

ACTS  
OF THE  
PARLIAMENT  
OF THE  
DOMINION OF CANADA  
PASSED IN THE SESSION HELD IN THE  
FOURTEENTH YEAR OF THE REIGN  
OF HIS MAJESTY  
KING GEORGE VI  
BEING THE  
SECOND SESSION OF THE TWENTY-FIRST PARLIAMENT

Begun and holden at Ottawa, on the Sixteenth day of February, 1950, and  
closed by Prorogation on the Thirtieth day of June, 1950.



FIELD MARSHAL THE RIGHT HONOURABLE  
VISCOUNT ALEXANDER OF TUNIS  
GOVERNOR GENERAL

PART I  
PUBLIC GENERAL ACTS

OTTAWA  
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# NATIONAL DEFENCE ACT

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# 14 GEORGE VI.

## CHAP. 43.

An Act respecting National Defence.

[Assented to 30th June, 1950.]

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

### SHORT TITLE.

1. This Act may be cited as *The National Defence Act*. Short  
title

### INTERPRETATION.

2. In this Act and in regulations made hereunder, unless the context otherwise requires, Definitions.

- (a) "aircraft" means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces, and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite; "aircraft".
- (b) "aircraft material" means engines, fittings, armament, ammunition, bombs, missiles, gear, instruments and apparatus, used or intended for use in connection with aircraft or the operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or the operation thereof; "aircraft  
material".
- (c) "civil court" means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction; "civil  
court".
- (d) "civil custody" means the holding under arrest or in confinement of a person by the police or other competent civil authority, and includes confinement in a penitentiary or a civil prison; "civil  
custody".
- (e) "civil prison" means any prison, gaol or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined, and, if sentenced out of Canada, any prison, gaol or other place in which a person, "civil  
prison."

	sentenced to that term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being be confined;
"Code of Service Discipline".	(f) "Code of Service Discipline" means the provisions of Parts IV, V, VI, VII, VIII and IX;
"court martial".	(g) "court martial" includes a General Court Martial, a Disciplinary Court Martial and a Standing Court Martial;
"defence establishment".	(h) "defence establishment" means any area or structure under the control of the Minister, and the materiel and other things situate in or on any such area or structure;
"Department".	(i) "Department" means the Department of National Defence;
"Deputy Minister".	(j) "Deputy Minister" means the Deputy Minister of National Defence;
"detention barrack".	(k) "detention barrack" means a place designated as such under subsection two of section one hundred and seventy-eight;
"emergency".	(l) "emergency" means war, invasion, riot or insurrection, real or apprehended;
"enemy".	(m) "enemy" includes armed mutineers, armed rebels, armed rioters and pirates;
"enrol".	(n) "enrol" means to cause any person to become a member of the Canadian Forces;
"His Majesty's Canadian Ship".	(o) "His Majesty's Canadian Ship" means any vessel of the Royal Canadian Navy commissioned as a vessel of war;
"His Majesty's Forces".	(p) "His Majesty's Forces" means the naval, army and air forces of His Majesty wheresoever raised, and includes the Canadian Forces;
"man".	(q) "man" means any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
"materiel".	(r) "materiel" means all movable public property, other than money, provided for the Canadian Forces or the Defence Research Board or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;
"military".	(s) "military" shall be construed as relating to all or any of the Services of the Canadian Forces;
"Minister".	(t) "Minister" means the Minister of National Defence;
"mutiny".	(u) "mutiny" means collective insubordination or a combination of two or more persons in the resistance of lawful naval, army or air force authority in any of His Majesty's Forces or in any forces co-operating therewith;

- (v) "non-public property" means, "non-public property".
- (i) all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces;
  - (ii) all money and property contributed to or by officers, men, units or other elements of the Canadian Forces for the collective benefit and welfare of such officers, men, units or other elements;
  - (iii) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection five of section thirty-nine; and
  - (iv) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in sub-paragraphs (i), (ii) and (iii);
- (w) "officer" means, "officer".
- (i) a person who holds His Majesty's commission in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
  - (ii) a subordinate officer in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force; and
  - (iii) any person who pursuant to law is attached or seconded as an officer to the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;
- (x) "penitentiary" means a penitentiary established under the *Penitentiary Act, 1939*, and includes, in respect of any punishment of imprisonment for two years or more imposed out of Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for two years or more by a civil court having jurisdiction in the place where the sentence is imposed, can for the time being be confined; and if in any such place out of Canada there is no prison or place for the confinement of persons sentenced to imprisonment for two years or more, then in that case "penitentiary" means a civil prison; "penitentiary".  
1939, c. 6.
- (y) "personal equipment" means all materiel issued to an officer or man for his personal wear or other personal use; "personal equipment".
- (z) "possession" by any person, for the purpose of the Code of Service Discipline and Part XII, includes, "possession".
- (i) having in his own personal possession;
  - (ii) knowingly having in the actual possession or custody of any other person; or



(iii) knowingly having in any place, whether belonging to or occupied by himself or not, for the use or benefit of himself or any other person;

"public property".	(aa) "public property" means all money and property of His Majesty in right of Canada;
"regulations".	(bb) "regulations" means regulations made under this Act;
"release".	(cc) "release" means the termination of the service of an officer or man in any manner whatsoever;
"service convict".	(dd) "service convict" means a person who is under a sentence that includes a punishment of imprisonment for two years or more imposed upon him pursuant to the Code of Service Discipline;
"service custody".	(ee) "service custody" means the holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barrack;
"service detainee".	(ff) "service detainee" means a person who is under a sentence that includes a punishment of detention imposed upon him pursuant to the Code of Service Discipline;
"service offence". R.S., c. 36.	(gg) "service offence" means an offence under this Act, the <i>Criminal Code</i> , or any other Act of the Parliament of Canada, committed by a person while subject to the Code of Service Discipline;
"service prison".	(hh) "service prison" means a place designated as such under subsection two of section one hundred and seventy-eight;
"service prisoner".	(ii) "service prisoner" means a person who is under a sentence that includes a punishment of imprisonment for less than two years imposed upon him pursuant to the Code of Service Discipline;
"service tribunal".	(jj) "service tribunal" means a court martial or a person presiding at a summary trial;
"summary trial".	(kk) "summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section one hundred and thirty-six and a trial by a superior commander pursuant to section one hundred and thirty-seven;
"superior officer".	(ll) "superior officer" means any officer or man who, in relation to any other officer or man, is by this Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man;
"unit".	(mm) "unit" means an individual body of the Canadian Forces that is organized as such pursuant to section eighteen, with the personnel and materiel thereof.

## PART I.

## DEPARTMENT OF NATIONAL DEFENCE.

## PROVISION FOR DEPARTMENT.

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

## MINISTER.

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

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

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

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

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

## DEPUTY MINISTER.

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

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

Associate  
Deputy  
Ministers

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

Additional  
Associate  
Deputy  
Ministers.  
Duties  
of  
Associate  
Deputy  
Ministers.

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

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

#### CIVILIAN EMPLOYEES.

Appointment.

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

#### JUDGE ADVOCATE GENERAL.

Appointment.

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

Exercise of  
powers of  
Judge Adv-  
ocate General.

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

#### MATERIEL.

Delivery of  
materiel  
for sale.

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

Application  
of proceeds.

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

Annual  
statement.

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

(4) The Minister shall forthwith lay the statement mentioned in subsection three before Parliament or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof. Tabling in Parliament.

#### INVENTIONS.

**12.** (1) Every discovery, invention or improvement in any art, process, apparatus, machine, manufacture or composition of matter made Certain inventions vested in the Crown.

- (a) by an officer or man acting within the scope of his duties or employment;
- (b) by an officer, servant, clerk or employee of the Department or of the Defence Research Board acting within the scope of his duties or employment; or
- (c) as a result of or in the course of research conducted by any person under a grant in aid furnished with the approval of the Minister in connection with that research.

and all rights with respect thereto are vested in His Majesty.

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

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

(4) Subject to regulations made by the Governor in Council and notwithstanding the *Civil Service Act*, the Minister may authorize payment of such bonuses or gratuities as in his opinion may be warranted to any person mentioned in subsection one who has made a discovery, invention or improvement that by virtue of this section is vested in His Majesty. Bonuses. R.S. c. 22.

#### REGULATIONS.

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

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

Limitation  
upon Min-  
ister's powers.

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

## PART II.

## THE CANADIAN FORCES.

## CONSTITUTION.

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

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

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

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

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

(5) In an emergency, the Governor in Council may <sup>Active</sup> establish and, while the emergency exists, authorize the <sup>service</sup> maintenance of a component of each Service of the Canadian <sup>forces.</sup> Forces, referred to in this Act as the active service forces, consisting of

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

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

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

**17.** (1) Subject to this Act, the Naval Service, including <sup>Continuation</sup> the Naval Forces, and the Canadian Army and the Royal <sup>of existing</sup> Canadian Air Force shall continue as constituted immedi- <sup>constitution.</sup> ately prior to the coming into force of this Part.

Redesigna-  
tion of Naval  
Service.

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

#### UNITS AND OTHER ELEMENTS.

Organization.

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

Component.

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

#### CHIEFS OF STAFF.

Chief of the  
Naval Staff.

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

Chief of the  
General Staff.

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

Chief of the  
Air Staff.

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

Responsi-  
bility and  
channels of  
communica-  
tion.

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

#### POWERS OF COMMAND.

Authority of  
officers and  
men.

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

#### ENROLMENT.

Commis-  
sioned  
officers.

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

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

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

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

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

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

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

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

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

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



Provision  
for release.

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

Method of  
release.

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

#### ATTACHMENT AND SECONDMENT.

Within the  
Canadian  
Forces.

**28.** (1) An officer or man may be attached or seconded to another component of the Service of the Canadian Forces in which he is enrolled or to any component of any Service of the Canadian Forces, other than that in which he is enrolled, in such manner and under such conditions as are prescribed in regulations; and he shall have like powers of command and punishment over officers and men of the component and Service of the Canadian Forces to which he is attached or seconded as if he were an officer or man of that component and Service of equivalent rank, relative to the rank he holds.

Out of the  
Canadian  
Forces.

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

Provision  
regarding  
reserve forces.

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

#### PROMOTION.

Authority.

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

#### REDRESS OF GRIEVANCES.

Procedure.

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

## RELEASE.

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

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

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

## ACTIVE SERVICE.

**32.** (1) The Governor in Council may place the Canadian Forces or any Service, component, unit or other element thereof or any officer or man thereof on active service anywhere in Canada, and also beyond Canada, for the defence thereof at any time when it appears desirable so to do by reason of an emergency. Placing forces on active service.

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

(3) An officer or man on active service may for the period of such service, be transferred from the component of the Service of the Canadian Forces in which he has been enrolled to the same component of another Service of the Canadian Forces or from the reserve forces to the regular forces. Transfer on active service.

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

## SERVICE.

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

**Liability of reserve forces.** (2) The reserve forces, all units and other elements thereof and all officers and men thereof

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

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

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

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

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

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

## PAY AND ALLOWANCES.

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

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

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

#### SUPPLY AND ISSUE OF MATERIEL.

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

#### PUBLIC PROPERTY.

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

#### NON-PUBLIC PROPERTY.

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

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

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

Other non-  
public  
property.

(4) Non-public property acquired by contribution but not contributed to any specific unit or other element of the Canadian Forces shall vest in the chief of staff of the Service of the Canadian Forces to which that non-public property is contributed and, subject to any specific directions by the contributor as to its disposal, may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependents, of that Service of the Canadian Forces.

By-products  
and refuse.

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

Alienation  
of non-public  
property.

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

Liability for  
loss or  
damage.

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

Exercise of  
authority.

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

Audit.

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

Special  
provision.  
1931, c. 27.

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

#### SERVICE ESTATES.

Collection,  
administra-  
tion and dis-  
tribution

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

Definition.

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

- (a) service pay and allowances;
- (b) all other emoluments emanating from His Majesty that, at the date of death, are due or otherwise payable;
- (c) personal equipment that the deceased person is, under regulations, permitted to retain; and
- (d) personal belongings, including cash, found on the deceased person or in camp, quarters or otherwise in the care or custody of the Canadian Forces.

## PRESUMPTION OF DEATH.

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

Authority  
to issue  
certificate.

## PERSONAL EFFECTS OF ABSENTEES.

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

Disposal.

## BOARDS OF INQUIRY.

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

Convening.

## CADET ORGANIZATIONS.

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

Formation

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

Conditions  
of service.

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

Not part of  
the forces.

## EDUCATIONAL INSTITUTIONS.

Establishment.

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

Administration.

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

## SERVICE ASSOCIATIONS.

Establishment.

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

Equipment.

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

## EXERCISE OF AUTHORITY.

Conditions applicable.

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

Method of signifying orders.

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

## NOTIFICATION OF ORDERS.

By exhibition.

