

ACTS
OF THE
PARLIAMENT
OF THE
DOMINION OF CANADA

PASSED IN THE SESSION HELD IN THE
EIGHTH AND NINTH YEARS OF THE REIGN
OF HIS MAJESTY

KING GEORGE VI

BEING THE
FIFTH SESSION OF THE NINETEENTH PARLIAMENT

Begun and holden at Ottawa, on the Twenty-seventh day of January, 1944, and
closed by Prorogation on the Thirty-first day of January, 1945.



HIS EXCELLENCY THE RIGHT HONOURABLE
THE EARL OF ATHLONE
GOVERNOR GENERAL

PART I
PUBLIC GENERAL ACTS

OTTAWA
PRINTED BY EDMOND CLOUTIER
LAW PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
ANNO DOMINI 1945

8 GEORGE VI.

CHAP. 23.

An Act respecting The Naval Service of Canada.

[Assented to 24th July, 1944.]

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

R.S., c. 139;
1940, c. 35.

Short Title.

1. This Act may be cited as *The Naval Service Act, 1944*. Short title.

Interpretation.

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

- (a) "active service," as applied to a person in the Naval Forces, means service or duty during an emergency; "active service."
- (b) "Commander-in-Chief" means an officer appointed as such to the chief command of a fleet, squadron, or station, or, in the case of any station for which no officer has been so appointed, the Chief of the Naval Staff; "Commander-in-Chief."
- (c) "Department," means the Department of National Defence; "Department."
- (d) "Deputy Minister" means the Deputy Minister of National Defence, unless under the *Department of National Defence Act*, a Deputy Minister of National Defence for Naval Service has been appointed, in which case "Deputy Minister" means the Deputy Minister of National Defence for Naval Service; "Deputy Minister."
R.S., c. 136.
- (e) "emergency" means war, invasion or insurrection, real or apprehended; "emergency."
- (f) "general orders" means orders and instructions issued to the Naval Forces by the Minister or under his authority; "general orders."
- (g) "man" means a person in the Naval Forces holding a rating of or below chief petty officer; "man."

- "Minister."
R.S., c. 136. (h) "Minister" means the Minister of National Defence, unless under the *Department of National Defence Act*, a Minister of National Defence for Naval Service has been appointed, in which case "Minister" means the Minister of National Defence for Naval Service;
- "naval establishment."
"Naval Forces."
"Naval Service."
"officer."
"on service"
"prescribed"
- (i) "naval establishment" includes officers' quarters, barracks, dockyards, victualling yards, naval yards, factories, rifle and gun ranges, naval colleges, and all other buildings, works and premises under the control of the Minister, constructed or set apart for the Naval Service;
- (j) "Naval Forces" means those naval forces organized for the defence and protection of the Canadian coasts and trade, or engaged as the Governor in Council may from time to time direct;
- (k) "Naval Service" includes His Majesty's service in respect of the Naval Forces, all naval affairs, and all naval property including, but not so as to limit the generality thereof: naval establishments, ships and other vessels, aircraft, vehicles, ordnance, ammunition, arms, armouries, stores, munitions and habiliments of war, and their procurement, maintenance and repair;
- (l) "officer" includes commissioned, warrant and subordinate officers serving in the Naval Service of Canada, but not chief petty and petty officers so serving;
- (m) "on service" means when called upon for the performance of any duties other than those specified as active service;
- (n) "prescribed" means prescribed by this Act or by regulations made hereunder.
- Interpretation of regulations and orders.
R.S., c. 1. **3.** The *Interpretation Act* and section two of this Act shall apply to all regulations, orders and articles of engagement made or entered into under this Act.

PART I.

THE NAVAL SERVICE.

Command-in-Chief.

- Command-in-chief. **4.** The Command-in-Chief of the Naval Forces is declared to continue and be vested in the King, and shall be exercised and administered by His Majesty, or by the Governor General as His representative.

Administration.

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

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

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

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

8. The Governor in Council may organize and maintain a permanent naval force. Permanent naval force.

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

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

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

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

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

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

12. The Governor in Council may at any time relieve from duty any officer in the Naval Service. Relief from duty.

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

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

public cost, shall be issued as may be prescribed by the Minister.

Naval Reserve.

Constitution of Naval Reserve.

15. The naval reserve shall consist of such persons as join the said reserve after naval or merchant marine service or after undergoing such training as may be prescribed by the Minister.

Organization.

16. The Governor in Council may organize the naval reserve, which shall comprise one force or more, as the Governor in Council may from time to time prescribe.

Active Service.

Active service.

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

Naval service may be at disposal of His Majesty in emergency.

18. In case of an emergency the Governor in Council may place at the disposal of His Majesty, for general service in the Royal Navy, the Naval Service or any part thereof, any ships or vessels of the Naval Service, and the officers and men serving in such ships or vessels, or any officers or men belonging to the Naval Service.

Parliament to meet when Naval Service on service as defined.

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

Possession may be taken of shipyards, plants and buildings.

20. (1) When the Governor in Council declares that an emergency has arisen in which it is expedient for the public service that His Majesty should have control of any dock, shipyard, pier, wharf, machine shop, repairing or salvage plant, factory, warehouse, store or other building, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession thereof in the name and on behalf of His Majesty, and to use it for the service of His Majesty in such manner as the Minister directs, and all persons, officers, servants and employees employed thereon shall obey the directions of the Minister in connection with the management or operation thereof.

(2) Such warrant shall remain in force so long, as, in the opinion of the Minister, the emergency exists. Duration of possession.

(3) There shall be paid to any person whose property is taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury he so sustains as is agreed upon between the Minister and the said person, or, in case of difference, as is fixed upon reference to the Exchequer Court of Canada. Compensation.

(4) Where any property is taken possession of under the provisions of this section, all contracts and agreements between the persons whose property is so taken possession of and the directors, officers and servants of such person or between such person and any other person in relation to, the working or maintenance of such property which would if such possession had not been taken, have been enforceable by the said person shall, during the continuance of such possession, be enforceable by His Majesty. Existing contracts may be enforced by His Majesty.

Naval Volunteer Reserve.

21. The Governor in Council may organize and maintain a naval volunteer reserve. Naval volunteer reserve.

22. The naval volunteer reserve shall consist of officers and men raised by voluntary engagement from among seafaring persons and others who may be deemed suitable for the service in which such volunteers are to be employed. Constitution.

23. The naval volunteer reserve shall comprise one force or more, as the Governor in Council may from time to time prescribe. One force or more.

Royal Canadian Naval College.

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

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

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

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

Superintendence of naval officer.

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

Staff.

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

Requirements for admission

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

Examinations.

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

Age.

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

Period and conditions of service.

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

Target Practice.

Target practice by vessels

29. (1) The Minister may lay down targets, buoys and other appliances for target practice by the vessels in the Naval Service, and also may provide rifle ranges suitably equipped for the use of the Naval Service at or near any port or any naval establishment.

Regulations.

(2) The Minister may make regulations for ensuring the safety of the public during such practice and may provide penalties for infringement of such regulations and for wilful damage to any such targets, buoys, ranges or other appliances.

