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No 1
to No

1950

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

TUESDAY, MAY 23, 1950

WITNESSES:

Mr. C. M. Drury, C.B.E., D.S.O., E.D., Deputy Minister of National Defence;

Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General;

Major J. H. Ready, Assistant Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. Campney, *Chairman*

and

Messrs.

Adamson,	George,	McLean *(Huron-Perth)*,
Balcer,	Gillis,	Pearkes,
Bennett,	Harkness,	Roberge,
Blackmore,	Henderson,	Stick,
Blanchette,	Higgins,	Thomson,
Cavers,	Langlois *(Gaspé)*,	Viau,
Claxton,	Lapointe,	Welbourn,
Dickey,	Larson,	Wright—25

(Quorum, 10)

ANTOINE CHASSE,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

TUESDAY, 16th May, 1950.

Resolved—That a Special Committee be appointed to consider Bill No. 133, An Act respecting National Defence; with power to send for persons, papers and records and to report from time to time; and that the said Committee consist of Messrs. Adamson, Balcer, Bennett, Blackmore, Blanchette, Campney, Cavers, Claxton, Dickey, George, Gillis, Harkness, Henderson, Higgins, Langlois *(Gaspe)*, Lapointe, Larson, McLean *(Huron-Perth)*, Pearkes, Roberge, Stick, Thomson, Viau, Welbourn and Wright; and that Standing Order 65(1) be suspended in relation thereto.

TUESDAY, 16th May, 1950.

Ordered—That Bill No. 133, An Act respecting National Defence; and Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof, be referred to the said Committee, and that the said Committee be empowered to consider the said Bills.

WEDNESDAY, 17th May, 1950.

Ordered—That Bill No. 221, An Act to provide for the Payment and Distribution of Prize Money, be referred to the said Committee, and that the said Committee be empowered to consider the said Bill.

Attest.

TUESDAY, 23rd May, 1950.

Ordered—That the said Committee be empowered to sit while the House is sitting.

Ordered—That the quorum of the said Committee be reduced from 13 members to 10.

Ordered—That the said Committee be authorized to print, from day to day, 500 copies in English and 250 copies in French of its Minutes of Proceedings and Evidence, and that Standing Order 64 be suspended in relation thereto.

Attest.

LEON J. RAYMOND

Clerk of the House.

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MINUTES OF PROCEEDINGS

TUESDAY, May 23, 1950

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 11.00 a.m.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Campney, Cavers, Claxton, George, Gillis, Harkness, Henderson, Langlois (*Gaspe*), McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Thomson, Viau, Welbourn, Wright.

In attendance: Mr. C. M. Drury, C.B.E., D.S.O., E.D., Deputy Minister of National Defence; Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander, H. A. McLearn, Deputy Judge Advocate General; Major J. H. Ready, Assistant Judge Advocate General.

The Clerk read the First Order of Reference of 16th May and invited nomination for the appointment of a Chairman.

On motion of Mr. George, Mr. R. O. Campney was unanimously elected Chairman.

The Chairman, Mr. Campney, took the Chair and thanked the members for the honour they bestowed upon him. He invited the co-operation of the Committee. He suggested that the Committee might consider the election of a Vice-Chairman.

On motion of Mr. Viau,

Resolved,—That the Committee request permission to sit while the House is sitting.

On motion of Mr. Thomson,

Resolved,—That a recommendation be made to the House that the quorum of the Committee be reduced from 13 Members to 10.

On motion of Mr. Stick,

Resolved,—That the Committee request permission to print, from day to day, 500 copies in English and 250 copies in French of the Minutes of Proceedings and Evidence.

On motion of Mr. Blanchette, it was unanimously resolved that Mr. Langlois be elected Vice-Chairman.

The Second Order of Reference, of 16th May and Third Order of Reference, of 17th May were read.

Mr. Adamson moved that the Committee proceed first with the consideration of Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof, and of Bill No. 221, An Act to provide for the Payment and Distribution of Prize Money, and thereafter consider Bill 133, An Act respecting National Defence.

After discussion, and the question having been put on the proposed motion of Mr. Adamson, it was resolved in the negative.

The Committee then proceeded to the clause by clause consideration of Bill No. 133, An Act respecting National Defence.

Mr. Claxton made a few introductory remarks regarding the said Bill and at his suggestion it was agreed that clauses 1 and 2 thereof be allowed to stand.

Brigadier Lawson was called. For the guidance of the members he filed copies of the following:

(*a*) List of changes in the National Defence Bill (J5) (First Reading), made by the Senate prior to passage of 8th December, 1949.

(*b*) List of changes in the National Defence Bill (J5) (As passed by the Senate) prior to introduction in the House of Commons as Bill 133.

(*c*) List of Clauses of National Defence Bill deleted by the Senate because of financial implications.

Mr. Drury and Major Ready answered certain specific questions arising out of the main witness' examination.

Clauses 3, 4 5, and 6 were severally agreed to.

On clause 7.

This Clause was allowed to stand, to be redrafted.

Clauses 8 and 9 were severally agreed to.

On clause 10.

On motion of Mr. Henderson,

Resolved,—That clause 10 of the said Bill be deleted.

Clause 11 was agreed to.

At 1.00 o'clock p.m., after some discussion on the subject, the Committee adjourned to meet again at the call of the Chair.

EVENING SITTING

The Committee met again at 8.15 o'clock p.m. The Chairman, Mr. Campney, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Campney, Cavers, Dickey, George, Gillis, Harkness, Henderson, Langlois *(Gaspe)*, McLean *(Huron-Perth)*, Pearkes, Roberge, Stick, Thomson, Viau, Welbourn, Wright.

In attendance: The same official and Military Forces Officers as are listed for the morning sitting.

The Committee resumed the clause by clause consideration of Bill No. 133, An Act respecting National Defence. Brigadier Lawson's examination was continued as each individual clause was being considered, and Mr. Drury, Commander Hurcomb, Wing Commander McLearn and Major Ready answered various questions arising out of the main witness' examination.

Clauses 12, 13 and 14 were agreed to.

Before proceeding to Part II of the said Bill, the Committee reverted back to clause 7 which had stood at the morning sitting.

On Clause 7.

On motion of Mr. Langlois,

Resolved,—That Clause 7 of the Bill be amended by deleting therefrom subsections (2) and (3) and substituting therefor the following subsection:

Additional Deputy Ministers.

(2) Where one or more additional Ministers or Associate Ministers are appointed under section six, the Governor in Council may appoint an additional Deputy Minister for each such additional Minister or Associate Minister.

Clause 7, as amended, was agreed to.

On motion of Mr. Viau,

Resolved,—That a new Clause be inserted in the Bill immediately after Clause 7 as follows:

Associate Deputy Ministers.

8. (1) The Governor in Council may appoint not more than three persons to be Associate Deputy Ministers of National Defence.

Additional Associate Deputy Ministers.

(2) During an emergency, the Governor in Council may appoint additional Associate Ministers.

Duties of Associate Deputy Ministers.

(3) Each Associate Deputy Minister shall have the rank and status of a deputy head of a department and as such shall, under the direction of the Minister and of the Deputy Minister, perform such duties and exercise such authority as deputy of the Minister and otherwise, as may be assigned to him by the Minister.

On Part II of the Bill

Clauses 15, 16, 17, 18, 19 and 20 were agreed to.

After lengthy discussion thereon Clause 21 was allowed to stand.

At 10.15 o'clock p.m., on motion of Mr. George, the Committee adjourned to meet again at 11.00 o'clock a.m., and 4.00 o'clock p.m., Wednesday, 24th May.

ANTOINE CHASSE,
Clerk of the Committee.

REPORT TO THE HOUSE

TUESDAY, 23rd May, 1950

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That is be empowered to sit while the House is sitting.
2. That the quorum be reduced from 13 members to 10.
3. That permission be granted to print, from day to day, 500 copies in English and 250 copies in French of the Minutes of Proceedings and Evidence, and that Standing Order 64 be suspended in relation thereto.

All of which has been respectfully submitted.

R. O. CAMPNEY,
Chairman.

Note: The said report was adopted on the same day.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

TUESDAY, May 23, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 11 a.m. The Chairman, Mr. R. O. Campney, presided.

The CLERK: Gentlemen, there is a quorum, and if you will permit me I will just read the Order of Reference with the names of the members of the committee.

16th May, 1950.

> Resolved—That a special committee be appointed to consider Bill No. 133, an Act respecting National Defence; with power to send for persons, papers and records and to report from time to time; and that the said committee consist of Messrs. Adamson, Balcer, Bennett, Blackmore, Blanchette, Campney, Cavers, Claxton, Dickey, George, Gillis, Harkness, Henderson, Higgins, Langlois (*Gaspe*), Lapointe, Larson, McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Thomson, Viau, Welbourn and Wright; and that Standing Order 65(1) be suspended in relation thereto.

I would now invite nominations for the election of a Chairman.

Mr. GEORGE: I move that Mr. Ralph Campney be chairman.

The CLERK: I declare the nominations closed, and would ask Mr. Campney to take the chair.

The CHAIRMAN: Gentlemen, I appreciate very much the honour which my fellow members of the committee have tendered me in making me chairman of this committee and the confidence which it implies. We have a very important task and quite a long one, but I am sure that with the co-operation and assistance of all the members of the committee we will do a good job and probably do it in as reasonable a time as possible.

Now, before we proceed to consider the bill there are certain preliminary matters which I think we should attend to. In view of the nature of the work of this committee I would presume we would want to have leave to sit while the House is sitting. Is that the will of the committee?

Mr. VIAU: I move the committee request permission to sit while the House is sitting.

Carried.

The CHAIRMAN: There are twenty-five members of this committee and under the rules as they stand it would take thirteen to make a quorum. It is customary, and I think it is possibly desirable in this case to reduce the quorum to a lower figure, and I would like to have your views on that.

Mr. THOMSON: I move that the quorum be reduced from thirteen to ten members.

Carried.

The CHAIRMAN: Now, there is one other preliminary matter and that is the question of printing the proceedings of the committee. We will have to have authority from the House to do that.

Mr. STICK: I move that the committee request permission from the House to print from day to day five hundred copies in English and two hundred and fifty copies in French of its minutes and proceedings and of the evidence.

Carried.

The CHAIRMAN: I also suggest that we might consider whether under the circumstances it would not be desirable to have a vice chairman of the committee.

Mr. BLANCHETTE: Mr. Chairman, I would like to move that Mr. Langlois act as vice chairman of the committee.

Carried.

The CHAIRMAN: I probably should have requested that the order of reference be read, and I would now ask the clerk to read it.

The CLERK: (reads)

16th May, 1950.

Ordered—That Bill No. 133, an Act respecting National Defence; and Bill No. 134, an Act to amend the Militia Pension Act and change the title thereof, be referred to the said committee, and that the said committee be empowered to consider the said bills.

17th May, 1950.

Ordered,—That Bill No. 221, an Act to provide for the Payment and Distribution of Prize Money, be referred to the said committee, and that the said committee be empowered to consider the said bill.

Attest.

LEON J. RAYMOND,
Clerk of the House.

The CHAIRMAN: Gentlemen, we are now on Bill 133, Clause one.

Mr. PEARKES: Mr. Chairman, before we proceed may I call your attention to the fact there are three bills before this committee. Two of them are of a minor nature, and one is a very long and complicated bill.

Now, I am only offering this as a suggestion, and I have quite an open mind about it; but I was wondering whether it might not be advisable to get rid of the two shorter bills first before we go on to the major bill. If there is a good deal of discussion regarding the major bill it might be that we would not refer it back to the House before the end of this session. The Minister of National Defence indicated that he was anxious that this Act should receive careful consideration with the idea of producing the best possible bill to meet the circumstances. It is a bill which will have a very lasting effect. It would be a pity to rush this bill through and to find that perhaps in a very short time you had to bring in other amendments to it because it had not received all the consideration which this committee should give it, owing to the fact that it is getting towards the end of the session.

Now, I have quite an open mind on this, but it does seem to me you could very quickly dispose of the prize money bill, and I should think the Canadian pension bill would take only a little longer; Bill 133 will take considerably longer because I understand we may call evidence if we wish to.

Now, I am just offering that as a suggestion.

The CHAIRMAN: Thank you. Of course I am agreeable to do whatever the committee wishes, but I had thought that because Bill 133 is of such importance it would be desirable that we should give it first consideration.

Mr. ADAMSON: I agree with General Pearkes that we do want to deal with this bill as soon as possible. It is a matter of law and has had three years of careful study, not only by the legal officers of the Crown, but by the Judge Advocate General. I feel the other two bills could be cleaned up in two sessions and we could then get on with this bill in an unhurried and much more legalistic way than if we tried to rush it through. I would move that we deal with the prize money bill and the militia pension bill first.

Mr. HARKNESS: I second that motion.

The CHAIRMAN: Frankly, I had not contemplated that we would not proceed with Bill 133. It has already passed the Senate and has been before the members for quite some time, and I think it is the wish of the government to complete the enactment of the bill at this session.

Mr. WRIGHT: Perhaps the minister might express an opinion on it.

Hon. Mr. CLAXTON: I have no opinion as to what order is best, but we would like to see all three bills adopted at this session if that can possibly be done. As has been said, Bill 133 was before parliament at the last session, and a bill in substantially the same form received consideration in the other place and was passed there. It may be that it is a good rule to start with the difficult bill first and get that behind us, but it is entirely up to the committee.

The CHAIRMAN: Are there any other remarks?

Mr. ADAMSON: If you go through examinations you take the easy questions first and then deal with the difficult ones. I think we could clear up the other two bills possibly this morning.

The CHAIRMAN: Are you ready for the question? The motion is that we proceed with the two lesser bills prior to considering Bill 133.

I declare the motion lost.

We are now on Bill 133, Clause one, and we are fortunate in having the Minister of National Defence here this morning. I think it would be helpful to us if he would give us an outline of the purpose of the bill and something of its history, and any other features of it he may care to develop.

Hon. Mr. CLAXTON: If it meets with the wishes of the committee I would be very glad to follow that suggestion.

The history of the bill has already been explained in the House and I do not think there is any need to go over that again. Very briefly, we have had the Department of National Defence Act and various other pieces of legislation including the Militia Act in effect for a long time, since 1868, but these have never been given comprehensive study, and no effort has been made up to now to revise and consolidate them. This is the first effort to unify all the legislation relative to defence in Canada and, of course, it is in line with our general policy to achieve the utmost in the unification of the three services. It seemed to us it would be desirable to have a law relative to defence and the service disciplinary Acts in a single statute, and that is the purpose of the bill before you, Bill 133.

Now, you will see in the explanatory notes on pages 6 and 7 of the introduction that this bill falls into three main divisions: Parts I, II and III, and relate generally to the organization of defence; Parts IV to IX constitute a complete code of service discipline and are so defined, and Parts X, XI and XII contain clauses of general application relating to defence.

Parts I, II and III correspond largely to a statute setting up a department of the government, but also they have some general provisions relative to defence matters.

Parts IV to IX, which constitute the code of service discipline, are what is properly called military law. Military law is the law which governs the members of the army and regulates the conduct of officers and soldiers as such, in

peace and war, at home and abroad. Its object is to maintain discipline as well as to deal with matters of administration in the army. As distinguished from ordinary civil law, military law is administered by military tribunals and is chiefly concerned with the trial and punishment of offences committed against its enactments, but on becoming subject to military law the soldier does not cease to be subject to the ordinary criminal and civil law. Now, I mention this definition particularly to give emphasis to the fact that under the British system of law, or systems of law in force in countries which derive their origins from Britain and follow their parliamentary system, the civil law is always supreme to the military law. Civil law is so supreme that under our system it is possible for a man to be convicted or acquitted of an offence by a military tribunal and then subsequently to be put in jeopardy again before a civil court. The only qualification that must be made is that the civil court will, in awarding a sentence, take into account the sentence a man already has received and served under the military law. That is fundamental to our system, the civil law is supreme.

I think it is important to make it clear that, "Military law is to be distinguished from martial law which is the condition obtaining when the application of the ordinary rules of law by the ordinary courts is suspended and such law as then remains is enforced by military tribunals. Martial law could only be lawfully proclaimed and enforced in Canada under the authority of an Act of parliament such as the War Measures Act," or conceivably by some prerogative right, but it is a very extreme measure to deal with highly unusual situations. I do not think martial law has ever been proclaimed in Canada since the very early days and long before confederation.

Now, there is another provision that I should mention, and that is military aid to the civil authorities, which is provided for both in the existing Miltia Act and the Criminal Code and this bill, for the purpose of suppressing riots. That is quite a different matter from martial law and that again has very special rules applicable to it.

Now, the criminal code has a reference to military law in section 2, subsection 21. It says:

> 2(21) 'Military law' includes the Militia Act and any orders, rules and regulations made thereunder, the King's regulations and Orders for the Army, any Act of the United Kingdom or other law applying to His Majesty's troops in Canada and all other orders, rules and regulations of whatsoever nature or kind to which His Majesty's troops in Canada are subject.

Now, of course, it is of the very essence of our system of government that all authority for government action must be found in an Act of parliament. This is the proposed Act of parliament. Under this bill provision would be made for the drafting of regulations which, when adopted by the Governor in Council, would gradually replace the existing King's regulations and orders for the Canadian army, the Royal Canadian Navy, and the Royal Canadian Air Force. They would be passed under virtue of the powers provided for in this bill.

Now, since the bill was adopted by the Senate we have had a number of suggestions made by our Defence Department and also by the Department of Justice for minor changes in the bill, and I think it would be very convenient for the members to have a schedule distributed indicating in detail every difference between the bill as passed by the Senate and the bill before you, so that you can see what the Senate agreed to and what you are now asked to agree to. The officers here will make copies of that schedule available to you.

Now, to assist in your consideration of the bill there is no need for me to say that I will be always at the service of the committee as will also be the

parliamentary assistant, Mr. Blanchette, and we will have, as frequently as possible, the assistance of the Solicitor General, who helped materially in piloting the bill through the Senate. There will also be available the deputy minister, Mr. C. M. Drury, who is here today, and associate deputies and officials of the department, and whenever they are required members of the armed forces themselves.

The actual work of preparing the bill, as I indicated in the House, fell under the direction of Brigadier R. J. Orde who has retired and who has been replaced as Judge Advocate General by then—Colonel Lawson. I am glad to make the announcement that he has just been promoted to the rank of brigadier and appointed Judge Advocate General; so that he appears before you for the first time with both those qualities today.

Brigadier Lawson has with him Commander Hurcomb, Judge Advocate of the Fleet representing particularly the navy in connection with the drafting of the bill, and Wing Commander McLearn who had to do with the drafting from the particular view of the air fore. There are also other officers of the Judge Advocate General's branch who may appear from time to time.

I should assure you that all of these gentlemen, and the others in the Judge Advocate General's branch have approached the job not from the point of view of their particular service but with the idea of getting the best possible bill applicable to all three services.

Sir, that concludes what I have to say by way of introduction. However, I might just make the suggestion that if the committee is going to proceed to a clause by clause discussion of the bill they should start with clause 3 on page 5, leaving the interpretation clauses to the end, or to be dealt with as you happen to have occasion to come across these terms in the course of going through the bill itself. These definitions I think will mean more and require less in the way of explanation if they are dealt with at the end or as they arise in connection with your consideration of the bill. My suggestion would be that you begin with clause 3.

You will see a system of cross references to corresponding legislation. Opposite clause 3 you will see a reference to the Department of National Defence Act, section 3—the Revised Statutes of Canada, 1927, chapter 136 as amended.

The abbreviations are found on page vii.

The Militia Act is referred to in respect of clause 4, the Naval Service Act, and so on.

Where the word "new" appears, as you will see opposite clause 5, that means this clause is substantially new, but usually it will be found to be a codification of a well established service principle or an adaption of some principle from some other statute—like the Criminal Code. Brigadier Lawson can make any explanations you require on those.

Now, as I told General Pearkes when the matter was before the House, we have also here a complete list, section by section of all the texts, of all the Acts, which this bill replaces. If you want to find out where clause 3, section 3 of the Militia Act is, you can look this up in this black book and you will see that it now appears in such and such a place. In that way we have covered the sections of the existing legislation which have been replaced or consolidated or revised, so that you can follow them through, and Brigadier Lawson has the volumes of notes relative to them.

May I suggest that if you are ready Brigadier Lawson might sit beside the chairman and assist in every way possible.

Brigadier W. J. Lawson, Judge Advocate General, called:

Mr. STICK: Perhaps we might have a word from Brigadier Lawson?

Brigadier LAWSON: Mr. Chairman, and gentlemen, I have very little to add to the very clear and accurate explanation given by the minister.

As the minister has said the bill now before you differs in some ways from the bill presented to the Senate. It differs in that: (*a*) it contains a number of amendments that were made in the Senate—most of them of a minor nature but several of considerable importance; (*b*) it contains a number of financial clauses that were not considered by the Senate; and (*c*) it contains a number of amendments which we have made in the light of the experience we have had in drafting the regulations. We have already started and have well under way the drafting of the new King's Regulations. This involves a very careful study of the bill. As a result we have made a number of very minor changes and these have been printed in the bill as presented to your House.

We have prepared mimeographed sheets showing all these changes and they will be distributed at once.

In addition to the changes I have mentioned, we also consider that other changes should be made. They will be brought to your attention when you come to the various clauses of the bill to which they relate.

Perhaps I should say something about the way in which this bill was drafted. The bill is not a purely legalistic effort, by any means. True, it was drafted in the office of the Judge Advocate General with the assistance of officers of the Department of Justice. However, we had in the office for months, coming over nearly every day, senior officers of the three services who went through in detail every clause of the bill from a policy standpoint. Those senior officers were authorized by their chiefs to pass judgment from the service point of view on all policy matters and every one of them, I may say, was very carefully and fully considered.

With me, as the Minister has said, I have Commander Hurcomb of the navy and Wing Commander McLearn of the air force.

The bill is divided into various parts and, with your permission, I will be responsible for assisting you with Parts number I, II, III, IX, and XIII. Commander Hurcomb will be responsible for parts number IV, VII and part of X; Wing Commander McLearn will have parts V, VI, VIII, a portion of X, and XII.

As the Minister has said, gentlemen, although we have used very great care in the drafting of this bill and have spent a very great deal of time and effort on it, we do not consider it by any means perfect and we feel certain that, as the result of the deliberations of your committee, a much better bill will be produced.

The CHAIRMAN: The memorandum which has been distributed is in three sections. You may wish to parallel these, as you go along, with the draft bill. One memorandum has to do with changes made by the Senate; another with subsequent changes made at the instance of national defence after the bill had passed the Senate; and a third sheet lists the clauses being financial clauses which were left out of the bill as passed by the Senate.

Leaving out clauses 1 and 2 which we have stood over, the first section that appears to be affected by any one of these memoranda would be clause 5. As far as clause 3 is concerned none of the memoranda have in any way altered the section as it is printed in the bill before us.

We shall now consider clause 3, formation of department.

3. There shall be a department of the Government of Canada which shall be called the Department of National Defence, over which the Minister of National Defence for the time being appointed by the Governor General by commission under the Great Seal shall preside.

Mr. ADAMSON: When was the name changed from the Department of Militia to the Department of National Defence?

Brigadier LAWSON: When the Department of National Defence Act was passed, sir.

Mr. ADAMSON: When was that?

Brigadier LAWSON: 1922, as I recall it, sir.

Mr. PEARKES: May I suggest that the chairman read out the clauses as we go along? That is done in most committees.

The CHAIRMAN: Very well.

Mr. PEARKES: Could Brigadier Lawson or one of the other officers tell us whether there is any difference between the reading of that clause now and the way it read under the Department of National Defence Act?

Brigadier LAWSON: There is no difference in legal effect. The only difference or change is that the Department of Justice, have now decided to make these clauses creating departments as uniform as possible. The clause has been reworded to conform with the standard form.

The CHAIRMAN: Shall clause 3 carry?

Carried.

Clause 4—duties (of the minister).

4. The Minister shall have the control and management of the Canadian Forces, the Defence Research Board and of all matters relating to national defence including preparation for civil defence against enemy action, and shall be responsible for the construction and maintenance of all defence establishments and works for the defence of Canada.

Mr. STICK: May I go back to number 3. It says that the Minister of National Defence shall preside. Is there any provision there for his absence or illness? Who would then preside?

Brigadier LAWSON: Well, sir, the Interpretation Act and the Civil Service Act provides that the deputy minister shall be his deputy in all matters of internal management in the department. Normally too, if the minister is absent, another member of the government is appointed in his absence.

Mr. STICK: It does not say that.

Brigadier LAWSON: I do not think it is necessary.

The CHAIRMAN: We are on clause 4.

Mr. PEARKES: Is there any difference between the wording in the National Defence Act and the wording here?

Brigadier LAWSON: The one material difference is the addition of civil defence. There is no provision for civil defence in the existing legislation.

Mr. PEARKES: We have not got those other Acts before us.

Mr. ADAMSON: Clause 4 does not mention it, and I would like to suggest the addition of "within and without the boundaries of Canada." It leaves it rather ambiguous here whether the Minister of National Defence has jurisdiction over the defence forces outside of the territorial limits of Canada. That question came up occasionally during the past war—in England.

Brigadier LAWSON: I do not quite follow what you mean.

Mr. ADAMSON: It says that the minister shall have control and management of the Canadian forces, and so on, "and shall be responsible for the construction and maintenance of all defence establishments and works of Canada." It just occurred to me that you might include "both within and outside the territorial limits of Canada."

Mr. STICK: Clause 5 covers that.

The CHAIRMAN: I might mention that clause 6 of the Militia Act which this supersedes, refers to works "in Canada" and I think probably the intention

of changing it from "in Canada" as it is in the Militia Act, to "of Canada" as it is in the bill, is probably to meet the purpose you have in mind.

Mr. WELBOURN: Does not the statement "all matters relating to national defence" cover it?

Brigadier LAWSON: Yes, really the purpose of the clause is to establish the position of the minister among his colleagues in the cabinet; to show the division of responsibility—the responsibility of the Minister of National Defence as opposed, for instance, to the responsibility of the Minister of Public Works. There is no reason to deal with works constructed outside of Canada because they would not come within the purview of the Minister of Public Works. I do not see any necessity for amending the clause.

The CHAIRMAN: Shall the clause carry?

Carried.

5. The Governor in Council, upon the recommendation of the Minister, may from time to time designate any other person in addition to the Minister to exercise any power or perform any duty or function that is vested in or that may be exercised or performed by the Minister under this Act.

Mr. STICK: Can we have an explanation of that?

Brigadier LAWSON: The reason for this clause, sir, is to enable the minister to delegate some of his very onerous duties. The Department of National Defence is a very large department. It involves intimately many thousands of people—the members of the forces, their dependents and so on. The minister is overwhelmed with detail work and there has been an effort for several years, particularly under our present deputy, to relieve the minister of detail. Under the present legislation there are many things the minister must personally look after. The purpose of this clause is to enable him to delegate some of those duties.

Mr. STICK: In the case of a national emergency, under this it would be possible to do something like they did in England when they set up regional commands?

Brigadier LAWSON: Yes, sir, but I would not think that the minister would delegate to outside authorities any of his powers. It is signing orders and that sort of thing which takes so much of his time.

Mr. STICK: Could it be taken as I have said, in a broad interpretation?

Brigadier LAWSON: Yes, it could be.

Mr. HARKNESS: What would be a specific sort of example of the powers referred to?

Brigadier LAWSON: He could delegate powers to the parliamentary assistant. The parliamentary assistant cannot exercise any of the Minister's legal power now. He is only able to help in such matters on his parliamentary duties. He cannot sign documents, etc. One of the things the Minister could do under this section would be to delegate powers to the parliamentary assistant.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 6.

6. (1) The Governor General may, during an emergency, by commission under the Great Seal appoint

(a) not more than three additional Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be prescribed by the Governor in Council; or

(*b*) not more than three Associate Ministers of National Defence, each of whom shall exercise and perform such of the powers, duties and functions of the Minister as may be assigned to him by the Governor in Council or the Minister.

(2) Each additional or Associate Minister appointed under this section may be continued in office for not more than six months after the termination of the emergency during which he is appointed.

Mr. STICK: That more or less answers the question I asked a moment ago.

Mr. PEARKES: Could we have an explanation of what an associate minister is? We have not any associate ministers now.

Brigadier LAWSON: This is a new concept sir. The purpose of this clause is to enable re-organization of the department, to take place in the event of war, on either one of two bases: to have additional ministers such as we had in the last war when we had a Minister of National Defence for Air and a Minister of National Defence for Naval Services; or, to have associate ministers who will be in a sense junior to the minister. There would be one minister at the head of the department with three associates who would assist him and have such powers or duties as may be assigned by the Governor in Council or the minister.

Mr. STICK: Something like the American system?

Brigadier LAWSON: Yes, and the British system.

Mr. STICK: Where they have secretaries for different services?

Brigadier LAWSON: Yes, that is right.

Mr. ADAMSON: Would associate ministers be in the same category as the deputy minister?

Brigadier LAWSON: No, sir; they could be members of the cabinet.

Mr. ADAMSON: Members of the cabinet?

Brigadier LAWSON: Not necessarily, but they could be, and they will be ministers in the full sense of the word.

Mr. DRURY: I do not think that they will necessarily be ministers of the cabinet.

Mr. HARKNESS: I think this is an approximation of the British system where you have a large ministry and within the ministry you have a cabinet or inner ministry.

Brigadier LAWSON: Yes, sir.

Mr. HARKNESS: This is working towards that idea. These people would be members of the ministry but not necessarily members of the cabinet?

Brigadier LAWSON: That is right.

Mr. WRIGHT: I would like to ask the witness a question here. It says: "Not more than three associate ministers of national defence, each of whom shall exercise and perform such of the powers, common duties and functions of the minister as may be assigned to him by the Governor in Council or the Minister." As I read this Act the minister has a great deal more authority than he had under the old Act. I am just wondering if he should have power to pass that power of his on to associate ministers? Should this not be the sole right of the Governor in Council rather than the right of the minister? Would you comment on that?

Mr. STICK: Are they not appointed by the Governor in Council under the great seal?

Brigadier LAWSON: The associate ministers would have to be appointed by the Governor in Council. It is a matter of policy whether the minister should

be able to delegate his duties to them. Of course, the minister is always subject to the Governor in Council and cannot detail duties that the Governor in Council does not want him to.

The CHAIRMAN: Is not the difference between (*a*) and (*b*) this: in (*a*) you have additional ministers whose duties and functions may be prescribed by order in council and who would be directly responsible to the cabinet; in (*b*) you have three associate ministers with duties assigned by the Governor in Council or the minister. In that case, I take it that the minister would be responsible for his associate ministers. The additional ministers get their powers from the Governor in Council whereas the associate ministers get their powers from either the minister or the Governor in Council.

Mr. LANGLOIS: Would the additional ministers mentioned in paragraph (*a*) be subordinate to the Minister of National Defence?

Brigadier LAWSON: No.

Mr. PEARKES: They would not be subordinate.

Brigadier LAWSON: No.

The CHAIRMAN: Shall clause 6 carry?

Carried.

Clause 7:

7. (1) There shall be a Deputy Minister of National Defence who shall be appointed by the Governor in Council.

(2) The Governor in Council may appoint not more than three persons to be Associate Deputy Ministers of National Defence.

(3) Each Associate Deputy Minister of National Defence shall have the rank and status of a deputy head of a department and as such shall, under the direction of the Minister and of the Deputy Minister, perform such duties and exercise such authority as deputy of the Minister and otherwise, as may be assigned to him by the Minister.

Mr. PEARKES: I wonder, Mr. Chairman, if we could have explained to us the duties of the deputy minister as they are today? How many deputy ministers are there? In the olden days there used to be a deputy minister for Navy, for Army and for Air. I understand that that practice is no longer carried out. I think it would be helpful if we could have explained to us the division of responsibility between the different deputy ministers.

Mr. DRURY: There is one deputy minister and there are three associate deputy ministers. There is now one minister of National Defence and only one civil head. The deputy minister has three associate deputy ministers whose duties are functional. One associate deputy minister is charged with personnel and administration matters as his principal pre-occupation. The second associate deputy minister is concerned principally with financial and supply matters and the third is Controller-General of Inspection Services.

The outline suggested in Clause 7 of the Act is to enable the appointment of additional deputy ministers to parallel the appointment of additional ministers or additional associate ministers. At the present moment there is only one deputy minister of National Defence.

Mr. PEARKES: Would it be the intention that the deputy ministers or the associate deputy ministers should work with the associate ministers? It would visualize that an associate minister would be a minister of personnel or a minister of service and supply, in which case you would then have a close affiliation between the associate deputy minister and that particular minister. Or do you picture that these associate ministers might look after the Navy, the Air Force, or the Army, in which case the division of the associate deputy ministers would not be closely linked with that of the associate ministers?

Mr. DRURY: We have not really reached any firm conclusion as to which would be best in the event of an emergency. It would depend to some extent on the character of the emergency. It was for that reason that alternatives were provided and legal provision made for the adoption of one or other of these alternatives. The present size of the Canadian Armed Forces is such that it is possible for one minister and one deputy minister to cope with all the problems that are involved. But in the event of an emergency, then one, two, or three of the Armed Services would be expected to expand in a very substantial. degree; and it would then probably be beyond the capabilities of one minister and one deputy minister to adequately look after all three services in the detail that would be required. So that if each of the three services is expanded materially, there would then have to be an organization of each service which would parallel the present organization of the department, and that the associate deputy ministers would be concerned with over-all service and not with an over-all function for all three services. That is, there would be associate deputy ministers for Air and for Navy rather than associate deputy ministers for Supply and for Personnel.

Mr. PEARKES: But you would still keep your associate deputy minister for supply as well as an additional associate minister for Navy, perhaps?

Mr. DRURY: No, I do not think we would, sir. There is only provision here for three deputy ministers.

Mr. PEARKES: That is the point I am getting at. I wonder why you limit it to three because it seems to be that with the expansion in an emergency it is likely that you might have to appoint an associate deputy minister to the Navy, to the Army and to the Air force. You might require one for supply, and you might perhaps, require another one for civil defence. So I wondered whether you should incorporate in the statutes that limiting factor of three associate deputy ministers. Why did you do it?

Mr. DRURY: I am afraid it was more with a view to economy of personnel than anything else.

Mr. PEARKES: Is that a factor in an emergency? We are dealing with an emergency and you are putting this on the statute books: and if you have to act quickly, then you have got to change the statute in order to get it done. I wonder whether it might not be worth considering the removal of that word "three', and substituting "such associate deputy ministers as might be required".

Mr. GILLIS: Is this not merely a matter of setting up a basic organization in case of an emergency? I think that all the things visualized in this particular clause were done during the last year. General Pearkes' objection to it is: I do not like to see the thing left wide open. I think the clause as written leaves provision for the necessary organization in case of an emergency; and if we did get into difficulties, then we could pass Orders in Council just as we did in the last war. All the organization visualized here was set up during the last war without any provision at all in the National Defence Act, as we went along and as the necessity arose for personnel. They passed Orders in Council until such time as they were able to amend the statute. I think the thing as it is is all right. It makes provision for a basic organization of each department. And if it develops to the point where that personnel cannot handle it, we can pass Orders in Council just as we did in the last war until we can get around to the changing the Act. I would not like to see it left wide open.

Mr. LANGLOIS: In the case of an emergency which would warrant the appointment of additional ministers, would clause 7 enable the Cabinet to appoint additional deputy ministers who will not be subordinate to the deputy minister of National Defence? I do not think the clause does that as it is; but I would like to be clear on this point.

Brigadier LAWSON: You are quite right, sir, it does not.

Mr. LANGLOIS: You say it does not. So these deputy ministers, even if two additional deputy ministers are added, would still be responsible to the Minister of National Defence. Is not that the case?

Brigadier LAWSON: That is right.

Mr. PEARKES: I take it that it is not yet decided whether they will be allocated to a particular service or to over-all functions?

Mr. LANGLOIS: But no matter what happened, they would still be subordinate to the deputy minister.

Mr. PEARKES: At the moment, yes. Can we be told what was the organization during the war of these associate deputy ministers?

Brigadier LAWSON: There were no associate deputy ministers during the war. There was a deputy minister of National Defence for Air, for the Naval Services, and for National Defence. But they were not subordinate in any way one to the other.

Mr. LANGLOIS: So this is hardly a continuation of the system which we had during the war. It was an entirely different one?

Brigadier LAWSON: That is right.

Mr. PEARKES: I think there is a great deal to be said for this. I am not critical of the change or of the allocating of the associate deputy ministers to functions and perhaps leaving it flexible so that you could have them allocable either to functions or to services. The only thing I question is, having had no experience of the workings of a national defence deputy minister, it might be advisable still to leave that clause open so that you might appoint as many functional or services associate deputy ministers as might be required.

Mr. LANGLOIS: I would prefer to have three persons to be additional or associate deputy ministers. I think that would meet your point and it would give a wording which would make those deputy ministers responsible to their additional ministers instead of being responsible to the deputy minister.

Mr. GEORGE: Is there anything which says that the associate deputy ministers are going to be responsible to the deputy ministers? In other words, the argument about an emergency and about associate deputy ministers is irrelevant at the moment. These associate deputy ministers could be appointed.

Brigadier LAWSON: The existing Act is the same and there are associate deputy ministers now.

Mr. GEORGE: You are just continuing what you have now?

The CHAIRMAN: It is the same provision that exists.

Mr. ADAMSON: Why limit it to three? You may need five, or two, or even none. What objection is there to restricting rigorously the wording of the Act to three? We may not know what sort of emergency there will be or what the function of this new type of civil servant is going to be.

Mr. GEORGE: There is no emergency now. This is just continuing existing appointments.

Mr. LANGLOIS: Suppose in case of an emergency the Cabinet decides to appoint one additional minister. First, does the power exist here in this Act as it is for the Cabinet to appoint a deputy minister who will be responsible not to the deputy minister of National Defence but responsible directly to this minister?

Brigadier LAWSON: No, the Act does not.

Mr. LANGLOIS: Do you not think it would be a good thing to have him responsible to his own minister and not to another person?

Mr. STICK: It does not define the duties of the deputy minister.

Mr. DRURY: As was pointed out, this clause 7 contemplates the peacetime organization of the department and by peacetime I mean prior to an emergency. It may be better to assign an associate deputy minister, that is, make an associate deputy minister primarily responsible for one service rather than the functions of three different services; and this clause would allow that. At the present moment there are three associate deputy ministers. If it is desired to reallocate the responsibilities of the associate deputy ministers on a service basis, this would be possible. There is no provision in the Act for the appointment of an additional minister except in the case of emergency, but the provision for associate deputy ministers would apply in the case of an emergency just as it applies to normal times.

Mr. STICK: I think it might be wise to write in a new subsection here which would parallel section 6(*a*), so there would be power in the event of an emergency to appoint three additional deputy ministers.

The CHAIRMAN: Possibly it may meet the wishes of the committee if we let the clause stand, to allow the officials to consider the representations made here, and take it up at a later date.

Mr. HARKNESS: I would like to have a parallel clause to 6(*a*) considered.

The CHAIRMAN: The clause stands in the light of the discussions.

Mr. STICK: If we are decided, then leave it to the deputy minister to bring in the amendment to that.

The CHAIRMAN: That would be my suggestion. What is the wish of the committee?

Mr. VIAU: I see no reason why we should delay the passing of clause 7, because it applies to peacetime as it is now. Clause 6, which we passed a moment ago, provides for the appointment of associate ministers of national defence during an emergency only.

The CHAIRMAN: Is it the wish of the committee that the section stand in the meantime so that the departmental officials can give consideration to it and bring back the departmental recommendations?

Agreed.

Then clause 8, under the heading "Civilian Employees," sets out:

> 8. Such officers, clerks and employees as are necessary for carrying on the business of the Department may be appointed in the manner authorized by law.

Mr. PEARKES: I presume that will cover females as well as males.

Carried.

The CHAIRMAN: Then clause 9, under the heading "Judge Advocate General," states:

> 9. The Governor in Council may appoint a barrister or advocate of not less than ten years standing to be the Judge Advocate General of the Canadian Forces.

Mr. ADAMSON: It says, "ten years' standing," but it does not say anything about military service there. By this clause you might appoint a civilian Judge Advocate General.

Mr. HENDERSON: Does that mean a barrister of the Canadian bar?

Brigadier LAWSON: Not necessarily, sir.

Mr. STICK: There is nothing about the rank the Judge Advocate General would hold. Would that come in under the regulations?

Brigadier LAWSON: It is contemplated there might be a civilian Judge Advocate General. In England the Judge Advocate General is a civilian, and in the United States he is a member of the services. It is left open here.

Mr. ADAMSON: Why was that done? It is a departure from our original practice.

Brigadier LAWSON: There has been no real departure. We simply thought it should be left open. There might be an appointment open and no one suitable in the service to fill it. We have a very small legal service.

Mr. HENDERSON: It is just a matter of flexibility.

Brigadier LAWSON: Yes.

Mr. STICK: Should he not have a rank, temporary or permanent?

Brigadier LAWSON: Not necessarily if he is a civilian appointee.

Mr. STICK: He comes under the army rules and regulations.

Brigadier LAWSON: His rank is governed by the service.

Mr. BLACKMORE: Does the word "standing" have sufficient significance there? Does that mean that he is active at the time, or part of the time.

Mr. LANGLOIS: That is his standing as a barrister.

Mr. ADAMSON: Under this you could appoint a judge of any of the provincial courts, even a justice of the Supreme Court and say he will be Judge Advocate General instead of "Mr. Justice."

Brigadier LAWSON: That is right; you could do that.

Mr. ADAMSON: Just bang bang, like that. Would he have to have a rank?

Mr. LANGLOIS: No.

Mr. ADAMSON: He might come in as a civilian and still be known as Mr. Justice So-and-So.

Brigadier LAWSON: That was the practice in England and at one time a Judge of the Probate Divorce and Admiralty Division was Judge Advocate General.

Carried.

The CHAIRMAN: Clause 10 deals with "Property":

10. (1) Any lands, buildings or equipment held by His Majesty, that are under the control of the Department for any purpose under this Act, may be leased by the Minister for a period not exceeding one year or may be leased, sold or otherwise disposed of by direction of the Governor in Council.

(2) Where any portion of the cost of any land, building or equipment sold under subsection one has been defrayed by the municipality in which it is situated, a fair proportion of the proceeds of sale, to be determined by the Governor in Council, may be returned to the municipality or expended therein for other purposes of the Department of a permanent nature.

Brigadier LAWSON: We are suggesting that that be deleted because of an Act which has just received third reading and is awaiting Royal Assent, which is called The Public Land Grants Act.

Mr. PEARKES: The whole of No. 10 is deleted?

The CHAIRMAN: You are suggesting it should be deleted.

Mr. PEARKES: I was wondering if we should give some thought to that because it has not been referred to the Senate, and this other Act has just been passed. Would it not be advisable to have some reference in this service Act which will guide service officers or refer them to this new Act? They probably will not be familiar with the new Act.

Brigadier LAWSON: I do not think, sir, junior officers in the services would have any occasion to deal with this section. All ministers are given quite wide powers under the new Public Land Grants Act to lease and sell lands.

Mr. STICK: That act covers the Department of National Defence?

Brigadier LAWSON: Yes, sir, it covers that department.

Mr. PEARKES: I am thinking of the position of an officer in one of the commands who has to deal with municipalities. He would not know anything about this other Act, and he will look up here to see what he can do to dispose of lands. I will agree it is a repetition but repetition may not be considered necessary. I am only trying to help the man who is out in Edmonton and has a problem to deal with with the mayor of a municipality.

Brigadier LAWSON: I have pointed out that this is not necessarily repetition. Actually the Public Lands Grants Act goes quite a bit further than section 10.

Mr. STICK: This only deals with land in Canada?

Brigadier LAWSON: Yes.

Mr. STICK: When you are in a foreign country and have acquired lands, is there any provision in the Act for that?

Mr. HENDERSON: I move this clause be deleted.

The CHAIRMAN: It is moved that clause 10 be deleted.

Brigadier LAWSON: There would be a cross-reference to the regulations.

Mr. ADAMSON: I would like to see it written in. I would like to see "all provisions of the Public Land Grants Act shall apply".

Mr. CAVERS: There may be some conflict between the Public Land Grants Act and this. I think it should be deleted.

Brigadier LAWSON: There are numerous Acts of parliament which apply to the Services; for instance, there is the Public Works Act which we have to look at every day.

Mr. BLACKMORE: I wonder if it could be dealt with by merely deleting this clause. We could delete the clause and call the next clause "clause 10".

The CHAIRMAN: I think we are relying on the statute passed at the present session.

Brigadier LAWSON: I understand it has passed the Senate.

Mr. STICK: It makes this clause obsolete.

Brigadier LAWSON: Yes.

The CHAIRMAN: Is there any further discussion? I suppose we should re-number the sections if section 10 is deleted.

Brigadier LAWSON: I was going to suggest we go back to clause 7 and re-number sub-clauses 2 and 3 as clause 8.

Mr. ADAMSON: Then we do not need to re-number all these clauses.

Brigadier LAWSON: That is right, sir.

The CHAIRMAN: The effect of this will make clause 7 read:

> There shall be a deputy minister of National Defence who shall be appointed by the Governor in Council.

That is clause 7. Clause 8, subsection 1, will be:

> The Governor in Council may appoint not more than three persons to be associate deputy ministers of National Defence.

Subsection 3 shall become subsection 2 of section 8.

Clauses 7 and 8 both stand. No. 8 becomes No. 9 and No. 9 becomes No. 10, and now we are at No. 11.

Agreed.

Clause 11 reads:

11. (1) The Governor in Council may authorize the Minister to deliver to any department or agency of the Government of Canada any equipment that has not been declared surplus and that is not immediately required for the use of the Canadian Forces or the Defence Research Board or for any other purpose under this Act, for sale to such countries on such terms as the Governor in Council may determine.

(2) The proceeds of a sale of equipment delivered under subsection one shall be paid into a special account in the Consolidated Revenue Fund and, subject to the approval of the Governor in Council, shall be used for the procurement of equipment; and payments out of the special account shall be made by the Minister of Finance on the requisition of the Minister.

(3) The Minister shall within three months after the termination of each fiscal year prepare a statement of the moneys received and disbursed under this section during that year, indicating the balance, if any, remaining at the end of that year in the special account mentioned in subsection two.

(4) The Minister shall forthwith lay the statement mentioned in subsection three before Parliament or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session thereof.

Mr. PEARKES: This is again a new section and one which has not been dealt with by the Senate. I think we should give some consideration to this. I presume it deals only with equipment that is being sold out of the country and has nothing to do with equipment being sold in Canada.

Mr. DRURY: That is correct.

Mr. PEARKES: Is there not some disposal board, or could we have a system of disposal of surplus equipment as it exists now?

Mr. DRURY: The present system of disposal of equipment provides only for the disposal of equipment which the armed forces regard as surplus, stocks which are either not required or have become obsolete. The way it is done is that the service or department produces a certificate that the item or items are surplus and this is passed to the Crown assets disposal corporation and this corporation then arranges the best possible sale and credits the proceeds to the Consolidated Revenue Fund. This deals only with items which are surplus to the requirements of the forces.

This particular section, clause 11, provides for the disposal of equipment which is not surplus in the sense that the services have no further use for it.

Mr. STICK: You are dealing solely with military equipment?

Mr. DRURY: Military equipment.

Mr. STICK: Clause 11 says: "declared surplus and that is not immediately required for the use of the Canadian forces." I would like the word "military" in there, because there are other forces in Canada besides the military services.

Brigadier LAWSON: The words "Canadian Forces" are defined as military forces. If you look at clause 15 you will see that.

Mr. DRURY: The words "Canadian Forces" are capitalized.

Mr. STICK: We have other forces besides military forces in Canada.

Mr. DRURY: We have.

Mr. STICK: Why not put "military" in, so that it will be definite and they will not scratch their heads and say, "What does this mean?" The word "military" defines it definitely and there could be no dispute about it.

Mr. LANGLOIS: Section 15 makes it clear that the Canadian Forces are the naval, army and air forces of His Majesty. I do not think there is any doubt there.

The CHAIRMAN: Shall the section carry?

Mr. PEARKES: I think this is too important a section to rush through. I am very vague about it. Does this deal purely with equipment which is declared surplus?

Mr. DRURY: Equipment that is not declared surplus.

Mr. PEARKES: Oh, it is not surplus.

Mr. HARKNESS: I take it the general purpose of this clause is to enable us to supply equipment to some of our allies and the money we get for it is used to replace what was given.

Mr. DRURY: That is one of the purposes.

Mr. WRIGHT: If that is a fact, is that not a function of parliament?

Mr. HENDERSON: The first line of the section says, "The Governor in Council may authorize," and so on.

Mr. WRIGHT: When we are entering into commitments to give large quantities of equipment to our allies, would that not be a function of parliament rather than the Governor in Council?

The CHAIRMAN: This section is limited to sales and I would not think sales are a matter for parliament.

Brigadier LAWSON: I have an actual case which occurred about a year ago that may help to explain it.

One year ago, Canadian Commercial Corporation was awarded as contract by the U.S. Government covering the sale to the latter of quantities of uniforms of types in use in the Canadian Army and Royal Canadian Air Force. The U.S. Government advised that the clothing was urgently required for delivery to the Government of Greece. It was not possible to obtain all the clothing through Canadian manufacturers in time to meet U.S. requirements. It was found that clothing which could not immediately be obtained from Canadian manufacturers was available in reserve stocks of the Canadian Army and the Royal Canadian Air Force and that this could be spared for the relatively short period which would elapse before replacement could be effected from Canadian manufacturers. Accordingly, Order in Council PC 1887 of April 1948 was passed authorizing Canadian Commercial Corporation to procure the requisite uniforms from the Department of National Defence on condition that the clothing be replaced with new-style battle dress in accordance with specifications to be provided by the Department to the amount of funds derived by Canadian Commercial Corporation from the sale to the U.S. Government. The transaction was completed accordingly.

Some of the direct benefits that would be derived from transactions of this kind are the following:

(A) Canada would be able to obtain United States funds through contracts which, were arrangements of this type not made, could not be secured.

(B) The armed forces would be able to dispose of equipment in reserve and receive by way of replacement new equipment up-to-date in pattern.

(C) The fact that replacement stores would be in process in the manufacturers' hands would make possible certain economies in the use of storage space.

(D) Canadian manufacturers would be awarded contracts for new equipment, thereby enabling them to keep "tooled up" for military production.

Now, that can be done by order in council, but the difficulty is that the funds received for the uniforms I mentioned were credited to the Consolidated Revenue Fund and had to be re-voted. Under this clause these funds are to be kept separate.

Mr. LANGLOIS: It is not a question which should be decided by parliament, it is just a case of selling goods.

Brigadier LAWSON: That is what I want to clarify.

Mr. ADAMSON: Does this not give the Minister of National Defence authority? Suppose there was one of the warring elements in southeast Asia that we wished to support and they came over and said, let us have a couple of batteries of twenty-five pounders, could the Minister of National Defence not just sell it to the other country whom we may support, and then get paid for it?

Brigadier LAWSON: If it is authorized by the Governor in Council.

Mr. ADAMSON: Only if authorized by the Governor in Council?

Brigadier LAWSON: Yes.

Mr. STICK: There is no harm in that.

The CHAIRMAN: Shall section 11 carry?

Carried.

Then clause 12, "Inventions":

12. (1) Every discovery, invention or improvement in any art, process, apparatus, machine, manufacture or composition of matter made

(*a*) by an officer or man acting within the scope of his duties or employment;

(*b*) by an officer, servant, clerk or employee of the Department or of the Defence Research Board acting within the scope of his duties or employment; or

(*c*) as a result of or in the course of research conducted by any person under a grant in aid furnished with the approval of the Minister in connection with that research.

and all rights with respect thereto are vested in His Majesty.

(2) Notwithstanding subsection one, the Minister, on behalf of His Majesty, may authorize agreements to be made with any person mentioned in paragraph (*c*) of that subsection whereby that person shall have and enjoy, exclusively or with limitations, any rights accruing to or that may accrue to or be vested in His Majesty in respect of the matters mentioned in that subsection.

(3) The Minister may, in any particular case, abandon any or all of the rights of His Majesty under subsections one and two upon such terms and conditions as the Minister may determine.

(4) Subject to regulations made by the Governor in Council and notwithstanding the Civil Service Act, the Minister may authorize payment of such bonuses or gratuities as in his opinion may be warranted to any person mentioned in subsection one who has made a discovery, invention or improvement that by virtue of this section is vested in His Majesty.

Mr. HARKNESS: What is the present situation in connection with inventions made by any of these people outlined in (*a*), (*b*), or (*c*)?

Brigadier LAWSON: I have Major Ready here who is our expert on patent law.

Major READY: Your question, sir?

Mr. HARKNESS: What is the present situation in connection with an invention made by the persons mentioned in (*a*), (*b*), or (*c*)?

Major READY: Under section 19(*a*) of the Patent Act, if an officer or employee of a government agency or a Crown company, invents a munition or instrument of war within the scope of his duties or employment, then that invention shall be assigned to the Minister of National Defence if the minister requests. If the invention is not made within the scope of his duties or employment then the inventor may assign, if he so wishes and is entitled to consideration if he assigns his invention. Those are the two classes.

Mr. HARKNESS: What is the definition of "within his duty?"

Major READY: That would be very difficult to define.

Mr. HARKNESS: I would think that would be the crux of the matter.

Major READY: I think what is contemplated there is, if a person employed for the purpose of designing a gun should happen to design a new buffer or some new piece of equipment for the gun, that would be within the scope of his duties. If he were to invent a carburetor or part of a carburetor for an aircraft I hardly think it would be said to have been invented within the scope of his duties. It is more a question of fact which must be decided in each individual case.

I have spoken with respect to the present legislation. This new bill proposes that the right to a device invented within the scope of his duties and employment will vest in His Majesty.

Mr. HARKNESS: In the case you have mentioned of a man working on a gun and who invents a carburetor for an aircraft, you mean the invention rights on the carburetor would vest in His Majesty in any event?

Major READY: I would hardly think that would be the case because he was not employed for the purpose of working on aircraft or inventing new types of carburetors for certain types of engines.

Mr. LANGLOIS: Are there any such claims outstanding now?

Major READY: We have several cases up for consideration now but most of those cases are quite clear and the inventions relate directly to the employment of the officer concerned.

Mr. HARKNESS: Do I take it under this new section the determination of whether the inventor would get any personal profit out of it is entirely in the hands of the minister?

Major READY: If he is employed for the purpose of making that invention, yes.

Mr. HARKNESS: Take the case of the man you mentioned, working on guns, and who invents a carburetor for an aeroplane. Is it within the discretion of the minister to say whether or not that invention vests in the Crown?

Major READY: In that case it would have to be determined whether he was acting within the scope of his duties or employment.

Mr. HARKNESS: That is what I want to get at? Who determines that? Is it the minister, or is there any other body which might determine it?

Major READY: There is set up within the department an inter-service inventions board which has representatives from the deputy minister's office and the three services. That board, it is anticipated, would make a recommendation to the minister as to whether the invention was within the scope of the actual duties of the person who submitted it?

The CHAIRMAN: If a man were not satisfied, would he have any recourse?

Brigadier LAWSON: He would have a right of action, sir, in the Exchequer Court.

Mr. HARKNESS: That is what I am getting at?

Mr. DRURY: If he made the invention I presume it would be his secret but, if it were patented, there might be a dispute in the Exchequer Court as to

whether it vested in the man or in His Majesty. If the man turned it over to His Majesty it would be a question of determining what reward he should get for the invention.

Mr. STICK: He has a right to go to court in case he does not agree?

Brigadier LAWSON: Yes.

Mr. HARKNESS: In subsection 2 it says that His Majesty may authorize agreements; under subsection 3 the minister may abandon rights of His Majesty; but that would only arise, I would take it, in a case where a man made an invention in the particular line of work he was employed on?

Major READY: Subsection 2 relates to paragraph (c) of subsection 1, and paragraph (c) anticipates the case where, for instance, the Defence Research Board gives a sum of money to a professor or to a university generally, and states that they want research done on a particular subject matter. What is anticipated there is if, during the course of the research which the Defence Research Board has requested, some other development comes up, then the person who is doing the research work would have the rights, provided the minister agreed under this section. However, those agreements would be made prior to the time the person accepted the grant in aid to do the research requested.

Mr. HARKNESS: What about subsection 3—the minister may in any particular case abandon any or all of the rights of His Majesty.

Major READY: That gives the minister the right in any particular case, where it is felt that the invention is not of any substantial value to the department, to choose to abandon all rights to the inventor who may go ahead and exploit his invention in any way he thinks desirable. He may exploit it commercially; he has all the rights to it.

Mr. DRURY: An endeavour has been made to strike a balance to see that the Crown is not robbed but at the same time to provide an incentive. There must be some flexibility in the administration to achieve that balance—not to discourage inventors from trying to work on behalf of the Crown, because of thinking that anything they do will be taken away from them: On the other hand, the rights of the Crown are protected.

Mr. HARKNESS: I was thinking this might be a rather wide discretion and people might feel it created discrimination in that one man might be given the rights to his invention and another man would not.

Mr. DRURY: There is that possibility.

Mr. STICK: Then that man goes before the Board.

Mr. HARKNESS: I wonder how it might be avoided? I have no definite ideas on it but it does occur to me as being a thing which might cause considerable trouble.

The CHAIRMAN: Would it be a fact that if a man had made an invention and the Board had recommended against him that it was within the scope of his duties and employment, it would be open to him to bring an action in the Exchequer Court if he wished? The test of the thing would seem to be whether it was within his duties or employment but he does not, presumably, have to accept a decision if he thinks he has other legal rights?

Mr. DRURY: I do not see why he should.

Mr. PEARKES: Does this inter-service invention board really decide whether a man has acted within the scope of his duty or not? Is that not a board which decides the value of an invention? Have you cases in which this board has definitely ruled that a man was or was not performing in the ordinary course of his duty?

Mr. DRURY: This board, sir, is just in the course of being set up but it is anticipated that in order to determine whether they have the right to make any recommendation with regard to compensation, they first have to determine whether the man was acting within the scope of his duties? I foresee that will be the subject of the deputy minister's and the minister's concurrence.

Mr. PEARKES: It seems to me to be a surprising power to give to such a board. I should have thought somebody in executive command would have decided whether the man was doing this in the course of his duty.

Brigadier LAWSON: It is the courts that decide that finally. The board has no power to decide. It says "We think the man was or was not acting in the scope of his employment." If the man does not agree with the decision he can go to the Exchequer Court.

Mr. PEARKES: How can a private soldier go to the Exchequer Court?

Mr. HARKNESS: It would seem to be that the matter in subsection 3 of the minister having the power to abandon rights, and also the matter in subsection 2, might be decided beforehand in the Exchequer Court—that is whether the man had any rights and whether he produced the invention in the course of his duties. The thing is left here entirely in the hands of the minister and he could, if he wanted, give the rights of the invention to a fellow who was a friend of his but, to another fellow, whom he did not like, he would not do so. It is not a very good power to have here.

Mr. BENNETT: Someone would have to have the power because otherwise nobody here in Ottawa would be able to sell an invention.

Brigadier LAWSON: Yes, someone has to have the power. A man in the course of his duties may invent something which, when the service authorities look into it, will be found to have no service utility; it may have, however, very important civilian implication. The government is not in the business of manufacturing mousetraps or whatever the man has invented and the government should not keep it from the people of Canada. There must be provision for a man to go ahead and produce that better mousetrap. There is provision that the minister can establish the cost of developing the invention and require that it be repaid to the Crown.

It is a wide power, but I do not think it can be avoided.

Mr. BLACKMORE: Does this specify that the minister is abandoning his rights to the man who invented it, or may he abandon the right to anyone he chooses?

Brigadier LAWSON: The inventor has the right to the invention—subject to this particular clause taking away from him. If the minister abandons the rights he must abandon them to the original holder—that is the inventor.

Mr. ADAMSON: If a man is working, shall we say, on the case given by Major Ready, on recoil mechanisms or a buffer for a gun and, if he invents this different buffer when he is working 100 per cent for the government, then he has no claim against the government for that. However, it may be found that it also has very large and important uses shall we say on heavy trucks, or that it is an invention which can be adapted for heavy trucks or to other recoil mechanisms in industry. Now, for the invention that he makes for the department, on the piece of ordnance, he has no claim; but if his invention is patented, can he be granted rights to the commercial use of his invention—or do they vest in the Department of National Defence?

Major READY: What we have done to date in cases of that is to take an absolute assignment of the man's right—that is under the old law, to prosecute patent applications to issue in the countries which are decided as being feasible. Then, afterwards, if there is no secrecy attached to the subject of the patent, we

return to the man all rights but retain in the Crown only the right to free use and or to manufacture. The man is free then, in the case I mention, to go ahead and exploit his invention commercially. That is what we have done here.

Mr. ADAMSON: You propose to carry on that way?

Major READY: That is a matter of policy, but I would say yes.

Mr. BLACKMORE: In your opinion does this clause guarantee that the policy shall continue?

Major READY: It does, in so far as subsection 3 is concerned—"the minister may—abandon all or any of the rights—", so that would give him authority to re-assign to the man all his rights with the exception of retaining a licence to free user or right to manufacture for the Crown.

Mr. BLACKMORE: Notwithsanding what Brigadier Lawson says I do not think that the clause itself is sufficiently specific that the minister abandons to the man who invented it. It says "upon such terms and conditions as the minister may determine."

Mr. ROBERGE: Would he not be protected under the patent laws?

Major READY: At present an inventor must sign the oath of invention and the petition in the application for a patent.

Mr. ROBERGE: If he does that would he not be protected?

Major READY: I would think so.

Mr. HARKNESS: What would actually happen if a recoilless mechanism was invented by an employee of the department?

Major READY: The procedure there is that the inventor himself must sign the oath and the petition in an application for a patent and then, if it is an invention which has been assigned to the minister that assignment is recorded against the title of the patent when it issues. The next step, if the rights are going back to the inventor is that a reassignment is registered against the title of the invention which would give back to the man the rights which were not retained by the Crown.

Mr. HARKNESS: As I understand it, actually an inventor in a case like this would sign this oath as agent of the Crown?

Major READY: No, he signs it as the inventor, the owner. He signs the oath to the effect that he is the inventor of that device and that is the only way that the patent office will accept the application.

Mr. HARKNESS: Then the Crown's rights are derived entirely under a section similar to this? How are the Crown's rights derived at the moment—if this is a new section?

Major READY: The Crown's rights are derived by obtaining from the man, under old section 19a of the Patent Act which is not now in effect, an absolute assignment from the man whereby he assigns his right and title to the invention to the Minister of National Defence.

Mr. HARKNES: What would happen if he were not willing to give that assignment?

Major READY: I beg your pardon?

The CHAIRMAN: It was obligatory under section 19a of the Patent Act which reads that he "shall", if required by the minister—the wording being "Any officer, servant or employee of the Crown or of a corporation which is an agent or servant of the Crown who, acting within the scope of his duties and employment as such, invents any invention in instruments or munitions of war, shall, if so required by the Minister of National Defence—" etc. It would be an obligatory assignment under that provision.

Major READY: It could be traced back to the common law. In so far as the principle master and servants were concerned, an invention made by a servant of a master, provided it was made as a result of his employment, vested in the master.

The CHAIRMAN: It seems to me that this is something more in the way of protection for the man than anything else. Otherwise the man would be at the mercy of the department. As far as the word "abandon" is concerned I think that legally the meaning is that if you claim against someone, and if you abandon that claim, you abandon it to the person against whom you are claiming. I do not think you can abandon the claim to somebody else.

Mr. BLACKMORE: The phrase "upon such terms and conditions as the minister may determine" modifies the word "abandon" do you not think.

The CHAIRMAN: I think it modifies the word, Mr. Blackmore, to the extent that Major Ready had in mind. The Department might retain certain rights for the use of the department. There might be restrictions but, within the scope of this section, I do not think that the minister could abandon it in favour of outside parties.

Major READY: That was the intention. It was the intention to give the Crown the right to free user or manufacture.

Mr. BLACKMORE: Regardless of the man who invented it?

Major READY: He is protected by the fact that he is recorded as inventor and it cannot be abandoned to anybody else.

Mr. HARKNESS: Could you give us a specific example, in so far as subsection 4 is concerned? When would that come into play or how would it work?

Major READY: I should think it would depend somewhat upon the value of the invention and, further, it would depend upon the possible pay and allowances of the person who invented the device. I should imagine if it was a private who made some very valuable submission or invention, he would be much more likely to receive a substantial bonus than would a brigadier who had made the same invention.

Mr. STICK: It is based on need.

Mr. HARKNESS: The idea is that you should provide more incentive for privates to invent than for brigadiers to invent.

Mr. ROBERGE: Would this section not cover a man who was working in his own time after hours and who worked out an idea of his own?

The CHAIRMAN: I should think he would be protected.

Mr. HARKNESS: There is no actual protection in this section, it is merely a discretion given to the minister to make payment to a man who has invented something—with the sole idea of adding incentive for so doing.

The CHAIRMAN: It puts in the statute a permissive section which should obviously be there so that it may be acted upon.

Mr. DRURY: In the absence of this subsection it would not be possible to make any payments of gratuities or bonuses.

Mr. STICK: It is to encourage people.

Mr. BLACKMORE: Mr. Chairman, I am looking for information that will be of help to me to get clear a matter that was referred to me, although I do not know just how dependable my report was.

Supposing a man was working on a mechanism, does he not have to report his find with respect to that mechanism to the officer who is in charge of him—his superior officer? Supposing a man is working on a mechanism in connection with radar or in any other field of endeavour and he makes an invention, does he not have to submit his invention to his superior officer?

Mr. STICK: If he makes the invention in the course of his duties I would think so.

Major READY: His superior officer would know what he was working on and would have full knowledge of what he was doing.

Mr. BLACKMORE: According to a report made to me, a man made a discovery and submitted it to his superior officer. The superior officer simply took credit for the discovery and the man had no recourse whatsoever.

Major READY: That is one of the things that has been done in so far as the Inter-service Invention Committee is concerned. We have set up a procedure whereby any man, or any civilian outside, may write and submit his invention directly to the deputy minister. When the deputy minister receives the submission he records it and acknowledges receipt of the submission—that is the details of the invention. He writes to the man and says we have received it on such and such a date. It is then sent to the appropriate director within the department for appraisal and consideration. By doing that a man has established with the deputy minister the first date on which that invention was conceived within the department.

Mr. HARKNESS: It is one o'clock and I move that we adjourn.

The CHAIRMAN: I was wondering if we might pass this section, or do you want Major Ready to come back. It is the only one in which he has an interest.

Mr. VIAU: Before we proceed any further, under section 1 (*a*) and (*b*) we refer to the term "officer", which is defined as any person who holds commissioned rank or who is seconded to any of the three armed forces. I wonder if we are not using the word too freely here?

Brigadier LAWSON: This section is confined to officers of the service. In section 9 we obviously referred to civilian officers but the definition says "unless the context otherwise requires—" and in that section "officer" otherwise requires.

The CHAIRMAN: Shall we let the section stand?

Agreed.

Would it meet the wishes of the committee if we adjourned at the call of the chair, but on the understanding that if we obtain permission to sit while the House is sitting that we will have another meeting this afternoon.

Mr. PEARKES: While I am anxious to assist you in every way in passing the bill through, the amendments to the War Veterans Allowance Act are coming up this afternoon, according to the notice which was given. I think that many of the members of this committee would be interested in that War Veterans Allowance Act. It is up for second reading and going to committee. If it gets through I would be satisfied to meet afterwards.

Mr. GEORGE: There is nothing to stop any member from leaving and attending the House. We are making good progress and everyone seems to be interested in making a good Act. I believe that we should sit as often and as long as we can. I would move, subject to permission being given by the House, that we sit at 4 o'clock this afternoon and at 8 o'clock tonight.

Mr. ADAMSON: Mr. Chairman, we had that schedule on the pipe line bills but, heaven above, let us not turn this committee into that sort of thing. This is a matter that requires considerable deliberation. These are all rather intricate clauses and there is very little political difference here at all. It is something which should be gone ahead with calmly, and I would strongly object to that motion.

The CHAIRMAN: I would like to meet once more today, if possible. Let us leave it that tentatively we shall meet at 4 o'clock.

Mr. HARKNESS: I would be quite prepared to have it left at the call of the chair, in consideration that this other matter is over. I would object to a meeting unless the War Veterans Allowance Act were finished.

The committee adjourned.

EVENING SESSION

The committee resumed at 8:15 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. Will you please come to order. I would just like to make a couple of observations about this meeting. At the time this afternoon when we got leave from the House to meet tonight only a short time was left to get the officials up here, and realizing that the veterans' allowance discussion seems to be a long way off, I thought probably we might make considerable progress if we met tonight. Therefore, I took the responsibility of calling a meeting for tonght instead of this afternoon.

Mr. ADAMSON: Mr. Chairman, along the same lines, in view of the fact that we are going to have these officials with us quite a bit during the discussion of this bill and that they have a busy day in the office in the morning and in the afternoon, might it not be abvisable to just try this out—it is only a suggestion—that we meet in the evening rather than in the afternoon so that these officials are not taken away from their offices during the daytime. They have their evenings free. We are only likely to be meeting about a month or perhaps less than that, and it only means five days a week until we meet on Saturday nights.

The CHAIRMAN: We will give consideration to that matter a little later. We will have to discuss holding a meeting tomorrow and you can bring it up at that time.

Mr. ADAMSON: During the day we would dislike to take them away from their offices.

The CHAIRMAN: They might find it a relief.

Mr. STICK: I do not think they are going to complain about that. They are more concerned about getting this through than staying in their offices.

The CHAIRMAN: In any event, we are on clause No. 12 regarding inventions.

There was a request that we stand it over until this evening. Are there any other questions that anyone wishes to ask.

Mr. PEARKES: I do not want to delay things but I have had letters regarding this question of inventions. It affects a great many men in the services. I am thinking of a case of a man who served in an anti-aircraft factory who thought that he had developed some type of fuse for an anti-aircraft shell. It was doubtful if it ever reached the authorities. He thought that he should have received a very handsome sum as a reward. No doubt there were twenty or thirty people working on the same thing at the same time. It is only with an idea of trying to find out a way in which we can satisfy the ambitious man who is inventive and who is anxious to try and help out, that I raise this point. We want to encourage him and we want to reward him for his discovery or his invention. So I feel we are not wasting time but we do wish to see whether this really does meet all the requirements. I would like to know what system is used in other departments. Take the National Research Department, for instance. They must have a number of employees who are in very much the same position as a soldier is, and they are working on various inventions all

the time. They must have some system of rewarding inventors and it might be worthwhile if we could take just a few minutes for somebody to tell us the system they are using in that department.

Major READY: So far as the National Research Council is concerned, the National Research Act is much after the fashion of the present clause 12; and section 11 states that all discoveries and inventions—I am just reading part of it—shall vest in the council and shall be made available to the public under such conditions of payments of fees and royalties as otherwise may be determined by the Governor in Council. Subsection (2) states that the council upon approval of the Governor in Council may pay to its technical officers and others working under its auspices who have made available inventions or improvements, bonuses or royalties as in its opinion may be warranted.

Mr. STICK: I take it the Research Council is really working on inventions for the government, that is part of their job; whereas in the armed services a man may not be on that, he may be doing his ordinary duty, but with an inventive turn of mind he may be able to do something for the army. There is a difference there, is there not?

Major READY: Yes, sir, but if he is doing a tour of duty as an administrative officer, as opposed to an officer who is employed for the purpose of inventing or developing some one project, then he does not come under this clause 12 if he is employed as an administrative officer because he is not employed for the purpose of making inventions which result from his employment.

The CHAIRMAN: It would appear that this section as I read it in relation to section 19A of the Patent Act and section 11 of the National Research Council Act is an attempt to get away from the restrictive features of the Patent Act and follow the method employed under the National Research Council Act.

Brigadier LAWSON: That is right. It is based on the National Research Council Act.

Mr. BLACKMORE: Has that word "abandon" any technical meaning when used in such circumstances as this? I wonder why you would not use the term "surrender"?

Major READY: This is the term used in the Patent Act. The intention here is that the minister may abandon all rights which means surrender or give them back.

Mr. THOMSON: It means a quit claim.

Mr. ADAMSON: Does the Crown under the Minister of National Defence now hold any patents on which they are receiving either royalties or any other payments?

Major READY: No, sir, as far as the department is concerned it is not the policy to exploit and develop patents. As I understand it the department requires only a licence to use or manufacture, that is the department has the right to use an invention and to manufacture it free from payment of royalties.

The CHAIRMAN: That is, for the purposes of the Crown.

Major READY: Yes.

Mr. ADAMSON: Does the National Research Council hold any patents which are now being used commercially on which they get royalty, do you know?

Major READY: I believe they do, yes; there is the Canadian Patent and Development Limited which has been set up for the purpose of exploiting patents, but as far as the Department of National Defence is concerned it has not surrendered any patents to that corporation of which I am aware.

Mr. ADAMSON: Would you, if you developed something surrender it or patent it to the man who invented it, even though he was working on, developing that special patent, or would you abandon it to the Canadian Patents and Development Limited?

Major READY: All I can say is that to the best of my knowledge and belief the department has not done that yet.

Mr. ADAMSON: You have never abandoned a patent?

Major READY: Not to Canadian Patents and Development Limited.

Mr. ADAMSON: Have you ever abandoned a patent to an individual?

Major READY: Oh yes, many, many times we have given inventors back full rights.

Mr. ADAMSON: And they have been developed commercially?

Major READY: I have not followed the course of the development since the rights were given back, so I cannot answer that. That is up to the individual himself; once he has the rights reassigned to him then he may do whatever he wishes with his invention.

Mr. ADAMSON: You do not know of any cases where they have developed them commercially. There are a lot of inventions made by people in the services, and I wondered if any of them had developed?

Major READY: Yes, I can tell you of one which was re-assigned to the inventor within the past six months. His explanation of why he wanted full rights and title was to develop it commercially. The inventor went back to the west coast with a re-assignment granting him full rights and title to go ahead and exploit the invention commercially. Whether or not he proceeded with it, I do not know. But that certainly was one case. And there have been many other cases where all rights and title have been re-assigned to the inventor.

Mr. BLACKMORE: How does the proposed Canadian practice in this regard compare with the practice in Britain?

Major READY: The British practice is in the process of changing as I understand it. I gathered that this change in Great Britain somewhat is in line if not directly in line with what is proposed in the clause.

Mr. BLACKMORE: Is Great Britain proposing a change in practice, or is she going on?

Major READY: The law relating to patents applicable in Great Britain is somewhat different from the law here. In Great Britain I believe, when a person is employed in a government department one of the conditions of his employment is that he will waive all rights to inventions which he may make while so employed; so the law amounts to the same thing as an absolute assignment.

Mr. BLACKMORE: Is the British practice in reference to the inventor more lenient or more considerate than our practice?

Major READY: I am not in a position to answer that.

Mr. PEARKES: Reference was made to the Inter-Service Inventions Board which was going to be set up. I know it is hard to draw a line between regulations and statutes, but I wondered if there should not be some reference in this statute to the procedure by which a man would submit his invention, and how it would come forward—whether it goes to that board or what. There is no reference here at all to the board and I wondered whether that is an ommission which should be corrected. Perhaps the Judge Advocate General would care to explain.

Brigadier LAWSON: The board is intended to be a body advisory to the minister and not an executive body, and therefore I think it would be inappropriate to refer to it in the statute. It is not to have any independent power but simply to advise the Minister in these matters.

Mr. PEARKES: But we were told this afternoon that the board would decide whether the man was in the process of his duty when he made his invention.

Brigadier LAWSON: Major Ready is more familiar with this matter than I am and I think Major Ready said that the board would make the decision and advise the Minister that it thought so and so, whereupon the Minister would make the final decision under the Act.

Mr. PEARKES: The board would not have the power of saying yes or no. Its power is purely advisory? From the point of view of protection of the Minister we are investing the Minister with very considerable powers here in saying that money will be allotted by him. I wondered whether the Minister of National Defence would prefer to have that left to the Governor General in Council.

The CHAIRMAN: Is that not covered in subsection 4 which reads:

(4) Subject to regulations made by the Governor in Council.....

That is in the section under which the minister can pay out money; and he must pay it out pursuant to regulation made by orders in council.

Mr. PEARKES: You feel that that covers it?

The CHAIRMAN: Yes.

Mr. PEARKES: It says that "the Minister may authorize".

The CHAIRMAN: But it is subject to regulation by order in council.

Mr. PEARKES: You feel that that is actual protection?

The CHAIRMAN: I think so.

Mr. ADAMSON: Major Ready, in my day anybody who had an invention used to take it up with the unit, and eventually with the brigade and with the intelligence staff. Is that procedure still envisioned?

Major READY: No, sir. What we anticipate is that a man with an invention may forward it directly to the deputy minister who will record the name of the invention, the date of receipt, and the subject matter of the invention. He will then acknowledge the fact that he received the invention from the man.

Mr. ADAMSON: Yes.

Major READY: And in due course it will be passed on to the appropriate director for appraisal of the value and usefulness to the service and so on.

Mr. ADAMSON: Then it does not have to come through what is known as the "usual channels"? It goes direct.

Mr. DRURY: The intention is that it go direct. There is recognition that in some senses the "usual channels" are not entirely adequate.

Mr. ADAMSON: I agree with the deputy minister on that point. This is a simplification which allows a man with an invention to send it directly to the board?

Major READY: Yes, that is the proposal, sir. And I might say further that having regard to the difficulties which were found when the Inventions Board was functioning, this present Inter-service Committee on Inventions is doing everything to ensure that those difficulties which previously existed with the Inventions Board will not exist with this Inter-service Invention Committee.

The CHAIRMAN: Does the section carry?

Carried.

The CHAIRMAN: We now come to section 13 and 14 dealing with the regulations:

13. (1) The Governor in Council may make regulations not inconsistent with this Act, for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

(2) Subject to section fourteen, the Minister may make regulations, not inconsistent with this Act or regulations made by the Governor in Council, for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces and generally for carrying the purposes and provisions of this Act into effect.

14. Where in any section of this Act, other than section thirteen and this section, there is express reference to regulations made or prescribed by the Governor in Council in respect of any matter, the Minister shall not have power to make regulations pertaining to that matter.

I was wondering if we might consider those two together.

Mr. WRIGHT: Mr. Chairman, not being a lawyer I would like the deputy minister's opinion as to this clause. Previously the King's Regulations had to be approved by the Governor in Council, and also the regulations made by the Governor in Council were required to be published in the *Canada Gazette* and tabled before both Houses of parliament. That is done away with now, as I understand it, and under the provisions of the new bill the Minister may make regulations and there is no provision whatsoever for publishing any of these regulations or tabling them in parliament. He could determine the establishment of units, proportion of officers to men, number of subdivisions and all such matters which were previously subject to control. They obviously control the expenditure of vast sums of money, and now the Minister is also given authority to make regulations in respect to discipline. How far can it go with respect to discipline without any reference to the Governor in Council and without ever publishing the regulations? It seems to me it is pretty broad and there should be some provision for them being published if publication does not disclose information that should not be disclosed.

The CHAIRMAN: It may be of help to the committee if I were to read sections 14 and 139 of the Militia Act, and section 38 of the Naval Service Act.

Sections 14 and 139 of the Militia Act read:

14. The organization of the Canadian Army shall be as from time to time prescribed by the Governor in Council.

139. The Governor in Council may make regulations for carrying this Act into effect, for the organization, discipline, efficiency and good government generally of the Canadian Army, and for anything requiring to be done in connection with the military defence of Canada.

Provided that the Governor in Council may empower the Minister to make regulations in respect of any matter relating to the organization, discipline and efficiency of the Canadian Army for which specific provision is not made elsewhere in this Act.

Section 38 of The Naval Service Act reads:

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.

Mr. WRIGHT: They have to be published in the *Gazette*.

Brigadier LAWSON: The question of publication is to be covered in an Act that is now before parliament called "The Regulations Act". The purpose of that Act is to remove the varying provisions for publication now contained in the various federal statutes and to introduce a uniform system of publication. When the National Defence Act was presented to the Senate, we had a provision in it for tabling in Parliament. We dropped the provision because of the new Act, now being brought forward, in which all existing sections in federal legislation referring to publication of regulations will be repealed.

The CHAIRMAN: That Act will be brought in at this session?

Brigadier LAWSON: I understand that it has already had first reading.

Mr. BLACKMORE: What was the reason for giving so much more power under this Act to the Minister than he had under the previous Act?

Brigadier LAWSON: I do not think he has more power, really.

The CHAIRMAN: I do not think so. It appears that under the Militia Act that the governor in Council is in control. He can empower the Minister to act. What section 14 would appear to mean is that the Governor in Council may make regulations for carrying this Act into effect, for the organization, discipline, efficiency and good government generally of the Canadian army and for anything requiring to be done in connection with the military defence of Canada. By the Naval Service Act, except where by this Act the Governor in Council is empowered to make regulations, the Minister may make regulations for carrying out this Act.

Mr. BLACKMORE: You feel the minister has not more power under this Act?

The CHAIRMAN: Not as much as under the Naval Service Act.

Carried.

Before we move on to Part II, might we revert to clauses 7 and 8 which were stood over in order that we might see whether a redraft acceptable to this committee could be prepared. The deputy minister and Brigadier Lawson have worked out a draft which I would like to have circulated. Perhaps we can then dispose of the section and not have it standing any longer.

Mr. PEARKES: Before you pass on to this part, I notice there are some important sections which have been omitted.

The CHAIRMAN: I will make a note of that.

Mr. STICK: That covers it, I think.

Mr. LANGLOIS: Yes, it looks all right to me.

The CHAIRMAN: That seems to me to meet the situation that was discussed at the morning session.

Mr. ADAMSON: Subsection 2 is new.

The CHAIRMAN: That is right.

Mr. ADAMSON: That gives them power in an emergency.

The CHAIRMAN: Yes, that meets Mr. Pearkes' objection which was raised this morning.

DEPUTY MINISTER

Appointment.

7. (1) There shall be a Deputy Minister of National Defence who shall be appointed by the Governor in Council.

Additional Deputy Ministers.

(2) Where one or more additional Ministers or Associate Ministers are appointed under section six, the Governor in Council may appoint an additional Deputy Minister for each such additional Minister or Associate Minister.

Mr. ADAMSON: It says "deputy head" in clause 8 (3), and that put these people under the deputy minister.

Brigadier LAWSON: The purpose of those words is to give each associate deputy minister the rank and status of a deputy head of a department; that gives the associate deputy minister certain privileges. He is to have equal rank with a deputy minister. They are associate deputy ministers but they are subject to the deputy ministers of the department. You cannot class them as directors as you would people working in a department, because they are deputies of the Minister.

Mr. LANGLOIS: I move, Mr. Chairman, that clause 7 be deleted and be replaced by the new clauses 7 and 8 as amended.

Mr. VIAU: I second that.

The CHAIRMAN: We want to get this in proper form. What we really want is section 7 amended by adding subsection (2).

Mr. ADAMSON: We are replacing it with two clauses now instead of one.

The CHAIRMAN: The first sub-clause is the same as No. 7 so I think the proper form would be to amend No. 7 by adding subsection (2).

Mr. STICK: I second that.

Carried.

The CHAIRMAN: And then is the clause as amended carried?

Carried.

Then we come to section 8:

Associate Deputy Ministers.

8. (1) The Governor in Council may appoint not more than three persons to be Associate Deputy Ministers of National Defence.

Additional Associate Deputy Ministers.

(2) During an emergency, the Governor in Council may appoint additional Associate Deputy Ministers.

Duties of Associate Deputy Ministers.

(3) Each Associate Deputy Minister shall have the rank and status of a deputy head of a department and as such shall, under the direction of the Minister and of the Deputy Minister, perform such duties and exercise such authority as deputy of the Minister and otherwise, as may be assigned to him by the Minister.

That section is amended by putting in a new subsection. In other words, subsection (1) remains the same and you amend it by adding the new subsection (2), and the existing subsection (2) becomes subsection (3).

Mr. VIAU: I move that.

Carried.

The CHAIRMAN: Does the section as amended carry?

Carried.

Mr. THOMSON: Section 8, 9 and 10 all go together. Have we carried those?

The CHAIRMAN: Yes. Now, Mr. Pearkes wanted to ask some questions before we move on to Part II of the Act.

Mr. PEARKES: In all of these parts there are assembled a great many other sections in the various manuals, and in some cases sections have been omitted and perhaps in no way included. I think in this particular part of the Act there are two omissions which occur to me. I mentioned one of them in the House,

the old section 4 of the Militia Act, which vests in His Majesty the Command-in-Chief of the Canadian forces; and it seems to me that that is something which we do not want to have removed from this Act unless there are very sound reasons for doing so. Then the other one is the liability to military service which was included in the old section 8 of the Militia Act, and I do not see that included. Now, have we eliminated all idea of bringing home to the citizen of Canada his liability to service? Mind you, liability to service is not enforcing that liability. That is an entirely different matter, but it does bring to the attention of every citizen of Canada his liability of service in the event of an emergency. And I would really like to know whether those two sections have been omitted from the present Act, because I think that involves a principle, breaking a link in the whole chain of command from His Majesty down to the liability of the ordinary citizen to defend his country if required in a case of grave emergency. I do not know, there may be other sections in which this liability to service applies. In the past we have always had plenty of time to pass other legislation; we had plenty of time in the last two wars in which if Canada wanted to have enforced enlistment we brought in special legislation to do that; but that has always been on the assumption that there has been time, but there may not be time in view of changing conditions; and I just ask the question as to whether it might not be well worth while having in this Act a reference to the liability to service of every man in Canada to defend the country in case of great need. There may have been perfectly good reasons as to why these two sections have been removed. I would like to be informed about them, and I would also like to hear whether there are any other sections which perhaps have been omitted and the reasons why. Give us the background.

The CHAIRMAN: I think the first point, if I recall correctly, was answered by the minister in the House.

Mr. PEARKES: He said it was in some other Act.

The CHAIRMAN: He referred, as I recall it, to the relevant section in the British North America Act.

Mr. ADAMSON: Yes, to a section of the British North America Act.

The CHAIRMAN: I know he made a statement in the House. Mr. Pearkes raised the question and the answer was, I think, that it came under a relevant section of the British North America Act; the constitution already covers it.

Mr. PEARKES: We should have the section of the British North America Act read to us so we can see whether it does cover the matter. I am not so sure that it does.

The CHAIRMAN: Wing Commander McLearn would like to make an observation on that.

Wing Commander MCLEARN: I might say that the subject matter of the Part, the organization of the dpartment itself with which the committee has been dealing is not one that is capable of being examined from the point of view of what has been left out in general. The subject matter of that Part is dealt with in several statutes—the Militia Act, the R.C.A.F. Act, the Naval Service Act and the Department of National Defence Act. One would expect that the existing Department of National Defence Act in itself would contain all subjects which are dealt with in this Part and perhaps conclude that anything in the existing Department of National Defence Act not perpetuated in this Act has been left out. Such is not the case because the Department of National Defence Act deals with such matters as the Defence Research Board, which is dealt with further over in this Act, and such is also the case in connection with the handling of service estates and other subjects of that sort. Now, the question of command-in-chief would properly arise under the next Part which will come before the committee, namely, the Part dealing with the constitution

of the Canadian Forces; and the question of calling up the whole population, I should think, might properly be discussed when the pertinent sections are reached. All I can say, sir, is that if you have any specific provision of the Militia Act or other statute in mind as we go through and will indicate it to us, we can tell you whether we dropped it or not and why we dropped it; but it would be somewhat awkward to go right through the whole gamut of the existing legislation at this time.

The CHAIRMAN: Would it not be better to proceed with the sections and keep your observations in mind. Some of these might be picked up later.

Mr. PEARKES: I would like to know now whether liability to service is covered in some of the other sections.

Wing Commander MCLEARN: Not in the sense that it is in the Militia Act. We have an explanation prepared in respect of that. I would suggest that the committee deal with that when it comes to the questions of active service and liability for service generally.

Mr. ADAMSON: And the explanation will be forthcoming at that time?

Wing Commander MCLEARN: Yes.

The CHAIRMAN: Well then, will you go on with this part II?

Mr. PEARKES: I would like to refer the committee to section 4 of the Militia Act which says that the Command-in-Chief of the Canadian Army 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; and that refers to R.S. Chapter 41, Section 4.

Mr. LANGLOIS: And section 15 of the British North America Act reads as follows:

> 15. The Command-in-Chief of the Land and Naval Militia, and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Mr. PEARKES: That needs amending, undoubtedly; and, of course, that would involve a change in the term "militia".

Brigadier LAWSON: The section is antiquated in form, but it does mean the same thing.

The CHAIRMAN: May we go on now to Part II?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Clause 15:

> 15. The Canadian Forces are the naval, army and air forces of His Majesty raised by Canada and consist of three Services, namely, the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force.

Mr. STICK: I think you should have the word "Royal" there—Royal Canadian Army.

Mr. GEORGE: Do the cadets come in now or are they covered separately?

The CHAIRMAN: Separately.

Mr. PEARKES: I am going to get into trouble here. May I ask why we have the particular order: Royal Canadian Navy, the army, and the air force?

Mr. LANGLOIS: The order of merit.

Mr. CAVERS: The navy is the senior service.

Mr. PEARKES: I think it is a point. In the British service, the Royal Navy is regarded as the senior service because it came into existence about 200 years before the army did. Then the army came into existence, and then came the Royal Air Force.

Now, I do not want to appear facetious but we are adopting a special Canadian code. As far as Canada is concerned, the army came into existence many years before the Canadian navy and, therefore, it is reasonable to argue that the Canadian army should be considered as the senior arm of the service. I would like to know why you have changed that order?

Mr. LANGLOIS: It might be the fact that the Canadian army came into existence by statute before the navy did but I think the first part of the Canadian navy was here under British rule in Canada and when General Wolfe came over here in ships. He had to get the ships before he got the men; and he needed the ships to get the men here.

Mr. PEARKES: Right; but they were British ships, not Canadian ships.

Mr. STICK: It was the British army then, not the Canadian army.

Mr. CAVERS: Is the navy not entitled to seniority on all parades?

Mr. PEARKES: Yes, if you put it down here this way, they are.

Mr. LANGLOIS: If General Pearkes prefers my first explanation, that it is the order of merit, we will stick to that and I have no objection.

Mr. PEARKES: Well, all joking aside, the reason why the British navy comes first is because it was organized officially before the army. That does not apply in all other countries and, as far as Canada is concerned, the Canadian army was authorized by law several years before the Canadian navy was.

I do not know your reason for putting the Canadian navy first—you may say you are following British tradition?

Commander HURCOMB: May I interject something here? There has been only one pronouncement that I know of on this subject and it was a memorandum which I saw issued by the Chief of the General Staff in the early 1920's in which he recognized the navy's entitlement to the distinction "the senior service." I tried to find out the background of this acknowledgment but there was nothing on the file to indicate it. I could only conclude that it was the good sense of the Chief of the General Staff and nobody else has contradicted it.

Mr. THOMSON: I submit that we have good sense too, and I agree with General Pearkes; the army should come first; and, while we are at it, should we not discuss the advisability of retaining or dropping the word "royal" on the other two services?

It is the Canadian navy, the Canadian army, and the Canadian air force.

Mr. STICK: I think the word "Royal" gives you your connection between the forces and the Crown, and I hesitate dropping it without due consideration.

Mr. DRURY: In the case of the army I think the appellation "royal" goes to units rather than to the army as a whole—units or corps. There is no similar subdivision in the navy or the air force so it must be the Royal Canadian Navy, and the Royal Canadian Air Force.

The CHAIRMAN: Shall the item carry?

Some Hon. MEMBERS: Carried.

Mr. PEARKES: What is carried?

Mr. STICK: After all, there is something in tradition and the policy of esprit de corps comes into the service. I do not give a continental whether the navy comes first, as long as they do their duty. If we made any change would it have any effect on the esprit de corps? Can you answer that?

Mr. DRURY: That is a rather difficult thing to answer. One might assume that the esprit de corps of the preferred service would rise, and that in the service less preferred it would drop; but it is very difficult to measure.

Mr. STICK: How would the navy take this? Would they like it or dislike it? Would it cause any dissatisfaction?

Mr. DRURY: I think unquestionably the navy, which traditionally has occupied the right of the line, would feel disappointed.

Mr. STICK: Why cause any friction? Let us leave well enough alone. I move that the section carry?

Carried.

The CHAIRMAN: Section 16.

