection 140.3(2) of the *National Defence Act*
- makes the eligibility of an offender for full parole, where serving a life sentence imposed otherwise than as a minimum sentence, subject to both sections 743.6 of the *Criminal Code* and section140.4 of the *National Defence Act*

Reasons for the change

This amendment is consequential to the implementation at new section 140.3 of a parole regime for life imprisonment sentences parallel to that under the *Criminal Code* and new section 140.4 that, parallel to section 743.6 of the *Criminal Code*, enables a military judge to restrict the eligibility for parole for sentences in the case of certain serious offences.

Clause 113	*Amends subparagraph 120.2(1)(b)(i) and subsection 120.2(3) of the Corrections and Conditional Release Act*	

What the amendment does

- makes eligibility for parole in the case of an additional concurrent sentence subject to section 140.4 of the *National Defence Act* [subpara. 120.2(1)(b)(i)]
- adds a reference to subsection 140.3(2) of the *National Defence Act* in a provision which deals with eligibility for full parole [subs. 120.2(3)]

Reasons for the change

This amendment is consequential to sections 140.3 and 140.4 of the *National Defence Act* which provide for a parole regime for life imprisonment sentences and enable a military judge to delay eligibility for parole for certain serious offences.

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Where reduction of period of ineligibility for parole

(3) Where, pursuant to section 745.6 of the *Criminal Code* or subsection 140.3(2) of the *National Defence Act*, there has been a reduction in the number of years of imprisonment without eligibility for parole of an offender referred to in subsection (2), the offender is not eligible for full parole until the day on which the offender has served, commencing on the day on which the additional sentence was imposed,

Nouveau calcul en cas de réduction du temps d'épreuve

(3) En cas de réduction du temps d'épreuve sur la peine d'emprisonnement à perpétuité en vertu de l'article 745.6 du *Code criminel* ou du paragraphe 140.3(2) de la *Loi sur la défense nationale*, le délinquant visé au paragraphe (2) n'est admissible à la libération conditionnelle totale qu'à la date à laquelle il a accompli le temps d'épreuve auquel il aurait été assujetti, compte tenu de la réduction, à la date de la condamnation à la peine supplémentaire ainsi que le temps d'épreuve sur la peine supplémentaire.

1995, c. 22, s. 18 (Sch. IV, item 38), c. 42, s. 34

114. Section 120.3 of the Act is replaced by the following:

1995, ch. 22, art. 18, ann. IV, art. 38, ch. 42, art. 34

114. L'article 120.3 de la même loi est remplacé par ce qui suit :

Maximum period

120.3 Subject to section 745 of the *Criminal Code* and subsection 140.3(1) of the *National Defence Act*, where an offender who is serving a sentence receives an additional sentence, the day on which the offender is eligible for full parole shall not be later than the day on which the offender has served fifteen years from the day on which the last of the sentences was imposed.

Maximum

120.3 Sous réserve de l'article 745 du *Code criminel* et du paragraphe 140.3(1) de la *Loi sur la défense nationale*, lorsqu'un délinquant qui purge une peine d'emprisonnement est condamné à une peine supplémentaire, la limite maximale du temps d'épreuve requis pour la libération conditionnelle totale est de quinze ans à compter de la condamnation à la dernière peine.

1995, c. 22, s. 13 (Sch. II, item 9), c. 42, s. 35(1)

115. The portion of subsection 121(1) of the Act before paragraph (*a*) is replaced by the following:

1995, ch. 22, art. 13, ann. II, art. 9, ch. 42, par. 35(1)

115. Le passage du paragraphe 121(1) de la même loi précédant l'alinéa *a*) est remplacé par ce qui suit :

Exceptional cases

121. (1) Subject to section 102 and notwithstanding sections 119 to 120.3 or any order made under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, parole may be granted at any time to an offender

Cas exceptionnels

121. (1) Sous réserve de l'article 102 mais par dérogation aux articles 119 à 120.3 et même si le temps d'épreuve a été fixé par le tribunal en application de l'article 743.6 du *Code criminel* ou de l'article 140.4 de la *Loi sur la défense nationale*, le délinquant peut bénéficier de la libération conditionnelle dans les cas suivants :

1995, c. 42, s. 39

116. Paragraph 125(1)(*a*) of the Act is amended by striking out the word "or" at the end of subparagraph (iii) and by replacing subparagraph (iv) with the following:

(iv) an offence set out in Schedule II in respect of which an order has been made under section 743.6 of the *Criminal Code*, or

(v) an offence contrary to section 130 of the *National Defence Act* where the offence is murder, an offence set out in Schedule I or an offence set out in Schedule II in respect of which an order

1995, ch. 42, art. 39

116. Le sous-alinéa 125(1)*a*)(iv) de la même loi est remplacé par ce qui suit :

(iv) une infraction mentionnée à l'annexe II et sanctionnée par une peine ayant fait l'objet d'une ordonnance rendue en vertu de l'article 743.6 du *Code criminel*,

(v) le meurtre, lorsqu'il constitue une infraction à l'article 130 de la *Loi sur la défense nationale*, une infraction mentionnée à l'annexe I de la présente loi ou une infraction mentionnée à l'annexe II pour laquelle une ordonnance a été rendue en vertu de l'article 140.4 de la *Loi sur la défense nationale*.