General Provisions.

Property vested in His Majesty.

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

Conditions of alienation.

31. All general orders issued to the Naval Forces shall be held to be sufficiently notified to all persons whom they concern by their publication and exhibition in the vessel or naval establishment to which those concerned belong, and proof of such exhibition shall be evidence of the issue of such orders.

Notice of general orders.

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

Proof of commissions, orders and regulations.

33. When any officer or man is killed on active service, or dies from wounds or disease contracted on active service, drill or training, or on duty, provision shall be made for his widow and family out of the public funds at the rates prescribed by the Governor in Council.

Provision for widow and family of deceased officers and men.

34. Every case of permanent disability, arising from injuries received or illness contracted on active service, drill or training or on duty, shall be reported on by a medical board and compensation awarded, under such regulations as are made from time to time by the Governor in Council.

Compensation for disability.

35. The Governor in Council may from time to time transfer to or from the Naval Service any vessel belonging to His Majesty.

Transfer of vessels

36. (1) If any person who, not belonging to the Naval Service, enters into an engagement with the Minister to serve His Majesty—

Certain persons made subject to Naval Service Act.

(a) in a particular ship, or

(b) in a particular ship or in such ships as the Minister may from time to time determine, and upon entering into the engagement, agrees to become subject to this Act, that person shall, so long as the engagement remains in force and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, except the provisions of sections thirty-three and thirty-four thereof, and the provisions of this Act to which he is so subject shall apply in relation to that person as if whilst subject to the said provisions of this Act he belonged to the Naval Service and were borne on the books of one of His Majesty's Canadian ships in Commission, but he shall not be nor be deemed to be a member of the Naval Service.

May be
deemed
officers or
men.

(2) The Governor in Council may direct that, subject to such exemptions as may in particular cases be made by or on behalf of the Minister, persons of any such class of the persons to which subsection one of this section relates as may be specified by the Governor in Council, shall whilst subject to the provisions mentioned in subsection one, be deemed to be officers or men, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and the Governor in Council may from time to time vary or revoke any directions so given.

Application of
Government
Vessels
Discipline
Act.
.S., c. 203.

37. Unless the Governor in Council otherwise directs, the *Government Vessels Discipline Act* shall not apply to any ship or vessel in the Naval Service, or to the officers, men or persons engaged for service thereon.

Regulations.

Ministerial
regulations
for Naval
Service
generally.

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

Publication.

39. Regulations made under authority of this Act shall be published in the *Canada Gazette*, and upon being so published they shall have the same force in law as if they formed part of this Act.

To be laid
before
Parliament.

40. Such regulations shall be laid before both Houses of Parliament within ten days after the publication thereof if Parliament is then sitting, and if Parliament is not then sitting then within ten days after the next meeting thereof.

Application of
Act of United
Kingdom
U. K., 1886
c. 109, and
King's
Regulations.

41. Except to the extent that the same were inconsistent with the *Naval Service Act*, chapter one hundred and thirty-nine of the Revised Statutes of Canada, 1927, and with any regulation made thereunder, and in so far as the same were applicable, the Act of Parliament of the United Kingdom entitled *The Naval Discipline Act, 1866* and amendments thereto and the King's Regulations and Admiralty Instructions in force from time to time from the first day of February, one thousand nine hundred and twenty-eight, to the date upon which this Act comes into force shall be deemed to have applied to the Naval Service during the said period as if enacted by Parliament.

Officer
or man
serving in
another
navy.

42. (1) Where any officer or man belonging to the Naval Forces is borne on the books of a ship or establishment of another Navy, he shall for all purposes of command

and discipline be subject to the laws, regulations and customs applicable to that ship or establishment.

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

Officer or man serving with military or air forces.

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

Members of military or air forces serving with Naval Forces

Penalties.

43. Any person who

- (a) procures or persuades any member of the Naval Forces to desert;
- (b) aids or assists any member of the Naval Forces in deserting; or
- (c) knowing any person to be a deserter from the Naval Forces conceals him or aids or assists him in concealing himself;

Penalties for aiding desertion.

shall be liable upon summary conviction to imprisonment, with or without hard labour, for any period not exceeding twelve months.

Execution of Warrants and Sentences.

44. The keeper, gaoler or warden of every gaol, prison or penitentiary in Canada shall receive and detain according to the exigency of any warrant under the hand of the person authorized under Part II of this Act or regulations, to issue a warrant, any person mentioned in such warrant and delivered into his custody, and shall confine such prisoner until discharged or delivered over in due course of law; and every such keeper, gaoler or warden shall take cognizance of any warrant purporting to be signed by any such authorized person.

Warrants and sentences.

Ships in Convoy.

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

Master of merchant vessel to obey orders of convoying officer.

Court-Martial Witnesses

Summoning of witnesses at courts-martial and disciplinary courts.

46. (1) Any person required to give evidence before a court-martial or disciplinary court assembled under Part II of this Act shall be summoned under the hand of the Deputy Minister, or the Judge Advocate of the Fleet, or his deputy, or the person appointed to officiate as deputy judge advocate at the trial, or, in the case of disciplinary courts, the person appointed to act as clerk of the Court.

Persons attending to be privileged.

(2) Any person attending in pursuance of the summons as a witness before any court-martial or disciplinary court shall be privileged from arrest during his necessary attendance in or on the court, and in going to and returning from the court.

Offences.

(3) Where any person who has been summoned as a witness under subsection one either makes default in attending after payment or tender of the reasonable expenses of his attendance, or while in attendance

(a) refuses to be sworn or make affirmation, or

(b) refuses to give evidence, or

(c) refuses to answer any question to which a court-martial or a disciplinary court may legally require an answer, or

(d) prevaricates in his evidence,

the president of the court-martial or disciplinary court may certify the offence of that person to any court of law which has power to punish witnesses guilty of like offences committed in that court. Upon receiving the certificate the court of law shall inquire into the alleged offence and, after examination of any witnesses who are produced against or for the accused person and after hearing any statement that is offered in defence, shall, if it seems just, punish the witness in like manner as if he had committed the offence in a proceeding in that court.

PART II

NAVAL DISCIPLINE.

Application.

Persons subject to this Part.