16. (1) There shall be a component of each Service of the Canadian Forces consisting of officers and men who are enrolled for continuing, full-time military service; and those components are referred to in this Act as the regular forces.

(2) The maximum numbers of officers and men in the regular forces shall be as from time to time authorized by the Governor in Council, and the regular forces shall include such units and other elements as are embodied therein.

(3) There shall be components of each Service of the Canadian Forces consisting of officers and men who are enrolled for other than continuing, full-time military service when not on active service; and those components are referred to in this Act as the reserve forces.

(4) The maximum numbers of officers and men in the reserve forces shall be as from time to time authorized by the Governor in Council, and the reserve forces shall include such units and other elements as are embodied therein.

(5) In an emergency, the Governor in Council may establish and, while the emergency exists, authorize the maintenance of a component of each Service of the Canadian Forces, referred to in this Act as the active service forces, consisting of

(*a*) officers and men of the regular forces and the reserve forces who are on active service and who are placed in the active service forces under conditions prescribed in regulations; and

(*b*) officers and men, not of the regular forces or the reserve forces, who are enrolled on active service in the active service forces for continuing full-time military service.

(6) The maximum numbers of officers and men in the active service forces shall be as from time to time authorized by the Governor in Council, and the active service forces shall include such units and other elements as are embodied therein.

That seems to fall into just three categories, the regular forces, the reserve forces, and the active service forces, under the conditions set out. There is a subclause in each case providing for the fixing of the maximum numbers by the Governor in Council. There is the same clause to fix the numbers in each case.

Mr. WRIGHT: In the second section here, to my way of thinking, there is the greatest change in this whole Act. It has been British tradition and Canadian tradition that parliament shall decide the maximum numbers that there shall be in the forces of Canada at any given time. This changes that principle and gives that power now to the Governor in Council. It seems to me that is a major change. I do not know whether it is good? I certainly would like to have some explanation from the deputy minister with regard to why we should take out of the hands of parliament the power to fix the maximum number of the forces. I do not want anyone to misunderstand me, and I am not trying to limit the forces but I do think this is something which parliament has always had the right to decide.

Now, we are taking it out of the hands of parliament and saying the Governor in Council has the power to decide the size of the armed forces we shall have in Canada at any given time.

Mr. STICK: Did parliament have that right before, Mr. Chairman?

The CHAIRMAN: Yes, I think so.

Mr. WRIGHT: I am sure of it.

Mr. PEARKES: It was controlled by the Army Act.

Mr. LANGLOIS: Parliament has another control by way of withholding or voting credits to the Minister of National Defence.

Mr. WRIGHT: Yes, I agree that parliament has that power in the voting of credits, but parliament always has had the control of the maximum number of men that should be in our army, navy or air force at any given time.

We are now departing from that principle, and it seems to me that is a change of principle which is something that can be pretty fundamental in our constitution, and I think it should be given pretty serious consideration.

The CHAIRMAN: First, as to the factual consideration, section 22 of the Militia Act says "that there shall continue to be a portion of the Canadian army on continuous fulltime military service which shall be called the active force and which shall consist of such officers and men voluntarily enrolled for continuous fulltime service, not exceeding 30,000, as are from time to time authorized by the Governor in Council."

There is, apparently, no statutory ceiling of any kind on the navy, air force, or the reserve army, and I think according to the departmental memorandum the idea is that the same situation that now applies to the navy, the air force and to the reserve army shall apply to the regular army particularly under world conditions as they exist now, and particularly due to the fact that the active army may require changes made in its personnel in relation to the reserve army distribution and enrolment. And, of course, as Brigadier Lawson points out, the effective control of the number of men in the army is the estimates that govern their department.

Mr. WRIGHT: Does the deputy minister now say that there is no limit to the numbers of men who may be enlisted in the air force or in the navy at the present time?

The CHAIRMAN: There is no statutory ceiling of any kind.

Mr. WRIGHT: There is no statutory ceiling as far as they are concerned but there is a statutory ceiling as far as the army is concerned?

The CHAIRMAN: In the regular army, not the reserve. It is the active army which must not exceed, under section 22 of the Militia Act, 30,000; that is the only limitation of the four categories; the actual limitation is on the regular army.

Mr. PEARKES: Perhaps I could explain the historical background if it would be of any interest to members in the committee. It dates back to just after the civil war in Great Britain where the parliamentary troops under Cromwell really carried out a minor reign of terror; and then followed the Restoration, and there was a fear that there would be a standing army in Great Britain which would be able to exercise the will of the King against the people, and so there was a law passed that every year parliament had to decide on the number of troops that were to be in the standing army in Great Britain. There was no fear at that time that the navy would be able to dominate the civilian population. Now, in Great Britain that control by parliament is kept by passing annually an annual Army Act which lays down every year, quite irrespective of the estimates and the amount of money to be voted, the number of troops there shall be in the standing army of Great Britain, and I believe that is carried on until today.

Now, in Canada we were not so afraid of the army of Canada, shall we say, ever getting a military coup of the government and we got around it by putting in the statute the size of the standing or regular or permanent force as it was called in those early days, and laid down the maximum number of troops which

parliament could maintain by statute. While, in the past, parliament never voted sufficient money to enable the Governor General to have a standing army which might control these houses of parliament, I do not believe there is any danger in the future; but that is the origin of it.

Mr. LANGLOIS: In the case of emergency, of war, in England, the War Emergencies Act would allow additional troops to be enrolled?

Mr. THOMSON: We may be farmers but we are guiltless of our country's plight. I would suggest that this Act is a contemplation of the aspect of emergency.

The CHAIRMAN: Or preparation for probable emergency.

Mr. WRIGHT: In a prospective emergency under the War Measures Act, the Governor in Council would have that power.

The CHAIRMAN: This is preparatory or at least it makes it permissible to make preparations.

Mr. HARKNESS: Section 5 deals with an emergency, having to do with the the numbers of officers and men in the regular forces.

Mr. DRURY: The number of men in the regular forces is perhaps a direct function of the size of the active forces; you can rapidly expand and, as the chairman pointed out, I think it is desirable to have some flexibility in preparation for an emergency before it actually occurs.

Mr. ADAMSON: I notice you have changed the phraseology here, that you kept the word "emergency" rather than "state of war". Is there any reason for that?

Brigadier LAWSON: We have always used that phraseology. "Emergency" is defined as "war, invasion, riot or insurrection, real or apprehended". Emergency in this sense must not be confused with a state of emergency under the War Measures Act. This state of emergency can exist without being declared by the Governor in Council.

Mr. LANGLOIS: Emergency is defined in section 2 of the present bill.

Mr. WRIGHT: Supposing the Governor in Council decides that they are going to enlist a certain number of men in the regular army and Parliament in their vote does not agree to that, the effect would be then that the Governor in Council would not have the funds which may be necessary to train these men properly. Today an army depends upon being highly trained and if parliament decided not to vote the necessary funds to train the number of men which the Governor in Council had enlisted, it seems we would have an inefficient army. If parliament and the Governor in Council agreed, then, under these circumstances, probably the number of the forces should be controlled by parliament rather than the Governor in Council.

The CHAIRMAN: Would it not be the case if parliament failed to grant the estimates that we would have a new government?

Mr. WRIGHT: Yes, I suppose so.

Mr. PEARKES: Personally, I do not think there is any occasion to limit the strength by having it in the statute because I think the possibility of an army taking control of the state has passed way, and I do not think there is any fear in this country on that score.

Mr. WRIGHT: That was not the fear which I had. My concern was to get the most efficient army we can get under this Act. It is a matter of efficiency rather than the fear of the army taking over the government.

Mr. PEARKES: In the past, although there was a ceiling laid down, never to my knowledge has the permanent force been recruited up to that ceiling.

Mr. VIAU: That would apply where an emergency was declared, where the reserve force was called out on active service?

Brigadier LAWSON: No. A state of emergency under the Militia Act was not declared in Manitoba.

Mr. VIAU: Why, with all those members of the reserve force called out on active service in the last few weeks?

Brigadier LAWSON: They were out on service, not out on active service.

Mr. VIAU: As far as pay and allowances are concerned, are they not on active service in Manitoba right now?

Brigadier LAWSON: No. They are on service, but not on active service.

The CHAIRMAN: Does the clause carry?

Mr. ADAMSON: I see that you are changing the name "active army" to "regular army". I think it is probably a good thing, but might I ask why it is being done?

Brigadier LAWSON: Under the Act as worded we are not required to call it the regular army or anything else. It is just referred to in this Act as the regular force for convenience. In the King's Regulations it can be called whatever is thought best. We had to get some name that would be a short name to use throughout the bill.

Mr. STICK: There is no limit by statute on the Navy or the Air Force.

The CHAIRMAN: Or the reserve Army.

Mr. STICK: Or the reserve Army.

Mr. WRIGHT: All that this does is to place the regular army at the present time in the same position as the air force, the navy, and the reserve army.

The CHAIRMAN: Does the clause carry?

Mr. PEARKES: In the old Militia Act, the period of service was laid down. I see that has been omitted. Has that been done intentionally? I think it is in section 15 of the Militia Act where it is laid down that the period of service shall be five years or three years, and so on. Has it been intentionally omitted?

Brigadier LAWSON: It has been omitted but it comes up under clause 21, I think. Yes, clause 21-(2).

Mr. PEARKES: And that will also deal with an extension of service in an emergency which was dealt with in the previous paragraph in the Militia Act.

Brigadier LAWSON: That is still another clause. I think the number now is 31.

Mr. PEARKES: You have also in the old Act the oath which had to be taken by the militia. Has that been done away with?

Brigadier LAWSON: We have not put the form of oath in the Act, sir.

Mr. PEARKES: That is not necessary?

Brigadier LAWSON: We did not think so. That again comes up under one of the subsequent sections.

The CHAIRMAN: Does the section carry?

Mr. PEARKES: The section in the old Militia Act which deals with military districts, laying down the outlines command and districts, reads:

> 19. The Governor in Council may,
>
> (*a*) direct that any portion of Canada shall be a military district for the purposes of this Act, and may alter the limits of any such district;
>
> (*b*) cause two or more districts to be grouped together for the purposes of command and administration; and
>
> (*c*) divide any military districts into subdistricts, brigade, regimental and company divisions, as appears expedient. R.S., c. 41, s. 21.

That is not included in this section. Does it come in elsewhere?

Brigadier LAWSON: No, it does not. We thought that it was unnecessary. That comes under general powers of the Governor in Council to organize the forces. The Air Force is organized on a functional command basis rather than on an area command basis, and we could not see any necessity for having it in the Act.

The CHAIRMAN: Does the section carry?

Carried.

Section 17

17. (1) Subject to this Act, the Naval Service, including the Naval Forces, and the Canadian Army and the Royal Canadian Air Force shall continue as constituted immediately prior to the coming into force of this Part.

(2) On and after the coming into force of this Part, the Naval Service, including the Naval Forces, shall be designated as the Royal Canadian Navy.

Mr. ADAMSON: Has it not been known as the Royal Canadian Navy up to now?

Brigadier LAWSON: Just the permanent naval force is known as the Royal Canadian Navy.

Mr. ADAMSON: You mean there was a distinction?

Commander HURCOMB: Yes, there were two components, the Royal Canadian Navy, which was the permanent force, and the reserves, which consisted originally of the Royal Canadian Navy Volunteer Reserve and the Royal Canadian Naval Reserve which were later called the Royal Canadian Navy (Reserve). Only the permanent force is called the Royal Canadian Navy.

The CHAIRMAN: This should have the support of the Naval Reserve forces.

Mr. PEARKES: There was a Royal Canadian Volunteer Reserve, and there was the other one.

The CHAIRMAN: Shall this clause carry?

Carried.

Clause 18

18. (1) The Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall consist of such units and other elements as are from time to time organized by or under the authority of the Minister.

(2) A unit or other element organized under subsection one shall from time to time be embodied in such component of the Service of which it forms a part as the Minister may direct.

Shall the clause carry?

Carried.

Clause 19

19. (1) The Governor in Council may appoint an officer to be Chief of the Naval Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Navy.

(2) The Governor in Council may appoint an officer to be Chief of the General Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Canadian Army.

(3) The Governor in Council may appoint an officer to be Chief of the Air Staff who shall hold such rank as the Governor in Council may prescribe and who shall, subject to the regulations and under the direction of the Minister, be charged with the control and administration of the Royal Canadian Air Force.

(4) Unless the Governor in Council otherwise directs, all orders and instructions to the Royal Canadian Navy, the Canadian Army, and the Royal Canadian Air Force that are required to give effect to the decisions and to carry out the directions of the Government of Canada, or the Minister, shall be issued by or through the Chief of the Naval Staff, the Chief of the General Staff or the Chief of the Air Staff, as the case may be.

Mr. PEARKES: Mr. Chairman, I do not know whether the committee is aware of the fact, but I think there is a bigger change here in so far as the army and the general administration of the staff are concerned than in any other section in this Act. Here you are changing the whole system of the staff control of the army. In the past you have had the general staff represented by the chief of the general staff, who has had the responsibility of coordinating the work of the other branches of the staff: the adjutant general, the quartermaster general and the master general of ordnance. Here you are placing the chief of the general staff in a position senior to the other heads of the branches or heads of staff, and that is really a major change which is going back almost to the system which was in vogue in 1904 when you had a commander in chief in the army. Certainly that was true in Great Britain, and it was found so unsatisfactory that the Fisher Commission reorganized that and appointed an army council in which you had the three heads of staff coordinated by the chief of the general staff. Each of the heads of staff, such as the adjutant general and the quartermaster general, have up until quite recently issued their own orders. The chief of the general staff issued his orders and the adjutant general, the quartermaster general, and the master general of ordnance issued their orders.

Now, it seems to me that paragraph 4 changes all that, and I would not like the committee to rule on this major change, because it is a major change in army administration, without full advice. I am not competent to give more than a very sketchy outline of it, as I have done. I feel that we should have this fully explained to the committee, and I do not know whether the deputy minister is prepared to do it or whether we should not ask the adjutant general or the chief of general staff to come and explain the reason for this major change. It is very definitely a major change in the system of issuing orders, and the system of command in the army. Perhaps we can get some explanation of it.

Mr. DRURY: Mr. Chairman, I am prepared to endeavour to satisfy the committee, but I do not know whether I will be able to do it. One of the purposes of this Act is to produce uniformity as between the three services. We have had, as a case in point, the situation in the air force and the navy. There is no statutory ceiling imposed on them, whereas in the army there has been, and it is proposed to abolish that now. In the past the Royal Canadian Navy and the air force have had a senior officer in charge of the entire service, and the army has been unique in having this three man control at the top. In order to get the three services uniform, and certainly the air force and the navy seem to have functioned satisfactorily under this arrangement, we proposed this change. May I say this was done with the full approval of the chief of general staff and the adjutant general and the quartermaster general, and we have adopted the same type of organization as the other two services.

Now, this statute will merely confirm what has been more or less a working arrangement over the past two years, since the department was organized as one unit, and there has been no dissatisfaction, as far as I have been able to learn, with this system of operation within the army.

I do not know what else the committee may like added to that.

Mr. ROBERGE: Do these senior sections work together; or do they operate from one grand strategy direct?

Mr. DRURY: Mr. Chairman, each service chief is responsible for his own service. For the production of a defence plan or rather a national defence plan, there is an organization known as the Chiefs of Staff Committee, which is composed of the three chiefs of staff and the chairman of the Defence Research Board.

Mr. ROBERGE: Who has authority over the whole staff?

Mr. DRURY: The minister in every instance remains the supreme arbiter in control.

Mr. STICK: That council you are speaking about is not set up in the statute.

Mr. DRURY: No.

Mr. LANGLOIS: I understand the chief of the general staff is chairman of this committee now. Who appoints him?

Mr. DRURY: He is appointed by the minister.

Mr. GEORGE: I think it might be of help if the deputy minister would go back a little further and explain that there is a defence committee of the cabinet and the minister and so on, so everybody understands how these orders get down to the general staff.

Mr. DRURY: Well, the supreme authority, of course, is parliament; the executive of parliament is the Governor in Council, and under the Governor in Council comes the minister. That is the executive stream and under the minister there are the various chiefs of staff. As an advisory group to the Governor in Council there is the cabinet and for defence matters, a committee of cabinet, known as the Cabinet Defence Committee. It is composed of the Prime Minister as chairman, the Minister of National Defence, the Minister of Trade and Commerce, the Secretary of State for External Affairs, and the Minister of Finance. They offer to the cabinet advice on defence questions. Advising the Cabinet Defence Committee is the minister, and advising the minister on defence questions is the Chiefs of Staff Committee. Now, that gives the advisory stream as distinct from the executive stream.

Mr. STICK: The Chiefs of Staff Committee can be called into the subcommittee of the cabinet when required?

Mr. DRURY: In practice the chiefs of staff attend the meetings of the Cabinet Defence Committee.

Carried.

Mr. PEARKES: No, this is too important to rush through. Is this system of supremacy of the general staff going to be carried right down through the formations?

Mr. DRURY: The only instance, Mr. Chairman, in which the Army Council type of operation obtained was at National Defence Headquarters. In each command there is a general officer commanding, assisted by staff, and he is the commander and responsible for the whole command. In the units it is of course a commanding officer, and it was only at National Defence Headquarters that this situation existed. I think that perhaps the purpose of it was that the chief of the general staff, the adjutant general, and the quartermaster general and master general of ordnance were regarded as principal staff officers to the commander in chief. Under our system the commander in chief has been largely nominal.

Mr. PEARKES: The commander in chief has been done away with since 1904, as you know, and this trinity of staff in the army has been working very satisfactorily. I can see some reason for having the same system which exists in the navy and air force, but all I am asking is, does this carry right down to the divisions? For instance, in a division you have a general staff officer, grade I, and an AA & QMG, with equal right of access to the commander. Now then, is the supremacy of the general staff to be carried right down through there? Here you are making the chief of the general staff supreme over the adjutant general and the quartermaster general and the master general of ordnance. Is that same supremacy to be carried down through all commands, and is the AA & QMG to go through the general staff officer to the commander? In the past the general staff has always co-ordinated the work of the other branches.

Mr. DRURY: There is no intention that at lower formations the role of the general staff officer should be other than co-ordination. Now, in some instances there have been appointed, as has been done in the United States, a chief of staff to the commander, and the chief of staff where such an appointment is made, is not a general staff officer or AA & QMG officer. He is chief of staff and he has responsibility for the operation of all staffs of the commander.

Mr. PEARKES: Is there any intention of following the United States system with various branches of the general staff, and I am not referring to operations only? Is that being adopted in Canadian formations?

Mr. DRURY: Not as yet, sir. We call him another link, but theoretically he has no responsibility, and then the general staff officer, Brigadier-General-Staff, is the co-ordinating officer.

Mr. WRIGHT: The deputy minister has stated that this pattern is becoming general, the Chief of the General Staff, Army, Navy and Air Force; what about the Chairman of the Defence Research Board? Would he not be a member of that kind on the staff council? Research plays such an important part in defence today that I should think he would be included.

Mr. DRURY: I think I mentioned that; if I did not, I intended to include the Chairman of the Defence Research Board.

The CHAIRMAN: You named him.

Mr. STICK: Yes, you named him.

Mr. WRIGHT: I am sorry, I did not hear that.

Mr. PEARKES: What about subsection (4) there, dealing with the issue of orders; are the principal staff officers competent to issue their own orders now, or are they to be issued by the Chief of the General Staff, as is stated here?

Mr. DRURY: They will be Army orders which will be in fact orders of the Chief of the General Staff.

Mr. PEARKES: They will be signed by, you say the Chief of Staff—which do you mean?

Mr. DRURY: It may be the Chief of the Naval Staff, or the Air Staff or the Army.

Mr. PEARKES: I am only referring to the Army now. Will the orders be signed by the Chief of the General Staff or will the Adjutant General also issue his orders?

Mr. DRURY: I think the Adjutant General will issue orders in the field which has been delegated to him by the Chief of the General Staff; the same with the Quartermaster General.

Mr. LANGLOIS: They would do that with the authority of the Chief of the General Staff.

Mr. STICK: And the Chief of the General Staff will be responsible for the orders to the Army, and so on.

Mr. ADAMSON: It seems to me that you might be able to do away with part II orders by having all orders issued through the G branch, the General Staff branch. Won't that be the result of this change?

Mr. DRURY: This relates to Army orders from Army Headquarters, that is, Army routine orders or Army general orders. Instead of being issued in three sections, they will be all in one under the authority of one man rather than under the authority of three.

Mr. ADAMSON: Then the A. G. and the branch will not issue orders at all.

Mr. DRURY: They will issue orders but not on their own authority, as stemming from the minister, but on their authority as stemming from the Chief of the General Staff.

Mr. VIAU: That is quite all right.

Mr. STICK: Has that been in practice for some time?

Mr. DRURY: It has been the working arrangement for the past two years.

Mr. STICK: How is it working out?

Mr. DRURY: Very well indeed.

Mr. PEARKES: This has been gradually developed and evolved since the last war. It was not the practice in the last war and it has not stood the test of actual service.

Mr. DRURY: No, it has not. One difficulty would be continuing the previous organization in a department such as the consolidated National Defence Department. The Adjutant General, the Quartermaster General and the Master General of the Ordnance were all responsible to the minister as well as the Chief of the General Staff, and that would mean that in the case of our present service organization the minister would have as advisers on the military side the Chief of the General Staff, the Chief of the Naval Staff and the Chief of the Air Staff, and in addition three other men representing the Army. The Army would speak to the minister with four voices and the Air Force and Navy would speak with one.

Mr. PEARKES: That is one of the problems with which we have to deal. I am speaking as one not without some experience, and I have some doubt as to whether it will work out satisfactorily in time of war as you suggest. Can you tell me this: is there anything in regard to the Army council still in existence—the provisions by which the principal other officers, such as the Adjutant General, the Quartermaster General and so on, have direct access to the minister?

Mr. DRURY: No, there is no such provision, but the administrative set-up under the minister is an advisory organization to the minister and that is composed first of the Defence Council, of which the minister is the chairman and the deputy minister is the vice chairman; and the members are the three Chiefs of Staff, the Chairman of the Defence Research Board and the associate deputy ministers. The advisory bodies to the Defence Council are two main committees of the services, the personnel members of the committees with a serviceman as chairman, composed of the Adjutant General, the air member for personnel and the chief of navy personnel—I haven't got those in quite the order laid down in the act—and the associate deputy minister whose principal function is personnel; and they consider the administrative side of personnel matters. The parallel on the supply side Committee is the principal supply officers committee, of which a serviceman is the chairman and composed of the Chief of the Naval Technical Service, the Quartermaster General and the air member for technical services and the associate deputy minister-supply.

Mr. PEARKES: Now, does your associate deputy minister in charge of personnel have direct access to the minister or to the deputy minister?

Mr. DRURY: He goes through the deputy minister.

Mr. PEARKES: At the present time no administrative staff officer or administrative deputy has direct access to the minister, it all goes through either the Chief of the General Staff or the commanding officer Army—goes directly to the Chief of the General Staff or to the deputy minister?

Mr. DRURY: That is, if you regard, in the case of the army, the Chief of the General Staff as being exclusively an operations officer.

Mr. PEARKES: Which you cannot do any longer?

Mr. DRURY: Which you cannot do any longer.

Mr. PEARKES: He is now to be essentially a chief of staff. It is a very major change, Mr. Chairman, and I think all we can do is to watch, with considerable interest, how it works out. It has been tried for the last two years and appears to be giving satisfaction. We have the assurance of the deputy minister that the Chief of the General Staff and the Adjutant General are satisfied that this is working, and know a similar organization exists in the United States Army; but there the General Staff principle is carried down to formations. I am not at all certain if we start it at the top that we shall not have to carry it down to formations. Otherwise, I see a break in that chain of command. It is such an old argument in the service—the value of the Chief of Staff and three principal staff officers—that there is no good injecting it here. The decision has been made, but I shall be interested to know when you find that you have to start it in commands, because I think you are going to have to do that. If you have one system at the top I do not see how you can have a different one in the lower formations.

Mr. LANGLOIS: Your major concern, if I understand you, General Pearkes, is that only the Chief of the General Staff, in the case of the army, has access to the minister? Is that so?

Mr. PEARKES: It is making the Chief of the General Staff, who was one of three principal staff officers, responsible for the co-ordination of the work of the other two; responsible not only for the co-ordination but for the administration, and you might even say the command of the others.

Mr. ADAMSON: You are putting administration, "Q" and Ordinance and all the other things really under the command of a Chief of Staff whose principal duties are operational?

Mr. DRURY: Well, it would depend on the type of operation I think.

In the case of the present operation in Winnipeg one might say that the principal preoccupation of the commander there is an administrative one.

Mr. ADAMSON: Yes. Well, I do not know, you are the deputy minister.

The CHAIRMAN: Shall section 19 carry?

Carried.

Clause 20.

20. The authority and powers of command of officers and men shall be as prescribed in regulations.

Mr. WRIGHT: What difference or what change is there in this clause from the Militia Act? Is it not so that in the Militia Act the authority of officers and men shall be as prescribed by orders in council rather than by regulation?

Brigadier LAWSON: It is a very long and complicated section in the Militia Act which I think pretty well boils down to this. The Militia Act does require the Governor in Council, and this requires regulations which would be made by the Governor in Council or by the minister.

Mr. WRIGHT: The main difference is that the regulations may be made by the minister rather than the Governor in Council.

The CHAIRMAN: Subject to the provisions of section 16 which gives the Governor in Council an overriding authority.

Mr. WRIGHT: Yes.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 21.

ENROLMENT.

21. (1) Commissions of officers in the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force shall be granted by His Majesty during pleasure.

(2) Persons shall be enrolled as subordinate officers and men for such term of service as may be prescribed in regulations made by the Governor in Council.

Mr. LANGLOIS: The change there is in the limit of time?

Mr. WRIGHT: I would like to ask some questions with respect to this. Does this apply to the reserve army as well as to the regular army?

Brigadier LAWSON: Yes, it applies to all of the services.

Mr. WRIGHT: That would mean then in the case of the reserve army, that when a man signed up for service in the reserve army the regulations might be that he would serve for three years, a certain number of hours each month, or a certain number of days out of each year. Then, by regulation, the minister could change that term of service and the amount of time the man would have to spend each month, without referring it to the Governor in Council?

It seems to me that this might be a case where by changing service period we would endanger the enlistment in our reserve army because a man would hesitate to enlist in the reserve army if by a regulation of the minister his term of service could be changed to three years, five years, or indefinitely, and his period of training during the year could be changed from thirty to fifty days.

Mr. STICK: It is not done by the minister, it is done by the Governor in Council.

Brigadier LAWSON: The term of service cannot be extended. If a man has enrolled for three years a subsequent section prescribes that he has to be discharged at the end of three years if he claims discharge. You cannot extend the term of an individual man after the end of his term has been reached.

Mr. WRIGHT: It is not proposed now that there should be any stated term; a man simply enlists in the reserve army?

Brigadier LAWSON: I think there must be a term of service.

Mr. WRIGHT: A term of service cannot be extended after the man has joined?

Mr. ROBERGE: Would his attestation card not guarantee that?

Mr. LANGLOIS: Terms of service are prescribed by regulations now in force.

Mr. ROBERGE: His attestation card would show the term of enrolment.

Mr. WRIGHT: I wanted to get this clear, that this does not give the Governor in Council power to change the term of service after a man had signed.

Brigadier LAWSON: If you look at clause 31, that covers that.

The CHAIRMAN: Shall the clause carry?

Mr. PEARKES: What protection is there that a man will be able to complete his term of service?

Brigadier LAWSON: I beg your pardon?

Mr. PEARKES: What protection is there for a man that he may complete his term of service?

Brigadier LAWSON: None, sir.

Mr. PEARKES: It is a very one-sided agreement. You have a man who has to sign on for a certain term of service, for three years or five years. Now, then, he can be discharged by whom?

Brigadier LAWSON: By the military authorities in accordance with the regulations.

Mr. PEARKES: Who are they? There is a principle here which could affect a man who has very nearly completed his pensionable term of service. Because he falls foul of his commanding officer, or perhaps a new commanding officer comes in, that man may be discharged before he has completed his pensionable service. Now, then, I feel something should be done to protect a man who has entered into an agreement. I do not think it applies so much to the first term of service as to subsequent terms of service, which might bring him into the pensionable bracket. Can he be fired out at the whim of a commanding officer?

Brigadier LAWSON: No, sir, not at the whim of a commanding officer. There are certain causes laid down in the regulations and he can only be discharged for one of those causes.

Mr. PEARKES: What are those causes?

Mr. THOMSON: Would section 30 not cover that? That is a grievance clause.

The CHAIRMAN: What is the position now under the present Act?

Brigadier LAWSON: Any man serves in the forces at His Majesty's pleasure, that has been fundamental from time immemorial.

Mr. PEARKES: There is no protection there for the man. I would like to know what the regulations are. The regulations should give some protection to a man. I can quote you a case within the last year where a man was within six months—I think it was six months, I am speaking entirely from memory—he was within approximately six months of pensionable service and he was not allowed to continue; he was discharged on the orders of a commanding officer. His discharge did not have to be referred to the Adjutant General or any higher branch.

Major READY: Was he discharged, General Pearkes, or merely not re-engaged? There is a distinction there.

Mr. PEARKES: There is a distinction there, and from memory I would not say for certain which it was. It might be that he was not re-engaged but again very much the same principle would apply, and all I am asking is: what safeguards are there for a man who, shall we say, has done nine years service, and has got another year to go to complete his pensionable service? What safeguard, what check is there against a commanding officer discharging him?

Mr. DRURY: Except for cause. I am not sure of the specific reasons for discharge. The adjutant-general has the regulations.

Mr. PEARKES: I feel that it is giving too much responsibility to the commanding officer to allow him to break what is really a contract with a man; and I think it should be referred to higher authority. I ask for information where that decision is made?

Mr. BENNETT: In the air force a commanding officer cannot discharge even an airman.

Brigadier LAWSON: That is so, except in very clear cases where a man is unfit or is under age.

Mr. BENNETT: That still has to come to the command.

Brigadier LAWSON: If an enlisted man is under 17 years of age his discharge can be authorized by the commanding officer. In a few cases like the commanding officer may authorize the discharge, but in all other cases it must go to the Air Officer Commanding, or with serious cases, if there is any doubt, to the Chief of the Air Staff.

Mr. BENNETT: Brigadier Pearkes has given us a case of a man who had about 19 years of service. No commanding officer could affect that man's discharge.

Mr. PEARKES: But can he affect his re-enlistment? He can. The commanding officer in the past has been solely responsible for the re-enlistment of a man at the end of his period of service. And therefore if a man had come within appreciable distance of his pension, on the decision of the commanding officer he need not be re-enlisted. I think that is working in a few cases a definite hardship. It may be a deterrent to getting men in. I wonder whether there should not be some regulation which perhaps does not come under the statute; whether there should not be some regulation providing that after a certain period of service only the higher command can refuse to have a man re-enlisted.

Mr. ADAMSON: Might I ask General Pearkes if he is blinking his eye with respect to clause 30, again?

Mr. PEARKES: I did not think we had got to 30 yet.

Mr. ADAMSON: Clause 30 gives "redress of grievances." 30 is the redress of grievances clause under which he can lodge his complaint.

Mr. ROBERGE: I think that clause 24 would be applicable.

Mr. STICK: Yes, clause 24, "lawfully released".

Mr. ADAMSON: Lawfully released by his commanding officer.

Mr. DRURY: In respect to Mr. Pearkes' point, I think the services are fully conscious of the deterrent aspects upon recruiting if there were overt cases of discrimination such as he mentioned. I understand that in a revision of the regulations consideration is being given to just the point he has made, namely, that it will not be possible to refuse, as a matter of discrimination, the re-engagement of a man whose services are satisfactory.

Mr. PEARKES: I do not want to use the word "discrimination".

The CHAIRMAN: I was going to suggest that the observation might be noted by the deputy minister in connection with the redraft of the regulation.

Mr. PEARKES: That covers the point.

Mr. HARKNESS: What are the terms of service at the present time?

Brigadier LAWSON: Five years.

Mr. HARKNESS: That is for all the three services, is it?

Brigadier LAWSON: Yes.

Mr. WRIGHT: What is the age of enlistment? Why does it not come under this clause too? Can the age of enlistment be changed by the regulations? The old Act stated that the age of enlistment was 18. I take it that we are leaving it to be set by the regulations now?

Brigadier LAWSON: That is correct.

Mr. WRIGHT: It seems to me that we should prescribe in the Act the age of enlistment and that that should be a function of parliament rather than a function of the Governor in Council or of ministerial regulation. I think it is pretty important that we should know at what age our young people are going to be taken into the army. I am not saying that it should be 17 or 18; but it seems to me that it should be set out in the Act and not left to regulations. Otherwise it could be dropped to 15 or 16 and it might become a danger in that young chaps would be enlisted in the army for a period of five years at an age when they had not reached discretion and were unabe to make decisions for themselves. I think there should be an age put in the Act rather than to leave it to the regulations. Just why has the change been made and the age not stated in the Act?

Brigadier LAWSON: It is very difficult to lay down a satisfactory age. Normally the age has always been 18. We have provision now that a boy can enlist at 17 years of age with the consent of his parents. And having regard to the type of technical work they do today, it may be necessary to enlist quite a young man in order to train him to the point where he can be useful as a

soldier. It may take as much as four years; and you may wish to enlist quite young people so that by the time they are old enough to be fighting soldiers they will be trained as fighting soldiers.

Mr. WRIGHT: I understand all that, but I think that if a boy is enlisted under the age of 18 it should only be with the consent of his parents and I think it should be so stated in the Act.

Brigadier LAWSON: The regulations do provide that now.

Mr. WRIGHT: But the regulations can be changed. I quite appreciate the fact that in a technical army such as we have today, the earlier a man has the training the better. But I do think that if a boy is enlisted under 18 years of age, we should have it in the Act that it must be only with the consent of the parents first being given. I would suggest that amendment. It seems to me important enough that it should be in the Act itself.

Mr. GILLIS: I think that Mr. Wright is right. At 17 years of age a boy is still a child and has very little conception of what he is getting into. At the same time we have had the explanation given by Brigadier Lawson. When a boy of 17 years of age, with his parents' consent, is taken into the services for the purpose of training, that raises the question again as to whether there is anything in the Act—I have not gone all through it—as to what age a boy can be sent into combat service. Does the Act cover that?

Brigadier LAWSON: No. There is nothing in the Act.

Mr. GILLIS: I would be absolutely opposed to permitting the minister or the Governor in Council to take that clause as it is, wide open, and be permitted to call children into the service for a specific period of time with no understanding as to when a boy might be put into combat service. I think that is a dangerous proposition. Moreover, there is no guarantee that what Brigadier Lawson told us would be carried out: that there would be, perhaps, three or four years of technical training. The chances are that these kids might be thrown into combat service; and I think a reasonable age should be fixed when they might be taken into service, let us say 18 at least; and in addition, I think there should be some provision as to when these boys might be placed in combat service. Those are two safeguards which we ought to see in the Act.

The CHAIRMAN: While at 17 we were children, I do not think that applies to the 17 year old boys of to-day. There are those who want the vote extended to include such persons. It may be that each generation is getting older for its years than was the case when we were young. But there is this point to consider: when you are taking recruits into some of the technical services such as radio, a boy of 17 years is probably very suitable for that kind of service.

Mr. GILLIS: But you have no guarantee that that is going to be done.

Mr. STICK: As far as combat service is concerned, I take it that nobody is sent overseas without a medical examination. And the boy of 17 may be huskier and stronger than another boy who is 19 or 20. I would think that is not governed by the boy's age but by his physical condition.

Mr. PEARKES: Mr. Chairman, it is now after 10 o'clock. This might be a good place for us to sleep over this rather knotty point. I think we have made pretty good progress today.

The CHAIRMAN: I am in the hands of the committee.

Mr. ANDERSON: May I ask if GL 139 is still in the regulations?

Brigadier LAWSON: No. That was made under the War Measures Act.

The CHAIRMAN: I think it is the feeling of the meeting that we meet twice tomorrow.

The committee adjourned.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

WEDNESDAY, MAY 24, 1950

WITNESSES:

Mr. C. M. Drury, CBE, DSO, ED, Deputy Minister of National Defence;
Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, EM., Judge Advocate General;
Wing Commander H. A. McLearn, Deputy Judge Advocate General.

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1950

Mr. R. O. Campney, *Chairman.*

and

Messrs.

Adamson,
Balcer,
Bennett,
Blackmore,
Blanchette,
Cavers,
Claxton,
Dickey,
George,
Gillis,
Harkness,
Henderson,
Higgins,
Langlois (*Gaspé*)
Lapointe,
Larson,
McLean (*Huron-Perth*)
Pearkes,
Roberge,
Stick,
Thomson,
Viau,
Welbourn,
Wright.—25.

(Quorum, 10)

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 24, 1950

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 11.00 o'clock a.m. Mr. Campney, the Chairman, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Campney, Cavers, Dickey, George, Gillis, Henderson, Langlois (*Gaspé*), Pearkes, Roberge, Stick, Thomson, Viau, Welbourn, Wright.

In attendance: Mr. C. M. Drury, C.B.E., D.S.O., E.D., Deputy Minister of National Defence; Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General; Squadron Leader S. L. Howell, Assistant Judge Advocate General.

The Committee resumed clause by clause consideration of Bill No. 133, An Act respecting National Defence.

Mr. Drury, Commander Hurcomb, Brigadier Lawson and Wing Commander McLearn were questioned as each individual clause was being considered.

The Committee reverted to clause 21 and after further discussion thereon it was again allowed to stand, and so was clause 22.

Clauses 23 to 29, both inclusive, were agreed to.

On Clause 30.

Mr. Adamson moved that the following be added after the word "Council" in line 20:

> Nothing in this section shall preclude an officer or man from appealing to the Minister in the final appeal.

After some discussion the said Clause was allowed to stand.

Clauses 31 to 35, both inclusive, were agreed to.

At 1.00 o'clock p.m., the Committee adjourned to meet again at 4.00 o'clock p.m.

AFTERNOON SITTING

The Committee resumed at 4.00 o'clock p.m. Mr. Campney, the Chairman presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Campney, Cavers, Dickey, George, Gillis, Henderson, Pearkes, Roberge, Stick, Thomson, Wright.

In attendance: The same official and officers of the Armed Forces as are listed at the morning sitting.

The Committee resumed consideration of Bill No. 133, An Act respecting National Defence.

Brigadier Lawson's examination was continued during which Mr. Drury and Wing Commander McLearn answered specific questions arising out of Brigadier Lawson's examination.

The Committee reverted to Clause 22 which was agreed to.

Clauses 36 to 52, both inclusive, were agreed to.

On Part III

Clauses 53, 54 and 55 were agreed to.

Brigadier Lawson was temporarily retired.

On Part IV

Commander Hurcomb was called as the main witness.

Paragraph 1 of Clause 56 was agreed to.

At 5.55 o'clock p.m., the Committee adjourned to meet again at 8.15 o'clock p.m., Thursday, May 25th.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

WEDNESDAY, May 24, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 11 a.m. The Chairman, Mr. R. O. Campney, presided.

Brigadier W. J. Lawson, Judge Advocate General, called:

The CHAIRMAN: Gentlemen, we have a quorum. May we proceed? We were discussing clause 21 which I had read, having to do with commissioned officers, subordinate officers, and men. Are there any further observations on this clause?

Mr. WRIGHT: Mr. Chairman, when we finished last night we were discussing the advisability of placing an age limit at which people might be enrolled under the Act. I think that we should have an age limit. There is an age limit of 18 years in the old Act. Brigadier Lawson has stated that he believed it would be advisable to have younger people enrolled due to the technical training that is necessary today in the army. I feel that if people younger than 18 years of age are to be enrolled, it should be only with the consent of their parents. We all know that young people of 16 or 17 years of age quite often take the notion all at once that they would like to join the army and they enlist, but they fail to realize that when they do, they are enlisting for a five year period and that it is absolutely impossible for them to change their minds. So I think there should be some provision whereby the consent of the parents must first be obtained.

Mr. ROBERGE: That is governed by the regulations, is it not?

Brigadier LAWSON: Yes, sir; it is governed by the regulations now.

Mr. ROBERGE: Why pin him down to that?

The CHAIRMAN: I think it should be observed that section 8 subsection 2 of the Militia Act provides for persons under the age of 18 years enlisting voluntarily with the consent of their parents, tutors or guardians. But under the Naval Service Act and the R.C.A.F. Act there has never been any such provision and there is not now. Apparently the proposal is to make section 1 for all the services conform to what now exists in the Naval Service and the R.C.A.F., and leave it to the regulations to set out age and necessity of consent.

Brigadier LAWSON: That has always been the case.

Mr. STICK: If we adopted an age limit, how would that affect the armed services in case of a national emergency? Could they take on boys and girls, for example, boy scouts and other organizations to help out on a temporary basis? Would that debar the armed forces from taking them on? I have in mind the emergency at Winnipeg where the boys and girls voluntarily pitched in and did wonderful work. But if we are going to place an age limit and make it law by statute, would that debar help being received from people of that age in a national emergency? I think we are legislating here for the future. I am very much against child labour in any form, just as much against it as anybody else,

but I would prefer to leave it as it is with the proviso from this committee that children under a certain age would be safeguarded from being conscripted into the armed forces except in a case of national emergency.

Mr. ADAMSON: Could I have a reference to the sections which affect the power under this Act to make regulations?

The CHAIRMAN: Section 13 gives the power to the Governor in Council, generally, subject to certain limitations in section 14, and it also gives concurrent power to the minister.

Mr. ADAMSON: I see. I wondered if some clause should not be put in whereby this regulation would be effective without the consent in respect to those under 18.

Mr. PEARKES: In the past have we not recruited boys into the Royal Canadian Navy without the consent of their parents?

COMMANDER HURCOMB: I hesitate to speak with authority concerning a lengthy period back. But within my recent knowledge, since the beginning of the Second World War, that has not been done.

Mr. PEARKES: You have not recruited boys without the consent of their parents?

Commander HURCOMB: That is right, we have not.

Mr. PEARKES: But you have recruited boys for Signal Companies and so forth?

Commander HURCOMB: The present age regulation is 17. That is the minimum age. And if a boy is between 17 and 18, he must have the consent of his parents.

Mr. ADAMSON: Is there still a rank in the Navy which is called "Boy"?

Commander HURCOMB: You mean "Boy Seaman"; No, sir, that has been abolished.

Mr. WRIGHT: I must object to their being taken in under the age of 18 without the consent of their parents, and I want to move accordingly.

The CHAIRMAN: Might I make a suggestion before you do that? It just occurs to me in the light of the discussion last night and today that this is a point on which we really cannot expect guidance from permanent officials because it is a matter of policy for the government. So I wonder if we should not stand the section until the Hon. Mr. Lapointe or someone is here who can speak on the policy side. We cannot ask these gentlemen to go beyond the mechanics of this particular point. But there might be further discussion with some member of the government present, and we could stand it for the time being. Would that be agreeable?

Mr. PEARKES: Mr. Chairman, a few minutes ago I think you said that this was being omitted in order to conform with the Navy and the Air Force.

The CHAIRMAN: Apparently.

Mr. PEARKES: Surely there is no reason why the Navy should not conform in this case, seeing that it is something they have been doing in practice. That is why I asked the question.

The CHAIRMAN: Would it be agreeable if we should leave it that way at the moment?

Agreed.

Mr. STICK: Clause 21 stands.

The CHAIRMAN: Clause 22.

> 22. The respective ranks that may be held by officers and men of the Canadian Forces shall be as from time to time prescribed in regulations made by the Governor in Council.

Mr. WRIGHT: In the old Act the ranks of the Royal Canadian Mounted Police are set out as compared to the ranks in the Armed Forces. In an emergency they have to work together. May I ask why under the new Act this is not carried forward, why the Mounted Police ranks are not put in?

Brigadier LAWSON: That is now provided for in the R.C.M.P. Act and therefore it is uncessary to provide for it in this Act. That is only my recollection and I would like to reserve the right to mention the point again after I have looked into it.

Mr. WRIGHT: I think we should find out definitely what the situation is.

Mr. STICK: The R.C.M.P. is not involved in this. We are dealing with the Armed Forces. We are not extending it to the R.C.M.P. now.

Mr. PEARKES: R.C.M.P. officers would always have similar authority to commissioned officers. It is an old established principle.

The CHAIRMAN: I do not see the force of dealing with that matter. I think we should deal with this point on its own.

Mr. STICK: We do not want to get into a discussion with the R.C.M.P. about that. I do not think it is necessary.

The CHAIRMAN: Shall clause 22 carry?

Mr. GEORGE: Let us get full information on it.

Mr. WRIGHT: In the old Act there was a scale which set out what the comparative ranks were. In an emergency the R.C.M.P. and the Armed Services have to work together very closely, and unless there is some scale of comparative ranks set out it is difficult for them to work together. It was set out in the Militia Act before, but we are dropping it here and I think there should be some explanation why it is dropped.

Mr. ADAMSON: The R.C.M.P., during the last war, had men in battle dress in the intelligence service.

The CHAIRMAN: Information is being sent for now. Perhaps we can let it stand.

Section 23:

The CHAIRMAN: Shall clause 23 carry?

> 23. The maximum number of persons in each rang and trade group of the Canadian Forces shall be determined as prescribed in regulations made by the Governor in Council.

Carried.

Section 24:

> 24. The enrolment of a person in a Service of the Canadian Forces binds that person to serve in that Service until he is, in accordance with regulations, lawfully relased.

The CHAIRMAN: Shall clause 24 carry?

Mr. ADAMSON: There is no provision for transfer from one service to another.

Brigadier LAWSON: There is in a subsequent section.

Mr. WRIGHT: Can the regulations in regard to terms of service be changed by the minister after a man has enlisted. Presumably the regulations can be changed at the will of the minister, but I want to know definitely whether they can or not.

Mr. ADAMSON: That is the terms of service in which he was enrolled?

The CHAIRMAN: Does section 31, subsection 1, meet your point?

Mr. WRIGHT: Yes.

Carried.

The CHAIRMAN: Section 25:

25. Oaths and declarations required upon enrolment shall be taken and subscribed before commissioned officers or justices of the peace and shall be in such forms as may be prescribed in regulations.

Mr. WRIGHT: Can Brigadier Lawson tell us just why the form of oath is not in the Act? We are allowing the form of oath to be set by regulations, and it seems to me the form of oath a man must take in the armed forces is something that should be set by parliament. Is there any objection to having the form of oath put in the Act?

Brigadier LAWSON: It is a matter of flexibility. We had a great deal of trouble during the last war in enlisting United States citizens. Many of them came up early in the war to enlist and by taking the oath of allegiance under the Militia Act lost their United States citizenship. We needed them, they were good soldiers, but they were under the handicap of losing their citizenship.

Mr. STICK: Also, have you not in this country religious sects who object to taking oaths in various forms?

Brigadier LAWSON: That is true.

The CHAIRMAN: Shall clause 25 carry?

Carried.

The CHAIRMAN: Section 26:

26. Subject to subsection three of section thirty-two, no officer or man shall without his consent be transferred from the regular forces to the reserve forces or from the reserve forces to the regular forces or from the Service of the Canadian Forces in which he has been enrolled to another Service of the Canadian Forces.

The CHAIRMAN: Subsection 3 of section 32 referred to in this section reads:

32 (3) An officer or man on active service may for the period of such service, be transferred from the component of the Service of the Canadian Forces in which he has been enrolled to the same component of another Service of the Canadian Forces or from the reserve forces to the regular forces.

Mr. ADAMSON: Do these clauses conflict?

Brigadier LAWSON: One is for active service, sir.

Mr. ADAMSON: I wonder if we could have some definition of what "component" means. We have heard about units and arms, and now we have components.

Brigadier LAWSON: Section 16, I think, sets that out.

The CHAIRMAN: Section 16, subsection 1, reads:

16. (1) There shall be a component of each Service of the Canadian Forces consisting of officers and men who are enrolled for continuing, full-time military service; and those components are referred to in this Act as the regular forces.

(2) The maximum numbers of officers and men in the regular forces shall be as from time to time authorized by the Governor in Council, and the regular forces shall include such units and other elements as are embodied therein.

(3) There shall be components of each Service of the Canadian Forces consisting of officers and men who are enrolled for other than continuing, full-time military service when not on active service; and those components are referred to in this Act as the reserve forces.

(4) The maximum numbers of officers and men in the reserve forces shall be as from time to time authorized by the Governor in Council, and the reserve forces shall include such units and other elements as are embodied therein.

(5) In an emergency, the Governor in Council may establish and, while the emergency exists, authorize the maintenance of a component of each Service of the Canadian Forces, referred to in this Act as the active service forces, consisting of

(*a*) officers and men of the regular forces and the reserve forces who are on active service and who are placed in the active service forces under conditions prescribed in regulations; and

(*b*) officers and men, not of the regular forces or the reserve forces, who are enrolled on active service in the active service forces for continuing, full-time military service.

(6) The maximum numbers of officers and men in the active service forces shall be as from time to time authorized by the Governor in Council, and the active service forces shall include such units and other elements as are embodied therein.

Brigadier LAWSON: The components are permanent forces, the reserve forces and the active service forces those are the three components.

Mr. ADAMSON: It simply means you cannot transfer a person from a component, that is, for instance, from the regular force to the component reserve force.

Brigadier LAWSON: That is what this section says you cannot do without consent.

Mr. ADAMSON: These new terms are a little confusing.

The CHAIRMAN: Shall section 26 carry?

Carried.

Section 27:

27. (1) Where, although not enrolled or re-engaged for service, a person has received pay as an officer or man, he is, until he claims his released, deemed to be an officer or man, as the case may be, of the Service and component of the Canadian Forces through which he received pay and to be subject to this Act as if he were such an officer or man duly enrolled or re-engaged for service.

(2) Where, although there has been an error or irregularity in his enrolment or re-engagement, a person has received pay as an officer or man of that Service and component of the Canadian Forces in which he was erroneously or irregularly enrolled or re-engaged, that person is deemed to be an officer or man, as the case may be, regularly enrolled or re-engaged, and is not, except as provided in subsection three, entitled to be released on the ground of the error or irregularity.

(3) Where a person who, by virtue of subsection two, is deemed to be an officer or a man, claims to be released within three months, reckoned from the date on which his pay commenced, and establishes the error or irregularity in his enrolment or re-engagement, he shall, except during an emergency, be released.

(4) Where a person claims his release on the ground that he has not been enrolled or re-engaged or has not been regularly enrolled or re-engaged, his commanding officer shall forthwith forward his claim to the authority having power to release him and, if he is entitled to be released, he shall be released with all convenient speed.

Mr. PEARKES: If a man under age is enlisted he will receive the pay of his rank until he is finally discharged?

Brigadier LAWSON: Yes, sir; and he is subject to military law.

Mr. PEARKES: It is simply protecting the man?

Brigadier LAWSON: That is right, sir.

Mr. STICK: During the war if a man joined the service and was attested, he did not receive pay until he actually sailed. Is he entitled to pay when he signs up or when he is attested, or when?

Brigadier LAWSON: Just as soon as he becomes a member of the forces.

Mr. STICK: What constitutes that?

Brigadier LAWSON: When he is first put on duty. There are cases where a man is attested and then is sent on leave for a time before his pay commences. He receives pay from the time of his first duty.

Mr. STICK: Supposing a man joins up in Newfoundland and is sent to some camp up here on the mainland; while he is travelling here is he reckoned to be on duty?

Brigadier LAWSON: Oh, yes; he receives pay from the time he joins in Newfoundland. As soon as he is sent anywhere he is on duty.

Mr. HENDERSON: Are any of the forces paid by cheque now?

Brigadier LAWSON: Officers are.

Mr. HENDERSON: How do you determine whether they receive their pay or not in compliance with this section?

Brigadier LAWSON: That would be a matter of fact. You would have to prove it to the satisfaction of the court if you were trying it by court martial.

Mr. ADAMSON: Is a man when he enlists paid almost immediately; does he get a grant of money almost immediately on enlistment?

Mr. STICK: Certainly not down home.

Brigadier LAWSON: I am not very familiar with pay practice.

Mr. LANGLOIS: Maybe he gets a clothing allowance?

Mr. ADAMSON: Under the old British system you received a shilling immediately you signed up. It seemed to me, seeing men being processed in M.D.2, that they received something, probably $10, not very much.

Brigadier LAWSON: That would be an advance of pay. That would be a matter of unit policy, I would think.

Mr. ADAMSON: I think it would be.

Mr. LANGLOIS: Would that be what you would call casual payment?

Brigadier LAWSON: It would be an advance in pay; it is called a "casual" in the navy.

Mr. STICK: I am sorry, I haven't got that clear in my mind yet. A boy goes and joins the Navy, the Army or the Air Force, he is accepted an he is sent home on two weeks' leave prior to departure for Vancouver or some place like that; does he get any pay or not?

Brigadier LAWSON: It depends on his leave sir, should he be sent on leave without pay he does not get paid.

Mr. STICK: He is in the Army.

Brigadier LAWSON: You can be in the Army and be on leave without pay. There is provision for that in the regulations. It all depends on the circumstances. If he asks for leave for his own convenience to go home and help out or something.

Mr. STICK: No, no.

Brigadier LAWSON: He probably would be on leave without pay, but if he was going on leave for the Army's convenience he would be on leave with pay.

Mr ROBERGE: He would be on pay from the time he signed up and passed his medical inspection and was accepted.

Brigadier LAWSON: Yes, he is entitled to pay from that point on.

Mr. ADAMSON: Once he has taken the oath he is considered to be a member of the armed forces, that is the deadline.

Brigadier LAWSON: Yes.

Mr. ADAMSON: Tell me this, could a man buy his way out? There are a lot of people, particularly in the Air Force, who want to buy out. Is that covered in any regulation?

Brigadier LAWSON: Yes sir.

Mr. ADAMSON: Where would we find that in the bill? Is it covered in the bill?

Brigadier LAWSON: No, it is not covered in the bill.

Mr. ADAMSON: Could you give us something about how it stands now? Would this be the clause on which to ask that question.

Mr. GEORGE: That has nothing to do with this clause.

Mr. ADAMSON: Well, this deals with transfer or discharge.

Brigadier LAWSON: Commander Hurcomb has the Naval regulations there.

Commander HURCOMB: In the Navy sir, discharge by purchase is not a right. It may be granted exceptional circumstances when an application is made and substantial reasons are given for seeking release and porviding the exigencies of the service permit. In other words, it is a matter of grace. The change is fixed according to the length of the time there is yet to serve. If a man has 4 years served out of a 5-year engagement it would cost him less to get out than if he had only served two years: The maximum is $100.

Mr. ADAMSON: Yes, are the other services similar.

Wing Commander MCLEARN: There was a change made respecting those who enlisted or were re-engaged in the army and air force subsequent to the first of April, 1948. Discharge by purchase now will be granted only in exceptional circumstances, where the applicant has substantial reason for seeking discharge; so that both the Army and the Air Force adopted the naval approach in respect to those who entered subsequent to April 1 of 1948.

Mr. ADAMSON: That is not a right in the three services now?

Wing Commander MCLEARN: In the Army and the Air Force, in respect to those who entered prior to April of 1948 it is.

The CHAIRMAN: Shall clause 27 carry?

Mr. GILLIS: No, Mr. Chairman; before it is passed I would like to ask a question. Will this clause be restrictive? What I mean by that is this: it was only two weeks ago that I wrote a letter to Mr. Claxton; a man came out of the services in 1917 and never received a discharge and he claims now that he is entitled to pay from 1917. According to the wording of this section he would be entitled to it.

Brigadier LAWSON: I don't believe so, sir.

Mr. GILLIS: It says here in effect that a man is not discharged until he receives his discharge in proper form, so to all intents and purposes he is still in the service.

Brigadier LAWSON: There is provision in the pay regulations that if a man performs no service he gets no pay.

Mr. STICK: If I might put in a word there, I was improperly discharged when I was overseas.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 28:

ATTACHMENT AND SECONDMENT

28. (1) An officer or man may be attached or seconded to another component of the Service of the Canadian Forces in which he is enrolled or to any component of any Service of the Canadian Forces, other than that in which he is enrolled, in such manner and under such conditions as are prescribed in regulations; and he shall have like powers of command and punishment over officers and men of the component and Service of the Canadian Forces to which he is attached or seconded as if he were an officer or man of that component and Service of equivalent rank, relative to the rank he holds.

(2) An officer or man may be attached or seconded to any of His Majesty's Forces, any department or agency of government, any public or private institution, private industry or any other body in such manner and under such conditions as are prescribed in any other Act or in regulations.

(3) No officer or man of the reserve forces who is not serving on active service shall without his consent be attached or seconded pursuant to this section.

Mr. PEARKES: I take it that that means—or perhaps I should put it this way—that that does not mean that a man might be transferred from, let us say, a cruiser to the submarine service, or from a bomber to a fighter squadron, or from the infantry to the artillery?

Brigadier LAWSON: No, this does not deal with transfer, this is attachment for special duty, not transfer; that is a different matter entirely.

Mr. BLACKMORE: I wonder if you would explain the difference between attachment and seconding.

Brigadier LAWSON: Attachment and secondment are the assignment of an officer or man from his service for detached duty to some other organization. If the duty is for the benefit of the service it is called attachment, if it is for the benefit of the other organization it is called secondment. If a man is attached he is paid by the service, if he is seconded he is paid by the other organization.

Mr. LANGLOIS: Is that similar to what we term a liaison officer?

Brigadier LAWSON: Yes.

Mr. PEARKES: Military attaches would be a case such as an officer seconded to the Department of External Affairs.

Mr. DRURY: No, they are not, they continue to operate in support of the chief of the mission to which they are posted.

Mr. PEARKES: Are they paid by External Affairs?

Mr. DRURY: No, they are paid by the department.

Mr. LANGLOIS: They are observers, are they?

Mr. DRURY: They are observers, yes.

Mr. STICK: Is an officer seconded for a stated period, or is it permanent?

Brigadier LAWSON: No, it is not permanent.

Mr. ADAMSON: This is to deal with the transfer or seconding from one service to another?

Brigadier LAWSON: Yes, sir.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 29, Promotion.

PROMOTION

29. Subject to section twenty-three and to regulations, officers and men may be promoted by the Minister or by such authorities of the Canadian Forces as are prescribed in regulations made by the Governor in Council.

Mr. WRIGHT: The qualifications for promotion are set out in detail and are pretty well known. Now, all that is said here is that it shall be subject to section 23 and to regulations. Are those regulations in such form, are they set out so that the qualifications necessary for promotion are available and become known to the public?

Brigadier LAWSON: Yes, sir.

Mr. WRIGHT: Everybody should be able to find out what the qualifications are for promotion.

Brigadier LAWSON: They would certainly be public, all regulations on the subject of promotion are in K.R.

Mr. LANGLOIS: And they are all tabled in the House.

Mr. WRIGHT: They are tabled in the House?

Brigadier LAWSON: Yes.

The CHAIRMAN: Shall the section carry?

Carried.

Section 30:

REDRESS OF GRIEVANCES

30. Except in respect of a matter that would properly be the subject of an appeal or petition under Part IX, an officer or man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance, may as a matter of right seek redress from such superior authorities in such manner and under such conditions as shall be prescribed in regulations made by the Governor in Council.

Mr. STICK: Just a moment on that, please. Under this clause a man may feel that he is ill-treated and apply under this clause. Unless there is something in there to say that the commanding officer cannot hold back the submission of any grievance of a man under his command it may result in difficulty. What I have in mind is this: what usually happens is that a fellow who has a grievance applies to his commanding officer and says he wants to have the case taken up, and usually there has been some feeling between the man and the commanding officer and the appeal goes no further with the result that the chap feels that he did not get proper consideration. I would like to see some provision in this clause whereby he could take his case up without any prejudice to his position with the commanding officer who should not have any hold over it at any future stage. That is what usually happens in practice.

Commander HURCOMB: In the Navy regulations there is this provision; a man shall not be penalized for making a complaint in accordance with the rules

provided by this article, and then the article states how the man shall make his complaint.

Mr. STICK: But do those regulations apply to the other services?

Commander HURCOMB: They are strictly naval.

Mr. STICK: Those are your regulations?

Commander HURCOMB: Yes.

Mr. STICK: Would it be the same for the Army and the Air Force?

Brigadier LAWSON: It is covered in the regulations.

Mr. ADAMSON: He has the right to appeal to higher authority.

Brigadier LAWSON: Generally speaking the regulations provide that the case goes first to the commanding officer, if the commanding officer does not deal with the complaint to the satisfaction of the man concerned he must pass it on up the line.

Mr. BENNETT: He also has the right to appeal to the Inspector General.

Brigadier LAWSON: Yes, there is that right too.

Mr. PEARKES: But there is no Inspector General now.

Brigadier LAWSON: That is right, there is no Inspector General now but inspections are carried out.

Mr. ADAMSON: I remember during the war that the then Minister of National Defence, Mr. Ralston, made a very great point that any officer or anybody else who had a grievance might take the matter up directly or through the proper channels with him, and he in many cases, to my knowledge, certainly did receive grievances about many many matters. The clause does not mention that grievances can be taken to the minister. Was that there in the previous clause?

Brigadier LAWSON: It was never in the Act.

Mr. ADAMSON: It was never in the Act? There was an old tradition though that a soldier could lay his complaint at the foot of his sovereign—and the sovereign in this case was the Minister of National Defence. The final appeal is to the minister.

Brigadier LAWSON: In the case of an officer it goes right to the Governor in Council; in the case of a man it is to the minister.

The CHAIRMAN: Shall the clause carry?

Mr. GILLIS: Are we to understand that this section is changing nothing—that the old mechanisms for redress of grievance are not being changed? My conception is that regardless of what the procedure may have been in the past, under this particular section the Governor in Council can make any regulations he sees fit to make and he can change anything that may have been laid down in the past.

It seems to me that we are leaving the door wide open for a brand new set of mechanics about which we do not know anything. Section 43 of the British Army Act laid down the mechanics you describe, but I understand this is replacing it, and we are giving the Governor in Council the right to make any new regulations that he sees fit.

Brigadier LAWSON: You are quite right; sections 42 and 43 of the British Army Act did lay the procedure down in detail but you must remember that the Governor in Council had the power to pass regulations which would supersede the Army Act; and that the Governor in Council did to a very large extent in respect of redress of grievance. You are really not giving the Governor in Council any further power here.

Mr. GILLIS: But we are divorcing ourselves completely from the British Army Act?

Brigadier LAWSON: Yes.

Mr. GILLIS: In the past the Governor in Council did have a guide to go by. He could look at the British Army Act and could say, "it is a new procedure but this is my guide". Here, however, we have wiped that out and we give the Governor in Council complete authority to make a new set of mechanics in regard to redress of grievance.

Mr. BENNETT: Which right he has now?

Mr. GILLIS: No.

Mr. BENNETT: Oh, yes he has.

Mr. GILLIS: He had to conform to the British Army Act.

Brigadier LAWSON: No, sir. Regulations made by the Governor in Council under existing legislation could supersede the British Army Act in Canada—so we are really not giving the Governor in Council any wider power.

Mr. GILLIS: Except that you are divorcing him from the necessity of looking at the Army Act as a guide?

Mr. LANGLOIS: Did not sections 42 and 43 of the Army Act deal with Part IX—Review and Petitions.

Brigadier LAWSON: No sir.

Mr. WRIGHT: To what extent have our regulations superseded the British Army Act, with regard to sections 42 and 43—before this proposed Act was brought in? If we had regulations already providing all these things that supersede sections 42 and 43 in the British Army Act, we are not changing anything? But, if on the other hand we were following the British Army Act and now propose to set up our own regulations, they would be different regulations.

Mr. THOMSON: I submit that there is a precedent for this in the provinces in civil and criminal proceedings. The provinces, through the Lieutenant Governor in Council have the power to pass regulations regarding the administration of justice, without reference to parliament, or without reference to a guide.

The CHAIRMAN: We have King's Regulations, air force, but they are of great length and great detail in the matter of redress of grievances; and they are self-contained.

Mr. WRIGHT: Are they self-contained in the army?

Brigadier LAWSON: Not as fully self-contained in the army, no; they refer to sections 42 and 43 of the Army Act.

Mr. BENNETT: The fact remains that the Governor in Council did have power to make self-contained regulations so that this section is not adding any more power to the Governor in Council.

The CHAIRMAN: The fact seems to be that the Governor in Council did have the power and did exercise the power in the case of the navy and the air force, and so far as the army is concerned, the Governor in Council did have the power to abrogate sections 42 and 43 of the British Army Act.

Mr. WRIGHT: It is self-contained in the air force but not as far as the army is concerned—they are still using sections 42 and 43 of the British Army Act.

The CHAIRMAN: It puts the method actually in effect in the air force and navy into effect now in the army.

Mr. PEARKES: Have you sections 42 and 43 there? Would you read them out?

Brigadier LAWSON: Section 42 reads:

> 42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby required to examine into such complaint, and (if so required by the officer) through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon.

Section 43 reads:

> 43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to such officer, being either a general officer or brigadier or an air officer, as may be prescribed. And every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Mr. WRIGHT: Could Brigadier Lawson give us similar regulations for the navy?

The CHAIRMAN: They are rather long.

Brigadier LAWSON: It would take some time.

Mr. WRIGHT: I think it is pretty important that we should know what we are doing in this.

The CHAIRMAN: Would you like to read them yourself, Mr. Wright?

Mr. WRIGHT: Could they be published in the proceedings as an appendix so tha we might compare them?

Mr. STICK: Are they somewhat similar to those you have already read?

Brigadier LAWSON: Much more detailed.

Mr. WRIGHT: Do they cover the same principle?

Brigadier LAWSON: The same ground.

Mr. WRIGHT: The principle is the same?

Brigadier LAWSON: Yes.

Mr. WRIGHT: That is the main thing; there is an appeal to the council?

Brigadier LAWSON: That is right.

Mr. ADAMSON: And, eventually, an appeal to the sovereign?

Brigadier LAWSON: Yes.

Mr. GILLIS: The position which sticks in my mind is that we are making a very major change. We are wiping out completely the Army Act, with the provision just made, and giving to the Governor in Council the right to make new regulations. Previously, he had the right to supplement sections 42 and 43 of the British Army Act, nevertheless, the basic rights of the soldier and officer were written into an Act. Now we are wiping that out.

Brigadier LAWSON: No, sir. In the case of the air force the Governor in Council, in effect, wiped out sections 42 and 43 and passed entirely new regulations governing redress of grievance.

Mr. GILLIS: But now we are wiping out those sections and giving the Governor in Council the right to write a new set?

Brigadier LAWSON: He always did have the right to write a new set of regulations covering redress of grievances.

Mr. GILLIS: Subject to the basic rights laid down under the Army Act?

Brigadier LAWSON: No, sir.

Mr. GILLIS: They never changed that?

Brigadier LAWSON: Yes, sir. Sections 42 and 43 of the Air Force Act were superseded by Air Force regulations.

Mr. GILLIS: I am thinking in terms of the army. I am not afraid for the navy or this air force but I am a little skeptical about application of this principle to the army. I have had some experience along these lines, and I would like to have from Brigadier Lawson the assurance that there will be a retention of the rights that were laid down under sections 42 and 43 of the Army Act. Persons may be requisitioned into the army, or they may join voluntarily. We are passing an Act now which will guide the future of those persons in the service, and I hate to have such dictatorial rights in it. The Governor in Council may lay down any regulations he sees fit.

I think we should have the assurance of the different heads of the service that are her that we are going to follow this kind of procedure: there must be a right for an officer or man who becomes aggrieved to get some trial; and there must be some machinery whereby he can appeal to higher authority.

Mr. LANGLOIS: To my mind section 30 does not make so great a change as is indicated. Section 30 establishes the right of a member of the forces to have his grievance redressed. The only difference between section 30 and sections 42 and 43 of the Army Act is that the procedure is not outlined in section 30 as it was in sections 42 and 43.

The procedure is not outlined in section 30 but it is in section 42 and 43. What sections 42 and 43 contain in addition to what is already contained in section 30 is that this man is to go first to his captain or to another officer, and here in section 30 we do not detail this procedure as to how the man should go about it. We say that regulations will prescribe the order to be followed. But the right to have his grievance redressed exists in section 30 and I think this is fundamentally right. It is for us to see that the members of the armed forces get the right to redress grievances, and they are getting it under section 30.

The CHAIRMAN: As a matter of fact, in sections 42 and 43 of the Army Act it says if a man has a grievance he "may", etc. those are the words used in the statute; and section 30 says that he "shall have", etc. as a matter of right. Section 30 really stresses his right to have his grievances redressed. It leaves, it is true, the procedure to be followed to the regulations as in the case of the other services, but it does establish his right even more basically and strongly than it does in the other act.

Mr. LANGLOIS: And furthermore, section 30 makes it an obligation upon the Governor in Council to draw up regulations to establish the proper procedure. The men of the forces are not going to be deprived of the right to have their grievances redressed. The fundamental right exists in the section, and it is the main duty of this committee to see that that is maintained, and section 30 does just that.

Mr. GILLIS: Subject to what regulation?

Mr. LANGLOIS: Procedure only. The procedure is going to set out in regulations as to whether he will go to his captain first or any other officer; the regulations will establish the order as between the officers to whom he shall go first.

Mr. WRIGHT: It does not change anything as far as the navy or air force are concerned, but it definitely does as far as the army is concerned, unless the present regulations are the same as sections 42 and 43. Now, would Brigadier Lawson tell us what the present regulations are? Are they sections 42 and 43, or are they part of the Army Act today?

Brigadier LAWSON: In so far as the army is concerned that is, practically speaking, correct, it is section 412 of the K.R. & O. for the Canadian Militia.

Mr. STICK: Is it the intention when you draw up the regulations in conformity with this Act to sort of carry sections 42 and 43 into the new regulations consistent with the new Act? Can you give us that assurance?

Mr. DRURY: It cannot be the same as sections 42 and 43 for the reason we have not an army council to start with and it is practically impossible to have the King personally go over these complaints, and in substitution for the army council and the sovereign personally we now have the minister and the Governor in Council, and it is our intention to continue in the new regulations that practice for the redress of grievances of officers; in the case of men, the Army Act provides that the highest authority to which a man can appeal is a general officer commanding, or it may be even a brigadier. In the case of the Canadian forces, which are smaller, it is the intention to give the men a right of appeal to the minister, so, in effect, under our system a man can appeal beyond the military hierarchy to a civilian authority.

Mr. STICK: That covers it.

Mr. LANGLOIS: I have a further question for Brigadier Lawson. I am just speaking from memory but when he read sections 42 and 43 of the Army Act I think he read as follows: "and any officer or man who considers that he has been wronged by any superior officer." or words to that effect, "may seek redress,". If you will now refer to section 30 before us you will see that it reads as follows:

> an officer or man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance—

I think this wording goes much further than the wording in sections 42 and 43.

Mr. WRIGHT: Read a little further on, it says: may as a matter of right.

Mr. LANGLOIS: I think it goes further than sections 42 and 43, and protects the officers and men of the armed forces to a greater extent than do sections 42 and 43.

Mr. GILLIS: Go on and read a little further. It says:

> under such conditions as shall be prescribed in regulations.

What regulations are they?

Mr. LANGLOIS: That is the procedure.

Mr. GILLIS: What are those prescribed regulations? If the deputy minister will say that that is the procedure he is going to follow, I will be satisfied.

Mr. LANGLOIS: I would like to have an answer to my suggestion that section 30 does go further.

Brigadier LAWSON: Section 30 was purposely drafted to go further than sections 42 and 43.

Mr. PEARKES: It is agreed by everybody, I think, that this section does give a man as a matter of right a chance of redressing a grievance. Is there any objection to outlining the procedure in the Act itself? You have the procedure outlined in sections 42 and 43. What objection is there to putting into this Act an outline of the procedure as given a few minutes ago by the deputy minister. Assurances are not of much value because, after all, personnel change

and so forth, whereas if you have it written into the Act, there is your procedure which tells everybody how to take it right up to the civilian authority.

The CHAIRMAN: There is just this that occurs to me. If you start bringing regulations into the Act in respect of different branches of the service you will complicate things.

Mr. PEARKES: There is nothing new in this respect. You are only following what was in the old Act.

Mr. STICK: Mr. Chairman, the evidence and the proceedings of this committee will be printed, and surely when the regulations are being drafted the suggestions of this committee will be given consideration, and if we have the assurance given to us by the deputy minister that when he draws up the regulations implementing the Act that they will be drawn up along the lines he indicated I think we should be satisfied. On the other hand, contravening that assurance I think he is placing himself on a hot spot.

Mr. PEARKES: After all, assurances do not mean anything.

Mr. STICK: But you have the evidence of this assurance in this committee.

Mr. LANGLOIS: Those regulations will be tabled in the House and any member of parliament can then see if those regulations do really implement section 30.

Mr. WRIGHT: I agree with you that we cannot have all the regulations written into this Act, it would make it too cumbersome and we are trying to simplify the Act, but can we not have this particular section in the Act in detail, because it deals with the redress of grievances and gives to the common soldier the outlines of the procedure he has got to follow to have the grievance redressed. I think there would be some benefit in having that particular section in a fair lot of detail in the Act, rather than leaving it to regulations.

Mr. CAVERS: Where are you going to draw the line, in putting regulations into one section and leaving them out in another?

Mr. WRIGHT: It is simply the section which has to do with grievances. It is a pretty important section in any army Act.

The CHAIRMAN: You would have to deal with the three services.

Mr. WRIGHT: Is it necessary to have variations in the redress of grievances as between the services? Is it necessary to have a difference in the procedure for redress of grievances between the various services, Army, Navy, and Air Force? Or could the one procedure apply to all three?

Mr. DRURY: I think the framework of the procedure could apply. Without spelling out all the channels, one might specify the ultimate authority to which an appeal might be made. I can see one practical difficulty. It is possible that before this Act were amended the size of the forces might grow to a point where it would be almost impossible for the minister to give consideration to all the grievances. It is perhaps unlikely that the forces would grow to that size. We would hope that there would never be sufficient volume of grievances to make that possible; but that is the reason probably in the Army Act why they limit appeals by men to the Brigadier or General, rather than carrying them to the Army Council. In the British Army the appeal is to a general officer only.

Mr. PEARKES: It would be all the more desirable to have it in the Act that the appeal will be to the minister.

Mr. DRURY: The only objection would be that an increase in the size of the forces might reach a point which would make that impractical.

Mr. BLACKMORE: The difficulty seems to be in determining who is going to see to it that the soldier gets this right. We know that it is here in the Act, but when you come to work it out, when you consider the old school tie

and things like that, the soldier under certain circumstances has little chance of getting justice. Now, Mr. Chairman, as I see it, judging from the experiences I had during the recent war with some of the cases which came to my attention, the ordinary soldier did not have the ghost of a chance of getting that right under certain circumstances. Certain officers could get it in for him and keep it in for him even for years afterwards, and the man had no recourse whatsoever. I would like to see some procedure set up whereby some recourse might be given. I had one case which came before me which was so involved that I do not believe the minister could spare the time to go into all the details which were involved in that case. And during a war, he could never give attention, let us say, to a dozen cases like that. I wonder why we should not have some sort of appeal to a civil court where there would be a judge who would have the time to weigh the evidence before him, and before whom evidence could be brought. I wish the deputy minister could give us some suggestion as to what to do. I believe every person around this table has had some experience with cases such as I have met with, where the soldier did not have any chance at all of getting justice. His right is all written in there, but just let him get it!

Mr. HENDERSON: I think the deputy minister made a very clear statement on this matter.

Mr. WRIGHT: I think he did too, but nevertheless it is not in the section. That is the point. I would like to see the section stand until after this discussion.

Mr. ADAMSON: I understand that the regulations are going to be tabled. We are wasting time.

Mr. WRIGHT: I think the deputy minister should have an opportunity to state more fully what the actual intention of the Act is. The intention of the Act is perfectly legitimate, but I think we are going further in it than the old Act, and I think the section should be redrafted in order to make it clear that actually there is an extension of the rights of the man for redress.

Mr. BENNETT: Brigadier Lawson has made it clear that the Governor in Council can pass self-contained regulations for the Army which would supersede 42 and 43.

Brigadier LAWSON: That is right.

Mr. BENNETT: So we are not changing a thing here.

Mr. BLACKMORE: I think that would signify that we ought to make a change.

Mr. ADAMSON: I would like to suggest that nothing in this section shall preclude an officer or a man from appealing to the Governor in Council as a court of final appeal. I think your regulations are probably excellent, but under this clause 30 you are cutting off an appeal of the officer at the command level or the brigadier level. That is a sort of thing which in my opinion is dangerous and unfair. I think that any officer and any man should have the right of final appeal to the Governor in Council. I think that should be a fundamental right.

The CHAIRMAN: He never has had it.

Mr. ADAMSON: Well, to the minister.

The CHAIRMAN: No, it is not the same thing. The man has never had the right up to now to appeal to the Governor in Council.

Mr. PEARKES: But the officer has.

The CHAIRMAN: Yes, the officer has.

Mr. PEARKES: But the man, no. That might be amended.

Mr. ADAMSON: I would amend it by allowing for an appeal to the Governor in Council and to the minister.

Mr. BLACKMORE: The fact that the ordinary man gets in wrong if he takes a matter up with his member of Parliament indicates there is room for plenty of abuse.

Mr. BENNETT: I was in contact with Mr. Power during the last war. There was not an application by an airman for redress in the last war that the minister did not see and deal with. Every night his brief case contained five or six grievances or retirements or discharges, and he would look into them personally. He worked 16 hours a day. You cannot show me a case of an airman who tried to get to the minister that his case was not fully considered by the minister.

Mr. BLACKMORE: I am glad to hear that about the airmen. I would like to have a similar assurance with respect to the army.

The CHAIRMAN: Shall the section carry?

Mr. BLACKMORE: I do not think this section should carry until something is put right about it. It is not a question of putting a question. Surely opposition members have a right to be heard here.

Mr. THOMSON: I suggest there is some place where confidence should be taken.

Mr. BLACKMORE: Well, let the confidence begin with some of the members.

Mr. THOMSON: Was there not a man who wanted to put his fingers into the side of Christ?

The CHAIRMAN: Do you want to move an amendment?

Mr. ADAMSON: I want to move an amendment so we may get the reaction of the minister. It was the practice in the war—I know in the case of the late Mr. Ralston, but I cannot speak for the Naval minister—I know that the late Mr. Ralston took a great deal of trouble in reviewing these cases. In fact, he considered it to be part of his duty and part of his sacred right as minister to hear as a final appeal the cases of officers and men who considered that they had been unjustly treated for a number of reasons. And I know that the late Mr. Ralston over and over again in the House stated that he considered it as part of his function as minister. I think this matter should be stated in the Act.

The CHAIRMAN: Mr. Adamson proposes the following amendment for the consideration of the committee:

> Nothing in this section shall preclude an officer or a man from appealing to the minister in the final appeal.

Mr. DRURY: I do not like to criticize the draftsmanship, but we might well put something in another section or another regulation which would effectively preclude such an appeal. I think if it is the desire of the committee to see that a man has the right of appeal to the minister, and an officer to the Governor in Council, that should be stated as a positive right.

The CHAIRMAN: Would you like to have this stand?

Mr. PEARKES: Why not let the section stand and perhaps the deputy minister and the judge advocate general can consider it and see if they can achieve an addition to this section?

The CHAIRMAN: Stand, now, section 31,

> 31. (1) Except during an emergency, an officer or man is entitled to be released at the expiration of the term of service for which he is enrolled or re-engaged.

(2) Except as may be prescribed in regulations made by the Governor in Council, any period during which an officer or man is in a state of desertion or is absent without leave shall not be reckoned toward the completion of the term of service for which that officer or man was enrolled or re-engaged.

(3) Where the term of service for which an officer or man is enrolled or re-engaged expires during an emergency or within one year after the expiration of an emergency, he is liable to serve until the expiration of one year after the emergency has ceased to exist.

Carried.

The CHAIRMAN: Section 32,

32. (1) The Governor in Council may place the Canadian Forces or any Service, component, unit or other element thereof or any officer or man thereof on active service anywhere in Canada, and also beyond Canada, for the defence thereof at any time when it appears desirable so to do by reason of an emergency.

(2) An officer or man of His Majesty's Forces who is a member of, serving with, or attached or seconded to a Service, component or unit of the Canadian Forces that has been placed on active service, or who has been placed on active service, or who pursuant to law has been attached or seconded to a portion of a force that has been placed on active service, shall be deemed to be on active service for all purposes.

(3) An officer or man on active service may for the period of such service, be transferred from the component of the Service of the Canadian Forces in which he has been enrolled to the same component of another Service of the Canadian Forces or from the reserve forces to the regular forces.

Mr. ADAMSON: This is very far-reaching.

Mr. PEARKES: There are some new elements there and I think the section requires more consideration.

Mr. WRIGHT: Should we not read section 33? One is related to the other.

The CHAIRMAN: They are in the same section and they are related. I shall read section 33:

33. Whenever the Governor in Council places the Canadian Forces or any Service, component or unit thereof on active service, if Parliament is then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the 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 and act in like manner as if it had stood adjourned or prorogued to the same day.

That has a bearing, of course, on the previous section.

Mr. PEARKES: Subsection 3 of section 32 means that a sailor in the Royal Canadian Navy may be transferred to a unit in the permanent active army of Canada; that an airman may be transferred to the navy, but a man in the naval reserve can only be transferred to a reserve unit in the army or an auxiliary squadron in the air force?

Brigadier LAWSON: That is right, sir.

Mr. PEARKES: That is something quite new; you are authorizing a transfer, without obtaining the man's consent, to the navy, army or air force.

Brigadier LAWSON: That is quite new, sir; we have never had that before.

Mr. PEARKES: From your experience in the last war you feel that is necessary?

Brigadier LAWSON: Yes; we found it very necessary in the last war. During the last war we had to discharge a man from one service and re-enlist him in the other service.

Mr. PEARKES: Is there anything here which authorizes similar transfers within the service from unit to unit; for instance, from the artillery to the infantry, which was done, of course, during the war? It seemed to me to be very desirable.

Brigadier LAWSON: That can be covered by regulations; we do not require it in the Act.

Mr. PEAKES: You cannot transfer them from service to service under the regulations?

Brigadier LAWSON: No, sir.

Mr. ADAMSON: Do I understand if a reserve unit is placed on active service by order in council, all those serving in that reserve unit are then deemed to be on active service?

Brigadier LAWSON: That is correct.

Mr. ADAMSON: And might serve anywhere within or without Canada?

Brigadier LAWSON: That is right.

Mr. STICK: It says, "for the defence of Canada".

Mr. GEORGE: In an emergency it is apparently a right of the Governor in Council to put the forces on active service, and by inference it suggests such action will be approved by parliament. Now, could the Governor in Council declare a state of emergency and have it continue without an Act of parliament?

Brigadier LAWSON: That is substantially correct. Parliament must be summoned, and if they do not agree with it they can put the government out of office or nullify its action by passing legislation.

Mr. ADAMSON: I think the purport of the two sections is obviously that the government of the day could act quickly. By section 33 parliament must be convened immediately.

Mr. STICK: To confirm what they had done.

Mr. ADAMSON: To confirm or otherwise what they had done.

Mr. PEARKES: Is there any change in that?

Brigadier LAWSON: No, sir.

Mr. GILLIS: I raised the question last night as to what age a boy might be sent into combat service. It was stated last night that we might have to call in groups for specialist training, and they may be training for two or three years. Supposing you have groups of boys 16 and 17 taking special training, and an emergency arises or war breaks out, under this section they could be transferred to another section of the service and sent into combat service. I would like to see here some definite rule as to the age at which a boy may be sent into combat service. You can do what you like with him under this section, regardless of what technical training he may be taking, and personally I do not think any boy should be sent into combat service under 19 years of age. Is there any thought as to what age a boy may be sent into combat service?

Brigadier LAWSON: There always have been regulations during a war. It was 19 years of age during the last war.

Mr. PEARKES: Was that for overseas service?

Brigadier LAWSON: Yes, sir.

Mr. PEARKES: It says overseas service and the defence of Canada.

Brigadier LAWSON: It seemed to me there should be no limit to the age for combat service in Canada. If we are actually defending Canada we would have to call on everybody, but it is a different matter perhaps when we are discussing overseas service.

Mr. ADAMSON: Here you say "on active service for all purposes." I am in favour of it; but if you have a reserve unit and declare that reserve unit to be an active unit, on active service for all purposes, that means everyone in that unit is automatically on active service for all purposes. That means he is on active service for the defence of Canada whether it is in Alaska or Pakistan or anywhere.

Brigadier LAWSON: There is no change at all, sir, in that. May I read section 64 of the Militia Act:

> 64. The Governor in Council may place the Militia, or any part thereof, on active service anywhere in Canada, and also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency.

The CHAIRMAN: That is substantially the same.

Mr. BENNETT: Mr. Chairman, I do not see why, in section 33, the ten days should not be fifteen days.

Mr. STICK: That is clause 33 you are speaking of?

Mr. BENNETT: Yes.

The CHAIRMAN: Presumably that means if parliament has adjourned and is to resume within 10 days.

Mr. BENNETT: The way I read it is that if there are eleven days he would still have to issue a proclamation. Why should it not be fifteen and fifteen?

The CHAIRMAN: The answer is that this is the way it always has been.

Mr. GEORGE: It could mean that if you did not know the House was going to meet it might take fifteen days to assemble the members.

The CHAIRMAN: It is practically word for word with the other section.

Mr. GEORGE: The point is if parliament were to resume within ten days of this particular date everybody would know it and have their plans made.

Mr. BENNETT: What about if it were twelve days?

The CHAIRMAN: I presume the figure is arbitrary.

Mr. BENNETT: My argument is that if it were the twelfth day, under this section you would have to issue a proclamation. That ten days should be fifteen days and the section would be clear.

Mr. ADAMSON: It should be ten days or fifteen days, or whichever is the shorter.

Mr. DRURY: I might undertake to consult the electoral officers. I am sure there is some reason for this, tied up with the curious way elections are called.

Mr. ADAMSON: During the war parliament was never actually prorogued, it was adjourned and could be called within ten days.

The CHAIRMAN: Would the committee like to have the section stand until this afternoon or deal with it now?

Mr. BLACKMORE: I wonder if one of the authorities would not work up some definition of "component" again, so that I may understand what it is.

Brigadier LAWSON: It is in section 16, sir. Component means the regular forces, or the reserve forces.

Mr. BLACKMORE: How many of them?

Brigadier LAWSON: There are three components, there is a reserve component, a regular component, and an active service component in each of the three services.

Carried.

The CHAIRMAN: Section 34:

34. (1) The regular forces, all units and other elements thereof and all officers and men thereof are at all times liable to perform any lawful duty.

(2) The reserve forces, all units and other elements thereof and all officers and men thereof

(*a*) may be ordered to drill or train for such periods as are prescribed in regulations made by the Governor in Council; and

(*b*) may be called out on service to perform any naval, army or air force duty, as the case may be, other than drill or training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council.

(3) Nothing is subsection two shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

Mr. PEARKES: That covers matters such as floods, and it seems quite interesting. There is a point that comes to my mind; there is no limitation of the period that the reserve might be called out on service.

Brigadier LAWSON: Clause 35 deals with the question of calling out the troops in a national disaster.

Mr. STICK: Would you comment on subsection 3; it is not quite clear to me.

Mr. ROBERGE: Does it mean that anybody enlisted in the reserve has to be re-enlisted on an active basis, or is he automatically embodied in that?

Brigadier LAWSON: He can be called out on service under this clause for any naval, military or air force duty, but not for any other purpose.

Mr. STICK: What is the meaning of subsection 3?

Brigadier LAWSON: Subsection 3 refers to certain classes of reserves. In the army you have the supplementary reserve which is merely a list of trained people and their only obligation is to serve on active service.

Mr. ADAMSON: Why do you use the term "army" rather than "military"? I notice in speaking of it a moment ago you used the term "military".

Brigadier LAWSON: "Military" refers to any service matter; it is not confined to the army. It is a common form of speech to use the word "military" when you are referring only to the army, but we do not think that is correct usage. Military is defined in the definition clause as relating to all or any of the services. In other words, we use the term "military" relating to the army, navy or air, and speaking of the army alone we say "army".

Carried.

The CHAIRMAN: Section 35:

35. (1) Where the Governor in Council has declared that a disaster exists or is imminent that is, or is likely to be, so serious as to be of national concern, the regular forces or any unit or other element thereof or any officer or man thereof shall be liable to perform such services in respect of the disaster, existing or imminent, as the Minister may authorize,

and the performance of such services shall be deemed to be naval, army or air force duty, as the case may be.

(2) Where the Governor in Council declares that a disaster as mentioned in subsection one exists or is imminent and that the services of the reserve forces are required for the purpose of rendering assistance in respect of the disaster, existing or imminent, the Governor in Council may authorize the reserve forces or any unit or other element thereof or any officer or man thereof to be called out on service for that purpose and all officers and men while so called out shall be deemed to be performing naval, army or air force duty, as the case may be.

(3) Nothing in subsection two shall be deemed to impose liability to serve as prescribed therein, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

Mr. PEARKES: My observation there is that there is no limitation on the time, either in this clause or the one which we have just passed, and I cannot help thinking that there should be some limitation of time put in there. You are dealing with civilians who are giving their time to serve in the reserve forces. It has nothing to do with the regulars at the moment. Now, this is to enable the Governor in Council to call out the reserve army or a unit for an indefinite period; in other words, you might call them out for 2 weeks or you might call them out for 6 months or a year. I cannot help thinking that there should be some limiting clause there limiting the time in which you could compulsorily call out a man on the reserve.

Mr. STICK: You could use the words "during the period of the emergency" to cover a case of that kind.

Mr. DRURY: I think, Mr. Chairman, the services are aware of the disadvantage of retaining men on duty beyond their will. It is an extremely difficult thing, as you know, to recruit all the men you desire in the reserve forces, and in their own self-interest they would not do anything unduly to prejudice the goodwill of the men concerned.

Mr. PEARKES: This would make your position as far as recruiting is concerned extremely difficult because you go to a man or to an officer and tell him that he could be called up; you say, you may if you join this reserve unit render yourself liable to be ordered out on active service, you may have to leave your job for an indefinite period of time.

Mr. LANGLOIS: What have you in mind with respect to a time limit, 6 months? I do not think it is feasible to do that.

Mr. PEARKES: I do. I cannot help but feel that some provision should be made. I am not drawing a line as to the length of the period, but let us say 30 days.

Mr. LANGLOIS: But if the emergency continues to exist for a longer period of time than that, then what would you do?

Mr. STICK: You could limit the time of service.

Mr. PEARKES: We did not have to call up the whole of the reserve army in order to deal with the flood, but those we did call up we had to put on active service; but if you have a certain number of people you can say to a man: you are not going to work more than 30 days; and then you can get another group in, if your emergency lasts 30 days or longer; and in such case it would have to be something very very terrible.

Mr. STICK: Would the words "without his consent," cover it?

Mr. LANGLOIS: It would spoil it.

Mr. PEARKES: I think you want to be able to order the reserve army out in a national emergency without asking a man whether he will go out. But, I do think it would be in the interests of the service if you had a limiting clause in the Act that the man could not be retained for more than thirty days?

Mr. STICK: For more than the state of emergency?

Mr. PEARKES: If you go around now and say to a recruit "We want you to join the Governor General's Foot Guards." He says, "What are the conditions?" "Well, you do so much training, and, in the event of not war but emergency, you may be called out for a whole year."

Mr. STICK: Would not the words "during the time of the emergency," cover it?

Mr. PEARKES: I think there should be a limiting feature.

The CHAIRMAN: There are two thoughts: first of all it is only applicable to those cases where the Governor in Council has expressly declared that there is a disaster existing or imminent. You are dealing with an abnormal condition. Second, disasters last varying times. I was thinking in terms of the Winnipeg flood, I suppose that some of those troops have been called out for the full thirty days now, or close to it. If you had a limitation in this section it might mean that in the midst of the disaster you would have to let a lot of people out and bring in other people. You would not therefore be achieving what is meant to be achieved by giving the Governor in Council the right to meet the disaster.

Mr. STICK: I am not in favour of limiting it to a specified period but, if you used "for the state of the emergency" you would cover it. When the emergency was over they would be discharged.