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

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

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

#### VALIDITY OF DOCUMENTS.

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

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

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

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



## PART III.

## THE DEFENCE RESEARCH BOARD.

Defence Research Board and its functions.	<b>53.</b> (1) There shall be a Defence Research Board which shall carry out such duties in connection with research relating to the defence of Canada and development of or improvements in materiel as the Minister may assign to it, and shall advise the Minister on all matters relating to scientific, technical, and other research and development that in its opinion may affect national defence.
Constitution	(2) The Defence Research Board shall consist of a Chairman and a Vice Chairman, appointed by the Governor in Council, the persons who from time to time hold the offices of Chief of the Naval Staff, Chief of the General Staff, Chief of the Air Staff, President of the Honorary Advisory Council for Scientific and Industrial Research, and Deputy Minister of National Defence, and such additional members representative of universities, industry and other research interests as the Governor in Council appoints.
Chairman and Vice-Chairman—tenure and salary.	(3) The Chairman and Vice Chairman shall hold office during pleasure, and shall be paid such salaries as the Governor in Council determines.
Other members—tenure and remuneration.	(4) The members of the Defence Research Board, other than the Chairman, Vice Chairman or the ex officio members, shall hold office for a period not exceeding three years but shall be eligible for re-appointment, and shall be paid such remuneration, if any, as the Governor in Council determines.
Expenses of members.	(5) Each member shall be paid his travelling and other expenses incurred in connection with the work of the Defence Research Board.
Duties of Chairman.	(6) The Chairman shall be the chief executive officer of the Defence Research Board and, under the direction of the Minister and in accordance with policies approved by the Board, shall oversee and direct the officers, clerks and employees of the Board, have general control of the business of the Board, have supervision over the work directed to be carried out by the Board, be charged with the organization, administration and operation of the defence establishments of the Board and perform such other duties as the Minister may assign to him.
Duties of Vice Chairman.	(7) The Vice Chairman shall perform such duties as may be assigned to him under the by-laws made by the Defence Research Board.
Status of Chairman.	(8) The Chairman shall have a status equivalent to that of a chief of staff of a Service of the Canadian Forces.

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

Powers of the  
Defence  
Research  
Board.

- (a) notwithstanding the Civil Service Act or any other section of this Act or any other statute or law, appoint and employ the professional, scientific, technical, clerical and other employees required to carry out efficiently the duties of the Board, prescribe their duties and, subject to the approval of the Governor in Council, prescribe their terms of appointment and service and fix their remuneration;
- (b) make by-laws or rules for the regulation of its proceedings and for the performance of its functions;
- (c) enter into contracts in the name of His Majesty for research and investigations with respect only to matters relating to defence; and
- (d) make grants in aid of research and investigations with respect only to matters relating to defence and establish scholarships for the education or training of persons to qualify them to engage in such research and investigations.

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

Expenses of  
the Defence  
Research  
Board.

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

Scholarships  
and grants  
in aid.

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

Moneys not  
required.

## PART IV.

## DISCIPLINARY JURISDICTION OF THE SERVICES.

## APPLICATION.

Persons  
subject.

- 56.** (1) The following persons, and no others, are subject to the Code of Service Discipline,
- (a) an officer or man of the regular forces;
  - (b) an officer or man of the active service forces;
  - (c) an officer or man of the reserve forces when he is
    - (i) undergoing drill or training whether in uniform or not,
    - (ii) in uniform,
    - (iii) on duty,
    - (iv) called out under subsection two of section thirty-five to render assistance in a disaster,
    - (v) called out under Part XI in aid of the civil power,
    - (vi) called out on service,
    - (vii) placed on active service,
    - (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
    - (ix) serving with any unit or other element of the regular forces or the active service forces, or
    - (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;
  - (d) subject to such exceptions, adaptations, and modifications as the Governor in Council may by regulations prescribe, a person who pursuant to law is attached or seconded as an officer or man to a Service of the Canadian Forces;
  - (e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or man of any force raised and maintained out of Canada by His Majesty in right of Canada and commanded by an officer of the Canadian Forces;
  - (f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;
  - (g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section forty-five;

- (h) an alleged spy for the enemy;
- (i) a service convict, service prisoner or service detainee, not otherwise subject to the Code of Service Discipline, who is committed to undergo his punishment in a service prison or detention barrack, as the case may be;
- (j) a person, not otherwise subject to the Code of Service Discipline, while serving with a Service of the Canadian Forces under an engagement with the Minister whereby he agreed to be subject to that Code.

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

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

#### *Persons in Canadian Forces.*

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

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

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

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

*Persons Accompanying Canadian Forces.*

Dealt with  
by Service  
accompanied.

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

Command.

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

*Spies for the Enemy.*

Dealt with  
by Service  
having  
custody.

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

*Released Persons Serving Sentence.*

Dealt with  
by Service  
having  
custody.

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

*Persons Under Special Engagement.*

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

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

*Women.*

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

## PLEA IN BAR OF TRIAL.

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

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

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

## PLACE OF COMMISSION OF OFFENCE.

58. Subject to section sixty-one, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or out of Canada. No limitation.

## PLACE OF TRIAL.

No limitation.

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

## PERIOD OF LIABILITY UNDER CODE OF SERVICE DISCIPLINE.

Time bar.

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

Exceptions.

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

## LIMITATIONS WITH RESPECT TO CERTAIN OFFENCES.

Murder, rape or manslaughter.

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

## JURISDICTION OF CIVIL COURTS.

No interference with civil jurisdiction.

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

Civil sentence modified by service punishment.

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

Remission in certain cases.

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

## PART V.

## SERVICE OFFENCES AND PUNISHMENTS.

## RESPONSIBILITY FOR OFFENCES.

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

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

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

## MISCONDUCT OF COMMANDERS IN PRESENCE OF ENEMY.

**64.** Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who Offences by commanders when in action.

- (a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other materiel into action;
  - (b) being in action, does not, during the action, in his own person and according to his rank, encourage his officers and men to fight courageously;
  - (c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy;
  - (d) being in action, improperly withdraws from the action;
  - (e) improperly fails to pursue an enemy or to consolidate a position gained;
  - (f) improperly fails to relieve or assist a known friend to the utmost of his power; or
  - (g) when in action, improperly forsakes his station,
- is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.



### MISCONDUCT OF ANY PERSON IN PRESENCE OF ENEMY.

Offences by  
any person in  
presence of  
enemy.

**65.** Every person who

- (a) improperly delays or discourages any action against the enemy;
- (b) goes over to the enemy;
- (c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;
- (d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard;
- (e) assists the enemy with materiel;
- (f) improperly casts away or abandons any materiel in the presence of the enemy;
- (g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel;
- (h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) behaves before the enemy in such manner as to show cowardice; or
- (j) does or omits to do anything with intent to imperil the success of any of His Majesty's Forces or of any forces co-operating therewith,

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

### SECURITY.

Offences  
related to  
security.

**66.** Every person who

- (a) improperly holds communication with or gives intelligence to the enemy;
- (b) without authority discloses in any manner whatsoever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of His Majesty's Forces or of any forces co-operating therewith;
- (c) without authority discloses in any manner whatsoever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of His Majesty's forces or of any forces co-operating therewith;
- (d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;

- (e) gives a parole, watchword, password, countersign or identification signal different from that which he received;
  - (f) without authority alters or interferes with any identification or other signal;
  - (g) improperly occasions false alarms;
  - (h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
  - (i) forces a safeguard or forces or strikes a sentinel; or
  - (j) does or omits to do anything with intent to prejudice the security of any of His Majesty's Forces or of any forces co-operating therewith,
- is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

#### PRISONERS OF WAR.

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

Offences  
related  
to prisoners  
of war.

#### MISCELLANEOUS OPERATIONAL OFFENCES.

- 68.** Every person who
- (a) does violence to any person bringing materiel to any of His Majesty's Forces or to any forces co-operating therewith;
  - (b) irregularly detains any materiel being conveyed to any unit or other element of His Majesty's forces or of any forces co-operating therewith;
  - (c) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any materiel being conveyed to any other unit or element of His Majesty's forces or of any forces co-operating therewith;
  - (d) without orders from his superior officer, improperly destroys or damages any property;
  - (e) breaks into any house or other place in search of plunder; or
  - (f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,

Offences  
related to  
operations.

is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.

#### SPIES FOR THE ENEMY.

**Penalty.**      **69.** Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment.

#### MUTINY.

**Mutiny with violence.**      **70.** Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment.

**Mutiny without violence.**      **71.** Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment.

**Offences related to mutiny.**      **72.** Every person who  
    (a) causes or conspires with any other person to cause a mutiny;  
    (b) endeavours to persuade any person to join in a mutiny;  
    (c) being present, does not use his utmost endeavours to suppress a mutiny; or  
    (d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,  
 is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

#### SEDITIONOUS OFFENCES.

**Advocating governmental change by force**      **73.** Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

#### INSUBORDINATION.

**Disobedience of lawful command**      **74.** Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

**75.** Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment. Striking or offering violence to a superior officer.

**76.** Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment. Insubordinate behavior.

**77.** Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Quarrels and disturbances.

**78.** Every person who

(a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;

(b) strikes or uses or offers violence to any other person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, station, camp, quarters or ship,

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

#### DESERTION.

**79.** (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment. Offence.

(2) A person deserts who

(a) being on or having been warned for active service or other important service, is absent without authority with the intention of avoiding that service;

(b) having been warned that his vessel is under sailing orders, is absent without authority, with the intention of missing that vessel;

Definition.

(c) absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;

(d) is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or

(e) while absent with authority from his unit or formation or the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

Presumption  
of desertion

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

Connivance  
at desertion.

**80.** Every person who

(a) being aware of the desertion or intended desertion of a person from any of His Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith; or

(b) fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

#### ABSENCE WITHOUT LEAVE.

Offence.

**81.** (1) Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Definition.

(2) A person absents himself without leave who

(a) without authority leaves his unit or formation or the place where his duty requires him to be;

(b) without authority is absent from his unit or formation or the place where his duty requires him to be; or

(c) having been authorized to be absent from his unit or formation or the place where his duty required him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorized.

**82.** Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

*False statement in respect of leave.*

#### DISGRACEFUL CONDUCT.

**83.** Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service.

*Scandalous conduct by officers.*

**84.** Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

*Cruel or disgraceful conduct.*

**85.** Every person who uses traitorous or disloyal words regarding His Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

*Traitorous utterances.*

**86.** Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

*Abuse of inferiors.*

**87.** Every person who  
 (a) makes a false accusation against an officer or man, knowing such accusation to be false; or  
 (b) when seeking redress under section thirty, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,  
 is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

*False accusations or statements.*

**88.** Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a man who is neither on active service nor on duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.

*Drunkenness.*

**89.** Every person who  
 (a) malingers or feigns or produces disease or infirmity;  
 (b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or

*Malingering or maiming.*

(c) wilfully maims or injures himself or any other person who is a member of any of His Majesty's Forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service, is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service, or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.

#### OFFENCES IN RELATION TO SERVICE ARREST AND CUSTODY.

Ill-treatment  
of person in  
custody

**90.** Every person who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Negligent or  
wilful inter-  
ference with  
lawful  
custody.

**91.** Every person who  
(a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;  
(b) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or  
(c) assists any person in escaping or in attempting to escape from custody,  
is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Escape  
from custody.

**92.** Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Obstruction—  
service  
police duties.

**93.** Every person who  
(a) resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline; or

(b) when called upon, refuses or neglects to assist an officer or man in the performance of any such duty, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

**94.** Every person who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Obstruction of civil power.

#### OFFENCES IN RELATION TO VESSELS.

**95.** Every person who wilfully or negligently or through other default loses, strands or hazards, or suffers to be lost, stranded or hazarded any of His Majesty's Canadian Ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment. Losing, stranding or hazarding vessels.

**96.** Every officer who, while serving in one of His Majesty's Canadian Ships involved in the convoying and protection of a vessel, Offences in relation to convoys.

(a) fails to defend a vessel or goods under convoy;  
 (b) refuses to fight in the defence of a vessel in his convoy when it is attacked; or  
 (c) cowardly abandons or exposes a vessel in his convoy to hazards,  
 is guilty of an offence and on conviction is liable to suffer death or less punishment.

#### OFFENCES IN RELATION TO AIRCRAFT.

**97.** Every person who

(a) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person; Wrongful acts in relation to aircraft, etc.  
 (b) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any of His Majesty's aircraft or aircraft material, or of aircraft or aircraft material of any forces co-operating with His Majesty's Forces; or



(c) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of His Majesty's aircraft, or aircraft of any forces co-operating with His Majesty's Forces,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Inaccurate  
certificate.

**98.** Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Low flying.

**99.** Every person who flies an aircraft at a height less than the minimum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Disobedience  
of captain's  
orders.

**100.** (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Command  
in aircraft.

(2) For the purposes of this section

(a) every person whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the latter is subject to the Code of Service Discipline; and

(b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline.

#### OFFENCES IN RELATION TO VEHICLES.

Negligent  
or furious  
driving.