47. The following persons, and no others, are subject to this Part:—

(a) Every person in or belonging to the permanent naval force and borne on the books of any one of His Majesty's Canadian Ships in commission;

(b) Every person in or belonging to a force organized under authority of this Act as a naval reserve force, or a naval volunteer reserve force, when he is:—

(i) on active service, or

(ii)

- (ii) in or on any property of the Naval Service, including naval establishments, ships and other vessels, aircraft, vehicles and armouries, or
- (iii) undergoing training, or
- (iv) borne on the books of any one of His Majesty's Canadian Ships in commission, or
- (v) in uniform;
- (c) A member of any of the naval forces of His Majesty raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State or Newfoundland while that member is attached temporarily to any of the Canadian Naval Forces, as and to the extent provided under subsections one, two and three of section six of *The Visiting Forces (British Commonwealth) Act, 1933*; 23-24 Geo. V. c. 21.
- (d) Cadets while enrolled in the Royal Canadian Naval College, to such extent and subject to such regulations as the Governor in Council prescribes;
- (e) Members of His Majesty's Canadian military and air forces when embarked on board any of His Majesty's Canadian Ships, to such extent and subject to such regulations as the Governor in Council prescribes;
- (f) Every person ordered to be received or who is a passenger on board any of His Majesty's Canadian Ships, under such regulations as the Minister prescribes;
- (g) Every person who, although he would not otherwise be subject to this Part, enters into an engagement with the Minister under the provisions of section thirty-six of this Act;
- (h) Every spy for the enemy;
- (i) So far as respects the offence, every person not otherwise subject to this Part who commits an offence under section sixty of this Act;
- (j) During the term of his sentence, every person who is sentenced under this Part to imprisonment in a penitentiary, imprisonment elsewhere than in a penitentiary or detention, notwithstanding that he is discharged or dismissed from the Naval Service or would otherwise but for this provision cease to be subject to this Part;
- (k) Every person who, although he would not otherwise be subject to this Part, is, by the Parliament of Canada, or during an emergency by the Governor in Council, made subject to this Part.

Public Worship.

48. All officers in command of His Majesty's Canadian Ships and naval establishments shall cause the public worship of Almighty God in the manner and forms for use Public worship to be performed.

in the Naval Service to be solemnly, orderly and reverently performed in their respective ships and establishments and shall take care that all religious services are performed diligently, and that the Lord's Day is observed according to law.

Misconduct in Presence of Enemy.

Misconduct in action

49. Every flag officer, captain, commander or officer commanding who:

- (a) upon signal of battle, or on sight of a ship of an enemy which it is his duty to engage, does not use his utmost exertion to bring his ship into action, or
- (b) his ship being in action, does not, during the action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously, or
- (c) surrenders his ship to the enemy when capable of making a successful defence, or
- (d) in time of action improperly withdraws from the fight,

shall, if he has acted traitorously, suffer death; if he has acted from cowardice, suffer death or such lesser punishment as is hereinafter mentioned; if he has acted from negligence, or through other default, be dismissed from the Naval Service, with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Not pursuing the enemy, and not assisting a friend in view.

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

Delaying or discouraging the service, or deserting his post, etc.

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

Misconduct of subordinate officers and men in action.

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

if he acts from negligence, or through other default, be dismissed from the Naval Service, with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Communications with the Enemy.

53. All spies for the enemy shall suffer death or such lesser punishment as is hereinafter mentioned. Spies.

54. Every person who:

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

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

(c) relieves the enemy with any supplies;

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

Correspondence, etc., with the enemy.

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

Improper communication with the enemy.

Neglect of Duty.

56. Every person who deserts his post or sleeps upon his watch, or negligently performs a duty imposed on him, shall be dismissed from the Naval Service with disgrace or shall suffer such lesser punishment as is hereinafter mentioned.

Abandoning post, etc.

Mutiny.

57. Where mutiny is accompanied by violence, every person who joins therein shall suffer death, or such lesser punishment as is hereinafter mentioned; and every person who does not use his utmost exertions to suppress the mutiny shall; if he acts traitorously, suffer death, or such lesser punishment as is hereinafter mentioned; if he acts from cowardice, suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned; if he acts from negligence be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Mutiny accompanied by acts of violence.

58. Where a mutiny is not accompanied by violence, the ringleader or ringleaders of the mutiny shall suffer death, or such lesser punishment as is hereinafter mentioned; and all other persons who join in such mutiny, or do not use their utmost exertions to suppress it, shall suffer imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned.

Mutiny not accompanied by acts of violence.

Inciting to mutiny.

59. Every person who endeavours to seduce any other person subject to this Part from his duty or allegiance to His Majesty, or endeavours to incite him to commit any act of mutiny, shall suffer death or such lesser punishment as is hereinafter mentioned.

Civilians endeavouring to seduce from allegiance.

60. Every person who, being on board any of His Majesty's Canadian Ships, endeavours to seduce from his duty or allegiance to His Majesty any person subject to this Part shall suffer death or such lesser punishment as is hereinafter mentioned.

Making mutinous assemblies or uttering seditious words.

61. Every person who makes or endeavours to make any mutinous assembly, or leads or incites any person to join in any mutinous assembly, or utters any words of sedition or mutiny, shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned.

Concealing any traitorous or mutinous practice, design or words.

62. Every person who wilfully conceals any traitorous or mutinous practice or design, or any traitorous or mutinous words spoken against His Majesty, or any words, practice, or design tending to the hindrance of the service, shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned.

Striking or attempting to strike, etc., superior officer.

63. Every person who strikes or attempts to strike, or draws or lifts up any weapon against, or uses or attempts to use any violence against his superior officer whether or not such superior officer is in the execution of his office, shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned.

Insubordination.

Disobedience or using threatening language to superior officer.

64. Every person who wilfully disobeys any lawful command of his superior officer, or uses threatening or insulting language, or behaves with contempt to his superior officer, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Quarreling, etc., or using reproachful speech or gestures.

65. Every person who quarrels or fights with any other person, whether such other person is or is not subject to this Part, or who uses reproachful or provoking speeches or gestures tending to make any quarrel or disturbance, shall suffer imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned.

Desertion and Absence without Leave.

Desertion.

66. Every person who absents himself from his ship, or from the place where his duty requires him to be, with

the intention of not returning to such ship or place, or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place, shall be deemed to have deserted, and

(a) if he has deserted to the enemy he shall be punished with death or such lesser punishment as is hereinafter mentioned;

(b) if he has deserted under any other circumstances, he shall be punished with imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned; and in every case he shall forfeit all pay, bounty, salvage, prize money, and allowances that have been earned by him, and all annuities, gratuities, medals, decorations, and good conduct and good service badges that have been granted to him, and also all clothes and effects which he left on board the ship or at the place from which he deserted, unless the tribunal by which he is tried, or the Minister, otherwise directs.

67. Every person who endeavours to seduce any other person subject to this Part to desert shall suffer imprisonment elsewhere than in a penitentiary, or such lesser punishment as is hereinafter mentioned.

Inducing any person to desert.

68. Every officer in command of any of His Majesty's Canadian Ships who receives or entertains a deserter from His Majesty's Canadian naval, military, or air forces, after discovering him to be a deserter, and does not with all convenient speed, in the case of a deserter from the Naval Forces give notice to the Commanding Officer of the ship to which the deserter belongs, or if the ship is at a distance, to the Commander-in-Chief, or, in case of a deserter from His Majesty's Canadian military or air forces, give notice to the Department of National Defence, or the Commanding Officer of the regiment or unit to which the deserter belongs, the officer so offending shall be dismissed from the Naval Service, or suffer such lesser punishment as is hereinafter mentioned.

Entertaining a deserter.

69. If any person without being guilty of desertion improperly leaves his ship or place of duty, he shall be liable to imprisonment elsewhere than in a penitentiary or to such lesser punishment as is hereinafter mentioned, and to such other punishment by forfeiture of wages or of other benefits as the Minister prescribes.

Punishment for breaking out of ship.