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Clause 113	*Amends subparagraph 120.2(1)(b)(i) and subsection 120.2(3) of the Corrections and Conditional Release Act*	**Continued**

What the amendment does

- adds a reference to subsection 140.3(2) of the *National Defence Act* in a provision which deals with eligibility for full parole [subs. 120.2(3)]

Reasons for the change

This amendment is consequential to sections 140.3 and 140.4 of the *National Defence Act* which provide for a parole regime for life imprisonment sentences and enable a military judge to delay eligibility for parole for certain serious offences.

Clause 114	*Amends section 120.3 of the Corrections and Conditional Release Act*	

What the amendment does

- makes the maximum period an offender may serve before being eligible for parole, where the offender receives an additional sentence, subject to subsection 140.3(1) of the *National Defence Act*

Reasons for the change

This amendment is consequential to section 140.3 of the *National Defence Act* which provides for a parole regime for life imprisonment sentences parallel to that under the *Criminal Code.*

Clause 115	*Amends subsection 121(1) of the Corrections and Conditional Release Act*	

What the amendment does

- adds a reference to section 140.4 of the *National Defence Act* in a provision which authorizes the granting of parole to an offender in exceptional circumstances, including terminal illness

Reasons for the change

This amendment is consequential to section 140.4 of the *National Defence Act* which enables a military judge to delay eligibility for parole for certain serious offences.

Clause 116	*Amends paragraph 125(1)(a) of the Corrections and Conditional Release Act*	

What the amendment does

- adds to the list of offences for which an offender cannot apply for accelerated parole review, the following offences punishable under section 130 of the *National Defence Act*:
  - murder
  - offences under Schedule I of the *Corrections and Conditional Release Act*
  - offences under Schedule II of the *Corrections and Conditional Release Act* where an order delaying parole eligibility been made under section 140.4

Reasons for the change

This amendment is consequential to sections 140.3 and 140.4 of the *National Defence Act*, which provide for a parole regime for life imprisonment sentences and enable a military judge to delay eligibility for parole for certain serious offences. This amendment will ensure that offenders serving sentences in a civil penitentiary for offences prosecuted under the *National Defence Act* will be treated the same as offenders serving sentences awarded in civilian criminal proceedings.

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has been made under section 140.4 of the *National Defence Act*;

1995, c. 42, s. 44(1)

117. Subsection 129(1) of the Act is replaced by the following:

117. Le paragraphe 129(1) de la même loi est remplacé par ce qui suit :

1995, ch. 42, par. 44(1)

Review of cases by service

129. (1) Before the statutory release date of an offender who is serving a sentence of two years or more that includes a sentence imposed for an offence set out in Schedule I or II or an offence set out in Schedule I or II that is punishable under section 130 of the *National Defence Act*, the Commissioner shall cause the offender's case to be reviewed by the Service.

Examen de certains cas par le Service

129. (1) Le commissaire fait étudier par le Service, préalablement à la date prévue pour la libération d'office, le cas de tout délinquant dont la peine d'emprisonnement d'au moins deux ans comprend une peine infligée pour une infraction visée à l'annexe I ou II ou mentionnée à l'une ou l'autre de celles-ci et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*.

1995, c. 42, s. 45(1)

118. (1) Paragraphs 130(3)(*a*) and (*b*) of the Act are replaced by the following:

118. (1) Les alinéas 130(3)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

1995, ch. 42, par. 45(1)

(*a*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, or for an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit an offence causing the death of or serious harm to another person or a sexual offence involving a child before the expiration of the offender's sentence according to law,

a) dans le cas où la peine d'emprisonnement comprend une peine infligée pour une infraction visée à l'annexe I, ou qui y est mentionnée et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*, que le délinquant commettra, s'il est mis en liberté avant l'expiration légale de sa peine, soit une infraction causant la mort ou un dommage grave à une autre personne, soit une infraction d'ordre sexuel à l'égard d'un enfant;