**101.** Every person who

(a) having the charge of a vehicle of the Canadian Forces, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, does or causes to be done any bodily injury to any person or damage to any property;

- (b) drives a vehicle of the Canadian Forces on a street, road, highway or any other place, whether public or private, recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case; or
  - (c) drives a vehicle of the Canadian Forces while intoxicated or under the influence of a narcotic,
- is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

**102.** Every person who

- (a) uses a vehicle of the Canadian Forces for an unauthorized purpose;
  - (b) without authority uses a vehicle of the Canadian Forces for any purpose; or
  - (c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,
- is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Unauthorized  
use.

**OFFENCES IN RELATION TO PROPERTY.**

**103.** Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any materiel, defence establishment or work for defence is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Causing  
fires.

**104.** (1) Every person who steals is guilty of an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.

Stealing.

(2) For the purposes of this section,

(a) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent

Definition.

(i) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest;

(ii) to pledge the same or deposit it as security;

(iii) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion;

(b) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;

(c) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment;

(d) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

Things  
capable  
of being  
stolen.

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen.

Receiving.

**105.** Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

Destruction,  
loss or im-  
proper  
disposal.

**106.** Every person who

(a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of His Majesty's Forces or of any forces co-operating therewith;

(b) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline; or

(c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of His Majesty,

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

Miscellaneous  
offences.

**107.** Every person who

(a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces;

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

- (c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of His Majesty's Forces, or to any forces co-operating therewith or to any mess, institute or canteen operated for the use and benefit of members of such forces;
- (d) demands or accepts compensation, consideration or personal advantage for convoying a vessel entrusted to his care;
- (e) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board; or
- (f) commits any act of a fraudulent nature not particularly specified in the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

#### OFFENCES IN RELATION TO SERVICE TRIBUNALS.

**108.** (1) For the purposes of this section, "service tribunal", in addition to the tribunals mentioned in paragraph (jj) of section two, includes a board of inquiry, a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations. "service tribunal".

- (2) Every person who Contempt of service tribunals.
  - (a) being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending;
  - (b) refuses to take an oath or make a solemn affirmation lawfully required by a service tribunal to be taken or made;
  - (c) refuses to produce any document in his power or control lawfully required by a service tribunal to be produced by him;
  - (d) refuses when a witness to answer any question to which a service tribunal may lawfully require an answer;
  - (e) uses insulting or threatening language before or causes any interruption or disturbance in the proceedings of a service tribunal; or
  - (f) commits any other contempt of a service tribunal, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment; and where an offence under this section is committed at or in relation to a court martial, that court martial may, under

the hand of the president, issue an order that the offender undergo, for a period not exceeding thirty days, a term of imprisonment or detention; and where any such order is issued the offender shall not be liable to any other proceedings under the Code of Service Discipline in respect of the contempt in consequence of which the order is issued.

False  
evidence.

**109.** Every person who, when examined on oath or solemn affirmation before a service tribunal mentioned in section one hundred and eight, knowingly gives false evidence, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding seven years or to less punishment.

#### OFFENCES IN RELATION TO BILLETING.

Disturbances,  
etc., in  
billets.

**110.** Every person who  
(a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for materiel has been provided; or  
(b) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises on which materiel is or has been accommodated,  
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

#### OFFENCES IN RELATION TO ENROLMENT.

Fraudulent  
enrolment.

**111.** Every person who, having been released from His Majesty's Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of his release is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

False answer  
on enrolment.

**112.** Every person who knowingly makes a false answer to any question set forth in any document required to be completed in relation to his enrolment is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Assisting  
unlawful  
enrolment.

**113.** Every person who is concerned in the enrolment of any other person, and knows or has reasonable cause to believe that by being enrolled such other person commits an offence under this Act, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

## MISCELLANEOUS OFFENCES.

**114.** Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment. Negligent performance of duties.

**115.** Every person who Offences in relation to documents.  
 (a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;  
 (b) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or  
 (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,  
 is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

**116.** Every person who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment. Refusing vaccination etc.

**117.** Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do anything, in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or causes or is likely to cause damage to or destruction of any property, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment. Negligent handling of dangerous substances.

CONDUCT TO THE PREJUDICE OF GOOD ORDER  
AND DISCIPLINE.

**118.** (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from His Majesty's service or to less punishment. Offence.

Not intended  
to cover  
offences  
elsewhere  
provided for.

(2) No person may be charged under this section with any offence for which special provision is made in sections sixty-four to one hundred and seventeen but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.

Contraven-  
tion of Act,  
regulations  
etc., may  
constitute  
offence.

(3) Contravention by any person of  
(a) any of the provisions of this Act;  
(b) any regulations, orders or instructions published for the general information and guidance of that Service of the Canadian Forces to which that person belongs, or to which he is attached or seconded; or  
(c) any general, garrison, unit, station, standing, local or other orders,  
is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Attempts to  
commit  
offences.

(4) An attempt to commit any of the offences prescribed in sections sixty-four to one hundred and seventeen is, unless such attempt is in itself an offence punishable under any of those sections, an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Saving  
provision.

(5) Nothing in subsections three or four shall affect the generality of subsection one.

#### OFFENCES PUNISHABLE BY ORDINARY LAW.

Service trial  
of civil  
offences.

**119.** (1) An act or omission  
(a) that takes place in Canada and is punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada; or  
(b) that takes place out of Canada and would, if it had taken place in Canada, be punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada.

is an offence under this Part and every person convicted thereof is liable to suffer punishment as provided in subsection two.

Punishment

(2) Subject to subsection three, where a service tribunal convicts a person under subsection one, the service tribunal shall,

(a) if under Part XII of this Act, the *Criminal Code* or other Act of the Parliament of Canada, a minimum penalty is prescribed, impose a penalty in accordance with the enactment prescribing that minimum penalty; or

- (b) in any other case,
- (i) impose the penalty prescribed for the offence by Part XII of this Act, the *Criminal Code* or that other Act; or
  - (ii) impose dismissal with disgrace from His Majesty's service or less punishment.
- (3) All provisions of the Code of Service Discipline in respect of a punishment of death, imprisonment for two years or more, imprisonment for less than two years, and a fine, shall apply in respect of penalties imposed under paragraph (a), or sub-paragraph (i) of paragraph (b) of subsection two. Ordinary rules apply
- (4) Nothing in this section shall be in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections sixty-four to one hundred and eighteen and to impose the punishment for that offence mentioned in the section prescribing that offence. Saving provision.

#### CONVICTION OF COGNATE OFFENCE.

- 120.** (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave. Conviction of related or less serious offences.
- (2) A person charged with attempting to desert may be found guilty of being absent without leave.
- (3) A person charged with any one of the offences prescribed in section seventy-five may be found guilty of any other offence prescribed in that section.
- (4) A person charged with any one of the offences prescribed in section seventy-six may be found guilty of any other offence prescribed in that section.
- (5) A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.
- (6) Where a person is charged with an offence under section one hundred and nineteen and the charge is one upon which, if he had been tried by a civil court in Canada for that offence, he might have been found guilty of any other offence, he may be found guilty of that other offence.

#### PUNISHMENTS.

- 121.** (1) The following punishments may be imposed in respect of service offences:— Scale of punishments
- (a) death;
  - (b) imprisonment for two years or more;



- (c) dismissal with disgrace from His Majesty's service;
- (d) imprisonment for less than two years;
- (e) dismissal from His Majesty's service;
- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) dismissal of an officer from the ship to which he belongs;
- (j) forfeiture of service toward progressive increase in pay;
- (k) fine;
- (l) severe reprimand;
- (m) reprimand;
- (n) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments".

#### *Less Punishment.*

Definition of  
"less  
punishment".

(2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

#### *Death.*

Limitation  
on imposition  
of death  
penalty.

(3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members.

#### *Imprisonment.*

Conditions  
relating to  
imposition of  
punishment of  
imprison-  
ment.

(4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions,

- (a) every person who, on conviction of a service offence, is liable to imprisonment for life or for a term of years or other term, may be sentenced to imprisonment for a shorter term;
- (b) a sentence that includes a punishment of imprisonment for two years or more imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;

- (c) a sentence that includes a punishment of imprisonment for less than two years imposed upon an officer shall be deemed to include a punishment of dismissal from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (d) where a service tribunal imposes a punishment of imprisonment for two years or more upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from His Majesty's service;
- (e) where a service tribunal imposes a punishment of imprisonment for less than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal from His Majesty's service;
- (f) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;
- (g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour.

*Dismissal With Disgrace.*

(5) Where a service tribunal imposes a punishment of dismissal with disgrace from His Majesty's service upon an officer or man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of imprisonment for less than two years.

Accompanying punishment.

(6) A person upon whom a punishment of dismissal with disgrace from His Majesty's service has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to serve His Majesty again in any military or civil capacity.

Consequences of dismissal with disgrace.

*Detention.*

- Conditions relating to imposition of detention. (7) The punishment of detention is subject to the following conditions,
- (a) detention shall not exceed two years and a person sentenced to detention shall not be subject to detention for more than two years consecutively by reason of more than one conviction;
  - (b) no officer may be sentenced to detention;
  - (c) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

*Reduction in Rank.*

- Application. (8) The punishment of reduction in rank shall apply to officers, warrant officers, chief petty officers, petty officers, non-commissioned officers and leading ratings.
- Conditions. (9) The punishment of reduction in rank shall not
- (a) involve reduction to a rank lower than that to which under regulations the offender can be reduced;
  - (b) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and
  - (c) in the case of a subordinate officer, involve reduction to a rank lower than an inferior grade of subordinate officer.

*Forfeiture of Seniority.*

- Sentence to specify period of forfeiture. (10) Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited.

*Dismissal from Ship.*

- Applies only to Royal Canadian Navy. (11) The punishment of dismissal of an officer from the ship to which he belongs shall apply only to officers of the Royal Canadian Navy.

*Fine.*

- Conditions relating to fines. (12) A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man, three months basic pay, and in the case of any other person the sum of

two hundred dollars, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

#### *Minor Punishments.*

(13) Minor punishments shall be such as are prescribed in regulations made by the Governor in Council. Governor in Council prescribes.

#### *Limitation.*

(14) The authority of a service tribunal to impose punishments may be limited in accordance with regulations made by the Governor in Council. Authority.

#### SENTENCES.

**122.** Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it. One sentence only to be passed.

#### INCARCERATION UNDER MORE THAN ONE SENTENCE.

**123.** Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, from the date of the pronouncement of the new sentence, run concurrently, but the punishment higher in the scale of punishments shall be served first. To be concurrent.

#### IGNORANCE OF LAW.

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

#### CIVIL DEFENCES.

**125.** All rules and principles from time to time followed in the civil courts in proceedings under the *Criminal Code* that would render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall be applicable to any defence to a charge under the Code of Service Discipline, except in so far as such rules and principles are altered by or are inconsistent with this Act. Rules of civil courts applicable

## INSANITY AS A DEFENCE.

Natural  
imbecility  
or mental  
disease.

**126.** (1) No person shall be convicted of a service offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

Specific  
delusions.

(2) In respect of a person labouring under specific delusions, but in other respects sane, subsection one shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

Presumption  
of sanity.

(3) Every person shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

## PART VI.

## ARREST.

## AUTHORITY TO ARREST.

**127.** (1) Every person who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence, may be placed under arrest. General authority.

(2) Every person authorized to effect arrest under this Part may use such force as is reasonably necessary for that purpose. Reasonable force authorized.

**128.** (1) An officer may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of Powers of officers.

(a) any man;

(b) any officer of equal or lower rank; and

(c) any officer of higher rank who is engaged in a quarrel, fray or disorder.

(2) A man may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of Powers of men.

(a) any man of lower rank; and

(b) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.

(3) An order given under subsection one or subsection two shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same Service, component, unit or other element of the Canadian Forces. Arrest of offenders of other Services.

(4) Every person who is not an officer or man, but who was subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by such person as any commanding officer may designate for that purpose. Arrest of persons other than officers or men.

**129.** Such officers and men as are appointed under regulations for the purposes of this section may Appointment and powers of specially appointed personnel

(a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence; and

(b) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council.

Issue of  
warrants.

**130.** (1) Subject to subsection two, every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection three of section one hundred and thirty-six may by a warrant under his hand authorize any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service offence.

Limitation.

(2) An officer authorized to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorizing the arrest of any officer of rank higher than he himself holds.

Contents of  
warrants.

(3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included.

Saving  
provision.

(4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant.

#### ACTION FOLLOWING ARREST.

Disposal of  
person  
arrested.

**131.** (1) A person arrested under this Part may forthwith on his apprehension be placed in civil custody or service custody or be taken to the unit or formation with which he is serving or to any other unit or formation of the Canadian Forces; and such force as is reasonably necessary for the purposes of this section may be used.

Delivery into  
custody.

(2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section one hundred and twenty-nine shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal, or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody.

Report of  
custody.