70. Every person who without being guilty of desertion or of improperly leaving his ship or place of duty is absent without leave shall be liable in time of emergency to imprisonment elsewhere than in a penitentiary or such

Absence without leave.

lesser punishment as is hereinafter mentioned, and at other times to imprisonment elsewhere than in a penitentiary or detention for any period not exceeding ten weeks, or such other punishment as the circumstances of the case require, and to such other punishment by forfeiture of wages or of other benefits as the Minister prescribes.

Forfeiture of effects for absence without leave

71. If any person is absent without leave for a period of one month, whether he is guilty of desertion or of improperly leaving his ship or place of duty or not and is not apprehended and tried for his offence, he shall be liable to forfeiture of wages and other benefits as the Minister prescribes; and the Commander-in-Chief may by an order containing a statement of the absence without leave direct that the clothes and effects, if any, left by him on board ship or at his place of duty be forfeited, and the same may be sold, and the proceeds of the sale shall be disposed of as the Commander-in-Chief may direct, and every order under this provision for forfeiture or sale shall be conclusive as to the fact of the absence without leave as therein stated of the person therein named; but in any case the Minister may, if it seem fit on sufficient cause being shown at any time after forfeiture and before sale remit the forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the use of the person to whom the clothes or effects belonged, or his representatives.

Miscellaneous Offences.

Profane swearing and other immoralities.

72. Every person who is guilty of any profane oath, cursing, execration, drunkenness, uncleanness, or other scandalous action in derogation of God's honour and corruption of good manners, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Officers cruelty or oppression.

73. Every officer who is guilty of cruelty, or of any scandalous or fraudulent conduct, shall be dismissed from the Naval Service with disgrace and every officer who is guilty of any other conduct unbecoming the character of an officer, shall be dismissed from the Naval Service with or without disgrace.

Suffering ships or aircraft to be improperly lost.

74. Every person who, designedly or negligently or by any default loses, strands, or hazards or suffers to be lost, stranded, or hazarded, any of His Majesty's Canadian Ships or other ships in the Naval Service, or designedly or negligently or by any default loses or suffers to be lost any aircraft belonging to the Naval Service, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

75. The officers of His Majesty's Canadian Ships appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf; and every officer who fails in his duty in this respect, and does not defend the ships and goods under his convoy, without deviation to any other objects, or refuses to fight in their defence, if they are assailed, or cowardly abandons and exposes the ships in his convoy to hazard, or demands or exacts any money or other reward from any merchant or master for convoying any ships or vessels entrusted to his care, or misuses the masters or mariners thereof, shall make such reparation in damages to the merchants, owners, and others, as the competent civil court adjudges, and also shall be punished according to the nature of his offence, by death or such lesser punishment as is hereinafter mentioned.

Not taking care of and defending ships under convoy.

76. Every officer in command of any of His Majesty's Canadian Ships who receives on board or permits to be received on board such ship any goods or merchandise whatsoever, other than for the sole use of the ship, except goods and merchandise on board any ship which may be shipwrecked or in imminent danger, either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Minister or his superior officer, shall be dismissed from the Naval Service, or suffer such lesser punishment as is hereinafter mentioned.

Taking goods on board other than for the use of the vessel.

77. Every person who wastefully expends, steals, or fraudulently buys, sells or receives any ammunition, provisions, or other public stores, and every person who knowingly permits any such wasteful expenditure, theft, sale, or receipt, shall suffer imprisonment elsewhere than in a penitentiary, or such lesser punishment as is hereinafter mentioned.

Embezzling public stores.

78. Every person who unlawfully sets fire to any dockyard, victualling yard, factory, arsenal, magazine, building, stores, or to any ship, vessel, hoy, barge, boat, or other craft or furniture thereunto belonging, not being the property of an enemy, pirate, or rebel, shall suffer death or such lesser punishment as is hereinafter mentioned.

Burning any magazine or vessel, etc. not belonging to an enemy.

79. Every person who knowingly makes or signs a false muster or record or other official document, or who commands, counsels or procures the making or signing thereof, or who aids or abets any other person in the making or signing thereof, shall be dismissed from the Naval Service

Making or signing false musters.

with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Intentionally inducing or aggravating disease or infirmity.

80. Every person who wilfully does any act or wilfully disobeys any orders, whether in hospital or elsewhere, with intent to produce or to aggravate any disease or infirmity, or to delay his cure, or who feigns any disease, infirmity, or inability to perform his duty, shall suffer imprisonment elsewhere than in a penitentiary or such lesser punishment as is hereinafter mentioned.

Endeavouring to stir up any disturbance on account of unwholesomeness of the victuals or other just grounds.

81. Every person who has any cause of complaint, either of the unwholesomeness of the victuals or upon any other just ground, shall quietly make the same known to his superior, or Captain, or Commander-in-Chief, and the said superior, Captain, or Commander-in-Chief, shall as far as he is able, cause the same to be presently remedied; and no person upon any pretence whatever shall attempt to stir up any disturbance, upon pain of such punishment as a court-martial may think fit to inflict, according to the degree of offence.

Not sending to the Exchequer Court all papers found aboard prize ships.

82. All the papers, charter-parties, bills of lading, passports, and other writings whatsoever that are taken, seized, or found aboard any ship or ships which are taken as prize shall be duly preserved, and the Commanding Officer of the ship which takes such prize shall send the originals entire and without fraud to the Exchequer Court of Canada there to be viewed, made use of, and proceeded upon according to law, upon pain that every person offending herein shall be dismissed from the Naval Service or shall suffer such lesser punishment as is hereinafter mentioned, and in addition thereto shall forfeit and lose his share of the capture.

Taking money or other effects out of any prize before the same is condemned.

83. No person shall take out of any prize or ship seized for prize any money, plate, or goods, unless it is necessary for the better securing thereof, or for the necessary use and service of any of His Majesty's Canadian Ships before the same be adjudged lawful prize in a competent Court; but the full and entire account of the whole without embezzlement shall be brought in, and judgment passed entirely upon the whole, without fraud, upon pain that every person offending herein shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned, and in addition thereto forfeit and lose his share of the capture.

Stripping or ill-using persons taken on board a prize.

84. If any ship or vessel is taken as prize, none of the officers, mariners, or other persons on board her shall be stripped of their clothes, or in any sort pillaged, beaten, or

ill-treated, upon pain that the person or persons so offending shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

85. If the Commanding Officer of any of His Majesty's Canadian Ships does any of the following things, namely:

- (a) by collusion with the enemy takes as prize any vessel, goods, or thing; or
- (b) unlawfully agrees with any person for the ransoming of any vessel, goods, or thing taken as prize; or
- (c) in pursuance of any unlawful agreement for ransoming or otherwise by collusion actually quits or restores any vessel, goods, or thing taken as prize;

Commanders capturing as prize by collusion, or collusively restoring ships or goods.

he shall be liable to dismissal from the Naval Service with disgrace, or to such lesser punishment as is hereinafter mentioned.

86. If any person breaks bulk on board any vessel taken as prize, or detained in the exercise of any belligerent right, or under any Act relating to piracy or to the slave trade or to the Customs, with intent to embezzle anything therein or belonging thereto, he shall be liable to dismissal from the Naval Service with disgrace, or to such lesser punishment as is hereinafter mentioned, and in addition thereto to forfeit and lose his share of the capture.

