

*National Defence Act*

**Mr. Pearkes:** No, I do not think they could have been included in the bill but I will be very pleased to table them as soon as they are printed if the hon. member is interested.

**Mr. Hellyer:** I will be pleased to receive a copy.

**Mr. Nielsen:** Can the minister explain the reason for the change from the rules of evidence formerly applicable at courts martial to what amounts to rules of evidence to be legislated? Will the minister also explain how changes and additions in the rules of evidence brought about by precedents laid down in the courts from time to time will be included in these rules of evidence?

**Mr. Pearkes:** I am informed there is no uniform code of rules of evidence which applies in all the provinces. The code will be tabled. When amendments are made to the rules of evidence any changes required in the code will be made by way of amendment.

Clause agreed to.

Clause 4 agreed to.

On clause 5—*Regulations respecting execution of punishment of death.*

**Mr. Hellyer:** I understand that the reason for this clause is to set out in detail the manner in which an execution is to be carried out. Does the minister have any further explanation beyond his statement of the other evening?

**Mr. Pearkes:** Yes. If a court martial sentences a serviceman to the death penalty the sentence, if approved by the convening officer, is referred to the governor in council. The governor in council would then be advised by the minister submitting the recommendation as to the place where and manner in which the execution should be carried out and also as to the date. In an ordinary civil court the judge, at the time he pronounces sentence, announces the place where, the manner in which and the date when the sentence will be carried out. That is not possible, of course, when dealing with sentences imposed by a court martial. The sentence might be pronounced in some far distant country overseas. It would have to be submitted to the governor in council and the recommendation with respect to whether the execution should be carried out by hanging or whether it should be carried out by a firing squad would then have to be considered by the governor in council.

**Mr. Nielsen:** I have two questions on this clause. Under the present National Defence Act what offences call for the punishment of death? Second, is the sentence of death appealable to the court martial appeal board,

to be called by another name under the next clause in the bill, regardless of whether or not the individual found guilty is on active service?

**Mr. Pearkes:** Yes. All findings of courts martial can be appealed to the appeal board or appeal court as it will be called if the bill carries. There are a number of crimes which one might describe as being of a traitorous nature for which the death sentence may be imposed if the crimes are committed in the face of an enemy.

**Mr. Hellyer:** I wonder whether the minister would permit one question on the previous clause. At the top of page 2 it says that when the decision of the court martial is not unanimous that court is to be dissolved and the accused may be tried again. How many times can an accused be tried on the same count? Is there any limit?

**Mr. Pearkes:** This is similar to a case where a jury would disagree in an ordinary court. There is no limit put on the number of times that an accused may be tried.

Clause agreed to.

On clause 6—*Preliminary disposition of appeals.*

**Mr. Nielsen:** Would the minister explain what the purpose is in changing the name of the court martial appeal board and setting up this court under the jurisdiction of superior court judges rather than the body in existence under the present legislation?

**Mr. Pearkes:** The reason for recommending that the court martial appeal board be replaced by a court of appeal is to give servicemen the same opportunity of appealing to a superior court that an ordinary civilian would have. It is really raising the status of the appeal body from that of a board to that of a court composed of judges either of the exchequer court or of the superior court of the province.

**Mr. Nielsen:** Before the clause carries, may I say that I think it is a tremendous advantage to the serviceman to have such a facility available to him. Will the minister explain further whether under the National Defence Act the serviceman may obtain the assistance of counsel to advise him as to whether or not he should appeal? If the decision is made to appeal can he obtain the assistance of civilian counsel for the purpose of appealing to the court? These rights are available, of course, to accused persons in civil life and I feel that they should be available to the serviceman.

**Mr. Pearkes:** There is provision for them to have counsel.