(3) An officer or man who, pursuant to subsection two, receives a person committed to his custody shall, as soon as practical and in any case within twenty-four hours thereafter, give in writing to the officer or man to whom it is his duty to report, the name of that person and an

account of the offence alleged to have been committed by that person so far as is known and the name and rank of the officer, man or other person by whom the person so committed was placed in custody, accompanied by any account in writing which has been submitted pursuant to subsection two.

#### LIMITATIONS IN RESPECT OF CUSTODY.

**132.** (1) Where a person triable under the Code of Service Discipline has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court martial has been ordered to assemble. Report of delay of trial.

(2) Every person held in custody in the circumstances mentioned in subsection one, who has been continuously so held for a period of twenty-eight days without a summary trial having been held or a court martial having been ordered to assemble, shall at the expiration of that period be entitled to direct to the Minister, or to such authority as the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case and in any event that person shall be so freed when a period of ninety days continuous custody from the time of his arrest has expired, unless a summary trial has been held or a court martial has been ordered to assemble. Petition in respect of delay of trial.

(3) A person who has been freed from custody pursuant to subsection two shall not be subject to re-arrest for the offence with which he was originally charged, except on the written order of an authority having power to convene a court martial for his trial. Limitation upon re-arrest.



PART VII.  
SERVICE TRIBUNALS.

APPLICATION.

- |   |   |
|---|---|
| <p><b>Commanding officer.</b></p>               | <p><b>133.</b> (1) Every reference in this Part to a commanding officer shall be deemed to be a reference to the commanding officer of the accused person, or to such other officer as may, in accordance with regulations, be empowered to act as the commanding officer of the accused person.</p>  |
| <p><b>Meaning of ranks where specified.</b></p> | <p>(2) Every reference in this Part to the rank of an officer or man shall be construed in accordance with regulations made by the Governor in Council and every such reference shall be deemed to include a person who holds any equivalent relative rank, whether that person is enrolled in, or is attached, seconded or on loan to the Canadian Forces.</p> |

INVESTIGATION AND PRELIMINARY DISPOSITION  
OF CHARGES.

- |  |  |
|--|--|
| <p><b>Immediate investigation required</b></p> | <p><b>134.</b> Where a charge is laid against a person to whom this Part applies alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.</p>  |
| <p><b>Dismissal or other disposition</b></p>   | <p><b>135.</b> Where, after investigation, a commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.</p> |

SUMMARY TRIALS BY COMMANDING OFFICERS.

- |                             |  |
|-----------------------------|--|
| <p><b>Jurisdiction.</b></p> | <p><b>136.</b> (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied,</p> <ul style="list-style-type: none"> <li>(a) the accused person is either a subordinate officer or a man below the rank of warrant officer;</li> <li>(b) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;</li> <li>(c) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial;</li> </ul> |
|-----------------------------|--|

(d) the offence is not one that in regulations made by the Governor in Council the commanding officer is precluded from trying.

(2) Subject to the conditions set out in this section and <sup>Sentences.</sup> in Part V relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(a) detention for a period not exceeding ninety days subject to the following provisions,

(i) a punishment of detention imposed by a commanding officer upon a chief petty officer, petty officer, non-commissioned officer or leading rating shall not be carried into effect until approved by an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving, and only to the extent so approved;

(ii) where a commanding officer imposes more than thirty days detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving;

(b) reduction in rank, but a punishment of reduction in rank imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore, under whom the commanding officer who imposed the punishment is serving;

(c) forfeiture of seniority;

(d) forfeiture of service toward progressive increase in pay;

(e) a fine not exceeding basic pay for one month;

(f) severe reprimand;

(g) reprimand;

(h) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale.

(3) A commanding officer may, subject to regulations <sup>Delegation.</sup> made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following,

(a) a fine not exceeding ten dollars;

(b) a reprimand;

(c) minor punishments.

Evidence  
on oath.

(4) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

Approval of  
punishments.

(5) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations.

#### SUMMARY TRIALS BY SUPERIOR COMMANDERS.

Jurisdiction.

**137.** (1) An officer of or above the rank of commodore, brigadier or air commodore, or any other officer prescribed or appointed by the Minister for that purpose, referred to in this section as a "superior commander", may in his discretion try by summary trial an officer below the rank of lieutenant-commander, major or squadron leader, or a warrant officer, charged with having committed a service offence, and in an emergency the Governor in Council may extend the provisions of this section to cases where the accused person is of the rank of lieutenant-commander, major or squadron leader.

Dismissal  
or other  
disposition.

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

Sentences.

(3) Subject to the conditions set out in this section and in Part V relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

- (a) forfeiture of seniority;
- (b) forfeiture of service toward progressive increase in pay;
- (c) fine;
- (d) severe reprimand;
- (e) reprimand.

Election.

(4) A superior commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial.

Evidence on  
oath.

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request.

## CONVENING OF COURTS MARTIAL.

**138.** (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may convene General Courts Martial and Disciplinary Courts Martial.

Convening  
authorities

(2) An authority who convenes a court martial under subsection one may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces.

Officers of  
other Services  
may be  
appointed

## GENERAL COURTS MARTIAL.

**139.** A General Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

Jurisdiction.

**140.** (1) A General Court Martial shall consist of not less than five officers and not more than such maximum number of officers as may be prescribed in regulations.

Number of  
members

(2) The president of a General Court Martial shall be an officer of or above the naval rank of captain or of or above the rank of colonel or group captain and shall be appointed by the authority convening the General Court Martial or by an officer empowered by that authority to appoint the president.

Appointment  
of president

(3) Where the accused person is of or above the rank of commodore, brigadier or air commodore, the president of a General Court Martial shall be an officer of or above the rank of the accused person, and the other members of the court martial shall be of or above the naval rank of captain or of or above the rank of colonel or group captain.

Trial of  
commodore  
etc.

(4) Where the accused person is of the naval rank of captain or of the rank of colonel or group captain, all of the members of a General Court Martial, other than the president, shall be of or above the rank of commander, lieutenant-colonel or wing commander.

Trial of  
captain, etc

(5) Where the accused person is a commander, lieutenant-colonel or wing commander, at least two of the members of a General Court Martial, exclusive of the president, shall be of or above the rank of the accused person.

Trial of  
commander,  
etc.

**141.** Such authority as is prescribed for that purpose in regulations shall appoint a person to officiate as judge advocate at a General Court Martial.

Judge  
advocate

**142.** None of the following persons shall sit as a member of a General Court Martial,

Ineligibility  
to serve on  
General Court  
Martial.

- (a) the officer who convened the court martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;

(d)

- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years;
- (g) an officer below the naval rank of lieutenant, the army rank of captain or the air force rank of flight lieutenant; or
- (h) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

#### DISCIPLINARY COURTS MARTIAL.

- Jurisdiction**      **143.** Subject to any limitations prescribed in regulations made by the Governor in Council, a Disciplinary Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.
- Punishment**      **144.** A Disciplinary Court Martial shall not pass a sentence including a punishment higher in the scale of punishments than dismissal with disgrace from His Majesty's service, or higher than such other punishment as may be prescribed in regulations; but no such other punishment shall be higher in the scale of punishments than dismissal with disgrace from His Majesty's service.
- Number of members.**      **145.** A Disciplinary Court Martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in regulations.
- Appointment of president.**      **146.** (1) The president of a Disciplinary Court Martial shall be appointed by the authority convening the Disciplinary Court Martial or by an officer empowered by that authority to appoint the president.
- Rank of president**      (2) The president of a Disciplinary Court Martial shall be an officer of or above the rank of lieutenant-commander, major or squadron leader or of or above such higher rank as may be prescribed in regulations.
- Judge advocate**      **147.** Such authority as may be prescribed for that purpose in regulations may appoint a person to officiate as judge advocate at a Disciplinary Court Martial.
- Ineligibility to serve on Disciplinary Court Martial.**      **148.** None of the following persons shall sit as a member of a Disciplinary Court Martial,
- (a) the officer who convened the court martial;
  - (b) the prosecutor;
  - (c) a witness for the prosecution;
  - (d) the commanding officer of the accused person;
  - (e) a provost officer;
  - (f) an officer who is under the age of twenty-one years; or
  - (g) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

## STANDING COURTS MARTIAL.

**149.** (1) The Governor in Council may in an emergency <sup>Constitution.</sup> establish Standing Courts Martial and each such court martial shall consist of one officer, to be called the president, who is or has been a barrister or advocate of more than three years standing and who shall be appointed by or under the authority of the Minister.

(2) Subject to any limitations prescribed in regulations, a <sup>Powers.</sup> Standing Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed a service offence, but a Standing Court Martial shall not pass a sentence including any punishment higher in the scale of punishments than imprisonment for less than two years.

## REPRESENTATION OF ACCUSED.

**150.** At any proceedings before a court martial the <sup>Defence.</sup> accused person shall have the right to be represented in such manner as shall be prescribed in regulations made by the Governor in Council.

## ADMISSION TO COURTS MARTIAL.

**151.** (1) Subject to subsections two and three, courts <sup>Trials public.</sup> martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.

(2) Where the authority who convenes a court martial or the president of a court martial considers that it is expedient <sup>Exception.</sup> in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the minutes of the proceedings of the court martial.

(3) Witnesses, other than the prosecutor and the accused <sup>Witnesses</sup> person and his representative, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court martial.

(4) The president may, on any deliberation among the <sup>Clearing court.</sup> members, cause a court martial to be cleared of any other persons in accordance with regulations.

## RULES OF EVIDENCE.

**152.** (1) The rules of evidence at a trial by court martial held in Canada shall be the same as those from time to time <sup>Trial in Canada</sup> followed in proceedings under the *Criminal Code* in civil <sup>R.S., c. 36.</sup> courts in the province of Canada in which the court martial is held, except in so far as such rules are inconsistent with this Act or regulations.

Trial outside  
Canada.

(2) Where a court martial is held out of Canada or in a ship beyond the territorial limits of Canada, the rules of evidence shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the accused person states to the court martial that his ordinary place of residence is situated, except in so far as such rules are inconsistent with this Act or regulations.

Special case.

(3) Where, in the circumstances mentioned in subsection two, an accused person states that his ordinary place of residence is situated out of Canada, or makes no statement as to his ordinary place of residence, the court martial shall apply the rules of evidence from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the capital city of Canada is situated, except in so far as such rules are inconsistent with this Act or regulations.

Exclusion.

(4) A court martial, wherever held, shall not as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing, be subject to any Act, law or regulation not in force in Canada.

Admission of  
documents  
and records.

**153.** (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations.

Statutory  
declarations  
admissible.

R.S., c. 59.

(2) A court martial may receive, as evidence of the facts therein stated, declarations made in the manner prescribed by section thirty-six of the *Canada Evidence Act*, subject to the following conditions,

- (a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;
- (b) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and
- (c) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (a) or (b) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.

#### WITNESSES AT COURTS MARTIAL.

Procurement  
of attendance  
of witnesses.

**154.** (1) The commanding officer of the accused person, the authority who convenes a court martial, or, after the assembly of the court martial, the president, shall take all

necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by any such commanding officer, authority who convenes a court martial or president to be frivolous or vexatious.

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in regulations, and if at the trial the evidence of the witness proves to be relevant and material, the president of the court martial or the authority who convened the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses of the witness so paid.

Procurement  
of attendance  
in exceptional  
cases.

(3) Nothing in this section shall limit the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit.

Rights o.  
accused  
preserved

#### EVIDENCE ON COMMISSION.

**155.** (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose, that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take the evidence of the witness under oath.

Appointment  
of commis-  
sioner.

(2) The document containing the evidence of a witness, taken under subsection one and duly certified by the commissioner, shall be admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

Admissibility  
of commission  
evidence

(3) Where in the opinion of the president 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 that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

Persons  
attendance of  
witness.



Commission  
evidence part  
of summary  
or abstract.

(4) The document mentioned in subsection two or a true copy thereof may be attached to the summary or abstract of evidence taken in respect of the charge against the accused person and, on being so attached, that document shall form part of the summary or abstract of evidence.

Cross-  
examination.

(5) At any proceedings before a commissioner the accused person and the prosecutor shall be entitled to be represented and the persons representing them shall have the right to examine and cross-examine any witness.

Copy to  
accused.

(6) The accused person shall, at least twenty-four hours before it is admitted at the court martial, be furnished without charge with a copy of the document mentioned in subsection two.

#### VIEW BY COURT MARTIAL.

President  
may  
authorize.

**156.** A court martial may, where the president considers it necessary, view any place, thing or person.

#### OBJECTION TO MEMBERS OF COURTS MARTIAL.

Right of  
accused.

**157.** (1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.

Replace-  
ments

(2) The procedure for the replacement of a president of a court martial or any other members of a court martial in respect of whom an objection has been allowed shall be as prescribed in regulations.

#### OATHS AT COURTS MARTIAL.

Persons  
required to  
take oath.