Breaking bulk on board prize ship with a view to embezzlement.

87. Every person who is guilty of any act, disorder, or neglect to the prejudice of good order and naval discipline, not hereinbefore specified, shall be dismissed from the Naval Service with disgrace, or suffer such lesser punishment as is hereinafter mentioned.

Offences against naval discipline not particularly mentioned.

88. Any person who commits any offence against this Part, such offence not being punishable with death or imprisonment in a penitentiary, shall, save where this Part expressly otherwise provides, be proceeded against and punished according to the laws and customs in such cases used at sea.

Crimes to be punished according to laws and customs in use.

Offences punishable by ordinary law.

89. Every person who is guilty of:

- (a) treason shall suffer death;
- (b) murder shall suffer death;
- (c) an offence under section three of *The Treachery Act* shall suffer death;

Offences punishable by ordinary law of Canada.

1940, c. 43.

- (d) rape shall suffer death or imprisonment in a penitentiary;
- (e) buggery, either with a human being or any other living creature, shall suffer imprisonment in a penitentiary;
- (f) manslaughter shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned;
- (g) robbery or theft shall suffer imprisonment in a penitentiary or such lesser punishment as is hereinafter mentioned;
- (h) any other offence which, if committed in Canada, would be punishable under the *Criminal Code* or any other Act of the Parliament of Canada, shall suffer either
- (i) the punishment assigned for the offence by the *Criminal Code* or the other Act; or
- (ii) if in committing the offence he is guilty under section eighty-seven of this Act of an act to the prejudice of good order and naval discipline not otherwise specified, the punishment provided by section eighty-seven.

R.S. c. 36.

Jurisdiction.

Jurisdiction
as to place
where
alleged
offence
committed.

90. (1) Every person who is charged with an offence under sections forty-nine to eighty-eight, both inclusive, and section ninety-six of this Act, may be tried and punished under this Part regardless of where the alleged offence was committed.

(2) Every person who is charged with an offence under section eighty-nine of this Act may be tried and punished under this Part:

- (a) when the alleged offence was committed within Canada—
- (i) in any harbour, haven, or creek or on any lake or river; or
- (ii) in or on any property of the Naval Service, including naval establishments, ships and other vessels, aircraft and vehicles; or
- (iii) on any premises held by or on behalf of the Crown in the right of Canada for naval or military or air force purposes; or
- (iv) in a canteen or sailor's home or any place of recreation placed at the disposal of or used by officers or men of the Naval Forces which is prescribed by the Minister;
- (b) when the alleged offence was committed outside of Canada, at any place on land, at sea or in the air.

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

Jurisdiction and limitation where offender has ceased to be subject to the Act.

Proviso.

General provisions.

92. Where the amount of punishment for any offence under this Part depends upon the intent with which it has been committed, and any person is charged with having committed such offence with an intent involving a greater degree of punishment, a court-martial may find that the offence was committed with an intent involving a less degree of punishment, and award such punishment accordingly.

Power of court-martial to find intent with which offence committed.

93. (1) Every person charged with an offence under sections forty-nine to eighty-eight of this Act, both inclusive, may, upon failure of proof of the commission of the offence charged be found guilty of another offence of the same class of which the evidence adduced proves him guilty the maximum punishment for which is less than the maximum punishment prescribed for the offence with which he is charged.

Power to find guilty of offence involving less punishment.

(2) If an offence with which a person is charged under section eighty-nine of this Act is not proved, he may be found guilty of any offence included in that offence of which on the evidence adduced he could be convicted under the *Criminal Code* or any other Act of the Parliament of Canada.

Power to find guilty of offence included in offence charged.
R.S. c. 36.

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

Rebels and mutineers to be deemed enemies.

95. Every officer in command of a fleet or squadron of His Majesty's Canadian Ships, or of one of His Majesty's Canadian Ships or the Senior Officer present at a port, or an officer having by virtue of subsections two and three of section one hundred and one of this Act power to try offences, may, by warrant under his hand, authorize any person to

Power to arrest offenders.

arrest any offender for any offence against this Part mentioned in such warrant; and any such warrant may include the names of more persons than one in respect of several offences of the same nature; and any person named in any such warrant may forthwith, on his apprehension, if the warrant so directs, be taken on board the ship to which he belongs, or some other ship of the Naval Service and any person so authorized may use force, if necessary, for the purpose of effecting such apprehension towards any person subject to this Part.

Penalty for not assisting in detection of offenders.

96. Every person who does not use his utmost endeavours to detect, apprehend and bring to punishment all offenders against this Part, and does not assist the officers appointed for that purpose, shall suffer imprisonment elsewhere than in a penitentiary, or such lesser punishment as is hereinafter mentioned.

Punishments.

Scale of punishments.

97. The following punishments may be inflicted in the Naval Service:

- (a) Death;
- (b) Imprisonment in a penitentiary;
- (c) Dismissal with disgrace from the Naval Service;
- (d) Imprisonment elsewhere than in a penitentiary;
- (e) Detention;
- (f) Dismissal from the Naval Service;
- (g) Forfeiture of seniority as an officer for a specified time, or otherwise;
- (h) Dismissal from the ship to which the offender belongs;
- (i) Severe reprimand, or reprimand;
- (j) Disrating a chief petty officer, petty officer or leading rating;
- (k) Forfeiture of pay, bounty, salvage, prize money, and allowances earned by, and of all annuities, gratuities medals, decorations, and good conduct and good service badges granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the ship to which he belongs;
- (l) Such minor punishments as are now inflicted according to the custom of the Naval Service, or may from time to time be allowed by the Minister;

and each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

98. (1) The following regulations are hereby made with respect to the infliction of punishments in the Naval Service:

Regulations
as to infliction
of
punishments.

- (a) The Minister may, except in case of sentence of death, which shall only be remitted by His Majesty, suspend, annul, or modify any sentence passed on any person subject to this Part, or substitute a punishment inferior in degree for the punishment involved in any such sentence, or remit the whole or any portion of the punishment involved in any such sentence, or remit the whole or any portion of any punishment into which the punishment involved in any such sentence has been commuted, and any sentence so modified shall (subject to the provisions of this Part) be valid, and shall be carried into execution as if it had been originally awarded, with such modification; but so that neither the degree nor the duration of the punishment involved in any sentence be increased by any such modification;
- (b) judgment of death shall not be passed on any prisoner unless four at least of the officers present at the court-martial, where the number does not exceed five, and in other cases a majority of not less than two-thirds of the officers present, concur in the sentence;
- (c) the punishment of death shall not be inflicted on any prisoner until the sentence has been confirmed by the Governor in Council;
- (d) the punishment of imprisonment in a penitentiary may be inflicted for the term of life, or for any other term of not less than two years;
- (e) the punishment of imprisonment in a penitentiary shall in all cases involve dismissal with disgrace from the Naval Service;
- (f) a sentence of dismissal with disgrace shall involve in all cases a forfeiture of all pay, bounty, salvage, prize money, and allowances that have been earned by, and of all annuities, gratuities, medals, decorations, and good conduct and good service badges that may have been granted to, the offender, and an incapacity to serve His Majesty again in any naval, military, air force, or civil service, and may also in all cases be accompanied by a sentence of imprisonment elsewhere than in a penitentiary;
- (g) the punishment of imprisonment elsewhere than in a penitentiary may be inflicted for any term less than two years and may be accompanied with a sentence of dismissal from the Naval Service;