Mr. GEORGE: I think the problem there is going to be more from the employer's viewpoint than the soldier's. It is not likely that the reserve troops in the maritimes would be called out and sent to Manitoba. The troops that are called out are from Winnipeg and their employers are very definitely interested in the disaster that is taking place and they are not going to jeopardize their men's positions. I think as far as the young soldier is concerned it would be good experience for him to be called out. His only worry, which we in the reserve are running into ourselves with all this extra training we are doing in our own units, would be that his employer did not want the man to be absent. I cannot think that the Governor in Council or the authorities would keep troops out any longer than necessary. Thirty days would not work, and to limit it to five days after the emergency ceased would not perhaps meet the situation either. There might be a lot of cleaning up to do.

The CHAIRMAN: Does anyone know a case—I was thinking of the Fraser Valley, but does anyone know of a case where the situation has not cleared itself? I do not think that the government—any government—would call out troops unless there was an emergency imminent or existing, and I know that in the case of the Fraser floods they were glad to get the men released as soon as they could. It is a question of judgment, however, as to when you can say that the emergency is over. In some types of emergency, after a certain time the civil authorities take over, but a flood, for instance, might continue for a long time. It is a question of trying to define when the emergency is over. Perhaps you would have to have another order in council to say that the emergency was over. It seems to me that the thing in practice, has worked.

Mr. PEARKES: It ceases to be an emergency after a certain period of time and other steps can be taken to deal with it.

The CHAIRMAN: That is right, but it is a nebulous line.

Mr. PEARKES: I feel if the thing has gone on for thirty days that the government can take other steps to deal with it and get other men in there. They can employ people without having to order the men of reserve units to serve for more than thirty days—without their desire. I agree with what Mr. George

has said about the employers and that it would have a very serious effect on employers of labour. If this clause is introduced they will say, "well, I cannot let you join up—"

Mr. GEORGE: No, no, I did not say that.

Mr. PEARKES: I know you did not, but I am saying it.

The CHAIRMAN: I wonder if I might interject something that Brigadier Lawson has called to my attention. In subsection 2, the section that gives the authority—"the Governor in Council may authorize—" and so on "for that purpose."

Mr. THOMSON: Is not that an implication that it is for the emergency?

Mr. STICK: And when the emergency is over they will have no right to retain the troops.

Mr. LANGLOIS: Even if a period of thirty days were to be put in the Act there is nothing to prevent the Governor in Council from releasing them after that thirty days and calling them up for another thirty day period the very next day.

Mr. WRIGHT: What is the position if the reserve force is called out for an emergency? Under the regulations today the forces are called out for training for approximately thirty days in a year. If they are called out in an emergency and we will say that they serve the full thirty days in the emergency, what would be their position?

Brigadier LAWSON: We have no authority at the moment to call out the reserve forces for service in a national disaster. All the men who are now out are volunteers, but this clause would give us the authority to call them out.

Mr. WRIGHT: If they were called out what would be their positions? If they were called out for an emergency for thirty days would they have to serve the other thirty days of regular training? That would amount to sixty days and that is what the employers would object to. Employers would lose the men for sixty days instead of thirty days as under the original regulations?

Brigadier LAWSON: That would depend on the regulations.

Mr. LANGLOIS: You say that you have only volunteers on duty there but, it means that those men have volunteered to be paid instead of working for nothing like the rest of the people are doing.

Brigadier LAWSON: They are volunteers; members of the reserve forces who have volunteered to serve.

Mr. LANGLOIS: The only difference with those in the reserve army is that they have volunteered to be paid while they are working, that is all.

Mr. DRURY: I think in defence of the reserve forces, it should be said that in addition to being paid, they are subject to military law and cease to be voluntary workers. Once they come out they do exactly as they are told and they work the number of hours they are told, and so on.

Mr. STICK: Would that period out there count with their days of service during the year?

Mr. DRURY: Whether their training would be in addition to that?

Mr. STICK: Yes.

Mr. DRURY: It could be either.

Mr. PEARKES: In the Fraser Valley it did not.

Mr. DRURY: It could be either. I do not think any decision has been made as to whether this will count as a period of training.

Mr. STICK: We could make a recommendation in this committee that the point be taken into consideration when drawing the rules and regulations for the reserve force.

Mr. GILLIS: I would like to ask the deputy minister one question in connection with the reserve force. Under the old Act it was specified that officers of the reserve forces had to pay for their own uniforms and equipment. This Act provides nothing like that. Is it the intention to supply those officers or are we continuing the previous practice of compelling them to purchase?

Mr. DRURY: With respect to officers it is the intention of having them pay for their own uniforms.

Mr. STICK: What about men? Theirs are issued.

Mr. DRURY: The men are issued with uniforms.

Mr. ADAMSON: Who declares a state of emergency? Is it not the Attorney General of the province?

The CHAIRMAN: Under this Act it would be the Governor in Council.

Mr. DRURY: There are various types of emergencies but, in so far as we are concerned here, a state of emergency is declared by the Governor in Council.

The CHAIRMAN: Where it is so serious as to be of national concern—

Mr. ADAMSON: Yes, but who decides whether it is a disaster?

Mr. STICK: It is declared by the Governor in Council to be a disaster.

Mr. ADAMSON: Well, has the Governor in Council declared the Red river situation to be a national disaster?

The CHAIRMAN: This is not in effect yet.

Mr. ADAMSON: Well, until the federal authority declares it to be a national disaster you cannot act under this Act?

Mr. DRURY: If under this particular clause 35, it was desired to call out the reserve force troops, it would be necessary to have an order in council declaring the disaster in question to be a national disaster.

Mr. PEARKES: But you can still call men out under clause 34 for service, and service there includes any military service, naval, air, and so forth.

Mr. LANGLOIS: That is only the regular forces.

Mr. STICK: You are wrong there.

Mr. PEARKES: Well, "the reserve forces, all units and other elements thereof and all officers and men thereof,"—"may be called out on service to perform any naval, army or air force duty—"

Mr. LANGLOIS: Any unit of the regular force.

Mr. PEARKES: Look at subsection 2 of section 34.

Mr. DICKEY: Only for navy, or army, or air force duty.

Mr. PEARKES: Only for navy, army, or air force duty, but they could say it was a naval, army, or air force duty to unload a munition ship, or to work on a dike.

Mr. LANGLOIS: Not for a national disaster?

Brigadier LAWSON: We obtained an opinion from the law officers of the Crown on that and they expressed the opinion that we could not call out the reserves in a national disaster under the existing legislation.

Mr. PEARKES: With that I agree, but surely this gives you the right to call them out for what you call a military duty. Now, what is a military duty? Would it not be considered a military duty, shall we say, to unload a munition ship i none case; or to provide a guard in an area which had been flooded; or in an area which had been destroyed by fire, to prevent sabotage and looting?

Mr. DRURY: I think that the first case, Mr. Chairman, would be rather a stevedore operation—to unload a munition ship; and the second case is a police function which is primarily a provincial responsibility.

Mr. PEARKES: They used regular troops to unload a ship in Nanaimo a few months ago.

Mr. STICK: That would be a national emergency.

Mr. GEORGE: I think I know the answer before I start but I would like to have this matter clarified. When these troops are called out, whether on training time or for other reasons, are they subject to the benefits of hospitalization, pay, pension, and so on, as they are when in summer training?

Mr. DRURY: The same as when they are undergoing summer training.

Mr. LANGLOIS: To supplement the answer given to General Pearkes by the deputy minister, military duty is not defined in the interpretation clause but "military" is defined. " 'Military' shall be construed as relating to all or any of the services of the Canadian Forces." I think that should help you understand the expression military duty. It must relate to the service of the Canadian Forces.

Mr. ADAMSON: What I am trying to tie in with this is that under aid to the civil power, the Attorney General I think has the right to declare a state of strike, riot, or insurrection, and he may then go to the general officer commanding, or the senior military officer, and ask for aid.

The CHAIRMAN: May I interrupt, sir? Aid to the civil power has nothing to do with the clauses we are looking at now. There is a whole part of the bill dealing with that.

Mr. ADAMSON: I realize that, but surely there should be some official similar to the attorney general who could declare a catastrophic event a disaster and ask the Department of National Defence for military aid, just as much as he could under aid to the civil power. A disaster cannot be taken to be such until the Governor in Council declares it to be a disaster, and you cannot send troops in to help in the case of an earthquake, flood or a fire unless you have an order in council. Now here is a case in point. Say you have a fire in the bush in northern Ontario. There are even now quite likely many forest fires raging completely out of control. There are troops in Petawawa. If the troops can be advantageously used in order to prevent the spread of that fire, I believe it should be possible for then to be called out by the local authorities who could go to the military authorities and say: we have a fire that is out of control, we need aid. Now, under these regulations before that can be done, you have to get an order in council, you have to get the cabinet to sit; disaster may happen on a Saturday afternoon and the cabinet may be away, and as a result you cannot get an order in council passed for twenty-four hours, and by that time the flames may have laid waste the whole district.

Mr. DRURY: The question there is whether fighting forest fires and so on is a proper employment for the troops. Now, we have acted on almost every occasion where assistance has been requested, and in some six major cases last year, we turned out all the troops we could. But fighting forest fires does result in a serious disarrangement of the various things the army, the navy and the air force are trying to do. They all have, as any industry has, a program of work; they are trying to achieve certain standards and cover certain things and these diversions adversely affect the achievement of their objectives, and perhaps the government as the employer should be the authority to decide whether the troops will be diverted to this or not. In some ways they are analogous to the employees of a large mill, and I do not think the attorney general of a province would call out the employees of the E. B. Eddy Company to move up the Gatineau somewhere to fight a forest fire.

Mr. ADAMSON: Under the Ontario act anybody can be conscripted, to use that word, in the area to fight a forest fire. The local fire ranger can conscript anybody in the area whether he be tourist, or whoever he may be, in order to do the fire fighting. Now, I know what the deputy minister says is only

too true, that fighting fires or building dikes does play havoc with training and is something that we ought to try to avoid as much as possible. Nevertheless if we have an emergency—and a fire is just as great an emergency as a flood—and if a fire burns hundreds of millions of dollars worth of valuable timber and destroys great tracts of land permanently, I feel that in a situation like that some quick methods of getting aid from the armed forces should be in the Act.

Mr. DRURY: Well, it is now provided as a matter of co-operation and it is done informally by telephone, in every case when we can do it.

Mr. ROBERGE: Would such a case not be taken care of in the aid to civil powers?

The CHAIRMAN: Yes. I think we are getting away from this section. There are a lot of other inter-related Acts of provincial and federal jurisdiction dealing with this matter and there is more or less an established procedure. The purpose of this section seems to be to create a method whereby in a disaster of national concern the Department of National Defence have laid down what they shall do or can do or may do, and I cannot see anything wrong with the section myself. It seems to me it is clearly stated, and furthermore, it is not to the exclusion of all these other things; it is more or less of a supplementary or a new definition of the situation we are meeting.

Mr. STICK: I do not think, Mr. Chairman, you can bring into this Act clauses to meet every individual case of emergency that arises.

The CHAIRMAN: Can we carry this section before we leave?

Mr. PEARKES: On this question of limiting the period, it seems to me the committee does not feel it should be included under this section. I must say that I can see no argument for not including the limited period in the previous section, section 34, which we have just dealt with and under which I raised the point first of all and was asked to leave it until we took up this section 35. I think you should have a limiting period for calling out the reserves or utilizing the reserves for a military duty in addition to the training.

Brigadier LAWSON: I would point out that we have never had any limiting period in the past.

Mr. DRURY: The previous section, section 34, Mr. Chairman, in practice has related more to individuals than to units. A man called up under this section for the navy or army or air force duty is called up or has been called up as an individual rather than as part of a complete unit.

Mr. PEARKES: Always with his consent?

Mr. DRURY: Always with his consent.

Mr. PEARKES: That is why it is my feeling you should include in section 34 a line to say "not exceeding a period of thirty days without his consent." You have not got that in there. It would seem now that you can call out a man for military service for any period that you like in addition to his training, and I think that will have a deterring effect on recruiting. I am not trying to be obstinate about it but it seems to me to be in the interest of the service to have such a limiting clause. However, I leave it with you. If you feel you do not want it, well and good, but I can see myself going to a young recruit, or to his employer, and saying: you will do your thirty days training and in addition to that we will call you out for any military duty we like for any period; for instance, the Governor General is going to open parliament and we are going to train three months beforehand to make it a good show.

Mr. LANGLOIS: I wonder if Mr. Drury would not consider the amended proposal that General Pearkes has just outlined? I do not like to see the government faced with a situation where it is dealing with an emergency which is

lasting more than thirty days, and at the end of those thirty days, everybody walks out, gets out of the area, and we are still required to carry on.

Mr. PEARKES: I am not talking about an emergency.

Mr. LANGLOIS: A national disaster?

Mr. PEARKES: No, I am not talking about that, I am talking about military service.

Mr. LANGLOIS: You said your remarks applied to both.

Mr. PEARKES: I said the committee did not appear to agree to that and as far as the emergency is concerned—

Mr. LANGLOIS: Well, I will put my suggestion forward. I would make it apply to the case of an individual rather than to the case of a group. So, after thirty days, for example, an individual will be able to apply for release from duties and if in the examination of his case, he can show that his services may be needed elsewhere or he would suffer prejudice or something to that effect, he could be released. I do not like to see the government faced with a situation where the troops could walk out. I do not think anyone here would like to see that happen.

Mr. ADAMSON: I agree with you, in a case of emergency.

Mr. PEARKES: My remarks applied to miltary service.

The CHAIRMAN: We are dealing now with section 35.

Mr. PEARKES: I raised this point under section 34 and you asked me to wait until we came to section 35, and I still ask the privilege of referring back to section 34.

The CHAIRMAN: Shall we carry section 35?

Carried.

Section 35 is carried; now if you want to General Pearkes, you may proceed.

Mr. PEARKES: I will be able to refer back to section 34 again?

The CHAIRMAN: Yes. We will hold another meeting at 4:00 o'clock this afternoon.

Mr. DRURY: Just to clear up the question, on section 34, there would not appear to be any general objection to adopting General Pearkes suggestion, there would be no objection to inserting a thirty day limit.

The CHAIRMAN: Well, you can consider that during the adjournment and bring it up at the meeting this afternoon.

The committee adjourned.

WEDNESDAY, May 24, 1950.

AFTERNOON SESSION

The CHAIRMAN: Gentlemen, we have a quorum, will you come to order, please?

If we might revert for just a moment—we held over clause 21, which I would still like to stand because I have not been able to get in touch with anyone who might come here to assist us.

In regard to clause 22 there was a request for some comparisons as between officers of the army and officers of the Mounted Police, and I think this information has been brought here now.

Brigadier LAWSON: I think the question was why had we dropped the table of relative ranks that appeared in the Militia Act? The reason for it is the Royal Canadian Mounted Police Act, Section 10, subsection 2 provides:

> Notwithstanding the provisions of any Act inconsistent herewith, the Governor in Council shall have power to prescribe the rank and seniority in the militia which officers of the Force shall hold for the purpose of seniority and command when they are serving with the militia.

In other words, the old section of the Militia Act had no effect because of this section of the Royal Canadian Mounted Police Act which was enacted at a later date.

The CHAIRMAN: Shall section 22 carry?

Carried.

Now, section 30; I would like that to stand until tomorrow.

This morning we had carried sections 34 and 35 and in the process Mr. Pearkes had asked a question and wished to revert to clause 34.

Mr. PEARKES: The deputy minister was going to draft something for us.

Mr. DRURY: I have not done any redrafting, but I have taken some advice. One aspect of this clause which was not mentioned was the possibility that international conditions might worsen to a point where the international situation became somewhat delicate and critical. In August 1939 it became desirable to call out certain of the reserve forces to guard vulnerable points against sabotage. That was something less than mobilization. The aspect of any future war is a little difficult to forecast, and it was felt it might be desirable to have the greatest flexibility in this matter.

Mr. PEARKES: Would that be covered by section 35, "Where the Governor in Council has declared that a disaster exists or is imminent that is, or is likely to be, so serious as to be of national concern." It seems to me that the situation you have pointed out is covered exactly in section 35. I understood you to say section 34 took care of a different set of conditions.

Mr. DRURY: I would hardly think the imminence of war or conditions pertaining in other countries could be described as a national disaster. There are different opinions on that, of course.

The CHAIRMAN: We carried the section; shall it stand as carried?

Carried.

Then, section 36, which deals with "Pay and Allowances":

> 36. (1) The pay and allowances of officers and men shall be at such rates and issued under such conditions as are prescribed in regulations made by the Governor in Council.
>
> (2) The pay and allowances of officers and men shall be subject to such forfeitures and deductions as are prescribed in regulations made by the Governor in Council.
>
> (3) Unless made in accordance with regulations prescribed by the Governor in Council, an assignment of pay and allowances is void.

Mr. ADAMSON: Is there any change in this?

Brigadier LAWSON: Yes, we are adapting the naval and air force principles to the army in this clause.

Mr. ADAMSON: Particularly about assignments of pay?

Brigadier LAWSON: Not that so much, sir. It is more a difference of wording than it is of reality. We had nothing in the old Act about deductions and forfeitures, that was covered in the Regulations and the Army Act of the United Kingdom, included in.

Mr. ADAMSON: I understand in some cases where a commanding officer becomes liable for loss of stores and other things under his command, it is covered in the same way in the new Act?

Brigadier LAWSON: Yes; that comes up in another section.

Mr. ADAMSON: That always seemed to be very unfair.

Mr. PEARKES: What is meant by subsection 3?

Brigadier LAWSON: It simply means that the authorities will not recognize any assignment unless it is in accordance with the regulations. For instance, if a man assigns his pay to some creditor we will not recognize it.

Mr. ADAMSON: You cannot garnishee army pay.

Brigadier LAWSON: No sir.

Carried.

The CHAIRMAN: Section 37,

> 37. The equipment supplied to or used by the Canadian Forces shall be of such type, pattern and design and shall be issued on such scales and in such manner as the Minister, or such authorities of the Canadian Forces as are designated by him for that purpose, may approve.

Mr. WRIGHT: In connection with the issue of uniforms to officers, I understand they pay for their own uniforms.

Brigadier LAWSON: That is correct.

Mr. WRIGHT: Does it come under this section?

Brigadier LAWSON: It is the policy that uniforms will not be issued to officers.

Mr. WRIGHT: It seems to me you have reached a time now in the Canadian army when officers are required to wear certain uniforms which should be issued to them, otherwise it is a deduction from their pay if they have to buy the uniforms and other items of equipment. With so many young chaps coming into the army right from school it works a hardship on them and consideration should be given to issuing this equipment to them.

Mr. GEORGE: I think it should be pointed out the only uniform required is battle dress and beret.

Mr. DRURY: There is an allowance paid to officers on joining of $250 for the purpose of purchasing uniforms. After the initial allowance they are required to keep it up themselves just as a civilian has to buy the costumes which he wears to work.

Mr. WRIGHT: That $250 is paid in Canada?

Mr. DRURY: Yes.

Mr. PEARKES: Is it paid to reserve army officers?

Brigadier LAWSON: No, sir.

Carried.

The CHAIRMAN: Section 38,

> 38. The conditions under which and the extent to which an officer or man shall be liable to His Majesty in respect of loss or damage to public property shall be as prescribed in regulations.

Mr. ADAMSON: Now, this is a new section and I would like to know what it replaces. It is quite a simple section, but with very far-reaching effect. What was the reason for this section?

Brigadier LAWSON: It replaces section 44 of the Militia Act, which provides in subsection 1:

> 44. The value of all such articles of public property as have become deficient or damaged, while in possession of any corps, otherwise than

through fair wear and tear or unavoidable accident, may be recovered by the Minister or by any other person authorized by him, from the officer in command of such corps.

We have now eliminated that automatic responsibility of the commanding officer.

Mr. ADAMSON: I think that is a step very definitely in the right direction.

Carried.

The CHAIRMAN: We now come to section 39, which is a long section. Shall I read it?

Mr. STICK: Read it through and then take it by subsections.

Mr. WRIGHT: Read it section by section.

The CHAIRMAN: Subsection 1 of section 39 reads:

39. (1) The non-public property of a unit or other element of the Canadian Forces shall vest in the officer from time to time in command of that unit or other element, and shall be used for the benefit of officers and men or for any other purpose approved by the chief of staff of the Service of the Canadian Forces in which that unit or other element is comprised, in the manner and to the extent authorized by that chief of staff.

Mr. PEARKES: Does that refer to funds as well as property?

Brigadier LAWSON: The phrase is defined in the definition section.

Mr. STICK: It would apply to canteen funds and things like that, I suppose.

Brigadier LAWSON: Yes.

Carried.

The CHAIRMAN: Subsection 2 of section 39 reads:

(2) The non-public property of every disbanded unit or other disbanded element of the Canadian Forces, vested in the officer in command of that unit or other element, shall pass to and vest in the chief of staff of the Service of the Canadian Forces in which that unit or other element was comprised, and may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependents, of the Service of the Canadian Forces in which that unit or other element was comprised.

Mr. DRURY: Mr. Chairman, I think perhaps subsection 8 should be read in connection with this.

The CHAIRMAN: Subsection 8 reads:

(8) A chief of staff shall exercise his authority under subsections one, two and four subject to any directions that may be given to him by the Minister for carrying the purposes and provisions of this section into effect.

Mr. BLACKMORE: Did I understand the deputy minister to say he would give us the definition of non-public property?

Mr. DRURY: I think most of the members of the committee read it.

The CHAIRMAN: It is on page 3 of the bill.

Mr. BENNETT: Does subsection 2 visualize a benevolent fund?

Mr. DRURY: There is a naval benevolent fund and an air force benevolent fund, but there is not as yet an army benevolent fund.

Mr. PEARKES: What has happened to it?

Wing Commander McLEARN: Mr. Chairman, there is no army fund in respect of presently serving soldiers who are not veterans. The army benevolent fund applies only to veterans of the last war and it is administered by D.V.A. The naval and air force funds are not public funds because those two are corporations, incorporated under the Companies Act.

Mr. DICKEY: Would any non-public property which came in through the operation of this subsection 2 go into any of these funds?

Wing Commander McLEARN: In the case of the air force a regular payment is made by all messes and canteens each month, based on the sales. Once those moneys leave the canteen or mess they cease to be non-public property.

Commander HURCOMB: In the navy there is no compulsion on canteens to make any contribution. It is voluntary and most of them do make contributions, but they are not obliged to.

Mr. DICKEY: What is the purpose of this section; what happens to this property?

Brigadier LAWSON: As I visualize it, it will be used in many ways. For instance, one unit may be disbanded and most of the members sent to another unit, and in that case I think the funds would go to the new unit.

Mr. DICKEY: This has nothing to do with the benevolent fund?

Brigadier LAWSON: No, it has only to do with funds of the unit.

Mr. BENNETT: What happened after the last war when the air force had three or four million dollars which they turned over to the benevolent fund. How would that be administered under this section?

The CHAIRMAN: This section would not have any bearing on it.

Wing Commander McLEARN: The funds which went to the benevolent fund at the conclusion of the war would not be covered because they left the control of the service altogether.

The CHAIRMAN: There are only funds within the service.

Mr. PEARKES: There is nothing in this section to prevent the chief of staff allocating some of these funds to the benevolent fund if he felt it proper.

Mr. DRURY: Other than any direction the minister might make.

Mr. ADAMSON: What was the final disposition of the canteen funds? I remember being at a committee in this House during the early years of the war when this was discussed, and I was wondering what had happened. Were they put in the benevolent fund?

Mr. DRURY: I would not like to say right now.

Mr. STICK: This should not be taken in the notes because it does not come under the scope of our inquiry.

The CHAIRMAN: Put it in.

Subsection 3 of section 39:

> (3) Where, by reason of a substantial reduction in the number of officers and men serving in a unit or other element of the Canadian Forces or by reason of a change in the location or other conditions of service of a unit or other element, the chief of staff of the Service of the Canadian Forces in which the unit or other element is comprised considers it desirable so to do, he may direct that the non-public property or any part thereof that is vested in the officer in command of that unit or other element shall pass to and be vested in the chief of staff upon the terms set out in subsection two.

This is following on subsection 2, and applies to certain conditions that may arise.

Mr. PEARKES: Does that allow for the storing of non-public property during such time as when a unit is being moved from one place to another? For instance, if the unit goes overseas could their mess furniture be stored under public arrangements?

Mr. DRURY: I should think so.

Carried.

The CHAIRMAN: Now, subsection 4, of section 39:

(4) Non-public property acquired by contribution but not contributed to any specific unit or other element of the Canadian Forces shall vest in the chief of staff of the Service of the Canadian Forces to which that non-public property is contributed and, subject to any specific directions by the contributor as to its disposal, may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men, or their dependents, of that Service of the Canadian Forces.

Carried.

The CHAIRMAN: And now subsection 5 of section 39:

(5) By-products and refuse derived from rations and other consumable stores issued to the Canadian Forces for use in service kitchens, and the proceeds of the sale thereof, shall, to the extent that the Governor in Council may prescribe, be non-public property.

Carried.

The CHAIRMAN: And now subsection 6 of section 39:

(6) Except as authorized by the appropriate chief of staff, no gift, sale or other alienation or attempted alienation of non-public property is effectual to pass the property therein.

Mr. PEARKES: That would prevent a unit making a donation say to the Last Post Fund or the Poppy Fund?

Brigadier LAWSON: That would depend on the regulations issued by the Chief of Staff—he will issue regulations saying in what manner non-public funds of a unit may be used. He does that now. It is the existing state of the law.

Mr. PEARKES: Is there anything in there which enables a unit to make a donation perhaps to the Manitoba Flood Fund? That is very much in our minds now.

Brigadier LAWSON: I would have to get the Rules for the Management of Messes and Canteens.

Mr. DICKEY: I think it is more probable that there would be provision to make donations to the Last Post Fund or the Poppy Fund; not for some special purpose like the Manitoba Relief Fund.

Mr. PEARKES: Yes, but the sergeant's mess of the Winnipeg Grenadiers might like to make a donation?

Mr. LANGLOIS: They would have to get authority to do so.

The CHAIRMAN: They would have to get authority either specifically or by reason of existing regulations which may cover all occasions.

Mr. BLACKMORE: Could we have a definition of the expression "is effectual to pass the property therein."

The CHAIRMAN: I think that means to legally pass the title; that is what I would say it meant. In other words the sale, or gift, or whatever it might be is void.

Mr. DICKEY: And it would make the individual property directly recoverable.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection 7.

(7) The conditions under which and the extent to which an officer or man shall be liable to make restitution or reimbursement in respect of loss or damage to non-public property resulting from his negligence or misconduct shall be as prescribed by the Minister.

Carried.

Subsection 8.

(8) A chief of staff shall exercise his authority under subsections one, two and four subject to any directions that may be given to him by the Minister for carrying the purposes and provisions of this section into effect.

Carried.

Subsections 9 and 10.

(9) Non-public property accounts shall be audited as the Minister may from time to time direct.

(10) The *Consolidated Revenue and Audit Act* shall not apply to non-public property.

We had better deal with 9 and 10 together. Shall they carry?

Carried.

Shall section 39 carry?

Carried.

Section 40.

40. (1) The service estates of officers and men who die during their service in the Canadian Forces may be collected, administered and distributed in whole or in part as prescribed in regulations made by the Governor in Council.

(2) For the purposes of this section, "service estate" means the following parts of the estate of a deceased officer or man mentioned in subsection one,

(*a*) service pay and allowances;

(*b*) all other emoluments emanating from His Majesty that, at the date of death, are due or otherwise payable;

(*c*) personal equipment that the deceased person is, under regulations, permitted to retain; and

(*d*) personal belongings, including cash, found on the deceased person or in camp, quarters or otherwise in the care or custody of the Canadian Forces.

Mr. PEARKES: May I ask a question there dealing with the estate of a man who dies with a pension coming to his widow. Now she has to pay succession duty on that estate before the pension is paid. Does the service pay that money over to national revenue, or the succession duties branch?

Mr. THOMSON: Only if the estate is within the boundaries of the succession duty taxes. In Ontario you have $20,000.

Mr. PEARKES: Well, the widows of permanent force officers have taxes taken from their pensions; they have to give to the succession duty people the amount

owing—that is something which we know about and which occurs all the time. What I am asking is whether that is done direct by the department or does it go to the widow first and then she pays it?

Brigadier LAWSON: We are not responsible for the payment of pensions.

Mr. PEARKES: But you are responsible here for administering the estate?

Brigadier LAWSON: Yes, but pensions are not part of the service estate.

The CHAIRMAN: "Service estate" is defined as being in the categories (*a*) (*b*), (*c*) and (*d*) of subsection 2; and pensions are not included.

Mr. LANGLOIS: Even in the case of a pension, as the law applies, it is up to the estate of the deceased to produce a clearance from succession duties before anybody is entitled to pay anything owing the estate; and that would apply to the minister.

Mr. PEARKES: Does the minister have to pay?

Mr. LANGLOIS: No, he does not pay but, according to the existing law, the estate of the deceased would have to produce a certificate of clearance from the succession duties branch that the duties have ben paid on the estate. The minister is not supposed to pay anything to the estate unless this release or clearance has been filed. It applies to bank accounts and so on.

Mr. PEARKES: That means that no pension is paid to the widow until she gets that clearance?

Mr. LANGLOIS: That is right.

Mr. PEARKES: So there is a definite holdup there and that pension is not paid until it has amounted to the moneys due by the estate to the succession duties branch.

Mr. LANGLOIS: Not only the estate, but even bank accounts cannot be paid by the bank to the widow unless the widow produces a certificate of clearance.

Mr. BENNETT: It is the same for life insurance?

Mr. LANGLOIS: Yes.

The CHAIRMAN: The usual succession duty release.

Mr. PEARKES: It comes very hard on the widow because in many cases she has no bank account and she has to wait until she gets a clearance and her pension has amounted to enough to pay the succession duties.

Mr. LANGLOIS: It is no harder on the widow of a civilian who has an insurance policy. The widow cannot receive any proceeds of the insurance policy without producing the succession duty release.

Mr. HENDERSON: If there is a bank account the bank will release either $500 or $1,000 for the people to carry on. I do not think there is any real difficulty.

The CHAIRMAN: Shall the clause carry?

Mr. GILLIS: In this succession duties business there is an angle that I think is pretty rank discrimination. An officer in the permanent force pays into a pension fund. I had a case a few weeks ago of an officer who passed away while in the service. There is no pension coming to the widow as his death is not attributable to service. The widow had returned to her the sum of $3,000 that was coming to her husband under that pension arrangement—money which he had paid in. The Income Tax Department deducted $650 from that as accruing to her by way of income. I think that is a pretty rank case of discrimination. In the first place, that officer was assessed on his income and pays tax on his total income—he would not get credit for his contribution toward the pension fund; and taxing her on the amount before it was returned to her I think is pretty raw. I think the service should go after that; and that comes within the scope of settling these estates.

Mr. ROBERGE: Would not that come under national revenue?

Mr. LANGLOIS: This has to do with the distribution of the estate?

Mr. GILLIS: It has to do with the distribution of the estate—when they steal $650 from the estate.

The CHAIRMAN: I do not think it means within the estate.

Mr. GILLIS: There is a bill coming up on that section of pensions.

The CHAIRMAN: Shall the section carry?

Carried.

Section 41.

41. Where an officer or man disappears under circumstances that in the opinion of the Minister or such other authorities as he may designate, raise beyond reasonable doubt a presumption that he is dead the Minister or any such other authority may issue a certificate declaring that such officer or man is deemed to be dead and stating the date upon which his death is presumed to have occurred, and such officer or man shall henceforth, for the purposes of this Act and the regulations and in relation to his status and service in the Canadian Forces, be deemed to have died on that date.

Mr. ADAMSON: What was the reason for this?

Brigadier LAWSON: There are two reasons for this clause. The first one is to clear the service records. It is obvious the man has died but we have no proof and we must be able to clear our records.

Mr. ADAMSON: Strike him off strength?

Brigadier LAWSON: Yes. The widow is entitled to certain benefits under the pay regulations and so on, and she must be able to get those benefits.

The second reason is I think that most of the provinces have legislation under which they will accept the certificate issued by the service authorities as proof of death. Of course, that is very important for a widow or family in settling an estate. Otherwise, the estate would drag on for years and it would result in a very awkward position.

The CHAIRMAN: That would be particularly applicable to airmen lost in remote areas, where they could not be found, and the estate would be held up.

Mr. LANGLOIS: It will have no effect before the civil courts?

Brigadier LAWSON: It has, because of the fact that the provinces have legislation.

Mr. LANGLOIS: Has Quebec agreed to that?

The CHAIRMAN: This has only to do with service personnel.

Mr. STICK: What happens if the man turns up afterwards? There are cases of that kind.

Mr. ADAMSON: If a man falls overboard on convoy at sea his body is not recovered. Nobody sees him fall over and he is just missing. Under the Act as it is now they would have to wait apparently seven years?

Brigadier LAWSON: No, we have regulations now.

Mr. ADAMSON: And do you declare the man to have died at sea as of such and such a date?

Brigadier LAWSON: That is correct.

Mr. ADAMSON: I have known of people who have fallen overboard and disappeared. There were many, in the convoys, who were lost and nobody saw them go; and nobody knew what to do.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 42.

42. The personal belongings and decorations of an officer or man, who is absent without leave, that are found in camp, quarters or otherwise in the care or custody of the Canadian Forces shall vest in His Majesty and shall be disposed of in accordance with regulations made by the Governor in Council.

Carried.

Clause 43.

43. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, where it is expedient that he or any such other authority should be informed on any matter connected with the government, discipline, administration or functions of the Canadian Forces or affecting any officer or man, convene a board of inquiry for the purpose of investigating and reporting on that matter.

Mr. WRIGHT: Under section 93 of the Militia Act this power was vested in the Governor in Council. Now it is given to the minister and not only to the minister but to any such authority as he may prescribe or appoint. It seems to me to be pretty loose. These boards of inquiry are rather important matters in the forces.

Brigadier LAWSON: It is really no wider because section 93 provided that the Governor in Council might make regulations. The Governor in Council did not actually convene boards of inquiry; he just made general regulations giving power to the service authorities to convene them. This does not widen it.

Mr. WRIGHT: It does not change the position?

Brigadier LAWSON: No.

Mr. PEARKES: You have changed the name from "court of inquiry" to "board of inquiry"?

Brigadier LAWSON: Yes, we have, sir. There was constant confusion over the word "court." People thought of a court of law but really this was a board of inquiry.

The CHAIRMAN: Shall the section carry?

Carried.

Clause 44.

44. (1) The Minister may authorize the formation of cadet organizations under the joint or several control and supervision of the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force, to consist of boys not less than twelve years of age and who have not attained the age of nineteen years.

(2) The cadet organizations mentioned in subsection one shall be trained for such periods, administered in such manner, provided with equipment and accommodation under such conditions and shall be subject to the authority and command of such officers as the Minister may direct.

(3) The cadet organizations mentioned in subsection one shall not be comprised in the Canadian Forces.

Mr. ADAMSON: Does that alter the three previous Acts in any material way?

Brigadier LAWSON: No, sir.

The CHAIRMAN: Shall section 44 carry?

Carried.

Section 45.

45. (1) The Governor in Council, and such other authorities as are prescribed or appointed by the Governor in Council for that purpose, may in the interests of national defence establish institutions for the training and education of officers and men, officers and employees of the Department and of the Defence Research Board, candidates for enrolment in the Canadian Forces or for employment in the Department or by the Defence Research Board and other persons whose attendance has been authorized by or on behalf of the Minister.

(2) The institutions mentioned in subsection one shall be governed and administered in the manner prescribed by the Minister.

Carried.

Section 46.

46. (1) The Governor in Council may establish associations and organizations for purposes designed to further the defence of Canada.

(2) The Minister may authorize the provision of accommodation, equipment and facilities for the training, practice and use of the associations and organizations mentioned in subsection one and other associations and organizations designed to further the defence of Canada, whether or not the members of such associations and organizations are officers or men.

Mr. ADAMSON: I would like to ask whether this would include rifle associations and other associations of that nature, or would it include fraternal associations?

Brigadier LAWSON: No; it would include rifle associations and associations of that nature, and not associations such as the Canadian Legion.

Mr. PEARKES: Under the previous regulations rifle associations had certain obligations. They could be called out in the event of an emergency. I think that was included in the old Militia Act but I see that there is nothing in the Act now to define their obligations.

Mr. STICK: What associations would they be?

Mr. PEARKES: Let us get the answer to one question first.

Brigadier LAWSON: I believe that section was dropped from the Militia Act in the 1947 amendment. Section 57 of the Militia Act is the comparable section.

Mr. PEARKES: Section 58 is the one—In case of emergency members of rifle associations and clubs shall become members of the Canadian army and shall be under the command of the officer commanding a command so long as the emergency exists until lawfully discharged. All members of such associations and clubs shall remain members of the Canadian army and shall be subject to drill, training, and discipline, to the same extent as other members thereof.

Brigadier LAWSON: That has been dropped now, sir.

Mr. PEARKES: Why?

Brigadier LAWSON: It was considered that they would not be suitable on the basis of the training they would have as a member of a rifle association. If they want to train for service they should join the reserve army.

Mr. PEARKES: Oh, no. A member of a rifle association can be an ex-soldier and indeed a member of the reserve army. Membership to rifle associations is open to veterans and, I think in the event of an emergency when you called people out on service, that type of man would be very useful indeed?

Mr. DRURY: There would be much duplication in that the members of the rifle association might be called out as members of the reserve forces or as

members of the associations. There would be a great many who would be medically unfit and this liability would result in the calling up of a number of individuals rather than a formed body. I think it was generally concluded this power would not be particularly practicable to exercise.

Mr. PEARKES: I feel you are giving members of rifle associations certain advantages but you are asking nothing in return. In the old days they got rifles and ammunition and in return for that there was a liability to be called out for emergency. Now you are still giving them the rifles and ammunition but you are waiving any responsibility.

Mr. THOMSON: But, Mr. Chairman, we are not waiving their right to volunteer. I think the old order is obsolete and this is better.

Mr. PEARKES: Why?

Mr. THOMSON: I feel that we should not ask these people, because we are helping them, to jump at the crack of the whip of the military organization. I think the leniency is admirable.

Mr. PEARKES: They are under no obligation at all?

Mr. ADAMSON: Apropos of the service associations, what are they? I think Mr. Stick's question should be answered? Would the Canadian Intelligence Association be considered as a service association? Or would the Naval Officers Association be considered as a service association?

Brigadier LAWSON: No, the Naval Officers Association would be considered more in the nature of a club.

Mr. ADAMSON: What about the Canadian Intelligence Association?

Brigadier LAWSON: I would think offhand that it would come under this. Certainly such assocaitions as the Canadian Artillery Association, and the Canadian Infantry Association would be included.

Mr. PEARKES: What about the Military Institutes which receive grants under the estimates?

Brigadier LAWSON: I think that would be beyond the scope of the class here. They are more fraternal organizations.

Mr. ADAMSON: As the rifle is more and more obsolescent, I just wondered what associations are included now? Is there a list?

Mr. DRURY: I think we have here a list of those associations to which grants are made but I am not sure that we have a list of the associations which have been formed by order in council. Military Institutes form themselves and do not require an order in council. The mere fact they form themselves and are useful in a military way does not necessarily deprive them of grants of either money, equipment or the use of facilities.

Mr. ADAMSON: Do you make a grant to the Canadian Intelligence Association, and the Canadian Artillery Association?

Mr. DRURY: We are making one to the Conference of Defence Associations, to the Canadian Artillery Association, to the Infantry Association, and I would like to check on the Intelligence Association.

Mr. PEARKES: And there are about eight others.

Mr. DRURY: I am not sure whether the Intelligence Association is in yet.

Mr. PEARKES: I think it is..

Mr. ADAMSON: Have you got the list there?

Brigadier LAWSON: We have, but is is not an accurate list. I would have to find out how they were incorporated.

Mr. DICKEY: The purpose of this section is to give the Governor in Council authority to establish such associations as are thought necessary. Surely it is not relevant what they are.

Mr. ADAMSON: I think it is important to know what they are, so that we will know in future what sort of associations are likely to be brought into being.

Brigadier LAWSON: I would point out that it is not necessary for an organization to be established under subsection 1 to receive benefits under subsection 2. Subsection 2 is very broad and an organiaztion such as a military institute and so on could receive benefits under subsection 2 although not established under subsection 1.

The CHAIRMAN: Subsection 2 makes provision in respect of associations and organizations mentioned in subsection 1 and other associations and organizations designed to further the defence of Canada. Shall the section carry?

Carried.

Section 47:

> 47. Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or man may be exercised by, or done by, to or before any other officer or man for the time being authorized in that behalf by regulations or according to the custom of the service.

Mr. BLACKMORE: May we have an illustration, Mr. Chairman?

Brigadier LAWSON: The purpose of the clause is to legalize the usual service delegation of authority. For example, a commanding officer may tell his adjutant to go and do something. The adjutant is then doing it for the commanding officer, and it is to prevent any illegality that we have this in the bill.

The CHAIRMAN: I think that section 171 of the Army Act of the United Kingdom, speaking generally, provides along the same lines for delegation of authority, while avoiding difficulties in the law arising from such delegation. It regularizes it.

Mr. WRIGHT: Suppose an officer were court martialled for something. Would a regulation under this law change the proceedings of the court martial?

Brigadier LAWSON: Oh no, sir.

Mr. WRIGHT: It has nothing to do with courts or with discipline?

The CHAIRMAN: With ordinary delegation of duty, I would say.

Mr. ADAMSON: Suppose the colonel tells his adjutant to drive a tank across the road and the result is a fatal accident to a motorist? Does this get the adjutant out of legal liability?

Brigadier LAWSON: No, sir.

Mr. ADAMSON: Then, what is the exact purpose of it?

Brigadier LAWSON: To legalize that delegation of authority which does take place throughout the services. A commanding officer has very onerous responsibility and very wide powers. His adjutant is there to assist him, and to do some of those things for him. For example, a commanding officer issues orders but they are signed by the adjutant for the commanding officer. Nevertheless those orders are the orders of the commanding officer.

The CHAIRMAN: Does the section carry?

Carried.

Section 48:

> 48. Orders made under this Act may be signified by an order, instruction or letter under the hand of any officer whom the authority who made such orders has authorized to issue orders on his behalf; and any order, instruction or letter purporting to be signed by any officer appearing therein so to be authorized is evidence of his being so authorized.

That is just supplementary to the other. Shall the section carry?

Mr. PEARKES: Has this anything to do with the new Act which is before the House and which is to get first reading?

Brigadier LAWSON: This has nothing to do with it. That Act relates only to orders in council and other orders of that nature.

Mr. PEARKES: I thought you referred to that yesterday.

The CHAIRMAN: That was in another connection.

Brigadier LAWSON: That was in connection with regulations made under the Act by the Governor in Council.

The CHAIRMAN: Does section 48 carry?

Mr. PEARKES: This will not clash in any way?

Brigadier LAWSON: No, sir.

Carried.

The CHAIRMAN: Section 49.

49. (1) All regulations and all orders and instructions issued to the Canadian Forces shall be held to be sufficiently notified to any person whom they may concern by their publication, in the manner prescribed in regulations made by the Governor in Council, in the unit or other element in which that person is serving.

(2) All regulations and all orders and instructions relating to or in any way affecting an officer or man of the reserve forces, other than an officer or man who is serving with a unit or other element, when sent to him by registered mail, addressed to his last known place of abode or business, shall be held to be sufficiently notified.

(3) Notwithstanding subsections one and two, all regulations and all orders and instructions mentioned in those subsections shall be held to be sufficiently notified to any person whom they may concern by their publication in the *Canada Gazette*.

Shall the section carry?

Mr. ADAMSON: All you have to do is to register it and mail it to him. You do not have to get proof of receipt at all.

Brigadier LAWSON: No. Just to the last known address, sir.

The CHAIRMAN: Shall the section carry? Carried.

Mr. STICK: The registered letter has to be signed for.

Mr. ADAMSON: Suppose he does not get it? Suppose it is sent to his last known address and is returned?

The CHAIRMAN: That applies in many other cases in civil life. There is no other way you can do it.

Mr. ADAMSON: But there is no proof that he received it until he signs a document and says that he received it.

Brigadier LAWSON: It is his duty to notify the authorities of a change of address and if he neglects to do so, he takes the consequences.

The CHAIRMAN: Section 50:

50. A commission, appointment, warrant, order or instruction in writing purported to be granted, made or issued under this Act is evidence of its authenticity without proof of the signature or seal affixed thereto or the authority of the person granting, making or issuing it.

Shall the section carry?

Carried.

Section 51:

51. (1) The Governor General may cause his signature to be affixed to a commission granted to an officer of the Canadian Forces by stamping

the signature on the commission with a stamp approved by him and used for the purpose by his authority.

(2) A signature affixed in accordance with subsection one is as valid and effectual as if it were in the handwriting of the Governor General, and neither its authenticity nor the authority of the person by whom it was affixed shall be called in question except on behalf of His Majesty.

Shall the clause carry?

Mr. ADAMSON: You mean that your commission will not be signed in ink any more, but just with a rubber stamp? I disapprove of it. I think a man should at least have his commission signed in ink.

Carried.

The CHAIRMAN: Section 52:

52. Every bond to His Majesty entered into by any person before a judge or justice of the peace, or officer of the Canadian Forces, for the purpose of securing the payment of a sum of money or the performance of a duty or act required or authorized by this Act or by regulations, is valid and may be enforced accordingly.

Shall the section carry?

Carried.

We now turn to part 3 "The Defence Research Board". What about this long section 53? Shall I read it piece-meal?

Mr. STICK: Yes, let us get at it.

The CHAIRMAN: Section 53, subsection (1):

53. (1) There shall be a Defence Research Board which shall carry out such duties in connection with research relating to the defence of Canada and development of or improvements in equipment as the Minister may assign to it, and shall advise the Minister on all matters relating to scientific, technical, and other research and development that in its opinion may affect national defence.

Shall subsection (1) carry?

Carried.

Section 53, subsection (2):

(2) The Defence Research Board shall consist of a Chairman and a Vice Chairman, appointed by the Governor in Council, the persons who from time to time hold the offices of Chief of the Naval Staff, Chief of the General Staff, Chief of the Air Staff, President of the Honorary Advisory Council for Scientific and Industrial Research, and Deputy Minister of National Defence, and such additional members representative of universities, industry and other research interests as the Governor in Council appoints.

Shall subsection (2) carry?

Mr. PEARKES: Can we be told who are on that Research Council now? Who are the representatives from universities and from industries?

Mr. DRURY: We have not got the present composition of the Defence Research Board, and I cannot recall them all. But if the committee wishes I shall have them produced. Unfortunately today is not a very good day to get them or I would get them right away. I can get them for you at our next meeting.

Mr. ADAMSON: Dr. Solandt is the head of it?

Mr. DRURY: Dr. Solandt is the chairman.

The CHAIRMAN: The names will be produced.

Subsection (3):

(3) The Chairman and Vice Chairman shall hold office during pleasure, and shall be paid such salaries as the Governor in Council determines.

Shall subsection (3) carry?

Mr. ADAMSON: What are the salaries now paid?

Mr. DRURY: The chairman gets a salary of $12,000.

Carried.

The CHAIRMAN: Section 53, subsection (4):

(4) The members of the Defence Research Board, other than the Chairman, Vice Chariman or the ex officio members, shall hold office for a period not exceeding three years but shall be eligible for re-appointment, and shall be paid such remuneration, if any, as the Governor in Council determines.

Shall subsection (4) carry?

Mr. PEARKES: Are these officials members of the Civil Service, members of the Armed Forces, or what are they? It appears that a man is appointed for three years or for such time as may be authorized, and it may be extended. You want to get the very best people possible and you want to assure them of some continuity. At the end of three years what happens to them?

Mr. DRURY: Some are re-appointed, and changes are made. I now have a list of the members of the Board.

The CHAIRMAN: Would the committee like to hear that list now?

Mr. DRURY: The chairman is Dr. Solandt; ex officio members are The Chief of the Naval Staff; The Chief of the General Staff; The Chief of the Air Staff; the Deputy Minister of National Defence; and the President of the National Research Council, that is Dr. C. J. Mackenzie.

Additional members who were appointed are: Dr. R. F. Farquharson, Head of the Department of Medicine, University of Toronto; Professor P. E. Gagnon, Director of the Department of Chemistry and Chemical Engineering and Director of the Graduate School, Laval University; Mr. H. G. Smith, Vice-President and Director, Canadian Industries Limited; and Dr. O. Maass, Macdonald Professor of Physical Chemistry and Chairman of the Department of Chemistry, McGill University. There are two appointments which are vacant at the moment.

Mr. PEARKES: I take it that this board is not in permanent session and that these gentlemen have other appointments? They come to meetings of the board as required?

Mr. DRURY: The Board normally meets quarterly, four times a year; while the interim business of the Board is conducted by the chairman with the aid of the staff of the Defence Research Board.

Mr. PEARKES: The chairman is a permanent official? He is in receipt of a salary?

Mr. DRURY: That is correct.

Mr. PEARKES: I presume that the members of the Board have their expenses paid, or receive an honorarium? They do not draw salaries?

Mr. DRURY: No. They do not draw salaries. They have their expenses paid. I am not sure about the honorarium; but they are not on salary.

Mr. PEARKES: They just meet every quarter and give advice. Is the vice-chairman on salary?

Mr. DRURY: We have not got a vice-chairman.

Mr. STICK: How are they appointed? Who appoints them?

Mr. DRURY: The members of the Board are appointed by the Minister on the recommendation of the Defence Research Board.

Mr. DICKEY: Does it not say the Governor in Council?

The CHAIRMAN: The Governor in Council under subsection 2, other than certain persons who are appointed by reason of their position.

Mr. STICK: I suppose they screen all those people.

Carried.

The CHAIRMAN: Now, subclause 5 of section 53?

(5) Each member shall be paid his travelling and other expenses incurred in connection with the work of the Defence Research Board.

Carried.

Subclause 6 of section 53:

(6) The Chairman shall be the chief executive officer of the Defence Research Board and, under the direction of the Minister and in accordance with policies approved by the Board, shall oversee and direct the officers, clerks and employees of the Board, have general control of the business of the Board, have supervision over the work directed to be carried out by the Board, be charged with the organization, administration and operation of the defence establishments of the Board and perform such other duties as the Minister may assign to him.

Carried.

Subclause 7 of section 53:

(7) The Vice Chairman shall perform such duties as may be assigned to him under the by-laws made by the Defence Research Board.

Mr. DRURY: I was wrong a moment ago, Mr. Davies has been appointed vice chairman. He has been a member of the staff of the Defence Research Board and he is vice chairman and a permanent official.

Mr. ADAMSON: And he is paid a salary?

Mr. DRURY: He is paid a salary, but I am not sure what his salary is.

Carried.

Mr. PEARKES: Is this word "by-laws" correct? We have been dealing with regulations up to now.

Mr. DRURY: The Defence Research Board is partially military, partially civil service, and partially civilian, so it is difficult to assimilate it completely with any other type of departmental organization.

The CHAIRMAN: Subsection 8 of section 53:

(8) The Chairman shall have a status equivalent to that of a chief of staff of a Service of the Canadian Forces.

Carried.

Shall section 53 carry?

Carried.

Mr. STICK: I am not quite satisfied with all this. However, go on, let it go.

The CHAIRMAN: Then, section 54:

54. The Defence Research Board may, with the approval of the Minister,

(*a*) notwithstanding the Civil Service Act or any other section of this Act or any other statute or law, appoint and employ the professional, scientific, technical, clerical and other employees required to carry out efficiently the duties of the Board, prescribe their duties and, subject to the approval of the Governor in Council, prescribe their terms of appointment and service and fix their remuneration;

(*b*) make by-laws or rules for the regulation of its proceedings and for the performance of its functions;

(*c*) enter into contracts in the name of His Majesty for research and investigations with respect only to matters relating to defence; and

(*d*) make grants in aid of research and investigations with respect only to matters relating to defence and establish scholarships for the education or training of persons to qualify them to engage in such research and investigations.

Mr. BLACKMORE: Mr. Chairman, Mr. Stick has indicated he is not exactly pleased with the last section, and I wonder if he would tell us what is troubling him.

Mr. STICK: I would like to have a good deal more information about what safeguards you have regarding the safety of the realm and so on. We have had the Dr. Fuchs' affair, and all that sort of business. Now, I would like to know what safeguards you have set up as far as the defence of the realm is concerned and what check you have.

Mr. DRURY: All employees of the Board undergo precisely the same screening as members of the Department of National Defence. The term "board" is perhaps what leads to some confusion. The Board itself is merely an advisory body and the operating agency is the chairman of the Board, Dr. Solandt, and a staff under him which works with the armed services in the closest possible cooperation. They are subject to the same security checks that either a civilian with the Department of National Defence or members of the military forces are subject to.

Mr. STICK: You are satisfied the regulation you have is good enough for the safety of the realm? You are dealing here with some military personnel and some civilians.

Mr. DRURY: The Board is very conscious of that difficulty and I think that with the screening which has been carried out of members of the Board and the staff it will be all right.

Mr. ADAMSON: Have you a category of "sensitive employees"? During the war they used the term "sensitive employment" and special screening was carried out for those engaged in sensitive employment. For instance, no one who was foreign born could be in the intelligence service, which I think possibly was a mistake, but is there now in peace time any category such as "sensitive employees"?

Mr. DRURY: Yes, there is.

Mr. ADAMSON: For instance, a clerk or a doorman in the Department of National Defence would not be a sensitive employee, but some of these people would be, and it does not seem wise to subject them to the same type of screening.

Mr. DRURY: Within our services and the Defence Board itself there are categories of screening.

Mr. PEARKES: Are the members under military discipline?

Mr. DRURY: No.

Mr. PEARKES: They are not members of the civil service?

Mr. DRURY: No, they are not.

Mr. PEARKES: There are no civil servants employed here at all?

Mr. DRURY: To the best of my knowledge there are not. There may be a man or two in the civil service who has been loaned to them, but the normal method of employment is not through the civil service. The board, however, has been most concerned to see that while they are not in the civil service the terms of service are as nearly equated to the rest of the service as possible.

Mr. ADAMSON: Do they have a superannuation scheme?

Mr. DRURY: They have.

Mr. ADAMSON: Comparable to the civil service?

Mr. DRURY: The same as the civil service.

Mr. ADAMSON: I imagine they come under the Official Secrets Act rather than under the other Acts.

Mr. WRIGHT: Do sections (*c*) and (*b*) apply to atomic research?

Mr. DRURY: They may.

Mr. WRIGHT: Do they?

Mr. DRURY: That is a question I prefer not to answer.

Mr. ADAMSON: Those would not include the employees of Chalk River?

Mr. DRURY: The employees of Chalk River come under the National Research Council.

Mr. ADAMSON: What is the liaison with the National Research Council? There does not seem to be any liaison officer and that is why I ask the question.

Mr. DRURY: Well, there is liaison in that the chairman of the National Research Council is a member of the Defence Board, and all the way down there is provision for contact. Members of the Defence Board sit on the National Research Council committees, and vice versa.

Mr. ADAMSON: What physical properties have the National Defence Board in the way of buildings, housing or laboratories?

Mr. DRURY: They have an experimental station at Suffield in Alberta; they have an electrical research station on the road to Prescott; they have an establishment at Valcartier near Quebec. They have some equipment, if not a building, in the naval research establishment in Halifax, and they may get their own building which will be separate and distinct. They also own their own equipment, but not a building on the Pacific coast. In addition there is a chemical laboratory in Ottawa.

Mr. ADAMSON: Would you think it advisable for them to have their own buildings here?

Mr. DRURY: No; the Defence Research Board is designed to serve the armed services, and the closer the physical contact, the closer the working relationship will be.

Mr. ADAMSON: I understand if you want a special job done you go to one of the universities or even to a commercial firm, such as Canadian Industries Limited, and ask them to carry out specific research for you.

Mr. DRURY: That is correct.

Mr. PEARKES: Do the clauses 38 and 39, which we previously passed, dealing wtih public and non-public property, apply to the property of this board?

Mr. DRURY: Non-public property relates only to the services, and the Defence Research Board is not one of the services.

Mr. PEARKES: So that does not apply?

Mr. DRURY: Public property applies to the Defence Research Board as it would to any other department of government.

The CHAIRMAN: Clause 38 applies only to officers and men.

Carried.

Clause 55:

55. (1) All expenses of the Defence Research Board shall be paid out of moneys appropriated by Parliament for the purpose or received by the Board through the conduct of its operations, bequests, donations or otherwise and shall be paid by the Minister of Finance on the requisition of the Minister.

(2) The Minister may request the Minister of Finance to allocate any portion of the moneys appropriated by Parliament for the purposes of the Defence Research Board for scholarships or grants in aid of research and investigations, and thereupon the Minister of Finance shall hold that portion of the moneys in trust and may at any time on the requisition of the Minister disburse that portion of the moneys for scholarships or grants in aid of research and investigations.

(3) Any moneys allocated by the Minister of Finance under this section that, in the opinion of the Minister, are not required for the purpose for which they were allocated shall cease to be held in trust.

Carried.

Mr. PEARKES: Now, the moneys which are derived through the operation of the board, I assume, mean moneys coming in. For instance, the board may develop something which might not be successful for military purposes but which might be of value for civilian use. That would be paid for, and what would be done with the money?

Mr. DRURY: To the best of my knowledge there have been no such cases to date.

Mr. PEARKES: Their board has no earning ability?

Mr. DRURY: The Board has no earning ability, to the best of my knowledge. It was thought wise, however, to include this type of thing, which parallels arrangements for the National Research Council in case it should develop earning ability.

Mr. PEARKES: So that any money the board earns is retained by itself and would not go into consolidated revenue?

Mr. DRURY: That is correct, sir.

Mr. PEARKES: Any money it earns goes back into the Board's funds and not into consolidated revenue?

Mr. DRURY: That is correct.

Carried.

The CHAIRMAN: We come now to clause 56, which is under the heading, "Part IV, Disciplinary Jurisdiction of the Services—Application." Section 56 is four and one-half pages, and I suppose we might read each subsection and see if we can deal with it in that way.

Commander P. H. Hurcomb, Judge Advocate of the Fleet, called:

Mr. PEARKES: Would it help if we had a general outline first of all, explaining the purpose of this particular part?

The CHAIRMAN: I think that might be helpful.

Mr. ADAMSON: It has obviously been tremendously shortened.

Commander HURCOMB: I would not say so on the whole.

The CHAIRMAN: Commander Hurcomb will give us an outline and that might shorten the discussions.

Mr. PEARKES: It will at least give your voice a rest, Mr. Chairman.

Mr. STICK: Might I suggest that no questions be asked until Commander Hurcomb is finished?

The CHAIRMAN: Yes, I think that would be very wise.

Commander HURCOMB: I will be very brief, Mr. Chairman. This is the first of six parts which comprise what we call the Code of Service Discipline. The main part will not be this one, but the one following it, which deals with offences and penalties. In that part each section starts off, "every person who" does something will suffer certain consequences.

Now, the main purpose of Part IV is to indicate what we mean by that term "every person." It describes the classes of people who are subject to the provisions of this Act and it prescribes jurisdiction in point of time, limitation of time, place of offence, and that is the purpose of Part IV.

Substantially it is a conglomeration of items taken from the existing service legislation. We tried to take the best features of legislation from each service. Frequently we found the naval provisions more suitable, very often the air force regulations, and the army regulations, and we tried to do the best we could with this conglomeration.

Perhaps one of the most interesting features will be the provisions for appeals from courts martial, and that is contained in Part IX and is entirely new. Apart from that there is really very little change from the existing set-up as the honourable members will see as we go through it.

The CHAIRMAN: Would you just give the names of the different parts?

Commander HURCOMB: You will see on page iii of the bill a table of contents which may be useful. Part IV is "Disciplinary Jurisdiction of the Services"; Part V is "Service Offences and Punishments"; Part VI is "Arrest"; Part VII is "Service Tribunals"; Part VIII is "Provisions Applicable to Findings and Sentences After Trial", and Part IX is "Appeal, Review and Petition". We have tried to follow a sort of chronological order throughout.

We have tried, and I think succeeded in the main, in attaining uniformity as among the services. As far as the army and the air force are concerned, their systems have always been substantially uniform because the Air Force Act of the United Kingdom followed the form of the Army Act of the United Kingdom, but the Naval Act was a different type of Act. We have succeeded, except in one or two isolated cases which we will justify on the basis of differences in conditions of service, in attaining substantial uniformity.

Mr. STICK: The purpose of this is to coordinate the discipline of the three services.

Commander HURCOMB: That is correct.

Mr. PEARKES: There has been a general tendency to increase the powers of the commanding officer in the army and the air force.

Commander HURCOMB: There is proposed in this bill some increase in his powers. The proposal is to increase his powers to award ninety days detention, but in cases of over twenty-eight days the excess of the sentence over twenty-eight cannot be carried into effect until the sentence is approved by a general officer commanding or air officer commanding. Thus the difference from the existing practice is not as drastic as it might first appear. As far as the navy is concerned there was no change.

Mr. PEARKES: Does the navy have to obtain confirmation from an admiral or fleet officer?

Commander HURCOMB: Yes, sir. As a matter of fact in the navy where a sentence of detention or imprisonment is imposed summarily, one must always have the approval of a senior officer before it is carried out, even if it is only for ten days.

Mr. ADAMSON: Generally speaking you are bringing the army and air force into line with the naval system. I understand that the commander of a ship has, by the very nature of his service, a good deal more authority than the commander of a section in the air force.

Commander HURCOMB: Yes, sir, he has, and will continue to have more because there is another factor to be considered. In the army and air force all accused persons, where a serious offence is involved have the right to be tried by a court martial, whereas in the navy that election applies only to chief petty officers and petty officers.

Mr. PEARKES: The man has the right to elect for a court martial?

Commander HURCOMB: Yes, sir, in the army and air force.

Mr. PEARKES: That has not been made to apply to the navy?

Commander HURCOMB: It applies to the ranks of petty officer and chief petty officer only.

Mr. PEARKES: One is forced to ask, if you are trying to get uniformity, why should that not be extended to the ranks.

Commander HURCOMB: We aimed at uniformity, but not at the expense of essentials. The naval view is that a ship is so constituted, the commanding officer so skilled in the treatment of his men, so familiar with the conditions of the ship, that he is in a position to deal summarily with everyone except men who have served a considerable length of time and perhaps whose pensions might be involved.

Mr. PEARKES: You do not feel a colonel of an army battalion is so skilled.

Commander HURCOMB: I was afraid, Mr. Chairman, that that rather unhappy expression might be picked up. I did not mean it in that sense. Conditions in a ship are confined and the confinement results in intimacy, for better or for worse.

Mr. PEARKES: It is more democratic.

Mr. STICK: A ship in the navy may be thousands of miles away from its base, and if these cases arise you cannot refer them to an admiral, so that the captain would have to have more authority.

Commander HURCOMB: That was the next point I was going to make. I left it to the last because I thought it was the more impressive point. Ships are at sea for lengthy periods of time and while it is true you could wait until you came back ashore to convene a court martial, any delay is detrimental to discipline, and offences must be dealt with quickly and on the spot.

Mr. GEORGE: Was there any criticism of that in the Mainguy report?

Commander HURCOMB: I had the honour to sit as assistant counsel on the Mainguy commission, and I do not think I am betraying any confidence, although we agreed the evidence would be kept confidential, when I say we did not have a single complaint based upon unjust sentences. I do not mean to suggest there had not been any, there must have been, but we did not have that complaint, and we are, I think, justified in concluding that there was no undesirable condition there that required remedying.

Mr. ADAMSON: Does the commander of a ship have equal rights irrespective of his rank? What I am suggesting is the commander of a destroyer may be

a commander or even a lieutenant commander, whereas the commander of a cruiser may be a captain or even a commodore, and while they are equal commanders and in charge of their ships, they differ in rank. Would they have equal disciplinary powers under this new Act?

Commander HURCOMB: They may impose the same punishment irrespective of rank, but the approval differs. In the case of commanders and above, fewer punishments require approval.

Mr. ADAMSON: But the distinction is the man who is in command of the ship has the authority and he has to deal with offences quickly, so he is given greater power than his equal in the other two services because of that?

Commander HURCOMB: That is so, sir, he is a despot, a benevolent despot, but still a despot.

Mr. STICK: It is somewhat the same as in the mercantile marine; the captain of a ship is in charge of his ship at sea and responsible for that ship.

The CHAIRMAN: I was expecting objections to the word "despot".

Mr. CAVERS: I can see where a close relationship exists in the case of a ship afloat, but I was thinking of establishments such as *Stadacona, Cornwallis*, and *Naden*, where there are many people in shore establishments, and where the commanding officer would not be as familiar with the men under his command.

Commander HURCOMB: The answer to that I think can be found in the Mainguy report. Our system of training is so designed that it simulates as far as possible the conditions a man is going to meet at sea. It was stated that when a man got to sea the different conditions he encountered were a bit of a shock to him, and one of the recommendations of the Mainguy report was that we should simulate as much as possible in training establishments the conditions of sea service.

Mr. WRIGHT: What jurisdiction exists to try civil offences?

Commander HURCOMB: That, sir, is in clause 61 at page 27 of the bill. There is jurisdiction to try all civil offences except murder, rape or manslaughter committed in Canada.

Mr. WRIGHT: What is the position when an offence occurs outside of a military establishment?

Commander HURCOMB: This is covered by section 58.

Mr. WRIGHT: The military tribunal has authority to try these offenders?

Commander HURCOMB: Yes. This is a change for the navy, but not for the army or air force.

Mr. WRIGHT: Before your people were tried in the civil courts?

Commander HURCOMB: Before, sir, in the navy, when a civil offence was charged the navy had no jurisdiction to try unless that offence was committed in a ship, establishment, haven, creek, or harbour; but this is being changed to bring us into line with the army and the air force.

Mr. ADAMSON: Were not those people involved in the demonstration in Halifax on VE Day tried by naval court martial?

Commander HURCOMB: There were a few tried by naval tribunals but those were for offences in connection with bringing goods on board ship—goods which had been stolen. In other words, an offence had then been committed within the naval establishment. The vast majority of those people, however, were tried by the civil courts..

The CHAIRMAN: May we then consider the section?

56. (1) The following persons, and no others, are subject to the Code of Service Discipline,

(*a*) an officer or man of the regular forces;

(*b*) an officer or man of the active service forces;

(*c*) an officer or man of the reserve forces when he is

(i) undergoing drill or training whether in uniform or not,
(ii) in uniform,
(iii) on duty,
(iv) called out under subsection two of section thirty-five to render assistance in a disaster,
(v) called out under Part XI in aid of the civil power,
(vi) called out on service,
(vii) placed on active service,
(viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence.
(ix) serving with any unit or other element of the regular forces or the active service forces, or
(x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;

Those are the basic classes of people covered.

Mr. PEARKES: Did not the condition formerly read "proceeding to or coming away from a drill?"

Mr. ADAMSON: That was a trick question always asked on N.P.A.M. examinations. It has been deleted, as I see it.

Commander HURCOMB: That was in the Army Act and Air Force Act, but it is not in here.

The CHAIRMAN: Would not subsection (*c*) cover the situation?

Mr. PEARKES: Let us take the case of a unit which is detached at some distance away. A man might be proceeding to a drill in a military vehicle but he would not get into uniform perhaps until he arrived at the town where the drill was to be carried out.

The CHAIRMAN: That would be under (*c*) (viii), would it not?

Mr. STICK: What would happen if an officer was seconded to a British unit and committed an offence in the British unit? Would he come back to be tried under the Canadian statute or would he come under their discipline and be tried there?

Commander HURCOMB: If he is attached to the British forces he can be tried by them or by us. Under the Visiting Forces Act there is reciprocal legislation between the United Kingdom and Canada. When an officer of the Canadian Forces is attached to a British force he is subject to the laws of the British force in the same way as if he were a member of it.

Mr. STICK: Has he got a choice to be tried under this Act or under the British Act?

Commander HURCOMB: No, he has no choice.

Mr. STICK: There is certainly close liaison between ourselves and the American forces?

Commander HURCOMB: Not of the same nature. We have no legislation with the United States at the present time. We have, though, an arrangement whereby a Canadian officer going on service with the United States Forces receives an order to obey the orders of his superiors in the United States Forces. If he disobeys an order there then he is guilty of disobedience to the order of his own force and he is taken back and tried by his own force.

Mr. ADAMSON: There was a very lengthy and heated debate, I remember, on the matter of the Visiting Forces Act, when the Americans were given the right to try members of their own forces serving in Canada. Apparently we have reciprocal rights in the United States?

Commander HURCOMB: We have, yes. We have by virtue of what we conceive to be the common law.

Mr. STICK: The reason I asked the question is that we have a situation in Newfoundland where we have American Forces permanently stationed there and they sometimes start running amok and are hauled up in police court. They are tried by the civil court.

Mr. GEORGE: I feel that the question brought up by General Pearkes is important—whether we should not have a clause indicating that reserve army personnel are on military duty proceeding to and from their drills.

Commander HURCOMB: If they are on duty, and you mentioned military duty, they would be covered by (iii).

We feel if they are not on duty, not in uniform, and not in a vehicle or defence establishment then we should have no disciplinary control over them.

Mr. PEARKES: If they are driving in their own car going to a drill they are not covered?

Mr. STICK: If they are not in uniform?

Mr. HENDERSON: If you put that in there will be too many facts which you will have to prove.

The CHAIRMAN: In addition to subclauses (*a*), (*b*) and (*c*) which we have covered there are six minor categories and an omnibus clause: I might read those:

> (*d*) subject to such exceptions, adaptations, and modifications as the Governor in Council may by regulations prescribe, a person who pursuant to law is attached or seconded as an officer or man to a Service of the Canadian Forces;

Mr. ADAMSON: Under subclause (x) a man not in uniform nor on training but at the sergeant's mess is subject to this immediately that he steps onto military property, irrespective of whether he has only come for a New Year's drink?

Commander HURCOMB: He would be subject also under subclause (viii). There is a certain overlap there, but the answer to the question is "yes".

The CHAIRMAN:

(*e*) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or man of any force raised and maintained out of Canada by His Majesty in right of Canada and commanded by an officer of the Canadian Forces;

(*f*) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;

(*g*) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section forty-five;

(*h*) an alleged spy for the enemy;

(*i*) a service convict, service prisoner or service detainee, not otherwise subject to the Code of Service Discipline, who is committed to undergo his punishment in a service prison or detention barrack, as the case may be;

(*j*) a person, not otherwise subject to the Code of Service Discipline, while serving with a Service of the Canadian Forces under an engagement with the Minister whereby he agreed to be subject to that Code.

Mr. GILLIS: Does subclause (f) presume to take in the Red Cross, the Salvation Army, the Legion War Services, and the Canadian Press?

Commander HURCOMB: It all depends, Mr. Chairman, on the relations between the individual and the unit he is accompanying. If a newspaper reporter makes a casual visit to a unit to get some news he would not be deemed to be accompanying the forces. But, on a large scale operation, if you had say a Y.M.C.A. auxiliary services man with you, and living with the forces, and if he were with them all the time, then he would be accompanying the forces and would be subject to the Code. It might be interesting to hear the effort we have made to write in the regulations a definition of the word "accompanies".

It is:

> A person, other than an officer or man, accompanies a unit or other element of the Canadian Army who:
>
> (*a*) acts with that unit or other element in the carrying out of any of its movements, manœuvres, duties in aid of the civil power, duties in a disaster or warlike operations; or
>
> (*b*) is accommodated or provided with rations, at his own expense or otherwise, by that unit or other element at any place in Canada designated by the Minister or at any place out of Canada; or
>
> (*c*) is embarked on a vessel or aircraft of that unit or other element.

Mr. STICK: You would have to have some control?

Commander HURCOMB: Yes.

Mr. ADAMSON: That is very sweeping.

Commander HURCOMB: It is not new, sir.

Mr. ADAMSON: The auxiliary services people are included in this for the first time?

Commander HURCOMB: I do not think so, sir; I think they could have been charged.

Brigadier LAWSON: They were subject to military law during the last war.

Mr. PEARKES: Not entirely, I beg to differ there.

Brigadier LAWSON: I should have confined my statement to those actually accompanying a unit; it did not apply to all auxiliary service people.

Mr. PEARKES: You had Y.M.C.A. personnel attached to formations.

Commander HURCOMB: They would be covered by the term "other element."

Mr. STICK: What really governs those people—to bring them under military discipline? Would the fact that they are attached to a unit indicate that they would come under military discipline? If they came up on their own and were not attached to a unit they would be outside of your disciplinary powers?

Commander HURCOMB: That is substantially true.

Mr. STICK: If the Red Cross came up and pitched a camp, and did things on their own for the troops, and if they were not attached to you for rations or anything like that, they would not came under the military discipline of your camp?

Commander HURCOMB: I would not think so.

Mr. STICK: But if they were attached, and definitely attached to you, they would come under it? That is about the distinction as we know it?

Commander HURCOMB: Yes.

Mr. ROBERGE: The minute they drew rations, water, light, and so on, they would be subject to military discipline?

Mr. STICK: Yes, that is it.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, MAY 25, 1950

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, E.M., Judge Advocate General;
Wing Commander H. A. McLearn, Deputy Judge Advocate General;
Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. CAMPNEY, *Chairman*

and

Messrs.

Adamson,	George,	McLean (*Huron-Perth*),
Balcer,	Gillis,	Pearkes,
Bennett,	Harkness,	Roberge,
Blackmore,	Henderson,	Stick,
Blanchette,	Higgins,	Thomson,
Cavers,	Langlois (*Gaspé*),	Viau,
Claxton,	Lapointe,	Welbourn,
Dickey,	Larson,	Wright.—25

(Quorum, 10)

Antoine Chasé,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, May 25, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 8.15 o'clock p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Campney, Cavers, Dickey, George, Harkness, Henderson, Langlois (*Gaspé*), Pearkes, Roberge, Stick, Viau, Welbourn, Wright.

In attendance: Commander P. H. Hurcomb, Judge Advocate of the Fleet: Brigadier W. J. Lawson, E. M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General; Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

The Committee resumed the clause by clause consideration of Bill No. 133, An Act respecting National Defence.

Commander Hurcomb was questioned on the remaining clauses of PART IV, under study. The witness was assisted by Brigadier Lawson, Wing Commander McLearn and Major McClemont.

On Clause 56

Sub-clauses 2 to 13 thereof, both inclusive, were severally agreed to.

On sub-clause (14)

Mr. Wright moved that the said sub-clause be amended by adding thereto, after the word "regulation", at the end of line 15 on page 26 of the Bill, the following:

"made by the Governor in Council".

After some discussion thereon and the question having been put on the said proposed amendment of Mr. Wright it was resolved in the affirmative.

Sub-clause 14, as amended, was agreed to.

Clause 56, as amended, was agreed to.

Clauses 57, 58, 59 and 60 were severally agreed to.

Clause 61, after lengthy discussion thereon, was allowed to stand.

Clause 62 was agreed to.

ON PART V of the Bill

Wing Commander McLearn was called as the main witness. He first gave an outline of PART V and during his questioning on the various clauses therof under consideration, he was assisted by Commander Hurcomb, Brigadier Lawson and Major McClemont.

Clauses 63, 64 and 65 were severally agreed to.

On clause 66

At the suggestion of Wing Commander McLearn, made on behalf of the Judge Advocate General, and on motion of Mr. Langlois,

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Resolved,—That Clause 66 be amended by deleting the word "due" in line 34, page 29 of the Bill, and again in line 1, page 30; and by inserting between the words "of" and "His" in line 8, page 30, the words "of any"

Clause 66, as amended, was agreed to.

Clauses 67 to 78, both inclusive, were severally agreed to.

At 10:30 o'clock p.m., the Committee adjourned to meet again at 10:00 o'clock a.m., Friday, May 26th.

Antoine Chasé,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

Thursday, May 25, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 8.15 p.m. The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum.

Commander P. Hurcomb, Judge Advocate of the Fleet, called:

The CHAIRMAN: When we adjourned yesterday we had passed subsection 1 of clause 56. We now come to subsection 2 of clause 56 which reads:

(2) Every person subject to the Code of Service Discipline under subsection one at the time of the alleged commission by him of a service offence shall continue to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that he may have, since the commission of that offence, ceased to be a person mentioned in subsection one.

Mr. ADAMSON: You mean that if he is discharged from the service he can still be liable for an offence that he committed in the service?

Mr. GEORGE: That is not a new thing.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection 3.

(3) Every person who, since the alleged commission by him of a service offence, has ceased to be a person mentioned in subsction one, shall for the purposes of the Code of Service Discipline be deemed, for the period during which under that Code he is liable to be charged, dealt with and tried, to have the status and rank that he held immediately prior to the time when he ceased to be a person mentioned in subsection one.

Carried.

Subsection 4.

(4) Subject to subsections five and six, every officer or man who is alleged to have committed a service offence may be charged, dealt with and tried only within the Service of the Canadian Forces in which he is enrolled.

Probably I should read 5 and 6 together here:

(5) Every officer or man who, while attached or seconded to a Service of the Canadian Forces other than the Service in which he is enrolled, is alleged to have committed a service offience, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled.

(6) Every officer or man who, while embarked on any vessel or aircraft of a Service of the Canadian Forces other than the Service in

which he is enrolled, is alleged to have committed a service offence, may be charged, dealt with and tried either within that other Service, as if he were an officer or man thereof, or within the Service in which he is enrolled.

Shall subsections 4, 5 and 6 carry?

Carried.

Mr. HARKNESS: That is all substantially the same as we had in the past. A man was ordinarily tried in his own service if it was readily possible.

The WITNESS: Yes.

Mr. HARKNESS: If there was any possibility of trying him in his own service that was where he was tried?

The WITNESS: That was a matter of administration and I think was the general case.

Mr. ROBERGE: If he was attached away would he be tried by that service for a crime committed there?

The WITNESS: Yes, sir.

The CHAIRMAN: Shall we go on to subsection 7.

(7) Every person serving in the circumstances set forth in paragraph (*e*) of subsection one who, while so serving, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service of the Canadian Forces in which his commanding officer is serving.

Carried.

Subsection 8.

(8) Every person mentioned in paragraph (*f*) of subsection one who, while accompanying any unit or other element of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within the Service in which is comprised the unit or other element of the Canadian Forces that he accompanies, and for that purpose shall be treated as a man, unless he holds from the commanding officer of the unit or other element of the Canadian Forces that he so accompanies or from any other officer prescribed by the Minister for that purpose, a certificate, revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, entitling such person to be treated on the footing of an officer, in which case he shall be treated as an officer in respect of any offence alleged to have been committed by him while holding that certificate.

Mr. HARKNESS: This would apply to war correspondents, photographers, and people of that nature?

The WITNESS: Yes, "accompanying" the forces.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection 9.

(9) Every person mentioned in subsection eight shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces that such person accompanies.

Carried.

Subsection 10.

(10) Every person mentioned in paragraph (*h*) of subsection one may be charged, dealt with and trid within the Service of the Canadian Forces in which he is at any time held in custody and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of such unit or other element of that Service as may be holding him in custody from time to time.

Mr. PEARKES: This deals with spies for the enemy; what about a person who gave secret information or attempt to obtain secret information from an ally. We have had instances of that recently and I wonder if that is covered either here or elsewhere?

The WITNESS: If he were a member of the forces of course the situation is covered in the next part. If he were not, then he would be triable for the civil offence perhaps under the Official Secrets Act or something of that nature. If he were subject to the code of service discipline he could be tried by us or by the civil power.

Mr. STICK: If he was not so subject, you would pass him over to the civil authorities?

The WITNESS: Yes, sir.

By Mr. White:

Q. Who decides whether he will be tried by you or by the civil code?—A. If he were subject to the civil code and were in our custody we would, so to speak, have the first shot at him. We would be in a position to decide, but I think in most cases it would be considered expedient to pass him on to the civil power if there were a civil power accessible to us.

Q. He has not got a choice of asking to be tried by the civil power?—A. He would not if he were subject to the code of service discipline.

Mr. ROBERGE: Does this sub-section 10 cover spies for allies?

The WITNESS: This covers only spies for the enemy.

Mr. PEARKES: I presume there is somewhere else further on a clause regarding being in possession of secret information or passing on secret information?

The WITNESS: Yes, sir; you will find that in section 66.

By Mr. Adamson:

Q. Are breaches of security covered under that?—A. Yes.

Q. Under the Defence of the Realm Act in England an officer could arrest or hold, without reporting it even to his superior officer for a period of forty-eight hours any civilian, or any other rank, or anybody at all. He did not have to report the arrest for forty-eight hours. I think a commanding officer did not have to report to the civilian authorities for a week.—A. Well, sir, that is not covered by this bill, that is, if the alleged guilty party were a civilian not subject to the code. There is no provision, under this bill, for holding such persons.

Q. This would just cover members of the Canadian forces, not of any allied forces or any forces seconded?—A. Section 66 would cover, for example, members of the British forces attached to us but if they were not attached and were not accompanying us they would not be covered.

The CHAIRMAN: Shall the sub-section carry?

Carried.

Sub-section 11.

(11) Every person mentioned in paragraph (*i*) of sub-section one who is alleged to have committed, during the currency of his imprisonment or detention, a service offence, may be charged, dealt with and tried within

the Service of the Canadian Forces which controls or administers the service prison or detention barrack to which he has been committed, and shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of that service prison or detention barrack, as the case may be.

Carried.

Sub-section 12.

(12) Every person mentioned in paragraph (*j*) of sub-section one who, while serving with a Service of the Canadian Forces, is alleged to have committed a service offence, may be charged, dealt with and tried within that Service and for that purpose he shall be treated as a man, unless the terms of the agreement under which he was engaged entitle him to be treated as an officer, in which case he shall be treated as an officer.

Carried.

Sub-section 13.

(13) Every person mentioned in sub-section twelve shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Service of the Canadian Forces in which that person is serving.

By Mr. Adamson:

Q. What regulations have you regarding anyone agreeing to be subject to the code?—A. That is a special situation, sir. We might have technical men, civilians, who are going on board a ship or aircraft and it may be convenient to subject them to the code. They would be only so subject if they signed the agreement.

Q. That has to be in writing?—A. In writing, and in the agreement it will be specified whether they shall be treated as officers or as men.

Q. You cannot just take hold of a man and say "you are subject to the code?" He has to agree to it and has to sign it—otherwise it seems to me he would be accepting very considerable responsibility?—A. Exactly, unless he were accompanying the forces.

Q. I am thinking of civilian specialists. You might drag them in and they would find themselves under army discipline without knowing it, but they all have to sign agreements which are made very clear to them?—A. Yes, sir.

The CHAIRMAN: Shall sub-section 13 carry?

Carried.

Sub-section 14.

Women

(14) The Code of Service Discipline, in its application to female persons, may be limited or modified by regulations.

This is a very small but very important sub-section.

By Mr. White:

Q. It is important and I want to suggest that it should be changed to read "limited or modified by regulations made by the Governor in Council." It seems to me this regulation may be very important and, unless there is some objection which the deputy minister can suggest, I would suggest that it be so amended.—A. There would be no objection from the service standpoint to that. It would simply involve adding, at the end of the subsection the words "made by the Governor in Council."

Q. I would move that subsection 14 be amended by adding after the word "regulations," the words "made by the Governor in Council."

The CHAIRMAN: Mr. White moves that subsection 14 of section 56 be amended by adding thereto the words "made by the Governor in Council." Shall the amendment carry?

Carried.

Shall the subclause as amended carry?

Carried.

Shall the section carry?

Carried.

Mr. STICK: Before we go on to section 57 was there not something left over from the last meeting?

The CHAIRMAN: We had section 21, section 30, and section 33 stood over. However, we are now dealing with a different part of the Act and unless the committee wishes we shall go on with it.

Agreed.

Section 57.

57. (1) Every person, in respect of whom a charge of having committed a service offence has been dismissed, or who has been found guilty or not guilty either by a service tribunal or a civil court on a charge of having committed any such offence, shall not be tried or tried again by a service tribunal under this Act in respect of that offence or any other offence of which he might have been found guilty on that charge by a service tribunal or a civil court.

(2) Nothing in subsection one shall affect the validity of a new trial ordered under section one hundred and ninety-one or one hundred and ninety-nine.

(3) Every person who under section one hundred and sixty-three has been sentenced in respect of a service offence admitted by him shall not be tried by a service tribunal under this Act in respect of that offence.

What does section 163 provide?

The WITNESS: We borrowed that from the Criminal Code. It is a provision whereby if a man is charged with an offence, after having been found guilty of that offence he may confess to a series of similar offences and the court may sentence him in respect of all the offences. It is just in order to clear his copy book.

The CHAIRMAN: That is ordinary civil procedure.

Mr. HARKNESS: What does "a service tribunal" take in? Does that include trial by commanding officer?

The WITNESS: Yes, sir.

Mr. PEARKES: This would apply to a trial which is primarily dealt with by a commanding officer?

Mr. BENNETT: According to the definition section a service tribunal is defined as: "—a court martial or a person presiding at a summary trial."

Mr. PEARKES: Who has the authority to order a new trial?

The WITNESS: The court of appeal. You will find that in the appeal section. Then, there is another procedure to which we will also come;—a petition based upon new evidence which has come to light after the trial. In either of those situations a new trial may be ordered.

Mr. HARKNESS: New evidence produced by whom?

The WITNESS: The accused person who has found new evidence indicating his innocence.

By Mr. Pearkes:

Q. That does not answer the question as to who has authority to order a new trial?—A. The court of appeal to whom the appeal is made.

Q. Yes?—A. And the chief of the general staff, in the case of the army, where it is a petition.

Q. And the chief of the naval staff?—A. Yes, sir.

Mr. ADAMSON: We will say a man is convicted of breaking into the wet canteen, and after conviction, he says there have been other break-ins of the wet canteen in the past month or so and I have done them all. He can do that and accept what additional sentence is given, or can he accept the same sentence?

The WITNESS: Your first alternative is correct, sir. The court will adapt the sentence not only to the offence with which he was charged but also to the other offences.

Mr. HARKNESS: He must make this confession before receiving sentence?

The WITNESS: Yes.

Mr. ADAMSON: I would ask one of the lawyers present if they can say what the word "autrefois" means in law language?

The WITNESS: It means "previously"; previously convicted or previously acquitted.

Mr. STICK: I hope you do not get into *stare decisis* here.

The CHAIRMAN: Shall clause 57 carry?

Carried.

Clause 58.

58. Subject to section sixty-one, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or out of Canada.

Mr. HARKNESS: What does 61 say?

The CHAIRMAN: Clause 61 says that a service tribunal shall not try persons charged with murder, rape, manslaughter—committed in Canada.

Shall clause 58 carry?

Carried.

Clause 59.

59. Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or out of Canada.

Mr. HENDERSON: Supposing a soldier went to the United States and committed an offence which would be considered as a service offence and he was brought up in the American courts and charged, what attitude would our service head have in Canada to another trial?

The WITNESS: The previous section, or rather section 57 would apply and the plea of autrefois convict would be open to him.

Mr. HENDERSON: That court refers to any court of competent jurisdiction anywhere in the world?

Mr. STICK: You would not try him a second time?

The WITNESS: No, we would not.

The CHAIRMAN: Section 59, shall it carry?

By Mr. Henderson:

Q. A civil court means a court of ordinary jurisdiction in Canada. That would not apply in that section, would it?—A. We have another section which,

I think, would apply and that is section 125 which gives to any accused person any civil defence that he might have raised in a civil action. Now, the plea of autrefois convict in the circumstances you mentioned would be open to a civilian tried by a Canadian civil court, therefore, under section 125 he would be able to raise that defence in a military court.

Q. Well, they still mention civil courts there, do they not?—A. Yes, but the rule of every Canadian civil court is that the doctrine of autrefois convict applies and it applies where the conviction was handed down by any court of competent jurisdiction.

The CHAIRMAN: Shall Section 59 carry?

Carried.

Section 60:

60. (1) Except in respect of the service offences mentioned in subsection two, no person shall be liable to be tried by a service tribunal unless his trial begins before the expiration of a period of three years from the day upon which the service offence was alleged to have been committed.

(2) Every person, subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence of mutiny, desertion or absence without leave or a service offence for which the highest punishment that may be imposed is death, shall continue to be liable to be charged, dealt with and tried at any time under the Code of Service Discipline.

By Mr. Adamson:

Q. Is there any change in this Act—A. There is a change, sir, in this respect. This drives us back a bit to the case where a man has ceased to be subject to the Act after he committed an offence. Now, under the existing law, the Naval Service Act, for instance, provides that such a man can only be tried within three months after his discharge. This provision would have the effect of extending the time to three years. In the army and air force, I believe the period is six months. That is the only difference.

Q. Why was the period lengthened?—A. For that class of person, sir, we felt it fair. Take the case where Able Seaman Doakes and Able Seaman Smith committed the same offence on the same date. Able Seaman Smith is fortunate enough to be demobilized a week later. The crime is not detected until, let us say, four months later. Now, Doakes, who had the misfortune to remain in, is for it. Smith, who was lucky enough to be released in time, is not. We felt that this limitation period should apply all across the board, and the question of discharge should have no bearing on the limitation.

Mr. VIAU: If he is absent for three and a half years is he automatically discharged?

The WITNESS: If his crime is not detected, sir, and it is not mutiny, desertion, or absence without leave, he is free.

Mr. WRIGHT: Why was the period of three years adopted? Is there any special significance in three years rather than two years?

The WITNESS: That is the case to-day, except for the discharge situation I have mentioned.

Mr. STICK: Regarding the time situation, would not the time start to run from the time the crime was detected rather than the time that a man was charged.

The WITNESS: The time begins to run when the offence is committed and continues to run and if three years elapse before the trial begins, then he is free.

Mr. ADAMSON: It seems going back an awful long way to penalize a man after he has been discharged. I see the point in equal justice for two people who

commit the same offence, but three years seems to be an awful long time because they would be comparatively minor offences. What is the corresponding situation in civil law? If a man has stolen anything how far can you go back in civil law?

The WITNESS: Offhand, I do not know.

The CHAIRMAN: I do not think there is any limitation at all.

Mr. ADAMSON: Is there any limitation?

The CHAIRMAN: I do not think so.

The WITNESS: There are different limitations for different offences.

The CHAIRMAN: I do not think there is any limitation with respect to theft.

Mr. BENNETT: If a man stole and then went A.W.L. for over three years, could he be charged under section 60(2) with both theft and being A.W.L. after the three year period?—A. The intention certainly was, sir, that you could only charge him with absence without leave.

Mr. STICK: How would that affect a person in a case like this: the government passes an Act forgiving all desertion and things like that? That has happened before after a period of time.

The WITNESS: After the second world war there was legislations passed which was, I think, inaccurately described as an amnesty. All it did was declare that the persons concerned are deemed never to have served. Now, if that were in force, of course, it would be a complete defence because Joe Doakes would say: by this provision I am deemed never to have served, therefore, I cannot be considered ever to have been a soldier and subject to the code.

Mr. GEORGE: That is a special section.

The WITNESS: There is a section in this Act dealing with that.

Mr. ADAMSON: Does that cover those who deserted or those who were called up and did not report?

The WITNESS: If you look at section 248 you will find that it covers persons who deserted or absented themselves. In other words, they would have to be in the service.

The CHAIRMAN: Shall the section carry?

Carried.

Section 61.

61. A service tribunal shall not try any person charged with an offence of murder, rape or manslaughter, committed in Canada.

Mr. ADAMSON: What is the reason for this? Why is this clause inserted? Has it been in for many years? A man murders his comrade in the barracks, he is tried by a civil court under this, but was he ever tried in the Canadian army by a military tribunal?

The WITNESS: The background, sir, is section 41 of the Army Act (U.K.) and section 41 of the Air Force Act (U.K.) is the same, which says that a person subject to military law shall not be tried by court martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom. In other words, there is no change here except we have left out treason and treason-felony.

By Mr. Wright:

Q. There is no such charge as treason-felony here in Canada?—A. I think we concluded there was not.

Q. Why were treason and sedition left out? These are both capital punishment offences and I take it that these three others are capital punishment offences. It seems to me the army would just as soon have treason and sedition

taken care of by the civil courts. They have to go into all the details of a treason or sedition trial. Was there any particular reason for taking out treason and sedition?—A. Well, sir, we have in this Act certain offences of a quasi-treasonable or seditious nature. We provided for them in the next part, as you will see, and we felt that since those particular offences should be tried by a service tribunal anywhere there was no particular reason to exclude treason.

Mr. STICK: Would it have a bearing as far as outside Canada is concerned?

Mr. WRIGHT: This is in Canada, I can quite see it in Canada, it would seem to me that in Canada treason and sedition could be tried by a civil court and not by a military one.

