

National Defence Act

Mr. Hellyer: Can the minister give us a little more information about the new section 189 found in clause 6? Does the chief of staff, upon the recommendation of the judge advocate general, have the right under any circumstances to withhold an appeal?

Mr. Pearkes: No, the chief of staff has no right to withhold an appeal. It is a privilege of the man who has been convicted to enter an appeal.

Mr. Nielsen: Would I be right in saying that the right of appeal of a serviceman under this legislation is the same as the right of a civilian to appeal before an ordinary court?

Mr. Pearkes: I am informed that an accused appearing before a court martial does not have the same right of appeal to the court martial appeal board as a person convicted by a civil court has to appeal to a provincial court of appeal. The person convicted by a court martial has a wider right in that no leave to appeal is required in any case, but his right is narrower in that he may only appeal to the court martial appeal board against the legality of the finding and sentence.

He may appeal against the severity of the sentence, but such an appeal is considered by the appropriate chief of staff and not by the court. It is considered that it would be inappropriate for a non-military tribunal to deal with the question of the severity of sentence as the sentence is based primarily upon military considerations. Of course, there is the other opportunity of appeal from the severity of the sentence by the submission of a grievance which is forwarded to the minister or the governor in council.

Mr. Hellyer: Would the minister explain a little more about section 189 (2) of the act which relates to the appeal against the legality of the findings. It says that the appeal shall be referred by the judge advocate general to the court martial appeal court unless the appropriate chief of staff, acting on the certificate of the judge advocate general quashes such findings.

Mr. Pearkes: If on the recommendation of the judge advocate general the finding has been quashed, that ends the whole proceedings. There is no need for an appeal, then.

Mr. Hellyer: Then he does have, in effect, the power of veto.

Mr. Pearkes: He has the right to quash any finding, and then there is no appeal necessary. The case is finished.

Mr. Hellyer: That is the point I was trying to make. Then, there is no right of appeal.

[Mr. Pearkes.]

Mr. Pearkes: It is the same as if the man were acquitted.

The Deputy Chairman: Shall clause 6 carry?

Mr. Pearkes: May I make a brief statement before that clause is actually carried? I should like to make some reference to the work of the court martial appeal board before the clause passes.

Following its establishment in 1951, 762 courts martial have been held in the three services, and this has resulted in hearings by the board of 52 appeals. Of these, the board disallowed 29, ordered new trials in 14 cases and allowed six without ordering a new trial. The decisions are still pending on three appeals. It is evident from these figures, and also from the care taken in the preparation of its judgments, that the court martial appeal board has made a very substantial contribution toward ensuring that military justice is administered in a fair and impartial manner.

The members of the court martial appeal board are hon. Mr. Justice Cameron of the exchequer court, His Honour A. G. Mac-Dougall, senior judge of the county court of Carleton, and the following members of the bar; Mr. Bernard M. Alexandor, Leonard W. Brockington, M. B. K. Gordon, George Addy, L. Plant, L. C. Audette and R. J. Orde. May I, on behalf of the government and the members of the armed forces, thank these gentlemen for the very fine work they have done. This work, and the experience the services have acquired in connection with appeal procedure, will facilitate greatly the establishment of a duly constituted court of appeal which this clause seeks to do.

Mr. Hellyer: Is the minister satisfied that this new procedure will expedite the hearing of these appeals?

Mr. Pearkes: Yes, that is one of the main reasons for introducing this amendment, in order to expedite the appeals. There has been, at times, a serious backlog owing to the volume of work that these gentlemen whom I have just mentioned had to carry out in addition to their ordinary legal business.

Mr. Benidickson: Has that backlog been analysed statistically? Is there any information on that?

Mr. Pearkes: I have just given the number of cases.

Mr. Benidickson: I mean the delays.

Mr. Pearkes: The delays have been in the main due to the pressure of other work, the