(h) any prisoner who is sentenced to imprisonment elsewhere than in a penitentiary shall be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some other lawful prison or place of confinement other than a penitentiary in which imprisonment may be lawfully executed;

(i) a sentence of imprisonment elsewhere than in a penitentiary may also be accompanied with a direction that the prisoner shall be kept to hard labour for all or any part of the term of imprisonment;

(j) the punishment of detention may be inflicted for any term not exceeding two years;

(k) the punishment of imprisonment elsewhere than in a penitentiary, or detention whether on board ship or on shore, shall involve disrating in case of a chief petty officer, petty officer, or leading rating and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment or detention: Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of wages during the term of detention;

(l) no officer shall be subject to detention.

(2) All other punishments authorized by this Part may be inflicted in the manner heretofore in use in the Naval Service.

Limitation
of time to
trials.

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

Degrees of
punishment.

"lesser
punishment."

100. Where any punishment is specified by this Part as the penalty for any offence, and it is further declared that a lesser punishment may be awarded in respect of the same offence, the expression 'lesser punishment' shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment, according to the scale contained in section ninety-seven of this Act.

101. (1) Any offence triable under this Part may be tried and punished by court-martial.

Court-martial to have power to try offences. Summary trial by officer in command.

(2) Any offence not capital which is triable under this Part, and (except in the cases by this Part expressly provided for) is not committed by an officer, may, under such regulations as the Minister from time to time issues, be summarily tried and punished by the Officer in Command of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the Officer in Command shall not have power to award imprisonment in a penitentiary at all or to award imprisonment elsewhere than in a penitentiary or detention for more than three calendar months.

(3) The power by this section vested in an Officer in Command of a ship may,

Idem.

(a) as respects persons on board a tender to the ship, be exercised in the case of a single tender absent from the ship, by the officer in command of such tender, and in the case of two or more tenders absent from the ship in company or acting together, by the officer in immediate command of such tenders; and

(b) as respects persons on board any boat or boats belonging to the ship, be exercised, when such boat or boats is or are absent on detached service, by the officer in command of the boat or boats; and

(c) as respects persons subject to this Part on detached service either on shore or otherwise, be exercised by the officer in immediate command of those persons; and

(d) as respects persons subject to this Part quartered in naval barracks, be exercised by the officer in command of those barracks.

102. With respect to any subordinate officer, the punishment of forfeiture of time or seniority may be imposed by the Minister for any time not exceeding twelve months, or by the Commanding Officer for any time not exceeding three months.

Authorities empowered to impose punishments to adhere to provisions herein named.

Disciplinary Court

103. (1) Where any officer or man is in time of emergency alleged to have been guilty of an offence under section fifty-six, sixty-four, sixty-five, sixty-six, sixty-nine, seventy, seventy-two, or eighty-seven, of this Act, the officer having power to order a court-martial may, if he considers that the offence is of such a character as not to necessitate trial by court-martial, in lieu of ordering a court-martial, order a disciplinary court constituted as hereinafter mentioned.

Trial of officers and men for disciplinary offences in time of emergency.

- Composition of disciplinary court.** (2) A disciplinary court shall be composed of not less than three nor more than five officers, of whom one shall be a commander or of higher rank.
- Powers.** (3) A disciplinary court shall have power to impose any punishment inferior to imprisonment elsewhere than in a penitentiary in the scale hereinbefore contained, but no greater punishment.
- Regulations.** (4) The Minister may from time to time make regulations governing the assembling, constitution and procedure and practice of disciplinary courts under this section, and the regulations shall provide for evidence being taken on oath and empower the court to administer oaths for that purpose.

Courts-martial.

- Constitution of courts-martial.** **104.** (1) A court-martial shall consist of not less than five nor more than nine officers.
- Qualifications.** (2) Subject to section one hundred and five, no officer shall be qualified to sit as a member of any court-martial held in pursuance of this Act unless he is a flag officer, captain, commander, lieutenant-commander, or lieutenant of the permanent naval force on full pay.
- Court-martial only when two or more ships together.** (3) A court-martial shall not be held unless at least two of His Majesty's Canadian Ships not being tenders, and commanded by captains, commanders, lieutenant-commanders, or lieutenants of the Naval Forces on full pay, are together at the time when such court-martial is held.
- Officers must be 21 or over.** (4) No officer shall sit on a court-martial who is under twenty-one years of age.
- Trial of flag officer.** (5) No court-martial for the trial of a flag officer shall be duly constituted unless the president is a flag officer, and the other officers composing the court are of the rank of captain, or of higher rank.
- Trial of captain.** (6) No court-martial for the trial of a captain in the Naval Forces shall be duly constituted unless the president is a captain or of higher rank, and the other officers composing the court are commanders or officers of higher rank.
- Trial of person below rank of captain.** (7) No court-martial for the trial of a person below the rank of captain in the Naval Forces shall be duly constituted, unless the president is a captain or of higher rank, nor, if the person to be tried is of the rank of commander, unless in addition to the president two other members of the court are of the rank of commander or of higher rank.
- Prosecutor not to sit on c.-m.** (8) The prosecutor shall not sit on any court-martial for the trial of a person whom he prosecutes.

(9) The Minister shall have power to order courts-martial to be held for the trial of offences under this Part, and to grant commissions to any officer of the Naval Forces on full pay authorizing him to order courts-martial to be held for the trial of such offences.

Minister may order court-martial and delegate such power.

(10) An officer holding a commission from the Minister to order courts-martial shall not be empowered to do so if there is present at the place where such court-martial is to be held any officer superior in rank to himself on full pay and in command of one or more of His Majesty's Canadian Ships or vessels although such last-mentioned officer may not hold a commission to order courts-martial; and in such a case such a last-mentioned officer may order a court-martial, although he does not hold any commission for the purpose.

When commissioned officer may not order a court-martial.

(11) The officer ordering a court-martial shall not sit thereon.

Officer ordering not to sit. President.

(12) The president of every court-martial shall be named by the authority ordering the same, or by any officer empowered by such authority to name the president.

(13) No commander, lieutenant-commander, or lieutenant shall be required to sit as a member of any court-martial when four officers of a higher rank and junior to the president can be assembled at the place where the court-martial is to be held (but the regularity or validity of any court-martial or of the proceedings thereof, shall not be affected by any commander, lieutenant-commander, or lieutenant being required to sit, or sitting, thereon, under any circumstances); and when any commander, lieutenant-commander or lieutenant sits on any court-martial the members of it shall not exceed five in number.

When officer not required to sit.