Mr. PEARKES: I would like to advance the theory that there should be a much wider extension of this clause: I have had some experience in the past on courts martial both from the point of view of sitting on courts martial and convening of a great many courts martial, and also of confirming or otherwise. During peacetime I feel that this committee should give very careful consideration as to the possibility of extending this particular section so that it covers practically crimes which might be considered of a civilian nature. I am not talking of when the forces are on active service. There would be a limiting clause there. But supposing you have cases of manslaughter, cases of sexual crimes, and cases of housebreaking, either in barracks or out of barracks, there are a whole range of crimes in the criminal code which you lawyers will be far more familar with than I am; but it seems to me that where there are civilian courts readily available it would be infinitely better to send that service personnel to these courts, and the service tribunals would not have a right to try men on what are not strictly military crimes unless they were on active service. Now, you will ask why is that done? I am speaking, and I put it on record now because it may be of some use in the future even if it is not accepted here. The personnel of a court martial or military tribunal are appointed by a senior authority and the members of that board are dependent for promotion, let us say on the reaction that they create on that senior authority that appoints them. I do not say that their advances would be considered purely by what they did on that court martial but it would have a distinct bearing. I am trying to give an example. A commander is asked to appoint the personnel of a board. A staff officer brings him a list of names. They might easily say "Lieutenant-Colonel Jones, yes, I was around his unit last week and I thought they were getting a bit slack. I would like to see how he handles this court, yes, by all means make him the president of this court." Lieutenant-Colonel Jones says, "the old man was around here last week, he was grousing a good deal about the state of discipline. I am going to see that he has no cause to question my firmness in dealing with this man in this court", because Jones knows perfectly well that the personnel is not from his unit and it does not really matter. Now, then, speaking from the point of view of having confirmed or otherwise the courts martial at the beginning of this war—and I admit now I am talking about troops on active service, but I think it will explain the case. I am speaking from experience and the same conditions will apply in peacetime. There was a very wide range of punishment given for the same type of offence committed. You will have one court martial set up this week which, shall we say, awarded a prisoner twelve months for a certain crime. Next week a entirely different board deals with the case of another but almost identical offence, and there you would find that the offender was awarded say, three months.

I do not think it would be hard to say that during the first two years of this war I must have reduced the punishments that were given in probably two-thirds of the cases which came before me because of the wide variations in the punishments awarded. Now, those are some of the reasons why I ask the

committe to consider seriously whether this clause should not be extended so that when the troops are not on active service, when they are here in Canada where civilian courts are available, it might be in the interest of service discipline or in the interest of justice to have the service man sent before an ordinary court where he would be tried before a jury and would be awarded punishment which would be in conformity with the criminal code for offences which are not essentially military offences.

Mr. GEORGE: I would like to agree mostly with what General Pearkes said. There are several points that come to my mind. I certainly did not deal with this thing on the level that he did, I think that most of these cases should be tried in the civil courts, if for no other reason than to relieve the commanding officer of a long list of administrative duties that he has to do every morning. I think, too, that the general gives a perfect reason why there should be permanent court martial boards. For instance, I presided at a court martial some time ago. I am not a lawyer, but the man was acquitted so I imagine he had a fair trial. All during the two weeks I never thought I was competent to sit as president of that court. However, there is one question that comes to my mind: if we do not have permanent court martial boards, when we move to another country as we might on active service, we are going to have no officers with experience on courts martial.

Mr. PEARKES: I most heartily agree that when you are on active service there should be permanent boards, but in this particular case it does not refer to active service.

Mr. HENDERSON: Mr. Chairman, I think it is a good provision for a man to be tried, convicted or acquitted by those he is serving with. In my experience on courts martial I have found that the junior officer is generally the first one who gives his decision, and I was never so unfortunate as to find a president of a court martial who tried to impose his ideas on other officers who made up that board.

I wish to make another point with respect to variation of sentences; I think Mr. Pearkes will agree that that also applies to civil courts. In one court a man may get a very light sentence and in another court for a similar offence he may get a severe one. That is something that applies throughout and it depends on the presentation of the case.

Brigadier LAWSON: I think there are several points that should be brought to the attention of the committee in connection with General Pearkes' suggestion. First of all, in the next clause of the bill there is provision made that the civil courts are always supreme. In other words, civil courts can always try a soldier and in peace time we very rarely try civil offences by court martial. In any event, civil courts can take them away from us if they wish to do so, under clause 62.

Mr. WRIGHT: Can a man in the service make application to be tried by the civil court?

Brigadier LAWSON: No, but the civil court can always try him no matter whether he has been tried by a military court or not. Another point is that we have men serving in peace time in remote areas in the far north where there are no suitable facilities for the administration of civil justice. Our policy is when serious offences are committed by such men they are brought out and tried by a civil court, but lesser offences are tried by service courts at the station where they are serving. The third point to which I wish to refer is that in peace time operations the men are trained for war. We must train our officers and men in peace time on the same basis they are going to operate on in war time.

The next point is the question of variation of sentence. We think that will be dealt with to some degree by the establishment of an appeal board. When a man considers he has been awarded an unjust sentence he may appeal. We never had that before.

The CHAIRMAN: There is one point I would like to have enlarged. It is not clear now in my mind as to the relative positions in Canada of the civil authority and the military authority where civilian crimes are concerned. If a man has committed an offence and has been charged and proceedings have been initiated through a military trial, can the civil authorities step in, or can the military authorities be made to give up the trial they have initiated?

Brigadier LAWSON: Yes, sir.

The CHAIRMAN: What is the authority for that?

Brigadier LAWSON: It is the next clause of the Act, sir, clause 62.

The CHAIRMAN: I do not want to confuse the two sections, but clause 62, subclause 1, says:

> 62. (1) Nothing in the Code of Service Discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

He certainly canot be tried twice.

Brigadier LAWSON: Yes, sir, he can be tried twice.

The CHAIRMAN: He can be tried twice for the same offence?

Mr. CAVER: Yes; the civil court is supreme.

Mr. BENNETT: There are certain offences in the service that are more important to the military than to civil authorities. Theft from a comrade is a very serious offence. We had a couple of offences which were tried by magistrates and the accused men were given suspended sentences and they should not have been given such minor punishments.

Brigadier LAWSON: That is a most important point. A certain type of offence may be regarded as very minor in civilian life, but in military life, when men are living together it is a very serious offence. If a man cannot feel he can go out of barracks and leave hs things there safely, he will lead a most unhappy life and consequently even a small theft from a comrade is a very serious offence, while in civilian life it may be considered minor.

Mr. PEARKES: Would that be more serious than the case of a man who stole from his comrade in a logging or mining camp?

Mr. STICK: I would say yes because he is not subject to military conditions?

Brigadier LAWSON: He can quit in a logging camp if he does not like the conditions.

Mr. ADAMSON: That brings to mind that particularly in the early days of the war, very frequently on Mondays part of my job as district intelligence officer was to go down to the Don jail to see who had landed up there over the week-end. The governor of the jail on frequent occasions said to me, "These are people we have here for petty offences." He said they had been there over and over again and had records of crimes for ten or fifteen years back. They were arrested for petty offences, stealing, drunkenness, and everything else. He not only told me but he told the district officer commanding and several other people that we would never make soldiers out of these men. They were repeaters and used to say that it was just like coming home when they arrived again. Now they were all absent without leave to start with, with one or two exceptions. That was a military offence but not a civil offence and the majority of them had committed some civil offence. The civil authorities wanted the

army to discharge these men so they could try them in the civil courts. There was a tendency in the army to do that to a degree because it was obviously a waste of time and money and the training officers' time and equipment to try and make soldiers out of these men. Immediately you started to discharge them the rumour went around that one trip to the Don jail would get you your discharge, and anybody who wanted to get out of the army managed to get into the Don jail and was automatically discharged until the custom had to be stopped. Now, it seems to me if the civilian courts could try these men to start with in peace time it would aid tremendously in the discipline and weeding out of unsatisfactory men who would never make soldiers and who are just the plague of every commanding officer's life.

Brigadier LAWSON: The civilian court could have tried those men.

The CHAIRMAN: I think Brigadier Lawson's observations clarify the matter in my mind. I do not see there is so much importance in sections 61 and 62 now.

Mr. PEARKES: My suggestion was that you should extend the number of crimes which cannot be tried by a military tribunal during peace time because there are civilian courts where a man can go before a jury and be tried. Now, some of the cases advanced by Brigadier Lawson I am not sure were very impressive; for instance, a man up north—well, civilians up north have to be tried too. If there are no courts in the Northwest Territories then the men have to be flown out and there are no service personnel stationed where it is not practical to bring them out.

Mr. ADAMSON: I would certainly like to see armed robbery added to 61.

The CHAIRMAN: If there is a general feeling on the part of the committee that this section should be reconsidered it will have to be done very carefully in the light of the remaining sections we are coming to. If the general feeling of the committee is that the officials should review section 61, then we should stand it for the time being.

Mr. WRIGHT: I would like to have Brigadier Lawson and the other gentlemen consider treason and sedition in this section.

Mr. BENNETT: Particularly in the case of a woman. Under this clause a woman could be tried for a capital offence.

The CHAIRMAN: Is it the wish of the committee that section 61 should be stood over for consideration?

Agreed.

The CHAIRMAN: Is it necessary or desirable in the light of the action you have taken on section 61 to take the same action in regard to section 62? I do not see why we cannot deal with 62 now.

Mr. WRIGHT: I think we can deal with section 62.

Section 62:

62. (1) Nothing in the Code of Service Discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

(2) Where a person, sentenced by a service tribunal in respect of a conviction on a charge of having committed a service offence, is afterwards tried by a civil court for the same offence or for any other offence of which he might have been found guilty on that charge, the civil court shall in awarding punishment take into account any punishment imposed by the service tribunal for the service offence.

(3) Where a civil court that tries a person in the circumstances set out in subsection two either acquits or convicts the person of an offence, the unexpired term of any punishment of imprisonment for more than two years, imprisonment for less than two years or detention, imposed

by the service tribunal in respect of that offence, shall be deemed to be wholly remitted as of the date of the acquittal or conviction by that civil court.

Mr. STICK: If a man is tried in a military court and receives a sentence, and then the civil court takes the case up, have we any authority to make them take into account the military punishment?

Mr. CAVERS: That is something in mitigation of sentence.

The CHAIRMAN: It is mitigation of sentence; it has nothing to do with conviction.

Mr. STICK: They do not have to take it into consideration?

The CHAIRMAN: They do not have to give it favourable consideration.

By Mr. Adamson:

Q. If the civil court sentences a man to six months for an offence for which he has been sentenced by a court martial to two years, the sentences will run concurrently. Does that mean the lesser sentence of the civil court will apply and he will receive discharge from military detention at the end of six months.—A. Subsection 3 makes it clear the service punishment terminates immediately the sentence of the civilian court is imposed.

Q. Then the case I have given would apply. If he is sentenced to six months for an offence by the civil authority and he has been sentenced to two years by a court martial, immediately he is sentenced by the civilian court the military judgment is washed out?—A. That is correct.

Q. Where it says the civil court, here, that may be the civil court of any country?—A. No, sir, the word civil court is defined in section 2 (*c*) as a court of ordinary criminal jurisdiction in Canada.

Mr. HARKNESS: But you said previously that this definition did not apply?

The WITNESS: I agreed with an honourable member that section 57 would not apply to a sentence imposed by a United States court, but I then resorted to another section, section 125, which accomplished the same result.

By Mr. Harkness:

Q. Is there anything in section 125 which would affect this definition of civil court in section 62, which we are now dealing with?—A. No, sir.

Q. You see what I am getting at. If we are fighting in France, a French court would be able to take a man up and try him?—A. This section applies only to civil courts of Canada.

By Mr. Viau:

Q. Who is the authority to decide?—A. As to what?

Q. As to whether a soldier should be tried by the civil court or military court?—A. The civil power has complete authority to come into a ship or barracks with a warrant and arrest anyone.

By Mr. Henderson:

Q. You told us the procedure of how a man could be charged in civil court after having been tried by a military tribunal, and you say the civil courts shall take into account the punishment imposed. Just how do you do that?—A. Under service regulations when a sailor or any member of the armed forces is charged before the civil power, an attending officer is at the trial. That attending officer would speak to the magistrate and would produce some kind of certificate showing the charge and conviction and the sentence imposed by the service tribunal, and the judge, we hope, would take that into consideration when awarding sentence.

Q. Here you say, "take into account", and I was wondering how you forced them to do it.—A. In my opinion you could not do it.

By Mr. Stick:

Q. Should it not say "may"?—A. In the Army Act, section 162, subsection 1, it says this:

> "162 (1). If a person sentenced by court martial in pursuance of this Act to punishment for an offence is afterward tried by a civil court for the same offence, that court shall, in awarding punishment, have regard to the military punishment he may have already undergone."

Q. Would not the word "may" be appropriate there instead of "shall"?—A. No, sir, that might imply he should not normally do it, and we would not want to create that impression.

By Mr. Bennett:

Q. Why should not we recommend to the Minister of Justice that we should extend a section of the Criminal Code to make them take cognizance of it?—A. In practice how could you implement that; how could you tell whether the judge has taken it into account?

By Mr. Henderson:

Q. Here you have set out that he must take it into account.—A. He shall have to think about it, but whether he does or not nobody will ever know.

The CHAIRMAN: I think if it is to remain it should be "shall", for what it is worth..

Mr. STICK: It gives the man charged a better chance.

The CHAIRMAN: I do not see any reason why this clause should not carry

Mr. ADAMSON: It brings to my mind something that happened in the United Kingdom during the war. There were several regrettable cases where livestock were shot by some of our troops, by accident, of course. These offences were considered and tried by the British civil courts and they took a very lenient view in many cases of these offences.

Mr. GEORGE: As long as there was no tree involved.

Mr. ADAMSON: A cow could be shot with comparative impunity for some time until the J.A.G. requested the British civil authorities to take a more serious view of it. Now, in the army if a man had been court martialled for shooting live stock in the United Kingdom he would have been sentenced more severely than by the British civil courts. I am just wondering whether there is any clause in this bill which would take into account such matters if our Canadian army serve again in the United Kingdom.

The WITNESS: I believe, sir, the parliament of Canada would have no jurisdiction to legislate in respect of a civil action in Great Britain.

Brigadier LAWSON: The civil courts are always there. If we have soldiers in Great Britain the British civil courts can take those men and try them. We cannot stop them. There is nothing we can say about it to stop them.

Mr. ADAMSON: But that does not apply in France and it certainly did not apply in—

The CHAIRMAN: I think we are getting a little away from our subject.

Brigadier LAWSON: It did not apply because of the special agreements we had with the governments of those countries. The civil authority, in our view, is always the supreme authority. The American view is a little different. I think there is a little confusion there, as the American system is different. But in our system the civil authority is always supreme.

Mr. ADAMSON: That would apply to the United Kingdom and any British country, but in the United States we must have a special agreement, I gather?

Brigadier LAWSON: In the United States the civil authority is not supreme over the military.

The CHAIRMAN: Shall the clause carry?

Carried.

We are now at Part V and we have with us Wing Commander McLearn who is familiar with the drafting and the history of this particular part. It is a long part, it runs to over sixty pages. I would suggest to the committee that he might give us some general observations on this part, its scope, and the principles involved, before we start to deal with the section. Does that meet with the wishes of the committee, if so I will ask Wing Commander McLearn to deal with Part V generally.

Agreed.

Wing Commander H. A. McLearn, Deputy Judge Advocate General, R.C.A.F., recalled:

The WITNESS: Mr. Chairman, I think it might expedite the business somewhat if I outline four points that have a bearing all the way through the offence clauses with which the committee is about to deal.

The first point is that it is quite obvious that a great many of these offences would not appear to need to be provided for; but, having regard to the requirements of those charged with administering discipline and also having regard to the need of apprising all personnel of the types of offences which may be committed, in other words, in order to ensure the maximum deterrent effect, it is considered advisable that we should set out in extenso the many offences which occur frequently.

The second point is that it will be noted throughout this part that every offence commences with the words: "Every person" or "Every officer". The word "person" throughout this part invariably relates to a person subject to the Code of Service Discipline. No one not subject to that Code may be tried under this Part by a service tribunal, or by any other type of tribunal, in respect of offences prescribed in this Part.

The third point is that at the end of every offence clause, the punishment is prescribed and a statement is made, "and on conviction is liable to" etc., or "to less punishment". In order to indicate to the committee what that expression "less punishment" means I think it is advisable that we should quickly run down the scale of punishments in clause 121, perhaps without discussing at this point the advisability of changes which have been brought about in the existing scale applicable to the three services.

The CHAIRMAN: You will find that on page 44 of the bill, section 121.

The WITNESS: The scale is:

(*a*) death.

(*b*) imprisonment for two years or more. This is equivalent to the present army and air force punishment of penal servitude.

(*c*) dismissal with disgrace from His Majesty's service. Formerly in the army that meant, for an officer, cashiering and, for other ranks, discharge with ignominy.

(*d*) imprisonment for less than two years.

(*e*) dismissal from His Majesty's service.

(*f*) detention.

(*g*) reduction in rank.

(*h*) forfeiture of seniority.

(*i*) dismissal of an officer from the ship to which he belongs.

(*j*) forfeiture of service toward progressive increase in pay.

(*k*) fine. With respect to fine, I should perhaps indicate that, under this scheme, fines might be levied by courts martial or commanding officers in respect of any offence which a service tribunal may try.

Mr. STICK: Does that fine mean the loss of pay?

The WITNESS: No. In this case a fine means a sum of money imposed upon the offender. To continue:

(*l*) severe reprimand.

(*m*) reprimand.

(*n*) minor punishments.

These are the words which end up the scale of punishments:

> and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments";

Subclause (2) of this clause provides that

> Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

The fourth point is that in many instances punishments may appear to be unduly severe but I would ask the committee, in any case where the maximum punishment stated appears to be too severe, to attempt to visualize the worst circumstances under which the particular offence in question may be committed. We must be sure that our punishment is high enough to take care of the worst cases and it is our feeling, on the basis of experience, that we can rely on service tribunals initially, and on reviewing authorities subsequently, to reduce punishments in virtually all cases to something appropriate to the circumstances of the case.

By Mr. Wright:

Q. Mr. Chairman, I would like to ask the witness one question. I notice—at least from the way I read the Act, whether I am right or not—that under this new Act there are certain offences concerning which, under the old Act, the death sentence was obsolete, now, it is not obsolete. As I understand it, under the old Act, the British Military Act, crimes of omission were not punishable by death. It was only crimes of commission. Under this Act there are certain crimes of omission which are punishable by death and for which no less punishment can be given. Would you care to comment on that or am I right in my interpretation? For instance, a person under section 65 (*c*) who fails to use his utmost exertion to carry the orders into effect, is guilty of an offence and on conviction, if he acted traitorously, he shall suffer death while under section 70, every person who joins in mutiny that is accompanied by violence is guilty of an offence and upon conviction is liable to suffer death or less punishment.

The WITNESS: I think the answer is that this Code represents a consolidation to a degree of existing naval, army and air force provisions and I see that among the naval provisions there are examples of omissions which are punishable by death. We thought in drafting this Bill that certain offences of omission were so serious as to warrant the death penalty.

Q. Without any chance of a lesser punishment?—A. Yes, sir.

Q. And there is no appeal?—A. Oh, yes, sir, there is an appeal.

The CHAIRMAN: A death sentence is mandatory, subject, however, to appeal.

Mr. WRIGHT: Just what is the appeal?

The CHAIRMAN: We will come to whole sections dealing with that.

The WITNESS: There is a whole Part of the bill dealing with that and in addition, sir, higher authority may reduce the sentence, and also the sentence under clause 170 (1) is subject to approval by the Governor in Council.

By Mr. Henderson:

Q. As I understand it there is to be no punishment in the way of pack drill, is that right?—A. We have not excluded it definitely but neither have we provided for it.

Q. Is it a punishment or is it not?—A. If you will notice...

Mr. HARKNESS: That was always listed as a training exercise.

The WITNESS: It is not listed in the scale of punishments but it might be provided for as a minor punishment. One would expect to find such punishments in the regulations as extra work, pickets and so on.

By Mr. Henderson:

Q. Is pack drill included in that?—A. In this bill we have neither provided for pack drill nor excluded it. Under the last item in the scale of punishment it would be possible for the Governor in Council to provide for it.

Q. And unless he does provide for it there will be no pack drill?—A. That is right, sir.

Mr. WRIGHT: I would like to ask the witness if all sentences of death are subject to review by the Governor in Council?

The WITNESS: Yes, sir.

By Mr. Adamson:

Q. I notice that there is no clause giving life imprisonment as a punishment.—A. There is now a provision for penal servitude under this bill, it would become imprisonment for two years or more.

Q. But the term life imprisonment has been dropped?—A. The present provision in the scale was for penal servitude for a term not less than three years. Penal servitude is a British expression and might include a sentence as long as life.

By Mr. Pearkes:

Q. I see under (i) dismissal from a ship. Now, would not being grounded be applicable to the air personnel, and be similar to that? I see no reference to that. Is that not regarded as a punishment?—A. We thought this punishment was of value only to the navy. Because of its background, dismissal from a ship in the navy has always been a somewhat disgraceful form of punishment and one that the navy has used for many years. It is well understood in that service. We would not want to have a tribunal declaring that a pilot, for example, was not fit to fly. It is a matter for the air staff authorities to determine his ability as a pilot, if we are still going to keep him in the service.

Q. Oh, yes, but did you not use grounding as a punishment for some young pilots who had been flying very low and who had been doing aerobatics?—A. Not as a punishment awarded on a charge. Punishment is not the proper word exactly.

The CHAIRMAN: Shall we start the sections?

Section 63.

63. (1) Every person is a party to and guilty of an offence who

(*a*) actually commits it;

(*b*) does or omits an act for the purpose of aiding any person to commit the offence;

(*c*) abets any person in commission of the offence; or

(*d*) counsels or procures any person to commit the offence.

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not.

Mr. STICK: May I ask a question? Is it the general rule in the military courts as it is in the civil courts that a man is presumed innocent until he is proven guilty? Does that apply?

The WITNESS: Yes, sir.

Mr. ADAMSON: Is it not a rather large clause, "whether under the circumstances it was possible to commit such offence or not". I mean, if it was obviously manifestly impossible to commit the offence.

Mr. LANGLOIS: The intent is there.

The WITNESS: Those words were adopted wholly from the Criminal Code. Wherever we found it possible we endeavoured to parallel the Criminal Code.

The CHAIRMAN: Shall the section carry?

Carried.

Section 64:

64. Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who

(*a*) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft, or his other equipment into action;

(*b*) being in action, does not, during the action, in his own person and according to his rank, encourage his officers and men to fight courageously;

(*c*) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, equipment, unit or other element of the Canadian Forces to the enemy;

(*d*) being in action, improperly withdraws from the action;

(*e*) improperly fails to pursue an enemy or to consolidate a position gained;

(*f*) improperly fails to relieve or assist a known friend to the utmost of his power; or

(*g*) when in action, improperly forsakes his station, is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.

The WITNESS: You will note that this section deals with commanding officers. It is limited in its application.

Mr. HARKNESS: Is there any difference between these provisions and the ones in the Army and Navy Act, and the Air Force Act at the present time?

The WITNESS: Just changes in terminology. We have introduced nothing new.

By Mr. Adamson:

Q. And the death sentence is mandatory for traitorous action without any other possibility of a sentence?—A. Yes, sir. In section 49 of the Naval Service Act some of the offences in this list are prescribed and offenders, if they act traitorously, are liable to suffer death.

Q. I suppose "traitorously" is described by the well known definition which is not in the Act?—A. In the regulations, we shall have footnotes in which the word "traitorously" will mean that a person has been false in his allegiance to His Majesty.

Q. Is this phrase in subsection (*a*) "does not use his utmost exertion" a new phrase?—A. No, sir. It is in the Naval Service Act.

Q. It was not in the Army Act?—A. No, sir.

Q. It struck me that it would be very difficult to know whether a man used his utmost exertion or not. I should think the determination of that would be extremely difficult if not impossible.

Mr. LANGLOIS: You would have the same difficulty in determining whether he used his utmost exertion.

By Mr. Harkness:

Q. What was the comparable section in the Army Act?—A. The only provision of which I am aware in the existing legislation, other than the Naval Service Act, at all comparable is a provision in the Air Force Act of the United Kingdom, which reads:

> 4 (10) When ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect.

Q. I can think in many instances plenty of people would think a particular officer was not using his utmost exertion. He may have thought he was himself, and perhaps other people did too, but I am a little suspicious of that wording.—A. I may say, sir, that we were guided to a considerable extent by precedent. This expression has been in the Naval Service Act for a long time and the Royal Air Force saw fit to adopt the same expression in the Air Force Act, so we could not see any good reason to depart from the phraseology used in the existing statutes.

Mr. ADAMSON: You will remember the case during the war where one of our corvettes saw a battleship comparatively close by and immediately went into action. It could have been nothing but suicidal in the result, but fortunately the ship happened to be either the "Nelson" or the "Rodney", one of our battleships of the Royal Navy. I remember hearing it discussed and it was said the commander of the corvette, realizing he stood no chance at all, still felt it was his duty to immediately close action with this battleship because if he had not done so he would have been considered cowardly. He stood absolutely no chance of inflicting any damage on it.

Brigadier LAWSON: Under those circumstances it would not be his duty to engage action.

Mr. ADAMSON: The question did come up and fortunately it was not the "Bismarck" he engaged.

Carried.

The CHAIRMAN: Section 65:

MISCONDUCT OF ANY PERSON IN PRESENCE OF ENEMY

65. Every person who

(*a*) improperly delays or discourages any action against the enemy;

(*b*) goes over to the enemy;

(*c*) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;

(*d*) improperly abandons or delivers up any defence establishment, garrison, place, equipment, post or guard;

(*e*) assists the enemy with equipment;

(*f*) improperly casts away or abandons any equipment in the presence of the enemy;

(*g*) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of equipment;

(*h*) when on watch in the presence or vicinity of the enemy leaves his post before he is regularly relieved or sleeps or is drunk;

(*i*) behaves before the enemy in such manner as to show cowardice; or

(*j*) does or omits to do anything with intent to imperil the success of any of His Majesy's Forces or of any forces co-operating therewith, is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment.

That rather parallels the other section.

By Mr. Adamson:

Q. You have the clause "imprisonment for life" in there which you omitt in the other section.—A. We say imprisonment for five years, fourteen years, etc., or life. The expression in the scale is "imprisonment for two years or more."

By Mr. Harkness:

Q. What is this subsection (*e*) to cover?—A. A person who provides equipment for the enemy. A clerk in charge of stores might find some way of getting equipment across the line with the assistance of others.

The CHAIRMAN: Apparently that was sometimes done in the war in China.

Mr. LANGLOIS: In subsection (*f*) is not the word "improperly" wrongly used?

Mr. PEARKES: You might possibly have to abandon your guns, but the breach locks may be removed and while the gun is still there I imagine it has been left properly.

Mr. LANGLOIS I find "improperly" is rather loose in meaning.

Mr. DICKEY: No, I think it is necessary.

By Mr. Viau:

Q. In paragraph (*h*) you use the word "drunk". What stage of drunkenness is that, being intoxicated or under the influence of liquor?—A. The court, on the basis of service knowledge, should be able to determine that.

By Mr. George:

Q. What about previous indulgence when a man is not on duty, and is called back to duty suddenly and is unable to perform his duties because of previous indulgence?—A. We have an offence of drunkenness prescribed and also an offence of "conduct to the prejudice of good order and discipline."

Q. Yes, but it was covered specifically in the old Act under section 19.—A. No, sir, that is a straight offence of drunkenness.

Brigadier LAWSON: Are you not thinking of one of the notes to section 19?

Mr. GEORGE: Perhaps I am. I think it is covered, Mr. Chairman.

Mr. ADAMSON: There is no blood test, I suppose.

Carried.

The CHAIRMAN: Section 66:

SECURITY

66. Every person who

(*a*) improperly holds communication with or gives intelligence to the enemy;

(*b*) without due authority discloses in any manner whatsoever any information relating to the numbers, position, equipment, movements, preparations for movements, operations or preparations for operations of any of His Majesty's Forces or of any forces co-operating therewith;

(*c*) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it;

(*d*) gives a parole, watchword, password, countersign or identification signal different from that which he received;

(*e*) without due authority alters or interferes with any identification or other signal;

(*f*) improperly occasions false alarms;

(*g*) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;

(*h*) forces a safeguard or forces or strikes a sentinel; or

(*i*) does or omits to do anything with intent to prejudice the security of His Majesty's Forces or of any forces co-operating therewith,

is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

Before we start to discuss this section, Wing Commander McLearn wishes to submit three amendments.

The WITNESS: The amendments would consist of the deletion of the word "due" in line 34 of subsection (*b*); the deletion of the same word in line 1 in clause (*e*); and the insertion of the words "of any" after "security" in line 8 of subsection (i).

Mr. BENNETT: Why would we not have the word "code" in subsection (*c*)? You have been very careful to consider every other item.

Mr. HENDERSON: Or "code" on the lower level too?

Mr. LANGLOIS: Subsection (i) says, "gives intelligence to the enemy."

Mr. HENDERSON: For instance, it could be the code on the lower formation.

The WITNESS: These are all matters falling within a particular category.

Mr. GEORGE: What is the definition of the word "code"?

The WITNESS: There are two separate categories. Secret means of giving messages may take the form either of code or cypher.

The CHAIRMAN: If you are going to put in specific words you will have to be very careful and say exactly what you mean.

Mr. PEARKES: Isn't there a difference between "cypher" and "code".

The WITNESS: Yes, sir, but I do not know where the line is drawn.

Mr. HENDERSON: What about the Slidex code where it is changed every morning at such and such an hour. It is secret but is not covered in that subsection.

Brigadier LAWSON: I would suggest as it has been pointed out that clause (*i*) covers the situation. I can see what the members have in mind but simply putting the word "code" in there would not be good enough because "code" has a number of meanings and you would have to define the word. I think it would make for complication in the Act and the offence is covered by the section.

Mr. ADAMSON: I was going to ask a question about subsection (*d*). Now, a man might forget, I have done that myself. I have been given signs and signals and that sort of thing and five minutes afterward I had forgotten and had to go back and get them again. It is a very simple thing to do.

The CHAIRMAN: You could not very well put in the word "forget".

Mr. ADAMSON: I have given the pass that happened to be for the previous twenty-four hours and the sentry has identified me and told me that was yesterday's pass and it was all right, but under this I could be taken and shot, which would be most uncomfortable.

Mr. BENNETT: That would go towards mitigation of your sentence.

Mr. ADAMSON: I would hate to take a chance. I have known quite a lot of commanding officers who thought I should have been shot.

The WITNESS: I would suggest that intent is an essential ingredient of this particular offence and the prosecution would have to establish *mens rea*

Mr. ADAMSON: If he was given a secret code and went out and forgot or was just plain stupid, this would make it a capital offence.

Mr. PEARKES: I should think giving a wrong password or signal might be an indication to the enemy of previous operations or perhaps an indication of future operations. Did somebody say something about intent or on purpose or deliberately or something like that?

The WITNESS: In virtually all cases it is necessary for the prosecution to establish intent, and I should think that intent is an essential ingredient of this particular offence.

By Mr. Stick:

Q. Is the word "code" left out for any reason?—A. All of these words relate to signs which a person gives to complete some form of movement.

Q. I realize it is covered by section 9 but I wondered if there was any reason for leaving out the word "code".—A. As Brigadier Lawson said, that point is covered under subsection (i).

By Mr. Harkness:

Q. Subsection (*b*) I take it is designed to cover an offence of which we had a very large number during the time we were in England. A man might write home to his mother and say: I am stationed only a mile from your cousin Julia; and the man's letter would be censored and picked up and sent back through the ordinary channels to his commanding officer and he would be brought up and punished for that offence. In most cases it was an offence of no value to the enemy whatever and was not really a matter of giving away information but nevertheless in the Canadian army in the last war there was a

great deal of store set by it. Nearly every place I was stationed in England British army units were stationed close by. I remember they received all their mail addressed to Bognor Regis or wherever it was, but anybody in my unit who indicated he was stationed at Bognor Regis was sent to a pokey for a while. Now, that information was of no value to the enemy as indicated by the fact that all these British units gave their address. Nevertheless punishment went on year after year.

The WITNESS: How would one ever know if information given was of value to the enemy?

Mr. HARKNESS: In that particular case it was of no value to the enemy, as was indicated by the fact that the British units actually dated their correspondence from Bognor Regis.

The same thing occurred when I was at the Senior Officers School at Oxford. The British officers dated their letters from the officers school at Oxford but I was not permitted to do that. I was confined by this regulation. There was no value to that information but it made a tremendous amount of disciplinary action necessary—action which had to be taken and which uselessly consumed the time of commanding officers and other people.

Mr. LANGLOIS: The prosecution would have to prove that it was of value to the enemy.

The CHAIRMAN: I do not think your suggestion is feasible.

Mr. GEORGE: In the lectures we had from the Intelligence Corps we were told that all information was of value to the enemy. It might not have appeared that way to us; but it was of value when added up.

Mr. HARKNESS: In the case I have indicated, the British people thought it was of no value to the enemy.

Mr. GEORGE: When we were in Canada we did the same thing, but you were then in a foreign country.

Mr. STICK: I think the purpose of this clause is to deter a man, not punish him.

Mr. HARKNESS: They were punished by the hundreds.

The CHAIRMAN: I think it is assumed that each of these clauses covers a serious matter arising under certain circumstances.

Mr. ADAMSON: What Colonel Harkness says is perfectly correct. There were officers and men who did state where they were, either by posting a letter in the ordinary post box or in some other way, and they were invariably hauled over the coals and frequently punished. That was so much so that I remember once going to the Ministry of Information to find out what information really was secret and what they did not want us in any way to publish—so that these rather stupid prosecutions and charges could be stopped.

We have mentioned the case of the man who would go out on weekend leave and mail a postcard from the town where he was stationed and it would bear the stamp of the town. There was not any possible reason why he should not do that. There was no reason at all why he should mail all of his mail from the army post office, but it was considered an offence and men were frequently charged. The thing was carried on and made a fetish of until it lost all semblance of reason, at one time.

The CHAIRMAN: I think we have to bear in mind that a section of this nature must be worded so that a serious offence can be taken care of without involving limitation in terms which might make the section unworkable. I think we have also to accept the fact that these clauses would not be applied foolishly to persons committing frivolous offences. On the other hand if we were to limit the

terms it might not make the section effective against, for instance, a person under (d) who precipitates a serious situation by reason of his failure to comply with the section. That is the difficulty.

Mr. PEARKES: Are you not covered by the words "without due authority." If the commander of a force says that it is all right to post letters in a civilian letter box or at Bognor Regis or anywhere else, then you have authority to do so. If the commander is so strict as not to grant authority under those circumstances, then you are liable to punishment..

Mr. ROBERGE: Would this case not cover the possibility of the enemy intercepting the mail on the seas. In England the people were writing to their homes ten or fifteen miles away. Their mail was not going out of England. However, the minute mail left England there was a possibility of interception.

Mr. HARKNESS: I was talking about cases in which it did not matter a bit whether the information was disclosed.

Mr. LANGLOIS: Where are you going to draw the line?

Mr. ADAMSON: The trouble is that we sometimes carried security to an extent where it became slightly ridiculous to punish people for offences like this. It makes security ridiculous, and once that happens the situation is very dangerous from the security point of view.

Mr. HARKNESS: Practically everybody thought that this sort of strict carrying out of this order was just foolish because I could see all the cases of non-observance of it by the British units, and everybody said "that is just nonsense", and the tendency was as a result to pay very little attention to it.

Mr. ADAMSON: Then they paid little attention to any security and you got frightful conditions.

Brigadier LAWSON: May I suggest, Mr. Chairman, that that is a matter of administration, not a matter of law. Even the best law may be improperly administered.

Mr. WRIGHT: I would like to pursue the question on (i) just a little further:

> "does or omits to do anything to prejudice the security of His Majesty's Forces or of any forces co-operating therewith, is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment."

Now, in ordinary civil courts, I have found where a sentence is too severe for any offence the chances are you charge a man under a lesser offence rather than under an offence with which he should be charged because you feel the sentence is too severe, and in this case if the offence is an omission, it seems the death sentence is very severe, and if it is traitorously, it is mandatory that the death sentence shall be imposed.

Mr. LANGLOIS: I think if he acted as a traitor only—

Mr. WRIGHT: I agree, it is "traitorously".

The CHAIRMAN: It seems to me it is quite possible to do as much or more harm under certain given circumstances by omitting to do something if you are in the armed forces as might result from the doing of some act.

Mr. STICK: Intent has to be proven.

Mr. LANGLOIS: Mr. Chairman, I beg to move that in (*b*) the word "due" be struck out, and that in (*e*) the same word due be struck out after the word "without" and in subsection (i) that after the words "the security of" the words "of any" be added. That is the amendment as suggested by Wing Commander McLearn.

The CHAIRMAN: Shall this amendment carry?

Carried.

Shall the section as amended carry?

Carried.

The CHAIRMAN: Is everybody getting tired? Could you stand another fifteen minutes? Let us get through a few of these short sections. I do not think there is very much to them.

Section 67

67. Every person who

(*a*) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;

(*b*) having been made a prisoner of war, fails to rejoin His Majesty's service when able to do so; or

(*c*) having been made a prisoner of war, serves with or aids the enemy, is guilty of an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

Mr. ADAMSON: Mr. Chairman, after the end of the first world war under the British Army Act there was a clause whereby every prisoner of war was subject to court martial, was there not?

Brigadier LAWSON: There was a court of inquiry.

Mr. ADAMSON: There was a court of inquiry.

Brigadier LAWSON: There was a provision that a court of inquiry could be had on all prisoners of war.

Mr. ADAMSON: Is there still that provision?

Brigadier LAWSON: No, we have dropped it on the bill.

Mr. ADAMSON: In (*b*) "fails to rejoin His Majesty's service when able to do so;"

The escape mechanism from most of the prisoner of war camps was handled by, generally speaking, the senior officer in that camp, or a committee, and those who were to escape were generally chosen on a voluntary basis and you could volunteer to escape but you need not be accepted. Now, it seems to me that this clause (*b*) is a little large, is it not, a little severe again?

Brigadier LAWSON: I do not think so, sir. This can be a very serious offence; in any of these things you can charge people in improper cases it is true, but you have to assume that the act is going to be reasonably administered.

The WITNESS: You would not charge in a case like that at all because a man would not want to get away on to the side of the enemy when all he would have to do would be to walk away from the enemy.

The CHAIRMAN: Shall the section carry?

Carried.

Section 68:

MISCELLANEOUS OPERATIONAL OFFENCES

68. Every person who

(*a*) does violence to any person bringing equipment to any of His Majesty's Forces or to any forces cooperating therewith;

(*b*) irregularly detains any equipment being conveyed to any unit or other element of His Majesty's forces or of any forces cooperating therewith;

(*c*) irregularly appropriates to the unit or other element of the Canadian Forces with which he is serving any equipment being conveyed to any other unit or element of His Majesty's forces or of any forces cooperating therewith;

(*d*) without orders from his superior officer, improperly destroys or damages any property;

(*e*) breaks into any house or other place in search of plunder; or

(*f*) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,

is guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from His Majesty's service or to less punishment.

Mr. GEORGE: It looks as though they are out to stop scrounging.

The CHAIRMAN: Yes.

Mr. HARKNESS: How about subsection (*b*) and (*c*) there, are they provisions?

The CHAIRMAN: They are a repetition of the existing ones, according to the departmental officers here.

Shall the section carry?

Carried.

Section 69:

SPIES FOR THE ENEMY

69. Every person who is a spy for the enemy is guilty of an offence and on conviction is liable to suffer death or less punishment.

Carried.

Section 70:

MUTINY

70. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to suffer death or less punishment.

Carried.

Section 71:

71. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment and, in the case of a ringleader of the mutiny, to suffer death or less punishment.

Mr. PEARKES: Is that term mutiny defined anywhere?

The WITNESS: Yes, sir, you will find it in subsection (*u*) of section 2 of the Bill.

Mr. ADAMSON: How closed do the conditions which brought about the Mainguy investigation and report approach this term mutiny?

The CHAIRMAN: I do not think we should go into that here.

Mr. LANGLOIS: I do not think that matter should be brought up here.

Carried.

Section 72:

72. Every person who

(*a*) causes or conspires with any other person to cause a mutiny;

(*b*) endeavours to persuade any person to join in a mutiny;

(*c*) being present, does not use his utmost endeavours to suppress a mutiny; or

(*d*) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,

is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Carried.

Section 73:

SEDITIOUS OFFENCES

73. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Mr. ADAMSON: Is this a new provision?

The WITNESS: No, sir. The existing section which prescribes mutiny reads as follows:—

Endeavours to seduce any person in any such force as aforesaid from allegiance to His Majesty, or to persuade any person in any such force as aforesaid to join any mutiny or sedition; . . .

That is in the Army Act at the moment.

Mr. ADAMSON: I agree with this is in many ways. For instance, take the circulation, shall we say, of the Canadian Tribune, which certainly advocates and will advocate the overthrow of the government by force. That would be an offence against this section and punishable accordingly; whereas the Canadian Tribune is circulated quite widely and is on view in the room next door to this room, the Parliamentary Reading Room, for instance. So I wondered why this section was included and why you thought it was necessary to include it?

The WITNESS: Having regard to the peculiar nature of the employment of people in the forces and having regard to circumstances which might be expected to arise in the future, it was thought advisable that we should spell out here specifically what we now say with one word, the word "sedition", in the existing Act. It has no meaning apart from its dictionary meaning and we did not want it perpetuated in that form. We thought it would be better to spell it out in accordance with the criminal code definition.

The CHAIRMAN: Does the section carry?

Carried.

Section 74:

74. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Does the section carry?

Carried.

Section 75.

75. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a superior officer, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Does the section carry?

Mr. ADAMSON: Do you mean a commissioned officer or a warrant officer? It means a non-commissioned officer.

The WITNESS: "Superior officer" is defined, sir. It means a person who, in relation to another person, is authorized to give a lawful command.

Mr. ADAMSON: Yes. Striking a sergeant would come under this.

The CHAIRMAN: Does the section carry?

Carried?

Section 76.

76. Every person who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment.

Does the section carry?

Carried.

Section 77.

77. Every person who quarrels or fights with any other person who is subject to the Code of Service Discipline, or who uses provoking speeches or gestures toward a person so subject tending to cause a quarrel or disturbance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Does the section carry?

Carried.

Mr. HARKNESS: This is new, is it not?

The WITNESS: No, sir. It appears in the Naval Service Act and it was thought that we should adopt it for all three services. Quarrelling or fighting can reach fairly serious proportions in an aircraft, for example, or in a place in the army where valuable and delicate equipment is stored. It is fighting in those circumstances that is envisaged. It is that type of fighting that this offence is designed to discourage. This is an example of the worst case being envisaged and not a mere squabble between two people in the open.

Mr. HARKNESS: Nevertheless if a squabble or fight occurs between two people, which does happen frequently, they would come under this section.

Mr. ADAMSON: This part "uses provoking speeches or gestures toward a person", that is certainly going a very long way.

Mr. STICK: If you scowled at a superior officer you would be up for insubordination.

Mr. ADAMSON: That is it. If you frown or smile or "cock your snoot".

Mr. STICK: We have had it before.

Mr. ADAMSON: I was going to say I did not like your face at dinner.

Mr. STICK: You could always turn your back on me.

Carried.

The CHAIRMAN: Section 78:

78. Every person who

(a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to any such officer;

(*b*) strikes or uses or offers violence to any other person in whose custody he is placed, whether or not such other person is his superior officer and whether or not such other person is subject to the Code of Service Discipline;

(*c*) resists an escort whose duty it is to apprehend him or to have him in charge; or

(*d*) breaks out of barracks, station, camp, quarters or ship,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Mr. WRIGHT: What is the significance of that expression "less than two years"?

The WITNESS: The difference is this, if it is two years or more it will be served in a penitentiary, and if it is less it will be served in a reformatory or other institution of that kind.

Mr. PEARKES: Do you mean if two company sergeants are having a row a lance corporal can come up and say, "Both you little boys are quarrelling, follow me to the guard room."

Mr. STICK: You are going to extreme cases.

Carried.

Mr. PEARKES: It is not an extreme case at all.

The committee adjourned.

15

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

FRIDAY, MAY 26, 1950

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet.
Brigadier W. J. Lawson, E.M., Judge Advocate General.
Wing Commander H. A. McLearn, Deputy Judge Advocate General.
Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. CAMPNEY, *Chairman*

and

Messrs.

Adamson,	George,	Larson,
Balcer,	Gillis,	McLean (*Huron-Perth*),
Bennett,	Harkness,	Pearkes,
Blackmore,	Henderson,	Roberge,
Blanchette,	Higgins,	Stick,
Cavers,	Hunter,	Viau,
Claxton,	Langlois (*Gaspé*),	Welbourn,
Dickey,	Lapointe,	Wright.—25.

(*Quorum, 10*)

ANTOINE CHASSÉ,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, 26th May, 1950.

Ordered,—That the name of Mr. Hunter be substituted for that of Mr. Thomson on the said Committee.

Attest.

LÉON J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, May 26, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 10.00 o'clock a.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Balcer, Bennett, Blackmore, Blanchette, Campney, Dickey, George, Harkness, Henderson, Langlois (*Gaspé*), Pearkes, Stick, Viau, Welbourn, Wright.

In Attendance: Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General; Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

The Committee resumed the clause by clause consideration of Bill No. 133, An Act respecting National Defence, at clause 79 of Part V.

Wing Commander McLearn was questioned on the various clauses of Part V under consideration and he submitted a number of amendments which were severally considered and adopted on motions by various members of the Committee. The witness was assisted by Commander Hurcomb, Brigadier Lawson and Major McClemont.

On Clause 79:

On motion of Mr. Blanchette,

Resolved,—That the said Clause be amended by striking out the word "due" wherever it appears in sub-clause (2) thereof.

The said clause, as amended, was agreed to.

Clauses 80 to 90, both inclusive, were severally agreed to.

On Clause 91:

On motion of Mr. George,

Resolved,—That the said Clause be amended by

(1) striking out the word "proper", in the first line of paragraph (*a*) thereof; and

(2) inserting between the words "or" and "attempting", in the first line of paragraph (*c*) thereof, the word "in".

The said Clause, as amended, was agreed to.

Clauses 92, 93 and 94 were severally agreed to.

On Clause 95:

On motion of Mr. Viau,

Resolved,—That the said clause be amended by

(1) striking out the word "vessels", in the third line thereof, and substituting therefor, "a vessel";

(2) striking out the words "the vessels and goods", in paragraph (*a*) thereof, and substituting therefor, "a vessel or goods";

(3) striking out the words "the vessels", in the first line of paragraph (*b*) thereof, and substituting therefor, "a vessel";

(4) striking out the words "they are", in the second line of paragraph (*b*) thereof, and substituting therefor "it is", and

(5) striking out the words "the vessels", in the first line of paragraph (*c*) thereof, and substituting therefor "a vessel".

The said Clause, as amended, was agreed to.

Clause 97 was agreed to.

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On Clause 98:
On motion of Mr. Pearkes,

Resolved,—That the said Clause be deleted and the following substituted therefor:—

"*Inaccurate certificate.*

98. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to insure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment."

The said Clause, as amended, was agreed to.
Clauses 99, 100 and 101 were severally agreed to.
On Clause 102:
On motion of Mr. Stick,

Resolved,—That the said Clause be amended by striking out in paragraph (*b*) thereof, the word "due".

The said Clause, as amended, was agreed to.
Clause 103 was agreed to.
On Clause 104:
On motion of Mr. Henderson,

Resolved,—That the said Clause be amended by adding thereto a new sub-clause as follows:—

"*Things capable of being stolen.*

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen."

The said Clause, as amended, was agreed to.
Clauses 105 and 106 were severally agreed to.
On Clause 107:
On motion of Mr. George,

Resolved,—That the said Clause be amended by striking out the word "vessels", appearing in paragraph (*d*) thereof, and substituting therefor, "a vessel".

The said Clause, as amended, was agreed to.
Clauses 108 to 114, both inclusive, were severally agreed to.
Clause 115, after some discussion thereon, was allowed to stand.
Clauses 116, 117 and 118 were severally agreed to.
Clause 119, after some discussion thereon, was allowed to stand.
Clause 120 was agreed to.
Clause 121 was considered at length, sub-clause by sub-clause, and was allowed to stand in respect of sub-clauses (8) and (9). All other sub-clauses thereof were severally agreed to.
Clauses 122 to 126 were severally agreed to.
The question of future meetings was discussed. It was finally agreed that the Committee would meet twice on Monday, May 29th, at 11.00 o'clock a.m. and at 4 o'clock p.m. and likely meet at the same hours on Tuesday, May 30th and Wednesday, May 31st, in view of the fact that the House would probably begin to sit at 11.00 a.m. as from Thursday, June 1st.

At 12.40 o'clock p.m. the Committee adjourned to meet again at 11.00 o'clock a.m., Monday, May 29, 1950.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

FRIDAY, May 26, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 10 a.m. The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum. You will please come to order.

Wing Commander H. A. McLearn, Deputy Judge Advocate General, R.C.A.F., recalled:

Our first section this morning is section 79 which deals with "Desertion":

79. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

(2) A person deserts who

(*a*) being on or having been warned for active service or other important service, is absent without due authority with the intention of avoiding that service;

(*b*) having been warned that his vessel is under sailing orders, is absent without due authority, with the intention of missing that vessel;

(*c*) absents himself without due authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;

(*d*) is absent without due authority from its unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or

(*e*) while absent with due authority from his unit or formation or the place when his duty requires him to be with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

I am glad to see there are not very many "desertions" from this committee through members leaving Ottawa for the week end.

I am going to read section 79 and in clauses (*a*), (*b*), (*c*), (*d*) and (*e*) I will omit the word "due", which amendment has been proposed by officials of the department. I am noting that now so that when we come to it we will consider it as an amendment.

Section 79 will then read as follows:

79. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

(2) A person deserts who

(*a*) being on or having been warned for active service or other important service, is absent without authority with the intention of avoiding that service;

(*b*) having been warned that his vessel is under sailing orders, is absent without authority, with the intention of missing that vessel;

(*c*) absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;

(*d*) is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or

(*e*) while absent with authority from his unit or formation or the place where his duty requires him to be, with the intention of not returning to that unit, formation or place, does any act, or omits to do anything, the natural and probable consequence of which act or omission is to preclude his return to that unit, formation or place at the time required.

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

Mr. BLANCHETTE: May I move that the word "due" be dropped from all these subsections?

The CHAIRMAN: It is moved that the word "due" in subsection (2), (*a*), line 41; in (*b*), line 44; in (*c*), line 1; in (*d*), line 5; in (*e*), line 10; be deleted from the section. Shall the amendment carry?

Carried.

Shall the section as amended carry?

Mr. PEARKES: May I ask a question: why is the navy so especially singled out? Is desertion particularly prevalent in the navy? I refer to section (*b*):

having been warned that his vessel is under sailing orders, is absent

There is no suggestion that anybody might be absent from his army unit when it was under orders to march. Of course, they would not think of doing that, would they, in the army? Then, as respects being absent from a plane when it is ordered on a bombing mission, there seems to be no provision for that. Is it only because that sort of crime is more prevalent in the navy?

Mr. LANGLOIS: The duties are so important that promptitude is vital.

Commander HURCOMB: The answer to the first question is no. Desertion is not more prevalent in the navy than in the other forces. This though is a very special situation. It has always been emphasized in the navy because, unlike an aircraft taking off, a ship sailing is not apt to return for many months, and the ship is shorthanded by virtue of the absence of one man. Now, that situation may perhaps exist for three months, whereas a similar thing occurring when an

aircraft is taking off is easily remedied. In any case, it will not take long to remedy, and the same applies, I think, with an army unit. This is why emphasis here is placed on a vessel sailing.

Mr. PEARKES: I should not think this should apply more in the navy than in the air force. It seems to me a fighter personnel is essential to the operation of an aircraft for the time it is going to be away, and the actual period of time does not make a great deal of difference. It is going away on an operation, and if a man is missing from his post in the aircraft he is interfering with the operation of the aircraft just as much as a sailor, or a stoker, who is absent from the cruiser is interfering with the operation of that cruiser for the period of its operation.

Commander HURCOMB: I think the answer lies in the replacement factor.

Mr. PEARKES: You cannot replace a man once an aircraft is up in the air.

Commander HURCOMB: But there are more aircraft present, I mean you will rarely find only one aircraft present at a station. When they learn that Joe Doakes is missing it is a relatively simple matter to take someone else, whereas, you may find a ship alone in a harbour where there is no replacement.

Mr. STICK: There are more opportunities for desertion in the navy than in the army, where the navy is touring all over the world.

Commander HURBOMB: There is actually less desertion in the navy, sir.

Mr. STICK: I do not want to labour this but in a certain part of Newfoundland the inhabitants there are descended from deserters from the navy.

Commander HURCOMB: Those were Royal Navy deserters!

The CHAIRMAN: Shall the section as amended carry?

Mr. PEARKES: I would like to hear from the air force representative.

The WITNESS: I think, sir, that Commander Hurcomb's answer is the correct one. There have been cases where a member of air crew has not turned up but the aircraft was able to go without him, as it was possible to scurry around the station and find someone to replace him on very short notice. In any case most air missions are of relatively short duration, or the aircraft will be away from base for a relatively short time in comparision with the lengthy period of most sea voyages. I think that the conditions of service in this respect are quite different and we do not require a specific reference to desertion at time of takeoff. I think that we are adequately covered under (*a*).

Mr. LANGLOIS: It might be also that desertion in the army is so very common that they provide for that by adding extra personnel.

Mr. STICK: That last clause, Mr. Chairman,—

The CHAIRMAN: Order, please.

Mr. STICK: With respect to that last clause, where it says "six months", does that mean to say a man has to be absent six months before he can be charged with desertion?

The CHAIRMAN: It is prima facie desertion if he is absent that period of time.

The WITNESS: It is a presumption which he may rebut at the trial. The prosecution would not have the onus to prove that he intended to desert, under those circumstances.

Mr. STICK: You can still charge him for desertion under six months, though.

The WITNESS: Yes, sir.

The CHAIRMAN: Shall the section carry?

Mr. HARKNESS: Was there a provision along the same lines in the Army Act? I remember there was some presumption after six months.

The WITNESS: No sir. What you may be thinking of is the court of enquiry which is invariably convened in the army and air force after twenty-one days, at which a declaration is made that the absentee is a deserter. The effect of that declaration is to assist the military authorities in clearing their books, their paylists and so forth.

By Mr. George:

Q. Do you mean that the court found he was a deserter or did they find he was absent and still is absent?—A. No, sir, it is a declaration that he is a deserter and the declaration has the effect of a finding of guilty until he surrenders or is apprehended. Then he is brought on trial and actually charged.

Q. I am not going to argue with you; it does not make any difference.—A. I am sorry, I stand corrected. The declaration reads that he is declared to be an absentee, but it has the legal effect of a finding of desertion until the absentee surrenders or is apprehended.

The CHAIRMAN: Shall the section as amended carry?

Mr. HARKNESS: That procedure would still be in effect, that after twenty-one days a man would be declared an absentee but he would not be looked on as a deserter until after the six months elapsed.

The WITNESS: Subsection (3) relates to a charge and an actual trial.

Mr. PEARKES: Coming back to this section 2 (*b*). After all 2 (*b*) is redundant of 2 (*a*). 2 (*a*) covers the situation either in the air force, the navy or the army. It is simply repetition, but you may want to emphasize it in the navy; you must be covered by 2 (*a*).

Commander HURCOMB: That is perfectly true, this is redundant, but General Pearkes has supplied the answer. We simply wish to emphasize this as a special situation.

The CHAIRMAN: Shall the section as amended carry?

Carried.

Section 80, it deals with connivances at desertion.

80. Every person who

(*a*) being aware of the desertion or intended desertion of a person from any of His Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith; or

(*b*) fails to take any steps in his power to cause the apprehension of a person known by him to be a deserter,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Shall the section carry?

Carried.

Section 81 deals with "Absence Without Leave":

81 (1) Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

(2) A person absents himself without leave who

(*a*) without authority leaves his unit or formation or the place where his duty requires him to be;

(*b*) without authority is absent from his unit or formation or the place where his duty requires him to be; or

(c) having been authorized to be absent from his unit or formation or the place where his duty required him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorized.

Shall the section carry?

Carried.

Section 82 deals with false statements in respect of leave.

82. Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Shall the section carry?

Carried.

Section 83:

83. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service.

By Mr. Harkness:

Q. Is there any definition of "scandalous manner"?—A. No, sir, this is one of the instances where service custom has given the word a meaning and it would be most difficult and, I think, undesirable to try to define it. You will notice that it is applicable to officers only and has been in effect for many years because of the peculiar position of responsibility which officers have.

Q. There has always been some difference of opinion as to what constituted scandalous conduct.

Mr. STICK: It was taken from the old tradition of being an officer and a gentleman.

The CHAIRMAN: That is it.

Carried.

Section 84:

84. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

Carried.

Section 85:

85. Every person who uses traitorous or disloyal words regarding His Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

Carried.

Section 86:

86. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

Section 87:

87. Every person who

(a) makes a false accusation against an officer or man, knowing such accusation to be false; or

(*b*) when seeking redress under section thirty, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

Section 88:

88. Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a man who is neither on active service nor on duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.

By Mr. George:

Q. Why have we dropped the scale of fines, or have we?—A. Fines have now been made applicable across the whole gamut of offences.

By Mr. Stick:

Q. If a man is on leave, or if an officer is on leave and not in uniform and gets tight, does he come under this?—A. Yes, sir.

Q. He is an officer always whether he is in uniform or not?—A. Yes.

Q. The same applies to the ranks?—A. Yes.

Q. It is pretty strict, I think.

By Mr. Harkness:

Q. There was on old established custom that a man would not be given imprisonment for drunkenness, but would be given a fine.—A. Perhaps it would help if I read the existing section in the Army and Air Force Acts.

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty,

shall, on conviction by court martial, be liable, if an officer, to be cashiered; or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding five pounds; Provided that, where the offence of drunkenness is committed by a soldier not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months, with or without the addition of the aforesaid fine.

You will notice that the existing legislation which I have just read provides a lower punishment for officers than it does for men. We have in all cases wiped out that distinction in the offence clauses because we consider it to be invidious. It is a distinction which now runs through several army and air force offence sections. The punishment for officers and men is identical throughout the offence sections except an officer is not subject to detention under any circumstances. An officer would have to go to imprisonment if you wanted to detain him at all.

Carried.

The CHAIRMAN: Section 89:

89. Every person who

(*a*) malingers or feigns or produces disease or infirmity;

(*b*) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or

(*c*) wilfully maims or injures himself or any other person who is a member of any of His Majesty's Forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service, or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.

Carried.

Section 90:

90. Every person who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

The CHAIRMAN: I understand there are two or three small amendments proposed to section 91. I will state what the proposed amendments are and if somebody will move them we will deal with them before we deal with the section itself. In subsection (*a*), line 22, delete the word "proper" before "authority"; in subsection (*c*), line 28, after the word "or" insert the word "in".

Will someone so move?

Mr. GEORGE: I so move.

The CHAIRMAN: Is there any discussion on this paragraph?

Mr. STICK: You might read it.

The CHAIRMAN: Section 91:

91. Every person who

(*a*) without proper authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;

(*b*) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or

(*c*) assists any person in escaping or attempting to escape from custody,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

By Mr. Langlois:

Q. Is the adjective "proper" also struck out in section 90?—A. No, sir, in that case we are defining an individual, and "proper authority" there means the proper person. In section 91 we mean without authorization.

The CHAIRMAN: It has been moved that the word "proper" in line 22 of subsection (*a*) be deleted, and in subsection (*c*) the word "in" be inserted after the word "or". Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 92:

92. Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

Section 93:

93. Every person who

(*a*) resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline; or

(*b*) when called upon, refuses or neglects to assist an officer or man in the performance of any such duty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

Section 94:

94. Every person who neglects or refuses to deliver over an officer or man to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Mr. HENDERSON: Does that mean to assist in the lawful or unlawful apprehension of a man?

Mr. STICK: It says "lawful apprehension" of anyone.

Carried.

The CHAIRMAN: Section 95; this section deals particularly with offences in relation to vessels.

95. Every person who wilfully or negligently or through other default loses, strands or hazards, or suffers to be lost, stranded or hazarded any of His Majesty's Canadian Ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment.

Carried.

Section 96:

96. Every officer who, while serving in one of His Majesty's Canadian Ships involved in the convoying and protection of vessels,

(*a*) fails to defend a vessel or goods under convoy;

(*b*) refuses to fight in the defence of the vessels in his convoy when they are attacked; or

(*c*) cowardly abandons or exposes the vessels in his convoy to hazards,

is guilty of an offence and on conviction is liable to suffer death or less punishment.

The following changes are proposed in relation to clause 96: subsection (*a*), line 20, strike out the words "the vessels and goods" and substitute therefor "a vessel or goods". In subsection (*b*), line 21, change the words "the vessels" to the singular, "a vessel"; and in line 22 of the same subsection, that is (*b*), insert instead of the words "they are" the words "it is". The section thus reads in the singular instead of plural throughout. In subsection (*c*) the same thing is changed in line 23, to the singular "a vessel".

Mr. LANGLOIS: In subsection (*c*) it says, "exposes the vessels in his convoy." I do not think it should be "a vessel".

The CHAIRMAN: We will see how it sounds when the changes are put in.

96. Every officer who, while serving in one of His Majesty's Canadian Ships involved in the convoying and protection of vessels,

(*a*) fails to defend a vessel or goods under convoy;

(*b*) refuses to fight in the defence of a vessel in his convoy when it is attacked; or

(*c*) cowardly abandons or exposes a vessel in his convoy to hazards,

is guilty of an offence and on conviction is liable to suffer death or less punishment.

Mr. STICK: The words are "his convoy". I suggest we cut out the word "his" and put in the word "a".

Commander HURCOMB: The intention is to impose this obligation only upon the officer in whose charge the convoy is. I think if you changed the section you would put a similar obligation on the captain of a ship which was not in the convoy but happened to be in the vicinity.

Mr. STICK: Suppose you are passing a convoy and something happens, is he responsible to his convoy?

Mr. LANGLOIS: I can give you an example; one day we were at sea and met another convoy and due to the carelessness and negligence of the commanding officer he ran into this other convoy. Fortunately a major accident was avoided but his action had endangered the other convoy, not his own, but the damage was as great as if it had been his own convoy.

Mr. HARKNESS: That would be covered in section 95.

Commander HURCOMB: This section is designed entirely to ensure that a convoy is protected.

Mr. BALCER: What about the case of a straggler? If you have a ship two miles astern and losing ground you will still have to protect it. Very often this problem arises.

Commander HURCOMB: There again it is a question of using discretion in laying the charge.

Mr. STICK: Does that limit his duty to his own convoy? Supposing a convoy is passing a couple of miles away and something happens he might think it necessary to go to assist them. Do you want him to stick to his own convoy and not leave?

Commander HURCOMB: Not unless he has orders to the contrary.

Mr. LANGLOIS: What would be the objection to changing it to "a convoy"?

Commander HURCOMB: My objection is it would place an obligation on the commanding officer of every ship in the North Atlantic to protect every convoy, which is not the intention.

Mr. LANGLOIS: I do not think it would go that far.

Mr. BENNETT: Does the word "convoy" always mean more than one ship?

Commander HURCOMB: It does not, sir.

Mr. BENNETT: If you change the word to "vessel" in the nineteenth line, why should it not be "vessels" here? Why should it not be "a vessel or vessels"?

Commander HURCOMB: You have a point there, sir. We could make it singular and then of course the Interpretation Act includes the plural. That amendment would be sound.

Mr. GEORGE: What was that again?

The CHAIRMAN: The proposal is that in line 19 the word "vessels" be changed to "a vessel" singular, so it runs throughout as "a vessel".

Mr. LANGLOIS: This would put an obligation on the commanding officer to defend all convoys in the Atlantic. I would like to direct you to the words "exposes a vessel in his convoy to hazards." I do not think by doing that you are making it obligatory for a commanding offcer to defend all ships in convoy. This says "abandons or exposes."

Commander HURCOMB: That offence can be covered in other sections. It might amount to misconduct of a commander in action, under section 64.

Mr. LANGLOIS: I know these two sections can be covered generally in other sections. We are being specific here, as we are going to be with the army and air force later on.

Carried.

Mr. LANGLOIS: I do not want to insists on it, but I just want to be sure.

Mr. BALCER: Your case is covered by clause 95.

Mr. LANGLOIS: They are all covered by the general section.

Mr. STICK: If the navy is satisfied, I am satisfied.

Commander HURCOMB: That is the way it has been.

Mr. STICK: I would not want to see an officer brought up for neglect of duty if he did not go to the assistance of another convoy. If you are satisfied, I am satisfied.

The CHAIRMAN: Mr. Viau moves the following amendment to clause 96; that in line 19 the word "vessels" be struck out and the words "a vessel" substituted; that in line 20 the words "the vessels and goods" be struck out and the words "a vessel and goods" substituted; that in line 21 the words "the vessels" be struck out and the words "a vessel" substituted; that in line 22 the words "they are" be struck out, and "it is" substituted and that in subsection (*c*) the words "the vessels" be struck out and the words "a vessel" be substituted.

Mr. BENNETT: "A vessel or vessels", in line 19. That should read "protection of a vessel or vessels," otherwise the crime would only lie in convoying a vessel.

Commander HURCOMB: We felt that the Interpretation Act would meet that point where it says that the words used in the singular form include the plural.

Mr. PEARKES: Do you refer to a vessel as "it" instead of "she"?

Commander HURCOMB: We are obliged to do that. We have made that sacrifice, and for this reason, that "vessel" includes something more than H.M.C. ships, it also includes cargos, tugs, etc., which are not generally referred to as "she".

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Now, we come to a group of offences in relation to aircraft contained in section 97 which reads as follows:

97. Every person who

(*a*) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person;

(*b*) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any of His Majesty's aircraft or aircraft material, or of aircraft or aircraft material of any forces co-operating with His Majesty's Forces; or

(*c*) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any of His Majesty's aircraft, or aircraft of any forces co-operating with His Majesty's Forces,

is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Carried.

Now, with regard to section 98, it has been proposed that this section be deleted and a new section be inserted the draft of which has been circulated and reads as follows:

Clause 98—Inaccurate certificate.

98. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material, unless he proves that he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Mr. STICK: Would you explain that a bit?

The CHAIRMAN: General Pearkes moves that section 98 in the draft bill be deleted and that the section which I have just read be substituted therefor. Shall the motion carry?

Mr. HARKNESS: This puts the onus of proof on the man?

The WITNESS: That is right.

Mr. HARKNESS: As it read the onus of proof was the usual thing of being put on the prosecuting authorities.

The WITNESS: Perhaps I had better give an example of the need for this provision. An airman, charged with ensuring that the fuel tanks are full in an aircraft, has to sign a certificate indicating such to be the case. He may have made some sort of check, but he may not have made the check prescribed in orders. If he can establish that he did make the check prescribed in orders, then he would have taken "reasonable steps". It having already been established that the certificate was not accurate, the onus would be on him to prove that he took every step specified in service orders or some other steps which in the circumstances were reasonable.

Mr. LANGLOIS: Besides that the new section does not go as far as the other.

The WITNESS: The new one, sir, we thought was more precise and better adapted to our requirements.

Mr. LANGLOIS: The other one read: "without insuring the accuracy..."; the new one reads, ". . . unless he proves that he took reasonable steps to insure..." That does not go as far as the first one.

Mr. HARKNESS: There is a big difference of onus; he must prove he did take steps.

Mr. LANGLOIS: The other was wide open.

The CHAIRMAN: Shall the motion carry?

Carried.

Shall the section as substituted carry?

Carried.

Section 99.

99. Every person who flies an aircraft at a height less than the minimum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

I would have been in considerable trouble in the first war under this section.

By Mr. Pearkes:

Q. Does imprisonment for two years carry with it dismissal or would dismissal have to be added?—A. In the case of an officer dismissal from the service would be automatic on the imposition of any punishment of imprisonment. That is provided for in clause 121.

Q. Any imprisonment carries with it dismissal?—A. Yes.

The CHAIRMAN: Of an officer.

Mr. PEARKES: Does it only apply to an officer?

The WITNESS: In the case of a man, sir, it is within the discretion of the court; it may impose dismissal in addition to imprisonment.

The CHAIRMAN: That is dealt with in a later section.

The WITNESS: Yes, sir, in clause 121 (4). Paragraph (*c*) refers to officers and (*e*) to men.

The CHAIRMAN: That is on page 46.

Mr. PEARKES: He says it carries dismissal as far as officers are concerned.

The CHAIRMAN: And may carry dismissal in the case of a man in the judgment of the tribunal.

Mr. PEARKES: What I am really coming to is this: would the wording of that dismissal in any way be construed as dishonourable discharge and thereby make it extremely difficult for an officer to obtain a position in civilian life? I will admit that low flying is something that has got to be discredited, but the punishment should not be such that it might make it extremely difficult for a person who has been dismissed from the service to get a job in civilian life as an accountant or something of that character.

The WITNESS: Sir, the background is this. During the war the sentence of dismissal was in most cases imposed upon officers found guilty of low flying. In fact, it was almost invariably so that that was done; and it carried with it a misconduct release certificate. Subsequent to the war, however, something like eleven hundred cases of sentence of dismissal discharge with ignominy and discharge were reviewed by a board and all cases of dismissal imposed on officers —except I think in one case—were altered by the minister on the recommendation of that board. They were altered to a lower punishment, thereby removing the stigma; and new certificates of release were issued. A punishment of imprisonment would very rarely be imposed for low flying, but once again we are seeking to look after the most serious cases. The normal punishment would be considerably lower than imprisonment for either officers or men.

Mr. STICK: A severe reprimand, I suppose.

The WITNESS: That might be so if the circumstances were not too bad; a fine might be more appropriate, as a matter of fact.

The CHAIRMAN: Shall the section carry?

Carried.

We now come to section 100, which reads as follows:

100. (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or

not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

(2) For the purposes of this section

(a) every person whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the latter is subject to the Code of Service Discipline; and

(b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall so long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline.

Carried.

We now come to a couple of sections dealing with "Offences in Relation to Vehicles"—section 101:

101. Every person who

(a) having the charge of a vehicle of the Canadian Forces, by wanton or furious driving or racing or other wilful misconduct or by wilful neglect, does or causes to be done any bodily injury to any person or damage to any property;

(b) drives a vehicle of the Canadian Forces on a street, road, highway or any other place, whether public or private, recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case; or

(c) drives a vehicle of the Canadian Forces while intoxicated or under the influence of a narcotic,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

Shall the section carry?

Mr. HARKNESS: Are these punishments comparable with similar offences laid down by the Criminal Code? I sees a cross-reference to the Criminal Code. Is it a new section as far as the forces are concerned?

The WITNESS: The Criminal Code equivalent of (a) provides a punishment of two years' imprisonment. We have jacked the punishment up to five years solely because of the great prevalance of motor vehicle accidents on the part of our drivers. It is hoped that the punishment will have a salutary effect.

Carried.

The CHAIRMAN: Section 102: There is an amendment in line 14 of subsection (b), by striking out the word "due". Shall the amendment carry?

Carried.

The section now reads:

102. Every person who

(a) uses a vehicle of the Canadian Forces for an unauthorized purpose;

(b) without authority uses a vehicle of the Canadian Forces for any purpose; or

(c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Shall the section as amended carry?

Mr. LANGLOIS: Mr. Chairman, before we go to the other heading—we passed the subsection regarding convoying in the navy. I do not know much about the army, but I understand that they have operations in the army similar to our convoys, and the same offence listed here for naval personnel in convoys could occur in the army—and as far as that is concerned it might also happen in the air force where they have planes which fly in formation. Why was the subclause not drawn up in the case of the army for a similar operation?

Brigadier LAWSON: I think the answer is that in the army it is not the same type of convoy. A naval convoy comprises a number of merchant ships and a few warships whereas an army convoy is composed of army vehicles; they are not civilian vehicles being protected by the army. Similarly, with aircraft, you do not have air force aircraft protecting civilian aircraft.

Mr. LANGLOIS: What about when you had planes flying with the ferry command or any other civilian outfit? This can happen also when you have an army taking over a city and they would have to escort, maybe, civilian planes transporting goods.

Brigadier LAWSON: It might happen very occasionally, but it would happen so infrequently that we thought there was no necessity of having a special section to cover it. An offence of that nature will be covered by the general sections.

Mr. LANGLOIS: This can happen.

Brigadier LAWSON: Yes, but it would be so infrequent that we did not think it necessary to have a special section to deal with it.

The CHAIRMAN: Shall the section carry?

Carried.

We now deal with a group of sections dealing with offences in relation to property. The first section is 103 and it reads as follows:

> 103. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any equipment, defence establishment or work for defence is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Shall section 103 carry?

Carried.

The next is section 104. There is a proposed amendment which Mr. Henderson will formally move providing for the addition of subsection 3. I shall read the section and subsection 3 and then we can have the amendment.

> 104. (1) Every person who steals is guilty of an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.
>
> (2) For the purposes of this section,
>
> (*a*) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent
>
> (i) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest;

(ii) to pledge the same or deposit it as security;

(iii) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion;

(*b*) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;

(*c*) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment;

(*d*) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

The CHAIRMAN: I will read the proposed addition to clause 104:

Things capable of being stolen

(3) Every inanimate thing whatever which is the property of any person, and which either is or may be made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Mr. Henderson moves the addition of subsection (3) to clause 104.

Mr. HARKNESS: What would be an example of what is covered by subclause (3)?

The CHAIRMAN: Well, I should think, for example, if a pump which was securely fixed to a cement block or some rigid thing were unbolted or taken off or made so that it could be moved, that would be covered by subsection (3).

Mr. BALCER: Why is there a restriction reading like this in clause 104, subclause (1):

...if at the time of the commission of the offence he was, by reason of his rank...

I mean, is not stealing an offence under whatever circumstances it may be? Why do you have to have such a restriction?

The WITNESS: The background of that is that in the Criminal Code there are a great many offences of theft or stealing with different punishments for them. There is an offence: under section 359 of the Criminal Code whereby everyone is guilty of an indictable offence and liable to fourteen years imprisonment who, if employed in the service of His Majesty or the government of Canada or the government of any province of Canada or any municipality, steals anything in his possession by virtue of his employment. That is a special provision to take care of civil servants, and it seems proper to us that people in the armed forces entrusted with Crown property should have the same punishment as provided by the Criminal Code.

If they cannot be prosecuted upon that basis, there is a catchall in section 386 of the Criminal Code to the effect that everyone is liable to 7 years imprisonment who steals anything for the stealing of which no punishment is otherwise provided. It seemed proper to adopt that punishment of 7 years for cases in which service personnel were not entrusted with the articles stolen.

Mr. STICK: Why do you use the words in the last section that you added, "an inanimate thing"? You could steal pigeons or something live.

The WITNESS: There we have followed the phraseology of the Criminal Code. It is true that the Criminal Code provides that living creatures are capable of being stolen. It deals with oysters, for instance, and a number of other animate

things. We thought that the proposed subclause would suit our purposes. If somebody should steal another's dog, he could be charged with an offence under the Criminal Code.

Mr. BENNETT: I think you should have the word "or" after (i), (ii) and (iii) of (*a*) 2.

The WITNESS: The drafting rules, by which the Department of Justice is seeking to bring about uniformity among statutes, call for a connective or disjunctive only between the last two.

By Mr. Langlois:

Q. Would the new clause take care of a case, for example, in which the King's picture had been permanently affixed to a wall of a wardroom, and it was removed and taken after the ship had been decommissioned?—A. Yes.

Q. I am guilty then.

Mr. STICK: You are fired then.

By Mr. Hackness:

Q. What was the purpose of 2 (a) (iii)

to part with it under a condition as to its return which the person parting with it may be unable to perform;

A. We drew this subclause (2) from the Criminal Code. It may be that we do not specifically require (iii) in any circumstances that we can now envisage, but it did appear desirable that we should as closely as possible follow the definition of the word "stealng" in the Criminal Code.

Q. There is no specific sort of circumstances that it is designed to guard against? I do not see anything here about stealing by finding over which I had difficulty two or three times during the war.—A. Stealing by finding is a matter depending strictly on the circumstances. If the item was abandoned by the owner, there is a lot of common law on that...

Q. There is no provision in here in connection with that?—A. No, sir.

Q. You think that is not necessary?—A. We do have a catchall a little farther on. A person may be charged with "any other act of a fraudulent nature". If what he did amounted to fraud we could charge him under that.

Q. I had at least three cases in which a man charged claimed that he found the article, and at least on two of these articles the man was charged with stealing through finding. In neither case did the thing stand up.

Mr. LANGLOIS: I wish to make a correction. A few minutes ago I used the word "wall" in connection with a wardroom. I should have used the expression "bulkhead".

The WITNESS: There is a general section here which covers the cases of what you might call ordinary civilian offences.

Brigadier LAWSON: I think there may be a little misapprehension about this section. This section covers every type of theft, not only theft of inanimate things. It is a codification of the common law as it is covered in the Criminal Code. This last subsection deals only with one particular type of things, inanimate things, but it does not limit the whole section to inanimate things. The case you speak of a theft by finding, if a man finds something and converts it to his own use he is guilty of theft under this section.

Mr. PEARKES: Are the framers of this amendment satisfied with the actual English of it? I think this will be the only paragraph in the whole Act which will end with the word "it". I do not think that is very good English. Would it not be better to have something in the nature of "that it might be stolen", "in order that it might be stolen" instead of "in order to steal it"?

The WITNESS: Yes, I think we might amend that.

The CHAIRMAN: It is proposed that the words in the new subsection, the last three words "to steal it" be changed to the words "that it might be stolen". We will include that in Mr. Henderson's amendment.

Shall the addition of subsection (3) carry?

Carried.

Shall the section carry as amended?

Carried.

Section 105, receiving

105. Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

Shall the section carry?

Carried.

Section 106, destruction, loss or improper disposal.

106. Every person who

(*a*) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of His Majesty's Forces or of any forces co-operating therewith;

(*b*) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline; or

(*c*) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of His Majesty,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Shall the section carry?

Carried.

Section 107, miscellaneous offences.

107. Every person who

(*a*) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces;

(*b*) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department, the Canadian Forces or the Defence Research Board;

(*c*) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of His Majesty's Forces, or to any forces co-operating therewith or to any mess, institute or canteen operated for the use and benefit of members of such forces;

(*d*) demands or accepts compensation, consideration or personal advantage for convoying vessels entrusted to his care;

(*e*) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board; or

(*f*) commits any act of a fraudulent nature not particularly specified in the Code of Service Discipline,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Mr. STICK: Members of parliament will not be able to fly in R.C.A.F. planes and take their grips along now.

The CHAIRMAN: It has been suggested in the interests of consistency that in subsection (*d*), line 4, the word "vessels" be changed to "a vessel". Mr. George so moves.

Shall the amendment carry?

Carried.

Shall the section as amended carry?

Mr. PEARKES: There is one part here which may be difficult, and that is the question of persons going on retirement. It is a custom which has been followed in the service for many many years, that when a commanding officer leaves a ship or a vessel, or a unit, very frequently he receives a present from his messmates or personnel of the unit. This absolutely is forbidden. You cannot even give his wife a present.

Brigadier LAWSON: That always has been prohibited by regulations.

Mr. PEARKES: And always has been broken.

Brigadier LAWSON: Yes.

Mr. PEARKES: Can I get that point settled? Is there any way of getting around it, because it is an embarrassment to a great many officers on retirement.

Brigadier LAWSON: I do not think there is, you cannot open the door to that sort of thing at all. I think the regulations have to be strict; if you want to close your eyes in a case, you can do so. It could develop into a very undesirable thing.

Mr. PEARKES: You adopt the Chinese principle as far as the law there is concerned.

By Mr. Langlois:

Q. Subsection (*e*) reads as follows:—

being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board;

Suppose that a ship were sinking and one of its chairs were found floating around and the commanding officer of another ship kept the chair as a souvenir? Would he be guilty under this subclause?—A. I suggest there would be an implied authority to take that on board.

Q. And keep it for himself?—A. I think so. This is designed to prevent people from using service vessels or aircraft for commercial purposes.

Q. I am clear on that, then; I wanted to clear my conscience on this.

Mr. VIAU: What about the person in charge of a vehicle?

Mr. LANGLOIS: You mean a tank?

Mr. VIAU: No, a motor convoy, being in charge of a motor convoy.

Brigadier LAWSON: That would be a minor sort of offence. This section is aimed particularly at smuggling and that sort of thing, bringing the goods into the country and so on, a more serious type of offence.

The CHAIRMAN: If this section is to cover serious offences it seems to me the punishment is very small—the penalty is only two years or less.

Brigadier LAWSON: If they were guilty of smuggling they could be charged under the Criminal Code with smuggling as well as under this section.

The CHAIRMAN: Shall the section as amended carry?

Carried.

We come now to section 108, "Offences in Relation to Service Tribunals". Before reading the section let us refer to (*jj*) of the interpretation section, section two for the definition of "service tribunal". The definition given there is: service tribunal means a court martial or a person presiding at a summary trial. Now I will read the section:

> 108. (1) For the purposes of this section, "service tribunal", in addition to the tribunals mentioned in paragraph (*jj*) of section two, includes a board of inquiry, a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations.
>
> (2) Every person who
>
> (*a*) being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending;
>
> (*b*) refuse to take an oath or make a solemn affirmation lawfully required by a service tribunal to be taken or made;
>
> (*c*) refuses to produce any document in his power or control lawfully required by a service tribunal to be produced by him;
>
> (*d*) refuses when a witness to answer any question to which a service tribunal may lawfully require an answer;
>
> (*e*) uses insulting or threatening language before or causes any interruption or disturbance in the proceedings of a service tribunal; or
>
> (*f*) commits any other contempt of a service tribunal,
>
> is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment; and where an offence under this section is committed at or in relation to a court martial, that court martial may, under the hand of the president, issue an order that the offender undergo, for a period not exceeding thirty days, a term of imprisonment or detention; and where any such order is issued the offender shall not be liable to any other proceedings under the Code of Service Discipline in respect of the contempt in consequence of which the order is issued.

Shall the section carry?

Mr. PEARKES: I want to ask one question there: does a man who is charged, have to answer every question which is put to him during the summary of evidence, that is before he is brought to court?

Major MCCLEMONT: No, he does not have to answer any questions, sir.

Mr. PEARKES: The sub-clause reads: Refuses to answer any question to which a service tribunal may lawfully require an answer.

Major MCCLEMONT: The answer to that is, he does not have to become a witness; the accused himself is especially warned and then he may be sworn and make a statement, but he does not have to do so. But this sub-clause does apply, of course, to every other person who is a compellable witness and if he appears there then he has to be sworn and answer the questions, but the accused is especially excepted.

Mr. LANGLOIS: Mr. Pearkes must have in mind the case of a man who is brought before the court as a witness without being accused but who is also involved in a case and his evidence might incriminate him.

Major McCLEMONT: He would be entitled to the advantage of the Canada Evidence Act there.

Mr. PEARKES: You take this summary of evidence before the court, the accused first appears at a summary taking of evidence?

Major McCLEMONT: He appears at the summary of evidence but he is not a witness. He is, however, a very interested party to the proceedings.

Mr. PEARKES: But he can be asked questions.

The CHAIRMAN: Shall the section carry?

Carried.

The next section deals with sections in relation to "Offences in Relation to Billeting":

110. Every person who

(*a*) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for equipment has been provided; or

(*b*) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises on which equipment is or has been accommodated

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Shall section 110 carry?

Mr. STICK: Is it the intention to go on until one o'clock?

The CHAIRMAN: I had hoped that we would.

Mr. STICK: If that is going to be the case could we have a break for ten minutes now?

The CHAIRMAN: If it is the wish of the committee. Before we recess, shall the section carry?

Carried.

The CHAIRMAN: We left off after just having carried section 110. The next three sections deal with offences in connection with enrolment, and the first is section 111, which reads as follows:

111. Every person who, having been released from His Majesty's Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of his release is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

Section 112:

112. Every person who knowingly makes a false answer to any question set forth in any document required to be completed in relation to his enrolment is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

By Mr. Pearkes:

Q. In the old Militia Act you have two pages which deal specifically with irregular signing of pay sheets. If you have the Militia Act there you will see there is provision for signing false certificates and claiming pay for drill which was not properly carried out, unlawfully retaining pay of others and making

false returns, and impersonating somebody on parade. Now, all those appear to have been omitted, but perhaps they appear somewhere else?—A. Many of those, sir, are covered in Part XII which commences on page 96.

Carried.

The CHAIRMAN: Section 113:

113. Every person who is concerned in the enrolment of any other person, and knows or has reasonable cause to believe that by being enrolled such other person commits an offence under this Act, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Carried.

We now come to an omnibus group of sections dealing with "Miscellaneous Offences". The first section is 114, which reads:

114. Every person who negligently performs a military duty imposed on him is guilty of an offence and on conviction is liable to dismissal with disgrace from His Majesty's service or to less punishment.

Carried.

Section 115:

115. Every person who

(*a*) knowingly or negligently makes or signs a document required for official purposes, that is false or who knowingly or negligently orders the making or signing thereof;

(*b*) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or

(*c*) knowingly and with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issue for any military or departmental purpose,

is guilty of an offence and on conviction, if he acted knowingly, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Mr. WRIGHT: I would like a little more consideration given to that clause. It states, "anyone who negligently makes or signs a document." In the army, navy and air force today there is a tremendous amount of documentary work that comes before various officers and N.C.O.'s. Quite often a man may negligently sign some of these as a matter of form. It seems to me the punishment for negligence in that case is pretty severe where there are so many papers to be signed as there are today.

The WITNESS: This falls within the general principle that the maximum punishment should be appropriate to the worst case. A document might be signed negligently, and that negligence might have far-reaching consequences indeed. Where there is a heavy duty to take care and a person signs a document negligently, the offence may be very grave.

By Mr. Langlois:

Q. Is not "knowingly" there superfluous since you have to prove intent?

The CHAIRMAN: Wing Commander McLearn suggests there is some force to this observation and he would like to have this clause stood over until it can be reviewed.

Stands.

Now, section 116:

116. Every person who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

By Mr. Henderson:

Q. Is a religious belief considered a reasonable excuse?—A. It is proposed that that would be one of the exceptions.

By Mr. Stick:

Q. A man refusing vaccination, even on religious grounds, may be endangering the lives of his fellow men?—A. Yes.

Carried.

The CHAIRMAN: Section 117:

117. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do anything in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or causes or is likely to cause damage if he acted wilfully, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for less than two years or to less punishment.

Mr. BALCER: In section 117 it says, "every person who wilfully or negligently or by neglect", and at line 33 it says, "if he acted wilfully."

The WITNESS: That covers one case among those mentioned.

Mr. BALCER: Oh, yes, thank you.

Carried.

The CHAIRMAN: Section 118 deals with "Conduct to the Prejudice of Good Order and Discipline":

118. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from His Majesty's service or to less punishment.

(2) No person may be charged under this section with any offence for which special provision is made in sections sixty-four to one hundred and seventeen but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.

(3) Contravention by any person of

(*a*) any of the provisions of this Act;

(*b*) any regulations, orders or instructions published for the general information and guidance of that Service of the Canadian Forces to which that person belongs, or to which he is attached or seconded; or

(*c*) any general, garrison, unit, station, standing, local or other orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(4) An attempt to commit any of the offences prescribed in sections sixty-four to one hundred and seventeen is, unless such attempt is in itself an offence punishable under any of those sections, an act, conduct, disorder or neglect to the prejudice of good order and discipline.

(5) Nothing in subsections three or four shall affect the generality of subsection one.

Mr. BLACKMORE: I wonder if we could have some comment on the complexities of that clause?

The CHAIRMAN: Will one of the departmental officials please explain it?

The WITNESS: The purpose of this clause, which is an historic one in army, navy and air force legislation, both in Canada and the United Kingdom, is to take care of cases where good order and discipline are prejudiced.

By Mr. Blackmore:

Q. I wonder if we could have two or three examples of such cases. I do not know anything about what we are letting the lads in for from reading this. —A. Examples would be borrowing money from a subordinate; producing a medical certificate knowing it not to be genuine; improperly wearing a uniform, rank, badge or medal to which the person is not entitled; being unfit for duty due to previous indulgence; giving a false name to service police.

By Mr. George:

Q. Actually they are minor offences?—A. Yes.

By Mr. Blackmore:

Q. This is a very severe punishment which is prescribed.—A. It is the same punishment as now in the Naval Service Act and the same punishment as in the Army and Air Force Acts with respect to officers.

Q. It may be punished by dismissal with disgrace.

Mr. STICK: They do not have to do that. They are making provision for extreme cases, but the punishment will fit the offence in the opinion of the court.

Carried.

The CHAIRMAN: Now we come to section 119, dealing with Offences Punishable by Ordinary Law and which reads as follows:

119. (1) An act or omission

(*a*) that takes place in Canada and is punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada; or

(*b*) that takes place out of Canada and would, if it had taken place in Canada, be punishable under Part XII of this Act, the *Criminal Code* or any other Act of the Parliament of Canada,

is an offence under this Part and every person convicted thereof is liable to suffer punishment as provided in subsection two.

(2) Subject to subsection three, where a service tribunal convicts a person under subsection one, the service tribunal shall,

(*a*) if under Part XII of this Act, the *Criminal Code* or other Act of the Parliament of Canada, a minimum penalty is prescribed, impose a penalty in accordance with the enactment prescribing that minimum penalty; or

(*b*) in any other case,

(i) impose the penalty prescribed for the offence by Part XII of this Act, the *Criminal Code* or that other Act; or

(ii) impose dismissal with disgrace from His Majesty's service or less punishment.

(3) All provisions of the Code of Service Discipline in respect of a punishment of death, imprisonment for two years or more, imprisonment for less than two years, and a fine, shall apply in respect of penalties imposed under paragraph (*a*), or sub-paragraph (i) of paragraph (*b*) of subsection two.

(4) Nothing in this section shall be in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections sixty-four to one hundred and eighteen and to impose the punishment for that offence mentioned in the section prescribing that offence.

This begins to read like the Income Tax Act.

Mr. PEARKES: I think that section should stand until we have had an opportunity to discuss this whole question of referring civil crimes, which are other than of a strictly military nature, to military tribunals. We have let section 61 stand and I think this is all linked up with that same problem, as far as I can understand it.

The CHAIRMAN: What is the wish of the committee?

Mr. WRIGHT: I think subsection (*a*) is the one. I would not mind seeing the rest of it passed, but certainly where the offence takes place in Canada we should consider it.

Mr. GEORGE: Why not let it stand along with section 61?

The CHAIRMAN: I think it should stand, as it seems to be the wish of some members. On the other hand, perhaps one of the permanent officials would like to make some comment on it for our guidance.

Mr. BLACKMORE: How would it be if one of them prepared a statement to cover both sections?

The CHAIRMAN: Yes, we will leave it that way.

Stands.

Section 120,

120. (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged with attempting to desert may be found guilty of being absent without leave.

(3) A person charged with any one of the offences prescribed in section seventy-five may be found guilty of any other offence prescribed in that section.

(4) A person charged with any one of the offences prescribed in section seventy-six may be found guilty of any other offence prescribed in that section.

(5) A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.

(6) Where a person is charged with an offence under section one hundred and nineteen and the charge is one upon which, if he had been tried by a civil court in Canada for that offence, he might have been found guilty of any other offence, he may be found guilty of that other offence.

The CHAIRMAN: Now, we come to a long section which deals with "Punishments", and I was wondering if we had better not deal with this subsection by subsection, rather than read it all.

Mr. WRIGHT: Yes.

The CHAIRMAN: Section 121, subsection 1 reads as follows:

PUNISHMENTS

121. (1) The following punishments may be imposed in respect of service offences:—

(*a*) death;
(*b*) imprisonment for two years or more;
(*c*) dismissal with disgrace from His Majesty's service;
(*d*) imprisonment for less than two years;
(*e*) dismissal from His Majesty's service;
(*f*) detention;
(*g*) reduction in rank;
(*h*) forfeiture of seniority;
(*i*) dismissal of an officer from the ship to which he belongs;
(*j*) forfeiture of service toward progressive increase in pay;
(*k*) fine;
(*l*) severe reprimand;
(*m*) reprimand;
(*n*) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments".