**158.** (1) At every court martial an oath shall be administered to each of the following persons,

- (a) the president and other members of the court martial;
- (b) the judge advocate;
- (c) the officers ordered to attend for purposes of instruction;
- (d) court reporters;
- (e) interpreters;
- (f) witnesses,

in the manner and in the forms prescribed in regulations.

Affirmation  
in lieu of  
oath.

(2) If a person to whom an oath is required to be administered under subsection one,

- (a) objects to take the oath and the president of the court martial is satisfied of the sincerity of the objection; or
- (b) is objected to as incompetent to take the oath and the president of the court martial is satisfied that the

oath would have no binding effect on the conscience of that person, the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in regulations and, for the purposes of this Act, a solemn affirmation shall be deemed to be an oath.

#### ADJOURNMENT AND DISSOLUTION.

**159.** A court martial may be adjourned whenever the president considers adjournment desirable. President may adjourn.

**160.** (1) Where, after the commencement of a trial, a court martial is by death or otherwise reduced below the minimum number of members prescribed in this Act, it shall be deemed to be dissolved. Dissolution when numbers reduced.

(2) Where, after the commencement of a trial, the president of a court martial dies or for any other reason cannot attend and the court martial is not thereby reduced below the minimum number of members prescribed in this Act, the authority who convened the court martial may appoint the senior member of the court martial to be the president and the trial shall proceed; but if the senior member of the court martial is not of sufficient rank to be appointed president, the court martial shall be deemed to be dissolved. President unable to attend.

(3) Where, on account of the illness of the accused person, it is impossible to continue the trial, the court martial shall be dissolved. Illness of accused.

(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. Effect of dissolution.

#### AMENDMENT OF CHARGES.

**161.** (1) Where at any time during a trial by court martial, it appears to the president that there is a technical defect in a charge that does not affect the substance of the charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case. May be made if no injustice.

(2) Where an amendment to the charge has been made, the president of the court martial shall, if the accused person so requests, adjourn the court martial for such period as the president considers necessary to enable the accused person to meet the charge so amended. Procedure.

(3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed Minute of amendment.

by the president of the court martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection therewith as being the original charge sheet.

#### DECISIONS BY COURTS MARTIAL.

Majority  
vote.

**162.** (1) The finding and, subject to subsection three of section one hundred and twenty-one, the sentence of a court martial and the decision in respect of any other matter or question arising after the commencement of the trial shall be determined by the vote of a majority of the members.

Equality on  
finding.

(2) In the case of an equality of votes on the finding, the accused shall be found not guilty.

Equality on  
sentence.

(3) In the case of an equality of votes on the sentence or on any other matter or question arising after the commencement of the trial, except the finding, the president of the court martial shall have a second or casting vote.

#### SIMILAR OFFENCES.

May be  
considered in  
imposing  
sentence.

**163.** A court martial may at the request of the offender and in its discretion take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the offender has been found guilty, that are admitted by him, as if he had been charged with, tried on and found guilty of such offences; but the sentence of the court martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty.

#### PRONOUNCEMENT OF FINDINGS AND SENTENCE.

Effect.

**164.** The finding and sentence of a court martial shall at the conclusion of the trial be pronounced to the offender in open court and he shall be under the sentence as of the date of the pronouncement thereof.

#### RECOMMENDATIONS TO CLEMENCY.

Applicable  
in certain  
cases only.

**165.** Where a court martial has found a person guilty of an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is manda-

tory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen applies, the court martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial.

#### DECISION WHERE ACCUSED INSANE AT TRIAL.

**166.** (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

Trial of  
issue of  
insanity

(2) Where the decision of the court martial on an issue mentioned in subsection one is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried.

Trial pro-  
ceeds if  
accused sane.

(3) Where the decision of a court martial held in Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be treated in accordance with subsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the *Criminal Code*, as if the same decision had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

Disposal of  
accused in  
Canada.

R.S., c. 36.

(4) Where the decision of a court martial held out of Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the *Criminal Code*, as if the same decision had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

Disposal of  
accused out of  
Canada.

R.S., c. 36.

(5) No decision of a court martial that an accused person is unfit to stand or continue his trial by reason of insanity shall prevent that person being afterwards tried in respect of the offence or of any other offence of which he might have been found guilty on the same charge; and the period during which he is unfit to stand or continue his trial by reason of

Saving of  
jurisdiction.

insanity shall not be taken into account in applying to him in respect of that offence the provisions of section sixty.

#### DECISION WHERE ACCUSED INSANE WHEN OFFENCE COMMITTED.

Special finding.

**167.** (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.

Disposal of accused in Canada.

(2) Where a court martial held in Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

R.S., c. 38.

Disposal of accused out of Canada.

(3) Where a court martial held out of Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

R.S., c. 38.

#### MINUTES OF PROCEEDINGS OF COURTS MARTIAL.

Delivery to offender.

**168.** A copy of the minutes of the proceedings of a court martial and of the form of the Statement of Appeal mentioned in section one hundred and eighty-eight shall be delivered without charge as soon as practical after the conclusion of the trial to the person who has been tried and found guilty by that court martial.

## PART VIII.

## PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL.

## IMPRISONMENT AND DETENTION.

**169.** (1) Subject to subsection three and sections one hundred and seventy-six and one hundred and seventy-seven, the term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention, shall commence on the date upon which the service tribunal pronounces sentence upon the offender. Commence-  
ment.

(2) The only time which shall be reckoned toward the completion of a term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included. Time  
counted.

(3) Where a punishment mentioned in subsection two cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration, the offender shall as soon as practical, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out, and the period of time prior to the date of arrival of the offender at that place shall not be reckoned toward the completion of the term of the punishment. Special case.

## PUNISHMENTS REQUIRING APPROVAL.

**170.** (1) A punishment of death imposed by a court martial shall be subject to approval by the Governor in Council and shall not be carried out unless so approved. Death.

(2) A punishment of dismissal with disgrace from His Majesty's service or of dismissal from His Majesty's service, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (b) or paragraph (c) of subsection four of section one hundred and twenty-one shall be subject to approval by the Minister or such authorities as are prescribed in regulations and shall not be carried out unless so approved; but any punishment of imprisonment for two years or more, imprisonment for less than two years or detention included in the sentence shall commence and be carried out under section one hundred and sixty-nine as Dismissal.

if the sentence had not included a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service, as the case may be.

Effective  
date of  
dismissal.

(3) A punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service shall be deemed to be carried out as of the date upon which the release of the offender from the Canadian Forces is effected.

Substitution  
where  
punishment  
not  
approved.

(4) An authority mentioned in section one hundred and seventy-three shall have power to substitute a new punishment for

- (a) a punishment of death that has not been approved under subsection one;
- (b) a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service that has not been approved under subsection two; or
- (c) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection two or five of section one hundred and thirty-six, as the case may be.

#### QUASHING OF FINDINGS.

Authority.

**171.** (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may quash any finding of guilty made by a service tribunal.

Effect upon  
sentence of  
complete  
quashing.

(2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal shall cease to have force and effect.

Effect upon  
sentence of  
partial  
quashing.

(3) Where, after a finding of guilty has been quashed, another finding of guilty remains, and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

#### SUBSTITUTION OF FINDINGS.

Authority.

**172.** (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may substitute a new finding for any finding of guilty, made by a service tribunal, that is illegal or cannot be supported by the evidence, if the new finding could validly have been made

by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding.

(2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the new finding, or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

#### SUBSTITUTION OF PUNISHMENTS.

**173.** Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, substitute for the illegal punishment such new punishment or punishments as he considers appropriate.

#### MITIGATION, COMMUTATION AND REMISSION OF PUNISHMENTS.

**174.** The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.

#### CONDITIONS APPLICABLE TO NEW PUNISHMENTS.

**175.** The following conditions shall apply where under this Act a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal,

- (a) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;
- (b) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve



- a period of incarceration exceeding the period comprised in that sentence;
- (c) where the new punishment is detention and the punishment that it replaces is imprisonment for two years or more or imprisonment for less than two years, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of two years; and
- (d) where the offence of which a person has been found guilty by a service tribunal is an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (a) of subsection two of section one hundred and nineteen applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence.

#### EFFECT OF NEW PUNISHMENTS.

Ordinary  
provisions  
to apply.

**176.** Where under the authority of this Act, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment shall have force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be.

#### SUSPENSION OF IMPRISONMENT OR DETENTION.

Authority.

**177.** (1) Where an offender has been sentenced to imprisonment for two years or more, imprisonment for less than two years or detention, the carrying into effect of the punishment may be suspended by the Minister, or such other authorities as he may prescribe or appoint for that purpose; and the Minister or any authority so prescribed or appointed is referred to in this section as a "suspending authority".

Postpone-  
ment of  
committal

(2) Where, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as

the case may be, may postpone committal until the directions of a suspending authority have been obtained.

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment.

Suspension possible at any time.

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment, he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

Effect of suspension before committal.

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment.

Effect of suspension after committal.

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on such review it appears to the suspending authority that the conduct of the offender, since the punishment was suspended, has been such as to justify a remission of the punishment, he shall remit it.

Review and remission.

(7) A punishment that has been suspended shall be deemed to be wholly remitted on the expiration of the period specified as the term of that punishment, unless the punishment has been put into execution prior to the expiration of that period.

Automatic remission.

(8) A suspending authority may, at any time while a punishment is suspended, direct the authority who is empowered to commit the offender to commit him, and from the date of the committal order that punishment shall cease to be suspended.

Committal after suspension.

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence.

Term where suspended punishment put into execution.

#### COMMITTAL TO IMPRISONMENT OR DETENTION.

**178.** (1) The Minister may prescribe or appoint authorities for the purposes of this section and any such authority is referred to in this section as a "committing authority".

"committing authority".

(2) Such places as are designated by the Minister for the purpose shall be service prisons and detention barracks and

Service prisons and detention barracks.

any hospital or other place for the reception of sick persons to which a person who is a service convict, service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed.

Warrants  
for com-  
mittal.

(3) A committal order, in such form as is prescribed in regulations, made by a committing authority shall be a sufficient warrant for the committal of a service convict, service prisoner or service detainee to any lawful place of confinement.

Authority  
for transfer.

(4) A committing authority may from time to time by warrant order that a service convict, service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

Custody  
pending  
committal  
and during  
transfer.

(5) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one such place to another such place, a service convict, service prisoner or service detainee may be held in any place, either in service custody or in civil custody or at one time in service custody and at another time in civil custody, as occasion may require, and may be transferred from place to place by any mode of conveyance, under such restraint as is necessary for his safe conduct.

Committal  
to peniten-  
tiaries.

(6) Where a punishment of imprisonment for two years or more is to be put into execution, the service convict shall as soon as practical be committed to a penitentiary, there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service convict be committed to a service prison there to undergo his punishment or part of his punishment, and where a service convict has undergone part of his punishment in a service prison and a committing authority then orders him to be committed to a penitentiary, the service convict may be so committed notwithstanding that the unexpired portion of the term of his punishment is less than two years.

Committal  
to service  
prisons.

(7) Where a punishment of imprisonment for less than two years is to be put into execution, the service prisoner shall as soon as practical be committed to a civil prison there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service prisoner be committed to a service prison or detention barrack there to undergo his punishment or part of his punishment.

Committal  
to detention  
barrack.

(8) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practical

be committed to a detention barrack there to undergo his punishment.

#### TEMPORARY REMOVAL FROM INCARCERATION.

**179.** Where the exigencies of the service so require, a service convict, service prisoner or service detainee may, by an order made by a committing authority mentioned in section one hundred and seventy-eight, be removed temporarily from the place to which he has been committed for such period as may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order shall be necessary upon his return to that place.

*Authority required.*

#### RULES APPLICABLE TO SERVICE CONVICTS AND SERVICE PRISONERS.

**180.** While a service convict is undergoing punishment in a penitentiary or a service prisoner is undergoing punishment in a civil prison, he shall be dealt with in the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment in a penitentiary or civil prison, as the case may be, shall in so far as circumstances permit, apply accordingly; but a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison shall not be discharged therefrom until the expiration of the term of his punishment, as reduced for good conduct by virtue of any rules in effect in that penitentiary or civil prison, unless an authority mentioned in section one hundred and seventy-four or section one hundred and seventy-seven orders that he be discharged therefrom prior to the expiration of the term of his punishment.

*Rules of penitentiaries and civil prisons to apply.*

#### VALIDITY OF DOCUMENTS.

**181.** The custody of a service convict, service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Act, or by reason only that such document deviates from the prescribed form; and any such document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature.

*Errors in form may be corrected.*

## INSANITY DURING IMPRISONMENT OR DETENTION.

Insane  
persons in  
peniten-  
tiaries or  
civil  
prisons.

**182.** A service convict or service prisoner who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a penitentiary or a civil prison, shall be treated in the same manner as if he were a person undergoing a term of imprisonment in such penitentiary or civil prison by virtue of the sentence of a civil court.

Insane  
persons in  
service  
prisons or  
detention  
barracks.

R.S., c. 36.