(14) Subject to the foregoing provisions of this section, whenever a court-martial is held, the officer appointed to preside thereat shall summon all the officers next in seniority to himself present at the place where the court-martial is held to sit thereon, until the number of nine, or such number, not less than five, as is attainable, is complete; but any officer of the rank of captain or above who is superintendent of a Naval Service dockyard, shall not be summoned to sit on courts-martial unless specially directed to do so by orders from the Minister.

President to summon required officers.

(15) The Minister may make regulations governing the assembling, constitution, procedure and practice of courts-martial and shall include among them provisions for evidence being taken on oath; and the court shall have power to administer oaths for that purpose.

Regulations.

105. When the Naval Forces are on active service, officers of the naval reserve force and the naval volunteer reserve force may sit as members of courts-martial or disciplinary courts on the same basis and under the same conditions as officers of the permanent naval force.

Reserve officers sitting on court-martial during war-time.

Where courts-martial to be held

106. A court-martial under this Part shall be held on board one of His Majesty's Canadian Ships, unless the Minister or the officer who ordered the court-martial in any particular case for reasons to be recorded on the proceedings otherwise directs in which case the court-martial shall be held at a port at such convenient place on shore as the Minister or the officer who ordered the court-martial shall direct.

As to time of sittings of courts-martial.

107. A court-martial held in pursuance of this Part may, if it appears to the court that an adjournment is desirable, be adjourned for a period not exceeding six days, but except where an adjournment is ordered shall sit from day to day, with the exception of Sundays, until sentence is given, unless prevented from so doing by stress of weather or unavoidable accident, and its proceedings shall not be delayed by the absence of any member, so that not less than four are present; and no member shall absent himself unless compelled to do so by sickness or other just cause, to be approved of by the other members of the court, and if any member of a court-martial absents himself therefrom, in contravention of this section, he shall be dismissed from the Naval Service, or shall suffer such lesser punishment as may be awarded by a court-martial.

Appointment of officiating judge advocate.

108. In the absence of the Judge Advocate of the Fleet or his deputy, and in default of any appointment in this behalf by the Minister, or by the Commander-in-Chief of any fleet or squadron, the officer who is to be the president of the court-martial shall appoint a person to officiate as deputy judge advocate at the trial; and the Judge Advocate of the Fleet for the time being, or his deputy, or the person officiating as deputy judge advocate, at any trial, shall administer an oath to every witness appearing at the trial.

Proceedings at trial.

109. (1) As soon as the court is assembled, the names of the officers composing the court shall be read over to the person charged, who shall be asked if he objects to being tried by any member of the court. If the person charged objects to any member, the objection shall be decided by the court. If the objection is allowed the place of the member objected to shall be filled by the officer next in seniority who is not on the court-martial, and is qualified to sit.

Idem.

(2) The person charged may then raise any other objection which he desires to make respecting the constitution of the court-martial. The objection shall then be decided by the court, which decision shall be final, and the constitution of the court-martial shall not be afterwards impeached, and it shall be deemed to have been in all respects duly constituted.

110. Before the court proceeds to try the person charged, the Judge Advocate of the Fleet, or his deputy, or the person officiating as deputy judge advocate, shall administer to every member of the court the following oath: that is to say,

Oaths to be administered to members of courts-martial

"I,, do swear that I will duly administer justice according to law, without partiality, favour, or affection; and I do further swear, that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help me God."

111. As soon as the oath is administered to the members of the court-martial, the president shall administer to the Judge Advocate of the Fleet, or his deputy, or the person officiating as deputy judge advocate, the following oath:—

Oaths to be administered to judge advocate, etc.

"I,, do swear, that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless thereunto required in due course of law. So help me God."

112. A Navy List or Gazette purporting to be published by authority and either to be printed by a Government printer or to be issued by the King's Printer, shall be evidence of the status and rank of the officers therein mentioned and of any appointment held by such officers until the contrary is proved.

Evidence of rank, etc., of officers.

Sentences.

113. Whenever sentence is passed by a court-martial on an offender already under sentence either of detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary, passed upon him under this Part for a former offence, the court may award sentence of detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary for the offence for which he is under trial to commence at the expiration of the detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary, to which he has been previously sentenced, although the aggregate of the terms of detention, imprisonment elsewhere than in a penitentiary, or imprisonment in a penitentiary, may exceed the term for which any of those punishments could otherwise be awarded: Provided that nothing in this section shall cause a person to undergo imprisonment elsewhere than in a penitentiary for any period exceeding in the aggregate less than two consecutive years, or detention for any period exceeding in the aggregate two consecutive years, and so much of any term of imprisonment or detention respectively imposed on a person by a sentence in pursuance of this section as would prolong the total term of his punishment beyond those periods shall be deemed to be remitted.

Imprisonment of offender already under sentence for previous offence.

Proviso.

Term of imprisonment.

114. (1) Every term of imprisonment in a penitentiary or imprisonment elsewhere than in a penitentiary, or detention in pursuance of this Part shall be reckoned as commencing on the day on which the sentence was awarded.

Place.

(2) The place of imprisonment or detention whether the imprisonment or detention was awarded as an original or as a commuted punishment, shall be such place as may be appointed by the court or the Commanding Officer awarding the punishment, or as may from time to time be appointed by the Minister.

Term and place.

(3) Where, by reason of a ship being at sea or off a place at which there is no proper penitentiary, prison, or naval detention quarters, a sentence of imprisonment, either in a penitentiary or elsewhere, or detention, as the case may be, cannot be duly executed, then, subject as hereinafter mentioned, an offender under sentence of imprisonment, either in a penitentiary or elsewhere, or detention, as the case may be, may be sent with all reasonable speed to some place at which there is a proper penitentiary, prison or naval detention quarters, in which the sentence can be duly executed, and on arrival there the offender shall undergo his sentence, in like manner as if the date of such arrival were the day on which the sentence was awarded, notwithstanding that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary, or detention, as the case may be, shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said sentence.

Warrant.

(4) Where in pursuance of this Part a person is sentenced to imprisonment, either in a penitentiary or elsewhere, or detention, the order of the Minister or of the Commander-in-Chief, or of the officer ordering the court-martial by which such person was sentenced, or, if he was sentenced by the Commanding Officer of a ship, the order of such Commanding Officer shall be a sufficient warrant for the sending of such person to the place of imprisonment or detention, there to undergo his sentence according to law, and until he reaches such place of imprisonment or detention for detaining him in naval custody, or in the case of a person sentenced to imprisonment either in a penitentiary or elsewhere, in any penitentiary, civil prison or place of confinement.

Power to suspend sentences.