Mr. WRIGHT: Could we have a definition of "minor punishments"?

The WITNESS: Sir, you will find that in subclause 13 on page 48, under the heading "Minor Punishments". Confinement to barracks is the best known one.

Mr. LANGLOIS: Is being placed on special report a minor punishment?

Commander HURCOMB: No, that is not a punishment.

Mr. WRIGHT: Minor punishments will be defined by regulations and these regulations will be published?

The WITNESS: Yes.

Carried.

The CHAIRMAN: Subsection 2, "Less Punishment":

LESS PUNISHMENT

(2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

The CHAIRMAN: Section 121 (2) reads:

(2) Where a punishment is specified by the Code of Service Discipline as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

Mr. STICK: That means reductions of sentence?

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection (3):

(3) A punishment of death may be imposed only by a General Court Martial, and may be imposed only with the concurrence of at least two-thirds of the members.

Mr. WRIGHT: What is the provision for appeal of the death sentence?

The WITNESS: First of all the death sentence has to be approved by the Governor in Council under section 170 (1). Then, having been approved by the Governor in Council, the accused would have the normal right to appeal against the severity of the sentence. I may be off on the timing. Presumably his appeal would go to the Governor in Council along with the submission to the Governor in Council for approval.

Mr. STICK: Is there any time limit?

The WITNESS: It must be appealed within fourteen days of the delivery to him of the proceedings of the court that passed the sentence.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection (4) "Imprisonment":

(4) The punishment of imprisonment for two years or more or imprisonment for less than two years is subject to the following conditions,

(*a*) every person who, on conviction or a service offence, is liable to imprisonment for life or for a term of years or other term, may be sentenced to imprisonment for a shorter term;

(*b*) a sentence that includes a punishment of imprisonment for two years or more imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;

(*c*) a sentence that includes a punishment of imprisonment for less than two years imposed upon an officer shall be deemed to include a punishment of dismissal from His Majesty's service, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;

(*d*) where a service tribunal imposes a punishment of imprisonment for two years or more upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from His Majesty's service;

(*e*) where a service tribunal imposes a punishment of imprisonment for less than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal from His Majesty's service;

(*f*) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

Mr. STICK: That is automatic?

The CHAIRMAN: Yes.

(g) a punishment of imprisonment for two years or more or imprisonment for less than two years shall be deemed to be a punishment of imprisonment with hard labour, but in the case of a punishment of imprisonment for less than two years, the Minister or such authorities as he may prescribe or appoint for that purpose may order that such punishment shall be without hard labour.

Mr. STICK: That means if a man gets two years or more they shall pass him over to the custody of a civil authority for detention, he goes to a penitentiary?

The WITNESS: We would almost invariably do so except in war when service prisons are set up to look after some of those sentenced to imprisonment.

Mr. HARKNESS: What would be "such authorities as he may prescribe"?

The WITNESS: I would imagine, sir, that it would be recommended to the minister that he appoint general officers commanding, air officers commanding and their naval counterparts.

Mr. HARKNESS: In other words, that would be confined to general officers?

The WITNESS: I may be looking in a crystal ball to some extent but I think that is how it would work out.

Mr. DICKEY: Where the sentence is two years or less you have, of course, been giving them into the charge of civil authorities, to a reformatory, say?

The WITNESS: Yes.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection (5):

(5) Where a service tribunal imposes a punishment of dismissal with disgrace from His Majesty's service upon an officer or man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of imprisonment for less than two years.

Shall the subsection carry?

Carried.

Subsection (6). Consequences of dismissal with disgrace.

(6) A person upon whom a punishment of dismissal with disgrace from His Majesty's service has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to serve His Majesty again in any military or civil capacity.

Shall the subsection carry?

Carried.

Subsection (7):

(7) The punishment of detention is subject to the following conditions,

(a) detention shall not exceed two years and a person sentenced to detention shall not be subject to detention for more than two years consecutively by reason of more than one conviction;

(b) no officer may be sentenced to detention;

(c) in the case of a chief petty officer, petty officer or leading rating in the Royal Canadian Navy or a warrant officer or non-commissioned officer in the Canadian Army or the Royal Canadian Air Force, a sentence that includes a punishment of detention, shall be deemed

to include a punishment of reduction in rank to the lowest rank to which under regulations he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

By Mr. Stick:

Q. Could we have an explanation of subsection (b), "no officer may be sentenced to detention;"?—A. The answer is that detention barracks are generally supervised by non-commissioned officers, that is, directly; the guards are corporals or below and it is quite foreign to the whole concept of service discipline that an officer should be held, while still remaining in the service, in the custody of someone who is not of commissioned rank.

Q. Yes, I understand that, but what about the case of an officer who is charged and may be waiting, say, three weeks for trial?—A. He would be held in his quarters under guard.

Q. Under another officer?—A. Yes, sir.

Q. The same thing applies as happened before, he had another officer there responsible for his custody.—A. That is right.

Q. All right, thank you.

The CHAIRMAN: Shall subsection (7) carry?

Carried.

Subsection (8),

(8) The punishment of reduction in rank in the Canadian Army and the Royal Canadian Air Force is subject to the following conditions,

(*a*) in the case of a commissioned officer, it shall not be imposed upon an officer of or above the rank of lieutenant-colonel or wing commander and shall not involve reduction to a rank lower than commissioned rank; and

(*b*) in the case of a subordinate officer, it shall not involve reduction to a rank lower than an inferior grade of subordinate officer.

Mr. LANGLOIS: I respectfully but strongly object to the special conditions in the case of the army and air force personnel. I think the same conditions should apply to those branches as applies to the navy.

The CHAIRMAN: I think I should read subsection (9) before we deal with subsection (8) at all because these sections are closely related.

(9) A punishment of reduction in rank in the Royal Canadian Navy shall apply only to a chief petty officer, petty officer or leading rating and shall not involve reduction to a rank lower than that to which under regulations the offender can be reduced.

We might deal with these two together.

Mr. STICK: He cannot be reduced in rank.

Mr. GEORGE: During the last great war as we all know we had no alternative, it was either a severe reprimand or a dismissal from the service; one was not enough and the other was too great for many of the offences, and many times we could be fined or suffer a reduction in rank, and we got the fine and the reduction in rank. I think in the interests of the service this should be made uniform.

Mr. LANGLOIS: Why make a difference in the navy and the other two branches? I am opposed to it.

The WITNESS: It might help if we give a little background to this provision. The R.C.A.F. is the only service in Canada or Great Britain which has a provision for reduction in rank of commissioned officers.

Mr. GEORGE: The R.A.F.?

The WITNESS: No, sir, only the R.C.A.F. This punishment was instituted during the war to cope with the great number of offences being committed by very young officers. There was a gap in the scale of punishments. We had, as you know, a very large training program, People were brought in and were commissioned quite quickly. In the interests of discipline generally, particularly having regard to the nature of the occupation of most air force officers, it was desired that, when an officer reached the level of flight commander in the rank of flight lieutenant, a means might exist to bring about his reduction. He probably had been in that rank only a very short time and had a commission for a very short time. It was desired to be able to reduce him by sentencing him to a lower rank in which he would have no command responsibility. Later on as his conduct improved he might warrant a promotion. The army authorities feel that their disciplinary organization would have been improved, if they had had a provision of this character. Naval authorities felt otherwise. The two subsections, as presented, reflect the wishes of the three services.

By Mr. Stick:

Q. Does it mean that if a man is a sergeant in the army you cannot reduce him to the rank of a private?—A. No, sir. Please notice the way (8) is stated: "the punishment of reduction in rank. . . is subject to the following conditions". You will see that there is a general authority to reduce, subject only to conditions specified. Please notice paragraph (*b*) which reads:

> in the case of a subordinate officer, it shall not involve reduction to a rank lower than an inferior grade of subordinate officer.

In the air force the only subordinate officer rank at the present time is that of flight cadet. It would be manifestly unfair to reduce a flight cadet to the rank of corporal. It may be that, at some future time, we will have other grades of subordinate officers and if a flight cadet should be promoted to one of these higher grades he could not be reduced below flight cadet.

Q. I may be wrong, you can reduce a sergeant to a corporal but you could not reduce him from a sergeant to the ranks.—A. Oh, yes. There is no limitation on the level of reduction except those stated.

Q. But a private is not an officer.

Brigadier LAWSON: I think the meaning of the term "subordinate officer" is leading us into difficulty. A sergeant is not a subordinate officer; he is a non-commissioned officer.

Mr. LANGLOIS: I am not passing an opinion on the propriety or non-propriety of one condition or the other or on their respective values, but are we not going against the principle established by our unification program of the three services? We are trying by this act to implement this unification, and here we are making a special case of two services and a special case of one of the services. I think the logic of this unification program ought to be carried through to the point where men, no matter what service they belong to, should receive the same treatment, and I think also we should—I do not know if I could call that discrimination—establish differences only in cases where the circumstances are special to one service. I do not think we should derogate from this principle of having uniformity all across the board. I think that is a question of principle.

Mr. GEORGE: Could you give us some reasons for these differences?

The CHAIRMAN: I think there is a good deal of force in what Mr. Langlois says but possibly Commander Hurcomb would like to make some remarks.

Mr. LANGLOIS: I am not passing judgment, mind you.

Commander HURCOMB: First, of all, Mr. Chairman, I think you will all agree that unification should not be carried out at the expense of essentials. There may, therefore, be some justification for the navy differing from the army and air force. We have to establish that justification and I will attempt to do so later on, but before I get to that I would like to quarrel with the thing in principle as it applies to the army or air force. That may be a little presumptuous but I think the committee is interested in considering this new departure very carefully before they adopt it. Our feeling is that if an offence is committed by an officer which is so serious as to justify reducing him in rank, he is no good to us and the answer is dismissal. That is certainly true in peacetime. If we do reduce him he will be no good us, we feel in so far as his relations with the men are concerned. His prestige is lost, the respect the men have for him is lost, and he is no good to the service. Our answer in these cases is dismissal from the service. From the standpoint of the officer personally I think it is unfair. He, unlike the men, when he decides to join the service joins it on a career basis. He plans to serve out his time in the service and he adjusts his personal affairs accordingly. He has not the choice ever of getting out of the service as a man has. He is in it for the rest of his life, if required. He works up to a point, to a certain rank carrying with it prestige and responsibility. He makes a slip, and is reduced in rank. He is completely unhappy, he is looked down upon by his fellow officers and the men, but he cannot get out of the service. A man in the same circumstances is in for a five-year engagement, and if after being reduced in rank, he does not like his new status he can refrain from re-engaging. That is the difference between an officer and a man. I hope I am not boring the committee.

Mr. STICK: No, carry on.

Mr. LANGLOIS: This is very interesting.

Commander HURCOMB: I must emphasize this, that in our view an officer who is reduced in rank is no good to us. We would find we would have to discharge him administratively anyway, and secondly, I say, it is unfair to the officer. Now, I can, I think, justify a distinction between the navy and the other two forces, but I would much prefer not to be driven to that. While I am a naval officer and it may be presumptuous for me to attempt to guide the army and air force on the question, there is a great deal of disagreement in this, and before I attempt to justify a difference between the services. I would like the committee to discuss the desirability in general of this entirely new departure.

Mr. STICK: Could we have your opinion so it will not be on the record. We do not want to do anything that would jeopardize you with your fellowmen but could you enlighten us without it being in the record. Would that be permissible, Mr. Chairman?

The CHAIRMAN: It can be done but I am a little doubtful as to the wisdom of having a discussion off the record. I would rather not press Commander Hurcomb at the moment. I think the point he has taken is well stated and deals with the principle of the section entirely. There is an important significance to this question. I think we might very well consider that phase of it and consider as well the question of distinction as between the services. This is the first place I think where such distinction is sought to be applied in the Act.

Commander HURCOMB: May I add one more word? Another thing I do not like about the army and air force proposal is the discrimination as between ranks. If you are going to be able to do this to a major why should you not be able to do it to a brigadier and a colonel, too? You will notice there is a rank limitation there that appears to be gross discrimination?

Mr. PEARKES: I must say I agree with every word that Commander Hurcomb said. The only thing I would like to add is to remind the committee

that a reduction in rank would also affect the officer's pension when he retired, thereby affecting his family as well. To a man who is able to provide security for his family all through his life, it is a very serious matter. I feel particularly it is wrong to have a ceiling as to where you may reduce an officer. After all is said and done a major may be commanding a battery of artillery and a lieutenant-colonel commanding a battalion. If the lieutenant-colonel is guilty of offences which had they applied it to the major commanding the battery would have meant the major being reduced to a captain that lieutenant-colonel should be reduced to a major and thereby become second-in-command of his battalion in the same way as a reduced major would then become second-in-command of his battery. I think the principle is very very dangerous and I would like to see this section, the whole section, revised. Then, again, if it is not meant to do that, I think it is most unwise to have a distinction between the three services, the officers of one service being treated in an entirely different way to the officers of the other two services in connection with crimes which are identical.

The CHAIRMAN: That phase of it impresses me. I think Wing Commander McLearn would like to make some remarks.

The WITNESS: The reason why the ceiling on ranks was placed in (8), (*a*) is the reason which Commander Hurcomb has expressed in respect to the reduction of officers generally. It is felt that if officers in the senior brackets have committed offences so serious as to warrant reduction, they should be released from the service, either by sentence of dismissal or administratively. That was the reason back of the rank ceiling in para (*a*).

Mr. PEARKES: A squadron leader is in an extremely important and responsible position in the Royal Air Force and if you reduce a squadron leader to a flight lieutenant—

The WITNESS: Under the existing provisions in the Air Force Act as adapted for the R.C.A.F., there is no rank limitation on reduction. It provides broadly for reduction to a lower commissioned rank in the air force.

The CHAIRMAN: As it is now.

Mr. PEARKES: There is no ceiling?

The WITNESS: No, sir, not at the moment; but for reasons that Commander Hurcomb stated, we feel that more senior officers should not be subject to the punishment of reduction in rank.

Mr. DICKEY: Mr. Chairman, I think the explanation we had as to why this was adopted in the R.C.A.F. indicated there may be a real place for it in that service, and also I think that I certainly agree with the obvious general opinion of the present army authorities that there is a place for it in the army discipline. After all, all this section does is authorize a punishment. If service tribunals in the navy do not consider that it is a useful, a proper punishment for purposes of navy discipline, well then there will surely be a tendency on the part of naval service tribunals not to impose this punishment. I do not think we will be justified in the legislation in distinguishing between the three services, but the fact that it is in the Act and is available to a naval tribunal does not mean they will be forced to resort to this punishment unless they consider in the particular circumstances of the case it is a sensible punishment to impose.

The CHAIRMAN: Well, there is a lot of force in that. After all this is a permissive section and not an obligatory one. We would like to hear from Brigadier Lawson.

Brigadier LAWSON: I am not in a position to say a great deal about this, but I think there is a lot of force in what Commander Hurcomb and General Pearkes have said as applied to peacetime conditions. I think there is a lot in that, but I do think under wartime conditions there is a lot to be said for this

punishment. There is a very serious gap in our scale of punishments, and we found it to be very awkward all through the last war. The arguments advanced by Commander Hurcomb and General Pearkes really, I think, apply largely to conditions of peacetime services. I would suggest, sir, that you let the section stand.

The CHAIRMAN: I was going to make that suggestion as I think obviously it would be the wish of the committee to have this section stand. There is no doubt about that. However, we might give some guidance to the permanent officials who will work on the redraft of the subsection. There seem to be two points of view involved: one is, shall the three services in these subsections when they are redrafted be on the same parity? In view of what Mr. Dickey has said it is a permissive section at any rate. Secondly, do we or do we not favour taking the ceiling off, as General Pearkes suggests, should be the case and makes reduction in rank applicable to all ranks. I wonder if we could give the officials any guidance in this regard?

Mr. LANGLOIS: I agree with Mr. Dickey when he says this clause is only permissive, but this clause will guide future decisions which will be made, and we are here to make an Act which may be used as a guide. As far as Brigadier Lawson's remarks are concerned, he said some of the remarks would apply more to peace time than to wartime conditions, but even in war time it would be very bad for the morale of men to serve and receive orders from a man who had been reduced in rank. I know myself as far as receiving orders from a man who had been demoted is concerned I would not respect him as much as I used to do and this man might become the laughing stock of his subordinates. I think the remarks made by General Pearkes apply to a great extent to wartime conditions.

Mr. GEORGE: We could go on arguing this for hours. The witnesses now know pretty well the difference of opinion, and while everybody here I think has seen service, we are certainly not qualified as to the legal end of it and are not prepared to make a decision. We must not get the three services arguing; we do not want to run into the same difficulty as the Americans have.

Mr. PEARKES: I wonder whether the legal officers of the service are the right people to decide this question or whether this should not go to the adjutant general and the personnel officers of the various services, and whether we should call the adjutant general and his corresponding senior officers before this committee to explain the reasons as far as the services are concerned.

The CHAIRMAN: I think we might let the two subsections stand, and in their reconsideration of them the officials can take cognizance of Mr. Pearkes' observations. When they come back to the committee we can then decide whether we want to call other officers.

Mr. STICK: Is it the wish of the committee to co-ordinate the punishments to fit the crimes in the three services? You are giving something to these gentlemen to go on and they must know what our wishes are.

Mr. GEORGE: I am convinced I was right the first time when I suggested we should not form any opinions now. I think the whole matter should be referred back and dealt with in due course after it has reached the heads of the services.

Mr. BLACKMORE: Mr. Chairman, before it goes back I was wondering if something like this does not need to be said; if we decide there will be no such thing as reduction in rank for officers, we may be causing those who have to do with officers who are charged with offences to take pains to try to avoid punishing the officer at all, and the result may be a weakening of discipline rather than a strengthening of it.

Mr. BENNETT: No matter how many witnesses you bring here you will not overcome a few years' experience, and my experience as far as this matter is concerned is that reduction is a very effective punishment in the air force.

The CHAIRMAN: Then subsections 8 and 9 of clause 121 will stand.

Subsection 10,

(10) Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited.

Carried.

Subsection 11,

(11) The punishment of dismissal of an officer from the ship to which he belongs shall apply only to officers of the Royal Canadian Navy.

Carried.

Subsection 12,

(12) A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man, three months basic pay; and in the case of any other person the sum of two hundred dollars, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

Mr. HARKNESS: What does "any other person" mean?

The WITNESS: A camp follower type of person, sir.

Carried.

The CHAIRMAN: Subsection 13,

MINOR PUNISHMENTS

(13) Minor punishments shall be such as are prescribed in regulations made by the Governor in Council.

Carried.

The CHAIRMAN: As clauses 8 and 9 stand section 121 as a result must stand, though all other subsections have carried.

Section 122,

122. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it.

Carried.

Section 123,

123. Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, from the date of the pronouncement of the new sentence, run concurrently, but the punishment higher in the scale of punishments shall be served first.

Carried.

Section 124,

124. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by him.

Carried.

Section 125,

125. All rules and principles from time to time followed in the civil courts in proceedings under the *Criminal Code* that would render any circumstances a justification or excuse for any act or omission or a defence to any charge, shall be applicable to any defence to a charge under the Code of Service Discipline, except insofar as such rules and principles are altered by or are inconsistent with this Act.

Carried.

Section 126,

126. (1) No person shall be convicted of a service offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.

(2) In respect of a person labouring under specific delusions, but in other respects sane, subsection one shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

(3) Every person shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

Mr. HARKNESS: Just one question there. Would what was known in the last war as battle fatigue be included under disease of the mind?

The WITNESS: It might, sir, or it might not. It would depend on the medical testimony or medical opinion in respect of the individuals concerned.

Mr. HARKNESS: You open up a very broad defence there.

The WITNESS: This is copied word for word from section 19 of the Criminal Code, and I have a few notes here on insanity that might clear the point up.

In order to establish the defence of insanity it is necessary to show either an incapacity to appreciate the nature and quality of the act or omission, or want of knowledge that the act or omission was wrong. The accused, in order to rely on insanity as a defence, must show that he was insane at the time of the offence and was not able to appreciate the nature and quality of the act or that it was wrong.

Carried.

The committee adjourned.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

MONDAY, MAY 29, 1950.

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, E.M., Judge Advocate General;
Lt-Col. J. R. Stewart, Provost Marshal (Army);
Wing Commander H. A. McLearn, Deputy Judge Advocate General;
Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General;
Squadron Leader A. T. Atherton, Provost Marshal (RCAF).

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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. Campney, *Chairman*

and

Messrs.

Adamson,	George,	Larson,
Balcer,	Gillis,	McLean *(Huron-Perth)*,
Bennett,	Harkness,	Pearkes,
Blackmore,	Henderson,	Roberge,
Blanchette,	Higgins,	Stick,
Cavers,	Hunter,	Viau,
Claxton,	Langlois *(Gaspé)*,	Welbourn,
Dickey,	Lapointe,	Wright—25

(Quorum, 10)

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MONDAY, May 29th, 1950.

The Special Committee appointed to consider Bill 133, An Act respecting National Defence, met at 11:00 o'clock a.m. Mr. J. G. L. Langlois *(Gaspé)*, Vice-Chairman, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Cavers, Dickey, George, Gillis, Harkness, Henderson, Langlois *(Gaspé)*, McLean *(Huron-Perth)*, Pearkes, Roberge, Stick, Viau, Welbourn, Wright.

In attendance: Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E. M., Judge Advocate General; Lt. Col. J. R. Stewart, M.B.E., Provost Marshal (Army); Wing Commander H. A. McLearn, Deputy Judge Advocate General; Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General; Squadron Leader E. T. Atherton, Provost Marshal (RCAF).

The Committee resumed the clause by clause consideration of Bill No. 133, An Act respecting National Defence, at PART VI.

Wing Commander McLearn was questioned on the various clauses of PART VI under consideration. He was assisted by Commander Hurcomb, Brigadier Lawson, Lt. Col. Stewart, Major McClemont and Squadron Leader Atherton.

Clauses 127 to 130, both inclusive, were severally agreed to.

On Clause 131

On motion of Mr. Blanchette,

Resolved,—That the said clause be amended by substituting for sub-clause (2) thereof the following:

> (2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section one hundred and twenty-nine shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody.

The said clause, as amended, was agreed to.

Clause 132 was agreed to.

Wing Commander McLearn was retired temporarily as the main witness.

On PART VII

Commander Hurcomb was recalled. He was questioned on the various clauses of the said PART, and was assisted by Brigadier Lawson, Wing Commander McLearn and Major McClemont.

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Clauses 133 and 134 were severally agreed to.

After lengthy discussion thereon Clause 135 was allowed to stand.

At 12:55 o'clock p.m., on motion of Mr. George, the Committee adjourned to meet again at 4:00 o'clock p.m.

AFTERNOON SITTING

The Committee resumed at 4:30 o'clock p.m. Mr. R. O. Campney, Chairman, presided.

Members present: Messrs. Adamson, Balcer, Bennett, Blackmore, Blanchette, Campney, Cavers, Dickey, George, Gillis, Harkness, Henderson, Langlois (*Gaspé*), McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Welbourn, Wright.

In attendance: The same Armed Forces officers as are listed at the morning sitting.

The Committee resumed consideration of Bill 133, An Act respecting National Defence, at PART VII.

Commander Hurcomb was questioned thereon. He was assisted by Brigadier Lawson, Wing Commander McLearn and Major McClemont.

The Committee carefully considered, sub-clause by sub-clause, Clause 135, which was again allowed to stand.

It was agreed that the Committee would sit at 4:00 o'clock p.m., and again at 8:15 o'clock p.m., on Tuesday.

At 5:30 o'clock p.m., the Committee adjourned to meet again at 4:00 o'clock p.m., on Tuesday, May 30th.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

MONDAY, May 29, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 11 a.m. The Vice-Chairman, Mr. J. G. L. Langlois, presided.

The VICE-CHAIRMAN: Gentlemen, we are dealing this morning with part VI, "Arrest—Authority to Arrest", section 127:

> 127. (1). Every person who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence, may be placed under arrest.
>
> (2) Every person authorized to effect arrest under this Part may use such force as is reasonably necessary for that purpose.

Wing Commander H. A. McLearn, Deputy Judge Advocate General, R.C.A.F., recalled:

The VICE-CHAIRMAN: Shall the section carry?

By Mr. Adamson:

Q. I object to that section. I wonder if someone can tell us whether that is a new section. I do not like the power to arrest on suspicion. I was wondering how that came to be put in there, and on what it was based?—A. We drew that in principle from section 36(2) of the Criminal Code, under which a peace officer is justified in arresting without warrant any person whom he finds lying in the street or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

Q. Yes, I know that is so; and the finding of jimmies and burglary tools upon a person is prima facie evidence that he is a burglar and he can be so charged even if no burglary has been committed. Was this ever in the Army Act before?—A. No, sir.

The VICE-CHAIRMAN: But it is in accordance with the wording of the Criminal Code?

The WITNESS: Yes. It would have the same effect.

Mr. ADAMSON: Somebody might have a grudge against somebody else, somebody in the Provost Corps might be particularly objectionable to the local sergeant and he could just go ahead and say I suspect that man, and have him arrested.

Mr. BENNETT: Mr. Chairman, they have to prove their suspicion.

The WITNESS: There is no doubt about that, sir.

Mr. PEARKES: Well, let us suppose a man has been arrested on suspicion, what happens after he has been arrested, if they are not able to support or prove their suspicion?

The WITNESS: If a person arrested has any cause to believe that he should not have been arrested, he would have a good cause of action against the one who arrested him, unless the one who arrested him could establish that he had reason-

able cause to suspect that an offence was about to be committed; in other words, the one who arrested him would have to establish that there was no malice.

By Mr. Wright:

Q. It might be possible to prove that in a civil court but it is a little different in a military court to prove a matter of that kind. My experience in the army would lead me to believe that you wouldn't have much of a chance before a military tribunal.—A. The opportunity for civil action is left open. That would be the sort of a place where a person arrested would have to bring an action for improper arrest.

Q. Then this would only apply in respect to a civil action?—A. He could bring a civil action for damages against a person who arrested him with malice.

Mr. WRIGHT: I am afraid he would be in a rather difficult position.

Mr. BENNETT: I would also suggest this, that if the arrest were based on a grudge the person arrested would not be in a very favourable position. I do not think it is practical.

By Mr. Adamson:

Q. Are we not writing something new into the statute which presents possibilities of abuse? I can see, for instance, a provost section having it in for some unit and you would have members of that unit going on leave and the provost section would say: well, last week they were here and caused a disturbance and there was a lot of drunkenness and so on and we will just go ahead and arrest them because we fear that they will do the same things this weekend, or this time, and so they apprehend the men on what they would consider good justification, or suspicion. I know that has happened, and that is why I bring the matter up. —A. The wording provides a safeguard. The provision relates to being suspected of being about to commit an offence. If an action were brought against the one arresting for damages for false arrest, he would have to establish that he acted reasonably in the circumstances.

By Mr. Harkness:

Q. What would happen in the case of a soldier who was outside of the country, as was the case in the last war? If a man had to take civil action to get relief from a false arrest and had to rely on a civil action for redress he might be a long time getting satisfaction, and he would really have no action against his accuser.—A. It is true there might be some delay by reason of his arrest having occurred beyond the country, but he would have a good cause of action in the civil courts in Canada on his return or he might arrange for an action to be brought in Canada while he was still outside.

Mr. HARKNESS: But that might be 5 years later.

Mr. GEORGE: The only recourse we had under the old Act was laying a charge against the person making the arrest, charging false arrest. There is no provision for civil action in the old Act.

The WITNESS: The one arresting maliciously could be charged with conduct to the prejudice of good order and discipline.

Mr. GEORGE: I think the section in the Criminal Code does not necessarily make this any clearer or more effective; on the contrary it rather complicates it.

Mr. BLACKMORE: I would like to know the provision we previously had in the Militia Act, and whether it has proven inadequate in any respect?

The VICE-CHAIRMAN: In other words, what is the reason for the change?

Mr. BLACKMORE: Yes, is what we have had not good enough?

The WITNESS: I shall read the existing provision which is section 45(1) of the Army Act:

> The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act:
>
> (1) Every person subject to military law when so charged may be taken into military custody.

Our feeling was that the existing legislation is not sufficiently explicit for service purposes. What we sought to do throughout the bill was to spell out every disciplinary procedure in a form capable of being applied conveniently by administrative authorities. The basis of the words which the committee is now considering is the section in the Criminal Code which I have read. I am sure that there will be no change in the actual procedure, but this provides a better guide.

Mr. STICK: I think so, Mr. Chairman. A red cap or somebody may have definite proof that a man he is watching may be about to commit, let us say, the offence of burglary, that that offence is about to take place or something like it, and he could arrest that man before it happened, otherwise he has to wait until the man actually commits the offence before he make the arrest. I think that is the idea, to check the man up before the thing actually happens, providing he is reasonably satisfied that the act is going to take place; and that is a better state of affairs than to wait until after an offence is committed. I am in favour of the action.

Mr. HENDERSON: I agree with the statement made by Mr. Adamson, I think on occasion they are inclined to be a little too quick in making arrests, and may not always wait for sufficient cause.

The WITNESS: There is another remedy available, the person improperly arrested could apply for redress of grievance, which would be particularly applicable in cases of arrests of this kind.

Mr. ADAMSON: I have known of a Provost section having it in for a particular section or unit of men, and it was brought to our attention that the provost sergeant said that if he saw any of these such and such a unit in town he would see that they were kept out of mischief or locked up just because they had been making trouble once or twice before; and under this section he could certainly do it. Perhaps it is a good thing, perhaps it is not. I am just mentioning it.

Mr. STICK: He has to have reasonable grounds to do it.

Mr. GILLIS: Just how would this section work: "is suspected of being about to commit an offence"? How would you charge a man under that, and what procedure would you follow in making the arrest, and what evidence is required to support the charge of being suspected of being "about to commit". I can hardly see a provost going up to a man and arresting him and saying: I am arresting you and charging you before the commanding officer because I suspect you were about to do something.

Mr. GEORGE: You have to prove that you have a suspicion.

Mr. GILLIS: You say you have to prove what you suspect. Whose word is going to be accepted?

The VICE-CHAIRMAN: This would cover cases of intended theft. For instance, it might be the case of someone found loitering about a building in which munitions were stored, and the actions of the individual would arouse the suspicion of the officer or man in the Provost Corps and would lead him to

think that a burglarly was about to be attempted, then this would permit of the person found loitering being arrested on suspicion of being about to break in and commit an offence.

Mr. HARKNESS: If he were found with burglarly tools in his possession he could be arrested on that ground alone. If a man looked as though he were going to rob or something of that sort all you would have to do would be to confine him to quarters. You don't have to arrest him on suspicion of committing a burglary, just confine him to his quarters. It is the same in the case of a civilian; you can arrest him when he is found in possession of burglarly tools, or if you suspect he is about to commit a crime. I think it is good.

The VICE-CHAIRMAN: You could arrest a civilian for vagrancy as a holding charge.

The WITNESS: The practical position, sir, at present is this. A member of the services, for example a sergeant, is seen by a provost, who holds the rank of corporal, in the act of applying a match to some tinder that is laid under a building. The offence of setting fire to the building has not yet been committed but the stage has been reached where it could be described as attempting to commit that offence. It seems desirable that the corporal should be able forthwith to take the sergeant into custody, but a corporal is not by virtue of his rank able to order a sergeant to go to his quarters. Under this Part the provost corporal would be able to put the sergeant under arrest and he would be charged with attempting to set fire to a building.

Mr. PEARKES: Surely under section 103, if a man were striking a match to set fire to a building he could be charged with an action which is likely to cause a fire. I do not think that is a very good example, but it says here very definitely in section 103 that it is a crime to wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any equipment, defence establishment or work. Surely if a man were striking a match to fire a building he could be charged under that section without this business of being suspected.

Mr. ADAMSON: He surely could be charged with committing an offence.

The WITNESS: Let us take it back further. He has not yet struck the match, but his actions with it cause him to be suspected of being about to commit an offence.

Mr. DICKEY: After all, this section deals with arrest, not with charges.

Mr. GILLIS: I object to those words in that section "suspected of being about to commit". I think they are unnecessary, irrelevant and pave the way for discrimination. The section is all right with that deletion.

The VICE-CHAIRMAN: You know we have similar provisions in the Criminal Code.

Mr. GILLIS: That does not make it right.

The VICE-CHAIRMAN: There is no new principle involved. In the Criminal Code it has a much larger application than it has in the Defence Act.

Mr. GILLIS: No, it has not.

The VICE-CHAIRMAN: It applies to everybody in Canada.

Mr. GILLIS: I do not think this is necessary at all; I think the wording of the section without that presumption in there is all right. I have had some experience with this sort of thing. I do not want to take up your time telling you stories, but it certainly did not work out in the last war. I saw a case of a boy suspected of something in the service and the R.C.M.P. came in and took him out, tried him before a magistrate, and under that very wording the magistrate convicted the boy and sent him to jail for a year, stigmatizing him

as a convict. He was a corporal in charge of stores, but he got his discharge from the service and was sentenced twice. He was dishonourably discharged and it was on that very wording that man was convicted. There was no proof, he was only suspected, and the whole thing was a chain of circumstantial evidence. I think that particular wording should be wiped out, it is not necessary and I object to it.

Mr. GEORGE: May I suggest this item stand?

The VICE-CHAIRMAN: Gentlemen, we have here Lieutenant-Colonel J. R. Stewart, and he will have something to say on this section if we wish to hear him.

Mr. GEORGE: Let the item stand.

Mr. ADAMSON: We are on the item now and I am sure he has the answer.

Lieutenant-Colonel J. R. STEWART, M.B.E.: Mr. Chairman, most offences in the service are committed after a drinking bout. It is the same as in civil life, liquor in, sense out. In the majority of cases this particular wording applies directly to that type of occurrence. A man has a few drinks under his belt and is suspected of being about to commit an offence. We take him into protective custody and he may never be charged with an offence, and may be released the next morning and sent back to his unit. It gives a man a fighting break, whereas if we waited until he committed an offence then he will no doubt be punished. I suggest that this particular set of circumstances will apply in nine cases out of ten, and that wording will apply directly to that set of circumstances. We will have to continue to operate under it regardless of whether or not it is ratified here, but we would like to have the procedure made legal. Protective custody is something that always has been recognized. We attempt to keep a man out of trouble if possible.

Mr. GILLIS: It does not change my mind one bit. If a man is drunk and incapable of looking after himself you have every reason to pick him up whether you put him in protective custody or charge him with being drunk. You have that right without this wording. The thing I do not like is that a boy can be picked up and on a chain of circumstantial evidence be sentenced.

Lieutenant-Colonel STEWART: May I amplify that? I was speaking of a man with a couple of drinks under his belt, and in the army there are twenty-nine ways of saying he is drunk without being able to prove it. We have no reason whatsoever to arrest a man if he has one or two drinks, but when he is drunk we can deal with him. It is when a man has lost his sense of discretion that we are concerned with this wording.

The WITNESS: I might add that no one can be convicted of anything under this clause. It is purely a vehicle under which a person can be placed in custody under certain circumstances and, having been placed in custody, he can be charged or not. This is the earliest stage of disciplinary procedure.

Mr. HENDERSON: I think what Colonel Stewart says makes it plain that this clause gives the provost corps the right to arrest at their discretion.

The VICE-CHAIRMAN: At their discretion is going a bit far. You see, the person ordering the arrest will have eventually to prove he had reasonable grounds for the arrest, and that it was warranted.

Mr. HARKNESS: A man could be put in jail for a certain time and then let go.

The VICE-CHAIRMAN: Read the corresponding section of the Criminal Code. It is section 36:

> 36. Every one is justified in arresting without warrant any person whom he finds by night committing any offence.
>
> 2. Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other

place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant.

The Criminal Code goes even further than the section under study.

Mr. HARKNESS: In the service all you have to do is order a man back to his quarters.

Mr. STICK: What authority have you to do that?

Mr. HARKNESS: You always have authority to do that.

Mr. STICK: You cannot order a man around unjustly.

Mr. ADAMSON: The provost corps can order a man to return to his quarters.

Mr. STICK: If they have reason for it.

Mr. ADAMSON: If a man is creating a disturbance, not having committed a crime, just making a noise, you could either order him to desist or to return to his quarters.

Mr. STICK: When you have reason for it.

Lieutenant-Colonel STEWART: It is past the suspect stage then.

Mr. ADAMSON: You have power to order him back to his quarters.

Lieutenant-Colonel STEWART: Yes, but not when we suspect him of being about to commit an offence.

The VICE-CHAIRMAN: You see, if a man lost his sense of discretion and made up his mind to set a fire, there would be no remedy if he was ordered back to his quarters because he will set another fire there.

Mr. ADAMSON: This is designed, and I see the reason for it, to prevent a group of people getting together and drinking too much and going out and committing mayhem or any other military offence that one might commit when he has too much to drink. As the provost marshal said, this is a protective clause and I quite agree that it is a protective clause, but it seems to me the wording of it might possibly tend to allow its abuse in certain cases. That is the only thing I am a little worried about because I have known cases where a grudge instinct against a particular unit was used.

Mr. GEORGE: I feel we should follow the practice which we have used when we run across controversial points, of letting the matter stand.

The VICE-CHAIRMAN: I am in the hands of the committee. I have no real objection to it, but do you want to make a final decision now or let the section stand.

Mr. HARKNESS: Before letting the section stand can you tell me why it is limited only to service offences? I should think there were offences other than service offences which it would be desirable to prevent a man committing.

The WITNESS: Service offences are defined in section 2 (gg) as including offences under the Criminal Code committed by persons while subject to the Act of service discipline. The expression "service offences" covers the whole field.

Mr. PEARKES: Where is that (gg)?

The WITNESS: At page 4, sir.

Mr. ADAMSON: Service offences may be rape or anything else.

Mr. DICKEY: I think if there is going to be power under this Act to convict a man of an attempt to commit a service offence, and that is going to be effective, there has to be power in somebody to arrest a man who is suspected of being about to commit an offence, and the only way you can express that is to say someone has that power. I think that is justification for the wording and I am in favour of it.

The WITNESS: Just one final word, sir. People in the service, by reason of the nature of their calling, have with them, more than others, articles which are

inherently dangerous; for example, grenades and rifles are highly dangerous in nature. Even more than in the case of the Criminal Code, I think that we need to have authority to take persons into custody upon suspicion.

Mr. ADAMSON: A man with side-arms gets drunk and throws his side-arms against the wall, and they may miss the wall and hit somebody.

The WITNESS: Yes, sir.

Mr. BLACKMORE: If the responsible officer would tell me he felt that during the war just past there were difficulties that arose because those charged with responsibility of arrest did not have authority, I will be satisfied.

Lieutenant-Colonel STEWART: We have had to take action on that, sir. We have not had authority to do it, but where a man with a couple of drinks has been refused further drinks at a bar or anywhere else, if that man is wearing side-arms he may go out and use those side-arms. If he has a grudge he can come back in and if anyone tries to prevent him he will shoot him. We have had cases of men discharging their firearms with forethought and intent.

Mr. STICK: You think this clause is necessary?

Lieutenant-Colonel STEWART: Very necessary.

Mr. ROBERGE: I know of two occasions where this clause would have been of benefit. When I was in Quebec two hundred Russians sneaked out with firearms and incited a riot. In England the same kind of thing happened. If we had had this clause we would have put them in custody. One man had a few drinks and had an argument with the corporal, and in the night he got up and stabbed the corporal. If he could have been put in custody that would not have happened.

Mr. ADAMSON: Just one word. When the regulations are being written I hope the points brought out by the committee will be considered.

Brigadier LAWSON: Yes, you may be sure of that.

Carried.

The VICE-CHAIRMAN: Now, section 128:

128. (1) An officer may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of

(*a*) any man;

(*b*) any officer of equal or lower rank; and

(*c*) any officer of higher rank who is engaged in a quarrel, fray or disorder.

(2) A man may, without a warrant, in the circumstances mentioned in section one hundred and twenty-seven, arrest or order the arrest of

(*a*) any man of lower rank; and

(*b*) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.

(3) An order given under subsection one or subsection two shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same Service, component, unit or other element of the Canadian Forces.

(4) Every person who is not an officer or man, but who was subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by such person as any commanding officer may designate for that purpose.

Mr. DICKEY: Mr. Chairman, can the officer tell us why in section 1 (*c*) and 2 (*b*) the words "in the actual commission of an offence" are not included?

The WITNESS: My only answer to that, sir, is we have adopted the language of the Army Act and the Air Force Act.

By Mr. Dickey:

Q. It seems to me if an officer can put a higher rank under arrest during a quarrel or a disorder, he should have similar power if he finds him committing some other offence.—A. I think it would be necessary to draw the line somewhere with respect to the seriousness of the offence, because otherwise one might find a situation quite subversive to discipline. A very junior officer might see fit to arrest a very senior officer whom he thought was about to commit a minor offence of a criminal character. The thought back of this is that there may be circumstances which require immediate arrest. If, for instance, the senior officer is intoxicated, it may be necessary to restrain him and put him in custody there and then. If the junior officer saw him in the act of stealing, for example, the junior officer's duty would be to report it to his immediate superior and the arrest could be made later.

By Mr. Adamson:

Q. Does that include commissioned officers or otherwise?—A. Subordinate officers is a category which lies between warrant officer and commissioned officer, and would include trainee officers like midshipmen in the navy or flight cadets in the air force.

Q. That was one of the reasons that caused so much bitterness in the United States forces.

By Mr. Gillis:

Q. May I ask in connection with that last paragraph, could he order the civilian authorities to pick him up?—A. He might order the civilian authorities, yes.

Q. That person then would be in civilian custody charged with a military offence?—A. He would be transferred to military custody.

The VICE-CHAIRMAN: Is not this new subsection 4 to enable a commanding officer to call on the civil police to help him in case of need?

The WITNESS: No, sir. This is designed to protect civilian accompanying the forces, whom we do not think should be exposed to arrest by service people indiscriminately. In this case only the commanding officer is empowered to decide who may arrest a particular civilian subject to the Code of Service Discipline.

Mr. GILLIS: Then he would later be transferred to the military tribunal for trial?

The WITNESS: That is correct.

By Mr. Adamson:

Q. Have you anything in any other section covering the arrest of a civilian for suspected espionage or sabotage?—A. Only for arrest for offences under this Act. If the person in question were subject to the Code of Service Discipline and were doing something which was an act to the prejudice or something which was an attempt to destroy property, there would be authority under this clause for his arrest.

Q. If you suspected a civilian of communicating with the enemy or trying to obtain information for the possibility of communicating it to the enemy could you hold him by military personnel? During the war under the sweeping powers of the Defence of the Realm Act you could, but I wondered if in this particular bill there were any powers of that nature?

Mr. GEORGE: We have covered all that.

The WITNESS: The situation would be covered if he was subject to the Code of Service Discipline and if he was suspected of being about to commit an offence of passing information to the enemy.

Mr. ADAMSON: That would be covered?

The WITNESS: That is right.

The VICE-CHAIRMAN: Shall the section carry?

Carried.

Section 129.

129. Such officers and men as are appointed under regulations for the purposes of this section may

(*a*) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence; and

(*b*) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in regulations made by the Governor in Council.

By Mr. Adamson:

Q. This is the clause whereby another rank may arrest an officer?—A. Yes, sir.

Q. I wonder if we could have some remarks from the Provost Marshal? Is this not new in the British Army?

The VICE-CHAIRMAN: No, it is covered in section 74.

Lieutenant-Colonel STEWART: We have had the authority.

The VICE-CHAIRMAN: It was under section 74 of the United Kingdom Army Act.

Mr. HARKNESS: It is new in respect of this particular clause "is suspected of being about to commit—", is it not?

The WITNESS: New in service legislation, yes.

Mr. STICK: It carries out the provisions of section 127.

The VICE-CHAIRMAN: It parallels it.

By Mr. Pearkes:

Q. I agree with the section but I take exception to the marginal note. Why do you want to make a difference between the provost corps and the shore patrol. I thought this was a unification bill; there should not be any difference. Furthermore, I do not think that heading covers everything. What about the regimental picket which is sent around, is that excluded?—A. The regimental picket would not be appointed under this clause, sir.

Q. "Such officers and men as are appointed under the regulations—"—A. But your regimental picket, sir, would be a person assigned to perform a particular duty.

Q. Yes; for instance a patrol through the streets of Folkestone in order to pick up any men of your regiment who were getting into trouble. Surely that was done, and surely they were supplementing the provost corps because there were not sufficient members of the provost corps personnel to carry out those duties?—A. In that case, what you say is true, sir. I thought you were alluding to fire pickets and that kind of duty.

Q. No, no.—A. In a case where they were performing provost duties, they would be appointed under this clause.

Mr. STICK: Cut out the word "shore".

Mr. PEARKES: "Especially appointed personnel."

The VICE-CHAIRMAN: We do not need an amendment; the marginal note can be corrected.

Mr. PEARKES: It is a minor thing but, at the same time, I would suggest you change that to powers of specially appointed personnel.

The VICE-CHAIRMAN: Mr. Pearkes, note is being taken of your remarks and they will be acted upon in due course, in the reprint.

Shall section 129 carry?

Carried.

Section 130.

130. (1) Subject to subsection two, every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection six of section one hundred and thirty-five or subsection six of section one hundred and thirty-six may by a warrant under his hand authorize any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service offence.

(2) An officer authorized to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorizing the arrest of any officer of rank higher than he himselfs holds.

(3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included.

(4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant.

Mr. PEARKES: There is one matter which is running through my mind in connection with all of these sections and on which I would like to get some assurance from the Judge Advocate General. If there is another war, we are going to be troubled with a fifth column working in this country, and I want to be certain that our code of discipline is sufficiently adequate to deal with a set of circumstances which seldom occurred in the last war. Are you satisfied these clauses do cover all of those cases which might be generally grouped together under actions of a fifth column?

Brigadier LAWSON: I am, sir. We have had that matter in mind very prominently when drafting the bill and we have given it consideration in every place it applies. I am personally satisfied the bill does give sufficient authority.

The VICE-CHAIRMAN: Shall section 130 carry?

Carried.

Section 131.

There is a proposed amendment to subsection 2. I will first read the section as it stands now:

131. (1) A person arrested under this Part may forthwith on his apprehension be placed in civil custody or service custody or be taken to the unit or formation with which he is serving or to any other unit or formation of the Canadian Forces; and such force as is reasonably necessary for the purposes of this section may be used.

(2) An officer or man commanding a guard or safeguard or an officer or man appointed under section one hundred and twenty-nine shall receive and keep a person who is committed to his custody by an officer, man or

other person having power to arrest that person, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal, or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged.

(3) An officer or man who, pursuant to subsection two, receives a person committed to his custody shall, as soon as practical and in any case within twenty-four hours thereafter, give in writing to the officer or man to whom it is his duty to report, the name of that person and an account of the offence alleged to have been committed by

Now I shall read the suggested amendment to subsection 2.

(2) An officer or man commanding a guard, guardroom or safeguard or an officer or man appointed under section one hundred and twenty-nine shall receive and keep a person who is under arrest pursuant to this Act and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of such committal or as soon as practical and in any case within twenty-four hours thereafter, to the officer or man into whose custody that person is committed, an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody.

Mr. ADAMSON: What is the difference between the amendment and the original?

The VICE-CHAIRMAN: I notice "guardroom" is added there.

Mr. HARKNESS: You have struck out under the latter part of the clause printed in the book "the offence with which the person—is charged" and put in its place "the reason why the person—is to be held." What is the reason for that change?

The WITNESS: Sir, the reason for the change at the foot of the subclause will appear from the following example. A relatively junior provost or other escort may be charged with the taking of an offender from point A to point B. At that time he may not be fully appraised of the actual offence; he is merely acting on the orders of a superior, taking this person from A to B. Under the revision, he would merely be required to state the reason why he is committing him into custody at the final place of disposition. If the circumstances were not such that he could state the offence, he would say "I am bringing the prisoner on the orders of Colonel so-and-so," or "on the orders of the commanding officer of so-and-so." The custodian under subsection (3) is under a duty to report to higher authority an account of the offence alleged to have been committed by that person so far as is known. The keeper of the guardroom is under the necessity of putting in a report to higher authority so he must ascertain why he is holding the man in custody.

By Mr. Pearkes:

Q. This would not be limited to the same service—that is a seaman could be handed over to a detention barracks or guardroom of the army?—A. Yes, sir.

Q. There is no need to include a reference, as you have done in other cases, to the same service components?—A. In the draft regulations, which are being prepared to amplify this clause, provision is made for the parent service to remove a prisoner from the custody of another service as soon as notice is given to the parent service that a prisoner of that service is held. For example, an army man may be placed under naval custody. In that situation, the naval authorities

would immediately communicate with the closest army authority and ask that the prisoner be removed from naval custody.

Mr. STICK: That has been the usual practice.

The WITNESS: That is correct.

Mr. STICK: In Edinburgh Castle ranks of all the services are brought into custody and those services are notified accordingly.

Mr. PEARKES: There were cases in Canada where one service was responsible for looking after prisoners of another service over extended periods of time. I was only asking whether you considered it necessary to include a reference but you think it is adequately covered.

The WITNESS: Yes, sir.

Mr. BLANCHETTE: Mr. Chairman may I move the amendment to subsection 2.

Mr. GEORGE: I will second.

Mr. HARKNESS: The effect of this would be that a man could be held without an offence definitely having been placed against him?

The WITNESS: Yes, sir. For twenty-four hours.

Mr. STICK: A charge has got to be laid.

Mr. HARKNESS: As it originally stood there had to be a charge stated when the man was held but under the present amendment that is not required, you just have to give a reason.

Mr. BLACKMORE: The reason could be stated in very general terms; it might be almost without meaning according to the wording here.

The VICE-CHAIRMAN: Would you repeat your question?

Mr. BLACKMORE: As it is stated now the reason could be in such general terms as to have almost no significance at all. I am wondering if that is desirable. It says: "—in which is stated the reason why the person so committed is to be held—". A person could state a reason in such general terms that it meant nothing, or it might mean anything. Do you think this is desirable?

The WITNESS: I would ask the chairman to call Squadron Leader Atherton, the Provost Marshal of the R.C.A.F., on that question.

Squadron Leader E. T. ATHERTON, Provost Marshal R.C.A.F.: So far we have been thinking, I suggest, more in terms of disciplinary action than in terms of security, but we in the air force provost are concerned with both discipline and security. I can foresee a case where it may be against the interest of security to divulge to the prisoner or to anyone else the reason that he is being held initially. The guard or escort, as has already been pointed out, may be a corporal and who should certainly not be entrusted with information that may affect the national interest. The corporal is simply told to convey the prisoner from point A to point B and there to deliver him. That, as far as I am concerned, is the reason underlying this particular section.

The VICE-CHAIRMAN: Does that answer the question?

Mr. BLACKMORE: Yes, if that is the only use it is put to.

Squadron Leader ATHERTON: I would suggest, Mr Chairman, that on only very few occasions would the escort not be made aware of the exact offence charged.

Mr. BENNETT: Does it not frequently happen that the officer in charge of a small unit does not know the charge, does not know what charge is going to be laid? Don't you think the charge should be made known at the time of the arrest?

Squadron Leader ATHERTON: I think the point is very well taken. In cases of absence without leave, the unit making the arrest does not know whether the individual is going to be charged with that or whether he will face the more serious charge of desertion. That information is not always known to the escort unit. When they apprehend a man who has been reported absent from his unit the escort does not know whether the charge is going to be absence without leave or desertion.

Mr. HARKNESS: Nobody is going to know that until a summary of the evidence is taken in any event. The only point that strikes me is that it is contrary to our whole general scheme. You can't hold a man in custody without laying a specific charge against him. In civil courts you can hold a man on a charge of vagrancy until such time as you determine what the formal charge is going to be.

Squadron Leader ATHERTON: Well, sir, in the case of a man who has absconded from his unit and is apprehended, let us say, in Montreal and must be taken right across the country through a series of different units—A, B, C, D—none of these units knows the exact nature of the charge. Let us say the escort arrives in Winnipeg and on account of flood conditions, he has to stop overnight, certainly he must have some kind of a reason to justify holding the prisoner in custody over night; and that reason simply is that he is prevented from carrying on his escort duties at that time. That is a valid reason for transferring custody *pro tem* but it has nothing to do with the charge being laid; he has to wait until he gets back to his unit before he becomes aware of the exact charge.

The VICE-CHAIRMAN: Shall the amendment carry?

Mr. ADAMSON: I would like to ask the provost marshal if there have been cases where breaches of security have occurred—these are getting more and more important as time goes on—whether it is deemed feasible to hold a man in his own unit or in the custody of the provost marshal until the evidence is obtained against him? Has that been done rather than sending him back to his unit?

Squadron Leader ATHERTON: Sir, I hesitate to answer that question without consulting my own files.

Mr. ADAMSON: But under this section that would be possible as is envisaged in this section?

Squadron Leader ATHERTON: Very definitely.

The VICE-CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Section 132, "Limitations in Respect of Custody".

132. (1) Where a person triable under the Code of Service Discipline has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court martial has been ordered to assemble.

(2) Every person held in custody in the circumstances mentioned in subsection one, who has been continuously so held for a period of twenty-

eight days without a summary trial having been held or a court martial having been ordered to assemble, shall at the expiration of that period be entitled to direct to the Minister, or to such authority as the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case and in any event that person shall be so freed when a period of ninety days continuous custody from the time of his arrest has expired, unless a summary trial has been held or a court martial has been ordered to assemble.

(3) A person who has been freed from custody pursuant to subsection two shall not be subject to re-arrest for the offence with which he was originally charged, except on the written order of an authority having power to convene a court martial for his trial.

Mr. ADAMSON: Could we have the reasons for this? This appears to be a new section.

The WITNESS: Yes, sir, subsections (2) and (3) are new. It was felt that something should be done to give persons in custody an absolute right in certain circumstances to be released.

Mr. ADAMSON: 28 days within which to exercise their right of appeal and 90 days for absolute release?

The WITNESS: That is right.

Mr. STICK: They can't be held indefinitely.

The WITNESS: That is right.

Mr. STICK: I agree with you there.

Mr. GEORGE: This provides for the absolute release of the man unless the case is proceeded with within a definite time limit?

The WITNESS: That is right.

By Mr. Harkness:

Q. I see by section 3 here that when a person has been freed from custody he is not subject to re-arrest except on the written order of an authority having power to convene a court martial for his trial. Is here a limitation to that? Can they do that two years later?—A. There is a 3-year time limit within which a person may be tried.

Q. Any time within 3 years he can be re-arrested, charged and tried? —A. That is right.

Q. Why do you take that position?—A. I think that we must have some provision for his re-arrest but, at the same time, not leave him open to the ordinary susceptibility of re-arrest, because subclause (2) of the clause could easily be circumvented if we did not put that specific provision in there. For instance a man could be released on the ninetieth day and re-arrested on the ninety-first day. There would be no protection for him in that situation. Under (3), only an authority with power to convene a court martial, could have him re-arrested. There is no reason why a person released should not be susceptible to trial, just as in the case of all other offenders. Clearly the 3-year period would apply.

Q. There is nothing there which provides that the civil authority may arrest him?—A. No. sir.

The VICE-CHAIRMAN: Shall the section carry?

Carried.

The VICE-CHAIRMAN: We now come to part VII, "Service Tribunals". For your information, gentlemen, Commander Hurcomb is in charge of this section. I will ask him to take the stand while this section is under discussion. Section 133, "Application".

Commander Hurcomb, Judge Advocate of the Fleet, called:

Mr. PEARKES: Before we go on with this, Mr. Chairman, may I suggest it would be helpful if we had a general statement. There are various types of tribunals and I think it would be of assistance if we had a general statement about them.

The VICE-CHAIRMAN: I do not see any objection to that. Will Commander Hurcomb oblige the committee?

The WITNESS: This part covers the tribunals or bodies who have authority to deal with service offences. The arrangement of the part is this; we start off on the lowest plane and work up to the highest. These are the types of service tribunals. First of all you have the commanding officer's summary jurisdiction, then you have the superior commander's summary jurisdiction, and then you come to the general court martial which is the highest form of tribunal; then the form of court martial that is at present known in the army as the "district court martial", but which we call in here the "disciplinary court martial". Finally we have the standing court martial which would apply in wartime, but in wartime only. During the war both the army and the air force had what was known as a field general court martial which had exceptionally broad powers. The army and the air force officials felt that this form of court martial was abused during the war, that it was used more often than was necessary. It was originally intended to be used only where it was not feasible to convene either a general or a district court martial, but this type of court was used far more frequently than was originally intended and both the army and the air force felt that we should dispense with them for the future. The summary court martial, which was adopted by the army only during the last war, consisting of a single officer, would perhaps be the best type for use in wartime for offences not sufficiently serious to justify trial by general disciplinary court martial. Now, those are the major types of tribunal, Mr. Chairman, and as we go through each of these types of tribunal attention will be drawn to any changes that have been made.

Mr. ADAMSON: What you propose there really is a new type of officer court martial similar in function to that of a magistrate in civil life?

The WITNESS: It is rather similar to a magistrate. As a matter of fact Major McClemont sat as a standing court martial during the last war. Generally, it is a simple and fairly straightforward procedure and has the advantage that cases can be disposed of expeditiously.

Q. Speed.—A. Speed is the essence, but the training of the officer who comprises this court is also of the essence.

By Mr. Pearkes:

Q. I would like to ask one or two more questions regarding the standing court. The general opinion held in the services was that the standing court martial was a good procedure.—A. In the navy, sir, we didn't have it, we didn't have to resort to it because of the powers of our commanding officers. We must conclude that, since this proposal has been approved on the highest service levels, the army are satisfied with their experience and the air force are attracted by the army's experience.

Q. I must say in my own personal experience I think the standing court martial is excellent and I am not quite certain that it should be limited to one officer. I question that, and I wonder why there is not a standing court. Personally I would like to see the standing court martial extended very considerably on active service so that practically every offence would go before a standing court martial. And that would remove any of the objections to which I have referred in the part, the possibility of undue influence being

brought on the individual officer and also on the question of getting uniformity of punishment for similar crimes. One point that I question at the moment is the desirability of having that attributed to one officer; why it would not be of the same size as an ordinary court martial I do not know. I may be able to get the answer to that question later on; but what I would like to ask now is—you say there is one of the officers present who served in this capacity on these courts martial?

Major McCLEMONT: Yes, sir, I was one of them.

Mr. PEARKES: Your previous experience was what, before you served in that capacity?

Major McCLEMONT: My previous experience, sir, was active service in a battalion for a matter of 3 years and in a training centre for a year. I was overseas. I was in the reserve forces some 15 years before the war. I was also a barrister and solicitor in Ontario, and it was considered that those qualifications made me competent to carry on this particular type of court martial by myself, and also as a permanent president of the normal district court martial. I believe, speaking for myself alone, that the idea was considered to have worked out very well in Canada. It was not tried overseas. Personally I tried 937 cases in a matter of two years, and I believe there was a petition against only one of my convictions.

Mr. PEARKES: That was a highly satisfactory job.

Major McCLEMONT: I think that was general throughout.

Mr. PEARKES: May I ask you one or two more questions?

Major McCLEMONT: Certainly.

Mr. PEARKES: Were none of these forms of court martial held overseas?

Major McCLEMONT: No, not overseas, there I believe they followed the standard procedure.

Mr. PEARKES: Can you tell me whether, in the light of your experience, and that of officers of similar experience and qualifications to your own, it would have been desirable to have had that form of court martial in the field?

Major McCLEMONT: I think so. Generally speaking, I think most of them were officers with a fair amount of seniority, they were probably beyond the age where they could go across the channel and take part in combat, and almost invariably they were barristers in civilian life as well as having considerable regimental experience and training background. Training in the law was considered generally to be a desirable asset, and it was not necessarily restricted to the purely administrative type in the first instance.

Mr. PEARKES: Do you know whether any of the officers of the permanent force were appointed in that capacity?

Major McCLEMONT: So far as I know I do not think any were. In most cases they would not have the qualification of barrister, but I think the permanent force officers could have been used to advantage, irrespective of the fact that they were not barristers.

Mr. PEARKES: But to your knowledge none of them were?

Major McCLEMONT: I do know of one officer who was not a barrister but who was president of a court martial.

Mr. PEARKES: But you think officers of the permanent force might very well have served in that capacity? They did not have to have previous experience in peacetime court martials?

Major McCLEMONT: I would say that the bulk of them had never had any experience of courts martial.

Mr. PEARKES: Probably none of them?

Major McCLEMONT: Probably none of them.

Mr. PEARKES: Because it was unusual to have a non-permanent officer serve in that capacity?

Major McCLEMONT: That is right, the average non-permanent officer rarely got involved in courts martial.

Mr. PEARKES: Are you prepared to say that perhaps experience with courts martial in peacetime would carry a certain amount of weight in time of war?

Major McCLEMONT: I don't think so, necessarily.

Mr. PEARKES: That is part of the argument that I got into the other day, about the desirability of training officers in court martial work so that they would have experience when they went on active service.

Commander HURCOMB: May I interject; no doubt it is none of my business, but I was wondering if there is not some misunderstanding; were you asking Major McClemont about ordinary courts martial with permanent personnel serving on them?

Mr. PEARKES: Yes.

Commander HURCOMB: Now, Major McClemont, were you speaking of what we call standing courts martial.

Major McCLEMONT: Yes.

Commander HURCOMB: But you were also speaking about the permanent president.

Major McCLEMONT: I am sorry, I was talking about the permanent president and whether it was desirable to have district courts martial as well as standing courts. District courts martial are very necessary in the technical type of case, one dealing with accounting or something like that, and it is very helpful to have one or two other persons on the court, besides the president, who are familiar with the particular type of crime; in that case he becomes simply another president at a court martial convened in the usual way. So far as these standing courts martial were concerned, the punishment meted out was limited to 2 years; we had no power to deal with officers or warrant officers, we could deal only with N.C.O.'s and other ranks. The arrangement was simple and direct. We could move from one area to another in the command or within districts, and all persons charged with court martial offences would be brought to that place from their various units, ready to be tried on a particular morning, and we could dispose of eight or ten cases in a day very much like a police magistrate does in police court.

Mr. PEARKES: I heartily approve of the system; I think it is an excellent innovation and my only feeling is that consideration should be taken to extending it so you may have permanent boards instead of a permanent president of a board, or a standing court martial of one man. I think for serious cases you might have a permanent board which would review these cases. Is that envisaged?

The WITNESS: It could be done under this Act, whether it will be or not is a matter for administrative consideration. At the present time, as far as the navy is concerned, we are not convinced that a standing court martial would be a good thing. I cannot speak for the army or air force.

Mr. ADAMSON: What was the dividing line between the cases you tried as a court martial sitting alone and as a court martial which was convened?

Major McCLEMONT: The dividing line was that a standing court martial would only deal with desertion and absence without leave.

Mr. ADAMSON: Ninety per cent of the trouble was that?

Major McCLEMONT: Yes, that is true. It seemed to work out reasonably well and they extended our jurisdiction to cover any offence under the Army Act providing there was a limit of two years.

The VICE-CHAIRMAN: I submit the explanatory remarks were very interesting and I think we should now proceed with section 133 under the heading Part VII, "Service Tribunals—Application":

> 133. (1) Every reference in this Part to a commanding officer shall be deemed to be a reference to the commanding officer of the accused person, or to such other commanding officer as may by regulations be empowered to act in lieu of the commanding officer of the accused person.
>
> (2) Every reference in this Part to the rank of an officer or man shall be construed in accordance with regulations made by the Governor in Council and every such reference shall be deemed to include a person who holds any equivalent relative rank, whether that person is enrolled in, or is attached, seconded or on loan to the Canadian Forces.

Carried.

And now section 134, "Investigation and Preliminary Disposition of Charges":

> 134. (1) Where a charge is laid against a person to whom this Part applies alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.
>
> (2) Where, after investigation, a commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

Carried.

The VICE-CHAIRMAN: Section 135 is a very lengthy section, and I respectfully submit that I should proceed section by section and call the general section as a whole to be carried later on.

Mr. PEARKES: Might we have an explanation at the beginning as to why it is necessary to have a special section dealing only with the Royal Canadian Navy? May it not be possible to have an all-embracing section which deals with these charges?

The VICE-CHAIRMAN: I believe, gentlemen, that we should first place section 135(1) before the committee and we could have explanations from Commander Hurcomb or any other witness. Section 135 is headed "Summary Trials by Commanding Officer within the Royal Canadian Navy", and subsection 1 is as follows:

> 135. (1) This section shall apply only in respect of persons who under Part IV are liable to be charged, dealt with and tried within the Royal Canadian Navy.

Mr. PEARKES: There is the point. Why, when you are trying to obtain unification, cannot you get together and prepare one section which would fit into all three services?

The WITNESS: That could have been done. We could have had a single section on summary trials applicable to all three services, but there would have been differences. We will come to those differences as we go along. We felt in the interests of the users of these provisions it was more practical to have a separate one for the navy and the army and air force. There will be differences, and we thought in order not to confuse the forces it would be more sensible to have two sections.

Mr. PEARKES: I suggest all these subsections stand until we have had a chance to examine this section and the following section to see where the differences are and have them explained to us. Why was it necessary to have this special section because, let us bear in mind, the whole principle of this Act is to get unification between the services? I question very much the necessity of having

two complete sections, one dealing with the navy and one with the army and air force. I think we should have army and air force representatives here or senior officers from the army and air force to explain why they cannot accept the naval conditions or vice versa. It does seem to me that the whole purpose falls within this section. I am not at all convinced that a little more give and take would not have produced one section which would have covered all of them. I think it is undesirable to have different standards of discipline in the three services.

The VICE-CHAIRMAN: Gentlemen, I am inclined to agree in part with what General Pearkes says. I repeat, I am in the hands of the committee, but it may be we will have a better understanding of the subsections under study here if they were postponed to the end of Part VII. We would then have studied the other sections and will be in a better position to appreciate the departure which has been made in this case. As I said before, the departure is due to the fact that commanding officers in the navy have got to have more authority considering the special circumstances of their respective commands. If the committee so wishes I am ready to let this clause stand until we have considered the other sections of Part VII, and at that time we will come back to this section. It is merely an expression of opinion on my part.

Mr. GEORGE: I wonder if the witness could give us the difference between sections 135 and 136?

The WITNESS: In the case of the army and the air force section 136, subsection 4, provides except when the offence would call for only a very minor punishment, an accused person would always have the right to elect to be tried by court martial rather than by summary trial. In the case of the navy that right exists only as to petty officers first class and chief petty officers, and I should add even in their case it is not an unqualified right of election. The second difference is that the punishment of dismissal with disgrace or dismissal cannot, in the army and air force, be imposed summarily by the commanding officer, whereas it can in the case of the navy. Actually that is a difference that is more apparent than real, because in the case of the navy this punishment cannot be imposed without approval of the Minister. While the punishment appears to be the commanding officer's punishment, it is really on a much higher level. The third difference is that imprisonment cannot be imposed summarily by air force and army commanding officers. In the navy, imprisonment can be imposed by the commanding officer within the limit of ninety days and subject to the approvals we will discuss later on.

By Mr. Pearkes:

Q. That imprisonment would not refer to being placed in custody aboard ship; that would be imprisonment in a naval or army defence barracks?—A. No, sir, that would be imprisonment in a civil prison or reformatory, except in the case of war when we might have service prisons. This punishment is not ordinarily undergone in detention barracks and cannot be carried out on board ship.

The VICE-CHAIRMAN: What is the wish of the committee, shall we proceed now?

Mr. GEORGE: We are going to have to stand both 135 and 136.

Mr. PEARKES: I would suggest we go through these, but not pass any section. They can be explained to us, but we will not pass the section or subsection until we have reviewed these two together.

Mr. ROBERGE: That suggestion of General Pearkes would give us a view of both sides.

Mr. GEORGE: Section 121 is stood over now and we cannot very well deal with these two without passing 121.

The WITNESS: I do not think that would come into this. It deals with reduction in rank of officers which is not a punishment that can be imposed summarily under section 135.

Mr. PEARKES: That is quite right, but we have not got unification.

The WITNESS: General Pearkes mentioned that the essential feature of this Bill was unification. I am sure he did not mean that. This does not amount to the creation of a single fighting force; the identity of the three services is retained. It is true the object of the bill is to obtain uniformity to whatever extent is practical, but General Pearkes I am sure would not suggest that be done to the detriment of essentials.

The VICE-CHAIRMAN: Gentlemen, if I understand these sections correctly, the only difference in what is proposed to be done and what is suggested by General Pearkes is that instead of having only one section with numerous exceptions we can put it in one section and have exceptions for the navy. That is the only difference between what is proposed to be done and General Pearkes' suggestion.

Mr. WRIGHT: I think we can carry this unification too far. There is a distinct difference between a naval vessel in a foreign port, away from other units, and the army and the air force. I think we would be going too far in insisting on absolute unification. I think we would lose something in discipline if we did.

The VICE-CHAIRMAN: Shall we proceed with section 135?

Mr. DICKEY: There is no use going over those sections twice. If we are going to stand the sections we should do so and proceed to later sections. I think we can go through these sections and perhaps let the sections stand pending some further discussion on the general principle of how far it may be required to have different discipline standards in the navy as opposed to the other two services.

The VICE-CHAIRMAN: I agree, and I respectfully submit once we have studied the matter section by section we will have a better idea of the departure and we can make up our minds if we are going to pass it or defeat it. I think we should proceed section by section and once we have gone through it we can decide if we are going to pass it or not.

Subsection 1 of section 135:

> 135. (1) This section shall apply only in respect of persons who under Part IV are liable to be charged, dealt with and tried within the Royal Canadian Navy.

Mr. PEARKES: I do not think that should carry because I am not convinced that it is necessary to have a section which applies only to the navy. Now, why does the navy not allocate the right to elect to be tried by a court martial when it is granted to the other two services? I feel that is one point for which I cannot see any justification.

The VICE-CHAIRMAN: Instead of saying "carried" I will read subsection 2:

> (2) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied,
>
> (*a*) the accused person is either a subordinate officer or a man;
> (*b*) the offence is not one for which the punishment of death may be imposed;
> (*c*) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;
> (*d*) the commanding officer is not precluded from trying the accused person by anything done under subsection nine or subsection ten; and

(*e*) the offence is not one which in regulations made by the Governor in Council the commanding officer is precluded from trying.

Mr. PEARKES: I think we very definitely want to be told the difference between the powers of a commanding officer in the navy and the powers of a commanding officer in the air force and army, and the reasons why the other services cannot accept these features.

Mr. ROBERGE: Mr. Chairman, would you read the same item in section 136? It seems to me the wording of 136, subparagraph 2, is identical.

The WITNESS: Before we go any further, the only difference between subsection 2 of 135 and subsection 2 of 136 is the subordinate officer provision in subclause (*a*). The difference there is that in the navy it would be open to a commanding officer to try a subordinate officer, that is a midshipman or an acting sub-lieutenant, and this trial would take place under subclause 4. However, the powers of punishment in that case are very limited and all the commanding officer can do is impose the punishment of forfeiture of seniority or service towards progressive pay.

By Mr. Pearkes:

Q. What is the situation in the air force and army?—A. In the army and air force only persons below the rank of warrant officer can be dealt with summarily by the commanding officer.

Q. Why does not the army and air force agree to dealing with these very junior ranks—why does it not give the commanding officer that right? I do not know what subordinate ranks are referred to in the army, but if it refers to a second lieutenant in training, why should the commanding officer not have the right to discipline him occasionally?

Brigadier LAWSON: In the army a warrant officer is a very important person and must be kept so.

Mr. PEARKES: I thought we were talking about subordinate officers.

Brigadier LAWSON: Under section 136, subsection 2, the commanding officer cannot try anyone who is not below the rank of warrant officer.

Mr. PEARKES: That is different to the explanation which was given; it is most confusing. What is the difference really? Surely a chief petty officer is comparable in rank to a warrant officer?

The WITNESS: He is not quite, sir. We have no rank really comparable to an army warrant officer.

Mr. DICKEY: Certainly for disciplinary purposes he has never been comparable?

The WITNESS: No.

Mr. PEARKES: In the army is there no rank comparable to a subordinate officer?

The WITNESS: Oh, yes, an officer cadet.

Mr. DICKEY: I think if we recognize the status of a warrant officer and give him the right not to be tried by his commanding officer, we cannot go ahead of that rank and give the commanding officer the power to try a subordinate officer.

Mr. PEARKES: Do you mean to say a commanding officer cannot punish in any way a subordinate officer, one of these young cadet officers?

Brigadier LAWSON: That is right, sir.

Mr. PEARKES: I cannot help but think the navy arrangement is infinitely better. It would help a very junior officer in the army if his commanding officer could deal with him without sending him up to a court martial.

The VICE-CHAIRMAN: I am surely pleased to hear you say that.

Mr. PEARKES: It is the only common sense thing, surely. In the past many youngsters' lives have been ruined because the commanding officer did not wish to send that very junior officer up to a court martial. That junior officer goes on from one excess to another excess but he cannot be disciplined as his commanding officer has no authority to discipline him at all. He goes from one excess to another until eventually he is court martialled and is dismissed. Had there been opportunities for dealing with those junior officers by the commanding officer I believe that many youngsters' careers could have been saved. I think the navy is to be commended for bringing this in and I heartily agree that as far as the subordinate officer is concerned, the same principle should apply in both services.

The VICE-CHAIRMAN: That is just one of the fine points of the naval service.

Mr. DICKEY: We can pass this section and go on and discuss the army and air force section.

By Mr. Adamson:

Q. I gather in the navy that you have a list of midshipmen and sub-lieutenants who have their seniority. The first four may have eighteen or fifteen months' seniority, so their seniority could be affected by three months or six months.—A. Yes, sir, very often midshipmen come out of the inter-service college with the same seniorities. Now, this will make it possible to put one fellow down below his classmates.

Q. So the midshipman would have to wait three months for his commission?—A. Yes.

Q. Does it apply to midshipmen and sub-lieutenants?—A. Only midshipmen and acting sub-lieutenants; not confirmed sub-lieutenants.

By Mr. Pearkes:

Q. Does the commanding officer have the right to inflict a fine on a midshipman?—A. He does not, sir, except indirectly by this other punishment in clause 4. He can postpone his right to his progressive increase in pay.

Q. You cannot allocate a fine?—A. You cannot, sir.

Mr. GEORGE: I move we adjourn until 4 o'clock.

Mr. STICK: I second the motion.

The VICE-CHAIRMAN: Gentlemen of the committee and the department, I thank you very much for your fine work this morning, and we will adjourn now until 4 o'clock this afternoon.

The Committee adjourned.

AFTERNOON SESSION

MONDAY, May 29, 1950.

—The committee resumed at 4 p.m.

The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum. I was not able to be here this morning but I am informed by Mr. Langlois, the vice-chairman, that you reached section 135 of the bill.

Mr. ROBERGE: That is correct, sir.

The CHAIRMAN: Were you dealing with it by subsections?

Mr. ROBERGE: Yes.

The CHAIRMAN: Were any of the subsections passed?

Mr. ADAMSON: No, Mr. Chairman; what we were doing was this: we were dealing with all the sections in total and then we were discussing the main points at issue.

The CHAIRMAN: This section deals with summary punishments?

Commander HURCOMB: Yes, sir.

Commander P. Hurcomb, Judge Advocate of the Fleet, recalled:

The CHAIRMAN: Shall subsection 1 carry?

Mr. ADAMSON: We dealt with that.

Mr. PEARKES: I think the idea was to read through the subsections and ask any questions and then go ahead and read section 136 and find out whether they could be combined or whether the differences could be overcome.

The CHAIRMAN: Is it the wish of the committee that we should read the two sections and have them considered at the same time?

Mr. ROBERGE: They were read this morning.

Mr. GEORGE: Before we start, Mr. Chairman, I wonder if one of the witnesses could explain this matter. As I understand it the purpose of this Act is to consolidate much that was in the former Act, the desire being to get these three codes into one. I think there was some difference of opinion as to just what we were trying to do.

The CHAIRMAN: These are both long sections. We could read both sections subsection by subsection. But they are both very long sections and I am not sure that that would expedite things, I think what I have in mind is something along the lines of the views just expressed by Mr. George. I wonder whether Commander Hurcomb could not give us briefly first the reasoning of the department leading to the drafting of two sections; and, secondly, point out in a general way the differences that exist.

Mr. GEORGE: That was done this morning. It seems to me that mention was made several times this morning of the fact that there is a certain amount of duplication.

Brigadier LAWSON: Mr. Chairman, I would like to say, the real purpose of this section is to get the best possible disciplinary code for the three services. In order to achieve that aim representatives of the three services sat down together and analysed their existing disciplinary code, decided what changes were desirable as a result of that analysis, and through discussions made by the service representatives we found that we had an almost unanimous disciplinary code, but we did find that there were one or two things that were special in one or other of the particular services and which that service needed, so we did not think that absolute uniformity was so important that any service should be asked to give up anything that it really needed to maintain adequate discipline in the service having regard to the special conditions of that service; in other words we did not want unity or uniformity at the expense of a fair and efficient disciplinary code.

Mr. PEARKES: I think we should put on the records of this committee the remarks of the Minister of National Defence. I quote from his remarks under date of April 18th, at page 1681 of Hansard, at the bottom of the page:

> The purpose of the legislation is far more than simply to consolidate existing defence measures. The purposes are:
>
> (1) to include in one statute all legislation relating to the Department of National Defence and the Canadian forces;

(2) to have a single code of service discipline so that sailors, soldiers and airmen will be subject to the same law;

(3) to make all legislation applicable to service personnel Canadian legislation;

(4) to obtain uniformity in the administration of service justice;

(5) to provide a right of appeal from the finding and sentences of courts martial;

(6) to abolish field general courts martial;

(7) to provide for a new trial on the discovery of new evidence;

(8) to provide in the administration of the department more efficient and expeditious means for the transaction of routine business;

(9) to establish the position and functions of the chiefs of staff;

(10) to abolish, as obsolete, provisions for levée en masse and enrolment by ballot; and

(11) to authorize the employment of regular forces to meet a national disaster, such as a major flood, and to permit the use of reserve forces for these purposes.

Those are the pertinent paragraphs. I do feel very keenly that it is desirable to have a uniform code of service discipline so that sailors, soldiers and airmen are operating under the same code. I recognize the fact that we have seen already that there are some cases where special consideration may have to be given to one service, but here we are up against the same thing; it is simply the wish of one of the services to have a form of discipline dealt with in section 2 —paragraph (*a*)—which so far as the navy is concerned gives the commanding officer on a ship the right to discipline and punish not to a very wide extent, to the extent of a fine of $10, and similar punishment; in other words, the right to punish very junior young officers, mere children who have come into the service. When we come to the next paragraph, paragraph 136, we find that the army and the air force trip on that rock and they say that they do not want to treat their junior officers in the same way, they don't want the second lieutenant or the junior flying officer who has been at the same tri-service college as a midshipman, who has been trained for the navy—they don't want their commanding officer to have the right to punish that junior officer. No reference is made to the fact that you could have the junior officer punished by the commanding officer in the way that is done in the navy. I do not refer to the case of warrant officers. I think that is an entirely different situation. A junior officer is only a child of 18, 19 or 20 years of age, without experience; he is entering the service for the first time; he does not know the ways of life at all, he has just come out of college. The regimental sergeant major and the warrant officer have reached the top of their rank. If it is in peacetime he has probably been in the service approaching 20 years. No commanding officer is going to fine him $10. I think it is ridiculous, and it can be overcome by adding after "man" in 135-2 (*a*), the words "below the rank of warrant officer"; that will cover the whole situation. That would mean that an army C.O. could punish a subordinate officer, a youngster, but he would not have the power and he would not want it, to punish a warrant officer. I have seen young men come into the permanent force for a good many years out of college. As soon as they graduate they go right into the permanent force; and I want to tell this committee that there are cases where a very young man who has gone a little bit wild in his regiment would have been saved if his commanding officer had been able to administer some discipline in the early days. There was one time when there was an unofficial system of administering discipline. The senior subaltern in the mess had certain unofficial prerogatives and he was able to discipline the newly joined second lieutenant. Conditions in the service have changed and the senior

subaltern in the Canadian forces does not have the same opportunities today that the senior subaltern of forty years ago had in a British regiment; and I do believe that if the army and the air force had the same privilege it could be of advantage to those services. Now, this is not in a sense a feature upon which the principle of unity should break down. I cannot see that it is of such pre-eminent importance that the three services should not get together and carry out the express wishes of the Minister there, that sailors, soldiers and airmen be subject to the same law, the same code of discipline; and you cannot tell me that it is healthy in a college such as Royal Roads or the Royal Military College where the three services are all learning their military law together for them to be told: if you go into the navy your captain will be able to discipline you but if you go into the army or the air force your C.O. has no power at all over you, I honestly believe, speaking from some experience, if I may say so, that it will be very much in the interest of discipline, in the case of officers particularly, if the commanding officer in the army and the air force has the same power as is now granted the commanding officer of a ship, and I think it is the one case in which we should allow the principle of universality of discipline for after all, it is only a minor question as to whether a man who is responsible for the lives of hundreds of sailors, soldiers or airmen and responsible for hundreds of thousands of dollars of government equipment should have the right to impose a fine on a child of nineteen.

By Mr. Dickey:

Q. I was always under the impression that a junior officer could be disciplined by certain superior officers. Is it intended to continue with that?—A. The only provision for punishment of an officer otherwise than by a court martial is at present contained in our regulations and these regulations say a subordinate officer whom the captain has found guilty of misconduct may have imposed on him forfeiture of time or seniority by the captain for any period not exceeding three months, and by the minister not exceeding twelve months. That is the only punishment that may be imposed on an officer other than by court martial.

Q. That is in the navy only?—A. That is in the navy only.

Q. What about the army and air force?

Brigadier LAWSON: Clause 137 of the bill covers that.

By Mr. Dickey:

Q. My understanding was that an officer did not have to go up for a court martial in every case, because there was authority in the district officer commanding and certain other superior officers to hear summary trials and to mete out such punishment as a severe reprimand and that sort of thing.—A. That has always been so in the army and air force.

By Mr. Pearkes:

Q. Could the commanding officer in the navy be a lieutenant commander in a ship?—A. Yes, sir.

Q. And he would rank with a captain in the army?—A. A major, sir.

Q. And what would be the corresponding rank for a commander?—A. A lieutenant colonel.

Q. So you are according to the officer of the navy powers which you will not grant to a corresponding or even senior officer in the army. You are saying in effect that Lieutenant Colonel Jones cannot discipline a second lieutenant, cannot fine him $10, cannot reduce him in seniority, although the lieutenant commander of a destroyer could.

The CHAIRMAN: Do not these differences arise out of the fact that ships of the navy are self-contained units, whereas in the army or air force you probably have larger establishments nearby. Is that where it stems from?

The WITNESS: That is right, that is the root of all the disciplinary distinction between the navy and army and air force.

By Mr. Dickey:

Q. The commanding officer in the navy very often has to have certain powers available at his hand that are not required in other services?—A. That is it.

By Mr. Langlois:

Q. This is not the only case; there are more powers given to the navy officers than the army or air force throughout.—A. It runs throughout.

Mr. BENNETT: We are going to strike this snag in every section. Mr. Dickey said this morning we should read over each section and pass each one subject to the overriding objection that navy, army and air force officers should be treated alike. We can pass the section and General Pearkes can object on principle.

The CHAIRMAN: Would that meet the wishes of the committee?

Mr. LANGLOIS: That is what we have been doing right along.

By Mr. Adamson:

Q. I understand the captain designated in this clause might be a two-stripe lieutenant and possibly as low in rank as a senior sub-lieutenant. Do they rank as captains?—A. I am not aware of any case of a sub-lieutenant being captain, except possibly in some Fairmiles. Certainly it could not happen in peace time that a captain of a ship could rank lower than lieutenant.

Q. Certainly in a corvette it might be a lieutenant and on occasion it might happen in a destroyer?—A. I think that is the case, sir.

The CHAIRMAN: Shall we look at the several subsections and pass what we can?

Subsection 1 of section 135.

Carried.

Mr. PEARKES: That is one we understand.

Mr. LANGLOIS: We had that this morning and we had reached subsection 3.

The CHAIRMAN: What had happened to Nos. 1 and 2?

Mr. LANGLOIS: They have been stood.

Mr. PEARKES: We did not finish dealing with subsection 2.

Mr. LANGLOIS: We were on subsection 2.

The CHAIRMAN: We will start with subsection 2 and I will read it again. Subsection 2 of section 135 reads:

(2) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied,

(*a*) the accused person is either a subordinate officer or a man;

(*b*) the offence is not for which the punishment of death may be imposed;

(*c*) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;

(*d*) the commanding officer is not precluded from trying the accused person by anything done under subsection nine or subsection ten; and

(*e*) the offence is not one which in regulations made by the Governor in Council the commanding officer is precluded from trying.

By Mr. Pearkes:

Q. There are one or two points there. Dealing with subsection (*d*) first of all, that denies a sailor the right of having his case tried by a court martial?—A. That of itself does not; it is simply a cross-reference to the other section which is subsection 9.

Q. And subsections 9 and 10 do that?—A. They do not give the power of election to be tried by a court martial to anyone except a chief petty officer or petty officer first class.

Q. I was going to ask about subsections (*b*) and (*c*); they seem to me to be very wide. You are giving a commander of a ship the right to dispose of crimes for which the punishment may be life imprisonment, although of course he does not have the power to award that punishment. However, he can deal with an offence for which the punishment is life. Of course, you have a qualifying clause in subsection (*c*) which says provided he does not think the gravity of that offence is so great that he has to give the maximum punishment?—A. Yes, sir.

Q. Is that not giving wide powers to the commanding officer?—A. It is, sir, but it is a power that is going to work for the benefit of the man. You may find a man getting a sentence which is less than the sentence he would have received had he been tried by a court martial.

Q. There is no chance of that man being retried?—A. He cannot be tried again, sir.

Q. And his punishment cannot be increased?—A. It cannot, sir.

The CHAIRMAN: It seems to me to be favourable to the man. I wonder if the navy is satisfied with that?

The WITNESS: Oh, very much, sir. That is the way it is today and reliance is placed on the judgment of the commanding officer. We entrust him with a ship worth $3 million, so why should we not trust him with the responsibility of not being too lenient with the men?

Carried.

The CHAIRMAN: Subsection 3 reads:

(3) A sentence passed by a commanding officer at a summary trial shall not include any of the following punishments,

(*a*) death;
(*b*) imprisonment for a period exceeding ninety days;
(*c*) detention for a period exceeding ninety days;
(*d*) any other punishment that by regulations made by the Governor in Council he is precluded from imposing.

Mr. HARKNESS: I think that should stand.

Mr. ADAMSON: We are not carrying these subsections, we are just reading them over.

The CHAIRMAN: I was treating them as being carried subject to the overriding objection to the section as a whole.

Mr. ADAMSON: Subject to subsequent review.

Mr. STICK: Does this mean the commanding officer cannot sentence a man to life imprisonment?

The WITNESS: Oh, definitely. The maximum is ninety days.

Mr. GILLIS: This is an extension of the previous section?

The WITNESS: No, this is identical with the existing law.

By Mr. Pearkes:

Q. There is a difference now between what the commanding officer in the other services can award and what a naval officer can?—A. Yes, and that difference is being reduced by this bill.

Q. Can you tell us what the difference is?

By the Chairman:

Q. Can you give the difference briefly?—A. The punishment of dismissal with disgrace or dismissal cannot be imposed summarily in the army and air force, whereas it can in the navy.

By Mr. Pearkes:

Q. It still can?—A. I am speaking of the situation under this Bill and under the existing law.

Q. It cannot be given under the new Act?—A. It cannot be given by the commanding officer in the army or air force.

Mr. LANGLOIS: The attention of the committee was drawn to the fact that in smaller vessels where the commanding officer is a junior officer, in Fairmiles, corvettes, it has been the practice to refer these cases to the commanding officer of the parent ship, who is a much senior officer.

The WITNESS: The Fairmile, as I understand it, was a tender to a larger ship. Now, under subsection 5 you will find a reference to the commanding officers of tenders. If they are detached and inaccessible to the parent ship then the captain of the Fairmile has certain powers of punishment, but if they are accessible to the parent ship the punishment must be imposed by the commanding officer of the parent ship.

By Mr. Pearkes:

Q. Is dismissal the only difference?—A. No, sir, imprisonment cannot under the new Act be imposed summarily by the commanding officer in the army and air force, whereas it can up to a period of ninety days by the naval commanding officer.

Q. If this Act is passed the commanding officer of the army or air force will not be able to give imprisonment?—A. That is so, and that is so today, sir.

Q. Are there any other differences?—A. It is difficult to avoid reading all of them, sir. These are the provisions of section 136, subsection 3, and that is where you will find what the army and air force commanding officer will be able to do. Would you like to hear what the commanding officer in the army and air force can do?

Q. I would like to know what they cannot do and what the naval men can do. We will be able to see how near we are getting to this single act of service discipline.—A. I mentioned dismissal with disgrace and dismissal as punishments which can be awarded by the navy and not the others. Imprisonment and detention in excess of thirty days in the army and air force cannot be imposed summarily unless approved by a senior officer, whereas in the navy the whole ninety days would have to be approved by the senior officer.

Mr. ROBERGE: Would it clarify this to read the subsection of section 136?

The CHAIRMAN: Unfortunately some of these sections run parallel and some do not.

Mr. ADAMSON: I would like to make one interjection here: I do not object to the imprisonment and detention clause, but I think giving the captain power of dismissal from the service is a very, very severe punishment.

The WITNESS: Yes, sir ,but here is a point about that. This punishment while it is a commanding officer's punishment cannot be carried out until it is approved by the minister.

By Mr. Stick:

Q. It has to go to a higher court for review?—A. Before this punishment is effective it must be approved by the minister.

Q. The captain tries a man and sentences him to be dismissed with ignominy from the service, then the case goes to the minister and if the minister is kind hearted or for some reason wants to change the sentence he may do so. Now, it is going to be very difficult for that commanding officer who has meted out this punishment.—A. Might I stop you there, sir; the punishment has not been meted out until it is approved by the minister.

Q. He is sentenced?—A. No, sir, he is remanded for punishment until the material is sent on to headquarters for the minister's approval.

Q. He has recommended it; the prisoner knows that?—A. No, sir, nobody knows that except of course the administrative staff who do the typing of the material that goes to headquarters. The accused man does not know what punishment is proposed.

Q. And he does not know until the sentence is read to him?—A. No, sir.

By Mr. Adamson:

Q. Who would know, would the port admiral know?—A. If the captain proposes a man's dismissal with disgrace he fills out a form describing the service record of the accused and the offences, and on this he says he proposes to impose the punishment of dismissal with disgrace. Meanwhile the prisoner is remanded for sentence.

Q. Has the accused been brought before him?—A. Yes, he has been found guilty and remanded for sentence. Now, this warrant goes to the flag officer, who is the equivalent of a general officer commanding, and there is a place on the form for him to say if it is approved or not approved. If it is not approved it goes no further. If the flag officer approves of it the material goes to headquarters and is considered by the personnel officer here. If the minister finally approves it, then the material goes back and the man is taken up before the ship's company and the sentence as approved is read to him and becomes effective then. That is the machinery.

Mr. HARKNESS: What advantage is there having that power in the captain's hands rather than having the man tried by court martial on shore because, if the offence occurs in a foreign port nothing can be done about it until they get back some place where all this material can go to the flag officer, and the minister, and so on?

The WITNESS: I am glad this question was asked because it brings out another basic feature of our system. The punishment when it is imposed is the captain's punishment; it is not the minister's, it is not the flag officer's punishment; it is the captain's punishment. It is The Old Man up on the bridge whose punishment it is, as far as the accused knows.

In other words it is part of the scheme to build up the prestige and standing that is absolutely essential for the captain on a ship.

Mr. LANGLOIS: And it is a good principle.

Mr. PEARKES: I think it is an excellent principle but I am asking why it is not so for the army and for the air force. Surely the commanding officer of a battalion should have that power then. Could you tell us why there is objection for the colonel of a regiment having that power, because he is The Old Man there.

Mr. ADAMSON: The colonel of a regiment is known as the father of his regiment and not as The Old Man.

Mr. PEARKES: A wing commander, it seems to me, would have his hand strengthened in exactly the same way.

Mr. HARKNESS: If it is a good principle in the navy it should be a good principle in the army and in the air force. If it is not a good principle in the army and in the air force then it is not a good principle in the navy.

The CHAIRMAN: I am not sure that that logic applies.

Mr. ROBERGE: Living conditions differ.