(*b*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule II, or for an offence set out in Schedule II that is punishable under section 130 of the *National Defence Act*, that the offender is likely, if released, to commit a serious drug offence before the expiration of the offender's sentence according to law,

b) dans le cas où la peine comprend une peine infligée pour une infraction visée à l'annexe II, ou qui y est mentionnée et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*, qu'il commettra, s'il est mis en liberté avant l'expiration légale de sa peine, une infraction désignée en matière de drogue;

1995, c. 42, s. 45(2)

(2) Paragraphs 130(4)(*a*) and (*b*) of the Act are replaced by the following:

(2) Les alinéas 130(4)*a*) et *b*) de la même loi sont remplacés par ce qui suit :

1995, ch. 42, par. 45(2)

(*a*) at the time the case was referred to it, the offender was serving a sentence that included a sentence for an offence set out in Schedule I or II, or for an offence set out in Schedule I or II that is punishable under section 130 of the *National Defence Act*, and

a) qu'au moment où le dossier lui est déféré le délinquant purgeait une peine d'emprisonnement comprenant une peine infligée pour une infraction visée à l'annexe I ou II, ou mentionnée à l'une ou l'autre de celles-ci et qui est punissable en vertu de l'article 130 de la *Loi sur la défense nationale*;

(*b*) in the case of an offence set out in Schedule I or an offence set out in Schedule I that is punishable under section 130 of the

b) que l'infraction — si elle relève de l'annexe I, ou y est mentionnée et est punissable en vertu de l'article 130 de la *Loi*

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Clause 116	*Amends paragraph 125(1)(a) of the Corrections and Conditional Release Act*	Continued

What the amendment does

- adds to the list of offences for which an offender cannot apply for accelerated parole review, the following offences punishable under section 130 of the *National Defence Act*:
  - murder
  - offences under Schedule I of the *Corrections and Conditional Release Act*
  - offences under Schedule II of the *Corrections and Conditional Release Act* where an order delaying parole eligibility been made under section 140.4

Reasons for the change

This amendment is consequential to sections 140.3 and 140.4 of the *National Defence Act*, which provide for a parole regime for life imprisonment sentences and enable a military judge to delay eligibility for parole for certain serious offences. This amendment will ensure that offenders serving sentences in a civil penitentiary for offences prosecuted under the *National Defence Act* will be treated the same as offenders serving sentences awarded in civilian criminal proceedings.

Clause 117	*Amends subsection 129(1) of the Corrections and Conditional Release Act*	

What the amendment does

- requires the National Parole Board to review the statutory release of an offender who has been convicted, under section 130 of the *National Defence Act*, of an offence set out in Schedules I or II

Reasons for the change

This amendment is consequential to section 140.4 of the *National Defence Act* which enables a military judge to delay eligibility for certain serious offences. This amendment will ensure that offenders serving sentences in a civil penitentiary for offences prosecuted under the *National Defence Act* will be treated the same as offenders serving sentences awarded in civilian criminal proceedings.

Clause 118	*Amends paragraphs 130(3)(a) and (b) and 130(4)(a) and (b) of the Corrections and Conditional Release Act*	

What the amendment does

- authorizes the National Parole Board to order an offender convicted under section 130 of the *National Defence Act* for an offence set out in Schedules I or II not to be released until the end of the offender's sentence in certain circumstances [130(3)(a) and (b)]

Reasons for the change

This amendment is consistent with section 140.4 of the *National Defence Act* which enables a military judge to delay eligibility for parole for certain serious offences. The amendment will ensure that offenders serving sentences in a civil penitentiary for offences prosecuted under the *Act* will be treated the same as offenders serving sentences awarded in the civilian criminal proceedings.

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National Defence Act, the commission of the offence caused the death of, or serious harm to, another person or the offence was a sexual offence involving a child,

sur la défense nationale — a causé la mort ou un dommage grave à une autre personne ou est une infraction d'ordre sexuel commise à l'égard d'un enfant.

R.S., c. C-46 — *Criminal Code* — *Code criminel* — L.R., ch. C-46

R.S., c. 27 (1st Supp.), s. 17

119. Section 132 of the *Criminal Code* is replaced by the following:

119. L'article 132 de la même loi est remplacé par ce qui suit : — L.R., ch. 27 (1er suppl.), art. 17

Punishment

132. Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Peine

132. Quiconque commet un parjure est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans.

120. Paragraph 463(*a*) of the Act is replaced by the following:

120. L'alinéa 463*a*) de la même loi est remplacé par ce qui suit :

(*a*) every one who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced to imprisonment for life is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years;

a) quiconque tente de commettre un acte criminel pour lequel, sur déclaration de culpabilité, un accusé est passible de l'emprisonnement à perpétuité, ou est complice, après le fait, de la perpétration d'un tel acte criminel, est coupable d'un acte criminel passible d'un emprisonnement maximal de quatorze ans;

