

Canadian Forces Act

law he must be tried by a special court consisting of a Canadian judge or Canadian barrister of ten years' standing. In other words, there are certain classes, as the hon. member will notice, who must be tried—if they are going to be tried under the code of service discipline at all—by a civilian judge or barrister.

Mr. Harkness: When we come to the latter part of the clause we find that it says that these various persons are to...

... be tried by a general court-martial consisting of a person, designated by the minister, who is or has been a judge of a superior court in Canada, or is a barrister...

And so on. I presume that that person will, in most cases, be the judge advocate? Is that the intention?

Mr. Campney: No.

Mr. Harkness: Or is it intended to appoint special people?

Mr. Campney: It is intended, if it be a judge, that he would be a civilian judge, or a civilian barrister. The idea is to bring the civilian judge or barrister into cases of that category.

Mr. Harkness: In other words, the intention is to appoint special people to act as judges in those courts and not to use members of the judge advocate general's branch for the purpose?

Mr. Campney: That is correct.

Mr. Harkness: I presume that again means a considerable increase in expense or cost of handling these matters?

Mr. Campney: From such study as we have been able to make and from observations made throughout the service, we do not anticipate a great number of these cases. This is a saving clause rather than a clause under which we think there will be a vast number of cases. Under the circumstances, I would not think that the need for this type of trial would arise very often.

Mr. Mitchell (London): I have two questions arising out of the remarks made by the minister. What is the right of appeal, if any, from the decision or sentence imposed by this court? The second, and perhaps more important matter, is this use of the words "sympathetic understanding". I do not think any of us in this committee are too much worried about the understanding that we would receive from the civilian authorities in the United Kingdom or, perhaps, those in France; but we may be considerably worried about the nature of the sympathetic understanding which we would receive from some

[Mr. Campney.]

of the other continental countries who live under an entirely different code. For that reason I reiterate that something further should be done to define the rights of one of our citizens serving abroad to be tried by our courts, except perhaps for capital or similar offences.

Mr. Campney: As to the first question asked by the hon. member, an appeal would lie from any of these courts-martial to the court-martial appeal board, and, in some cases, with the final appeal to the Supreme Court of Canada.

With regard to the second question, the NATO agreement among all the constituent countries applies. These decisions have to be arrived at by agreement. One country cannot assert jurisdiction in another country unless the other country is willing to allow it to do so. This term "sympathetic understanding" in connection with these matters is a part of the NATO agreement among these countries. All have agreed on that. A country cannot assert something that it really has no legal right to assert. One can get a great deal further, I am sure, by negotiation and by following the term "sympathetic understanding" than in almost any other way. All NATO countries are in that position, trying to work with each other.

Mr. MacLean: I am still not quite clear about what is meant by the explanatory note in connection with clause 10. It says that dependents who are subject to the military code must be tried by a general court-martial and other civilians may be so tried. What power has a commanding officer, if any, to deal summarily with minor offences committed by dependents at that station, perhaps in permanent married quarters in another country, something that has no direct concern with the civilian population of the country concerned at all? To all intents and purposes it is an internal thing as far as the unit is concerned. What is the position of the commanding officer as to his powers of discipline or punishment of the dependent?

Mr. Campney: He would have no jurisdiction whatever over any dependent.

Clause agreed to.

On clause 11—*False answers or false information.*

Mr. Harkness: What is the reason for making this addition to this clause? In other words, why does the clause need enlargement? Has it been found that, as it stands, it has not been able to meet the need? The chief false information, of course, which is given by anyone at the time of enlistment