**183.** A service convict, service prisoner or service detainee who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barrack, may, in the discretion of the commanding officer of that service prison or detention barrack, be made available to the Lieutenant-Governor of the province in which the service prison or detention barrack is situated, in order that he may be treated in the manner provided for in section nine hundred and seventy of the *Criminal Code*, and, pending action under that section, he shall be kept in strict custody until his case has been disposed of under that section, whether or not his term of imprisonment or detention has expired.

## PART IX.

## APPEAL, REVIEW AND PETITION.

## GENERAL PROVISIONS.

**184.** For the purposes of this Part, the expressions "legality" and "illegal", shall be deemed to relate either to questions of law alone or to questions of mixed law and fact. "legality" and "illegal".

**185.** Nothing in this Part shall be in derogation of the powers conferred under Part VIII to quash findings or alter findings and sentences. Saving provision.

## RIGHT TO APPEAL.

**186.** Every person who has been tried and found guilty by a court martial shall, subject to subsection three of section one hundred and eighty-eight, have a right to appeal in respect of any or all of the following matters, Cases in which applicable.

- (a) the severity of the sentence;
- (b) the legality of any or all of the findings; or
- (c) the legality of the whole or any part of the sentence.

**187.** The right of any person to appeal from the finding or sentence of a court martial shall be deemed to be in addition to and not in derogation of any rights that he has under the law of Canada. Other rights preserved.

## ENTRY OF APPEALS.

**188.** (1) An appeal under this Part shall be stated on a form to be known as a Statement of Appeal which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant. Form.

(2) A Statement of Appeal shall not be invalid by reason only of informality or the fact that it deviates from the prescribed form. Validity.

(3) No appeal under this Part shall be entertained unless the Statement of Appeal is delivered to a superior officer or to any person by whom the appellant is held in custody Time limits.

- (a) within fourteen days after delivery to the offender, pursuant to section one hundred and sixty-eight, of a copy of the minutes of the proceedings and of the form of the Statement of Appeal; or
- (b) where the finding or sentence in respect of which the offender intends to enter an appeal has been altered under section one hundred and seventy, one hundred and seventy-two, one hundred and seventy-three or

one hundred and seventy-four, within fourteen days after the date upon which notice of such alteration is given to the offender.

Where  
sent.

(4) All Statements of Appeal shall be forwarded to the Judge Advocate General.

#### PRELIMINARY DISPOSITION OF APPEALS.

When  
quantum of  
sentence  
only  
involved.

**189.** (1) Where an appeal relates only to the severity of the sentence, mentioned in paragraph (a) of section one hundred and eighty-six, the Judge Advocate General shall forward the Statement of Appeal to an authority who, under section one hundred and seventy-four, has power to mitigate, commute or remit punishments and that authority may dismiss the appeal or, subject to Part VIII, may mitigate, commute or remit the punishments comprised in the sentence.

Illegal  
findings.

(2) Where an appeal relates to the legality of the findings, as mentioned in paragraph (b) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board provided for in this Part, unless the appropriate chief of staff, acting on the certificate of the Judge Advocate General that all of the findings in respect of which an appeal has been made are illegal, quashes such findings.

Illegal  
sentences.

(3) Where an appeal relates to the legality of the sentence, mentioned in paragraph (c) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board, unless the Judge Advocate General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void.

#### COURT MARTIAL APPEAL BOARD.

Estab-  
lishment.

**190.** (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

Members.

(2) The Court Martial Appeal Board shall consist of the following members:

- (a) a Chairman, who shall be a judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*; and
- (b) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a superior court of criminal jurisdiction as that expression is defined in the *Criminal Code*, or a barrister or advocate of not less than five years standing, all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place. Presiding member.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly. Sittings and hearings.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote. Quorum and decision on appeal.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent. Notification of dissent.

(7) The Court Martial Appeal Board may hear evidence, including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the *Inquiries Act*. Evidence.  
R.S., c. 99

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council. Fees

#### DISPOSITION OF APPEALS BY COURT MARTIAL APPEAL BOARD.

**191.** (1) Upon the hearing of an appeal respecting the legality of a finding of guilty on any charge, the Court Martial Appeal Board, if it allows the appeal, shall Powers.

- (a) set aside the finding and direct a finding of not guilty to be recorded in respect of that charge; or
- (b) direct a new trial on that charge, in which case the appellant shall be tried again as if no trial on that charge had been held.

(2) Where the Court Martial Appeal Board has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence shall cease to have force and effect. Effect of setting aside finding of guilty.

(3) Where the Court Martial Appeal Board has set aside a finding of guilty but another finding of guilty remains, the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court Punishment where finding set aside.



martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

Substitution of new punishment where illegal punishment set aside.

**192.** Upon the hearing of an appeal respecting the legality of a sentence passed by a court martial, the Court Martial Appeal Board, if it allows the appeal, shall forthwith refer the proceedings to the Minister, or to such other authority as the Minister may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

Special power to disallow appeal.

**193.** Notwithstanding anything in this Part, the Court Martial Appeal Board may disallow an appeal if, in the opinion of the Board, to be expressed in writing, there has been no substantial miscarriage of justice.

Power of service authorities preserved.

**194.** Where a punishment included in a sentence has been dealt with pursuant to subsection three of section one hundred and ninety-one or section one hundred and ninety-two, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court martial that tried the appellant.

#### RULES OF APPEAL PROCEDURE

Chairman may make.

**195.** (1) The Chairman of the Court Martial Appeal Board, with the approval of the Governor in Council, may make rules not inconsistent with this Act respecting,

- (a) the seniority of members of the Board for the purpose of presiding at appeals;
- (b) the practice and procedure to be observed at hearings;
- (c) the conduct of appeals;
- (d) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;
- (e) the production of all other documents and records relating to an appeal;
- (f) the extent to which new evidence may be introduced;
- (g) the circumstances in which the appellant may attend or appear before the Board on the hearing of his appeal, but no such rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death; and

(h) provision for and payment of fees of counsel for the appellant.

(2) No rule made under this section shall have effect until <sup>Publication.</sup> it has been published in the *Canada Gazette*.

#### APPEAL TO SUPREME COURT OF CANADA.

**196.** (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney General of Canada. <sup>Cases in which appeals lie.</sup>

(2) An application for leave to appeal under subsection one shall be delivered to the Attorney General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board. <sup>Application.</sup>

(3) The Supreme Court of Canada shall, in respect of the hearing and determination of an appeal under this section, have the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections one hundred and ninety-one to one hundred and ninety-four shall apply with such adaptations and modifications as the circumstances may require. <sup>Powers of Supreme Court of Canada.</sup>

#### REVIEW AFTER EXPIRATION OF RIGHT TO APPEAL.

**197.** Upon the expiration of the period mentioned in subsection three of section one hundred and eighty-eight within which an appeal may be made, the proceedings of every court martial shall be reviewed by the Judge Advocate General in respect of any matter mentioned in paragraph (b) or (c) of section one hundred and eighty-six on which an appeal has not been made. <sup>Review by Judge Advocate General.</sup>

**198.** Where, upon the review mentioned in section one hundred and ninety-seven, the Judge Advocate General certifies that any finding or punishment is illegal, he shall refer the minutes of the proceedings of the court martial to the appropriate chief of staff for such action under this Act as that chief of staff may deem fit. <sup>Procedure where illegality exists.</sup>

#### PETITION FOR NEW TRIAL.

**199.** (1) Every person who has been tried and found guilty by a court martial shall have a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial. <sup>Where applicable.</sup>

Time  
limits.

(2) No petition under this section shall be entertained unless it is delivered to an officer designated for that purpose in regulations

(a) within one year after the date of the pronouncement of the finding; or

(b) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out,

whichever is the later.

Disposal.

(3) Every petition under this section shall be forwarded to the Judge Advocate General who shall refer the petition with his recommendation to the appropriate chief of staff who, if he is of the opinion that the petition should be granted, shall order a new trial, in which case the petitioner shall be tried again as if no trial had been held.

New trial.

(4) When a new trial is held pursuant to subsection three and the petitioner is found guilty the sentence passed at the original trial shall be restored and shall have force and effect as if the new trial had not been ordered.

## PART X.

MISCELLANEOUS PROVISIONS HAVING  
GENERAL APPLICATION.

## WITNESSES AND COUNSEL AT COURTS MARTIAL.

**200.** (1) For the purposes of this section, "court martial", <sup>"court martial"</sup> in addition to the tribunals mentioned in paragraph (g) of section two, includes a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations; and references in this section to the president or members of a court martial shall be deemed to include references to any such commissioner or officer.

(2) Every person required to give evidence before a court martial may be summoned under the hand of the authority by whom the court martial was convened, established or appointed, or the Judge Advocate General, or under the hand of the president, judge advocate, commissioner taking evidence under this Act or officer taking a summary of evidence in accordance with regulations. <sup>Summons to witnesses.</sup>

(3) A person summoned under subsection two may be required to bring with him and produce at a court martial any documents in his possession or under his control relating to the matters in issue before the court martial. <sup>Production of documents.</sup>

(4) A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations. <sup>Witness fees.</sup>

(5) Any conduct of counsel before a court martial that would be liable to censure or be contempt of court if it took place before a civil court in the place where the court martial is held shall likewise be liable to censure or be contempt of court in the case of a court martial; and the regulations governing the procedure of courts martial shall be binding upon counsel appearing before courts martial, and wilful disobedience of those regulations shall, if persevered in, be deemed to be contempt of court. <sup>Misconduct of counsel.</sup>

(6) A court martial may, by order under the hand of the president, a commissioner taking evidence under this Act or an officer taking a summary of evidence in accordance with regulations, cause counsel to be removed from the court martial for contempt, but an officer taking a summary of evidence shall not take action under this subsection without the approval of his commanding officer. <sup>Removal for contempt.</sup>

**201.** Every person when required to give evidence on oath under this Act shall take his oath in the form pre- <sup>Oaths.</sup>

R.S., c. 36. scribed in regulations and that oath shall, in respect of any prosecution for perjury under the *Criminal Code*, have the same force and effect as an oath taken before a civil court.

**DISPOSAL BY CIVIL AUTHORITIES OF DESERTERS AND  
ABSENTEES WITHOUT LEAVE.**

"Justice."  
R.S., c. 36.

Powers of  
arrest on  
reasonable  
suspicion.

Issue of  
warrant.

Powers of  
justice.

Disposal  
of suspected  
person.

Verification  
of admission.

Remands.

**202.** (1) For the purposes of this section "justice" means a justice as defined in the *Criminal Code*.

(2) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, for any officer, man or other person, to apprehend that suspected person and forthwith to bring him before a justice.

(3) A justice, if he is satisfied by evidence on oath that a deserter or absentee without leave is, or is reasonably suspected to be, within his jurisdiction, may issue a warrant authorizing the deserter or absentee without leave to be apprehended and brought forthwith before him or any other justice.

(4) Where a person is brought before a justice charged with being a deserter or absentee without leave under this Act, that justice may examine into the case in like manner as if that person were brought before him accused of an indictable offence.

(5) A justice, if satisfied either by evidence on oath or by the admission of a person brought before him under this section that he is a deserter or absentee without leave, shall cause him to be delivered into service custody in such manner as the justice may deem most expedient; and, until he can be so delivered, the justice may cause him to be held in civil custody for such time as appears to the justice reasonably necessary for the purpose of delivering him into service custody.

(6) Where a person has admitted that he is a deserter or absentee without leave and evidence of the truth or falsehood of the admission is not then forthcoming, the justice before whom that person is brought shall remand him for the purpose of obtaining information as to the truth or falsehood of the admission; and for that purpose the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(7) A justice, before whom a person is brought under this section, may from time to time remand that person for a period not exceeding eight days on each appearance before him, but the whole period during which a person is so remanded shall not be longer than appears to the justice reasonably necessary for the purpose of obtaining the information mentioned in subsection six.

(8) Where a justice before whom a person is brought under this section causes him to be delivered into service custody or to be held in civil custody, the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

Report  
following  
disposal.

(9) Where a person surrenders himself to a constable and admits desertion or absence without leave, the constable in charge of the police station to which he is brought shall forthwith inquire into the case and, if it appears to him from the admission that such person is a deserter or absentee without leave, he may cause him to be delivered into service custody, without bringing him before a justice; and in that event the constable shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

Report  
where  
person  
delivered  
into  
service  
custody.

#### CERTIFICATE OF CIVIL COURTS.

**203.** Where any person subject to the Code of Service Discipline has at any time been tried by a civil court, the clerk of that court or other authority having custody of the records of the court shall, if required by any officer of the Canadian Forces, transmit to that officer a certificate setting forth the offence for which that person was tried, together with the judgment or order of the court thereon, and shall be allowed for that certificate the fee authorized by law.

Procedure.