The CHAIRMAN: It seems to me conditions in the three services may vary.

Mr. STICK: Let us hear from the army and from the air force on the subject.

Brigadier LAWSON: I think there is one point to consider in connection with the army and the air force and it is this: they must expand in an emergency much more rapidly than the navy does. After all the navy is limited by the number of ships it has and you cannot build a ship overnight. True, you cannot build an aircraft overnight either, but the navy does expand less rapidly and the commanding officers in the army will have less experience than the officers who are commanding ships.

Mr. PEARKES: Can you tell us the expansion which took place in the navy in the first year of this past war, and the expansion which took place in the army? That would give us some idea?

The WITNESS: I do not know whether that information is available for the army but in the navy we started off with 1,300 officers and men in about May 1939, and by the end of the war the peak strength on any one day during the war was 96,000.

Mr. PEARKES: A fairly substantial expansion?

The WITNESS: Oh, very.

Brigadier LAWSON: I am looking for the figures for the army.

Mr. PEARKES: I think the navy rate of expansion was quite high.

Mr. HARKNESS: If the basis of Brigadier Lawson's argument is correct, it is all the more reason why a lieutenant colonel in the army or a wing commander in the air force should be given at least equal authority to a lieutenant in the navy. You have a lieutenant in the navy with these powers, and in nearly all cases he would be much more junior a man with less experience than would be the case for a wing commander or a lieutenant colonel in the other two services.

Brigadier LAWSON: In the other two services a commanding officer is not necessarily a lieutenant colonel; he may be a major, or possibly a captain.

Mr. HARKNESS: You have that in very few cases—very few indeed.

The CHAIRMAN: Is it the committee's wish that we continue with these subsections? Is it getting us anywhere or not?

Mr. PEARKES: Could we get those figures?

Mr. BENNETT: I can tell you that the increase for the air force was from roughly 1,500 to 200,000.

Mr. DICKEY: Subject to verification of its peacetime strength, the army increased up to 500,000 or 600,000.

Brigadier LAWSON: Yes, from a very few thousand to five or six hundred thousand.

Mr. HARKNESS: The only difference there is that you had 40,000 to 50,000 reserve force people, a large proportion of whom were officers.

The WITNESS: If you do not mind me saying something, this is a very important point in the whole thing. I think all of us would be against giving broad powers to an individual, generally speaking. We give those powers only if some special service condition makes it vital for us to do so. The army and the air force have lifted up the powers of their commanding officers in this bill —you will see how they have lifted them up shortly. Because of the difference in conditions of service it is still not necessary for them to give to commanding officers the same powers which captains will have.

The reason, it seems to me, is clear. A ship is alone at sea, away from port, away from the protection of the task group; the captain is running there a unit; he is separated from everyone else and he must be the boss in every sense. In the army and in the air force you will rarely find a situation where it is not possible for a very junior officer of a very small unit to go up above a little bit. That to me seems to be the essential difference.

Mr. PEARKES: I do not think it is a question of dealing with very junior officers. We are dealing with the commander of a unit. Quite frequently you have a battalion sent on garrison duty; for instance we had them going to Bermuda at the beginning of the war, we had them also going to Newfoundland, we had them going to Iceland, and I cannot help feeling that if these powers are desirable for the navy they are equally desirable for the army. We are asking for an explanation and I do not think the explanation with all deference to Brigadier Lawson, that expansion was quicker in the army can be taken as a very good reason for this not being done. If expansion was quicker in the last war, which was quite questionable, it is by no means certain that it will be quicker in the next war. I have not heard yet from the air force as to their objection about giving these powers to a wing commander?

Mr. BENNETT: I would like to give a few objections. General Pearkes, you are saying that this additional power is a good thing in the air force. We will just take No. 1 Training Command during wartime. There would be about 90 stations in that command; at least 25 would be commanded by flight lieutenants and we often had stations with a flying officer commanding them. They are places where there is no training going on; they are just equipment depots. The man in charge there would not be capable of exercising additional authority. Even at an A.O.S. there would be a squadron leader in charge. It was only at the main depots and places like that where we had group captains. These men, in view of the rapid expansion, would not be capable of handling the additional authority. When you visualize the air force as being composed of a number of units, you just cannot compare them to ships in the navy.

Mr. BALCER: We have the same situation in the navy?

The WITNESS: Yes.

Mr. BENNETT; But through the whole of it there is this fact that while the naval commander has wide powers of punishment it is subject to review. That does not have to be done in the army or the air force, they can refer the matter immediately to the commanding officer and get action right away, which they cannot do in the navy. We are trying to bring these things into line, to unify them, but the same conditions do not exist.

The CHAIRMAN: I should think uniformity would be predicated at least on somewhat similar conditions. The thing which has impressed itself upon me as I have listened to this discussion is that there are essentially and materially different circumstances attending the operation of these different services. It seems to me that it is not so much a question of getting all these things uniform as to detail as it is a question of what would be in the best interest of each of the services concerned. I do not think that absolute verbal uniformity should be the object for us to achieve if it is not in the best interest of the services. I must admit that I am quite impressed with the fact that there are essential differences between the services, differences of circumstances and points of view which seem to justify some sort of a differential as between the services. Perhaps Brigadier Lawson would care to discuss it further.

Brigadier LAWSON: I would just like to add something to what I have said and it is this: the fundamental approach in drafting these sections was that commanding officers should not be given any more arbitrary power than it is essential that they should have. When we came to look into what is

essential it was found that the naval commanding officer did require more arbitrary power than an army or air force commanding officer and that is the reason for the difference in the clauses.

Mr. LANGLOIS: The same argument might apply here as we find in connection with the merchant marine where the master of the ship has a wide range of power, he has the power of life and death over his men; and I think we need wider powers in dealing today with a captain of a ship in the navy than is the case with commanding officers in the army or the air force, but I am not going so far as to say that they should have the powers given to the captain of a merchant ship under the Canada Shipping Act.

Mr. PEARKES: I just want to say that I think the army and the air force should be put on the same level, given the same degree of power, with respect to junior officers as is enjoyed through this section by the navy in connection with their junior officers, and I refer only to people who are junior in rank.. I agree that the naval commander should have this power, that it is a good thing in connection with the disciplining of young officers, and I do think that the uniformity suggested by the minister, to whose speech I referred, should be obtained if at all possible.

Mr. DICKEY: I think we have been approaching this thing from perhaps the wrong point of view. I think it is for the good of the service that that provision has been put in this section with respect to discipline of junior officers in the navy, and I think it is to the credit of all the officers concerned that they have worked this thing out with a sound principle behind it, and I approve that principle. I see no serious objection to adopting the section and I think the officers have done a very good job in framing this in the way they have. I feel satisfied that the suggestion of the services is sound.

Mr. PEARKES: I hope that Mr. Dickey is not suggesting that any member of this committee is unacquainted with these matters. I am still of the same point of view that I expressed this morning.

Mr. DICKEY: I just wanted to get it on the record that I think the three forces have done a very fine job on this section and I am in favour of it.

Mr. BLACKMORE: The principal thing is: we are satisfied that the navy is not losing face.

Mr. BALCER: I agree with Mr. Blackmore that the navy has done a very good job on this section. I suggest that we should proceed.

The CHAIRMAN: We could wait and dispose of this section after we have dealt with section 136. As I interpret the generality of Mr. Pearkes' objection, or his point of view on the section, and I think I understand it correctly, it is that there is nothing wrong with the navy section, 135, but probably the following section dealing with the army and the air force should be made more parallel.

Mr. PEARKES: By putting a few words into that section you could do away entirely with section 136. That is why I suggest that we let this section stand over, because it is almost word for word the same as section 136. All you have to do is to refer back to 2 (*a*), and all you have to do there is to add the words "below the rank of warrant officer" and the whole section would apply to the army, the navy and the air force.

The CHAIRMAN: I was just wondering if we should not deal with section 135 and then take a look at 136, after we are familiar with what is in 135.

Mr. ADAMSON: I wonder if the witness could tell us if there is a definition of the term subordinate officer?

The WITNESS: There is none, sir, and I think one of the main reasons why there is not is because that level of rank has not been completely organized up to the moment. The army might consider some time having a rank similar to acting sub-lieutenant, it is in a state of flux.

Mr. STICK: It seems to me that we are all satisfied that the navy is not getting too much power, so let us deal with the navy section and then we can go on with the army and the air force and if we are not satisfied we can come back to this section again.

Mr. PEARKES: One feeling that I have is that these two sections could be amalgamated, jack them up to the same level.

Mr. STICK: You could do that afterwards.

Mr. PEARKES: That is why I asked for 135 to stand until we had considered 136. I think we might consider it subsection by subsection and undoubtedly arrive at a wording which would satisfy the navy end of it, then we could let the section as a whole stand and come back to it after we had considered 136.

The CHAIRMAN: I am inclined personally to that view, otherwise I do not think we will ever get anywhere. I propose to call the subsections and we will deal with them seriatim.

Mr. STICK: That is what we agreed to this morning.

The CHAIRMAN: Then I will deal with the sections by subsections.

Clause 135, and section (1): Shall the subsection carry?
Carried.

Subsection (2):
Carried.

Subsection (3):
Carried.

Subsection (4):

(4) A subordinate officer charged with having committed a service offence that in the opinion of the commanding officer is not sufficiently grave to justify trial by court martial, may be tried by summary trial under this section, but no punishment shall be imposed except forfeiture of seniority for a period not exceeding twelve months or forfeiture of service toward progressive increase in pay for a period not exceeding twelve months.

Mr. ADAMSON: On this one I would like to see if Commander Hurcomb could not possibly work out some definition of subordinate officer which would apply both to the army and to the navy. I think this is a very very important subsection as it includes junior officers who are just going into the service. In the army there is no such machinery for taking care of picadilloes which junior officers I hope still commit while the navy has a very adequate method of doing it. And I would like to see if it is not possible to work out a definition for the term subordinate officer and the provision for some punishment, say in the case of an acting sub-lieutenant—have the power of putting him back in his seniority. I would like to see something provided for in connection with the army similar to what they now have in the navy. I do wish that you would consider a definition of subordinate officer.

Mr. GILLIS: Well, let us deal with the navy first, then we can go on to the army and the air force.

The CHAIRMAN: I was going to say that the question of definitions will be noted on the record and can be dealt with at a later stage when we revert to section 2.

The WITNESS: It is defined in the regulations today.

Mr. STICK: You mean in the navy?

The WITNESS: In the naval regulations.

Mr. STICK: Could you read it and let us have it on the record here?

The WITNESS: Yes, it is Article 1.02, sub-clause XLIX: "subordinate officer includes all officers of all branches of the rank of acting sub-lieutenant, midshipman or cadet."

Carried.

The CHAIRMAN: Subection (5):

(5) The authority of a commanding officer exercisable under this section may,

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

(*b*) in respect of persons on board a boat belonging to the unit, be exercised, when the boat is absent on detached service, by the officer in command of the boat; and

(*c*) in respect of persons on detached service, either on shore or otherwise, be exercised by the officer in immediate command of those persons.

Carried.

Subsection (6):

(6) A commanding officer may, subject to regulations made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following,

(*a*) a fine not exceeding ten dollars;

(*b*) a reprimand;

(*c*) minor punishments.

Carried.

Subsection (7):

(7) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations.

Carried.

Subsection (8):

(8) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

Carried.

Subsection (9):

(9) Where a commanding officer tries a chief petty officer or a petty officer, first class, by summary trial and the commanding officer, either before or after any or all of the evidence has been heard, arrives at the conclusion that a finding of guilty,

(*a*) in the case of a chief petty officer or petty officer, first class, who is liable to be sentenced to the punishment of reduction in rank, would justify that punishment; or

(*b*) in the case of a chief petty officer or petty officer, first class, who under regulations is not liable to be sentenced to the punishment of reduction in rank, would justify the punishment of imprisonment for less than two years or detention,

the accused person shall, subject to paragraph (*a*) of subsection ten, have the right to elect to be tried by court martial rather than have the commanding officer continue and complete the summary trial, and the commanding officer shall inform him of that right.

By Mr. Gillis:

Q. I would like to ask for a little information there as to the difference between the implication of the word "imprisonment" and "detention". I take it that imprisonment is more severe than detention?—A. That is so, sir. Imprisonment for less than two years is a sentence that is served normally in a civil prison or civil reformatory, but in wartime may be served in what we call service prisons. Detention is a very different punishment and is served in detention barracks.

Q. Is not that a double sentence, to sentence service personnel to a civilian prison? Does a man not come out of prison with the stigma of a convict?—A. He does, sir.

Q. Has it been considered that he may be detained in a military prison and avoid that double sentence?—A. This, sir, normally covers the case where we wash our hands of him and he is being dismissed, too. We do not usually give this sort of punishment except for the kind of offences for which he would get that punishment if he were tried by the civil power.

Q. In addition to wearing that stigma he carries a certificate to the effect that he has been discharged for misconduct?—A. If he were tried by the civil power for theft and was sentenced to two years' imprisonment he would still be discharged by the services in ninety-nine cases out of one hundred.

Q. I think dishonourable discharge is the greatest punishment but in addition to that he is fingerprinted by the R.C.M.P. and there is a picture of him in their files. When he goes to seek employment they check his record and find he has been discharged for misconduct.—A. He is a criminal in the real sense or he would not be there.

Q. Why confine him in a civilian jail when he has not committed any infraction of the civil law?—A. I said, sir, that we do not normally impose this punishment except for civil offences.

Q. Why not try him in the civil courts?

Mr. STICK: They have the right to try him in the civilian court.

The WITNESS: They have the right to pick him up.

Mr. BENNETT: Detention barracks have not accommodation for taking personnel for long periods of time. During war times it was necessary sometimes to detain a man for a year or so, but it is not desirable. The first thing the inspector general looks at when he comes around is how long prisoners have been there because they do not get proper exercise.

Mr. GILLIS: It certainly is not good for a man to suffer all the penalties of an infraction of the civil law when he has not been tangled up with them. If he was tried in the service he should be confined in the service and I do not think he should get a double sentence. I think the army or the air force or the navy is responsible because you take these kids away from home when they are eighteen or nineteen years of age and they go out and have a few drinks of beer and get tangled up with a car. They would not be there except for the fact they were called into the service. You try them as though they were old

hardened convicts and throw them in with hardened criminals, and when that boy comes out he is a criminal for the rest of his life.

The WITNESS: Not if our penal reformers have something in their latest suggestions.

Mr. HENDERSON: Would not that happen to the same boy on civvy street?

The WITNESS: Oh, yes, exactly.

By Mr. Gillis:

Q. He would not have an army discharge to carry around for the rest of his life?—A. We are not going to give him an honourable discharge when he deliberately cuts his usefulness to the service short by committing a crime.

Q. I think a misconduct discharge is sufficient without incarcerating him for a couple of years in prison.—A. It would be a very nice way of getting out of the service during war time.

Q. There was a lot of trouble with this particular thing during the last war and the gentleman sitting next to you said he had sat on a lot of courts martial and only had one appeal. However, after the war was over there was a board of review set up to examine that whole question and there was an awful lot of those cases back where there was bad judgment shown. I am particularly burned up about this sort of thing. I had the privilege of going into a civilian court to try to assist a couple of kids who had no defence whatever, and in my opinion nobody was paying very much attention to them.—A. Our regulations require there be an attending officer.

Q. In the case I am talking about there was not an attending officer; they were just thrown into prison and written off.

By Mr. Adamson:

Q. You do not mention any period of detention; how long is a man in detention before he goes to penitentiary? Is there any limit to detention?—A. They are quite distinct punishments; the punishment of detention is designed to reform a man, not in a civil sense but to reform him in the military sense. He goes through drill in detention and he comes out a better sailor, soldier or airman. Imprisonment and detention are two different punishments with different purposes.

By Mr. Gillis:

Q. I am not objecting to detention at all, but I do object to putting on the spot a boy who has gone into the service voluntarily and because of lack of judgment and inexperience happens to get mixed up with a civilian authority. I do not think that is right.—A. I am afraid your quarrel is with the civil penal power.

Q. My quarrel is with the naval regulations that give the authorities power to put these boys in civilian prisons. If he is not a good navy man and not liable to become one, I think he should be sent home and written off.

Mr. HENDERSON: Regardless or the offence he has committed?

By Mr. Gillis:

Q. The offences were not serious. Suppose some fool goes away and leaves the keys in his car and a couple of kids who are half drunk pick up the car. The sentence in that case is mandatory and is one year in jail. I think the fellow who left his keys in the car is the one who should be in jail.—A. I can guarantee you in a case of that sort he would not get imprisonment from the armed forces. He would not get such good treatment from the civil power if he got into their hands, because the sentence is mandatory.

Q. I am quite satisfied. I think the navy did handle their affairs in the last war much better than any other branch of the service.

By Mr. Adamson:

Q. How long can a man be sentenced to detention?—A. Summarily?

Q. No, at any time?—A. Two years is the maximum.

Q. That is a new section?—A. That is in the new section and it was in the old one.

Q. I am asking this for information because I had to visit on occasion a military prison at Aldershot and some of the men in there had been in for seven years.—A. That was a service prison, sir, not a detention barracks. His sentence would not be detention, it would be penal servitude.

By Mr. Pearkes:

Q. This section is not dealing with recruits, it is only dealing with petty officers.—A. Subsection 9 gives the right of election only to chief petty officers and petty officers first class.

Q. So it would not apply to the point Mr. Gillis was raising as far as junior men are concerned?—A. No.

Carried.

The CHAIRMAN: Subsection 10 reads:

(10) (*a*) Where a chief petty officer or petty officer, first class, has, under subsection nine elected to be tried by court martial and, in the opinion of the senior naval officer present, the exigencies of naval service do not permit a court martial to be assembled within a reasonable period, that senior naval officer may, if he considers it necessary, authorize the commanding officer to deal with the case by summary trial.

(*b*) Where in the circumstances mentioned in paragraph (a), the commanding officer at a summary trial imposes the punishment of reduction in rank upon a chief petty officer or petty officer, first class, the senior officer in chief command shall order a board of inquiry to assemble forthwith to determine whether, having regard to the circumstances of the case, any one or more of the punishments lower in the scale of punishments than reduction in rank would be appropriate.

(*c*) Where a board of inquiry recommends a substituted punishment under paragraph (*b*), the senior officer in chief command shall make an order to that effect and the substituted punishment shall have force and effect as if it had been imposed at the summary trial in the first instance, and the provisions of the Code of Service Discipline shall apply accordingly.

By Mr. Pearkes:

Q. If this section is new, what was the previous arrangement?—A. Sir, this is exactly the present rule, but the rule was not in our statute, it was in the regulations. All we have done is to ensure this right will not be tampered with without parliament's approval by taking it out of the regulations and putting it in the statute.

By Mr. Adamson:

Q. I was wondering about the senior naval officer; you would not have to go to the Eastern Command for that?—A. Any senior officers, sir.

Q. He would be able to convene a board of inquiry, where the petty officer elects to be tried by court martial, but is tried summarily?—A. Yes.

Q. And his rank would be commander?—A. I would not expect to find it below commander.

Q. But it could be commander?—A. Yes.

Carried.

—The committee adjourned.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

TUESDAY, MAY 30, 1950

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, E.M., Judge Advocate General;
Wing Commander H. A. McLearn, Deputy Judge Advocate General;
Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. Campney, *Chairman.*

and

Messrs.

Adamson,	George,	Larson,
Balcer,	Gillis,	McLean (*Huron-Perth*),
Bennett,	Harkness,	Pearkes,
Blackmore,	Henderson,	Roberge,
Blanchette,	Higgins,	Stick,
Cavers,	Hunter,	Viau,
Claxton,	Langlois (*Gaspé*),	Welbourn,
Dickey,	Lapointe,	Wright.—25.

(Quorum, 10)

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, May 30th, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 4.00 o'clock, p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Campney, Cavers, Dickey, George, Gillis, Harkness, Henderson, Higgins, Hunter, Langlois (*Gaspé*), Larson, McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Viau, Welbourn, Wright.

In attendance: Commander Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General; Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

The Committee resumed the clause by clause consideration of Bill No. 133, An Act respecting National Defence, at Part VII.

Commander Hurcomb was questioned on the various clauses of PART VII and the witness was assisted therein by Brigadier Lawson, Wing Commander McLearn and Major McClemont.

On Clauses 135, 136 and 137

After continued debate thereon, the said clauses were allowed to stand. It was further agreed that the said clauses, (together with Clauses 21, 30, 61, 115, 119 and 121 (in respect of sub-clauses (8) and (9) thereof only), which were stood over from preceding sittings), all be referred back to the Minister and the Chiefs of Staff to be reviewed by them in the light of the views expressed thereon by the members of the Committee.

Clauses 138 to 149, both inclusive, were severally agreed to.

On Clause 150

On motion of Mr. Langlois (*Gaspé*),

Resolved, That the said Clause be amended by adding thereto, after the word "regulations", in line 15, page 61 of the Bill, the following: "made by the Governor in Council".

The said Clause, as amended, was agreed to.

On Clause 151

On motion of Mr. Langlois (*Gaspé*),

Resolved, That sub-clause (3) of the said Clause be amended by

(*a*) striking out the word "and", in line 26, page 61 of the bill, and substituting therefor a comma (,); and

(*b*) inserting after the word "person", in line 27, same page, the following: "and his representative,".

The said Clause, as amended was agreed to.

Clauses 152, 153 and 154 were severally agreed to.

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Clause 155, after some debate thereon, was allowed to stand and it was agreed that the said Clause be referred back to the Minister and Chiefs of Staff for reconsideration as in the case of the other Clauses referred to above.

Clauses 156 to 165, both inclusive, were severally agreed to.

On Clause 166

After some debate thereon, the said Clause stood over until the next sitting.

At 6.00 o'clock, p.m., the Committee adjourned to 8.15 o'clock p.m.

EVENING SITTING

The Committee resumed at 8.15 o'clock p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Blanchette, Campney, Cavers, Dickey, George, Gillis, Harkness, Henderson, Hunter, Langlois (*Gaspé*), Larson, McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Welbourn, Wright.

In attendance: The same Armed Forces Officers as are listed at the afternoon sitting.

The Committee resumed the clause by clause study of Bill No. 133, An Act respecting National Defence, at Part VII.

Commander Hurcomb was questioned on the various Clauses of Part VII under consideration and he was assisted therein by Brigadier Lawson, Wing Commander McLearn and Major McClemont.

Clauses 166, 167 and 168 were severally agreed to.

Commander Hurcomb was retired temporarily as the main witness.

On Part VIII

Wing Commander McLearn was recalled as the main witness on the said part. He was questioned on the various clauses thereof under consideration and was assisted therein by Commander Hurcomb, Brigadier Lawson and Major McClemont.

Clauses 169 and 181, both inclusive, were severally agreed to.

On Clause 182

On motion of Mr Dickey,

Resolved, That the said Clause be amended by making

Sub-clause (2) thereof, Clause 183 of the Bill.

The said Clause, as amended was agreed to.

Wing Commander McLearn was retired temporarily as the main witness.

On Part IX

Brigadier Lawson was recalled to answer questions on the various clauses of the said part under consideration and he was assisted therein by Commander Hurcomb, Wing Commander McLearn and Major McClemont.

Clause 183 (now to be 184) was agreed to.

On Clause 184

On motion of Mr. Henderson,

Resolved, That the said Clause be deleted.

At this stage of the proceedings, the Committee reverted to Clause 9 (now to be 10) of the Bill, and

On motion of Mr. Henderson,

Resolved, That the said Clause be amended by adding thereto the following new sub-clause:

Exercise of Powers of Judge Advocate General.

(2) The powers, duties and functions of the Judge Advocate General may be exercised by such other person as the Minister may authorize to act for the Judge Advocate General for that purpose.

The said Clause, as amended, was agreed to.

Clauses 185, 186 and 187 were severally agreed to.

On Clause 188

On motion of Mr. Langlois (*Gaspé*),

Resolved, That paragraph (*b*), sub-clause (3) of the said Clause be amended by inserting after the word "section", in line 3, page 78 of the Bill, the following: "one hundred and seventy".

The said clause, as amended, was agreed to.

Clause 189 was agreed to.

Clause 190, after lengthy debate thereon, was allowed to stand.

At 10.40 o'clock p.m., the Committee adjourned to meet again at 4.00 o'clock p.m, Thursday, June 1, 1950.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
TUESDAY, May 30, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 4 p.m. The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum. When we recessed last evening we had just completed tentatively going over section 135, subsection by subsection, and the section was stood over though the subsections were passed seriatim as to form. We had therefore come to section 136. Section 136 and section 137 purport to set out the statutory provisions for the conduct of summary trials by commanding officers in the army and air force, whereas section 135 governs summary trials carried out by commanding officers of the Royal Canadian Navy. In the discussion it appeared that there is some difference of opinion among the members of the committee as to the advisability of having two different sections, or at least in regard to their not being somewhat more parallel to each other than they are.

I think before we proceed with section 136 we might discuss that matter, because there has been no decision reached as to the basis of dealing with the three sections to which I have referred. Perhaps after some general discussion we might arrive at such a basis prior to considering the sections in detail.

Mr. PEARKES: We had a long discussion on section 135 yesterday and in order to avoid a similar discussion on sections 136 and 137 I would like to suggest to the committee the advisability of referring these three sections to the Chiefs of Staff Committee to ask them to review these sections to see whether they could not bring them a little more into harmony with the principle of a single Act of discipline for the three services. I feel that if we got into a detailed discussion on these various sections we would not get very much further than we did yesterday, and I feel there are questions of policy which have to be settled and questions which would be beyond the scope and the authority of the representatives of the department here, who would not be in a position to give definite answers. Now, if that idea is at all acceptable to the committee I would be very pleased to make a motion to that effect, but I do not want to take the bull by the horns and make a motion if it is not in accordance with the wishes of the committee. I really do think it would simplify the discussion on the sections, and speaking along those lines, it may be that in subsection 2 of section 136 perhaps one could add the words "either a subordinate officer" and that would bring it into uniformity with the similar subsection in 135, and later on in this section there are subsections and paragraphs identical with section 135. It may be possible that the form of these two sections could be changed a little in order to avoid any redundancy. I should be very pleased to refer this section to the chiefs of staff; they are on a committee, they sit together, they would have with them the representatives who are here. The minister is chairman of that committee, or his deputy is, and they could then review these sections and decide upon a policy in the light of the expressions of opinion which have been given in this committee. If they cannot go as far as some members of this committee suggested, well and good, but we shall at least have had the satisfaction of knowing that our views have been represented to the highest service quarter.

Mr. GEORGE: I agree with General Pearkes and, although my experience on parliamentary committees is relatively limited, it seems everyone here is trying to get the best Act for the three services. When a difference of opinion arises

like this I think it is very unwise to attempt to force a section through and I feel it should be referred back to the chiefs of staff and the minister for further study. If they cannot find any improvement and if, in their considered opinion it is the way they want it, we can go on. If we let these three sections 135, 136 and 137 stand, then from section 138 on we should not get into any argument, but if we do, those sections should stand pending what is done with the three sections that now stand. There are actually four sections now standing, section 121 is along the same line. I feel we have to assume that the sections previous to 138 have been carried, but if there are any drastic changes in those four sections, then the changes in the ones we are going to deal with would be automatic.

The CHAIRMAN: Personally I think that is a good suggestion, because, as Mr. George has said, we all want to achieve the best possible Act and these three sections are all tied in together. If the senior officers in the services review them at our request, in the light of the discussions we have had here, and propose changes, I take it that would be acceptable to the committee. If they do not desire to make any changes then we will know that the sections as at present drafted represent their considered view as to the best method of handling this subject.

If it is acceptable to the committee I would be glad to entertain that suggestion, and I think we might get some guidance from the same group on the other sections that have already been stood over. We can then deal with such sections at a later date and not waste our time in repetitious discussion on items which have to do with the same subject matter. If the committee agrees we can start in on section 138. I would like to deal with these sections from 138 on, finally, the understanding being, of course, that if these three sections which we have now referred back to the heads of the services are materially changed, we would change other related sections to make them conform. Do we need a formal motion?

Agreed.

Mr. DICKEY: Perhaps the committee would also refer at the same time subsection 8 of section 121.

The CHAIRMAN: Yes, I would like to have the benefit of the opinion of the heads of the services on all those sections which have been stood.

Mr. ADAMSON: Perhaps the chiefs of staff might see if it is possible to get a definition of "subordinate officer."

The CHAIRMAN: We will provide them with a copy of the transscript of the evidence so they can see what has been said here.

Mr. PEARKES: Not just what was said here today, but what was said right along.

The CHAIRMAN: Yes, what was said right along.

Then we come to section 138,

> 138. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may convene General Courts Martial and Disciplinary Courts Martial.
>
> (2) An authority who convenes a court martial under subsection one may appoint as members of the court martial, officers of the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force or officers of any navy, army or air force, who are attached, seconded or loaned to the Canadian Forces.

Carried.

Section 139,

139. A General Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

Carried.

Part IV is the part that deals with jurisdiction and the category of persons who are subject to military discipline.

Carried.

Section 140:

140. (1) A General Court Martial shall consist of not less than five officers and not more than such maximum number of officers as may be prescribed in regulations.

(2) The president of a General Court Martial shall be an officer of or above the naval rank of captain or of or above the rank of colonel or group captain and shall be appointed by the authority convening the General Court Martial or by an officer empowered by that authority to appoint the president.

(3) Where the accused person is of or above the rank of commodore, brigadier or air commodore, the president of a General Court Martial shall be an officer of or above the rank of the accused person, and the other members of the court martial shall be of or above the naval rank of captain or of or above the rank of colonel or group captain.

(4) Where the accused person is of the naval rank of captain or of the rank of colonel or group captain, all of the members of a General Court Martial, other than the president, shall be of or above the rank of commander, lieutenant-colonel or wing commander.

(5) Where the accused person is a commander, lieutenant-colonel or wing commander, at least two of the members of a General Court Martial, exclusive of the president, shall be of or above the rank of the accused person.

Mr. PEARKES: I take it there is no material change in that?

Commander P. Hurcomb, Judge Advocate of the Fleet, recalled:

The WITNESS: I think it is fair to say that is correct, sir.

By Mr. Stick:

Q. What is meant in subsection 4 where it says "other than the president"? —A. The president in clause 2 must be of the rank of colonel in the army, and all members shall be of or above the rank of lieutenant-colonel.

Carried.

The CHAIRMAN: Section 141:

141. Such authority as is prescribed for that purpose in regulations shall appoint a person to officiate as judge advocate at a General Court Martial.

Mr. HENDERSON: I would like to mention a point there. As I understand it now a judge advocate does not retire with the court when they are deciding a case.

Major MCCLEMONT: The judge advocate does not retire when the court is considering a finding of guilty or not guilty.

Mr. HENDERSON: Does the judge advocate ever under present regulations instruct the court in the absence of the accused or his counsel?

Major McCLEMONT: He does not at all, sir. If the court require further instructions beyond his summing up at the end, after the addresses for the accused and for the prosecution, the court is reopened and the judge advocate gives any further advice in open court, but he is never with the court whilst they are considering the finding unless the accused and the public are there.

Mr. HENDERSON: That is provided for in regulations?

Major McCLEMONT: Those are the present regulations.

Carried.

The CHAIRMAN: Section 142:

142. None of the following persons shall sit as a member of a General Court Martial,

(*a*) the officer who convened the court martial;

(*b*) the prosecutor;

(*c*) a witness for the prosecution;

(*d*) the commanding officer of the accused person;

(*e*) a provost officer;

(*f*) an officer who is under the age of twenty-one years;

(*g*) an officer below the naval rank of lieutenant, the army rank of captain or the air force rank of flight lieutenant; or

(*h*) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

By Mr. Pearkes:

Q. There is just one point; medical officers, chaplains and paymasters would not be eligible to sit on this court?—A. Yes, sir, except chaplains.

Q. That is new?—A. That is new for the navy. Chaplains are not permitted to sit because they do not hold rank.

By Mr. Stick:

Q. Does it specify that in the Act or in the regulations?—A. No, sir, but the Act is so broadly drafted as to make it possible for all those people to sit, and we anticipate the regulations will impose no restrictions on that. It is up to the convening authority to name anybody he likes.

Carried.

The CHAIRMAN: Section 143:

143. Subject to any limitations prescribed in regulations made by the Governor in Council, a Disciplinary Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

Carried.

Section 144:

144. A Disciplinary Court Martial shall not pass a sentence including a punishment higher in the scale of punishments than dismissal with disgrace from His Majesty's service, or higher than such other punishment as may be prescribed in regulations; but no such other punishment shall be higher in the scale of punishments than dismissal with disgrace from His Majesty's service.

Carried.

Section 145:

145. A Disciplinary Court Martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in regulations.

Carried.

Section 146:

146. (1) The president of a Disciplinary Court Martial shall be appointed by the authority convening the Disciplinary Court Martial or by an officer empowered by that authority to appoint the president.

(2) The president of a Disciplinary Court Martial shall be an officer of or above the rank of lieutenant-commander, major or squadron leader or of or above such higher rank as may be prescribed in regulations.

Carried.

Section 147:

147. Such authority as may be prescribed for that purpose in regulations may appoint a person to officiate as judge advocate at a Disciplinary Court Martial.

Carried.

Section 148:

148. None of the following persons shall sit as a member of a Disciplinary Court Martial,

(*a*) the officer who convened the court martial;

(*b*) the prosecutor;

(*c*) a witness for the prosecution;

(*d*) the commanding officer of the accused person;

(*e*) a provost officer;

(*f*) an officer who is under the age of twenty-one years; or

(*g*) any person who prior to the court martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

By Mr. Stick:

Q. In convening these courts there is nothing in this Act which says an officer of the regiment of the accused should not sit, and the usual practice is to bring one in from outside. Is there anything in the Act to say an officer of the regiment of the accused cannot sit?—A. No, sir. There is nothing in the existing legislation on it, sir. If that principle is desirable it may be implemented by the convening authority when he names the members of the court.

Q. Personally I think it is desirable. I do not think any man or officer comprising the court should belong to the same regiment as the accused.—A. It may be desirable to consider it at some time. As a general rule it might not be feasible.

Mr. LANGLOIS: Mr. Chairman, can any officer refuse to sit because he is prejudiced about the case?

The WITNESS: Sir, there is a provision for making objections.

Mr. STICK: The accused can object to any officer sitting?

The WITNESS: Yes, sir.

Mr. LANGLOIS: It is the same as we have in a court of law. If a judge feels he is prejudiced about a case he can excuse himself.

The WITNESS: Unless he can arrange it informally with the convening authority, if he felt very strongly about it he could say so in open court, whereupon the accused, under section 157, would obviously object to him as being prejudiced.

Mr. HARKNESS: Unless it might be he was prejudiced in favour of the accused.

The WITNESS: In which case we would expect him to hold his tongue.

Mr. ADAMSON: That provision against the provost sitting is of long standing, is it not?

Major MCCLEMONT: It has been as far as field general courts martial are concerned. I do not know if there is any ban in other courts martial.

Mr. ADAMSON: That is new, is it?

Major MCCLEMONT: It is new in respect of those courts martial.

Carried.

The CHAIRMAN: Section 149:

149. (1) The Governor in Council may in an emergency establish Standing Courts Martial and each such court martial shall consist of one officer, to be called the president, who is or has been a barrister or advocate of more than three years standing and who shall be appointed by or under the authority of the Minister.

(2) Subject to any limitations prescribed in regulations, a Standing Court Martial may try any person who under Part IV is liable to be charged, dealt with and tried upon a charge of having committed a service offence, but a Standing Court Martial shall not pass a sentence including any punishment higher in the scale of punishments than imprisonment for less than two years.

By Mr. Harkness:

Q. There is no provision here apparently for a standing court martial except in time of war or in emergency, as it states here.—A. That is correct.

Q. What is the reason for that?—A. It is a procedure of an unusual nature and it has been felt a general court martial, disciplinary court martial and summary procedure is sufficient to cover all exigencies of peacetime operations, but in war when you have hundreds of officers tied up with a multitude of courts martial you may have to make a special provision, which we have done here.

Q. You do not like this way of conducting cases particularly, but you make provision for it in case it is essential?—A. As far as the navy is concerned we probably do not need it, but I cannot speak for the army and air force on that point.

By Mr. Higgins:

Q. What do you say about the idea of barristers of three years' standing; that is a little low, is it not?—A. We might have some very able young officers who graduate at the age of twenty-three; they have three years' practice and are twenty-six. If they have good service records and generally seem fitted to do such work, they can probably do it as well as a barrister of fifteen years' standing.

Q. The only qualification is three years?—A. That is the minimum qualification.

By Mr. Pearkes:

Q. Is there anything in the regulations which prevent disciplinary courts martial being of a more permanent nature?—A. There is nothing in the regulations which would prevent that.

Q. So that the authority that appoints a court martial of that nature could appoint it to take a great many cases and really be of a permanent nature without having to change the members of the court?—A. He could do it, sir. He would have to have a separate convening order for each court, but the names could be identical.

Q. He would have to issue separate convening orders, would he?—A. In my opinion he would.

Q. There is nothing here which would allow or prevent there being a standing court martial or standing disciplinary court martial except that it would have to be appointed in each case?—A. There is nothing to prevent that.

Q. I am thinking aloud and I am just wondering whether there should be anything that would enable that to be done without always having to appoint officers for each court?—A. There is not much difficulty about issuing separate convening orders for the individual courts.

Mr. HARKNESS: I wonder if Brigadier Lawson would tell us whether the army is particularly anxious that they should only have this power in an emergency?

Brigadier LAWSON: We do not feel that we need it in peacetime. There are not enough service courts to require it. The advantage of having formal courts martial is that you train officers in military legal procedure, in addition to giving the accused a fair trial. For another thing, we have not enough lawyers in the service to set up these standing courts in peacetime.

Mr. ADAMSON: Your experience with them in the war was satisfactory?

Brigadier LAWSON: Very satisfactory.

Mr. ADAMSON: How many were there?

Major McCLEMONT: I suppose there were 12 to 15 presidents of standing courts martial across Canada.

Mr. ADAMSON: In Canada.

Brigadier LAWSON: I would say there were ten or fifteen thousand trials.

Mr. ADAMSON: That is the number of accused tried by those standing boards?

Brigadier LAWSON: Yes.

Mr. HARKNESS: I was wondering whether you would not rather cut out that part about the emergency so that if you did think it necessary you could set them up in peacetime?

Brigadier LAWSON: There is not much point in having the words in. It is conceivable that a great expansion of the service in peacetime would make it desirable to institute this procedure. We have no objection to the words coming out. They centainly do not add anything to the bill.

Mr. LANGLOIS: The word "emergency" is defined in the interpretation clause.

Mr. HARKNESS: Yes, but I would think you might like perhaps to have the emergency taken out and a court of this kind could be set up at any time.

Brigadier LAWSON: There certainly would be no objection to taking the words out.

Mr. ADAMSON: I will move, Mr. Chairman, or Colonel Harkness might, that the change be made.

Mr. GILLIS: If you take the words out you have not got the authority to set up that kind of court in an emergency.

Mr. HARKNESS: Yes you have.

Mr. GILLIS: Where do you get that authority?

Mr. HARKNESS: You could set it up any time.

Mr. GILLIS: There is no provision in the Act if you take the words out.

Mr. HARKNESS: The Governor in Council may make regulations authorizing a standing court martial at any time.

Mr. GILLIS: I would sooner have it written in the Act than to have it done behind the scenes with someone writing orders in council. I think it should be in the legislation.

The CHAIRMAN: I have the impression from listening to the discussion that this section is apparently drafted to deal with an emergency. It seems to me it is a little bit superfluous to the machinery of the Act in peacetime but, if it is earmarked for emergency use, and everybody knows that, then no matter how many years before an emergency may arise it will always be that the section is there for that purpose.

Mr. HUNTER: Why put in extra powers which are not needed? Why give such powers as that? You can always amend the Act if it becomes necessary? It has not been so in the past?

Mr. HARKNESS: I think it is a better way of dealing with a lot of offences than the regular court martial. I am inclined to think a man who has experience with dealing with a large number of cases is going to deal with them much better than the ordinary court martial does.

Mr. LANGLOIS: There is no objection to "in an emergency" but why could we not use "under special circumstances," or "in real emergency".

Mr. HARKNESS: Just take out the words "in emergency" and you can use it or not.

Mr. DICKEY: This section gives the Governor in Council power to bring in a special system of military justice. It is not considered to be necessary by the services under ordinary circumstances. I think parliament should limit the power of the Governor in Council to what we consider the kind of circumstances in which it should be exercised and I think that the words "in an emergency" are proper and I certainly would be in favour of passing the section as it stands.

The CHAIRMAN: Shall the section carry?

Carried.

Section 150.

REPRESENTATION OF ACCUSED

150. At any proceedings before a court martial the accused person shall have the right to be represented in such manner as shall be prescribed in regulations.

Mr. CAVERS: Do the regulations provide that the accused may have the right to choose his own representative?

Major MCCLEMONT: Yes, the regulations, or rather the rules of procedure as they now are called, provide for the accused selecting such defending officer from the service as he wishes. He also of course has the right to have counsel of the civilian type and he is entitled to have a friend sit by him and advise him.

Mr. WRIGHT: I think that should be in the Act. I do not think it should be left to the regulations and I cannot see any reason why it should not be written into the Act. It is a pretty important thing that should not be changed. The accused should always have the right to counsel and I suggest we amend that, putting it right in the section that the accused should have the right and that counsel should be provided.

Major McCLEMONT: The present position is that counsel may also be provided at the expense of the Crown, but some part of the expense may be recovered from the accused later on. The accused as well has the right to hire counsel if he can afford it and almost an absolute right to have a defending officer assigned to him.

The CHAIRMAN: It has always been dealt with under the regulations.

Major McCLEMONT: Yes, it has always been dealt with under the regulations. This is the first time it has been in statutory form. It has not been amplified because it was rather difficult to say the exact number of forms of representation the accused might have. He now has approximately four.

Mr. WRIGHT: I think if he has four we should state those four and if there are others then we should leave it open. I have written out an amendment:—"At any proceedings before a court martial the accused person shall be admitted to make his full answer and defence thereto and to have the witnesses examined and cross-examined by counsel, solicitor or agent on his behalf."—I do not know whether that would cover all the circumstances, you people know better than I do. Personally I would like to see this written in the Act rather than to be covered by regulation.

Brigadier LAWSON: It is a very commendable idea in peacetime, but in wartime it is not practical. There are not counsel available at all times to represent accused charged before courts martial. It would mean you could not try a person under active service conditions in many instances because there would not be counsel available to represent him. They now have the right, under those circumstances, to be represented by a defending officer of their choice.

The CHAIRMAN: We would not want to amend the Act to take away any of the rights that a man now has.

Mr. HENDERSON: I do not think we should include any of these things.

The CHAIRMAN: Well, you have had a good deal of experience.

Mr. GILLIS: Have we the assurance that the regulations are going to remain as they are? This clause says that he has the rights to be represented in such manner as shall be prescribed by the regulations.

Mr. LANGLOIS: The regulations are tabled in the House and can be seen by any person. Some may have been tabled today by the parliamentary assistant regarding the air force and any member of parliament can check on those.

Mr. GILLIS: That does not make any difference once they are passed.

Mr. LANGLOIS: You can protest.

Mr. GILLIS: That will not do the man any good if he is getting a court martial. I think the basic right to counsel should be written into the Act.

Mr. DICKEY: I think it is, Mr. Chairman.

Brigadier LAWSON: The basic right is written into the Act. The Act sals in so many words that an accused person shall have the right to be represented. It is only the manner in which he is to be represented that is regulated by the Governor in Council; but he has the basic right to be represented.

Mr. GILLIS: But we do not know what the hypothetical regulations are going to be.

Mr. WHITE: Would you change it to read: "—have the right to be represented, and, in such manner—"?

Mr. HENDERSON: This basic right was not in the three previous Acts.

Mr. CAVERS: The right is here; how it is to be dealt with is in the regulations. That seems to me to cover it.

Mr. LANGLOIS: These regulations must be made so that the man will not be deprived of his right to be represented. To do otherwise is impossible and the Governor in Council has no authority to pass such regulations.

Mr. HUNTER: If we were to reach the point where a person would not have a right to representation—if we had a government of that kind—I think we would change the Act just as quickly.

Mr. GILLIS: The government does not make the regulations; that is the unfortunate part. They have no say in it, neither has the cabinet. You say that we have a right to amend the Act but the Act was amended very very few times in the last war. You just got notice of an order in council.

Mr. WRIGHT: I would like to know who has authority to make these regulations, the Governor in Council or the minister?

The WITNESS: Either one, sir. The general rule would apply whereby the Governor in Council could make them, but if he did not, then the minister would be authorized to make them.

Mr. WRIGHT: I think the regulations should be made by the Governor in Council?

The WITNESS: We have no objection to that.

Mr. LANGLOIS: I would so move.

The CHAIRMAN: We did that in another section. Mr. Langlois moves that the following words be added to section 150: "made by the Governor in Council," after the word "regulations."

Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Section 151.

151. (1) Subject to subsections two and three, courts martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.

(2) Where the authority who convenes a court martial or the president of a court martial considers that it is expedient in the interests of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and any such order shall be recorded in the minutes of the proceedings of the court martial.

(3) Witnesses, other than the prosecutor and the accused person, shall not be admitted to a trial, except when under examination or by specific leave of the president of the court martial.

(4) The president may, on any deliberation among the members, cause a court martial to be cleared of any other persons in accordance with regulations.

Mr. ADAMSON: I gather that subsection (2) is a clause that was inserted—a new clause—to provide for trial for subversive activity and that sort of thing, where it would be prejudicial if the methods became known.

The WITNESS: It could cover that sir, but the more common thing would be where some secret equipment is involved.

Mr. PEARKES: I want to ask one thing. It says here: "witnesses, other than the prosecutor—" what about the defending officer?

The WITNESS: He would not be a witness.

Mr. PEARKES: Is the prosecutor considered a witness?

The WITNESS: The prosecutor could be a witness.

Mr. PEARKES: That will not exclude the officer defending nor the prosecutor?

Mr. DICKEY: I should not think it would mean the prosecuting officer?

The WITNESS: Yes, it does.

Mr. ADAMSON: I gather the authority, when the court martial is convened, may prescribe that it shall be held in camera.

The WITNESS: He must make an order, sir.

The CHAIRMAN: Commander Hurcomb says that he has a suggestion regarding an amendment to subsection 3 of clause 151.

The WITNESS: We were discussing this during the adjournment and we feel that the honourable members who spoke have made a good point. It is possible that the defending officer might be called as a character witness. The danger is that he might be excluded from the entire trial as has been suggested. We suggest the following amendment: after the word "prosecutor" in line 26 that we add a comma, that we delete "and", and in the next line, after the word "person" we delete the comma, and add the words "and his representative."

Mr. LANGLOIS: I would so move.

The CHAIRMAN: It is moved that subsection 3 be amended to read as follows:—"Witnesses, other than the prosecutor, and the accused person and his representative, shall not be admitted to a trial except when under examination or by specific leave of the president of the court martial."

Shall the amendment carry?

Carried.

Shall the section carry as amended?

Carried.

Section 152:

152. (1) The rules of evidence at a trial by court martial held in Canada shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province of Canada in which the court martial is held, except in so far as such rules are inconsistent with this Act or regulations.

(2) Where a court martial is held out of Canada or in a ship beyond the territorial limits of Canada, the rules of evidence shall be the same as those from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the accused person states to the court martial that his ordinary place of residence is situated, except in so far as such rules are inconsistent with this Act or regulations.

(3) Where, in the circumstances mentioned in subsection two, an accused person states that his ordinary place of residence is situated out of Canada, or makes no statement as to his ordinary place of residence, the court martial shall apply the rules of evidence from time to time followed in proceedings under the *Criminal Code* in civil courts in the province in which the capital city of Canada is situated, except in so far as such rules are inconsistent with this Act or regulations.

(4) A court martial, wherever held, shall not as respects the conduct of its proceedings or the reception or rejection of evidence or as respects any other matter or thing, be subject to any Act, law or regulation not in force in Canada.

Mr. ADAMSON: It seems very involved.

Mr. LANGLOIS: And a very roundabout way of saying what it means.

Mr. ADAMSON: Do the rules of evidence vary a great deal?

The WITNESS: Very slightly, but there is no such thing as the "law of evidence of Canada", because there are trifling variations between provinces.

Mr. HARKNESS: What law of evidence has been followed up to this time?

The WITNESS: Under the section 128 of the Army Act the rules of evidence shall be the same as those followed in the civil courts in England.

The CHAIRMAN: Shall the section carry?

Carried.

Section 153:

153. (1) Such classes of documents and records as are prescribed in regulations made by the Governor in Council may be admitted as evidence of the facts therein stated at trials by court martial or in any proceedings before civil courts arising out of such trials, and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those regulations.

(2) A court martial may receive, as evidence of the facts therein stated, declarations made in the manner prescribed by section thirty-six of the *Canada Evidence Act*, subject to the following conditions.

(*a*) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before the trial;

(*b*) where the declaration is one that the accused person wishes to introduce, a copy shall be served upon the prosecutor at least three days before the trial; and

(*c*) at any time before the trial the party upon whom the copy of the declaration has been served under paragraph (*a*) or (*b*) may notify the opposite party that he will not consent to the declaration being received by the court martial, and in that event the declaration shall not be received.

Carried.

Section 154:

154. (1) The commanding officer of the accused person, the authority who convenes a court martial, or, after the assembly of the court martial, the president, shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by any such commanding officer, authority who convenes a court martial or president to be frivolous or vexatious.

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in regulations, and if at the trial the evidence of the witness proves to be relevant and material, the president of the court martial or the authority who convened the court martial shall order that the accused person be reimbursed in the amount of the fees and expenses of the witness so paid.

(3) Nothing in this section shall limit the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit.

By Mr. Harkness:

Q. What is the situation where there is a very material witness but the exigencies of the service do not permit him to be present. Is the court martial automatically postponed?—A. The machinery of the next section could be used—section 155. Evidence could be taken on commission and if that is not appropriate, the court martial would only have to be adjourned until the witness was available.

Q. There is provision that the court martial in such a case must be postponed or adjourned?—A. I do not think there is specific provision to that effect in here but that is the practice.

Q. Is there any protection for an accused person apart from practice?—A. Well, just the provision of the next section regarding evidence on commission.

Mr. PEARKES: I suppose if a judgment was given and a witness the accused thought was material had not been produced he could appeal the case on very substantial grounds?

The WITNESS: That is a point.

Mr. LARSON: This seems to me rather to favour the person who can afford to do these things.

The WITNESS: The only place that enters is where the request is deemed to be frivolous or vexatious. Where the court decides the request is frivolous or vexatious then the accused has to raise the money.

Mr. CAVERS: Who is the judge of whether it is frivolous or vexatious?

The WITNESS: The commanding officer decides whether a request is frivolous and if that is the decision the man has got to find some money.

By Mr. Larson:

Q. I have had experience with commanding officers who are very different in their dealings. I have had some that seemed very lenient but, if a commanding officer happens to be a very hard-boiled type and figures he is going to get a fellow, what is to stop him saying that the accused has to pay for having a witness procured. The accused is entirely at the mercy of the commanding officer.—A. Yes, but we must have this because an accused might ask to summon all the members of the Naval Board to a court martial in Vancouver. You must have some safeguard there. The point you raise, sir, is whether the right to decide should be with the commanding officer or on a higher plane.

Q. That is probably it. But it seems to me involving this thing with money will favour certain things like delay. If a man could afford to have a witness brought from a distant point he might delay the court martial for a time.

Mr. GEORGE: Has the accused any right to appeal under these provisions, as he has in the other sections?

The WITNESS: Well he could state a grievance on the decision of the commanding officer that something was frivolous. He would have the redress of grievances provision, but, if he were smart, I should think he would let the trial proceed and rely on his right of appeal.

Mr. LANGLOIS: What happens when a man wants to have some witnesses from outside, other than soldiers, called before the court on his behalf? What about those witnesses if the man has no money to pay?

The WITNESS: I think subsection 4 of section 200 covers that.

The CHAIRMAN: Subsection 4 of section 200 reads: "A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations."

The WITNESS: It is paid at the public expense, in practice.

Mr. LARSON: Does the accused have leave to appeal? Has he an absolute right of appeal?

The WITNESS: You will come to that in Part XI. It is rather complicated and I think it would be confusing to bring it in now.

The CHAIRMAN: Shall section 154 carry?

Carried.

Section 155:

155. (1) Where it appears to the Judge Advocate General, or to such person as he may appoint for that purpose, that the attendance at a trial by court martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason, the Judge Advocate General, or such person as he may appoint for that purpose, may appoint any officer or other qualified person, in this section referred to as a "commissioner", to take the evidence of the witness under oath.

(2) The document containing the evidence of a witness, taken under subsection one and duly certified by the commissioner, shall be admissible in evidence at a court martial to the same extent and subject to the same objections as if the witness had given that evidence in person at the trial.

(3) Where in the opinion of the president of a court martial, a witness whose evidence has been taken on commission, should in the interests of justice appear and give evidence before the court martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

(4) The document mentioned in subsection two or a true copy thereof may be attached to the summary or abstract of evidence taken in respect of the charge against the accused person and, on being so attached, that document shall form part of the summary or abstract of evidence.

(5) At any proceedings before a commissioner the accused person and the prosecutor shall be entitled to be represented and the person representing them shall have the right to examine and cross-examine any witness.

(6) The accused person shall, at least twenty-four hours before it is admitted at the court martial, be furnished without charge with a copy of the document mentioned in subsection two.

This is just the ordinary provision for taking evidence on commission.

Mr. HUNTER: It says here that the Judge Advocate General, or such person as he may appoint, if he thinks the attendance at a trial of a witness is not readily obtainable, may appoint any officer as a commissioner. It strikes me that the officer should have some legal qualifications.

Brigadier LAWSON: It may not be possible to find a person with legal qualifications. The officer for instance from whom you might wish to have the commission evidence taken might be in the line and you would have no legally qualified person there to take evidence. I think you have to leave it rather wide and take it for granted that discretion would be used in appointing the commissioner.

Mr. HUNTER: Is the accused to be represented?

The CHAIRMAN: Yes, under subsection 5.

Mr. HUNTER: If you are in a position in action and you cannot find anybody with legal qualifications it is going to be equally difficult to find someone to represent the accused. I do not see the advantage here, and it strikes me, where you are not having the witness present that things should be done by some person with considerable qualifications. It might be that the evidence was very important. The whole case might depend on that evidence.

The WITNESS: Certainly if there were any doubt about the competence of the commissioner they would avail themselves of the provision of subclause 3 if it could be done, which empowers the court to call the witness before the court. That is the only answer.

Mr. ADAMSON: I suppose this section, if new, is to overcome the difficulty that occurred during the war where witnesses had to be brought from overseas and extremely long distances. I think there was one case where the travelling expenses were $60,000 or so; officers had to be brought from Libya.

The CHAIRMAN: How many?

Mr. ADAMSON: Is not that so?

The WITNESS: There were two War Measure orders in council providing substantially for the same procedure as this section provides.

Mr. ADAMSON: Were there not one or two cases of extremely long delays in courts martial?

Major MCCLEMONT: That may have been so prior to 1943, but after these orders in council were passed it was possible to take evidence on commission here for use overseas and vice versa.

Mr. STICK: You found the practice worked quite all right?

Brigadier LAWSON: Yes, it did sir.

By Mr. Henderson:

Q. There is one point here about taking evidence on commission. Once you do it it is final. Do you not think it would be a much better way, in all fairness to the accused, and to the prosecution, if there were some notice given so many days ahead from one party to the other indicating that so-and-so was to be examined on commission. I am quite sure any defending counsel or prosecuting counsel would find themselves in a position that they would have to do a lot of spade work to know who the witness was. The way this section reads the accused could be prevented from asking questions?—A. Not the accused, he could not be examined on commission.

Q. Yes. Take the case where you tell his representative today that the prosecution is going to examine so-and-so in New York, for instance. Now, that is all over when you take that evidence on commission, and I think in fairness to the other party, to the prosecution or the defence, they should be given so many days' notice that you are going to examine someone on commission because when you finish your commission evidence you are finished and it would be unfair for either party not to be given an opportunity to know who the party is they are examining and what the purpose of the examination is.

Major MCCLEMONT: Do you not think that is a matter really of rules of procedure that could be covered in the regulations? There are a number of regulations now which say the accused shall have so much notice of trial.

Mr. HENDERSON: I think commission evidence is very important. You do not have the witness before you in court so you can cross-examine him as the defending officer. What he has said is over and done with and I think the accused should be given the opportunity ahead of time to know something about this witness who is going to be cross-examined.

Mr. GEORGE: Is that covered by section 5? It says he shall be represented and he cannot be represented unless he is notified.

Mr. HENDERSON: It is the length of notice I am talking about.

Mr. LANGLOIS: Mr. Chairman, I heartily agree with what has been said, but there are some aspects which may be considered in the procedure to be followed in taking evidence on commission. Would it not be a good thing to have the rules of procedure applying to a court martial also apply to evidence taken on commission?

Mr. HENDERSON: You have given him notice for other matters; I do not see why you cannot give him notice for this section.

Brigadier LAWSON: Section 5 states the accused is entitled to be represented. If he is not given sufficient notice to exercise that right a civil court would interfere.

The CHAIRMAN: Of course, notice may be adequate or inadequate; it would have to be notice sufficient to make it physically possible to be represented; but that may not be sufficient notice to enable the accused to properly instruct his counsel.

Mr. HENDERSON: I suggest a limitation of notice be placed in one of these sections.

Mr. CAVERS: I would suggest that it be ten days' notice. I think the accused and the prosecution should have ten days' notice when evidence is to be taken on commission.

The CHAIRMAN: I agree that evidence taken on commission is very vital evidence and very difficult to upset if no one is representing the accused at the time it is being taken. If it is the wish of the committee, this section may stand.

Mr. LANGLOIS: Mr. Chairman, I agree with this opinion and I would like the legal authorities to realize the fact there is no provision for the rules of evidence to apply to the commission.

Mr. BLACKMORE: Before leaving, I am not sure this point is in order here, but I notice time and again the accused shall have this right and the other right, and what I cannot get through my head is what provision is made for him to assert that right. Now, am I correctly informed that someone who is convicted by a court martial is unable to get a copy of the court martial proceedings?

The WITNESS: No, sir, a copy of the proceedings is provided for him.

By Mr. Blackmore:

Q. We state he has the right to do something, but it may be pretty difficult for him to assert that right.—A. Section 68 makes it mandatory to deliver copies of the court martial and minutes of proceedings to the accused person and with the minutes of proceedings there is also delivered to him a statement of appeal which he can fill in if he wishes to launch an appeal.

Q. Did that prevail throughout the war?—A. In the navy he had to pay for it, he had to pay for the copy of proceedings.

Q. How much did he have to pay?—A. It was ten cents a folio in the navy.

Q. About how much would that cost him in an ordinary court martial?—A. It is hard to assess, sir, because courts martial varied so much in length, but it could cost him as much as twenty cents a page.

Brigadier LAWSON: Just for the information of the committee, we have had two cases recently and I asked the court reporter and he said it was $2.25 for one and the other was $2.40.

Mr. HUNTER: In a lengthy trial it could cost a lot.

The CHAIRMAN: Anyway, I do not think it would be exorbitant.

Mr. ADAMSON: I want to support what Mr. Langlois said about the rules of evidence, and I suggest that be put in the section. In order to simplify it why could it not be made the rules of evidence of the capital city of Canada?

Bridagier LAWSON: I think the rules of evidence on commission would have to be exactly the same rules as with any other evidence.

The CHAIRMAN: Yes, exactly.

Carried.

Section 156:

156. A court martial may, where the president considers it necessary, view any place, thing or person.

Carried.

Section 157:

157.(1) When a court martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to be tried by any of them, and if he objects the court martial shall decide whether the objection shall be allowed.

(2) The procedure for the replacement of a president of a court marital or any other members of a court martial in respect of whom an objection has been allowed shall be as prescribed in regulations.

Carried.

Section 158:

158. (1) At every court martial an oath shall be administered to each of the following persons,

(*a*) the president and other members of the court martial;
(*b*) the judge advocate;
(*c*) the officers ordered to attend for purposes of instruction;
(*d*) court reporters;
(*e*) interpreters;
(*f*) witnesses,

in the manner and in the forms prescribed in regulations.

(2) If a person to whom an oath is required to be administered under subsection one,

(*a*) objects to take the oath and the president of the court martial is satisfied of the sincerity of the objection; or
(*b*) is objected to as incompetent to take the oath and the president of the court martial is satisfied that the oath would have no binding effect on the conscience of that person,

the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in regulations and, for the purposes of this Act, a solemn affirmation shall be deemed to be an oath.

Mr. GEORGE: I wonder if we could have an explanation of paragraph 2 (*b*)?

The CHAIRMAN: It sets out the procedure if a witness is incompetent to take an oath, or if the president rules the oath would have no binding effect on the conscience of that witness.

Mr. ADAMSON: Surely if an oath would have no effect, a solemn affirmation would have no effect.

Mr. BENNETT: Oh, yes, if he was a well recognized atheist.

Mr. LANGLOIS: There are no provisions if a witness would like to take an oath in another manner on religious grounds.

Mr. PEARKES: It is prescribed in the regulations.

The CHAIRMAN: Yes.

Carried.

Section 159:

159. A court martial may be adjourned whenever the president considers adjournment desirable.

Carried.

Section 160:

160. (1) Where, after the commencement of a trial, a court martial is by death or otherwise reduced below the minimum number of members prescribed in this Act, it shall be deemed to be dissolved.

(2) Where, after the commencement of a trial, the president of a court martial dies or for any other reason cannot attend and the court martial is not thereby reduced below the minimum number of members prescribed in this Act, the authority who convened the court martial may appoint the senior member of the court martial to be the president and the trial shall proceed; but if the senior member of the court martial is not of sufficient rank to be appointed president, the court martial shall be deemed to be dissolved.

(3) Where, on account of the illness of the accused person, it is impossible to continue the trial, the court martial shall be dissolved.

(4) Where a court martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced.

Carried.

Section 161:

161. (1) Where at any time during a trial by court martial, it appears to the president that there is a technical defect in a charge that does not affect the substance of the charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case.

(2) Where an amendment to the charge has been made, the president of the court martial shall, if the accused person so requests, adjourn the court martial for such period as the president considers necessary to enable the accused person to meet the charge so amended.

(3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed by the president of the court martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection therewith as being the original charge sheet.

Mr. LANGLOIS: Subsection 1 is quite a departure from the practice in civil courts. This business of amending any mistakes in the charge rests with the prosecution and not with the court. I think it is quite a departure and if there is a good reason for it I would like to have it.

The WITNESS: This is derived from section 893 of the Criminal Code which provides as follows: "Where, before trial, or at any stage of a trial, it appears to the Court that the indictment is defective, the Court shall make such order for the amendment of the indictment as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice, and may make such order as to the payment of any costs incurred owing to the necessity for amendment as the Court thinks fit."

Carried.

The CHAIRMAN: Section 162:

162. (1) The finding and, subject to subsection three of section one hundred and twenty-one, the sentence of a court martial and the decision in respect of any other matter or question arising after the commencement of the trial shall be determined by the vote of a majority of the members.

(2) In the case of an equality of votes on the finding, the accused shall be found not guilty.

(3) In the case of an equality of votes on the sentence or on any other matter or question arising after the commencement of the trial, except the finding, the president of the court martial shall have a second or casting vote.

By Mr. Pearkes:

Q. Section 121 is also standing.—A. No, only subsections 8 and 9, sir.

Q. That is a change in procedure, is it not?—A. Sir, section 53, subsection 8, of the Army Act provides: "53 (8). In the case of an equality of votes on the finding the accused shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote." I think it is fair to say it is substantially the same, sir.

Q. I was referring to the first sub-heading.—A. It is in the rules of procedure at the moment, I understand, sir.

Carried.

The CHAIRMAN: Section 163:

163. A court martial may at the request of the offender and in its discretion take into consideration, for the purposes of sentence, other service offences, similar in character to that of which the offender has been found guilty, that are admitted by him, as if he had been charged with, tried on and found guilty of such offences; but the sentence of the court martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty.

Carried.

Section 164:

164. The finding and sentence of a court martial shall at the conclusion of the trial be pronounced to the offender in open court and he shall be under the sentence as of the date of the pronouncement thereof.

By Mr. Adamson:

Q. I want to ask a question about appeals. Last night we dealt with sections of the Criminal Code which said if a man had been sentenced and had appealed, even if he was held in custody the time pending hearing of appeal would not be counted in considering his sentence. I gather that does not apply in this section?—A. It is certainly not covered in this section.

Q. I want to make it clear if a man is sentenced to six months or three months, and appeals to higher authority, the execution of his sentence shall start from the time he is sentenced by the court martial?—A. Yes, sir.

By Mr. George:

Q. May I ask why this is changed from the old army custom?—A. Well, sir, it arises out of the new appeal provision. This is the naval practice today.

In the army and air force the sentence was not pronounced because it had to be confirmed by the confirming authority. We have eliminated the confirming authority entirely because of the new appeal provision.

By Mr. Langlois:

Q. Would this section not preclude the court from sentencing a man to time already spent in jail?—A. They could take it into account in imposing sentence; they always do that in practice.

By Mr. Hunter:

Q. I judge under this it is impossible for the court to reserve their decision? —A. I suppose they could adjourn and postpone making a decision, but they have to make it eventually.

By Mr. Harkness:

Q. A court martial always has to make a decision?—A. They make a decision, but in the army and air force it was not pronounced.

By Mr. Pearkes:

Q. Unless the man was found not guilty?—A. Yes, sir.

Q. In the new provisions there is no confirmation required, therefore the presiding officer has no opportunity to reduce the sentence unless there is an appeal made by the prisoner?—A. No, sir, you will find later on that is still reserved.

Carried.

The CHAIRMAN: Section 165:

165. Where a court martial has found a person guilty of an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (*a*) of subsection two of section one hundred and nineteen applies, the court martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial.

By Mr. Adamson:

Q. This is a new section?—A. No, sir, it is based on the principle contained in the Army Act.

Q. And how is clemency recommended?—A. It is actually set out in the minutes of the court martial. This covers only cases where punishment is mandatory, and they say, "We recommend in view of the good record of the accused that he should be granted clemency."

Q. You do not suggest, you just recommend?—A. I would not expect so, sir.

Q. You just recommend clemency?—A. Yes, I expect that is what would happen.

Carried.

The CHAIRMAN: Section 166:

166. (1) Where at any time after a trial by court martial commences and before the finding of the court martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

(2) Where the decision of the court martial on an issue mentioned in subsection one is that the accused person is not then unfit to stand or continue his trial, the court martial shall proceed to try that person as if no such issue had been tried.

(3) Where the decision of a court martial held in Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be treated in accordance with subsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the *Criminal Code*, as if the same decision had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

(4) Where the decision of a court martial held out of Canada is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection five of section nine hundred and sixty-seven and section nine hundred and sixty-nine of the *Criminal Code*, as if the same decision had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

(5) No decision of a court martial that an accused person is unfit to stand or continue his trial by reason of insanity shall prevent that person being afterwards tried in respect of the offence or of any other offence of which he might have been found guilty on the same charge; and the period during which he is unfit to stand or continue his trial by reason of insanity shall not be taken into account in applying to him in respect of that offence the provisions of section sixty.

Mr. HARKNESS: Just one point there. Is there any provision in the regulations or otherwise as to what means the court martial shall take to determine whether the man is unfit through insanity to stand trial? In other words, is there any provision in regard to taking medical evidence from one or more qualified men?

Major MCCLEMONT: There has to be a certificate he is fit for trial each day.

Mr. HARKNESS: It says here an issue shall be tried by the court martial.

Major MCCLEMONT: There would be expert witnesses then, and the same procedure would be followed as in a criminal court.

Mr. HARKNESS: What is there to make such a rule apply?

Major MCCLEMONT: The defending officer would say that his man was insane and not fit to go on with his trial, and produce medical testimony to back it up. No doubt the prosecution could produce medical officers, civilian or military, to refute that view.

Mr. ADAMSON: There may be legal reasons for it, but in line 22 it says, "he shall be transferred, as soon as conveniently may be."

The CHAIRMAN: That is a legal term with an established meaning. It may perhaps be a little antiquated.

Mr. HUNTER: You have no defined in your section what rules of evidence are to apply.

The WITNESS: This is part of a trial by court martial so that the section which we carried deals with it and that would apply.

The Committee adjourned.

TUESDAY, May 30, 1950.

EVENING SESSION

The committee resumed at 8.15 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. We have two clauses left of the part that we were working on before, section 167 and section 168, and that will complete Part VII.

Mr. ADAMSON: Section 166 was not carried, if I remember correctly.

The CHAIRMAN: I read it, but it may not have been carried.

Mr. HUNTER: We had discussed it.

Carried.

The CHAIRMAN: Section 167:

167. (1) Where evidence is given at a court martial that a person charged with a service offence was insane at the time of the commission of that offence, the court martial, if it finds that person not guilty of the offence, shall make a special finding as to whether he was insane at the time of the commission of the offence and whether he was found not guilty by reason of insanity.

(2) Where a court martial held in Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in the province of Canada in which that court martial was held.

(3) Where a court martial held out of Canada makes a special finding under subsection one that an accused person was insane, it shall order that person to be kept in strict custody and he shall be transferred, as soon as conveniently may be, to the province of Canada in which he is domiciled, and upon transfer to that province he shall be treated in accordance with subsection two of section nine hundred and sixty-six and section nine hundred and sixty-nine of the *Criminal Code*, as if the same finding had been made in respect of him by a civil court in that province; and, in the case of an accused person who is not domiciled in any province, the Minister may make such arrangements for the benefit and welfare of that person as to the Minister seem fit.

Mr. ADAMSON: What are sections 966 and 969 of the *Criminal Code*?

The CHAIRMAN: Wing Commander McLearn, you might give the committee the gist of the sections referred to.

Wing Commander MCLEARN:, Section 966 is much the same as subsections (1) and (2) of our clause 167. Section 969 of the *Criminal Code* states:

In all cases of insanity so found, the Lieutenant Governor may make an order for the safe custody of the person so found to be insane, in such place and in such manner as to him seems fit.

Mr. ADAMSON: Did you read section 966?

Wing Commander MCLEARN: I did not read it, sir. I said that the substance of it was the same as subsections (1) and (2) of clause 167.

Mr. HARKNESS: Just a minute. If a man is found to be sane and then not guilty of an offence, the court, according to this, still has to make a special report as to whether he was insane or not.

Wing Commander McLEARN: The purpose of that, sir, is to put the accused in the position, when he regains his sanity, of knowing whether he was found not guilty by reason of being insane or found not guilty of having committed the act. The court must indicate when there is a finding of not guilty whether it was because of his insanity or because the evidence did not indicate he committed the act at all.

Mr. HENDERSON: You then have the situation that the man has been ruled to be sane and found not guilty of the offence, but all this other business about finding whether he is insane or not has to be reported, which does not seem to be quite fair to the man.

The CHAIRMAN: I think that it is an attempt to be fair to him.

Wing Commander McLEARN: The point is that if it is found he committed the act and was insane at the time of the commission of it, he should be turned over to the civil authorities.

Mr. HARKNESS: I am talking about a case where he is found not guilty and not insane.

Wing Commander McLEARN: In that case, sir, he would be treated as a medical problem within the service.

Mr. HARKNESS: If he was found to be not insane?

Wing Commander McLEARN: I misunderstood you, sir. He would just be acquitted then.

The CHAIRMAN: This section only operates where the man is alleged to be insane.

Mr. HUNTER: What Mr. Harkness is getting at is a case where a man is alleged to be insane and found to be not insane and not guilty. In that case he would be just not guilty, that is all.

Mr. ADAMSON: There is just one further point on this section. If he is found to be insane and therefore detained under sections 966 and 969 of the *Criminal Code* at the pleasure of the Lieutenant Governor, he would be committed to a provincial mental hospital. Now, that is at the expense of the province, is it not?

Mr. HUNTER: Subject to grants from Mr. Martin.

Wing Commander McLEARN: I think it would be, sir. He would be sent to his place of domicile.

Mr. ADAMSON: Whereas, if he was wounded or a casualty in any other way except as a mental patient he would be the responsibility of the Department of National Defence or the Department of Veterans Affairs, and under this if he is found insane he will be shipped off and becomes the responsibility of the province.

Mr. HUNTER: Only if he has been accused of a crime.

Mr. ADAMSON: Yes, but if he is insane,—that is if he is accused of a crime and is found to be insane,—you immediately ship him off to the provincial hospital and he is a charge on the province. If he is completely insane for the rest of his life he would be a charge on the province for life.

Mr. DICKEY: I do not think that follows from this section. The only way you can get a person into a provincial institution is by a lieutenant governor's warrant. The question of who would pay for his treatment and that sort of thing would depend on the circumstances of the particular case just as it does now with respect to veterans and personnel within the service.

Mr. ROBERGE: This deals only with persons in the service?

Wing Commander McLEARN: Yes, sir, or persons accompanying the forces.

Mr. ROBERGE: Would persons seconded come under that?

Wing Commander McLEARN: I think the question would be settled on the basis of the circumstances if the province was not happy to have the patient at provincial expense.

Mr. HENDERSON: Does it not boil down to a straight pension matter? If it is found a man has become insane in the service he would have a case before the Pensions Board.

The CHAIRMAN: The question would have to be decided whether he was in the service or outside at the time.

Mr. ADAMSON: I think it should be qualified.

Mr. HENDERSON: I do not think it can be qualified. It depends on the facts, whether his insanity is a result of his service.

Mr. ADAMSON: It would be a matter of arbitration.

The CHAIRMAN: It would be a matter of fact.

Mr. HUNTER: The province would not take him if they thought he was a pensionable case.

Carried.

The CHAIRMAN: Section 168:

168. A copy of the minutes of the proceedings of a court martial and of the form of the Statement of Appeal mentioned in section one hundred and eighty-eight shall be delivered without charge as soon as practical after the conclusion of the trial to the person who has been tried and found guilty by that court martial.

Carried.

Wing Commander H. A. McLearn, Deputy Judge Advocate General, R.C.A.F., recalled:

The CHAIRMAN: We now come to Part VIII and that deals with "Provisions Applicable to Findings and Sentences after Trial," and Wing Commander McLearn is going to assist us with this part. Do you wish to make any statement on the generality of the section?

The WITNESS: No, sir, it is not necessary.

Mr. ADAMSON: We are going to have no general statement on it?

The CHAIRMAN: I think not. I think it is made up of sections in many ways not particularly related.

Section 169:

169. (1) Subject to subsection three and sections one hundred and seventy-six and one hundred and seventy-seven, the term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention, shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

(2) The only time which shall be reckoned toward the completion of a term of a punishment of imprisonment for two years or more, imprisonment for less than two years or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

(3) Where a punishment mentioned in subsection two cannot lawfully be carried out by reason of a vessel being at sea or in a port at which there is no suitable place of incarceration, the offender shall as

soon as practical, having regard to the exigencies of the service, be sent to a place where the punishment can lawfully be carried out, and the period of time prior to the date of arrival of the offender at that place shall not be reckoned toward the completion of the term of the punishment.

Mr. ADAMSON: Before we discuss that, what briefly are the exceptions in subsection (1)?

The WITNESS: Subsection (3) of section 169 has just been read. Section 176 relates to the substitution of a new punishment for a punishment awarded by a tribunal and has a bearing on the date from which any sentence of incarceration is reckoned.

Mr. DICKEY: That would of necessity be a lesser punishment?

The WITNESS: That is right, sir. Section 177 relates to the suspension of sentences of imprisonment or detention. Where a punishment of imprisonment or detention is suspended, it may in certain circumstances, which are explained in section 177, be revived.

Mr. ADAMSON: What happens in the case of a man who commits a crime in a ship and there is no place you can put him, when it will be a month or six weeks before you get back to port? Under this section his time does not count until he arrives in port and he is under detention in the ship, is he not?

Commander HURCOMB: The punishments mentioned in the first section cannot be carried out on board ship and normally he would continue to perform his duties and be paid for his time, so it seems reasonable that time should not count towards the completion of his sentence.

Mr. STICK: That if he is doing duty?

Commander HURCOMB: He will normally do duty, sir. It is just not practicable to keep a man in the jug on board ship.

Mr. STICK: No matter what the crime is?

Mr. ADAMSON: Does this not jibe with section 164 which states that the time of the sentence shall commence from the date of the sentence being read to him?

Commander HURCOMB: He is under sentence at that time, sir, but for the first time in section 169 we are told what time will count and this time does not count because he is in pay, he is probably performing his normal duties, and we cannot carry out the sentence in the ship.

Mr. ADAMSON: Supposing he is with a naval squadron in the Mediterranean or on board a capital ship such as the *Magnificent* or the *Ontario*, and a court martial is convened at Gibraltar. Supposing the man is sentenced to the only place you can incarcerate him, Halifax or Kingston, he is detained in a cell and put on board the cruiser or aircraft carrier and it is a month before he gets back to Canada, or perhaps more, perhaps the ship on a long commission and it is three months?

The CHAIRMAN: We are on section 169 and Mr. Adamson has proposed a hypothetical question to these gentlemen. Probably one of them would like to answer.

Commander HURCOMB: This provision is based on the Naval Service Act for many years and perhaps the best way of describing its purpose is to give an example. A ship is out at sea, a man commits an offence which would call, we will say, for twenty-eight days detention, but the ship is thirty days away from port. Now, because of the provisions of section 164, that sentence of detention would begin to run from the date of imposition and by the time they got to a place where he could be sent to a detention barracks the sentence is exhausted. The whole purpose of the punishment is lost because detention is a punishment designed to accomplish a special purpose. Normally, the man will perform duties as I said before; he will be paid. General Pearkes mentioned the army

soldier who is in a ship. Now, if he is in any one of our ships he is performing duties, he performs some sort of duty, and I see in the manual of military law at page 34 at the top, they are speaking now of duties on board ship: he may be employed on fatigue duties though he should not be placed on guard. That would normally be true in the navy, too. He would perform his normal duties and he would be paid for all that time. Now, that is the purpose that would serve.

Mr. PEARKES: It was in effect in King's rules and regulations or in the Army Act.

Commander HURCOMB: No, I was reading from the first part of the manual of military law, not the Army Act.

Mr. PEARKES: It is covered in the old manual of military law.

Commander HURCOMB: Not exactly this provision, which is covered solely by the Naval Service Act. I simply mention that to show that the normal army rule is that a man under punishment waiting to be sent to custody may be called upon to perform normal military fatigue duties, and the same is true in the navy, he would carry on with his duties, we need him; we need every one in the ship.

Mr. ADAMSON: I can remember a man being sent to cells on the half deck; he has to sit down there and pick oakum; does that not happen any more?

Commander HURCOMB: It does, sir, but this section applies only to the sentence of imprisonment and detention that cannot be carried out on board the ship; you are referring to an entirely different punishment, the punishment of "cells."

Mr. ADAMSON: If a man is given four days in cell you incarcerate him in the cell and give him an old rope and say pick that into oakum and he has to do so many pounds a day, but to a man who commits a very much more serious offence you say; all right you have committed a very much more serious offence, you are liable to twenty-eight days in detention; but the fellow who committed the lesser offence goes to the cells immediately. The man who has committed a major offence goes back on duty till you get back to port. Now, is that conducive to discipline on board, is that conducive to a happy ship?

Commander HURCOMB: The point is this, if a very ingenious sea lawyer, and we have some of them, thought this thing out very carefully, and we did not have this provision in here and he was getting a little tired of work he would commit an offence that would call for twenty-eight days detention. He knows we cannot do anything to him unless he becomes violent or commits some new offence; he is off work and never gets to detention quarters at all, he never has to go through the rigorous drill they have in those quarters.

Mr. Adamson: He has to pick oakum?

Commander HURCOMB: No, that is a separate punishment known as cells; we could not have him do that.

Mr. STICK: If you have a man and he is in detention on a ship, his time does not count until he comes to port.

Commander HURCOMB: If you do not mind my correcting you, sir, he is not in detention in the technical sense because we cannot carry out the punishment of detention on board a ship.

Mr. LARSON: What would happen, would he then be allowed to run around loose or would he start his detention there?

Mr. STICK: Would he be under pay?

Commander HURCOMB: As soon as sentence begins to run officially, he loses pay.

Mr. PEARKES: Let us say he goes into the prison at Gibraltar for a week and then because his ship is starting off again he is allowed out again and he comes back on the ship, enjoys all the privileges, the wet canteen, and so forth, and completes the sentence when he gets to Halifax.

Commander HURCOMB: I think that most unlikely, sir; I think he would be put in there and left in there until the sentence was completed or not put in at all. Probably not put in at all.

Mr. STICK: Mr. Chairman, a man is under detention and he is not getting paid. His time should count after the sentence is carried out, I do not care where it is.

Commander HURCOMB: We fully agree, but he is getting paid in this situation until he gets to detention quarters.

Mr. BENNETT: Does subsection (2) override the original civilian provisions regarding time off for good behaviour?

Wing Commander MCLEARN: No, sir. The main purpose is to look after people who escape from custody and to insure that the period during which they are on the loose does not count towards the serving of their sentence. We have in detention barrack regulations extensive provisions for time off for good conduct. Moreover, if an offender has been sentenced to imprisonment, the normal time allowed off for good conduct allowed in the civil institution where he is incarcerated applies to him.

Mr. BENNETT: But your subsection (2) reads: "The only time which shall be reckoned toward the completion of a term of a punishment of imprisonment for two years or more,... shall be the time that the offender spends in civil custody..." That is mandatory.

Mr. DICKEY: That wording would not exclude any other interference with the sentence such as pardon or remission or the ordinary application of provisions which would reduce the sentence for good behaviour.

Mr. BENNETT: Pardon and remission are in this Act but nowhere do I see anything about good behaviour mentioned, even subject to the regulations for good behaviour.

Wing Commander MCLEARN: Will you look at section 180, sir. That deals with the application of penitentiary and civil prison rules.

The CHAIRMAN: I think that takes care of it.

Mr. ADAMSON: This deals solely with detention and not penal servitude.

Wing Commander MCLEARN: You will see it deals with imprisonment or detention.

Mr. ADAMSON: That includes penal service?

Wing Commander MCLEARN: Yes, sir.

Mr. ADAMSON: You bring a man home who has been charged, and who is guilty and sentenced to penal service which can only be served in a civilian jail, and instead of locking him up in the cells you put him back on duty and he goes off to the local jail or to the local penitentiary when he arrives at a Canadian port.

Wing Commander MCLEARN: That is right, sir.

Mr. ADAMSON: Well, I just thought Commander Hurcomb said that.

Wing Commander MCLEARN: Just in that special case referred to in subsection (3).

Mr. ADAMSON: I would like to get to the bottom of this. If a man commits a serious offence while on one of the cruises from Vancouver around the Panama,

and, if he commits the offence off Seattle, he is tried at sea for that serious offence. We shall say he is sentenced to penal servitude. Now, he is not sent back to a Canadian port for probably three months.

Mr. DICKEY: The ship stops at San Francisco?

Mr. ADAMSON: I know that it will be possible to put him off at San Francisco but that is an American port and you have to have your provost people down there and go to a lot of trouble. In the meantime, he is still going to draw pay and he will still be on duty? Is not that so?

Commander HURCOMB: In that situation, sir, he would not be tried at all until he got back to Canada, because, with a heavy sentence of that nature, one would have to have a court martial and you could not conduct a court martial under our existing set-up with simply one ship at sea or even two ships at sea. You would not have the officers required, so you would not try the man at all.

Mr. GEORGE: Would that not be the answer to a lot of this argument? In the cases mentioned, or in many of them, the men would not be tried until they got into port.

Commander HURCOMB: Yes, that is true. Only offences calling for short term imprisonment would be tried at sea.

Mr. ADAMSON: Offences calling for punishment up to what term?

Commander HURCOMB: Certainly within the summary jurisdiction, which is ninety days. That is all the captain could impose summarily.

Mr. LARSON: What would happen until the man got back to Canada?

Commander HURCOMB: It would depend upon the circumstances. If it were felt that he would be a danger to the ship's company he would be held in some form of custody. It would be just the same as is the case in a civil jail. If a prisoner is not violent you let him out. It is roughly the same situation.

Mr. HENDERSON: The prisoner would be no worse off than a civilian waiting for the circuit judge to come around and try him.

Commander HURCOMB: That is the way we feel.

The CHAIRMAN: Shall the section carry?

Carried.

Section 170:

170. (1) A punishment of death imposed by a court martial shall be subject to approval by the Governor in Council and shall not be carried out unless so approved.

(2) A punishment of dismissal with disgrace from His Majesty's service or of dismissal from His Majesty's service, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (*b*) or paragraph (*c*) of subsection four of section one hundred and twenty-one shall be subject to approval by the Minister or such authorities as are prescribed in regulations and shall not be carried out unless so approved; but any punishment of imprisonment for two years or more, imprisonment for less than two years or detention included in the sentence shall commence and be carried out under section one hundred and sixty-nine as if the sentence had not included a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service, as the case may be..

(3) A punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service shall be deemed to be carried out as of the date upon which the release of the offender from the Canadian Forces is effected.

(4) An authority mentioned in section one hundred and seventy-three shall have power to substitute a new punishment for

(*a*) a punishment of death that has not been approved under subsection one;

(*b*) a punishment of dismissal with disgrace from His Majesty's service or dismissal from His Majesty's service that has not been approved under subsection two; or

(*c*) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection seven of section one hundred and thirty-five or subsection three or seven of section one hundred and thirty-six, as the case may be.

By Mr. Adamson:

Q. I am looking at 173, "substitution of punishments", and I notice there the minister is mentioned as the authority, whereas in the other sections, certainly for the death penalty, it is the Governor in Council. I think the Governor in Council should be mentioned but I just want to ask that question. The substitution authority is the minister; he can substitute a penalty, presumably for a punishment less than death, but the Governor in Council is the only authority that can certify or approve of the death sentence. Is that the distinction?—A. That is right, sir.

Q. Is that the only distinction? Life imprisonment, on the other hand, can be dealt with by the minister?—A. For the approval of a new punishment, yes. The punishment of death must be approved by the Governor in Council and, if the Governor in Council does not see fit to approve a sentence of death, then the minister, or such authority as might be appointed by him under section 137, would have the power to substitute a new punishment for the sentence of death not approved.

Q. That would apply just to the death sentence?—A. There are many other cases, sir.

Q. Only the Governor in Council has jurisdiction over the death sentence?—A. Yes, sir.

Q. If the Governor in Council says that we do not approve the death sentence, then the minister has to decide on what sentence is applicable under the circumstances?—A. That is right.

The CHAIRMAN: Shall the section carry?

Carried.

Section 171:

171. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may quash any finding of guilty made by a service tribunal.

(2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal shall cease to have force and effect.

(3) Where, after a finding of guilty has been quashed, another finding of guilty remains, and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

Carried.

Section 172:

172. (1) The Minister, and such other authorities as he may prescribe or appoint for that purpose, may substitute a new finding for any finding of guilty, made by a service tribunal, that is illegal or cannot be supported by the evidence, if the new finding could validly have been made by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding.

(2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorized by this Act in respect of the new finding, or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section one hundred and seventy-five, substitute such new punishment or punishments as he considers appropriate.

Carried.

Section 173:

173. Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, substitute for the illegal punishment such new punishment or punishments as he considers appropriate.

Carried.

Section 174:

174. The Minister, and such other authorities as he may prescribe or appoint for that purpose, may, subject to the conditions set out in section one hundred and seventy-five, mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.

By Mr. Pearkes:

Q. How is it intended to apply that? That would cover the old system of confirming a court martial, but how is it intended that it would be applied?—A. As soon as the trial is over, and whether the accused has entered an appeal or not, the proceedings will find their way up through the chain, for example, from the G.O.C. to army headquarters.

Q. Will the G.O.C. have to approve of them in any way?—A. No, sir. He would automatically conduct a review at his level, as the proceedings go through, on the advice of his A.J.A.G., and of his administrative disciplinary staff officers. He might see fit to quash the finding and substitute a new finding, or commute or substitute another punishment. The same authority would repose in the chief of the general staff. For certain classes of higher ranking officers or more serious offences, some of these powers might reside only in the minister.

Q. When you had to confirm a sentence there was the obligation of reviewing it?—A. That is right.

Q. So I am afraid that there would be a tendency toward laxity in the case where there is no obligation to review all of the sentences. It is all right where you are only getting one court martial every three months but when you are getting twenty courts martial a month then I think there would be a danger of the senior authority skipping over them.—A. The committee will ultimately see a clause in which for the first time an absolute obligation is imposed upon the Judge Advocate General to review all proceedings. Running down the scale to the command level we will have regulations which will indicate what steps

should be taken by the command in relation to proceedings as they go through. I think that when you see the whole picture you will appreciate that the accused is well protected.

The CHAIRMAN: Does the section carry?

Carried.

Section 175, Conditions Applicable to New Punishments.

175. The following conditions shall apply where under this Act a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal,

(*a*) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitution;

(*b*) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve a period of incarceration exceeding the period comprised in that sentence;

(*c*) where the new punishment is detention and the punishment that it replaces is imprisonment for two years or more or imprisonment for less than two years, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of two years; and

(*d*) where the offence of which a person has been found guilty by a service tribunal is an offence, prescribed in section sixty-four, sixty-five, sixty-six or sixty-seven, for which the punishment of death is mandatory, or in section eighty-three, for which the punishment of dismissal with disgrace from his Majesty's service or dismissal from His Majesty's service is mandatory, or an offence to which paragraph (*a*) of subsection two of section one hundred and nineteen applies, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence.

Does the section carry?

Carried.

Seciton 176, Effect of New Punishments.

176. Where under the authority of this Act, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment shall have force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of the Code of Service Discipline shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation, as the case may be.

Does the section carry?

Carried.

Section 177, Suspension of Imprisonment or Detention.

177. (1) Where an offender has been sentenced to imprisonment for two years or more, imprisonment for less than two years or detention, the carrying into effect of the punishment may be suspended by the Minister, or such other authorities as he may prescribe or appoint for that purpose; and the Minister or any authority so prescribed or appointed is referred to in this section as a "suspending authority".

(2) Where, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a penitentiary, civil prison, service prison or detention barrack, as the case may be, may postpone committal until the directions of a suspending authority have been obtained.

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection one has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment.

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment, he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment.

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on such review it appears to the suspending authority that the conduct of the offender, since the punishment was suspended, has been such as to justify a remission of the punishment, he shall remit it.

(7) A punishment that has been suspended shall be deemed to be wholly remitted on the expiration of the period specified as the term of that punishment, unless the punishment has been put into execution prior to the expiration of that period.

(8) A suspending authority may, at any time while a punishment is suspended, direct the authority who is empowered to commit the offender to commit him, and from the date of the committal order that punishment shall cease to be suspended.

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence.

Does the section carry?

Carried.

By Mr. Adamson:

Q. This is merely a good conduct clause?—A. Yes, sir.

Q. And it gives the power of a suspending officer to say to a man who has been sentenced, let us say, for a year, after he has served three months: "We suspend your sentence. You will go back to duty, and if you behave yourself, we might remit your sentence. But you still have a suspension of a sentence

hanging over you and if you do not behave yourself, then you may be incarcerated again and the whole of your sentence will be served."—A. That is correct, sir, subject to sub-clause (7), the provision for automatic remission.

By Mr. Stick:

Q. The time of suspension counts?—A. It counts towards the automatic remission. If he served, let us say, three months of a one year sentence, on the expiration of nine further months. He is free of all fear of having his sentence revived.

By Mr. Adamson:

Q. Yes; but if he has served three months, and his sentence is suspended for two months, and then he goes out and gets drunk again, the suspending officer can say to him: "You are an incorrigible. Back you go." He has still got to serve the nine months?—A. That is right.

By Mr. George:

Q. Is there anything in this Act which says that the new punishment cannot exceed the old one?—A. Yes, sir; section 175 (*b*).

The CHAIRMAN: We passed that. Does the section carry?

Carried.

The CHAIRMAN: Section 178:

178. (1) The Minister may prescribe or appoint authorities for the purposes of this section and any such authority is referred to in this section as a "committing authority".

(2) Such places as are designated by the Minister for the purpose shall be service prisons and detention barracks and any hospital or other place for the reception of sick persons to which a person who is a service convict, service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed.

(3) A committal order, in such form as is prescribed in regulations, made by a committing authority shall be a sufficient warrant for the committal of a service convict, service prisoner or service detainee to any lawful place of confinement.