121. Subparagraph 465(1)(*b*)(i) of the Act is replaced by the following:

121. Le sous-alinéa 465(1)*b*)(i) de la même loi est remplacé par ce qui suit :

(i) to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

(i) d'un emprisonnement maximal de dix ans, si la prétendue infraction en est une pour laquelle, sur déclaration de culpabilité, cette personne serait passible de l'emprisonnement à perpétuité ou d'un emprisonnement maximal de quatorze ans,

R.S., c. F-11 — *Financial Administration Act* — *Loi sur la gestion des finances publiques* — L.R., ch. F-11

122. Schedule I.1 to the *Financial Administration Act* is amended by adding, in alphabetical order in column I, references to

122. L'annexe I.1 de la *Loi sur la gestion des finances publiques* est modifiée par adjonction dans la colonne I, selon l'ordre alphabétique, de ce qui suit :

Canadian Forces Grievance Board

Comité des griefs des Forces canadiennes

Military Police Complaints Commission

Commission d'examen des plaintes concernant la police militaire

Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

Commission d'examen des plaintes concernant la police militaire

Military Police Complaints Commission

and corresponding references in column II to the Minister of National Defence.

ainsi que de la mention « Le ministre de la défense nationale » placée, dans la colonne II, en regard de ce secteur.

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Clause 119	*Amends section 132 of the Criminal Code*	

What the amendment does
- removes a reference to the death penalty

Reasons for the change
Section 132 of the *Criminal Code* provides that a person who commits perjury to procure the conviction of another person for an offence punishable by death is liable to a maximum term of imprisonment for life.

This amendment is consequential to the amendments that eliminate the death penalty. With the elimination of the death penalty from the *National Defence Act*, there will not be any offences punishable by death in Canadian legislation.

Clause 120	*Amends paragraph 463(a) of the Criminal Code*	

What the amendment does
- removes a reference to the death penalty

Reasons for the change
Paragraph 463(a) of the *Criminal Code* provides that a person who attempts to commit or is an accessory after the fact to the commission of an indictable offence for which, on conviction, an accused is liable to be sentenced to death or to imprisonment for life is liable to imprisonment for a term not exceeding 14 years.

This amendment is consequential to the amendments that eliminate the death penalty. With the elimination of the death penalty from the *National Defence Act*, there will not be any offences punishable by death in Canadian legislation.

Clause 121	*Amends subparagraph 465(1)(b)(i) of the Criminal Code*	

What the amendment does
- removes a reference to the death penalty

Reasons for the change
Subparagraph 465(1)(b)(i) of the *Criminal Code* provides that a person who conspires with anyone to prosecute a person for an alleged offence, knowing that he did not commit that offence, is liable to imprisonment for a maximum 10-year term if the alleged offence is one for which the person would be liable to be sentenced to death, to imprisonment for life, or to a maximum of fourteen years.

This amendment is consequential to the amendments that eliminate the death penalty. With the elimination of the death penalty from the *National Defence Act*, there will not be any offences punishable by death in Canadian legislation.

Clause 122	*Amends Schedule I.1 to the Financial Administration Act*	

What the amendment does
- adds the Canadian Forces Grievance Board and Military Police Complaints Commission to Column I of Schedule I.1 to the *Financial Administration Act*
- adds corresponding references in column II to the Minister of National Defence

Reasons for the change
This amendment makes the Canadian Forces Grievance Board and Military Police Complaints Commission divisions of the public service of Canada.

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R.S., c. P-21 *Privacy Act* *Loi sur la protection des renseignements personnels* L.R. ch., P-21

123. The schedule to the *Privacy Act* is amended by adding the following in alphabetical order under the heading "*Other Government Institutions*":

Canadian Forces Grievance Board

Comité des griefs des Forces canadiennes

Military Police Complaints Commission

Commission d'examen des plaintes concernant la police militaire

123. L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « *Autres institutions fédérales* », de ce qui suit :

Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

Commission d'examen des plaintes concernant la police militaire

Military Police Complaints Commission

R.S., c. P-35 *Public Service Staff Relations Act* *Loi sur les relations de travail dans la fonction publique* L.R., ch. P-35

124. Part I of Schedule I to the *Public Service Staff Relations Act* is amended by striking out the following:

Defence Research Board

Conseil de recherches pour la défense

124. La partie I de l'annexe I de la *Loi sur les relations de travail dans la fonction publique* est modifiée par suppression de ce qui suit :