#### DUTIES RESPECTING INCARCERATION.

**204.** (1) Every warden, governor, gaoler, commanding officer, commandant or other keeper of a penitentiary, civil prison, service prison or detention barrack shall take cognizance of any warrant of committal purporting to be signed by a committing authority mentioned in section one hundred and seventy-eight and shall receive and detain, according to the exigency of that warrant, the offender mentioned therein and delivered into his custody and shall confine that person until discharged or delivered over in due course of law.

Execution  
of warrants.

(2) Any person mentioned in subsection one to whom a Statement of Appeal is delivered under section one hundred and eighty-eight shall cause the Statement of Appeal to be forwarded forthwith to the Judge Advocate General.

Delivery of  
Statements  
of Appeal.

## MANOEUVRES.

Minister  
may  
authorize.

**205.** (1) For the purpose of training the Canadian Forces, the Minister may authorize the execution of military exercises or movements, referred to in this section as "manoeuvres", over and upon such parts of Canada and during such periods as are specified.

Notice.

(2) Notice of manoeuvres shall be given to the inhabitants of any area concerned by appropriate publication.

Powers

(3) Units and other elements of the Canadian Forces may execute manoeuvres on and pass over such areas as are specified under subsection one, stop or control all traffic thereover whether by water, land or air, draw water from such sources as are available, and do all things reasonably necessary for the execution of the manoeuvres.

Inter-  
ference.

(4) Any person who wilfully obstructs or interferes with manoeuvres authorized under this section and any animal, vehicle, vessel or aircraft under his control may be forcibly removed by any constable or by any officer, or by any man on the order of any officer.

Bar of  
action.

(5) No action shall lie by reason only of the execution of manoeuvres authorized under this section.

## EMERGENCY POWERS IN RELATION TO PROPERTY.

Control  
of property  
in emer-  
gency.

**206.** (1) When the Governor in Council by reason of an emergency declares it to be expedient for His Majesty to take control of property, including transportation or communications facilities in Canada or operating from Canada, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession of property which he considers necessary for defence purposes or to assume the operation or management thereof for the service of His Majesty in such manner as the Minister directs; and all persons employed in whatever manner in connection with such property shall obey the directions of the Minister or of the person named in the warrant.

Duration.

(2) A warrant mentioned in subsection one shall remain in force only so long as the emergency exists.

Enforce-  
ment of  
contracts

(3) Where action relating to any property has been taken under subsection one, all contracts and agreements in respect of that property, which would otherwise have been enforceable by or against the person who owns that property, including the directors, officers, servants and agents of that person, shall be enforceable by or against His Majesty.

**207.** When an emergency exists, the officer in command of any unit of the Canadian Forces or any officer duly authorized by him may, subject to regulations made by the Governor in Council, enter upon, take, impress, control, use, occupy, alter, remove or cause to be removed, destroy, desolate or lay waste any property imperatively required to be so dealt with immediately for the purpose of meeting the emergency.

Emergency powers of commanding officer.

**208.** Any person who suffers loss, damage or injury by reason of the exercise of any of the powers conferred by section two hundred and five, two hundred and six or two hundred and seven shall be compensated from the Consolidated Revenue Fund.

Compensation.

#### EXEMPTION FROM TOLLS.

**209.** (1) No duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landing-place, highway, road, right of way, bridge or canal, shall be paid by or demanded from any unit or other element of the Canadian Forces or an officer or man when on duty or any person under escort or in respect of the movement of any materiel.

Canadian Forces exempt.

(2) Nothing in this section shall affect the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of His Majesty.

Exception

#### SHIPS IN CONVOY.

**210.** Every master or other person in command of a merchant or other vessel under the convoy of any of His Majesty's Canadian Ships shall obey the directions of the commanding officer of the convoy or the directions of the commanding officer of any of His Majesty's Canadian Ships in all matters relating to the navigation or security of the convoy, and shall take such precautions for avoiding the enemy as may be directed by any such commanding officer; and if he fails to obey such directions, that commanding officer may compel obedience by force of arms, without being liable for any loss of life or property that may result from the use of such force.

Master of merchant ship to obey convoying officer.

#### SALVAGE.

**211.** (1) Where salvage services are rendered by or with the aid of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces, His Majesty

Crown may claim for salvage services.



may claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the vessel or aircraft had belonged to him.

Consent of  
Minister to  
salvage  
claim.

(2) No claim for salvage services by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces shall be finally adjudicated upon, unless the consent of the Minister to the prosecution of the claim is proved; and such consent may be given at any time before final adjudication.

Evidence  
of consent.

(3) Any document purporting to give the consent of the Minister for the purpose of this section shall be evidence of that consent.

Claim  
dismissed  
if no  
consent.

(4) Where a claim for salvage services is prosecuted and the consent of the Minister is not proved the claim shall be dismissed with costs.

Minister  
may accept  
offers of  
settlement  
for the  
Crown and  
others.

(5) The Minister may, upon the recommendation of the Attorney General of Canada, accept on behalf of His Majesty and the commander and crew or part of the crew, offers of settlement made with respect to claims for salvage services rendered by vessels or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

Distribution.

(6) The proceeds of any settlement made under subsection five shall be distributed in such manner as the Governor in Council may prescribe.

Canada  
Shipping  
Act, 1934  
1934, c. 44  
— limiting  
provision.

(7) Section five hundred and thirty-four of the *Canada Shipping Act, 1934*, shall not apply to or in respect of any claim for salvage services by His Majesty or by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

#### GOVERNMENT VESSELS DISCIPLINE ACT.

When  
applicable.  
R.S., c. 203.

**212.** Unless the Governor in Council otherwise directs, the *Government Vessels Discipline Act* shall not apply to His Majesty's Canadian Ships or to any other ship or vessel of the Canadian Forces or to the officers, men or other persons serving or engaged for service therein, or to officers and men serving in the regular forces, the active service forces, or the reserve forces when on service or on active service.

#### LIMITATION OF CIVIL LIABILITIES.

Officers and  
men not  
to be  
taken out  
of His  
Majesty's  
service

**213.** (1) An officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces is not liable to be taken out of His Majesty's service by any process, execution or order of

any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of

- (a) a charge of or conviction for an offence punishable under the *Criminal Code*, or any other law of Canada or of a province of Canada, or an offence punishable according to the law of that part of His Majesty's dominions in which the offence was committed; or
- (b) a judgment for a debt, damages or sum of money when the amount involved, exclusive of any costs, exceeds two hundred dollars.

R.S., c. 38.

(2) All proceedings and documents in or incidental to a process, execution or order in contravention of this section are void; and where a complaint is made by an officer or man or by his commanding officer that such officer or man has been dealt with in contravention of this section by any process, execution or order issued out of any court, the officer or man or his commanding officer may complain to that court or to any court superior to it and the court or a judge thereof shall examine into the complaint and shall, if necessary, discharge the officer or man without fee, and may award reasonable costs to him which may be recovered as if such costs had been awarded in his favour in an action or other proceeding in such court.

Procedure on complaint of officer or man.

(3) Any person having a cause of action against an officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces may, notwithstanding anything in this section, after due notice in writing of his intention to commence action has been personally served upon the officer or man, or left at his usual place of abode, commence action and proceed to judgment, and may proceed to execution except as against the person, pay, allowances or personal equipment of such officer or man.

Judgment and execution.

**214.** Every officer and man of the reserve forces on active service and every officer and man of the regular forces and active service forces is exempt from serving on a jury.

Exemption from jury service.

**215.** (1) No action, prosecution or other proceeding lies against any person for an act done in pursuance or execution or intended execution of this Act or any regulations, or of any military or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, regulations or such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of continuance of injury or damage, within six months after the ceasing thereof.

Limitation of actions.

Saving  
provision.

(2) Nothing in subsection one shall be in bar of proceedings against any person under the Code of Service Discipline.

Actions  
barred.

**216.** No action or other proceeding lies against any officer or man in respect of anything done or omitted by him in the execution of his duty under the Code of Service Discipline, unless he acted, or omitted to act, maliciously and without reasonable and probable cause.

## PART XI.

## AID OF THE CIVIL POWER.

**217.** For the purposes of this Part,

Definitions.

(a) "Attorney General" means the Attorney General of any province of Canada, or the acting Attorney General of a province, or any minister of a government of a province performing for the time being the duties of a provincial Attorney General;

(b) "Officer Commanding a Command" means an officer commanding a Canadian Army Command if he is present in the command and able to act, or if he is not so present, or is from sickness or other cause unable to act, the officer appointed to administer the command or for the time being performing the duties of the officer commanding the command.

**218.** The Canadian Forces, or any unit or other element thereof, or any officer or man, with materiel, are liable to be called out for service in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of an Attorney General, considered as likely to occur, and that is beyond the powers of the civil authorities to suppress, prevent, or deal with.

Canadian Forces liable to be called out to suppress riot.

**219.** Nothing in this Part shall be deemed to impose liability to serve in aid of the civil power, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

Exception in case of certain reserves.

**220.** In any case where a riot or disturbance occurs, or is considered as likely to occur, the Attorney General of the province in which is situated the place where the riot or disturbance occurs, or is considered as likely to occur, on his own motion, or upon receiving notification from a judge of a superior, county or district court having jurisdiction in that place that the services of the Canadian Forces are required in aid of the civil power, may by requisition in writing, signed by him and addressed to the Officer Commanding a Command of the command in which that place is situated, require the Canadian Army or such part thereof as the authorities hereinafter mentioned consider necessary, to be called out on service in aid of the civil power.

Attorney General of province may requisition Canadian Army.

**221.** (1) Upon receiving a requisition in writing made by an Attorney General under section two hundred and twenty. the Officer Commanding a Command shall call

Call out of Canadian Army in a command.

out such part of the Canadian Army in his command as he considers necessary for the purpose of suppressing or preventing any actual riot or disturbance, or any riot or disturbance that is considered as likely to occur.

Call out  
of Canadian  
Army in  
other  
commands.

(2) Where the Officer Commanding a Command mentioned in subsection one considers that the services of parts of the Canadian Army in commands other than his command are necessary or desirable for the purpose of suppressing or preventing the riot or disturbance mentioned in the requisition, he shall notify the Chief of the General Staff of the number of officers and men, and of the materiel therefor, that he requires, as to which the Officer Commanding a Command shall be the sole judge; and upon being so notified the Chief of the General Staff may call out such parts of the Canadian Army and provide such materiel as in his judgment are available to meet the requirements of the Officer Commanding a Command and shall cause them to be despatched to the Officer Commanding a Command.

Call out  
of navy  
and air  
force.

(3) Where the Officer Commanding a Command mentioned in subsection one has called out or caused to be called out any part of the Canadian Army in aid of the civil power, and considers that the services of any part of the Royal Canadian Navy or of the Royal Canadian Air Force are necessary or desirable for the purpose of assisting that part of the Canadian Army so called out, he may address to the Minister, through the Chief of the General Staff, a request stating the nature and extent of the assistance from the Royal Canadian Navy or from the Royal Canadian Air Force which in the circumstances the Officer Commanding a Command requires; and the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, if the Minister so directs, shall call out such part of the Royal Canadian Navy or of the Royal Canadian Air Force, and materiel therefor, as the Minister considers necessary or desirable for the purpose of meeting the request.

Form of  
requisition.

**222.** A requisition of an Attorney General under this Part may be in the following form, or to the like effect, and the form may, subject to section two hundred and twenty-three, be varied to suit the facts of the case:—

Province of  
To wit

Whereas information has been received by me from responsible persons (or a notification has been received by me from a judge of a (superior) (county) (district) court having jurisdiction in ) that a riot or disturbance of the peace beyond the powers of the civil author-

ities to suppress (or to prevent or to deal with) and requiring the aid of the Canadian Forces to that end has occurred and is in progress (or is considered as likely to occur) at ;

And whereas it has been made to appear to my satisfaction that the Canadian Forces are required in aid of the civil power;

Now therefore I, the Attorney General of , under and by virtue of the powers conferred by the National Defence Act, do hereby require you to call out the Canadian Army or such part thereof as you consider necessary for the purpose of suppressing (or preventing or dealing with) the riot or disturbance and, if it is deemed necessary or desirable by the appropriate authorities, I do hereby request that such other Services of the Canadian Forces as are under that Act liable to be called out in aid of the civil power be so called out for the purpose of assisting the Canadian Army;

And for and on behalf of the Province of , I the said Attorney General, hereby undertake that all expenses and costs, incurred by His Majesty by reason of the Canadian Forces or any part thereof being called out on service in aid of the civil power pursuant to this requisition, shall be paid to His Majesty by the said province.

Dated at , this , 19 .  
day of

Attorney General.

**223.** (1) In a requisition made under this Part it shall be stated that information has been received by the Attorney General from responsible persons, or that a notification has been received by the Attorney General from a judge that a riot or disturbance beyond the powers of the civil authorities to suppress or to prevent or to deal with, as the case may be, has occurred, or is considered as likely to occur, and that the Canadian Forces are required in aid of the civil power; and the requisition shall further state that it has been made to appear to the satisfaction of the Attorney General that the Canadian Forces are so required.