(4) A committing authority may from time to time by warrant order that a service convict, service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

(5) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one such place to another such place, a service convict, service prisoner or service detainee may be held in any place, either in service custody or in civil custody or at any one time in service custody and at another time in civil custody, as occasion may require, and may be transferred from place to place by any mode of conveyance, under such restraint as is necessary for his safe conduct.

(6) Where a punishment of imprisonment for two years or more is to be put into execution, the service convict shall as soon as practical be committed to a penitentiary, there to undergo his punishment according to law; except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service convict be committed to a service prison there to undergo his punishment or part

of his punishment, and where a service convict has undergone part of his punishment in a service prison and a committing authority then orders him to be committed to a penitentiary, the service convict may be so committed notwithstanding that the unexpired portion of the term of his punishment is less than two years.

(7) Where a punishment of imprisonment for less than two years is to be put into execution, the service prisoner shall as soon as practical be committed to a civil prison there to undergo his punishment according to law, except that a committing authority may, in accordance with regulations made by the Governor in Council, order that a service prisoner be committed to a service prison or detention barrack there to undergo his punishment or part of his punishment.

(8) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practical be committed to a detention barrack there to undergo his punishment.

By Mr. Adamson:

Q. And you have three classes there, the service convict, the service prisoner and the service detainee?—A. Yes.

Q. Do you have a definition for them? I do not see it.—A. They are defined in clause 2.

Q. They are defined there?—A. Yes. The distinction to be drawn is that a service convict is one who is sentenced to two years or more imprisonment; a service prisoner is one who is sentenced to imprisonment for less than two years and a service detainee is one who is sentenced to detention.

Q. And the maximum for a service prisoner is 90 days?—A. No, sir. The 90 day limit is on summary conviction only in the navy.

Q. And the service detainee is virtually the same as the other two?—A. No, sir. The sentence of a service detainee can be served only in a service institution. For instance, from this immediate area he would be sent to the army detention barracks at Camp Borden where he would be obliged to undergo certain drills and other procedures of a military nature under detention barrack regulations. A service prisoner, on the other hand, normally goes to a civil jail, and he is treated there just as though he had been sentenced by a civil court to a term of imprisonment for two years less one day.

Q. And in the case of a service prisoner and the service detainee you still hope to make a useful soldier, sailor or airmen out of him?—A. In the case of a service detainee, that is true.

Q. And that is the general distinction between the two?—A. Yes, sir.

Q. And there is just the one service detention barracks, the one at Camp Borden?—A. All from this area go there. There are other detention barracks.

Q. One for each command?—A. I am not sure how many. There are several.

Q. And all service detainees are sent to some detention barracks?—A. That is right.

Q. And all branches of the service go to the same detention barracks?—A. Yes, the army runs all detention barracks at the present time.

By Mr. Gillis:

Q. Has the committing authority been changed in this section?—A. No, it has not been changed.

Q. Under the old Militia Act was it not the Governor in Council who was the committing authority, and is not the minister here given the power which formerly vested in the Governor in Council?—A. No, that is covered by section 133 of the Militia Act.

Q. Under this section the minister may prescribe or appoint the authority by virtue of this section, and any such authority, referred to in this section, has the same powers as he has.—A. The authority here is not given very much discretion. As a matter of fact, he can only act on the basis of a valid finding and sentence of some sort of tribunal. He has only the power to sign the document whereby the prisoner is committed to an institution to serve the sentence awarded by the tribunal.

Carried.

The CHAIRMAN: Section 179:

179. Where the exigencies of the service so require, a service convict, service prisoner or service detainee may, by an order made by a committing authority mentioned in section one hundred and seventy-eight, be removed temporarily from the place to which he has been committed for such period as may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order shall be necessary upon his return to that place.

Mr. PEARKES: If he goes to another place he has to have a further committal order?

The WITNESS: He would, sir, definitely.

By Mr. Adamson:

Q. A service convict cannot be sentenced to a detention barracks?—A. No, sir, he might be sentenced to a service prison if one were set up.

Q. But there is no service prison in Canada?—A. The last time I checked, a few months ago, a portion of the detention barracks at Camp Borden had been set aside and designated as a service prison. I am unable to say whether that is the case today.

Q. What about that place at Kingston?

Mr. PEARKES: That is closed up; that was just a tourist camp.

Carried.

The CHAIRMAN: Section 180:

180. While a service convict is undergoing punishment in a penitentiary or a service prisoner is undergoing punishment in a civil prison, he shall be dealt with in the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment in a penitentiary or civil prison, as the case may be, shall insofar as circumstances permit, apply accordingly; but a service convict undergoing punishment in a penitentiary or a service prisoner undergoing punishment in a civil prison shall not be discharged therefrom until the expiration of the term of his punishment, as reduced for good conduct by virtue of any rules in effect in that penitentiary or civil prison, unless an authority mentioned in section one hundred and seventy-four or section one hundred and seventy-seven orders that he be discharged therefrom prior to the expiration of the term of his punishment.

Carried.

Section 181:

181. The custody of a service convict, service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Act, or by reason only that such document deviates from the pre-

scribed form; and any such document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature.

Carried.

The CHAIRMAN: Before we proceed with section 182, I think there are some proposed changes. Wing Commander McLearn advises me that it is the wish of the Judge Advocate General's Branch to take section 184 out of its context and put it somewhere else later on, and in order to do that without having to renumber all the following sections it is considered desirable to break 182 into two sections and make subsection 1 section 182 and subsection 2 section 183. The present section 183 will then become 184.

Mr. DICKEY: I so move.

Mr. ADAMSON: That is the only alteration, is it?

The WITNESS: Yes, sir.

The CHAIRMAN: No. 182 will read as follows:

182. A service convict or service prisoner who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a penitentiary or a civil prison, shall be treated in the same manner as if he were a person undergoing a term of imprisonment in such penitentiary or civil prison by virtue of the sentence of a civil court.

Carried.

What was subsection 2 now becomes, by reason of the amendment, section 183, and subsection 2 is now omitted and 183 will read as follows:

183. A service convict, service prisoner or service detainee who, having been released from the Canadian Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barracks, may, in the discretion of the commanding officer of that service prison or detention barrack, be made available to the Lieutenant-Governor of the province in which the service prison or detention barrack is situated, in order that he may be treated in the manner provided for in section nine hundred and seventy of the *Criminal Code*, and, pending action under that section, he shall be kept in strict custody until his case has been disposed of under that section, whether or not his term of imprisonment or detention has expired.

Carried.

Mr. PEARKES: Is a man a service convict or prisoner if he has been released from the Canadian forces?

Mr. HUNTER: He is, within the definition of the Act.

The WITNESS: When he is serving his punishment in a service prison or detention barracks he is subject to the code of Service Discipline under clause 56, even though he has been released from the forces.

Mr. DICKEY: He continues to be a person under sentence?

The WITNESS: Yes.

Mr. HENDERSON: Is he not better off? He can take advantage of this review and the minister might reduce his sentence.

Mr. GILLIS: Providing a member of the service is undergoing detention in a civilian prison and his sentence has expired but he is mentally unbalanced, you may hand him over to the lieutenant governor of the province to confine him in a mental institution the same as a civilian person. Now, providing the parents of the boy are prepared to take that boy and put him in a sanatorium,

does that preclude that happening? Is it mandatory that the boy should be handed over to the authorities in the province rather than go back to his parents who would, perhaps, be able to give him better treatment and pay for it?

The CHAIRMAN: This is a permissive section and action may be taken in the discretion of the commanding officer. He could turn the boy back to his family if he thought it was safe to do so.

Mr. HUNTER: My personal experience with commanding officers of detention barracks is that they should be given very little discretion.

Mr. DICKEY: There is one thing here, he is to be made available to the lieutenant governor of the province. If the parents are in a position to or wish to make any arrangement, that could be dealt with under the ordinary provincial law applying to people who are insane, and it could be handled in that way.

The WITNESS: That is correct.

Carried.

The CHAIRMAN: The next section starts Part IX, "Appeal, Review and Petition," and I understand Brigadier Lawson will carry the burden on this one.

Brigadier W. J. Lawson, Judge Advocate General, recalled:

The CHAIRMAN: The first section will now be 184:

184. For the purposes of this Part, the expressions "legality" and "illegal", shall be deemed to relate either to questions of law alone or to questions of mixed law and fact.

The WITNESS: I might make a brief statement, Mr. Chairman. At the present time there is no right of appeal to a higher court against conviction or sentence by a court martial. Any officer or soldier convicted and sentenced by a court martial may submit a petition against such conviction or a sentence or both, but he has no right to be present or make representations when such petition is being considered. Furthermore, all court martial proceedings are at the present time reviewed by the judge advocate general in order to ensure that no irregularity or miscarriage of justice has occurred, but again this review takes place in private and the accused has no right to be represented.

We are changing this in the Bill. We are providing for an appeal by the accused. This is designed to place service personnel as nearly as possible in the same position as persons convicted by civil courts. However, when the appeal relates only to the severity of the sentence it will be dealt with by service authorities as at present, but when the appeal raises a question of law or a question of mixed law and fact it will be dealt with by a court martial appeal board consisting of judges or other legally qualified persons, and there will be a further appeal in certain cases to the Supreme Court of Canada.

Mr. ADAMSON: Not being a lawyer I would like to know what the difference is between law and mixed law and fact.

The WITNESS: That is quite a difficult question, sir. I have before me Crankshaw's Commentary on the Canadian Criminal Code, which is regarded as an authoritative work on criminal law. Dealing with the point you raise, Crankshaw says this:

> "Question of law" includes a defect in the indictment; wrongful admission or exclusion of evidence; misdirection on a point of law; absence of corroboration, where necessary; no case to go to the jury; and wrongful construction of verdict.
>
> "Question of fact" includes misdirection as to evidence, unreasonable verdict and irregularity during the trial.
>
> "Mixed law and fact" arises where there is a doubt whether the question involved is one of law or of fact.

Mr. ADAMSON: I gather that the point in this clause is to deal with the question of law and fact and not to be as technical as in a criminal code?

The WITNESS: That is it, to get away from too great technicality.

Mr. DICKEY: Is it necessary to say questions of law or fact or of mixed law and fact?

The WITNESS: Pardon me?

Mr. DICKEY: Questions of law or fact or questions of mixed law or fact?

The WITNESS: We are excluding questions of fact.

Mr. DICKEY: That is intentional.

Mr. HENDERSON: Practically speaking, everyone will appeal against the law.

Mr. GEORGE: Have you not an amendment, Mr. Chairman?

The CHAIRMAN: We will now come to the old section 184, which reads:

> 184. The powers, duties and functions of the Judge Advocate General under this Part may also be exercised by such other person as the Minister may authorize to act for the Judge Advocate General for that purpose.

Now, it is proposed to take that section out and put it back on page 6 in the renumbered section 10, as a subsection of that. If you will turn to page 6, we might deal with this now. If you look at page 6 at the old original clause 9, which has now been renumbered 10, it is now proposed that No. 10 shall read thus:

> 10. (1) The Governor in Council may appoint a barrister or advocate of not less than ten years standing to be the Judge Advocate General of the Canadian Forces.

Then subsection (2) reads:

> (2) The powers, duties and functions of the Judge Advocate General may be exercised by such other person as the Minister may authorize to act for the Judge Advocate General for that purpose.

That is the old section 184. It is just to keep from renumbering all the sections.

Mr. Henderson moves that the substance of section 184 in the draft bill, that is the original section 184, be added to section 10, as subsection (2), the existing section being renumbered as subsection (1).

Mr. DICKEY: There is one word different.

The WITNESS: It is not all the same.

The CHAIRMAN: Then we had better do it the other way, we had better delete section 184. Is that so moved? Section 184 of the printed bill is deleted. The motion is carried, and while it is in our minds, we will go back and deal with section 10.

We go back to section 10 as it stands. Will someone move that it be numbered 10, and subsection (1) and that subsection (2) be added as I read it?

Mr. McLean so moves.

Carried.

Mr. PEARKES: You just have one judge advocate general?

The WITNESS: Yes, sir.

By Mr. Adamson:

Q. It was pointed out that the Judge Advocate General may be a civilian; we may have to have a judge?—A. Yes, sir.

Q. He may be a barrister, or anybody appointed by the minister?—A. Anyone with ten years standing as a barrister.

The CHAIRMAN: Section 185:

Mr. STICK: I do not know whether we moved that subsection as amended be carried.

The CHAIRMAN: Yes, that was moved by Mr. McLean.

185. Nothing in this Part shall be in derogation of the powers conferred under Part VIII to quash findings or alter findings and sentences.

Carried.

Section 186:

RIGHT TO APPEAL

186. Every person who has been tried and found guilty by a court martial shall, subject to subsection two of section one hundred and eighty-eight, have a right to appeal in respect of any or all of the following matters,

(*a*) the severity of the sentence;

(*b*) the legality of any or all of the findings; or

(*c*) the legality of the whole or any part of the sentence.

Mr. GILLIS: Do the regulations provide counsel in the case of an appeal?

The WITNESS: It is expected that they will but the regulations have not yet been drafted. We provide counsel at the trial so there is no reason to think that would not be done for the appeal.

Mr. HARKNESS: There is no provision for appeal from the summary conviction of a commanding officer?

The WITNESS: No, sir.

The CHAIRMAN: Shall the section carry?

Carried.

Section 187:

187. The right of any person to appeal from the finding or sentence of a court martial shall be deemed to be in addition to and not in derogation of any rights that he has under the law of Canada.

Carried.

There is an amendment to section 188, subsection 3. If you will look at the third line on page 78, after the word "section" insert the words "one hundred and seventy" and a coma, so that the phrase will read "under section one hundred and seventy, one hundred and seventy-two, one hundred and seventy-three, or one hundred and seventy-four,—in other words, there is another section added to the three already there.

Mr. LANGLOIS: I so move.

The CHAIRMAN: Shall the amendment carry?

Carried.

Now we will go back to section 188.

188. (1) An appeal under this Part shall be stated on a form to be known as a Statement of Appeal which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant.

(2) A Statement of Appeal shall not be invalid by reason only of informality or the fact that it deviates from the prescribed form.

(3) No appeal under this Part shall be entertained unless the Statement of Appeal is delivered to a superior officer or to any person by whom the appellant is held in custody

(*a*) within fourteen days after delivery to the offender, pursuant to section one hundred and sixty-eight, of a copy of the minutes of the proceedings and of the form of the Statement of Appeal; or

(*b*) where the finding or sentence in respect of which the offender intends to enter an appeal has been altered under section one hundred and seventy, one hundred and seventy-two, one hundred and seventy-three or one hundred and seventy-four, within fourteen days after the date upon which notice of such alteration is given to the offender.

(4) All Statements of Appeal shall be forwarded to the Judge Advocate General.

By Mr. Hunter:

Q. Why would that be two weeks rather than the usual 30 days?—A. It is just a matter of obviating delay as far as possible. It is a simple form which the accused must be given. It is a form of statement of appeal. It would be a printed form and all he has to do is to fill it out and hand it to the person in whose custody he is.

Q. In the case of a person sentenced to death it might take a considerable length of time to prepare an appeal.—A. In that case the matter would have to go before the Governor in Council for confirmation of the sentence and I think there would be plenty of time. He could put in a statement just to protect his rights. We do not want to cause undue delay.

By Mr. Pearkes:

Q. What is the period of time in civilian courts? Is it 30 days?—A. Yes, sir.

Q. It does not mean that the appeal has to be delayed for 30 days, does it, or for two weeks? You can put it in at once?—A. Yes, sir.

Q. He has 30 days in which to review the evidence. Would it not be in the interests of the man? Have we not passed a section which said that the evidence had to be handed to the prisoner within a certain length of time? I have forgotten how long it was?—A. He has 14 days after he gets the evidence.

Q. After he gets the evidence handed to him?—A. Yes, sir.

By Mr. Hunter:

Q. I saw one case where the evidence was very long. Cases won't all take days. Perhaps there might be a sentence of death which would have to go before the Governor in Council. Would not the time be a bit short?—A. It might be in the very odd case, but I do not think the accused would be prejudiced. He could put in a statement which would be sufficient to preserve his rights in the meantime. It is not like a formal appeal case in a civil court; it is an informal sort of statement.

By Mr. Langlois:

Q. It is a notice of appeal?—A. Yes.

The CHAIRMAN: Does the section carry as amended?

Carried.

Mr. ADAMSON: Mr. Chairman I move that we sit until half past ten. It is quarter past ten right now.

The CHAIRMAN: I thought we might get to the end of Part IX depending on how fast we progress. Section 189.

Mr. ADAMSON: We are 80 per cent through the bill already.

The CHAIRMAN: We will continue for a little while yet.

Mr. ADAMSON: I move that we adjourn at 10 o'clock.

The CHAIRMAN: Do not move, just watch the clock.

Mr. GEORGE: You need not stay.

The CHAIRMAN: Section 189:

189.(1) Where an appeal relates only to the severity of the sentence, mentioned in paragraph (*a*) of section one hundred and eighty-six, the Judge Advocate General shall forward the Statement of Appeal to an authority who, under section one hundred and seventy-four, has power to mitigate, commute or remit punishments and that authority may dismiss the appeal or, subject to Part VIII, may mitigate, commute or remit the punishments comprised in the sentence.

(2) Where an appeal relates to the legality of the findings, as mentioned in paragraph (*b*) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board provided for in this Part, unless the appropriate chief of staff, acting on the certificate of the Judge Advocate General that all of the findings in respect of which an appeal has been made are illegal, quashes such findings.

(3) Where an appeal relates to the legality of the sentence, mentioned in paragraph (*c*) of section one hundred and eighty-six, the Statement of Appeal shall be referred by the Judge Advocate General to the Court Martial Appeal Board, unless the Judge Advocate General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void.

Carried.

Now, we have a new clause 190.

The WITNESS: That is right, sir.

The CHAIRMAN: Clause 190 in the bill before you is to be deleted and a new section substituted. That is now being circulated and I will read it:

CLAUSE 190

190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following members:

(*a*) a Chairman, who shall be a judge of the Exchequer Court or of a "superior court of criminal jurisdiction" as that expression is defined in the Criminal Code; and

(*b*) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a "superior court of criminal jurisdiction", as that expression is defined in the Criminal Code, or a barrister or advocate of not less than five years standing,

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Judge Advocate General shall on the hearing of all appeals sit with the Court Martial Appeal Board, not as a member, but for the purpose of advising on service law, regulations and legal procedure.

(5) Where the chief of staff of the Service of the Canadian Forces within which an appellant was tried considers it desirable, the chief of staff may designate an officer in addition to the Judge Advocate General to sit with the Court Martial Appeal Board on the hearing of the appeal, not as a member, but for the purpose of advising on service procedure and customs and any other matter involving service considerations.

(6) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(7) Three members of the Court Martial Appeal Board shall be a quorum, and the decision of any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(8) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(9) The Court Martial Appeal Board may hear evidence including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the *Inquiries Act*.

(10) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council.

Mr. ADAMSON: What is the difference between the old clause and the new?

The WITNESS: It is a matter of technical drafting. There is no change in substance at all. It is just a matter of making provision for more than one board to sit. It was considered that in the event of a war one board would not be able to handle the volume of work to be done and it might be desirable to make provision for splitting the board up.

Mr. PEARKES: And what about the Judge Advocate General here sitting in on the hearing of all appeals with a court martial appeal board? How are you going to take care of that? Are you going to appoint an additional one?

The WITNESS: Yes, sir, that is the purpose of that amendment to clause 10 that was just carried.

Mr. HUNTER: You should have had "who may sit instead of the judge advocate general." I think the way it is worded you are committed to sit as well.

Mr. STICK: There is no provision made for relief for you as judge advocate general.

Mr. ADAMSON: It says, "the judge advocate general shall sit on all appeals."

The WITNESS: I think section 10 covers that. That was section 184 and was changed a little as to wording and made section 10(2)

By Mr. Henderson:

Q. Does the same procedure apply here that the judge advocate general does not advise the board in the absence of the accused or his counsel?—A. That would depend on the rules made by the board. There is nothing one way or the other in the bill.

Q. I think it is quite important the judge advocate general be allowed to sit as a member, but I do not think he should be allowed to go behind the screen and advise the board in the absence of the accused and counsel.—A. He sits as an admiralty assessor would sit with an admiralty court.

By Mr. Langlois:

Q. This is copied from the procedure in admiralty court?—A. Yes.

By Mr. Hunter:

Q. Is there a rule of statute that limits the generality of the foregoing section?—A. I do not think so, sir. I think that broad section allowing other persons to be appointed to act for the judge advocate general would cover this section.

Q. You do not think the narrower wording here would limit the generality of the previous section?—A. No, I may say we have consulted law officers on that point and they concur.

By Mr. Henderson:

Q. Is it the intention to have him advise the court in the absence of the accused or accused's counsel?—A. That would depend on the rules that will be made by the court. He will advise the court and when asked for advice will tender advice.

Q. But not tender advice in the absence of the accused or his counsel. We do not want him going behind the screen and telling them something that may possibly be wrong. Having the good of the accused in mind he should have the privilege of having his counsel state his case.

Mr. ROBERGE: The appeal is just judged on the evidence that has been given.

Mr. LANGLOIS: Mr. Chairman, if this rule is the same as the procedure in admiralty court, he would not be there to judge whether or not the man is guilty of an offence, but he is there to help the court to appreciate the testimony and statements made by witnesses and to aid in the interpretation of the evidence given to the court.

Mr. HENDERSON: Undoubtedly he will give some opinion as to regulations and legal procedure. Should that not be done while counsel for the accused is there? I do not see any harm in doing it in open court.

The CHAIRMAN: Any counsel is supposed to assist the court, but counsel should not be permitted to assist the court in camera.

Mr. HENDERSON: This is not to assist the accused and the defence counsel would not have a chance to assist the accused.

The WITNESS: You must remember this court is made up of two members of the Bar and a judge, all persons of considerable standing, and they are not likely to be misled by a stupid judge advocate general. It is quite a different thing in a court martial composed of laymen who might well be misled by a judge advocate who is the official legal adviser to the court. In this case the judge advocate general is not legal adviser to the court, he is simply there to assist the court by answering any questions they ask him as to service law and custom.

Mr. HENDERSON: What would be the difficulty in having the judge advocate general do that in open court?

The WITNESS: I think it should be left for the board to decide their rules of procedure.

Mr. LANGLOIS: The judge may want to seek the advice of the judge advocate general.

Mr. HENDERSON: If the board knew it all they would not need the judge advocate general.

The WITNESS: Mr. Chairman, that is the point, the judge advocate general is not giving evidence, he is simply assisting the court.

Mr. HENDERSON: He is giving advice.

Mr. ROBERGE: He would be there just at the call of the board.

The WITNESS: No, he sits with the board.

Mr. HUNTER: We have a different situation from the last war where the judge advocate general was telling the court. He is not going to tell two barristers and one judge what to do.

Mr. HENDERSON: There would be no harm in counsel explaining to the accused.

Mr. HUNTER: Why limit it to barristers of five years instead of ten years? Is it because of the availability of barristers?

The WITNESS: You cannot tell how big this thing might be in war time. We may have to establish many tribunals and so we do not think it is wise to limit the field in that respect. No doubt, in choosing the persons to compose the board we would choose from experienced barristers, but it might very well be that someone with seven or eight years experience at the bar would be suitable and if you had ten years written into the Act you could not use him.

The CHAIRMAN: Your idea, Mr. Dickey, would be that subsection (4) should have some words inserted to the effect that he may advise at the hearing of the appeal.

Mr. DICKEY: Yes, the wording as it is now, say: "shall on the hearing of all appeals sit with the court martial appeal board", I think that gives him the right to be with the members of the board, not only during the hearing of the appeal and any additional evidence they may see fit to hear, but also when they are considering their judgments and at all times up to the actual handing down of the decision on the appeal, and a good deal of that would, of course, be done by the board without the accused or his counsel being present. I am inclined to agree with Mr. Henderson that we might well consider just what the implications of that would be.

The WITNESS: Mr. Chairman, may I point this out, the Judge Advocate General is in a sense a judicial officer. The duty of the Judge Advocate General is not to obtain a conviction, he is there to protect the accused rather than to convict the accused. I do not see why his advice to the board should be more distrusted than that of one member of the board to another member.

Mr. DICKEY: Except that all members of the board have the responsibility of arriving at the decision and either confirming or quashing the conviction it is dealing with in the appeal.

Mr. HUNTER: And it is not going to be the Judge Advocate General who is always going to be there; it will be appointees who will replace him and in whom we may not have as much confidence as we have in the Judge Advocate General. You may have representatives in other countries, you might have a representative we have not great confidence in. In that case, the point raised by Mr. Henderson would be well taken.

Mr. LANGLOIS: Well, Mr. Chairman, you have considered the fact that the judges after the trial would have to study the evidence given in the court, and would discuss the evidence among themselves; and it would be unfair to them that the defense lawyer should be there.

Mr. HENDERSON: That is the source of the difficulty.

Mr. LANGLOIS: It would be very hard on a judge to have a man there to express contrary opinions from the advice given by the Judge Advocate General. I know in the Admiralty Court that is the way it is done. The gentlemen, the

two assessors, are masters of merchant ships and they know nothing about the law; they are just there to help the judge appreciate the testimony.

Mr. HENDERSON: Yes, but there you are not dealing with criminal law, and the liberty of the subject; you are dealing more or less with civil actions.

The CHAIRMAN: This is a new part of the Act and something entirely new to the services. It has just been redrafted and possibly, seeing that we have progressed fairly well, today, everyone would like to think this section over.

Mr. STICK: I move we adjourn.

The CHAIRMAN: We stand adjourned until Thursday at 4 o'clock.

Mr. GILLIS: Could we carry this section?

The CHAIRMAN: No, we will let it stand until we meet again on Thursday at 4 o'clock.

The committee adjourned.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

Bill No. 133, An Act respecting National Defence, and

Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof, and

Bill No. 221, An Act to provide for the Payment and Distribution of Prize Money, also referred to the Committee.

THURSDAY, JUNE 1, 1950

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, E.M., Judge Advocate General;
Wing Commander H. A. McLearn, Deputy Judge Advocate General;
Major W. P. McClemont, K.C., E.D., and Major J. H. Ready, Assistant Judge Advocate General.

OTTAWA
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. Campney, *Chairman*

and

Messrs.

Adamson,	George,	Larson,
Balcer,	Gillis,	McLean (*Huron-Perth*),
Bennett,	Harkness,	Pearkes,
Blackmore,	Henderson,	Roberge,
Blanchette,	Higgins,	Stick,
Cavers,	Hunter,	Viau,
Claxton,	Langlois (*Gaspé*),	Welbourn,
Dickey,	Lapointe,	Wright—25

(*Quorum, 10*)

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, June 1st, 1950.

The Special Committee appointed to consider Bill 133, An Act respecting National Defence, met at 4.00 o'clock p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Adamson, Balcer, Bennett, Blackmore, Campney, Dickey, George, Gillis, Harkness, Henderson, Higgins, Hunter, McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Welbourn.

In attendance: Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E.M., Judge Advocate General; Wing Commander H. A. McLearn, Deputy Judge Advocate General; Major W. P. McClemont, K.C., E.D., Assistant Judge Advocate General.

On a question of privilege, Mr. George made a correction in the printed report of the Evidence of Thursday, May 25th. At page 124, "line 14", the words: "For instance, I presided at a court martial some time ago", should read "I presided at a manslaughter court martial during the war".

The Committee resumed its clause by clause consideration of Bill 133, An Act respecting National Defence at PART IX.

Brigadier Lawson was questioned on the various clauses of part IX under study. He was assisted by Commander Hurcomb, Wing Commander McLearn and Major McClemont.

On Clause 190.

After continued debate thereon the said clause, as amended at the suggestion of the Judge Advocate General, was allowed to stand.

Clauses 191 to 195, both inclusive, were severally agreed to.

On Clause 196.

On motion of Mr. Bennett,

Resolved, that the said clause be amended by

(*a*) Striking out the word "or" in line 24, and "any tribunal thereof" in line 25, and "or tribunal" in line 26, of sub-clause 1.

(*b*) Striking out all the words after "Board" in line 31 to the end of sub-clause 2.

The said clause, as amended, was agreed to.

Clauses 197, 198 and 199 were severally agreed to.

Brigadier Lawson was temporarily retired.

On PART X

Wing Commander McLearn was recalled. He was questioned on the various clauses under study.

Clauses 200 to 209, both inclusive, were severally agreed to.

Wing Commander McLearn was temporarily retired.

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Commander Hurcomb was recalled. He was questioned on the various clauses under study.

Clauses 210 to 216, both inclusive, were severally agreed to.

Commander Hurcomb was temporarily retired.

On PART XI

Brigadier Lawson was recalled.

Clauses 217 to 227, both inclusive, were severally agreed to.

Brigadier Lawson was temporarily retired.

On PART XII

Wing Commander McLearn was recalled.

Clause 228 stood until all other clauses of PART XII had been considered.

Clauses 229 to 247, both inclusive, and clause 228 were severally agreed to.

Wing Commander McLearn was temporarily retired.

At 6.10 o'clock p.m., the Committee adjourned until 8.15 o'clock p.m.

EVENING SITTING

The Committee resumed at 8.15 o'clock p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Adamson, Bennett, Blackmore, Campney, Dickey, George, Gillis, Harkness, Henderson, Higgins, Hunter, McLean (*Huron-Perth*), Pearkes, Roberge, Stick, Welbourn, Wright.

In attendance: The same officers as are listed for the afternoon sitting and, in addition, Major J. H. Ready, Assistant Judge Advocate General.

The Committee resumed clause by clause consideration of Bill No. 133, An Act respecting National Defence.

On PART XIII

Brigadier Lawson was recalled and questioned on the various clauses of the said PART.

Clauses 248, 249, 250, and 251 were severally agreed to.

The Committee then reverted to clauses which were previous by stand on.

Clause 1 was agreed to.

On Clause 2

On motion of Mr. George,

Resolved,—That paragraph (n) of the said clause be amended by deleting therefrom the words "a component of a Service of" in line 25.

On motion of Mr. Roberge.

Resolved,—That the said clause be further amended by deleting therefrom the definition of "equipment" in line 27, and the present paragraphs (p), (q) and (r) be re-lettered (o), (p) and (q) respectively and the following definition of "materiel" be inserted a new paragraph (r) as follows:

"(r) "materiel" means all movable public property, other than money, provided for the Canadian Forces or the Defence Research Board

or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided."

On motion of Mr. Stick,

Resolved,—That the said clause be further amended by striking out the word "any" in paragraph (aa), line 4, of page 4, and substituting therefor "on any and".

Clause 2, as amended, was agreed to.

Blanket amendment.

On motion of Mr. Henderson,

Resolved,—That Bill No. 133, An Act respecting National Defence, be further amended by deleting throughout the Bill the word "equipment", except where it forms part of the phrase "personal equipment" and be replaced in each case by the word "materiel" in the following places:

Clause	*Page*	*Line*
2(h)	2	10
2(v)	3	5
2(y)	3	43
2(mm)	4	47
11(1)	6	31
		Heading
		Marginal note
11(2)	7	1 and 5
37	15	25
		Heading
		Marginal note
44(2)	18	13
46(2)	18	35
53(1)	21	4
64(a)	28	21
64(c)	28	27
65(d)	29	9
65(e)	29	11
65(f)	29	12
65(g)	29	16
66(b)	29	36
68(a)	30	25
68(b)	30	28
68(c)	30	33
103	38	23
110(a)	41	11
110(b)	41	16
209(1)	87	20
218	91	15
221(2)	92	14 and 19
221(3)	92	38
230	96	17
248(2)	102	21

By leave of the Committee, Mr. Wright was allowed to put certain questions to the witnesses in respect to section 54 previously agreed to.

Further consideration of Bill No. 133, An Act respecting National Defence, was postponed to a subsequent meeting, in respect of clauses 21, 30, 61, 115, 119, 121 (8) and (9), 135, 136, 137, 155, and 190, which still stand.

The Committee, thereafter, considered, clause by clause, Bill No. 134, "An Act to amend the Militia Pension Act and change the Title thereof.

Major Ready was recalled as the main witness. He was assisted by the other officers present.

Clauses 1, 2 and 3 were severally agreed to.

Clauses 4 and 5 were allowed to stand.

Clauses 6 and 7 were severally agreed to.

Clause 8 was considered, sub-clause by sub-clause, and was allowed to stand in respect of paragraph (iv) of sub-clause 2 thereof.

Clauses 9, 10 and 11 were severally agreed to.

On clause 12.

On motion of Mr. George,

Resolved,—That the said clause be amended by striking out section 50 in sub-clause (4) thereof and inserting therefor the following:

"50. (1) The Minister shall appoint a board, to be known as the Service Pension Board, which shall consist of a chairman, a member from each Service and a member to represent the Minister.

(2) A requisition for payment of a pension or gratuity to a contributor or dependent under this Part shall be supported by

(*a*) a certificate by the Service Pension Board that the actual cause of retirement of the contributor establishes a right to the type of pension or gratuity recommended by the Service,

(*b*) a certificate by the Judge Advocate General that the contributor is legally entitled to payment of the benefit recommended, and

(*c*) such a certificate by the Auditor General as may be directed by the Treasury Board."

Clause 12, as amended, was agreed to.

On Clause 13.

On motion of Mr. Hunter,

Resolved,—That the said clause be amended by (*a*) striking out paragraph (*g*) of sub-clause 3 thereof and substituting therefor the following:

"(*g*) prescribing whether and to what extent and under what conditions any period of absence from duty shall be counted as service for the purpose of computing pensions and gratuities and the pay and allowances of which a contributor during such period of absence shall be deemed to have been in receipt for the purpose of computing contributions and average pay and allowances under this Part;"

(*b*) Striking out the word "additional" in paragraph (*h*) of sub-clause 3 thereof, line 32 of page 12, and substituting therefor: "computing".

Clause 13, as amended, was agreed to.

Clause 14 was agreed to.

On Clause 15

On motion of Mr. Welbourn,

Resolved,—That the said motion be amended by deleting therefrom the word "paid" in line 40 of page 13 and substituting therefor: "payable".

Clause 15, as amended, was agreed to.

Clause 16 was agreed to.

Clause 17

On motion of Mr. Henderson,

Resolved,—That the said clause be deleted and the following substituted therefor:

"17. Sections three, six and eight shall be deemed to have come into force on the first day of October, nineteen hundred and forty-six, and the other sections of this Act shall come into force on a day to be fixed by proclamation of the Governor in Council."

Major Ready was retired.

The Committee postponed further consideration of the said Bill, with respect to clauses 4, 5 and 8 (2) (iv), to a subsequent meeting.

The Committee, thereafter, considered Bill 221 An Act to provide for the Payment and Distribution of Prize Money.

Commander Hurcomb was recalled and questioned on the various clauses of the Bill.

Clauses 1, 2, 3 and 4, the preamble and the Title of the said Bill were agreed to and the Bill ordered to be reported to the House without amendment.

At 10.30 o'clock p.m., the Committee adjourned to the call of the Chair.

ANTOINE CHASSÉ,
Clerk of the Committee.

REPORT OF THE HOUSE

FRIDAY, 2nd June, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, begs leave to present the following as a

SECOND REPORT

Pursuant to the Order of Reference of 17th May, 1950, your Committee has considered Bill No. 221, An Act to provide for the Payment and Distribution of Prize Money, and has agreed to report same without amendment.

All of which is respectfully submitted.

R. O. CAMPNEY,
Chairman.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
THURSDAY, June 1, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 4 p.m. The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. GEORGE: Mr. Chariman, on Thursday, May 25, at page 124, line 14, of the evidence, I am reported to have said, "For instance, I presided at a court martial some time ago." What I said was, "I presided at a manslaughter court martial during the war."

The CHAIRMAN: The correction will be noted.

When we adjourned on Tuesday evening we were considering the redraft of section 190 and we had not completed our discussion. We had considerable debate on the section, and the officials of the department tell me that in the light of the discussion they are reconsidering the same. This is a new section which has never been in effect before and I would suggest that under the circumstances we might let it stand for the present and proceed with section 191.

Agreed.

The CHAIRMAN: Section 191, "Disposition of Appeals by Court Martial Appeal Board":

191. (1) Upon the hearing of an appeal respecting the legality of a finding of guilty on any charge, the Court Martial Appeal Board, if it allows the appeal, shall

(*a*) set aside the finding and direct a finding of not guilty to be recorded in respect of that charge; or

(*b*) direct a new trial on that charge, in which case the appellant shall be tried again as if no trial on that charge had been held.

(2) Where the Court Martial Appeal Board has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence shall cease to have force and effect.

(3) Where the Court Martial Appeal Board has set aside a finding of guilty but another finding of guilty remains, the Board shall forthwith refer the proceedings to the Minister, or to such other authority as he may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

I might say, before we discuss this section, that Brigadier Lawson is assisting us in this particular part of the Act.

Brigadier W. J. Lawson, Judge Advocate General, called:

By Mr. Pearkes:

Q. The court martial appeal board has no authority to reduce the sentence?—A. That is correct.

By Mr. Hunter:

Q. It says, "respecting the legality of a finding"; is that actually what they are doing? Is that a proper term? Supposing the appeal board says that the finding of guilty was against the weight of evidence, does that go to the legality of the finding? It strikes me as unusual wording.—A. I think the weight of evidence is a question of fact and not a matter of law.

Mr. DICKEY: It appears to be covered under section 184.

Mr. BLACKMORE: Would "valid" be a more preferable word?

The CHAIRMAN: Section 184 defines "legality" and "illegal", as being related to questions of law or questions of mixed law and fact.

Carried.

Section 192:

192. Upon the hearing of an appeal respecting the legality of a sentence passed by a court martial, the Court Martial Appeal Board, if it allows the appeal, shall forthwith refer the proceedings to the Minister, or to such other authority as the Minister may prescribe or appoint for that purpose, who shall, subject to section one hundred and seventy-five, substitute for the punishment imposed by the court martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court martial shall thereupon cease to have force and effect; and section one hundred and seventy-six shall apply to the new punishment or punishments.

By Mr. Stick:

Q. They cannot increase the punishment; they either confirm it or reduce it?—A. That is right, sir, the punishment cannot be increased.

Carried.

The CHAIRMAN: Section 193:

193. Notwithstanding anything in this Part, the Court Martial Appeal Board may disallow an appeal if, in the opinion of the Board, to be expressed in writing, there has been no substantial miscarriage of justice.

By Mr. Adamson:

Q. What is section 1014 (2) of the Criminal Code? Does it use the same language?—A. I have it here, sir. It says:

1014 (2). The court may also dismiss the appeal if, notwithstanding that it is of opinion that on any of the grounds above mentioned the appeal might be decided in favour of the appellant, it is also of opinion that no substantial wrong or miscarriage of justice has actually occurred.

Carried.

The CHAIRMAN: Section 194:

194. Where a punishment included in a sentence has been dealt with pursuant to subsection three of section one hundred and ninety-one or section one hundred and ninety-two, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court martial that tried the appellant.

Carried.

Section 195:

195. (1) The Chairman of the Court Martial Appeal Board, with the approval of the Governor in Council, may make rules not inconsistent with this Act respecting,

(*a*) the seniority of members of the Board for the purpose of presiding at appeals;

(*b*) the practice and procedure to be observed at hearings;

(*c*) the conduct of appeals;

(*d*) the production of the minutes of the proceedings of any court martial in respect of which an appeal is taken;

(*e*) the production of all other documents and records relating to an appeal;

(*f*) the extent to which new evidence may be introduced;

(*g*) the circumstances in which the appellant may attend or appear before the Board on the hearing of his appeal, but no such rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death; and

(*h*) provision for and payment of fees of counsel for the appellant.

(2) No rule made under this section shall have effect until it has been published in the *Canada Gazette.*

Mr. BLACKMORE: That seems to give the chairman a tremendous amount of power, nearly as much as we have.

The CHAIRMAN: There are two limitations: one, that it can only make rules with the approval of the Governor in Council, and, two, the rules must not be inconsistent with the terms of the Act.

Carried.

Gentlemen, there are three minor amendments proposed in the wording of the next section. I might refer to them first and then read the section. In line 24 strike out the word "or"; line 25, strike out "any tribunal thereof"; line 26, strike out "or tribunal"; and in line 31 strike out the words "or tribunal".

Section 196, as amended will then read as follows:

196. (1) A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Board may, where there has been dissent in the Board, appeal to the Supreme Court of Canada with leave of the Attorney General of Canada.

(2) An application for leave to appeal under subsection one shall be delivered to the Attorney General of Canada within thirty days of notice to the appellant of the decision of the Court Martial Appeal Board, and the Attorney General of Canada may grant leave to appeal only if in his opinion a matter of importance affecting the public interest is involved.

(3) The Supreme Court of Canada shall, in respect of the hearing and determination of an appeal under this section, have the same powers, duties and functions as the Court Martial Appeal Board has under this Act, and sections one hundred and ninety-one to one hundred and ninety-four shall apply with such adaptations and modifications as the circumstances may require.

By Mr. Harkness:

Q. What would be the matter of importance affecting the public interest? —A. That would be in the discretion of the attorney general. The whole purpose of this section is to discourage frivolous appeals. You must remember

there are no costs involved in this while when ordinary criminal and civil cases are appealed costs are a considerable factor.

Q. The only case where there can be an appeal is where one or more members of the board have put in a dissenting judgment?—A. That is right.

Q. Under those circumstances, as the first paragraph reads, it would appear that a person who has been charged has the right of appeal, but then it is modified by this clause. I cannot see if a man is charged with manslaughter resulting from an automobile accident and there is a dissenting judgment on the part of one judge, how it is not a matter of public interest.—A. I would say it is a matter of public interest that justice should be done in any case.

By Mr. Higgins:

Q. You may have a case where the public interest would not be involved greatly, but it would be of considerable interest to the man himself.—A. The conception is that the Court Martial Appeal Board is the court of last resort in all but exceptional cases. The accused is given this additional right, but it is only a right we consider should be available in exceptional circumstances.

Mr. HARKNESS: Would it not be sufficient grounds for appeal, and would it not prevent frivolous appeals if you merely left it with "there must be a dissenting judgment on the part of one member"?

The CHAIRMAN: What Mr. Harkness suggests, would make an appeal to the Supreme Court of Canada more or less automatic, and the idea is I assume to keep some surveillance over the right of appeal in the hands of the Attorney General.

The WITNESS: There must be, when this is all being done at the cost of the Crown. If the accused had to pay it would not be necessary, but he does not have to. The court would be cluttered up with appeals unless we had somebody who could say whether the accused could or could not appeal.

Mr. HARKNESS: You would not have a dissenting judgment unless there was grave difference of opinion amongst the members of the board as to the man's guilt or innocence.

The WITNESS: There is just as likely to be a dissenting judgment in the Supreme Court. If you take out the clause regarding leave of the Attorney General it will mean that practically every case before the Court Martial Appeal Board in which there is dissent would automatically go to the Supreme Court of Canada.

Mr. HIGGINS: Could you cut it off at the words "matter of importance"?

The CHAIRMAN: I cannot see any objection to that.

Mr. DICKEY: It seems to me what may be troubling the committee is the question of public interest.

The CHAIRMAN: I wonder if it would meet the views of the committee if we changed the words to read, "if in his opinion a matter of substantial importance is involved."

Mr. BENNETT: I do not see why you need that at all.

Mr. DICKEY: I think it is in the public interest that justice should be done.

Mr. BENNETT: He is not going to grant leave unless it is of substantial interest.

Mr. ROBERGE: The word "partially" on the last line means some part of the evidence had been overlooked, I suppose?

The WITNESS: There are normally a number of charges and they might allow an appeal in respect of certain charges and dismiss it in respect of other charges.

By Mr. Pearkes:

Q. What is the practice in civilian courts when referring an appeal to the Supreme Court? It seems to me if it is possible to do away with referring every case to the minister of the Crown there would be some advantage to it. The minister of the Crown in war time is a very busy man. It so happens I was speaking to someone who had been a minister in one of the defence departments during the war and he was stressing the tremendous burden which the minister carries during war time when individual cases have to come to his attention. If there is a solution, such as that suggested by Mr. Harkness, I think it has much merit.—A. Mr. Chairman, the first point is it is not the Minister of National Defence, it is the Attorney General. The second point is the matter can only come up before him if there is dissent on the court martial appeal board.

The CHAIRMAN: It seems to me that if you are going to give the right of appeal to a man if there is a dissenting judgment, only when the Attorney General grants leave, it is not very desirable to put limitations on the Attorney General as to when he will or will not grant leave. If you stop at subsection 2, with the word "board" you have a clear-cut section.

May I put it this way? If Mr. Bennett agrees to move the first of these small amendments I have mentioned, and then all the words in subsection 2 after the word "board", in line 31, be struck out, that will make the section clear. Does that correct it?

Carried.

Shall the section as amended carry?

Carried.

Section 197, "Review after Expiration of Right to Appeal":—

197. Upon the expiration of the period mentioned in subsection two of section one hundred and eighty-eight within which an appeal may be made, the proceedings of every court martial shall be reviewed by the Judge Advocate General in respect of any matter mentioned in paragraph (*b*) or (*c*) of section one hundred and eighty-six on which an appeal has not been made.

Carried.

Section 198.

198. Where, upon the review mentioned in section one hundred and ninety-seven, the Judge Advocate General certifies that any finding or punishment is illegal, he shall refer the minutes of the proceedings of the court martial to the appropriate chief of staff for such action under this Act as that chief of staff may deem fit.

Carried.

Section 199.

PETITION FOR NEW TRIAL

199. (1) Every person who has been tried and found guilty by a court martial shall have a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial.

(2) No petition under this section shall be entertained unless it is delivered to an officer designated for that purpose in regulations

(*a*) within one year after the date of the pronouncement of the finding; or

(*b*) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out,

whichever is the later.

(3) Every petition under this section shall be forwarded to the Judge Advocate General who shall refer the petition with his recommendation to the appropriate chief of staff who, if he is of the opinion that the petition should be granted, shall order a new trial, in which case the petitioner shall be tried again as if no trial had been held.

(4) When a new trial is held pursuant to subsection three and the petitioner is found guilty the sentence passed at the original trial shall be restored and shall have force and effect as if the new trial had not been ordered.

Carried.

We come to Part X of the bill now and I presume this is a sort of omnibus part. We shall hear Wing Commander McLearn.

Wing Commander McLearn, Deputy Judge Advocate General, R.C.A.F., called:

Is there anything you would like to say of a general nature?

The WITNESS: No, sir.

PART X

MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATION

WITNESSES AND COUNCIL AT COURTS MARTIAL

200. (1) for the purposes of this section, "court martial", in addition to the tribunals mentioned in paragraph (*g*) of section two, includes a commissioner taking evidence under this Act and an officer taking a summary of evidence in accordance with regulations; and references in this section to the president or members of a court martial shall be deemed to include references to any such commissioner or officer.

(2) Every person required to give evidence before a court martial may be summoned under the hand of the authority by whom the court martial was convened, established or appointed, or the Judge Advocate General, or under the hand of the president, judge advocate, commissioner taking evidence under this Act or officer taking a summary of evidence in accordance with regulations.

(3) A person summoned under subsection two may be required to bring with him and produce at a court martial any documents in his possession or under his control relating to the matters in his possession or under his control relating to the matters in issue before the court martial.

(4) A witness summoned or attending to give evidence before a court martial shall be paid such witness fees and allowances for expenses of attendance as are prescribed in regulations.

(5) Any conduct of counsel before a court martial that would be liable to censure or be contempt of court if it took place before a civil court in the place where the court martial is held shall likewise be liable

to censure or be contempt of court in the case of a court martial; and the regulations governing the procedure of courts martial shall be binding upon counsel appearing before courts martial, and wilful disobedience of those regulations shall, if persevered in, be deemed to be contempt of court.

(6) A court martial may, by order under the hand of the president, a commissioner taking evidence under this Act or an officer taking a summary of evidence in accordance with regulations, cause counsel to be removed from the court martial for contempt, but an officer taking a summary of evidence shall not take action under this subsection without the approval of his commanding officer.

Mr. HUNTER: Is there some place in the Act a sanction against a witness who refuses to appear?

The WITNESS: In section 243.

The CHAIRMAN: Shall the section carry?

Carried.

Section 201.

201. Every person when required to give evidence on oath under this Act shall take his oath in the form prescribed in regulations and that oath shall, in respect of any prosecution for perjury under the *Criminal Code*, have the same force and effect as an oath taken before a civil court.

Carried.

Section 202.

202. (1) For the purposes of this section "justice" means a justice as defined in the *Criminal Code*.

(2) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, for any officer, man or other person, to apprehend that suspected person and forthwith to bring him before a justice.

(3) A justice, if he is satisfied by evidence on oath that a deserter or absentee without leave is, or is reasonably suspected to be, within his jurisdiction, may issue a warrant authorizing the deserter or absentee without leave to be apprehended and brought forthwith before him or any other justice.

(4) Where a person is brought before a justice charged with being a deserter or absentee without leave under this Act, that justice may examine into the case in like manner as if that person were brought before him accused of an indictable offence.

(5) A justice, if satisfied either by evidence on oath or by the admission of a person brought before him under this section that he is a deserter or absentee without leave, shall cause him to be delivered into service custody in such manner as the justice may deem most expedient; and, until he can be so delivered, the justice may cause him to be held in civil custody for such time as appears to the justice reasonably necessary for the purpose of delivering him into service custody.

(6) Where a person has admitted that he is a deserter or absentee without leave and evidence of the truth or falsehood of the admission is not then forthcoming, the justice before whom that person is brought shall remand him for the purpose of obtaining information as to the truth or falsehood of the admission; and for that purpose the justice

shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(7) A justice, before whom a person is brought under this section, may from time to time remand that person for a period not exceeding eight days on each appearance before him, but the whole period during which a person is so remanded shall not be longer than appears to the justice reasonably necessary for the purpose of obtaining the information mentioned in subsection six.

(8) Where a justice before whom a person is brought under this section causes him to be delivered into service custody or to be held in civil custody, the justice shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

(9) Where a person surrenders himself to a constable and admits desertion or absence without leave, the constable in charge of the police station to which he is brought shall forthwith inquire into the case and, if it appears to him from the admission that such person is a deserter or absentee without leave, he may cause him to be delivered into service custody, without bringing him before a justice; and in that event the constable shall transmit to such authorities of the Canadian Forces as the Minister may prescribe, a report which shall contain such particulars and be in such form as may be prescribed by the Minister.

The relative section of the Criminal Code defines a justice as being a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, a police magistrate, a stipendiary magistrate, or any person having power or authority of two or more justices of the peace.

Mr. ADAMSON: Would it not be just as well to put that definition in here?

The WITNESS: No, sir, because this clause is for the guidance essentially of justices themselves.

The CHAIRMAN: Shall the section carry?

Carried.

Mr. STICK: What about the words "the constable may cause him to be delivered into service custody—" I think it should be "shall deliver him—". I do not think there is any discretion in the matter; it is the duty of the constable to do so?

The WITNESS: The constable may have some cause to disbelieve the person who surrenders. He may have some doubt as to whether the individual is or is not a deserter. One can conceive of cases where the nearest unit to which he might deliver the man would be some considerable distance away. One can think of other circumstances where the constable might not consider it expedient to deliver him to a service unit on his own authority without the backing of a justice.

Shall section 202 carry?

Carried.

The CHAIRMAN: Section 203.

203. Where any person subject to the Code of Service Discipline has at any time been tried by a civil court, the clerk of that court or other authority having custody of the records of the court shall, if required by any officer of the Canadian Forces, transmit to that officer a certificate setting forth the offence for which that person was tried, together with the judgment or order of the court thereon, and shall be allowed for that certificate the fee authorized by law.

Mr. ADAMSON: This is also just permissive; it is not mandatory.

The WITNESS: There may be many minor traffic offences where the service would not want to see the certificates. If we hear about an offence and require the certificate, then there would be a duty on the clerk to send it to us.

The CHAIRMAN: Shall the section carry?

Carried.

Section 204.

204. (1) Every warden, governor, gaoler, commanding officer, commandant or other keeper of a penitentiary, civil prison, service prison or detention barrack shall take cognizance of any warrant of committal purporting to be signed by a committing authority mentioned in section one hundred and seventy-eight and shall receive and detain, according to the exigency of that warrant, the offender mentioned therein and delivered into his custody and shall confine that person until discharged or delivered over in due course of law.

(2) Any person mentioned in subsection one to whom a Statement of Appeal is delivered under section one hundred and eighty-eight shall cause the Statement of Appeal to be forwarded forthwith to the Judge Advocate General.

Carried.

Mr. GEORGE: In line 30 is the word "barrack" correct? Should it not be "barracks"?

The WITNESS: In the bill on page 2, paragraph (*k*) it is defined in the singular—"detention barrack".

The CHAIRMAN: Shall the section carry?

Carried.

Section 205.

205. (1) For the purpose of training the Canadian Forces, the Minister may authorize the execution of military exercises or movements, referred to in this section as "manoeuvres", over and upon such parts of Canada and during such periods as are specified.

(2) Notice of manoeuvres shall be given to the inhabitants of any area concerned by appropriate publication.

(3) Units and other elements of the Canadian Forces may execute manoeuvres on and pass over such areas as are specified under subsection one, stop or control all traffic thereover whether by water, land or air, draw water from such sources as are available, and do all things reasonably necessary for the execution of the manoeuvres.

(4) Any person who wilfully obstructs or interferes with manoeuvres authorized under this section and any animal, vehicle, vessel or aircraft under his control may be forcibly removed by any constable or by any officer, or by any man on the order of any officer.

(5) No action shall lie by reason only of the execution of manoeuvres authorized under this section.

Mr. PEARKES: Under the Manoeuvres Act there were a great deal more regulations and enactments than there are here. Have the troops the right to billeting, on manoeuvres, as being a thing which is reasonably necessary for the execution of the manoeuvre? Have they the right to take over a building as a headquarters? Have they the right to requisition petrol for their vehicles? Would they have the right to requisition fodder for their horses—although we do not have many horses nowadays; but have they a general power of requisitioning.

The CHAIRMAN: I think Brigadier Lawson might make an observation here.

Brigadier LAWSON: There is no power to requisition in this clause; it simply gives the power to pass over. This gives a right to trespass—that is what it amounts to.

Mr. PEARKES: Yes, but it says "to do all things reasonably necessary for the execution of the manœuvres." A motor column, because of a breakdown of the supply column behind it, before reaching the manœuvre may run short of gasoline and the manœuvres cannot go on unless they get gasoline. If there are gasoline pumps in the town through which they are passing have they got the right to demand that gasoline as being a thing reasonably necessary for the conduct of manœuvres?

Brigadier LAWSON: I would say not, because of the sense in which the words are used. You must read the words coming before that. They limit the generality of the concluding phrase—that is to do such things—of like nature—as the matters mentioned before such as stopping traffic; drawing water and so on.

Mr. PEARKES: They can draw water so why could they not draw food or gasoline? I think it is a very fine distinction?

Mr. STICK: I think the idea is that when you draw water you do not pay for it but if you drew gasoline you would have to pay?

Mr. PEARKES: Have you ever been on the prairies?

Mr. GEORGE: There is no emergency involved in this section and I can see a lot of confusion if certain unit commanders were allowed to requisition and obtain materials. The treasury officer trying to straighten it out would never get finished, and there appears to be no need for it on manœuvres.

Mr. GILLIS: Is there any provision in the regulations for consultation and agreement with the civic authorities in an area into which you may move?

Brigadier LAWSON: The regulations under this clause of course have not been drafted yet but I would certainly think there would have to be such provision in the regulations. You could not move into an area without making preliminary arrangements.

Mr. GILLIS: Perhaps all you would have to do would be to post a notice saying "Get ready for us."

Brigadier LAWSON: I may say that we had manœuvre regulations during the war that provided elaborate machinery for dealing with the local authorities and for settling claims.

Mr. HARKNESS: What about subsection 5: "No action shall lie by reason only of the execution of manœuvres authorized under this section." Would that preclude a man whose crops were partially destroyed from recovering?

Brigadier LAWSON: I think section 208 covers the point.

Mr. HARKNESS: Section 208 says "—shall be compensated—" but that puts the compensation entirely in the hands of the Department of National Defence and he is specifically denied a right of action by subsection 5.

The CHAIRMAN: Unless he can prove damage under 208.

Brigadier LAWSON: He is given the right to compensation under section 208 and, if the department does not compensate him, he has a right of action.

Mr. HIGGINS: There has got to be damage.

Brigadier LAWSON: The purpose of this is to preclude actions for trespass.

Mr. ADAMSON: In lines 9 and 10 of subclause 3 it says: "—on and pass over such areas as are specified in subsection 1," and that would give the commanding officer, or any officer apparently, the power to move a motorized column, for instance through an orchard.

The CHAIRMAN: No, it would give that power to the minister.

Mr. ADAMSON: Yes, but if you were having manœuvres in the Niagara Peninsula, where there have been a great number of manœuvres, under this section a motorized or armoured unit wishing to take cover might move into an orchard and do very considerable damage. I do not say they would do that but we are not dealing here with what might happen; we are dealing with a statute. Under this clause the unit commander would have the right to do so?

Brigadier LAWSON: That is true, but the owner of the orchard would have a right to compensation for any damage done to the orchard.

Mr. ADAMSON: That is all very well but compensation takes a lot of time and it is very seldom adequate for the loss of trees and loss of crops.

Brigadier LAWSON: I would hate to be the commanding officer of a unit that did unnecessary damage.

Mr. ADAMSON: So would I, but we are dealing with a law and not with possibilities or reasonable conduct. We are dealing with the writing of a bill.

Mr. DICKEY: This section has nothing to do with the powers of a commanding officer; it has only to do with powers of the minister.

Mr. PEARKES: Perhaps the normal practice might be of some value. I took part in the manœuvres in Great Britain in 1937. They issued a large map and there were a great many small areas excluded from the map showing the general manœuvre. On other maps there were shown small orchards and great fields definitely marked as not being included in the area which had been taken for manœuvre.

I am not personally happy about the point I raised. I think it is rather loose phrasing to say "to do all things reasonably necessary for execution of the manœuvres." There might just possibly be misunderstanding by a commanding officer.

Mr. GEORGE: As I understand it section 205 is only an authority for the minister to set up regulations governing manœuvres. Commanding officers would never see this section. They would be dealing with the regulations laid down under this authority. This clause just gives the minister opportunity to add more clauses to cover things not specifically covered in this section.

The CHAIRMAN: Shall the section carry?

Carried.

Section 206.

206. (1) When the Governor in Council by reason of an emergency declares it to be expedient for His Majesty to take control of property, including transportation or communications facilities in Canada or operating from Canada, the Minister may, by warrant under his hand, empower any person named in such warrant to take possession of property which he considers necessary for defence purposes or to assume the operation or management thereof for the service of His Majesty in such manner as the Minister directs; and all persons employed in whatever manner in connection with such property shall obey the directions of the Minister or of the person named in the warrant.

(2) A warrant mentioned in subsection one shall remain in force only so long as the emergency exists.

(3) Where action relating to any property has been taken under subsection one, all contracts and agreements in respect of that property, which would otherwise have been enforceable by or against the person who owns that property, including the directors, officers, servants and agents of that person, shall be enforceable by or against His Majesty.

Carried.

Section 207.

207. When an emergency exists, the officer in command of any unit of the Canadian Forces or any officer duly authorized by him may, subject to regulations made by the Governor in Council, enter upon, take, impress, control, use, occupy, alter, remove or cause to be removed, destroy, desolate or lay waste any property imperatively required to be so dealt with immediately for the purpose of meeting the emergency.

Carried.

Section 208.

208. Any person who suffers loss, damage or injury by reason of the exercise of any of the powers conferred by section two hundred and five, two hundred and six or two hundred and seven shall be compensated from the Consolidated Revenue Fund.

Carried.

Section 209.

209. (1) No duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landing-place, highway, road, right of way, bridge or canal, shall be paid by or demanded from any unit or other element of the Canadian Forces or an officer or man when on duty or any person under escort or in respect of the movement of any equipment.

(2) Nothing in this section shall affect the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of His Majesty.

Mr. HENDERSON: How can this affect someone outside the service; it is a civil right?

The WITNESS: We have a sanction in clause 246 regarding improper exaction of tolls. This is the first Part of the Bill which relates to the population generally.

Mr. BALCER: Is this done by general agreement in Canada?

The WITNESS: Not by any specific agreement but it is made an offence by the parliament of Canada to exact tolls in respect of the use of bridges, etc., by vehicles in the government service. The federal authority is competent to impose a penalty in respect of such exactions.

By Mr. Henderson:

Q. Does not this go farther?—A. I do not think so.

Q. You are not only preventing him from taking the toll but you are fining him for asking for one?—A. By demanding a toll, sir, he might prevent a motor vehicle from crossing a bridge. In many instances the driver would not have the money to get through and the fact that money was demanded as a condition of passage would prevent the movement altogether.

Q. This is not in a state of emergency?—A. No, sir.

Q. Well it is a civil right being taken away from a person?—A. No, sir. It is a matter of defence which lies within the competence of the federal authority.

Mr. GEORGE: Does this apply at all times or only in the case of emergency or on manœuvres?

The CHAIRMAN: It is a general section applying at all times.

Mr. GILLIS: Mr. Duplessis would put up quite an argument with you.

Brigadier LAWSON: This has always been the law. It does not represent any change.

The WITNESS: Only in the Army Act of the United Kingdom, sir.

Mr. BENNETT: It has always been recognized; for instance in Montreal the bridge is used without charge.

The CHAIRMAN: Shall the section carry?

Carried.

Section 210.

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

Carried.

Commander P. Hurcomb, Judge Advocate of the Fleet, recalled:

The CHAIRMAN: Section 211:

211. (1) Where salvage services are rendered by or with the aid of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces, His Majesty may claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the vessel or aircraft had belonged to him.

(2) No claim for salvage services by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces shall be finally adjudicated upon, unless the consent of the Minister to the prosecution of claim is proved; and such consent may be given at any time before final adjudication.

(3) Any document purporting to give the consent of the Minister for the purpose of this section shall be evidence of that consent.

(4) Where a claim for salvage services is prosecuted and the consent of the Minister is not proved the claim shall be dismissed with costs.

(5) The Minister may, upon the recommendation of the Attorney General of Canada, accept on behalf of His Majesty and the commander and crew or part of the crew, offers of settlement made with respect to claims for salvage services rendered by vessels or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

(6) The proceeds of any settlement made under subsection five shall be distributed in such manner as the Governor in Council may prescribe.

(7) Section five hundred and thirty-four of the *Canada Shipping Act 1934*, shall not apply to or in respect of any claim for salvage services by His Majesty or by the commander or crew or part of the crew of a vessel or aircraft belonging to or in the service of His Majesty and used in the Canadian Forces.

By Mr. Higgins:

Q. Is there any distribution of salvage to the crew under this Act?—A. This section, sir, is almost identical with the War Measures order in council upon

which it is based and we distributed the proceeds of a good many salvage claims under the old regulations. We have in the treasury some $60,000 awaiting distribution.

Q. What is holding that up now?—A. Well, the War Measures Orders were repealed in December, 1947, and we are waiting for this authority to pay the claims, and for that purpose we are making it retroactive.

Q. How was it usually distributed?—A. First of all you have a division as between the Crown and the officers and crew. That division depends on the degree of risk involved, but in my experience the usual distribution is one-third to the Crown and two-thirds to the ship's company. Among the ship's company there is a rank scale and if a man performs any special act of gallantry or arduous duty he may get a double share.

Carried.

The CHAIRMAN: Section 212:

212. Unless the Governor in Council otherwise directs, the *Government Vessels Displicine Act* shall not apply to His Majesty's Canadian Ships or to any other ship or vessel of the Canadian Forces or to the officers, men or other persons serving or engaged for service therein, or to officers and men serving in the regular forces, the active service forces, or the reserve forces when on service or on active service.

Carried.

Section 213:

213. (1) An officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces is not liable to be taken out of His Majesty's service by any process, execution or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of

(*a*) a charge of or conviction for an offence punishable under the *Criminal Code*, or any other law of Canada or of a province of Canada, or an offence punishable according to the law of that part of His Majesty's dominions in which the offence was committed; or

(*b*) a judgment for a debt, damages or sum of money when the amount involved, exclusive of any costs, exceeds two hundred dollars.

(2) All proceedings and documents in or incidental to a process, execution or order in contravention of this section are void; and where a complaint is made by an officer or man or by his commanding officer that such officer or man has been dealt with in contravention of this section by any process, execution or order issued out of any court, the officer or man or his commanding officer may complain to that court or to any court superior to it and the court or a judge thereof shall examine into the complaint and shall, if necessary, discharge the officer or man without fee, and may award reasonable costs to him which may be recovered as if such costs had been awarded in his favour in an action or other proceeding in such court.

(3) Any person having a cause of action against an officer or man of the reserve forces on active service or an officer or man of the regular forces or active service forces may, notwithstanding anything in this section, after due notice in writing of his intention to commence action has been personally served upon the officer or man, or left at his usual place of abode, commence action and proceed to judgment, and may proceed to execution except as against the person, pay, allowances or personal equipment of such officer or man.

By Mr. Harkness:

Q. What about this business of leaving the notice at his usual place of abode? Supposing a man is in Europe, leaving such notice at his usual place of abode would be the place he lived at in Canada and he might have no notice at all personally.—A. If he was a married man there would be no difficulty; the home of his family would be his "abode"; but I can see there might be some difficulty if he were a single man.

Q. He may have a judgment against him without knowing anything about it.

Mr. GEORGE: During the war was there not an order covering that? It seems to me that came up several times.

Mr. HARKNESS: There definitely was an order during the war.

Brigadier LAWSON: There definitely was an order, but I cannot recall what it was.

Mr. HIGGINS: That would be a matter for the judge; he would not give judgment unless he was satisfied the man really lived there.

Mr. DICKEY: This only applies to the special notice to be given before the action is commenced. Even if a man is overseas and that notice is left at some place that can be described as his usual place of abode, he is out of the jurisdiction when he is serving overseas. The only means of commencing an action in Canada is to have personal service on the debtor.

Carried.

The CHAIRMAN: Section 214:

214. Every officer and man of the reserve forces on active service and every officer and man of the regular forces and active service forces is exempt from serving on a jury.

By Mr. Pearkes:

Q. Would you consider making that every officer and man of the reserve force on active service or on service? It would be helpful if we could have exemption for the reserve forces while on service.—A. The old Army Act says that only soldiers in the regular forces shall be exempt.

Mr. GEORGE: There is something in the Militia Act about it, because I was exempted twice.

Mr. HENDERSON: Supposing a jury was selected this morning and a reserve force man was on it and about 6 o'clock at night he would be going on parade—I should think that would cause a bit of confusion.

Mr. GEORGE: Have you got the Militia Act there?

The WITNESS: I think you found your protection in one of the provincial statutes. For instance, in the Ontario Act the provision is that every member of His Majesty's army, navy or air force, on full pay is exempt from jury service.

Mr. ADAMSON: What harm would there be to exempting all members of the reserve force? Would that take too many out of the panel?

The CHAIRMAN: Yes, they sometimes have great difficulty now in getting a panel.

The WITNESS: I can see no justification for it because his full-time occupation is civilian.

The CHAIRMAN: A man might be warned for jury duty and the case might be started when he was called out on service.

Mr. GEORGE: What about his one day's duty a week?

Mr. HUNTER: That is voluntary.

Mr. ADAMSON: Paid officers are exempted from jury duty, anyway.

The WITNESS: They are in the regular forces.

The CHAIRMAN: What does "service" mean?

Brigadier LAWSON: Service is defined in section 34 of the Act.

The CHAIRMAN: What would happen if a man were called for jury duty and while actually sitting on a case, went home at night and found a notice to parade? What would happen to the trial in that case?

Mr. GEORGE: Normally your training is on certain days and those are known far in advance, and the summer camp period is known far in advance. I do not think this section can be written to cover an emergency, but I feel we should have protection for these personnel.

Mr. HUNTER: There are no jury sittings in the summer.

Mr. PEARKES: A man may be taking courses during the winter time.

The WITNESS: Might I make a suggestion, I rather feel we should be a little careful not to go too far because this subject is also dealt with in many provincial statutes. The provincial jurisdiction stems from their control of the administration of justice and I think it would be a rather touchy thing if we went into the civilian or quasi-civilian field in this and perhaps it would be better to leave it as it is. That is just my own opinion.

Mr. GEORGE: I would agree, providing we had these ten provincial statutes here. The point I am looking at is we have a hard enough time getting these chaps enlisted as it is. Fortunately we have plenty of them where I come from. They are running three and four courses per year of ten days' duration, and they are taking periods of training during the week and on week-ends. In our particular case they are practically all tradesmen and to finish this off they must attend summer camp.

Mr. HUNTER: In any court there is a proper procedure by which you can make application through the registrar to the judge that a certain man be excused and under reasonable conditions they are excused.

Mr. GEORGE: I think it should be a right.

Brigadier LAWSON: To my knowledge we have never had any trouble with jury service interfering with training. We usually can rely on the good sense of the sheriff and, as has been pointed out, a man can apply for exemption if we need him. I think it is better to leave it.

Carried.

The CHAIRMAN: Section 215:

> 215. (1) No action, prosecution or other proceeding lies against any person for an act done in pursuance or execution or intended execution of this Act or any regulations, or of any military or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, regulations or such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of continuance of injury or damage, within six months after the ceasing thereof.
>
> (2) Nothing in subsection one shall be in bar of proceedings against any person under the Code of Service Discipline.

Carried.

Section 216:

> 216. No action or other proceeding lies against any officer or man in respect of anything done or omitted by him in the execution of his

duty under the Code of Service Discipline, unless he acted, or omitted to act, maliciously and without reasonable and probable cause.

Carried.

The CHAIRMAN: We now come to Part XI, and I understand Brigadier Lawson will be our assistant on this section.

Brigadier W. J. Lawson, Judge Advocate General, recalled:

The CHAIRMAN: Do you wish to make any general remarks before we deal with the sections?

The WITNESS: No, sir.

By Mr. Adamson:

Q. Are there any material changes in this over the old regulations?—A. May I say there are few changes in this. We have provided for liability to the navy to assist the civil power that did not exist before. We have provided that aid to the civil power shall not be considered as active service, but as service. Otherwise I think the wording is practically the same.

By Mr. Henderson:

Q. Would a person injured in that case be subject to the possibility of receiving a pension?—A. Yes, injuries on service are pensionable.

By Mr. Adamson:

Q. There are just technical reasons for dropping the word "active"?—A. Yes, it seems you have to summon parliament when the troops go on active service.

Carried.

The CHAIRMAN: Section 217:

217. For the purposes of this Part,

(*a*) "Attorney General" means the Attorney General of any province of Canada, or the acting Attorney General of a province, or any minister of a government of a province performing for the time being the duties of a provincial Attorney General;

(*b*) "Officer Commanding a Command" means an officer commanding a Canadian Army Command if he is present in the command and able to act, or if he is not so present, or is from sickness or other cause unable to act, the officer appointed to administer the command or for the time being performing the duties of the officer commanding the command.

Carried.

Section 218:

218. The Canadian Forces, or any unit or other element thereof, or any officer or man, with equipment, are liable to be called out for service in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of an Attorney General, considered as likely to occur, and that is beyond the powers of the civil authorities to suppress, prevent, or deal with.

Carried.

Section 219:

219. Nothing in this Part shall be deemed to impose liability to serve in aid of the civil power, without his consent, upon an officer or man of the reserve forces who is, by virtue of the terms of his enrolment, liable to perform duty on active service only.

By Mr. George:

Q. I understand that applies to the supplementary reserve?—A. That is right.

By Mr. Adamson:

Q. This is a new clause put in for the purpose of dealing with the reserve army?—A. The supplementary reserve, sir.

Carried.

Section 220:

220. In any case where a riot or disturbance occurs, or is considered as likely to occur, the Attorney General of the province in which is situated the place where the riot or disturbance occurs, or is considered as likely to occur, on his own motion, or upon receiving notification from a judge of a superior, county or district court having jurisdiction in that place that the services of the Canadian Forces are required in aid of the civil power, may by requisition in writing, signed by him and addressed to the Officer Commanding a Command of the command in which that place is situated, require the Canadian Army or such part thereof as the authorities hereinafter mentioned consider necessary, to be called out on service in aid of the civil power.

By Mr. Adamson:

Q. It does not require the minister to act at all?—A. No, it is a provincial matter.

By Mr. Gillis:

Q. Can the Attorney General take that action without being requested to do so by the community which is benefited?—A. Under present circumstances the Attorney General only can act. Under the Militia Act the local mayor or magistrate could make the request directly, but that was dropped and was no longer considered necessary with our modern means of communication.

Q. In the past the community had to pay for the use of the troops while they were there. Does the province assume responsibility now for payment of the army or is it the municipality?—A. It is the liability of the province under this Act.

By Mr. Adamson:

Q. What about calling out the Mounted Police, can that be done by the Attorney General of the province?—A. I do not believe so, sir.

Q. I was thinking of the disturbances of 1946 in Hamilton when the Mounted Police were called out. Was that done through the provincial authorities?—A. I know of no provision for the provincial authorities being able to call the police out.

By Mr. Bennett:

Q. Does this section apply to the Yukon and Northwest Territories?—A. Where federal troops are in control they can just send troops in. They would not come under this Act.

Carried.

The CHAIRMAN: Section 221:

221. (1) Upon receiving a requisition in writing made by an Attorney General under section two hundred and twenty, the Officer Commanding a Command shall call out such part of the Canadian Army in his command as he considers necessary for the purpose of suppressing or preventing any actual riot or disturbance, or any riot or disturbance that is considered as likely to occur.

(2) Where the Officer Commanding a Command mentioned in subsection one considers that the services of parts of the Canadian Army in commands other than his command are necessary or desirable for the purpose of suppressing or preventing the riot or disturbance mentioned in the requisition, he shall notify the Chief of the General Staff of the number of officers and men, and of the equipment therefor, that he requires, as to which the Officer Commanding a Command shall be the sole judge; and upon being so notified the Chief of the General Staff may call out such parts of the Canadian Army and provide such equipment as in his judgment are available to meet the requirements of the Officer Commanding a Command and shall cause them to be despatched to the Officer Commanding a Command.

(3) Where the Officer Commanding a Command mentioned in subsection one has called out or caused to be called out any part of the Canadian Army in aid of the civil power, and considers that the services of any part of the Royal Canadian Navy or of the Royal Canadian Air Force are necessary or desirable for the purpose of assisting that part of the Canadian Army so called out, he may address to the Minister, through the Chief of the General Staff, a request stating the nature and extent of the assistance from the Royal Canadian Navy or from the Royal Canadian Air Force which in the circumstances the Officer Commanding a Command requires; and the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, if the Minister so directs, shall call out such part of the Royal Canadian Navy or of the Royal Canadian Air Force, and equipment therefor, as the Minister considers necessary or desirable for the purpose of meeting the request.

By Mr. Adamson:

Q. Are there no provisions at the present time for calling out the air force or the navy?—A. There is for the air force but not for the navy.

Mr. PEARKES: I have one little suggestion which occurs to my mind. I wonder whether the time has not come to change the title from chief of general staff to chief of the army staff. We have chief of the naval staff and chief of the air force. I just throw it out as a suggestion for you to discuss with your authorities as to whether it would not be a good time to make him chief of the army staff.

Mr. STICK: There is no general in the air force or the navy.

Mr. PEARKES: It has nothing to do with a general. I suggest you refer it to see what the reaction will be.

Mr. DICKEY: I was wondering why it is necessary to go to the minister. Why should the army commander go to the minister to get any assistance he might require from the navy or air force?

The WITNESS: I think that is a question of allocation of responsibility between the forces. I do not think it is possible to empower an army commander to simply call out part of the army or navy unless there had been consultation with the heads of those services.

Carried.

The CHAIRMAN: Section 222:

222. A requisition of an Attorney General under this Part may be in the following form, or to the like effect, and the form may, subject to section two hundred and twenty-three, be varied to suit the facts of the case:—

Province of

To wit

Whereas information has been received by me from responsible persons (or a notification has been received by me from a judge of a (superior) (county) (district) court having jurisdiction in) that a riot or disturbance of the peace beyond the powers of the civil authorities to suppress (or to prevent or to deal with) and requiring the aid of the Canadian Forces to that end has occurred and is in progress (or is considered as likely to occur) at ;

And whereas it has been made to appear to my satisfaction that the Canadian Forces are required in aid of the civil power;

Now therefore I, ,
the Attorney General of , under and by virtue of the powers conferred by the National Defence Act, do hereby require you to call out the Canadian Army or such part thereof as you consider necessary for the purpose of suppressing (or preventing or dealing with) the riot or disturbance and, if it is deemed necessary or desirable by the appropriate authorities, I do hereby request that such other Services of the Canadian Forces as are under that Act liable to be called out in aid of the civil power be so called out for the purpose of assisting the Canadian Army;

And for and on behalf of the Province of
, I the said
Attorney General, hereby undertake that all expenses and costs, incurred by His Majesty by reason of the Canadian Forces or any part thereof being called out on service in aid of the civil power pursuant to this requisition, shall be paid to His Majesty by the said province.

Dated at , this
day of , 19 .

Attorney General.

Carried.

Section 223:

223. (1) In a requisition made under this Part it shall be stated that information has been received by the Attorney General from responsible persons, or that a notification has been received by the Attorney General from a judge that a riot or disturbance beyond the powers of the civil authorities to suppress or to prevent or to deal with, as the case may be, has occured, or is considered as likely to occur, and that the Canadian Forces are required in aid of the civil power; and the requisition shall further state that it has been made to appear to the satisfaction of the Attorney General that the Canadian Forces are so required.

(2) In a requisition made under this Part there shall be embodied an unconditional undertaking by the Attorney General that the province shall pay to His Majesty all expenses and costs incurred by His Majesty by reason of the Canadian Forces or any part thereof being called out for service in aid of the civil power, as by the requisition required.

(3) Every statement of fact contained in a requisition made under this Part shall be conclusive and binding upon the province on behalf of which the requisition is made, and every undertaking or promise in the requisition shall be binding upon the province and not open to question or dispute by reason of alleged incompetence or lack of authority on the part of the Attorney General or for any other reason.

(4) In every case where a requisition is made under this Part, the Attorney General of the province concerned shall, within seven days after the making of the requisition, cause an inquiry to be made into the circumstances which occasioned the calling out of the Canadian Forces or any part thereof, and shall send a report upon the circumstances to the Secretary of State.

(5) A statement of fact contained in a requisition made under this Part shall not be open to dispute by the Officer Commanding a Command upon whom the requisition is made.

Carried.

Section 224:

224. Officers and men when called out for service in aid of the civil power shall, without further authority or appointment and without taking oath of office, be held to have and may exercise, in addition to their powers and duties as officers and men, all of the powers and duties of constables, so long as they remain so called out, but they shall act only as a military body, and shall be individually liable to obey the orders of their superior officers.

By Mr. Pearkes:

Q. In the old Act he had the powers of a special constable. Now you have changed it to the word "constable". Is there any difference in the powers of a special constable and a constable?—A. I do not think there is. We concluded the word "special" had no meaning, therefore we dropped it.

Carried

The CHAIRMAN: Section 225:

225. The Canadian Forces or any part thereof called out in aid of the civil power shall remain on duty in such strength as the Officer Commanding a Command, who has carried into effect a requisition of an Attorney General made under this Part, deems necessary or orders, until notification is received from the Attorney General that the Canadian Forces are no longer required in aid of the civil power; and the Officer Commanding a Command may, from time to time as in his opinion the exigencies of the situation require, increase or diminish the number of officers and men called out; except that officers and men of the Royal Canadian Navy and the Royal Canadian Air Force called out to assist the Canadian Army in aid of the civil power may be withdraw at such time and to such extent as the Chief of the Naval Staff or the Chief of the Air Staff, as the case may be, under the direction of the Minister, may order.

Carried.

Section 226:

226. All expenses and costs incurred by His Majesty by reason of any of the Canadian Forces being called out under this Part in aid of the civil power, shall be paid to His Majesty by the province the Attorney General of which made the requisition requiring the Canadian Army to be called out.

Carried.

Section 227:

227. Such moneys as are required to meet the expenses and costs occasioned by the calling out of the Canadian Forces as provided for in this Part and for the services rendered by them shall, pending payment by the province liable under section two hundred and twenty-six, be advanced in the first instance out of the Consolidated Revenue Fund by the authority of the Governor in Council, but shall be payable by and recoverable from the province to and by His Majesty as moneys paid by His Majesty to and for the use of the province at the request of the province.

Carried.

We are now at part XII, dealing with "Offences Triable by Civil Courts." Wing Commander McLearn is going to be our witness.

Wing Commander H. A. McLearn, Deputy Judge Advocate General, R.C.A.F., recalled:

The CHAIRMAN: Would you like to make any observations, Wing Commander McLearn?

The WITNESS: Just this, sir. The offences prescribed in this part are capable of being committed by the public as well as by officers and men, and I may say they are substantially the same as offences prescribed at present in the Militia Act.

The CHAIRMAN: Section 228:

228. (1) Every person, including an officer or man, sall be liable to be tried in a civil court in respect of any offence prescribed in this Part.

(2) No charge against an officer or man in respect of any offence prescribed in this Part shall, if the complainant is any other officer or man, be tried by a civil court unless the consent thereto in writing of the commanding officer of such first-mentioned officer or man has first been obtained.

Mr. PEARKES: Might I suggest that the section stand until we have completed the part, then we will know what offences we are referring to?

The CHAIRMAN: I think that is agreeable. The section stands.

Section 229:

229. No prosecution in a civil court shall be commenced against a person in respect of an offence prescribed in this Part after the expiration of six months from the date of commission of the offence charged, except for any of the offences mentioned in section two hundred and thirty-nine.

Carried.

Section 230:

230. Every person who contravenes regulations respecting the access to, exclusion from, and safety and conduct of any person in, on or about any defence establishment, work for defence or equipment is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Carried.

Section 231:

231. Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him or by direction of the person before whom he appears for the purpose of being enrolled in the Canadian Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

By Mr. Gillis:

Q. I wonder if the witness would explain what would happen to a person going into the service on an attestation which says he has no disability. Suppose he is in the service for some time, and they find he has something that he does not know about. He then has made a false statement going into the service.—A. No, sir, he must have intended to make a false statement. He must have a guilty mind.

Q. How are you going to determine that?—A. You will notice the word "knowingly" there. The effect of that word is to impose an onus on the prosecution to prove that the accused knew what he was doing when he made the false answer.

Mr. STICK: He gets a medical check-up.

By Mr. Gillis:

Q. My friend has said he gets a medical check-up when he comes in. There are hundreds of boys who went into the service and came out with T.B. The boy did not know it going in, but for pension purposes he is judged to have had it before enlistment. Right now the pension commissioner is ruling against them.—A. This is purely an offence clause to take care of a situation where somebody knowingly makes a false statement.

Q. Give me one example.

Mr. STICK: Suppose he had epileptic fits.

Mr. GILLIS: He certainly would not get in.

The WITNESS: A criminal record is a good example.

Mr. GILLIS: You would not take him in with a criminal record?

The WITNESS: The nature of the criminal record would be the determinating factor.

Mr. HARKNESS: Giving a false age?

The WITNESS: I should think it most unlikely that anyone would be prosecuted for giving a false age.

Mr. GEORGE: Can we be sure of that?

Mr. ADAMSON: I can understand where there is a history of T.B. in the family the man would not like to state that because that would be a mark against him, and he might conceivably pass the medical examination. It seems rather a shame to subject a person such as that to this quite heavy fine and imprisonment.

The WITNESS: Sir, I think the same remarks apply that I made when I was dealing with service offences. This is designed to take care of the worst type of case. One might even say that a false answer is an indication of keenness if the false answer is not serious.

By Mr. Gillis:

Q. What would you consider very serious?—A. A serious criminal record.

Q. We took men out of the penitentiaries and put them in last time. A man may have been sentenced when he was nineteen or twenty years of age and may

come out and go into the service and make a good soldier.—A. It may be that someone makes a false answer of such a nature such that, if he had told the truth, he would not have been admitted. The Crown is put to great expense by initial training and, perhaps, transfer of the man to some distant place. It may be found that he is totally disqualified to continue serving by reason of the true circumstances which he failed to disclose. He could be tried within the service for having committed the service offence prescribed in section 112, or he could be tried by a magistrate under this section.

Q. The only point that bothers me there is that a boy may come in and then find he is medically unfit. As it is now the Pension Commission are turning down hundreds of boys who passed medically going in, but came out psychopathic cases and tuberculosis patients, and the examining officer did not know they had such afflictions when they enlisted. Under that clause a man in that category could be prosecuted?—A. No, sir. He must have knowingly made a false answer.

Q. I wish you could convince the Pension Commission.

The CHAIRMAN: He must have known he was making an answer that was false.

Mr. PEARKES: Failing to disclose previous service would be an example.

Mr. DICKEY: I think it is essential there be some section which imposes a penalty for making a false statement on enlistment, and I think the only proper protection that can be given is to insert the word "knowingly".

Carried.

The CHAIRMAN: Section 232:

232. Every medical practitioner who signs a false medical certificate or other document in respect of

(*a*) the examination of a person for the purpose of enrolment in the Canadian Forces;

(*b*) the service or release of an officer or man; or

(*c*) the disability or alleged disability of a person, purported to have arisen or to have been contracted during, in the course of, or as a result of the service of such person as an officer or man,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Carried.

Section 233:

233. Every person who falsely personates any other person in respect of any duty, act or thing required to be performed or done under this Act by the person so personated is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Mr. ADAMSON: I assume if someone is called and another person who is known to be unfit answers for that soldier, and gets a false discharge, this would apply?

The WITNESS: The most common case is where a person appears on a pay parade, impersonates a soldier who is absent and receives his pay.

Mr. HENDERSON: What about an officer?

The WITNESS: It says, "any other person."

Carried.

The CHAIRMAN: Section 234:

234. Every person who falsely represents himself to any military or civil authority to be a deserter from His Majesty's Forces is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Carried.

Section 235:

235. (1) Every officer or man of the reserve forces who without lawful excuse neglects or refuses to attend any parade, drill or training at the place and hour appointed therefor is guilty of an offence and is liable on summary conviction for each offence, if an officer to a fine of ten dollars, and if a man to a fine of five dollars.

(2) Absence from any parade, drill or training mentioned in subsection one shall, in respect of each day on which such absence occurs, be a separate offence.

Mr. STICK: There is some provision for a medical certificate or something like that?

The WITNESS: Oh, yes. Illness is a good excuse.

Mr. HARKNESS: This is more honoured in the breach than in the observance.

Mr. GEORGE: There is good reason.

Carried.

The CHAIRMAN: Section 236:

236. Every officer or man of the reserve forces who fails to keep in proper order any personal equipment or who appears at drill, parade or on any other occasion with his personal equipment out of proper order, unserviceable or deficient in any respect is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five dollars for each offence.

Carried.

Section 237:

237. Every person who without reasonable excuse interrupts or hinders the Canadian Forces at drill, training or while on the march is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence; and may be taken into custody and detained by any person by the order of an officer until such drill, training or march is over for the day.

Carried.

Section 238:

238. Every person who without reasonable excuse obstructs or interferes with manœuvres authorized under section two hundred and five is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars.

Carried.

Section 239:

239. (1) Every person who

(*a*) unlawfully disposes of or removes any property;

(*b*) when lawfully required, refuses to deliver up any property that is in his possession; or

(*c*) except for lawful cause, the proof of which lies on him, has in his possession any property,

is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars for each offence.

(2) For the purposes of this section, "property" means any public property under the control of the Minister, non-public property, and property of any of His Majesty's Forces or of any forces co-operating therewith.

Carried.

Section 240:

240. (1) Every person who

(*a*) procures, persuades, aids, assists or counsels an officer or man to desert or absent himself without leave; or

(*b*) in an emergency, aids, assists, harbours or conceals an officer or man who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that such officer or man was a deserter or an absentee without leave.

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and not less than one hundred dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

(2) A certificate signed by the Judge Advocate General, or such person as he may appoint for that purpose, that an officer or man was convicted under this Act, of desertion or absence without leave or had been continuously absent without leave for six months or more, and setting forth the date of commencement and the duration of such desertion, absence without leave or continuous absence without leave, shall for the purposes of proceedings under this section be evidence that the officer or man was a deserter or absentee without leave during the period mentioned in the certificate.

Mr. HARKNESS: Is this applicable against a man's wife.

Mr. ROBERGE: It says, "person".

The WITNESS: Yes, sir, but it is most unlikely that a charge would be laid against a man's wife.

Mr. ROBERGE: Does not the provincial law cover that?

Mr. HARKNESS: As this reads it would refer to a man's wife and she should be specifically exempt.

The WITNESS: I think you can be certain that there would never be a prosecution against a wife for concealing her husband who is a deserter.

Mr. ADAMSON: Is a wife a "person" under the Act?

The WITNESS: Yes, sir.

Carried.

The CHAIRMAN: Section 241:

241. Every person who, knowing that an officer or man is about to desert or absent himself without leave, aids or assists him in his attempt to desert or absent himself without leave is guilty of an offence and is

liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

Carried.

Section 242:

242. Every person who

(*a*) wilfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such other person is required under this Act or regulations to perform;

(*b*) counsels any other person not to perform any duty that such other person is required under this Act or regulations to perform;

(*c*) does an act to the detriment of any other person in consequence of such other person having performed a duty that he is required under this Act or regulations to perform;

(*d*) interferes with or impedes, directly or indirectly, the recruiting of the Canadian Forces;

(*e*) wilfully produces any disease or infirmity in, or maims or injures himself or any other person with a view to enabling himself or such other person to avoid service in the Canadian Forces;

(*f*) with intent to enable any other person to render himself, or to induce the belief that such other person is, permanently or temporarily unfit for service in the Canadian Forces, supplies to or for such other person any drug or preparation calculated or likely to render such other person, or lead to the belief that such other person is, permanenly or temporarily unfit for such service; or

(*g*) gives or receives, or is in any way concerned in the giving or receiving, of any valuable consideration in respect of enrolment, release or promotion in the Canadian Forces,

is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both fine and imprisonment.

Carried.

Section 243:

243. (1) Every person who

(*a*) on being duly summoned as a witness under section two hundred and after payment or tender of the fees and expenses of his attendance prescribed in regulations, makes default in attending;

(*b*) being in attendance as a witness before a court martial mentioned in section two hundred.

(i) refuses to take an oath or affirmation legally required of him,

(ii) refuses to produce any document in his power or under his control legally required to be produced by him, or

(iii) refuses to answer any question that legally requires an answer;

(*c*) uses insulting or threatening language before a court martial mentioned in section two hundred, or causes any interference or disturbance in its proceedings, or prints observations or uses words likely to influence improperly the members of or witnesses

before that court martial or to bring that court martial into disrepute, or in any other manner whatsoever displays contempt of that court martial; or

(*d*) being in attendance as counsel before a court martial mentioned in section two hundred, is in contempt of court whithin the meaning of subsection five of that section,

is guilty of an offence and the court martial may, by a certificate setting forth the facts thereof, refer the offence of such person to a civil court, in the place where the court martial is held, that has power to punish witnesses guilty of like offences in that civil court.

(2) Any civil court to which an offence mentioned in this section has been referred shall cause to be brought before it the person certified to have committed that offence, and shall inquire into the circumstances set forth in the certificate mentioned in subsection one, and, after examination of any witnesses who may be produced for or against the person so accused and after hearing any statement that may be offered in defence, shall, if it seems just, punish the person in like manner as if he had committed the offence in a proceeding in that civil court.

Carried.

Section 244:

244. Every person employed in connection with any property, control of which has been taken by His Majesty under section two hundred and six, who does not obey the directions of the Minister or such person as is named in any warrant issued by the Minister is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

By Mr. Adamson:

Q. This is a new section; what is the reason for this?—A. Sir, it was thought desirable that we should have sanctions applicable to clause 206, which relates to the requisitioning of property in an emergency.

Q. This merely gives you power to fine or imprison anyone for disobeying that regulation?—A. In a civil court, if the person concerned is not a member of the service.

Mr. HARKNESS: What is to prevent an employee from quitting his job?

Mr. HENDERSON: I think this power is necessary. Supposing the forces took over the Niagara Power Company, they would want to have someone to run it.

Mr. HARKNESS: If that is the case employees would not be allowed to quit.

Mr. HENDERSON: Once in a while they would have to stay on the job.