Conseil de recherches pour la défense

Defence Research Board

125. Part I of Schedule I to the Act is amended by adding the following in alphabetical order:

Canadian Forces Grievance Board

Comité des griefs des Forces canadiennes

Military Police Complaints Commission

Commission d'examen des plaintes concernant la police militaire

125. La partie I de l'annexe I de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Comité des griefs des Forces canadiennes

Canadian Forces Grievance Board

Commission d'examen des plaintes concernant la police militaire

Military Police Complaints Commission

R.S., c. P-36 *Public Service Superannuation Act* *Loi sur la pension de la fonction publique* L.R., ch. P-36

126. Part I of Schedule I to the *Public Service Superannuation Act* is amended by striking out the following:

Defence Research Board

Conseil de recherches pour la défense

126. La partie I de l'annexe I de la *Loi sur la pension de la fonction publique* est modifiée par suppression de ce qui suit :

Conseil de recherches pour la défense

Defence Research Board

R.S., c. V-2 *Visiting Forces Act* *Loi sur les forces étrangères présentes au Canada* L.R., ch. V-2

127. Subsection 13(1) of the *Visiting Forces Act* is replaced by the following:

127. Le paragraphe 13(1) de la *Loi sur les forces étrangères présentes au Canada* est remplacé par ce qui suit :

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Clause 123	*Amends the Schedule to the Privacy Act*	

What the amendment does

- adds the "Canadian Forces Grievance Board" and the "Military Police Complaints Commission" to the Schedule to the *Privacy Act*

Reasons for the change

This amendment makes the Canadian Forces Grievance Board and the Military Police Complaints Commission subject to the *Privacy Act*.

Clause 124	*Amends Part I of Schedule I to the Public Service Staff Relations Act*	

What the amendment does

- deletes the Defence Research Board from Part I of Schedule I to the *Public Service Staff Relations Act*

Reasons for the change

Since provisions providing for the Defence Research Board are being repealed, it no longer needs to be listed.

Clause 125	*Amends Part I of Schedule I to the Public Service Staff Relations Act*	

What the amendment does

- adds the "Canadian Forces Grievance Board" and the "Military Police Complaints Commission" to Part I of Schedule I to the *Public Service Staff Relations Act*

Reasons for the change

This amendment makes the employees of the Canadian Forces Grievance Board and the Military Police Complaints Commission subject to the employer-employee relations regime of the *Public Service Staff Relations Act*.

Clause 126	*Amends Part I of Schedule I to the Public Service Superannuation Act*	

What the amendment does

- deletes the Defence Research Board from Part I of Schedule I to the *Public Service Superannuation Act*

Reasons for the change

Since provisions providing for the Defence Research Board are being repealed, it no longer needs to be listed as a separate entity.

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Application of provisions of *National Defence Act*

13. (1) Subject to such limitations as may be prescribed in the regulations, subsections 249.22(1) to (3) and section 251.2 of the *National Defence Act* apply in relation to courts martial of a visiting force, except that a person required to give evidence before a court martial of a visiting force may be summoned only by a provincial court judge or justice of the peace whose authority in that respect shall be exercised in accordance with the regulations.

Application des dispositions de la *Loi sur la défense nationale*

13. (1) Sous réserve des restrictions que les règlements peuvent prescrire, les paragraphes 249.22(1) à (3) et l'article 251.2 de la *Loi sur la défense nationale* s'appliquent à l'égard des cours martiales d'une force étrangère présente au Canada, sauf qu'une personne tenue de témoigner devant une cour martiale d'une telle force ne peut être assignée que par un juge de la cour provinciale ou un juge de paix dont les pouvoirs en l'espèce doivent s'exercer suivant les règlements.

COMING INTO FORCE

ENTRÉE EN VIGUEUR

Coming into force

128. This Act or any of its provisions, or any provision enacted or amended by this Act, comes into force on a day or days to be fixed by order of the Governor in Council.

Entrée en vigueur

128. La présente loi ou telle de ses dispositions, ou des dispositions de toute loi édictée par elle, entre en vigueur à la date ou aux dates fixées par décret.

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Clause 127	*Amends subsection 13(1) of the Visiting Forces Act*	

What the amendment does

- changes the *National Defence Act* section references concerning summoning of witnesses

Reasons for the change

The amendment is consequential to the renumbering of the provisions of the *National Defence Act* related to the summoning of witness for courts martial.

Clause 128	*Adds a coming into force provision*	

What the provision does

- provides that the *Act* or any of its provisions come into force on a specific day or on separate days fixed by order of the Governor in Council

Reasons for the provision

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.

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