

OATHS FOR USE IN COURTS-MARTIAL

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, 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.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and 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.

3. OFFER UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and 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.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TMOINS. (RO (Can) 2693.)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. **RECORDING PROCEEDINGS:** When no shorthand writer is employed the addresses of Prosecutor and Defending Officer (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accused in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accused to go on parade. He refused and did not go on parade. Cross-exam: He did not say he was sick. (or, None.) Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 93(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 93(B) should be complied with. If taken verbatim, RP 93(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. **DEFENCE PROCEDURE:** RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

- (i) Opening address by Defending Officer. (RP 60(C), 87(C), 92(C) (D).)
- (ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (See RP 41 fn 3, 46 fn 1, 80.)
- (iii) Evidence of witnesses for accused as to facts or his character or both. (See RP 46 fn 1.)
- (iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 60(B)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)
- (v) Closing address (on matters other than in mitigation of punishment) by Defending Officer or accused. (See RP 40 fn 8-12, 87(C), 92(C) (D).) But Defending Officer or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly, see RP 61.)
- (vi) Closing address by Prosecutor. (See RP 40 fn 7, 87(C), 92(C) (D).) Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)
- (vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL

1. All deletions and alterations in printed and written record MUST BE INITIALED BY President or JA, if any. **RECORD FORMS R, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALED.**

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALED BY President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

- (i) Charge Sheet. (On top.)
- (ii) Convening Order with any declarations made by Convening Officer under RP 104, 106, 107, 114.
- (iii) Medical Certificate(s). (KR Can 557.)
- (iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
- (v) Exhibits numbered Ex A, Ex B, etc. (As to admission in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 142 (1) (g) (h).)
- (vi) Summary of Evidence, if not already on exhibit.
3. Any report or remarks by President or Court for attention of Confirming Officer will be attached to p 4 of CF A 96 and not form part of record of proceedings. (RP 85(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (AA 55(B), RP 118(C), MML p 758.)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.