115. (1) Where a person has been sentenced to imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary, or detention the Minister or officer who by virtue of subsection four of section one hundred and fourteen of this Act has power to issue an order of com-

mittal (hereinafter in this section referred to as 'the committing authority') may, in lieu of issuing such an order, order that the sentence be suspended until an order of committal is issued, and in such case:

- (a) notwithstanding anything in this Part the term of the sentence shall not be reckoned as commencing until an order of committal is issued;
- (b) the case may at any time, and shall at intervals of not more than three months, be reconsidered by the Minister or committing authority, or an officer, holding such command as the Minister may by regulation prescribe, and if on any such reconsideration it appears to the Minister, committing authority or officer that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, the Minister or committing authority or officer shall remit the whole or any part of it;
- (c) subject to regulations made by the Minister, the Minister or committing authority, or an officer holding such command as the Minister may by regulation prescribe, may at any time while the sentence is suspended issue an order of committal and thereupon the sentence shall cease to be suspended;
- (d) where a person while a sentence on him is so suspended, is sentenced to imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary, or detention for any other offence then, if he is at any time committed either under the suspended sentence or under any such subsequent sentence and whether or not any such subsequent sentence has also been suspended, the committing authority may direct that the two sentences shall run either concurrently or consecutively, so, however, as not to cause a person to undergo imprisonment elsewhere than in a penitentiary for a period exceeding in the aggregate less than two consecutive years, or detention for a period exceeding in the aggregate two consecutive years, and where the sentence for such other offence is a sentence of imprisonment in a penitentiary, then, whether or not that sentence is suspended, any previous sentence of imprisonment elsewhere than in a penitentiary or detention which has been suspended shall be avoided.

(2) Where a person has been sentenced to imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary or detention and an order of committal has been issued, the Minister or the committing authority, or an officer holding such command as the Minister may by regulation prescribe, may order the sentence to be suspended, and in such case the person whose sentence is suspended shall be discharged and the currency of the sentence shall be suspended until he is again committed under the same sentence, and paragraphs (b) and (d) of

Suspended
sentence.

sub-section one of this section shall apply in like manner as in the case where a sentence has been suspended before an order of committal has been issued.

Minister may order penalty either remitted, suspended, or not.

(3) Where a sentence is suspended under this section whether before or after committal, the Minister or, subject to any regulation or direction which may be issued by the Minister, the committing authority or officer by whom the sentence is suspended may, notwithstanding anything in section ninety-eight of this Act direct that any penalty which is involved by the punishment of imprisonment in a penitentiary, or imprisonment elsewhere than in a penitentiary or detention either shall be or shall not be remitted or suspended.

Place of imprisonment may be changed, etc.

116. Whenever it is deemed expedient the Minister, the Commander-in-Chief or senior naval officer present may by an order in writing from time to time change the place of confinement of any offender imprisoned or sentenced to be imprisoned elsewhere than in a penitentiary or detained in pursuance of this Part or of any offender undergoing or sentenced to undergo detention, and the gaoler or other person having the custody of such offender shall immediately on the receipt of such order remove such offender to the other place of confinement, or in case of an offender undergoing or sentenced to undergo detention, to the naval detention quarters mentioned in the said order, or shall deliver him over to naval custody for the purpose of the offender being removed to such other place of confinement or naval detention quarters; and every gaoler or keeper of such last-mentioned place of confinement or naval detention quarters shall, upon being furnished with a copy of such order of removal, attested by or on behalf of the Minister receive into his custody and shall confine pursuant to such sentence or order every such offender.

Proviso for discharge or removal of prisoners.

117. (1) Whenever any offender is undergoing imprisonment elsewhere than in a penitentiary or detention in pursuance of this Part, it shall be lawful for the Minister, or where an offender is undergoing imprisonment elsewhere than in a penitentiary or detention by order of his Commanding Officer, for such a Commanding Officer or the Minister, to give an order in writing directing that the offender be discharged; and it shall also be lawful for the Minister and any officer commanding any of His Majesty's Canadian Ships by order in writing, to direct that such offender be delivered over to naval custody for the purpose of being brought before a court-martial, either as a witness, or for trial or otherwise, and such offender shall accordingly, on the production of any such order, be discharged, or be delivered over to such custody.

(2) The time during which any offender under sentence of imprisonment elsewhere than in a penitentiary or detention is detained in naval custody under sub-section one of this section or under section one hundred and sixteen shall be reckoned as imprisonment or detention under his sentence for whatever purpose he is so detained; and the governor, gaoler, keeper, or superintendent who delivers over any such offender shall again receive him from naval custody, so that he may undergo the remainder of his punishment.

Proviso as to time of detention in naval custody.

118. The Minister may set apart any buildings or vessels, or any parts thereof, as naval prisons or naval detention quarters, and any buildings or vessels, or parts of buildings or vessels, so set apart as naval prisons or naval detention quarters, as the case may be, shall be deemed to be naval prisons or naval detention quarters respectively within the meaning of this Part.

Minister may set apart buildings and ships as naval prisons.

Supplemental provisions.

119. (1) When one of His Majesty's Canadian Ships is wrecked or lost or destroyed, or taken by the enemy, such ship shall, for the purposes of this Part, be deemed to remain in commission until her crew has been regularly removed into some other of His Majesty's Canadian Ships or until a court-martial has been held, pursuant to the custom of the Naval Service in such cases, to inquire into the cause of the wreck, loss, destruction, or capture of the ship.

Crews of ships lost or destroyed.

(2) When no specific charge has been made against any officer or man for or in respect or in consequence of such wreck, loss, destruction, or capture, all the surviving officers and men of any such ship may be tried together, before one and the same court, and upon their trial may be called upon to give evidence on oath or affirmation before the court touching any of the matters then under inquiry, but no officer or man shall be obliged to give any evidence which may tend to incriminate himself

All the officers and crew of lost ship may be tried by one court.

(3) When deemed necessary by the Minister or any officer authorized to order courts-martial, separate courts-martial shall be held for the trial of one or more of such officers and men for or in respect or in consequence of the wreck, loss, destruction, or capture of any such ship.

Or by separate courts.

(4) For any offence or offences committed by any officer or man or officers and men after the wreck, loss, destruction, or capture of any such ship, a separate court-martial shall be held for the trial of such offender or offenders.

For subsequent offence, separate court.

120. If the ship of any officer ordered to command any two or more of His Majesty's Canadian Ships has been wrecked, lost, or otherwise destroyed, such officer shall

When ship of senior officer is lost, he may dispose of officers and crew of lost ship.

continue in the command of any ship or ships which at the time of his ship being wrecked, lost, or destroyed was or were under his command, and such officer may order the surviving officers and crew of the wrecked, lost, or destroyed ship to join any other ship under his command, or may distribute them among the other ships under his command, if more than one, and such officer shall, until he meets with some other officer senior to himself, have the same power and authority in all respects as if his ship had not been wrecked, lost or destroyed.

Saving provision.

Act not to supersede authority of ordinary courts.

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

PART III

REPEAL—OPERATION.

Repeal.

Imperial Acts and regulations repealed.

122. *The Naval Discipline Act, 1866*, and the Acts in amendment thereof passed by the Parliament of the United Kingdom, *The Naval Discipline (Dominion Naval Forces) Act, 1911*, passed by the Parliament of the United Kingdom, and the King's Regulations and Admiralty Instructions, in so far as they are part of the law of Canada, are repealed.

Act repealed.

123. *The Naval Service Act*, chapter one hundred and thirty-nine of the Revised Statutes of Canada, 1927, is repealed.

Commencement of Act.

Coming into force.

124. This Act shall come into force on a date to be fixed by proclamation of the Governor in Council published in the *Canada Gazette*.