What  
requisition  
must show.

(2) In a requisition made under this Part there shall be embodied an unconditional undertaking by the Attorney General that the province shall pay to His Majesty all expenses and costs incurred by His Majesty by reason of the

Under-  
taking  
to pay  
costs.

Canadian Forces or any part thereof being called out for service in aid of the civil power, as by the requisition required.

Statements  
of fact  
to be  
binding  
on the  
province.

(3) Every statement of fact contained in a requisition made under this Part shall be conclusive and binding upon the province on behalf of which the requisition is made, and every undertaking or promise in the requisition shall be binding upon the province and not open to question or dispute by reason of alleged incompetence or lack of authority on the part of the Attorney General or for any other reason.

Inquiry  
and report  
by Attorney  
General.

(4) In every case where a requisition is made under this Part, the Attorney General of the province concerned shall, within seven days after the making of the requisition, cause an inquiry to be made into the circumstances which occasioned the calling out of the Canadian Forces or any part thereof, and shall send a report upon the circumstances to the Secretary of State.

Statements  
not open  
to dispute.

(5) A statement of fact contained in a requisition made under this Part shall not be open to dispute by the Officer Commanding a Command upon whom the requisition is made.

Officers  
and men  
have  
powers of  
constables.

**224.** Officers and men when called out for service in aid of the civil power shall, without further authority or appointment and without taking oath of office, be held to have and may exercise, in addition to their powers and duties as officers and men, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body, and shall be individually liable to obey the orders of their superior officers.

Duration of  
aid of  
civil  
power.

**225.** The Canadian Forces or any part thereof called out in aid of the civil power shall remain on duty in such strength as the Officer Commanding a Command, who has carried into effect a requisition of an Attorney General made under this Part, deems necessary or orders, until notification is received from the Attorney General that the Canadian Forces are no longer required in aid of the civil power; and the Officer Commanding a Command may, from time to time as in his opinion the exigencies of the situation require, increase or diminish the number of officers and men called out; except that officers and men of the Royal Canadian Navy and the Royal Canadian Air Force called out to assist the Canadian Army in aid of the civil power may be withdrawn at such time and to such extent as the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, under the direction of the Minister, may order.

**226.** All expenses and costs incurred by His Majesty by reason of any of the Canadian Forces being called out under this Part in aid of the civil power, shall be paid to His Majesty by the province the Attorney General of which made the requisition requiring the Canadian Army to be called out.

Province  
to pay  
expenses.

**227.** Such moneys as are required to meet the expenses and costs occasioned by the calling out of the Canadian Forces as provided for in this Part and for the services rendered by them shall, pending payment by the province liable under section two hundred and twenty-six, be advanced in the first instance out of the Consolidated Revenue Fund by the authority of the Governor in Council, but shall be payable by and recoverable from the province to and by His Majesty as moneys paid by His Majesty to and for the use of the province at the request of the province.

Advances  
in first  
instance.



## PART XII.

## OFFENCES TRIABLE BY CIVIL COURTS.

## APPLICATION.

Liability  
to civil  
trial

**228.** (1) Every person, including an officer or man, shall be liable to be tried in a civil court in respect of any offence prescribed in this Part.

Special  
provision.

(2) No charge against an officer or man in respect of any offence prescribed in this Part shall, if the complainant is any other officer or man, be tried by a civil court unless the consent thereto in writing of the commanding officer of such first-mentioned officer or man has first been obtained.

Special  
limitation  
on prosecu-  
tions.

**229.** No prosecution in a civil court shall be commenced against a person in respect of an offence prescribed in this Part after the expiration of six months from the date of commission of the offence charged, except for any of the offences mentioned in section two hundred and thirty-nine.

## OFFENCES.

Breach of  
regulations  
respecting  
defence  
establish-  
ments, etc.

**230.** Every person who contravenes regulations respecting the access to, exclusion from, and safety and conduct of any persons in, on or about any defence establishment, work for defence or materiel is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

False  
answer on  
enrolment.

**231.** Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him by or by direction of the person before whom he appears for the purpose of being enrolled in the Canadian Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

False  
medical  
certificates.

**232.** Every medical practitioner who signs a false medical certificate or other document in respect of

- (a) the examination of a person for the purpose of enrolment in the Canadian Forces;
- (b) the service or release of an officer or man; or
- (c) the disability or alleged disability of a person, purported to have arisen or to have been contracted during, in the course of, or as a result of the service of such person as an officer or man,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

**233.** Every person who falsely personates any other person in respect of any duty, act or thing required to be performed or done under this Act by the person so personated is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment. Personation.

**234.** Every person who falsely represents himself to any military or civil authority to be a deserter from His Majesty's Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment. Representa-  
tion of  
desertion.

**235.** (1) Every officer or man of the reserve forces who without lawful excuse neglects or refuses to attend any parade, drill or training at the place and hour appointed therefor is guilty of an offence and is liable on summary conviction for each offence, if an officer to a fine of ten dollars, and if a man to a fine of five dollars. Failure  
to attend  
parade.

(2) Absence from any parade, drill or training mentioned in subsection one shall, in respect of each day on which such absence occurs, be a separate offence. Each  
absence an  
offence.

**236.** Every officer or man of the reserve forces who fails to keep in proper order any personal equipment or who appears at drill, parade or on any other occasion with his personal equipment out of proper order, unserviceable or deficient in any respect is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five dollars for each offence. Neglecting  
personal  
equipment.

**237.** Every person who without reasonable excuse interrupts or hinders the Canadian Forces at drill, training or while on the march is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence; and may be taken into custody and detained by any person by the order of an officer until such drill, training or march is over for the day. Interruption  
of drill or  
training.

**238.** Every person who without reasonable excuse obstructs or interferes with manoeuvres authorized under section two hundred and five is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars. Hampering  
manoeuvres.

Unlawfully  
dealing with  
property.

**239.** (1) Every person who  
(a) unlawfully disposes of or removes any property;  
(b) when lawfully required, refuses to deliver up any property that is in his possession; or  
(c) except for lawful cause, the proof of which lies on him, has in his possession any property,  
is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence.

Definition.

(2) For the purposes of this section, "property" means any public property under the control of the Minister, non-public property, and property of any of His Majesty's Forces or of any forces co-operating therewith.

Assisting or  
harbouring  
deserters or  
absentees.

**240.** (1) Every person who  
(a) procures, persuades, aids, assists or counsels an officer or man to desert or absent himself without leave; or  
(b) in an emergency, aids, assists, harbours or conceals an officer or man who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that such officer or man was a deserter or an absentee without leave,  
is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and not less than one hundred dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

Certificate  
of Judge  
Advocate  
General.

(2) A certificate signed by the Judge Advocate General, or such person as he may appoint for that purpose, that an officer or man was convicted under this Act, of desertion or absence without leave or had been continuously absent without leave for six months or more, and setting forth the date of commencement and the duration of such desertion, absence without leave or continuous absence without leave, shall for the purposes of proceedings under this section be evidence that the officer or man was a deserter or absentee without leave during the period mentioned in the certificate.

Aid to  
intending  
deserters or  
absentees.

**241.** Every person who, knowing that an officer or man is about to desert or absent himself without leave, aids or assists him in his attempt to desert or absent himself without leave is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

Miscel-  
laneous  
offences.

**242.** Every person who  
(a) wilfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such other person is required under this Act or regulations to perform;

- (b) counsels any other person not to perform any duty that such other person is required under this Act or regulations to perform;
  - (c) does an act to the detriment of any other person in consequence of such other person having performed a duty that he is required under this Act or regulations to perform;
  - (d) interferes with or impedes, directly or indirectly, the recruiting of the Canadian Forces;
  - (e) wilfully produces any disease or infirmity in, or maims or injures himself or any other person with a view to enabling himself or such other person to avoid service in the Canadian Forces;
  - (f) with intent to enable any other person to render himself, or to induce the belief that such other person is, permanently or temporarily unfit for service in the Canadian Forces, supplies to or for such other person any drug or preparation calculated or likely to render such other person, or lead to the belief that such other person is, permanently or temporarily unfit for such service; or
  - (g) gives or receives, or is in any way concerned in the giving or receiving, of any valuable consideration in respect of enrolment, release or promotion in the Canadian Forces,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

**243.** (1) Every person who

- (a) on being duly summoned as a witness under section two hundred and after payment or tender of the fees and expenses of his attendance prescribed in regulations, makes default in attending; Offence of contempt of court.
- (b) being in attendance as a witness before a court martial mentioned in section two hundred,
  - (i) refuses to take an oath or affirmation legally required of him,
  - (ii) refuses to produce any document in his power or under his control legally required to be produced by him, or
  - (iii) refuses to answer any question that legally requires an answer;
- (c) uses insulting or threatening language before a court martial mentioned in section two hundred, or causes any interference or disturbance in its proceedings, or prints observations or uses words likely to influence improperly the members of or witnesses before that court martial or to bring that court martial into

disrepute, or in any other manner whatsoever displays contempt of that court martial; or

(d) being in attendance as counsel before a court martial mentioned in section two hundred, is in contempt of court within the meaning of subsection five of that section,

is guilty of an offence and the court martial may, by a certificate setting forth the facts thereof, refer the offence of such person to a civil court, in the place where the court martial is held, that has power to punish witnesses guilty of like offences in that civil court.

Disposal  
of offender.

(2) Any civil court to which an offence mentioned in this section has been referred shall cause to be brought before it the person certified to have committed that offence, and shall inquire into the circumstances set forth in the certificate mentioned in subsection one, and, after examination of any witnesses who may be produced for or against the person so accused and after hearing any statement that may be offered in defence, shall, if it seems just, punish the person in like manner as if he had committed the offence in a proceeding in that civil court.

Failure  
to obey  
directions  
respecting  
property  
taken  
over, etc.

**244.** Every person employed in connection with any property, control of which has been taken by His Majesty under section two hundred and six, who does not obey the directions of the Minister or such person as is named in any warrant issued by the Minister is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Breach of  
regulations  
respecting  
billeting,  
etc.

**245.** Every person who contravenes regulations respecting the quartering, billeting and encamping of a unit or other element of the Canadian Forces, or of an officer or man is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars.

Improper  
exaction  
of tolls.

**246.** Every person who receives or demands a duty or toll in contravention of section two hundred and nine is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Failure  
to comply  
with  
convoy  
orders.

**247.** Every person who fails to comply with directions given under section two hundred and ten is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

## PART XIII.

## SPECIAL PROVISIONS

## DESERTERS AND ABSENTEES.

**248.** (1) Every member of the Naval Forces of Canada, the Canadian Army and the Royal Canadian Air Force and every person called out for compulsory military service under *The National Resources Mobilization Act, 1940*, who, while serving on active service beyond Canada at any time after the ninth day of September, one thousand nine hundred and thirty-nine, or while serving on active service within Canada at any time between the thirty-first day of December, one thousand nine hundred and forty-five, and the first day of October, one thousand nine hundred and forty-six, deserted or absented himself without leave and is still absent on the date that this section comes into force, shall for all purposes be deemed never to have been enlisted or enrolled in or appointed to or have served with the naval, army or air forces of Canada during the war that commenced in September, one thousand nine hundred and thirty-nine.

Certain  
deserters  
and  
absentees  
deemed  
never to  
have  
served.  
1940, c. 13.

(2) Notwithstanding that any person mentioned in subsection one is deemed never to have served in the naval, army or air forces of Canada, all pay and allowances, rations, kit and materiel at any time paid or issued to him or on his behalf shall be deemed to have been paid or issued with due authority.

Pay, etc.,  
of such  
persons.

## AMENDMENT TO THE ROYAL CANADIAN AIR FORCE ACT.

**249.** Paragraph (e) of section two of *The Royal Canadian Air Force Act*, chapter fifteen of the statutes of 1940, is repealed and the following substituted therefor:—

Definition  
of "officer".

"(e) "officer" means a person who holds His Majesty's commission in or who is a subordinate officer in the Royal Canadian Air Force or who is attached or seconded to the Royal Canadian Air Force as an officer;"

## REPEAL.

**250.** *The Royal Military College Act*, the *Militia Act*, the *Department of National Defence Act*, *The Royal Canadian Air Force Act* and *The Naval Service Act, 1944*, or any portion thereof, may be repealed by proclamation of the Governor in Council.

Existing  
legislation.  
1928, c. 7.  
R.S., c. 132.  
R.S., c. 136.  
1940, c. 15.  
1944, c. 23

## COMMENCEMENT OF ACT.

Proclama-  
tion.

**251.** Sections one, two hundred and eleven, two hundred and forty-eight, two hundred and forty-nine and two hundred and fifty of this Act shall come into force when this Act is assented to, section two hundred and eleven shall operate retrospectively to the eighth day of December, one thousand nine hundred and forty-seven, section two hundred and forty-nine shall operate retrospectively to the first day of October, one thousand nine hundred and forty-six, and the other sections of this Act shall come into force on a day or days to be fixed by proclamation of the Governor in Council.

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