Brigadier LAWSON: In my opinion if the man's contract had not expired you could require him to stay on and fulfil his contract of employment under this section.

Mr. ROBERGE: It would apply to stevedores unloading ships?

Brigadier LAWSON: Yes, or if you took over an air line you could not have all the pilots quitting.

Mr. HARKNESS: I would think it would be contrary to the general provisions of free employment.

Brigadier LAWSON: Remember, sir, it is only in an emergency that this operates.

Mr. ADAMSON: If you take over a factory making vital material you can prosecute anybody who refuses to work.

Brigadier LAWSON: If their contract of employment had not expired. If their contract had expired I think they could quit.

Carried.

The CHAIRMAN: Section 245.

245. Every person who contravenes regulations respecting the quartering, billeting and encamping of a unit or other element of the Canadian Forces, or of an officer or man is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars.

Shall the section carry?

Carried.

Section 246.

246. Every person who receives or demands a duty or toll in contravention of section two hundred and nine is guilty of an offence and is liable on summary conviction to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

Shall the section carry?

Carried.

Section 247.

247. Every person who fails to comply with directions given under section two hundred and ten is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

Shall the section carry?

Carried.

Mr. PEARKES: You can carry section 228 as far as I am concerned now, Mr. Chairman.

The CHAIRMAN: Thank you very much. I think we might, and that will complete the bill.

Shall section 228 carry?

Carried.

The CHAIRMAN: Tonight we will finish this Bill except as to the sections which have been stood. After that we might take up the Military Pensions Act Amendments and the other small bill. If we are able to complete these tonight we will adjourn to meet at the call of the chair when the officers are ready to deal up with the stood sections. We meet again at 8:15, gentlemen.

—The committee adjourned.

THURSDAY, June 1, 1950.

EVENING SESSION

—The Committee resumed at 8:15 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. When we adjourned this afternoon we had just completed section 247, and we now have left four sections which are in Part XIII, "Special Provisions". Brigadier Lawson will deal with those.

Brigadier W. J. Lawson, Judge Advocate General, recalled:

The CHAIRMAN: Section 248:—

248. (1) Every member of the Naval Forces of Canada, the Canadian Army and the Royal Canadian Air Force and every person called out for compulsory military service under *The National Resources Mobilization Act, 1940,* who, while serving on active service beyond Canada at any time after the ninth day of September, one thousand nine hundred and thirty-nine, or while serving on active service within Canada at any time between the thirty-first day of December, one thousand nine hundred and forty-five, and the first day of October, one thousand nine hundred and forty-six, deserted or absented himself without leave and is still absent on the date that this section comes into force, shall for all purposes be deemed never to have been enlisted or enrolled in or appointed to or have served with the naval, army or air forces of Canada during the war that commenced in September, one thousand nine hundred and thirty-nine.

(2) Notwithstanding that any person mentioned in subsection one is deemed never to have served in the naval, army or air forces of Canada, all pay and allowances, rations, kit and equipment at any time paid or issued to him or on his behalf shall be deemed to have been paid or issued with due authority.

Carried.

Section 249:—

249. Paragraph (*e*) of section two of *The Royal Canadian Air Force Act,* chapter fifteen of the statutes of 1940, is repealed and the following substituted therefor:—

(*e*) "officer" means a person who holds His Majesty's commission in or who is a subordinate officer in the Royal Canadian Air Force or who is attached or seconded to the Royal Canadian Air Force as an officer;

Mr. STICK: Why the special Act?

Wing Commander MCLEARN: The background of this clause is that at the moment we have in the air force people in the rank of flight cadet who are stated to have the status of subordinate officers. There is a technical flaw which goes to the very root of their status at present. It is envisaged that the bill now before the committee will not be proclaimed immediately. Clause 251 indicates it will only come into effect on proclamation. Indoctrination within the services, made necessary by the changes in the bill, will take several month, thereby delaying proclamation and the air force would like to cure that technical flaw in the interim.

Mr. PEARKES: Why not amend the Canadian Air Force Act?

Wing Commander McLEARN: That is what we are doing here.

Mr. PEARKES: Why is it here?

Wing Commander McLEARN: All of the clauses in this part are transitory. Clause 248 is transitory also.

The CHAIRMAN: In the meantime you want this correction made in the existing Act?

Wing Commander McLEARN: Exactly.

Carried.

The CHAIRMAN: Section 250:

250. *The Royal Military College Act*, the *Militia Act*, the *Department of National Defence Act, The Royal Canadian Air Force Act* and *The Naval Service Act, 1944*, or any portion thereof, may be repealed by proclamation of the Governor in Council.

Carried.

Section 251:

251. Sections one, two hundred and eleven, two hundred and forty-eight, two hundred and forty-nine and two hundred and fifty of this Act shall come into force when this Act is assented to, section two hundred and eleven shall operate retrospectively to the eighth day of December, one thousand nine hundred and forty-seven, section two hundred and forty-nine shall operate retrospectively to the first day of October, one thousand nine hundred and forty-six, and the other sections of this Act shall come into force on a day or days to be fixed by proclamation of the Governor in Council.

Carried.

Mr. WRIGHT: Why is section 249 retroactive?

The CHAIRMAN: Let us take the sections in order. Section 248 has to do with special provisions regarding deserters and absentees, section 249 amends the Royal Canadian Air Force Act, and section 250 is the repeal section.

Mr. HIGGINS: What is section 249 retroactive for?

Wing Commander McLEARN: We want to amend the Royal Canadian Air Force Act to cure the flaw respecting flight cadets from the time that rank was first introduced.

The CHAIRMAN: Now, without dealing at the moment with any of the sections that were stood for reconsideration we have not yet passed sections 1 and 2 of the bill. I presume section 1 might pass?

1. This Act may be cited as the *National Defence Act*.

Carried.

There are a few amendments to section 2 proposed by the officials and I wonder if we should take them one at a time?

The CHAIRMAN: Section 2:

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

(*a*) "aircraft" means flying machines and guided missles that derive their lift in flight chiefly from aerodynamic forces and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite;

(*b*) "aircraft material" means engines, fittings, armament, ammunition, bombs, missles, gear, instruments and apparatus, used or intended for use in connection with aircraft or the operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or the operation thereof;

(*c*) "civil court" means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction;

(*d*) "civil custody" means the holding under arrest or in confinement of a person by the police or other competent civil authority, and includes confinement in a penitentiary or a civil prison;

(*e*) "civil prison" means any prison, gaol or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined, and, if sentenced out of Canada, any prison, gaol or other place in which a person, sentenced to that term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being be confined;

(*f*) "Code of Service Discipline" means the provisions of Parts IV, V, VI, VII, VIII and IX;

(*g*) "court martial" includes a General Court Martial, a Disciplinary Court Martial and a Standing Court Martial;

(*h*) "defence establishment" means any area or structure under the control of the Minister, and the equipment and other things situate in or on any such area or structure;

(*i*) "Department" means the Department of National Defence;

(*j*) "Deputy Minister" means the Deputy Minister of National Defence;

(*k*) "detention barrack" means a place designated as such under subsection two of section one hundred and seventy-eight;

(*l*) "emergency" means war, invasion, riot or insurrection, real or apprehended;

(*m*) "enemy" includes armed mutineers, armed rebels, armed rioters and pirates;

(*n*) "enrol" means to cause any person to become a member of a component of a Service of the Canadian Forces;

(*o*) "Equipment means all movable public property or materiel, other than money, provided for the Canadian Forces or the Defence Research Board or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores or provisions so provided;

(*p*) "His Majesty's Canadian Ship" means any vessel of the Royal Canadian Navy commissioned as a vessel of war;

(*q*) "His Majesty's Forces" means the naval, army and air forces of His Majesty wheresoever raised, and includes the Canadian Forces;

(*r*) "man" means any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;

(*s*) "military" shall be construed as relating to all or any of the Services of the Canadian Forces;

(*t*) "Minister" means the Minister of National Defence;

(*u*) "mutiny" means collective insubordination or a combination of two or more persons in the resistance of lawful naval, army or air force authority in any of His Majesty's Forces or in any forces co-operating therewith;

(*v*) "non-public property" means,

(i) all money and property other than issues of equipment, received for or administered by or through messes, institutes or canteens of the Canadian Forces;

(ii) all money and property contributed to or by officers, men, units or other elements of the Canadian Forces for the collective benefit and welfare of such officers, men, units or other elements;

(iii) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection five of section thirty-nine; and

(iv) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in sub-paragraphs (i), (ii) and (iii);

(*w*) "officer" means,

(i) a person who holds His Majesty's commission in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;

(ii) a subordinate officer in the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force; or

(iii) any person who pursuant to law is attached or seconded as an officer to the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force;

(*x*) "penitentiary" means a penitentiary established under the *Penitentiary Act, 1939,* and includes, in respect of any punishment of imprisonment for two years or more imposed out of Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for two years or more by a civil court having jurisdiction in the place where the sentence is imposed, can for the time being be confined; and if in any such place out of Canada there is no prison or place for the confinement of persons sentenced to imprisonment for two years or more then in that case "penitentiary" means a civil prison;

(*y*) "personal equipment" means all equipment issued to an officer or man for his personal wear or other personal use;

(*z*) "possession" by any person, for the purpose of the Code of Service Discipline and Part XII, includes,

(i) having in his own personal possession;

(ii) knowingly having in the actual possession or custody of any other person; or

(iii) knowingly having in any place, whether belonging to or occupied by himself or not, for the use or benefit of himself or any other person;

(*aa*) "public property" means any property of His Majesty in right of Canada;

(*bb*) "regulations" means regulations made under this Act;

(*cc*) "release" means the termination of the service of an officer or man in any manner whatsoever;

(*dd*) "service convict" means a person who is under a sentence that includes a punishment of imprisonment for two years or more imposed upon him pursuant to the Code of Service Discipline;

(*ee*) "service custody" means the holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barrack;

(*ff*) "service detainee" means a person who is under a sentence that includes a punishment of detention imposed upon him pursuant to the Code of Service Discipline;

(*gg*) "service offence" means an offence under this Act, the *Criminal Code*, or any other Act of the Parliament of Canada, committed by a person while subject to the Code of Service Discipline;

(*hh*) "service prison" means a place designated as such under subsection two of section one hundred and seventy-eight;

(*ii*) "service prisoner" means a person who is under a sentence that includes a punishment of imprisonment for less than two years imposed upon him pursuant to the Code of Service Discipline;

(*jj*) "service tribunal" means a court martial or a person presiding at a summary trial;

(*kk*) "summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section one hundred and thirty-five or section one hundred and thirty-six and a trial by a superior commander pursuant to section one hundred and thirty-seven;

(*ll*) "superior officer" means any officer or man who, in relation to any other officer or man, is by this Act, or by regulations or by custom of the service, authorized to give a lawful command to that other officer or man;

(*mm*) "unit" means an individual body of the Canadian Forces that is organized as such pursuant to section eighteen, with the personnel and equipment thereof.

The CHAIRMAN: I will give you the amendments proposed to section so we may have them regularly moved and inserted.

Clause 2 (*n*)—The words "a component of a Service of" should be deleted so that the definition would read as follows:

(*n*) "enrol" means to cause any person to become a member of the Canadian Forces;

Mr. GEORGE: I will so move.

Amendment carried.

Clause 2 (*o*)—The definition of "equipment" should be deleted, present paragraphs (*p*), (*q*) and (*r*) should be re-lettered (*o*), (*p*) and (*q*) respectively and the following definition of "materiel" should be inserted as paragraph (*r*):

(*r*) "materiel" means all movable public property, other than money, provided for the Canadian Forces or the Defence Research Board or

for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided:

The word "equipment", except where it forms part of the phrase "personal equipment", should be replaced throughout the Bill with the word "materiel" in the following places:

Clause	*Page*	*Line*
2(h)	2	10
2(v)	3	5
2(y)	3	43
2(mm)	4	47
11(1)	6	31
		Heading
		Marginal note
11(2)	7	1 and 5
37	15	25
		Heading
		Marginal note
44(2)	18	13
46(2)	18	35
53(1)	21	4
64(a)	28	21
64(c)	28	27
65(d)	29	9
65(e)	29	11
65(f)	29	12
65(g)	29	16
66(b)	29	36
68(a)	30	25
68(b)	30	28
68(c)	30	33
110(a)	41	11
110(b)	41	16
209(1)	87	20
218	91	15
221(2)	92	14 and 19
221(3)	92	38
230	96	17
248(2)	102	21

Clause 2 (*aa*)—The words "any property" in line 4 on page 4 should be deleted and the words "all money and property" substituted so that the definition as altered would read as follows:

(*aa*) "public property" means all money and property of His Majesty in right of Canada;

The CHAIRMAN: Brigadier Lawson will explain "materiel" in more detail, which word is thought will be more all-embracing than the word "equipment".

Brigadier LAWSON: The only purpose of this change is to use what we consider to be a more suitable word. "Equipment" did not seem to be a very suitable expression to cover the various items that are issued to the forces, whereas "materiel" is a proper word and seemed to be more suitable.

Mr. GEORGE: What becomes of subsection (*r*)?

The CHAIRMAN: (*r*) is relettered (*q*).

Mr. ROBERGE: I move the amendment be carried.

Carried.

The CHAIRMAN: Now, that change is going to involve a good many changes, because wherever the word "equipment" has been used throughout the bill, except in the phrase "personal equipment", it will be changed to "materiel". I will read the sub-section and we will just supersede the word "equipment" with the word "materiel".

Mr. GEORGE: Why not take them as read?

Mr. HENDERSON: We can put them in the record. I move the word "equipment" be deleted and the word "materiel" be inserted in all sections affected by the change of word.

Carried.

The CHAIRMAN: There is one other amendment on page 4, subsection (*aa*). Substitute the words "all money and" for "any", in line 4, page 4.

Mr. STICK: I move the amendment.

Carried.

The CHAIRMAN: That is all the amendments proposed by the officials, so if there are no other suggested amendments shall section 2 as amended carry?

Carried.

That completes the discussion on Bill 133, except in respect of a dozen or so sections which have been stood over. It is my suggestion that if it meets the wishes of the committee we deal with a few of these tonight. Some sections are receiving consideration by the chiefs of staff and these we cannot deal with, but we can look at some other small amendments and deal with those.

Mr. WRIGHT: Just before you do that I would like to refer to clause 54 (*c*) at page 22. It states:

> (*c*) enter into contracts in the name of His Majesty for research and investigations with respect only to matters relating to defence;

That seems to me to be pretty broad powers for the minister. This Defence Board could take on some very, very large projects without the consent of the Governor in Council, under this Act. It might start developing atomic weapons or to do almost anything under that and take on an expenditure which would involve, before it could be completed, millions of dollars. That would all be without the consent of the Governor in Council. I do not know how you can overcome that because I do not suppose you want to refer to the Governor in Council every time you desire to design a new haversack or small things. This, however, gives great powers to enter into contracts on research or investigations that may involve major projects costing millions of dollars. I wonder if the Judge Advocate General would care to comment on that? Is there any way that could be dealt with where for major projects the Governor in Council would be consulted before expenditures or large sums of money could be entered into?

The WITNESS: The answer, sir, is that first of all we cannot go beyond the money appropriated by parliament. The department only has so much to spend in a year and that is all there is to it.

Mr. WRIGHT: Yes, but they could enter into contracts to start research on something which might involve only expenditures for a year, but, to complete the investigation and to bring it to a successful conclusion would cost perhaps millions of dollars, and in that way they would involve parliament in further grants?

The WITNESS: They could not involve a future parliament; no government department has power to do that. They can only go as far as the appropriation lets them go. Nothing they can do can force parliament to appropriate further money.

Mr. WRIGHT: No, but the expenditure might start in on a project which would require several years work to complete. They could start on the expenditure all right, and it would be useless unless they got a further grant next year, to complete the project; but it seems to me that they could involve parliament in an expenditures for several years.

Mr. GEORGE: Is that not covered in section 53(1), the first sentence?

The WITNESS: That gives the minister control over all their operations in any event. They might, by entering into the type of contract you suggest and waste the first year's money. If parliament refused to vote the money next year to carry on the work perhaps the first part of the work would be wasted, but the department could not commit parliament.

Mr. WRIGHT: No, but the Governor in Council would be the proper authority to give permission to start any major project. There is a distinct difference between the minister and the Governor in Council?

The WITNESS: As a matter of fact the practice with respect to contracts over $15,000 is that they are submitted to the Governor in Council.

Mr. WRIGHT: That would cover it, but it is not so stated here.

The CHAIRMAN: That is general government practice?

The WITNESS: Yes, that is general government practice and it applies to the Defence Research Board.

Mr. WRIGHT: Well, that would be satisfactory, but it seems to me that it is pretty wide open here.

Major J. H. Ready, Assistant Judge Advocate General, called:

The CHAIRMAN: Bill 134 which I now propose to take up, with the concurrence of the committee, is an Act to amend the Militia Pension Act and to change the title thereof.

It is somewhat technical in its terms and as we have not all got copies of the Act being amended I would suggest that Major Ready will have to give us some detail as we go along as to the purpose of the amendments proposed.

The first section is a purely formal section.

1. The title of chapter one hundred and thirty-three of the Revised Statutes of Canada, 1927, "An Act respecting Pensions to the Permanent Staff and Officers and Men of the Permanent Militia, and for other purposes," is repealed and the following substituted therefor:—

"An Act respecting Pensions for the Defence Services."

Carried.

Section 2.

2. Section one of the said Act is repealed and the following substituted therefor:—

1. This Act may be cited as *The Defence Services Pension Act.*

Carried.

Section 3.

3. Paragraph (*e*) of section two of the said Act is repealed and the following substituted therefor:

(*e*) "officer" means a commissioned officer, a subordinate officer or a warrant officer of the force.

Carried.

Section 4. This is a new section.

4. (1) Subsection one of section four of the said Act, as enacted by section one of chapter six of the statutes of 1929, is repealed and the following substituted therefor:—

4. (1) An officer who is retired compulsorily after twenty years' service for any cause other than misconduct or inefficiency is entitled to a pension for life,

(*a*) equal to one-fiftieth of the pay and allowances of his rank or permanent appointment at the time of his retirement for each year of service if he is an officer appointed to the force, or a warrant officer promoted to or appointed to that rank, prior to the first day of May, nineteen hundred and twenty-nine; or

(*b*) equal to one-fiftieth of the average annual amount of the pay and allowances received by him during the three years immediately preceding his retirement for each year of his service if he is an officer appointed to the force, or a warrant officer promoted to or appointed to that rank, on or after the first of May, nineteen hundred and twenty-nine.

(2) Section five of an Act to amend the *Militia Pension Act*, as enacted by chapter six of the statutes of 1929, is repealed in so far as it relates to section one of that Act.

(3) Subsections twelve and thirteen of section four of the said Act are repealed and the following substituted therefor:—

(12) A retired officer who has been granted a pension under this Part and thereafter is employed in the public service of Canada or appointed to or enlisted in the naval, army or air forces of Canada is entitled to receive that part of his pension which, when added to his salary or pay and allowances, as the case may be, will not exceed the pay and allowances of which he was in receipt at the date of his retirement from the force.

By Mr. Pearkes:

Q. I have two points of principle to discuss here. The first deals with subsection 1 in which you will notice the amount of the allowance for pension is based on the pay and allowances that are received on the day of retirement. That is a contract that was entered into prior to the 1st of May 1929 with these people who have retired. It applies to people who have retired. It applies to people who have been in the permanent force for a long time and are now nearly ending their service or have recently ended it.

(*c*) deals with another class of officers and men who are of more recent vintage and who have their pension based on the average of the last three years of their pay and allowances.

Now I am not suggesting in the majority of cases it does not work out to their advantage but there are definite cases where it works out very much to the disadvantage of the officer who retires.

Let me cite a case. An officer is sent on retirement leave, a married officer. While he is on retirement leave, but during the last six months of his service, his wife dies. His pension then is based on the pay and allowances which he is getting on the day of retirement—that of a single man. Whereas, had he come under the modified clause—after May 1st, 1929, his pension would have been based on his pay and allowances average for three years, which would be considerably more than that of a man whose pension is based on the pay and allowances of his day of retirement.

There is also another abuse which might be brought in and that is almost what you might call "retirement day promotions" in which an officer, within

six months of his retirement, is promoted. I know of cases where it has been done in the past. The individual is promoted so that he may draw a higher pension. He would not have been promoted had it not been known that he was going out on retirement six months hence. Because he is going on retirement he is promoted and he gets a better pension that he would have otherwise.

There is also the case which applies to men as well as officers where, for various reasons an officer or man is demoted during the last short period of his service. His pension then is based on the lower rate. Do I make myself clear? —A. Yes sir.

Q. Now I am not suggesting that you can break a contract for these people who entered into this pension agreement thirty years ago, but I do say that it would be in the interest of the few who suffer by it, and it would prevent the possibility of retirement promotions, if you put in a clause to the effect "or on the average of the last three years, whichever is the highest."

I do not know whether I have made myself clear but I do know of individual cases, although we do not want to bring individual cases before the committee, where today a man is not drawing the pension that he hoped to get because of this particular clause—basing the pension on the pay and allowances he was receiving on the day of his retirement. Quite obviously it is not considered a good clause because in the application of the pension in the more recent cases you take the three-year period; and I am not sure whether it is not a longer period in part 4 where you have the six-year period. In the civil service unless I am incorrect it is a ten-year period. I do suggest adding the words "or the average of the pay and allowances during the last three years, whichever is the highest."—A. I think, sir, that it has always been the intention to make this Act as beneficial as possible for the greatest number of persons, but there will always be the exceptional case irrespective of what provisions are made for the purpose of remedying these exceptional cases.

The 1929 date originates from the fact that prior to 1929 a pension was computed on the basis of the last day's pay and allowances. The Act was then amended by increasing the basis of computing to three years. Pensions granted under subsection (a) in most cases were higher than had they been computed on the average of the pay and allowances received during the three years immediately preceding retirement.

Q. I realize that but it does not alter the fact that there are few people who would be affected if you added, as I have suggested, the words "or for the average of the last three years." I do not think it is going to affect twenty people in the service today. Probably it will not affect any; there are only about 25 people who might be affected, and it might so happen that some sergeant-major would lose his wife in the last six months of his service and his pension would be thereby reduced. Whereas, if you make it "or for the average of the last three years, whichever is the highest," then that man would receive the pension which he is certainly hoping to get, expecting his wife to live until he retired. This only applies to people who have been in the service for a long time now. In another ten years probably in another five years it will not be applicable. I do not think you could make it retroactive.

Brigadier LAWSON: I would suggest, sir, that if you make an amendment and do not make it retroactive it is going to cause a lot of hard feeling, at least on the part of people who have been recently retired and have lost pension due to the fact that perhap a wife has died.

Mr. PEARKES: I would like to see it retroactive but I do not think you can make this legislation retroactive because it still holds good; other people may be affected and, again, it applies in subsection 3 where the status of retired person has an effect. If he goes into other employment in the government service you will see his remuneration is based on the pay and allowances

that he was receiving on the day of his retirement. It might be that if you changed this you could assist some people now who are in the other branches of the government, and the government is anxious to have the services of these experienced men, but the men may be handicapped because the pay and allowances are based on the last day of retirement.

I would like to suggest an amendment—that in line 26 after the word "retirement" we insert the words "or for the average of the last three years, whichever is the highest."

By Mr. George:

Q. May I ask a question there? Has this officer or man been contributing towards the pension in proportion to the amount that he has been receiving?—A. Yes.

Q. If he is married at the time he is paying in he pays in more than he does after his wife dies?—A. Yes.

Q. Then the persons referred to in Section A occupy a preferred position at the moment in that the amount they receive on the day of retirement would, on the average, be considerably higher than the average two-year period, and the result would be that they would be in a preferred position?

Mr. PEARKES: The majority do; but there are just one or two cases where the man who, through no fault of his own, has a misfortune in having lost his wife and is not in a preferred position but is in a worse position than if he was under B.

Mr. ADAMSON: I know of a case exactly like that. This bill includes the principle of retroactivity in clause 17, dating back to October 1946. In sections 3, 6, and 8 I see no reason why the clause mentioned by Mr. Pearkes should not be made retroactive.

Mr. PEARKES: I feel that it is giving a little protection to a certain number of men who are today in the services. They have contributed, and as has been suggested, they have contributed all along.

The CHAIRMAN: This is a very technical Act and we must remember that whatever we do amendment to the existing Act may have repercussion in various directions. I thought as I listened to Mr. Pearkes' remarks, that perhaps we would be well advised if we stood the section, to give the officials a chance to consider Mr. Pearkes observations and advise us. It is a very technical Act and I am a little hesitant about making amendments except after very careful consideration.

Brigadier LAWSON: If you want to amend it, we would have to take time to make a proper draft.

The CHAIRMAN: Would you not have to consult the Treasury?

Mr. PEARKES: Yes; if they have to consult the Treasury, they would get the thin end of the stick. But if we make a recommendation here I am sure the officers would welcome the suggestion. Of course, it is protecting them. They have given their service and we are trying to protect them now and I think this committee might well make a recommendation.

The CHAIRMAN: I do not think we should simply turn this section back to the officials without giving them our views as to what is desirable. I think we should make a recommendation so that they might take it to the Treasury and have it put in proper form, or at least tie it in with the other sections of the Act. As long as we make it clear to them what we as a committee, think ought to be done with the section, they might then come to us and say: "This achieves your purpose."

Mr. ADAMSON: Can you make a recommendation rather than an amendment to a section? Can you let a section stand and send it back with a recommendation?

Mr. BENNETT: I think that the chairman's suggestion is a good one, to let it stand until we look at the other sections.

The CHAIRMAN: The Clerk points out that if an amendment to an Act of this nature involves the expenditure of more money than is contemplated under the section, we cannot do more than recommend. We can not amend the section.

Mr. ADAMSON: We should let the section stand and make a recommendation.

Mr. HENDERSON: I suggest that we let the section stand and have a look at it after we have gone over the other sections.

The CHAIRMAN: Section 4. We have dealt with it for the time being.

Section 5:

5. Subsection one of section fourteen of the said Act is repealed and the following substituted therefor:—

"14. (1) The pension to a militiaman on retirement shall be,

(*a*) if he has completed fifteen but less than twenty years' service, an annual sum equal to one-fiftieth of the annual pay and allowances of which he was in receipt on retirement for every year of service;

(*b*) if he has completed twenty but less than twenty-five years' service, an annual sum equal to twenty-fiftieths of the annual pay and allowances of which he was in receipt on retirement with an addition of two-fiftieths of the pay and allowances for every year of service over twenty years;

(*c*) if he has completed twenty-five years' service, an annual sum equal to thirty-fiftieths of the annual pay and allowances of which he was in receipt on retirement with an addition of one-fiftieth of the annual pay and allowances for every year of service over twenty-five years, but the annual pension shall not exceed two-thirds of his annual pay and allowances at his retirement."

Mr. PEARKES: There you have the same principle again which I referred to, Mr. Chairman.

The CHAIRMAN: We shall let section five stand for the present on the same basis. We come now to section 6.

6. Paragraphs (*a*) and (*b*) of section thirty-nine of the said Act, as enacted by section eleven of chapter thirty-five of the statutes of 1928, are repealed and the following substituted therefor:—

39. (*a*) The expression "Force" means the Permanent Active Air Force and any other component of the Royal Canadian Air Force the members of which are enlisted or appointed for continuing full-time service;

(*b*) "officer" means a commissioned officer, a subordinate officer or a warrant officer of the Force;

By Mr. George:

Q. I take it that the Navy has its own pensions Act?—A. The Act is divided up into two separated distinct divisions. The first division embraces parts 1 to 4. Part 1 applies to the Army. Part II applies to the Navy and that Part makes Part I apply to the Navy where applicable. Part III applies to the Royal Canadian Air Force and that Part makes Part I apply to the Royal Canadian Air Force where applicable.

By Mr. Pearkes:

Q. I have a question. What is meant by "continuing full time service"? There was a case. I have to go back to the year 1929 when the officer establishment of the Air Force was considerably increased by taking in at that time a certain number of non-permanent Air Force officers who served continuously attached to the permanent Air Force for a year or more expecting all the time that they would be taken into the permanent Air Force. But in the 1930's, in 1932 I think it was, there was a wholesale reduction of these attached non-permanent Air Force officers; there was a wholesale reduction in the Air Force, and these attached non-permanent Air Force officers sought other jobs. Some of them, at least one that I know of, went into the Mounted Police.

Now, then, he cannot count the time for his Mounted Police pension. He cannot count the time when he was continuously attached to the R.C.A.F. towards his Mounted Police pension because he is not considered as having been in the permanent R.C.A.F. Now then, what is the exact interpretation of the word: "continuous", or "continual full time service"? If the word "force" covers a man who served with the non-permanent, as it was called then, the non-permanent R.C.A.F. for one year, is he considered as being in what is now called the Permanent Active or Regular Component of the R.C.A.F.?—A. I would think, sir, from the description which you have given of the circumstances of the service that he would come within the term of this definition of "Force".

Q. If he can, it would solve his problem, do you see?

Brigadier LAWSON: You will have to go back to the National Defence Act where you get the different components of the Force. It is people who are enlisted in that part of the Force which is on continuous full-time service; the purpose of their enlistment or appointment is for full-time service. A person joining the reserves is not enlisted for that purpose. It is true that he may serve on full-time service during part of the time but the purpose of his enlistment or appointment is not for full-time service.

Mr. PEARKES: It may not be now, but it was in those days; they were called in, as it were, on probation. I wonder if I might read a paragraph from a letter which I have. I would rather not mention the individual's name because it is an individual case; but it does apply. It is more of a memorandum than anything.

> G.O. 39/29 P.C. Order 387 of 5-3-29 increased to 85 the officer establishment of the non-permanent Air Force, establishment for other ranks remaining the same.
>
> The strength of the permanent R.C.A.F. was augmented from time to time by the permanent employment of officers taken on the non-permanent establishment for the purpose. The officers, generally ex-war pilots, were given non-permanent commissions and were employed continuously under the same conditions as were the officers of the permanent establishment. On appointment they were given to understand (verbally) that they would be absorbed into the permanent establishment as time went on. This arrangement was adhered to in the earlier years. Subsequent to 1927, however, transfers of officers from the non-permanent to the permanent establishment were limited to Provisional Pilot Officers, i.e.:—R.M.C. and University students who took summer courses at Camp Borden and were given non-permanent commissions until they had completed their university training when those who wished to adopt the R.C.A.F. as a career were given permanent commissions.
>
> In the meantime, those officers of the ex-war pilot category who were permanently employed but still on the non-permanent establish-

ment remained there, their hope of achieving permanent status . . ." were never obtained because of the reduction in the permanent Air Force. This was all in the formative years of the R.C.A.F.

The CHAIRMAN: Is not this pretty far fetched?

Mr. PEARKES: That is why I asked what was the definition of "continuing full-time service", because these people were carrying out continuing full-time service for a year or more.

Brigadier LAWSON: It all depends on what component of the Air Force the person was in. It is not what the particular service is, but it is the component he was serving in. If he is serving in a reserve component, it does not apply to that service. But if he is serving in a regular component, then the Act applies.

Mr. PEARKES: The expression "force" means a permanent active Air Force or any other basic reserve Air Force and it is another component of the R.C.A.F., the members of which are enlisted or appointed for continuing full time service, so it does not refer to the regular R.C.A.F. It refers to another component which is the reserve, and this is just an example of what I have been talking about. So this does not refer to the regular R.C.A.F., it refers to another component which is the reserve and this is just an example of what I have been talking about. Here you have a reserve air force man serving continually full time.

Brigadier LAWSON: That is quite true, Mr. Chairman. Some members of the reserve may serve full time, but the members of the reserve are not enlisted or appointed for continuous full-time service.

Mr. GEORGE: We have some today. We have certain personnel of the army called up full time, some of them for 365 days a year.

Mr. HUNTER: Who are you calling up for full-time service?

Mr. GEORGE: In our particular unit we have to have additional help and the commander of the command grants authority to call up for a certain time certain people such as mechanics, clerks and instructors, and it is a very touchy subject in the army. Permission is only granted where the need is shown and the service may be terminated at any time.

Mr. HUNTER: I did not know that.

Mr. DICKEY: Perhaps we can continue. I do not think General Pearkes has any quarrel with it. He simply wants to know the meaning of it. Perhaps we can get the answer later.

Mr. ROBERGE: What would be the reason these men were not taken on the force?

Brigadier LAWSON: We call a man up from time to time who has special qualifications that we happen to need temporarily. They are not members of the regular forces and are not entitled to count their time as pensionable time under this Act. The service is not their career and this Act is only intended to apply to persons whose career is in the services.

Mr. ROBERGE: Perhaps these people hoped they could make a career of it.

Brigadier LAWSON: Yes, but unfortunately they did not realize their hope.

Mr. ROBERGE: Why were they let out?

Mr. PEARKES: It was when they cut the establishment.

Mr. HUNTER: The question is on the wording of the section.

Mr. PEARKES: If we cannot get the officials to agree, how can we?

Carried.

The CHAIRMAN: Section 7:

7. The said Act is further amended by adding thereto, immediately after section forty-one thereof, the following sections:—

41A. For the purpose of computing pensions or gratuities under this Act fractions of years of service shall be counted, and for this purpose a period of service of fifteen days or more shall count as one month but a period of less than fifteen days shall not be counted.

Carried.

Section 41B:

41B. Parts I to IV of this Act do not apply to officers or militiamen who were not in the forces on the thirty-first day of March, nineteen hundred and forty-six, and who were or are appointed to or enlisted in the forces subsequent to that day and who have not been granted a pension under any of those Parts.

Mr. PEARKES: Why is it you have that particular date?

The WITNESS: Because subsequent to that date any person joining the permanent force would automatically have pension status under Part V.

Mr. ADAMSON: Was not that the official end of the war?

Brigadier LAWSON: No, sir.

Mr. HUNTER: It looks like the official end of a fiscal year.

Mr. ADAMSON: When was the official end of the war?

Brigadier LAWSON: It has not ended yet.

Mr. PEARKES: It was the 1st of September, 1946, was it not?

Brigadier LAWSON: That is the date as far as coming off active service is concerned. There have been various dates, one when the War Measures Act ceased to be operative, but the war does not end under international law until a peace treaty is signed.

Mr. ADAMSON: There has been a peace treaty with Italy.

Brigadier LAWSON: But not with Germany or Japan.

Mr. HARKNESS: There was a date taken as the official end of the war.

Mr. HUNTER: That was for certain limited purposes.

Brigadier LAWSON: It was for contracts entered into which came to a conclusion at the end of the war.

Mr. HUNTER: Legally we are still fighting ferociously.

Carried.

The CHAIRMAN: We will now go on to section 8.

8. (1) Subsection one of section forty-two of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is amended by adding thereto, immediately after paragraph (*f*) thereof, the following paragraph:—

(*ff*) 'officer' means a commissioned or subordinate officer of the Force and includes a warrant officer of the Royal Canadian Navy;

(2) Paragraph (*i*) of subsection one of section forty-two of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, and amended by section two of chapter nine of the statutes of 1947, is repealed and the following substituted therefor:—

(*i*) 'service' means time served in the forces and includes for the purpose of making contributions and of computing pensions or gratuities under this Part,

(i) time served in the Civil Service or the Royal Canadian Mounted Police,

(ii) time served on active service in the naval, army or air forces of His Majesty raised in Canada during time of war,

(iii) time served on active service during time of war in any of the naval, army or air forces of His Majesty, other than those raised in Canada, by any person who, having served on active service in any of the forces of His Majesty during the war that commenced on the tenth day of September, nineteen hundred and thirty-nine, is appointed to or enlisted in the forces,

(iv) one-fourth of the period of service during which the contributor served in the naval, army or air forces of His Majesty raised in Canada other than the forces and was liable to be called out for periodic and annual training or duty by the Governor in Council other than during an emergency if the service is not service that may be counted under any other sub-paragraph of this paragraph, and

Mr. PEARKES: Will you stop there, please? It is subsection (iv) I wanted to make a recommendation about, and it will apply to just that type of man who is referred to as serving continuously for a certain period of time and who is not taken into the regular forces. For instance, one of the pay staff is employed continuously for a period of two years and then when he has proved his worth he is taken on the permanent staff and I cannot help feeling that those two years of continuous service should count more than one-fourth.

Let me give you another example, we have a mission in Pakistan at the present time composed mainly of non-permanent officers. It is possible that one or two of those may be anxious to join the permanent force when they return here. Now, my contention is if the individual has served more than a year continuously he should be allowed to count that time either in whole or half towards his pension. Of course he would have to pay back the contribution he would have made had he been permanently employed. I think that would be an encouragement to some of the younger men in the reserve forces to go into the active army.

Mr. GEORGE: I quite agree. That is one of the points we run into. One of the reasons given by higher authority is that they do not want too many personnel to serve with the reserve army. Their argument is that if they have so many across the board they will not know what to do with them, and it is stated very clearly in instructions calling them up that they are not subject to any pension right and must not get the feeling that they eventually will be taken on strength in the permanent army.

Mr. HUNTER: I just do not understand the meaning of this. It looks like one of these amendments to the Income Tax Act.

The CHAIRMAN: I notice a similarity to income tax verbiage all the way through.

Mr. HUNTER: What is this phrase in line 32, "other than the forces"?

The WITNESS: "Forces" is defined in the Act, sir, and it is just excluding those components not mentioned from the operation of Part V of the Act.

BRIGADIER LAWSON: Other than the regular forces would be a shorter way of putting it.

Mr. HARKNESS: It is designed to cover service in the reserve forces.

The WITNESS: That is correct.

The CHAIRMAN: It is not within our competence to amend any sections that in a way might lead to further expenditures of public money. I would also point out that the minister has stated in the House that it is his intention that the whole Act shall be completely revised in a year or two. This is therefore a "patching" job. I think we should bear that in mind as we go along. We can of course, make recommendations in connection with this bill, but we cannot amend it in any particular that would lead to an increase in expenditures.

Mr. PEARKES: I would like to suggest to the committee we make the recommendation and that it be brought forward when the new pension bill is discussed.

The CHAIRMAN: I see no objection to that. I think probably what we might do is go through the Act as we are doing and make a note of the section in connection with which we consider recommendations should be made and then later pass the sections which we have stood and at the same time formulate our recommendations, if any.

Mr. GEORGE: As far as recommendations go in this section, I feel it is a matter of policy. Just because a man is called out in the reserve army for one year with the understanding he is not to be employed any longer, he is not subject to any pension right and he does not contribute. I think it is a matter of very high policy rather than recommendations of this committee. You are getting around to what the reserve army is, how it should be trained, and how many personnel should be called out for any reason, how large some of our units should be allowed to become, and I would not like to approve or disapprove of any recommendation in this particular section, until the policy was formulated. I can see we could get into a lot of difficulties. I feel this is a matter of policy that is beyond this committee.

Mr. PEARKES: I wonder if I have made my point clear. I say if a man serves continuously in the reserve unit and then is taken into the active component, his time should count towards his pension more than one-fourth of the time. It counts for one-fourth anyway and I say it should count more.

The CHAIRMAN: I have another thought about the question of recommendations. This is an amendment to a bill that is before us and the bill being amended is not before us. As these suggestions go to the subject-matter of the bill being amended, I do not know whether it is within our competence to make recommendations on the subject-matter of the bill itself.

Mr. HARKNESS: I think it is the same thing we had in the Committee on Veterans Affairs in connection with amendments to the Pension Act. We had a large number of amendment which we went over.

The CHAIRMAN: That was a draft bill, was it not?

Mr. HARKNESS: We made a considerable number of recommendations. Of course, all those necessarily involved the expenditure of money and the same is true as far as the Indian Act was concerned. I do not think there is anything against our making recommendations.

Mr. GILLIS: We seem to be all mixed up on this thing. Is this not largely a matter of definition? The explanations for every change in the bill are very clear here and we are dealing with a bill that is making changes in the regular pension for the permanent forces. Why do we not go through this thing? Let us get through with it. The explanations are on the right and they are pretty clear. I think we should deal with the bill first and if anything is omitted we can draw up recommendations.

The CHAIRMAN: Shall we go through the bill and see what we can approve and let the rest stand at least temporarily? We will make a note in connection with the first subsection of section 8 that there is a question as to a recommendation raised. I will read the rest of the section.

(v) in the case of any person who elects to become a contributor under this Part, any period that might have been counted as service of such person under any other Part of this Act.

(3) Subsection two of section forty-two of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:—

(2) When a member of the forces does not offer to re-engage in the forces upon the expiration of his period of engagement he shall, for the purposes of this Part, be deemed to have retired from the forces at his own request and when he offers to re-engage and his offer is not accepted his retirement shall be deemed to be a compulsory retirement from the forces.

Shall sub-section 3 carry?

Carried.

Section 9:

9. Paragraph (*b*) of section forty-three of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

(*b*) who was appointed to or enlisted in the forces on or before the said day was still in the forces on the said day and who elects to become a contributor under this Part on or before the thirty-first day of December, nineteen hundred and fifty, or

(*c*) who was a member of the forces on the thirty-first day of March, nineteen hundred and fifty-six, and who, subsequent to that day, was retired or discharged from the forces for a purpose other than promotion to commissioned rank in the same Service of the Force and at any time after being so retired or discharged again becomes a member of the forces, or

(*d*) Who was appointed to or enlisted in the forces on or before the thirty-first day of March, nineteen hundred and forty-six, was still in the forces on that day, and who on such day or thereafter was serving as an officer appointed temporarily or for a fixed term and who, while so serving, becomes a member of the forces by reason of a change in the nature of his appointment, and who within six months of the date of that change or within six months after the coming into force of this paragraph, whichever is the later, elects to become a contributor under this Part.

Carried.

Section 10:

10. (1) Subsection one of section forty-five of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

"45. (1) Any contributor may within one year after he becomes a contributor or within six months after the coming into force of this subsection, whichever is the later, elect to contribute under this Part in respect of the whole or any part of his service prior to becoming a con-

tributor for which he has not contributed under this Act, the Civil Service Superannuation Act or the Royal Canadian Mounted Police Act other than Part IV."

(2) Subsection four of section forty-five of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

"(4) Where a contributor who is contributing by instalments in respect of prior service under this section, retires before payment of the instalments in full, he shall be deemed to have contributed in respect of the service for which he elected to contribute, and the remaining instalments shall be reserved out of any pension, or, where he is entitled to a gratuity, the present value of those remaining instalments shall be deducted from the gratuity."

The CHAIRMAN: If it is the wish of the committee it might be just as well if I merely called the sections and perhaps I could read the maginal notes?

Agreed.

Section 11.

11. Section forty-six of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, and amended by section one of chapter sixty-five of the statutes of 1947, is repealed and the following substituted therefore:

"46. An annual pension shall be paid to a contributor

(*a*) who is not an officer and who has served in the forces for twenty-five years or more and who is retired at his own request from the forces at the end of a period of engagement or re-engagement otherwise than by reason of misconduct; or

(*b*) who has served in the forces for twenty years or more and who is retired from the forces because

(i) he has reached the prescribed age limit for his rank,

(ii) his services are no longer required by reason of a reduction in establishment, or

(iii) his retirement is to promote economy in the force and in the opinion of the Treasury Board his retirement will promote economy or efficiency;

(*c*) who has served in the forces for ten years or more and who is retired as being physically or mentally unfit to perform his duties as a member of the forces and such unfitness has been certified by a medical board composed of not less than three medical officers of any of the forces and confirmed by the chief medical officer of the force in which the contributor is serving; or

(*d*) who has served in the forces for ten years or more, and who served on active service in any of His Majesty's forces wherever raised, during the war that commenced on the tenth day of September, nineteen hundred and thirty-nine, and who was not in the forces on the first day of June, nineteen hundred and forty-four, and who is appointed to or enlisted in the forces on or before the thirty-first day of December, nineteen hundred and forty-eigh and who is retired from the forces for any of the reasons and under the conditions mentioned in paragraph (*b*) of this section; or

(*e*) who is not an officer and has served in the forces for twenty years but less than twenty-five years and who is retired at his own request from the forces at the end of a period of engagement or re-engagement otherwise than by reason of misconduct,

but in any such case the pension shall be reduced by five per centum for each complete year by which his period of service is less than twenty-five years; or

(*f*) who is not entitled to pension under paragraph (*d*) of this section but who has served in the forces for ten years but less than twenty years and is retired for the reason mentioned in subparagraph (i) of paragraph (*b*) of this section, but in any such case the pension shall be reduced by one per centum for each complete year by which the number of years of his service is less than twenty years; or

(*g*) who is not entitled to pension under paragraph (*d*) of this section but who has served in the forces for ten years but less than twenty years and is retired for either of the reasons and under the conditions mentioned in subparagraphs (ii) or (iii) of paragraph (*b*) of this section, but in any such case the pension shall be reduced by one-third until he attains the age of sixty-five years; or

(*h*) who has served in the forces for ten years or more and who is retired by reason of his inefficiency in the performance of his duties, caused otherwise than by misconduct, but in any such case the pension shall be reduced by one-half until he attains the age of sixty-five years and thereafter he shall be paid two-thirds of the pension; or

(*i*) who has served in the forces for ten years or more and who is retired by reason of misconduct and on whose behalf a recommendation has been made by the Minister and approved by Treasury Board that it is in the public interest by reason of good and faithful service rendered by the contributor in the forces prior to the time of his misconduct, but in such case the pension shall be reduced by one half until he attains the age of sixty-five years and thereafter he shall be paid two-thirds of the pension.

Mr. GEORGE: I have one question with regard to section 46. If an officer is playing hockey and dies on the ice, does his wife get the pension that she would have had he been killed in battle?

The WITNESS: Under the Militia Pension Act service completed counts towards pension. The fact that the officer died just terminates the service. The disability might or might not result in a pension under the pension Act as opposed to the Militia Pension Act. This Act only deals with service. The other Act, the Pension Act deals with disability and death.

By Mr. Gillis:

Q. I would like to ask this question: an officer who has put in ten years service took a heart attack and died. His death was not attributable to service and his widow could not get a pension. The officer has paid into the pension fund and after his death the amount of money he had paid in was returned to his widow. In the case I am thinking about the amount was $3,000 but the income tax department deducted $600 from that return of pension for income tax purposes. Has there been any representation made to the department regarding such deductions? Are they legitimate? They certainly are not just?—A. That is income tax.

Q. Yes, charged against the contributions that he made to the Militia Pension Fund?—A. The contributions which he makes under the Militia

Pension Act may be deducted, and are deducted for the purpose of income tax returns. When the benefit is paid under the Act an amount is deducted for the full benefit payable for income tax.

Q. That is absolutely unfair because that $3,000 in one year shifts the contribution into a bracket which it would not reach if it were deducted when paid in small amounts from the fund. I think they are getting an awful lot of money to which they are not entitled.

Mr. HUNTER: Is not that a question of income tax law rather than this Pension Act?

The CHAIRMAN: I would think that it is purely an income tax matter and not referrable to this Act?

Mr. GILLIS: I think it is a pension matter. They have deducted that as income tax all in one year.

The CHAIRMAN: That would be pursuant to the relevant requirement under the Income Tax Act.

The WITNESS: There is no provision in this Act for making a deduction for income tax.

Mr. GILLIS: I mention it because I think the army and the air force should go after the income tax people on that point.

Mr. HUNTER: I think they should be exempt entirely.

The CHAIRMAN: Shall the new 46A carry?

Carried.

46A. (1) Where a contributor who has served in the forces for ten years or more dies while a member of the forces or dies while in receipt of an annual pension, his widow shall be paid an annual pension until re-marriage equal to one-half of the annual pension that would have been payable to the contributor had he been retired under the circumstances mentioned in paragraph (*c*) of section forty-six at the date of his death or his retirement, as the case may be.

(2) Where a contributor who has served in the forces for ten years or more dies while a member of the forces or dies while in receipt of an annual pension, each of his children shall be paid an annual pension until attaining the age of eighteen years, equal to one-fifth of the annual pension payable to his widow under subsection one of this section or three hundred dollars, whichever is the lesser amount, but in the case of a child who has lost both parents by death, the pension shall be doubled; but the total amount of the pension to the children of a contributor shall not exceed the amount of the pension that would be payable to the widow of such contributor in like circumstances, and the total amount of the pension to the widow and children shall not exceed three-fourths of the annual pension that would have been payable to the contributor under paragraph (*c*) of section forty-six at the date of his death or his retirement, as the case may be.

Mr. HARKNESS: There is one point in connection with that which I would like to bring up. There are a large number of married officers who have been taken into the permanent forces since the end of the war who have now really very little protection for their wives. Actually they have been in the permanent force about four years—that is from some date in 1946. You have the other situation of the young fellow who joined the permanent force before the outbreak of war, say at the end of August 1939 and he has got his ten years in now. If he dies his wife gets half of the pension he would be entitled to. The other officer who joined on the 2nd or 3rd of September 1949 has put in exactly the same amount of service except for two or three days but if he dies all his wife

gets is a gratuity based on four or five years that he has got in up to date, since the end of the war. It means that those officers, in order to protect their families, have to take out life insurance. In the case which was brought to my attention the officer concerned is paying $13 something a month for a life insurance policy which, in the event of his death, will give his wife the same protection as the wife of the brother officer who has the same service but who was in the permanent force as from the start of the war. That seems a little discriminatory and I was wondering if there could be any provision put in here. I do not think anyone could make out a case that an officer should be paid a pension with less than ten years service, but there is the case of the wife being protected in the event of the officer's death from non-service reasons before he has ten years' service in the permanent force, although he has actually served more than ten years in the army.

I wonder if consideration has ever been given to those circumstances?

Brigadier LAWSON: Consideration has certainly been given to those circumstances but it is a matter of policy. There must be a limit somewhere. You must consider that all those officers who served during the war got exactly the same benefits as people who returned to civilian life. They got war service gratuities and their veterans' benefits and in that way they were compensated for their war service. There is no particular reason why they should be compensated again for that service any more than those people were who went back to civilian life.

Mr. HARKNESS: But there is the point I mention where in one case the man's wife is protected but in the other case she is not. In order to get her the same amount of protection as the fellow who was a permanent force officer before the war it costs the other officer a considerable amount of money for life insurance.

Brigadier LAWSON: There is undoubtedly a great deal in what you say. It is a very good point.

The CHAIRMAN: I should think it is a matter of policy.

Mr. HARKNESS: It is a matter, like a number of these others which General Pearkes brought up on which we could make a recommendation.

The CHAIRMAN: Shall the new 46A carry?

Carried.

46B.

46B. (1) A contributor who has served in the forces for less than ten years and who is retired from the forces for any reasons and under the conditions mentioned in paragraphs (*b*) and (*c*) of section forty-six, shall be paid a gratuity equal to one month's pay and allowances for each year of his service.

(2) Where a contributor who has served in the forces for less than ten years dies while in the forces, his widow shall be paid a gratuity equal to one month's pay and allowances for each year of his service, or where the contributor dies and leaves no widow, such gratuity shall be paid to his children under the age of eighteen years at the date of his death.

(3) Where a contributor dies while serving in the forces and leaves no widow or children to whom a pension or gratuity is payable, a gratuity in an amount equal to his total contribution made under this Part without interest shall be paid into and become part of the service estate of the contributor as defined in the Department of National Defence Act.

(4) Where a contributor who has served in the forces for ten years or more dies and the aggregate amount paid to the contributor and to his widow and children by way of pension or gratuity does not exceed the total amount of his contributions without interest and no other moneys are payable under this Part by reason of the death of the contributor, a

gratuity in an amount equal to the difference between the total amount of his contributions without interest and the aggregate amount of the pensions and gratuities paid to the contributor, his widow and children, shall be paid to the dependent children of the contributor.

Carried.

46C.

46c. A gratuity in an amount equal to the contributions of a contributor under this Part without interest shall be paid to a contributor to whom an annual pension or other gratuity is not payable under any other section of this Part.

The CHAIRMAN: Shall section 11 carry?

Carried.

Section 12.

12. Sections forty-seven, forty-eight, forty-nine, fifty, fifty-one and fifty-two of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, are repealed and the following substituted therefor:

47. (1) Except as herein otherwise provided an annual pension granted under section forty-six shall be one-fiftieth of the average pay and allowances received by the contributor during the last six years of his service multiplied by the number of years of his service not exceeding, however, thirty-five years.

(2) Where the average pay and allowances for the period fixed by this Part for the purpose of computing the pension of a contributor is less than the average pay and allowance for any like period during the contributor's service, the contributor or his widow or children under the age of eighteen years, as the case may be, are entitled to receive in addition to a pension under this Part a refund of the contributions made in respect of the excess of his pay and allowances during any like period over his pay and allowances for the period so fixed, and the Governor in Council on the recommendations of the Treasury Board may by regulation determine the basis of such refund in any case or class of cases, and where the contributor has died without receiving the refund, the person or persons amongst the surviving widow and children or children only, of the contributor to whom it shall be paid, and if to more than one of them, the manner in which it shall be apportioned.

48. (1) All service of a contributor, whether or not the service has been continuous, in respect of which the contributor has at any time made contributions under this Part or under any other Part of this Act or under the Civil Service Superannuation Act or the Royal Canadian Mounted Police Act, other than Part IV thereof, which contributions have not previously been repaid to him by way of gratuity or otherwise, may, on his retirement or death, be counted for the purpose of computing any pension or gratuity under this Part but, except as provided by subsections two, three and four of this section, no other service may be counted.

(2) Where a person who has elected to become a contributor under this Part has service in the forces which could be counted as service for the purpose of a pension under any other Part of this Act for which he was not required to make any contribution, the whole of the said service may be counted for the purpose of computing any pension or gratuity under this Part, but an amount equal to five per centum of the aggregate pay and allowances received by him during such service shall be deducted from the gratuity, if any, or shall be commuted, on such basis as may be prescribed by regulation, into an annuity in respect of his life commencing at the age when the pension becomes payable and the amount of the annual

payment of such annuity shall be deducted from the payments of pension, but the person to whom the pension is payable may, any time after the pension becomes payable, make good in one payment the value of the said deductions which would be made thereafter under this subsection from the said pension.

(3) The Governor in Council may by regulation provide that the service of a contributor for which he made contributions under any Part of this Act or under the *Civil Service Superannuation Act* or the *Royal Canadian Mounted Police Act*, other than Part IV thereof, which contributions have been refunded to him by way of a gratuity or otherwise, may be counted for the purpose of computing any pension or gratuity under this Part to such extent and on such conditions and upon the making of such contributions as may be prescribed by regulations.

(4) Where a contributor had, prior to becoming a contributor, served as an officer in the forces temporarily or under a commission for a fixed term, his service in the forces prior to becoming a contributor may be counted for the purpose of computing any pension or gratuity under this Part if he repays any gratuity received by him in respect of such service and he makes the contributions required by this Part in respect of such service and the Governor in Council may by regulation prescribe the manner in which the said refund and contributions may be made.

49. The pensions provided for by this Part shall, unless otherwise provided by regulations under this Part, be payable in equal monthly instalments and unless otherwise specified in this Part shall continue during the lifetime of the recipient; but the Governor in Council on the recommendation of the Treasury Board may by regulation authorize the payment of a pension to the last day of the month in which the recipient dies.

50. (1) The Minister shall appoint a board, to be known as the Service Pension Board, which shall consist of a chairman, a member from each Service and a member to represent the Minister.

(2) A requisition for payment of a pension or gratuity to a contributor or dependent under this Part shall be supported by

(*a*) a certificate by the Service Pension Board that the actual cause of retirement of the contributor establishes a right to the pension or gratuity recommended by the Service,

(*b*) a certificate by the Judge Advocate General that the contributor is legally entitled to payment of the benefit recommended, and

(*c*) a certificate by the Auditor General.

51. (1) Subject to subsection two, no widow or child of a contributor is entitled to a pension or gratuity under this Part if

(*a*) the contributor was over sixty years of age at the date of his marriage;

(*b*) the contributor dies within one year of the date of his marriage, unless the Treasury Board is satisfied that the contributor was in good health at that date; or

(*c*) the person to whom the pension or gratuity is otherwise payable is in the opinion of the Treasury Board unworthy of it.

(2) A breach by the contributor of the conditions as to marriage prescribed by subsection one does not prejudice the right to a pension or gratuity of a child of an earlier marriage of the contributor.

(3) Where the contributor marries and his age exceeds that of his wife by twenty years or more the pension payable to his widow, under this Part, shall be reduced by such an amount as the Governor in Council may by regulation prescribe.

(4) Where the widow is by virtue of this section not entitled to a pension or gratuity the children of the contributor are entitled to the same pension or gratuity as they would have been entitled to had the widow predeceased the contributor, and such pension or gratuity shall be paid for the benefit of the children to such person and under such terms and conditions as may be prescribed by the Treasury Board.

52. A contributor who has been retired as an officer or warrant officer and has been granted a pension under this Part and thereafter is employed in the public service of Canada or appointed to or enlisted in the naval, army or air forces of Canada is entitled to receive that part of his pension which, when added to his salary or pay and allowances, as the case may be, will not exceed the pay and allowances of which he was in receipt at the date of his retirement from the force.

There is an amendment proposed by Mr. George, deleting the proposed new section 50 as shown and substituting the following:—

50. (1) The Minister shall appoint a board, to be known as the Service Pension Board, which shall consist of a chairman, a member from each Service and a member to represent the Minister.

(2) A requisition for payment of a pension or gratuity to a contributor or dependent under this Part shall be supported by—

(*a*) a certificate by the Service Pension Board that the actual cause of retirement of the contributor establishes a right to the type of pension or gratuity recommended by the Service.

(*b*) a certificate by the Judge Advocate General that the contributor is legally entitled to payment of the benefit recommended, and

(*c*) such a certificate by the Auditor General as may be directed by the Treasury Board.

Shall the amendment carry?

Carried.

Shall section 12 as amended carry?

Carried.

Section 13.

13. (1) Paragraph (*b*) of section fifty-three of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

(*b*) prescribing the method of computation of an annual pension authorized by this Part;

(2) Paragraph (*d*) of section fifty-three of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

(*d*) prescribing the cases in which pensions shall be payable otherwise than in monthly instalments;

(3) Paragraphs (*g*), (*h*) and (*i*) of section fifty-three of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, and paragraph (*gg*) of the said section, as enacted by section eighteen of chapter six of the statutes of 1949, are repealed and the following substituted therefor:

(*g*) prescribing whether and to what extent and under what conditions any duly authorized period of absence from duty without pay shall be counted as service for the purpose of computing pensions and gratuities and the pay and allowances which a contributor on such leave of absence without pay shall be deemed to have been in receipt of for the purpose of computing contributions and average pay and allowances under this Part;

(*h*) prescribing the extent to which and the manner in which a contributor, who after retirement from the forces, is appointed to the public service of Canada or is appointed to or enlisted in the naval, army or air forces of Canada, may count that additional service for the purpose of additional pension;

(*i*) providing that service in any of the forces of Newfoundland and service prior to the first day of April, nineteen hundred and forty-nine, with the Government of Newfoundland, may be included for the purpose of making contributions and of computing pensions and gratuities under this Part; and

(*j*) for any other purpose deemed necessary to give effect to the provisions of this Part.

There is a proposed change, in that subsection (*g*) of (3) is to be deleted and a new subsection (*g*) substituted as follows:

(*g*) prescribing whether and to what extent and under what conditions any period of absence from duty shall be counted as service for the purpose of computing pensions and gratuities and the pay and allowances of which a contributor during such period of absence shall be deemed to have been in receipt for the purpose of computing contributions and average pay and allowances under this Part;

There is a further amendment that clause (*h*), in line 32 shall have the word "additional" deleted and the word "computing" inserted instead.

Mr. HIGGINS: What is the meaning of the words "may be" in brackets (1)?

The WITNESS: That service is prior non-contributory service and the person has the right to elect either a part or the whole of that type of service.

Mr. HIGGINS: If he wants to so elect he can buy in and has to contribute?

The WITNESS: Yes.

The CHAIRMAN: Shall the amendments carry?

Carried.

Shall section 13 as amended carry?

Carried.

Section 14.

14. Subsections one and two of section fifty-four of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, are repealed and the following substituted therefor:

54. (1) Where a pension or gratuity is payable under this Part to any person and the Canadian Pension Commission is of the opinion that he is incapable of expending or is not expending the annual pension or gratuity in a proper manner, or that he is not maintaining the members of his family to whom he owes the duty of maintenance, the Minister may order that the pension or gratuity or any part thereof may be paid to such other person as the Canadian Pension Commission may recommend, in order that the pension or gratuity or any part thereof may be expended for the benefit of the person to whom it is payable and members of his family to whom he owes the duty of maintenance.

(2) Where a contributor to whom a pension is payable under this Part is convicted of an indictable offence, committed by him while in the forces, if it appears to the Treasury Board that the commission of the offence constituted a failure by the contributor to render good and faithful service while in the forces, the Treasury Board may direct that payment of the pension be discontinued or that the whole or any part thereof be paid to persons dependent upon the contributor for support.

Carried.

Section 15.

15. Section fifty-seven of the said Act, as enacted by section six of chapter fifty-nine of the statutes of 1946, is repealed and the following substituted therefor:

"57. (1) The Minister shall lay before Parliament within fifteen days after the commencement of each session thereof:

(*a*) a statement showing the number of pensions and gratuities paid to contributors, widows, children and other dependents under this Part during the preceding fiscal year; and

(*b*) a statement showing the amount received as current and arrears of contributions and the total amount paid as pensions and gratuities together with such other information as may be prescribed by the Governor in Council under this Part.

(2) An actuarial valuation of the Permanent Services Pension Account shall be made once every five years and a report shall be laid before Parliament within fifteen days after the commencement of the session next after the completion of the actuarial valuation estimating to what extent the assets of the fund are sufficient to meet the benefits paid under this Part.

There is an amendment here in line 40, at the bottom of subsection 2, the word "paid" is to be changed to the word "payable." Mr. Wellbourn so moves.

Shall the amendment carry?

Carried.

Shall section 15 as amended carry?

Carried.

Mr. HUNTER: Why do you settle on five years there?

The WITNESS: That was put in at the request of the Finance Department who decided that period would be most appropriate.

The CHAIRMAN: We come now to section 16.

16. The said Act is further amended by adding thereto the following sections:

59. A female contributor who resigns or is compulsorily retired from the forces by reason of her marriage shall be deemed to have retired voluntarily.

60. (1) Any debit balance in the pay account of a former member of the forces may be recovered from any pension or gratuity to which he is entitled under this Part, whether such debit balance existed in his pay account on the date of his retirement or is ascertained subsequent thereto.

(2) Recovery of a debit balance pursuant to this section shall be effected in such manner and to such extent as the Governor in Council may by regulation prescribe, but recovery shall not be effected unless the former member is given notice of the existence of the debit balance and the amount thereof.

Carried.

Section 17.

17. Sections three, six and eight shall be deemed to have come into force on the first day of October, nineteen hundred and forty-six.

There is an amendment proposed by Mr. Dickey to the effect that the section be extended by adding certain words so that it will read:

17. Sections three, six and eight shall be deemed to have come into force on the first day of October, nineteen hundred and forty-six, and the other sections of this Act shall come into force on a day to be fixed by proclamation of the Governor in Council.

Shall the amendment carry?

Carried.

Shall section 17 as amended carry?

Carried.

Mr. WRIGHT: What is the position of a common-law wife under the Pension Act? Has she any status?

Brigadier LAWSON: No.

Mr. WRIGHT: There is no recognition of a common-law wife under the Pension Act at all?

The WITNESS: Not under the Militia Pension Act.

By Mr. Hunter:

Q. I wonder what a subordinate officer is?—A. "Subordinate officer" is included to take care of a new class of officer. In the air force he is known as a flight cadet and he will under this definition have the status of an officer for pension purposes. Before there was a technicality which prevented him from having status under the Act either as an officer or a man.

Q. An army cadet would come in in the same way?—A. No.

Q. The chaps in the C.O.T.C. are cadets?

Mr. GEORGE: The army has officer cadets today. In the reserve we have officer cadets instead of second lieutenants.

Brigadier LAWSON: It is being introduced into the army; in the navy the rank is midshipman.

The CHAIRMAN: There are two or three points which now present themselves. First of all I would like a general discussion in the committee regarding proposed recommendations, and whether we shall make recommendations or let the record stand for the government to consider without recommendations being made. Mr. Pearkes has very fully placed on the record the facts on certain particular matters. I do not know whether the House will take cognizance of recommendations even if we do make them.

Mr. GILLIS: They pay no attention to them.

Mr. PEARKES: I do not suppose they would pay any attention to them at all but when the Pension Act is being rewritten then I think there will be attention paid.

The CHAIRMAN: The reason for my remark is my view that unquestionably the revising officers will take cognizance of the evidence and the discussion in this committee whenever the revision of the Act takes place. It is therefore a question of the committee's wishes; first as to whether we should go through the procedure of making recommendations which will probably not be effective in amending this bill and which we cannot insert ourselves because they touch on the expenditure of money, and second as to whether it is the wish of the committee under such circumstances to make recommendations, Mr. Pearkes and Mr. Harkness have put on the record their views, and the reasons for their submissions. We might leave it at that. What does the committeee think is the proper thing to do?

Mr. DICKEY: I feel that this bill is just a fairly small group of amendments to various portions of the general Act. I for one would be a little hesitant about making any specific recommendations when we are dealing strictly with matters that are out of context. We have not got the whole Act or even whole parts of the Act, or whole sections of the Act. Personally I think that the views of General Pearkes and the others have been put on the record and I would hesitate to go any farther than that.

Mr. PEARKES: I should certainly like to see the committee make a firm recommendation here. The Acts are available if anyone wants to study them. I will admit they have been amended a great many times and you will find them difficult to follow but they are available and if the committee wants to get some evidence I am sure the officers who are here can explain the Acts as they exist. I do not want to hold up the committee but I am sure if members of the committeee want to take time on the Act it is available. I would like to make a firm recommendation in the two cases I have mentioned, although I do not know that the government will amend the Act to meet the recommendations. I do feel these recommendations should be on record, and when this Act is being rewritten two or three years hence they will then be available. They will never sort them out in that mass of evidence, because this is all in the same volume as the discussions on the other bills.

Mr. ROBERGE: Would the officials object if recommendations were made?

The CHAIRMAN: I do not think the officials would object at all, they would take no view. It is up to us as a committee, and it is only a recommendation in any event.

Mr. HARKNESS: I do not suppose there would be any great harm done in making recommendations.

Mr. GEORGE: Why not let this stand. We have to have another meeting to finish the other bill. Why could not these sections be taken up by the proper authorities in the meantime and either amended or brought back the way they are?

The CHAIRMAN: We have to have another meeting and we can at that time further consider the Bill. Mr. Pearkes can formulate his views in the meantime and we can then deal with them. We can only make recommendations in any event.

Mr. PEARKES: They do refer the recommendations to the various departments concerned.

The CHAIRMAN: If they want to change the Act they would have to refer it back to the committee with instructions or amend on third reading I should think.

Mr. HUNTER: If we are going to start making recommendations which may be quite worthwhile, surely we should have the whole thing in front of us so we

can know what we are amending. I am afraid I have not read all the Acts and amendments as carefully as Mr. Pearkes has. I am not quite sure I understand the policy behind it.

The CHAIRMAN: As I understand the bill, all the sections are carried with the exception of 4, 5 and 8(2) (iv). We have left those sections to be further considered and we will complete consideration of the bill at the next meeting.

We now come to bill 221; An Act to provide for the Payment and Distribution of Prize Money. There are four sections reading as follows:

1. This Act may be cited as *The Canada Prize Act 1950.*

2. The sum of five hundred and fifty-nine thousand six hundred and forty-three dollars and twenty-four, cents, which represents the proceeds of prize, shall be paid out of the Consolidated Revenue Fund by the Minister of Finance in accordance with section four.

3. Any money paid to Canada pursuant to the Prize Act, 1948, of the Parliament of the United Kingdom or pursuant to any other Act of the Parliament of the United Kingdom providing for payment of prize money to Canada, shall be deemed not to be public moneys as defined in *The Consolidated Revenue and Audit Act, 1931,* and, when received by Canada, shall be paid out by the Minister of Finance in accordance with section four.

4. All moneys required by sections two and three to be paid out by the Minister of Finance shall be paid as follows:

(*a*) sixty-eight per centum thereof to the Canadian Naval Service Benevolent Trust Fund; and

(*b*) thirty-two per centum thereof to the Royal Canadian Air Force Benevolent Fund.

Shall these sections 1, 2, 3 and 4 carry?

Carried.

Shall the preamble carry?

Carried.

Shall the Title carry?

Carried.

Shall I report the bill?

Carried.

—The committee adjourned.

SESSION 1950

HOUSE OF COMMONS

SPECIAL COMMITTEE

ON

BILL No. 133

AN ACT RESPECTING NATIONAL DEFENCE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

Bill No. 133, An Act respecting National Defence;

Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof.

TUESDAY, JUNE 6, 1950.

WITNESSES:

Commander P. H. Hurcomb, Judge Advocate of the Fleet;
Brigadier W. J. Lawson, E.M., Judge Advocate General;
Wing Commander H. A. McLearn, Deputy Judge Advocate General;
Major W. P. McClemont, K. C., E.D., Major J. H. Ready, Assistants Judge Advocate General.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1950

Mr. R. O. CAMPNEY, *Chairman*

and

Messrs.

Adamson,
Balcer,
Bennett,
Blackmore,
Blanchette,
Cavers,
Claxton,
Dickey,
George,
Gillis,
Harkness,
Henderson,
Higgins,
Langlois (*Gaspé*),
Lapointe,
Larson,
McLean, (*Huron-Perth*),
Pearkes,
Roberge,
Stick,
Thomson,
Viau,
Welbourn,
Wright.—25

(Quorum, 10)

Antoine Chassé,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,

TUESDAY, June 6, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, met at 3.30 o'clock p.m. The Chairman, Mr. R. O. Campney, presided.

Members present: Messrs. Balcer, Bennett, Campney, Cavers, George, Gillis, Harkness, Henderson, Hunter, Langlois (*Gaspé*), Larson, McLean (*Huron-Perth*), Roberge, Stick, Viau, Welbourn, Wright.

In attendance: Commander P. H. Hurcomb, Judge Advocate of the Fleet; Brigadier W. J. Lawson, E. M., Judge Advocate General: Wing Commander H. A. McLearn, Deputy Judge Advocate General: Major W. P. McClemont, K.C., E.D., and Major J. H. Ready, Assistants Judge Advocate General.

On a question of privilege Mr. George asked that a correction be made in the printed report of the Evidence of Thursday, May 25th, at page 124, line 18: the words "if we do not have permanent court martial boards" should read "if we did not have permanent court martial boards".

The Committee resumed consideration of Bill No. 133, An Act respecting National Defence.

The various clauses which were stood over at former sittings were further considered and other clauses passed were, by unanimous consent, allowed to be re-opened for further consideration.

Commander Hurcomb, Brigadier Lawson, Wing Commander McLearn and Major McClemont were recalled and questioned on the various clauses under study.

On Clauses 135 *and* 136.

On motion of Mr. Langlois (*Gaspé*).

Resolved, That the said Clauses and headings thereof be deleted and the following substituted therefor:

Summary Trials by Commanding Officers

136. (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied.

(*a*) the accused person is either a subordinate officer or a man below the rank of warrant officer;

(*b*) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;

(*c*) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial;

(*d*) the offence is not one that in regulations made by the Governor in Council the commanding officer is precluded from trying.

63701—1½

(2) Subject to the conditions set out in this section and in Part V relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(*a*) detention for a period not exceeding ninety days subject to the following provisions,

(i) a punishment of detention imposed by a commanding officer upon a chief petty officer, petty officer, non-commissioned officer or leading rating shall not be carried into effect until approved by an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed punishment is serving, and only to the extent so approved;

(ii) where a commanding officer imposes more than thirty days' detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving;

(*b*) reduction in rank, but a punishment of reduction in rank imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore, under whom the commanding officer who imposed the punishment is serving;

(*c*) forfeiture of seniority;

(*d*) forfeiture of service toward progressive increase in pay;

(*e*) a fine not exceeding basic pay for one month;

(*f*) severe reprimand;

(*g*) reprimand;

(*h*) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale.

(3) A commanding officer may, subject to regulations made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following,

(*a*) a fine not exceeding ten dollars;

(*b*) a reprimand;

(*c*) minor punishments.

(4) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

(5) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations."

On Clause 2.

Arising out of the former resolution,

On motion of Mr. Stick,

Resolved, That the said clause be re-opened and be further amended by deleting therefrom paragraph (*kk*) thereof and substituting the following therefor:

(*kk*) "summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section one hundred and thirty-six and a trial by a superior commander pursuant to section one hundred and thirty-seven;

The said clause, as further amended, was agreed to.

On Clause 21.

On motion of Mr. Langlois (*Gaspé*),

Resolved, That the said clause be amended by adding thereto the following subclause:

(3) A person under the age of eighteen years shall not be enrolled without the consent of one of his parents or of his guardian.

On Clause 24.

On motion of Mr. Stick,

Resolved, That the said clause, already passed, be re-opened and be deleted and the following substituted therefor:

24. The enrolment of a person binds that person to serve in the Canadian Forces until he is, in accordance with regulations, lawfully released.

Clause 30 was further considered and agreed to.

On Clause 33.

On motion of Mr. Langlois (*Gaspé*),

Resolved, That the said clause, already passed, be re-opened and amended by striking out the word "fifteen", in line 19 on page 14 of the Bill, and the word "ten" substituted therefor.

The said clause, as amended, was agreed to.

Clause 61 was further considered and agreed to.

On Clause 66.

On motion of Mr. Stick,

Resolved, That the said clause already passed be re-opened and amended by (*a*) inserting a new paragraph (*c*) as follows:

(*c*) without authority discloses in any manner whatsoever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of His Majesty's forces or of any forces co-operating therewith;

and (*b*) the present paragraphs (*c*) to (*i*) re-lettered accordingly.

On Clause 115.

On motion of Mr. Langlois (*Gaspé*),

Resolved, That the said clause be deleted and the following substituted therefor:

115. Every person who

(*a*) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;

(*b*) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or

(*c*) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

Clause 119, after further consideration, was agreed to.

On Clause 133

On motion of Mr. Langlois (Gaspé),

Resolved,—That the said Clause, already passed, be re-opened and amended by deleting subclause (1) thereof and substituting therefor the following:

133. (1) Every reference in this Part to a commanding officer shall be deemed to be a reference to a commanding officer of the accused person, or to such other officer as may, in accordance with regulations, be empowered to act as the commanding officer of the accused person.

On motion of Mr. Viau,

Resolved, That Clause 134 be sub-divided into two clauses, numbered 134 and 135.

On clause 137

On motion of Mr. George,

Resolved, That the said Clause and the heading thereof be deleted and the following substituted therefor:

Summary Trials by Superior Commanders

137. (1) An officer of or above the rank of commodore, brigadier or air commodore, or any other officer prescribed or appointed by the Minister for that purpose, referred to in this section as a "superior commander", may in his discretion try by summary trial an officer below the rank of lieutenant-commander, major or squadron leader, or a warrant officer, charged with having committed a service offence, and in an emergency the Governor in Council may extend the provisions of this section to cases where the accused person is of the rank of lieutenant-commander, major or squadron leader.

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

(3) Subject to the conditions set out in this section and in Part V relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(a) forfeiture of seniority;
(b) forfeiture of service toward progressive increase in pay;
(c) fine;
(d) severe reprimand;
(e) reprimand.

(4) A superior commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial.

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request.

Clause 155, after further consideration, was agreed to.

On Clause 170

On motion of Mr. Roberge,

Resolved,—That the said Clause, already passed, be reopened and amended by deleting paragraph thereof and substituting therefor the following:

(*c*) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under sub-section two or five of section one hundred and thirty-six, as the case may be.

On Clause 190

On motion of Mr. Langlois,

Resolved,—That the said Clause be deleted and the following substituted therefor:

190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following members:

(*a*) A Chairman, who shall be a judge of the Exchequer Court or of a "superior court of criminal jurisdiction" as that expression is defined in the Criminal Code; and

(*b*) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a "superior court of criminal jurisdiction", as that expression is defined in the Criminal Code, or a barrister or advocate of not less than five years standing.

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence, including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the *Inquiries Act*.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribed by the Governor in Council."

On Clause 121

On motion of Mr. Stick,

Resolved, That the said Clause be amended by (*a*) deleting therefrom subclauses (8) and (9) and substituting the following therefor:

(8) The punishment of reduction in rank shall apply to officers, warrant officers, chief petty officers, petty officers, non-commissioned officers and leading ratings.

(9) The punishment of reduction in rank shall not

(*a*) involve reduction to a rank lower than that to which under regulations the offender can be reduced;

(*b*) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and

(*c*) in the case of a subordinate officer, involve reduction to a rank lower than an inferior grade of subordinate officer.

and (*b*), adding to the said Clause a new subclause as follows:

Limitation

(14) The authority of a service tribunal to impose punishments may be limited in accordance with regulations made by the Governor in Council.

The preamble, Title of Bill No. 133, An Act respecting National Defence was agreed to, and the said bill, as amended, was ordered to be reported to the House.

On motion of Mr. George,

Resolved, That the said Bill, as amended, be reprinted.

The Chairman then read a telegram from Mr. Stanley B. Ryerson, National Organization Secretary of the Labor Progressive Party (*see Minutes of Evidence appended to the present Minutes of Proceedings*), in connection with Clause 73 of Bill No. 133.

On motion of Mr. Viau, it was agreed that the said telegram be filed.

The Committee thereafter resumed consideration of Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof, in respect to Clauses 4, 5 and 8 (2) (iv) thereof.

Major Ready was recalled and questioned on the various clauses under further consideration.

Clauses 4, 5 and 8 (2) (iv) were, after further consideration severally agreed to.

Mr. Harkness read into the record a statement of Mr. Pearkes, containing certain recommendations with respect to the said Clauses. (*See Minutes of Evidence appended to the present Minutes of Proceedings.*)

On Clause 11.

On motion of Mr. Wright,

Resolved,—That the said Clause be reopened and amended by inserting after the word "economy", in line 17 of page six of the bill, the following: "or efficiency".

The said Clause, as amended, was agreed to.

The preamble and Title of Bill No. 134, An Act to amend The Militia Pension Act and change the Title thereof was agreed to and the said Bill as amended was ordered to be reported to the House.

On motion of Mr. George,

Resolved, That the said bill, as amended, be reprinted.

The Chairman thanked the members, and the officials and officers in attendance, for their contribution to the task of the Committee.

At 4.45 o'clock p.m., the Committee adjourned *sine die*.

ANTOINE CHASSÉ,
Clerk of the Committee.

REPORT OF THE HOUSE

TUESDAY, June 6, 1950.

The Special Committee appointed to consider Bill No. 133, An Act respecting National Defence, begs leave to present the following as a

THIRD REPORT

Pursuant to the Order of Reference of 16th May, 1950, your Committee has considered the following bills and has agreed to report them with amendments, viz:

Bill No. 133, An Act respecting National Defence;

Bill No. 134, An Act to amend the Militia Pension Act and change the Title thereof.

A reprint has been ordered of the said Bills Nos. 133 and 134, as amended.

A copy of the Minutes of Proceedings and Evidence taken in respect of the two above-mentioned bills, and also in relation to Bill No. 221, An Act to provide for the Payment and Distribution of Prize Money, reported upon on June 2, 1950, is tabled herewith.

All of which is respectfully submitted.

R. O. CAMPNEY,
Chairman.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

TUESDAY, June 6, 1950.

The Special Committee on Bill 133, an Act respecting National Defence, met this day at 3.30 p.m. The Chairman, Mr. R. O. Campney, presided.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. GEORGE: Mr. Chairman, on page 124 line 18 of the evidence I am reported as saying: "If we do not have permanent court martial boards". What I intended to say was: "If we do have permanent court martial boards".

The CHAIRMAN: That seems to be a material correction and it will be noted accordingly. Now, gentlemen, when we adjourned the other evening we had finished considering the sections of Bill 133 in sequence, and we had in the process stood a number of sections, some substantively and some in order to give effect to redrafting as requested by the officials of the Department.

To-day perhaps we might start at the begining of the Act and pick up these various sections as we go along, deal with them, and possibly dispose of them. I would hope that we might be able to do complete oour work this afternoon; and I would suggest that if we do propose to finish this afternoon, we should finish promptly at 6 o'clock because of a certain dinner taking place at that time.

With respect to section 2 (*kk*), the first section to be dealt with the amendment proposed is purely a technical amendment arising out of proposed amendments to sections 135 and 136. I would therefore suggest that we proceed to sections 135 and 136 and deal with them, and then come back to section 2 (kk). Sections 135 and 136 are the two sections, as you will remember, with respect to which there was a difference as between the services. There was a great deal of discussion as to whether it might not be useful and possible to make them more nearly similar. I refer to page 53.

Mr. STICK: Could we have a statement from the Judge Advocate General on these things?

The CHAIRMAN: Yes, I was going to suggest that. The proposal is, I think, to amalgamate, according to one of the suggestions made, sections 135 and 136 so that the resultant section would be applicable to all services.

Mr. STICK: Yes.

The CHAIRMAN: If that meets with the wish of the committee, we shall have to deal with the two sections together. Now, Brigadier Lawson?

Brigadier LAWSON: Very briefly, Mr. Chairman, what we have done is to amalgamate the present sections 135 and 136 into one section which applies equally to all three services. In other words, the services will be on a uniform basis. We have taken certain things from the Naval part, that is the old section 135, and probably rather more things from the Army and Air Force part, the old section 136, and have produced one section.

Mr. STICK: In line with the suggestions which came from the committee?

Brigadier LAWSON: Yes.

The CHAIRMAN: This is an attempt on the part of the drafting officers to meet the general wishes of the committee as expressed when we last debated the

sections. If it is the wish of the committee, I would entertain a motion that clause 135 and clause 136 of the bill be deleted and the following clause substituted. Perhaps I should read this proposed new clause.

Mr. LANGLOIS: I so move, Mr. Chairman.

The CHAIRMAN: It is moved by Mr. Langlois that sections 135 and 136 of the bill be deleted and the following substituted, to be known as section 136. We shall deal with what happens to section 135 later. The new proposed section 136 reads as follows:

Summary Trials by Commanding Officers

136. (1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied,

(*a*) the accused person is either a subordinate officer or a man below the rank of warrant officer;

(*b*) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;

(*c*) the commanding officer is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial;

(*d*) the offence is not one that in regulations made by the Governor in Council the commanding officer is precluded from trying.

(2) Subject to the conditions set out in this section and in Part V relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(*a*) detention for a period not exceeding ninety days subject to the following provisions,

(i) a punishment of detention imposed by a commanding officer upon a chief petty officer, petty officer, non-commissioned officer or leading rating shall not be carried into effect until approved by an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving, and only to the extent so approved;

(ii) where a commanding officer imposes more than thirty days detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore under whom the commanding officer who imposed the punishment is serving;

(*b*) reduction in rank, but a punishment of reduction in rank imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an officer not below the rank of commodore, brigadier or air commodore, under whom the commanding officer who imposed the punishment is serving;

(*c*) forfeiture of seniority;

(*d*) forfeiture of service toward progressive increase in pay;

(*e*) a fine not exceeding basic pay for one month;

(*f*) severe reprimand;

(*g*) reprimand;

(*h*) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale.

(3) A commanding officer may, subject to regulations made by the Governor in Council and to such extent as the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorized to impose punishments other than the following,

(*a*) a fine not exceeding ten dollars;

(*b*) a reprimand;

(*c*) minor punishments.

(4) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

(5) Such punishments as are, in regulations made by the Governor in Council, specified as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in such regulations.

The new draft section 136 represents the views of the committee, I think, as translated into fact by the departmental officials. We now have a motion that sections 135 and 136 be deleted and that this new draft section which I have just read to you be substituted. Shall the motion carry?

Mr. GEORGE: There are no changes in this? It is just a consolidation?

Brigadier LAWSON: There are substantial changes, as there must be because there were substantial differences between the sections. We incorporated the two sections taking certain features from one and certain features from the other and made one section to be common to the three services.

Mr. GEORGE: I quite realize that, but there are no changes other than that?

Mr. LANGLOIS: Reductions in rank apply to the Navy now. They did not before?

Brigadier LAWSON: It did to other ranks, but not to officers.

Mr. LANGLOIS: Yes.

Mr. HARKNESS: The Navy now has authority to deal with subordinate officers.

Brigadier LAWSON: That is one of the features we took from the Navy part and applied it to the Army and Air Force.

The CHAIRMAN: Does the section carry?

Carried

We shall turn now to clause 2 (*kk*). That subsection must be deleted and the following be substituted:

2(*kk*). "Summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section one hundred and thirty-six and a trial by a superior commander pursuant to section one hundred and thirty-seven;

Mr. STICK: I so move.

Mr. CHAIRMAN: It is moved by Mr. Stick that this amendment be made. Does the motion carry?

Carried.

Section 2 as further amended is carried.

The next one to be dealt with is section 21. There were some representations, as you will remember, when this section was before the committee to the effect

that there ought to be some consent required from the parents or guardians of persons under the age of 18 entering the services. A new subsection 3 is now proposed reading as follows:

(3) A person under the age of eighteen years shall not be enrolled without the consent of one of his parents or of his guardian.

That new subsection is to be added to the present section.

Mr. LANGLOIS: I so move.

The CHAIRMAN: It is moved by Mr. Langlois that that subsection be added. Shall the motion carry?

Carried.

The next section which I have noted is section 24. Section 24 carried when it was considered, but I think Brigadier Lawson wants to make a statement about it.

Brigadier LAWSON: The reason for this change is that the section as drafted before spoke of the enrolment of a person in a Service of the Canadian Forces. We now say "enrolment of a person in the Canadian Forces" themselves. You will recall that another section does provide for inter-service transfer during an emergency. In order to provide for such a transfer we must speak of enrolment in the forces, and not of enrolment in a particular service.

Mr. STICK: I so move.

The CHAIRMAN: Mr. Stick moves that section 24 be deleted and that the following be substituted:

24. The enrolment of a person binds that person to serve in the Canadian Forces until he is, in accordance with regulations, lawfully released.

Shall the amendment carry?

Carried.

Shall section 24 as amended carry?

Carried.

Presumably I should take the same steps with regard to section 21. Shall section 21, as amended, carry?

Carried.

Shall section 2 as amended carry?

Carried.

The next section of which I have a note is clause 30 which was stood. As you will remember, clause 30 has to do with redress of grievances, and there was some discussion about all grievances going eventually to the Minister if desired.

Brigadier LAWSON: Yes, sir.

The CHAIRMAN: I think the general feeling in the services is that this proposed proceeding might not be practically speaking effective. The minister's office would hardly have time, along with all the other activities to look at everybody's grievances. The section in question is now made subject to the regulations of the Governor in Council and could be changed to meet changing conditions without amending the statute. Possibly it would be better if it remained as it is. Shall the section carry? Shall section 30 carry?

Carried.

Section 33 is the next one. This section did carry, but there was a certain amount of discussion about the apparent discrepancy between the situation

where parliament had prorogued or adjourned, and the period would not expire within ten days, and the situation where a proclamation could be issued for the meeting of parliament within 15 days. It was proposed in that connection that the word "fifteen" be deleted and the word "ten" be substituted.

Mr. GILLIS: No. It was just the other way round, was it not?

The CHAIRMAN: No. I think the idea was to make it ten in both cases. Was not that the proposal?

Brigadier LAWSON: Yes, sir.

Mr. GILLIS: The proposed amendment, oh, yes, "ten" substituted. Why not make it "fifteen" and "fifteen"?

The CHAIRMAN: I understood the thought was that as time has progressed, means of communication have also speeded up, so that if an emergency should arise, ten days should be ample time in which to convene parliament.

Mr. LANGLOIS: I move the amendment, Mr. Chairman.

The CHAIRMAN: Mr. Langlois moves that the word "fifteen" in line 19 on page 14 be deleted and the word "ten" substituted.

Shall the amendment carry?

Carried.

Shall the section as amended carry?

Carried.

We now come, I think, to section 61.

Mr. STICK: Section 61 stood.

The CHAIRMAN: And I think the same views obtain with respect to sections 61 as obtained with respect to section 30. There was some suggestion, as I recollect it without looking up the evidence, that other crimes might be added to the list of crimes set out in this section. This has been given very careful reconsideration. I think the feeling generally in the Department is that these three particular crimes, murder, rape and manslaughter committed in Canada have been in the Act for a great length of time, and that it would be rather dangerous to extend or to disturb them. Would you like to have Brigadier Lawson make a statement on this matter?

Mr. STICK: I do not think it is necessary.

The CHAIRMAN: Shall section 61 carry?

Carried.

The next section is section 66. In accordance with the discussion which took place in the committee when this section was before us, it is now proposed to insert a new paragraph.

Mr. LANGLOIS: (*c*).

The CHAIRMAN: The suggestion is that we insert a new paragraph to be known as subsection (*c*) which I shall read in a moment. That would mean that section 3 at present in the Act, as well as the subsequent subsections would be re-lettered or re-numbered one step further down the alphabet, and that this new subsection (*c*) which it is proposed to insert, would read as follows:

> (*c*) without authority discloses in any manner whatsoever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of His Majesty's forces or of any forces co-operating therewith;

I think the idea is to give effect to the question of cyphers, and so on. Personally I have not the slightest idea of what a cryptographic system is.

Mr. STICK: I think I raised that question about codes; it was not inserted there, if that is a distinction.

The CHAIRMAN: Are you satisfied that a cryptographic system and a code are the same thing?

Mr. STICK: I think so.

Brigadier LAWSON: We discussed this with the Joint Telecommunications Committee of the Services. They agreed that perhaps there was something omitted from this section and they agreed that this was the correct way to cover the point raised in the evidence of the committee.

Mr. STICK: I so move.

The CHAIRMAN: Mr. Stick moves that a new paragraph be substituted in section 66 to be known as paragraph (*c*), and that the present paragraph (*c*) and each subsequent subsection be re-lettered accordingly. Does that motion carry?

Carried.

Shall the section as amended carry?

Carried.

We now come, according to my list of standing clauses, to clause 115 which was stood over for re-consideration by departmental officials. My recollection is that the committee was not satisfied that intent was sufficiently indicated as being a necessary ingredient.

Mr. WRIGHT: I think we thought that the sentence was a little severe.

The CHAIRMAN: The officials have proposed a new section. Perhaps I might read the new draft section 115. It is now proposed that the present section 115 be deleted and the following substituted:

> 115. Every person who
>
> (*a*) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in such a document, orders the making or signing thereof;
>
> (*b*) when signing a document required for official purposes, leaves in blank any material part for which his signature is a voucher; or
>
> (*c*) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,
>
> is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment."

The latter part of this new section abolishes the old punishment of seven years or less and two years or less and makes the whole subject to three years or less.

Mr. LANGLOIS: I note also that they have substituted "wilfully" for "knowingly".

Mr. STICK: It clarifies the intent.

Mr. LANGLOIS: Yes.

Mr. STICK: "Leaves in blank any material part"—I would like an explanation of that. What does that apply to exactly?

Brigadier LAWSON: It means, sir, that if an officer or a man signs a document in which there are spaces left to be filled in by him, if he either wilfully or negligently fails to fill them in and they are filled in wrongly by someone else or the failure to fill them in leads to trouble, he is guilty of an offence.

Mr. STICK: He must wilfully do it?

Brigadier LAWSON: Yes or negligently.

The CHAIRMAN: Mr. Langlois moves that section 115 be deleted and the section which I have just read be substituted therefor. Shall the motion carry?

Carried

No. 119, I think, is the next one. The general feeling in regard to section 119 was that it ought not be disturbed. It is a highly technical section and it differentiates between civil and military offences and is tied in with section 61, and we stood it for that reason. Now, we have not amended 61, so I think somebody might move that we carry section 119.

Mr. CAVERS: I so move.

The CHAIRMAN: Mr. Cavers moves that section 119 be carried? Carried?

Carried

Section 121 the next section to be considered I wish to let stand just for the moment. There is still some information I wish to get on that section which I hope to have shortly. We come then to section 133, subsection 1.

It is proposed by the department that subsection 1 of section 133 as it stands be deleted and that a new subsection be substituted. I would ask Brigadier Lawson to explain the proposed new subsection.

Brigadier LAWSON: Mr. Chairman, the reason for the proposed amendment to subclause 1 of clause 133 is that in rewriting clause 136, which the committee has already dealt with, we omitted a provision that had been contained in clause 135 which applied to summary trials by commanding officers within the Royal Canadian Navy, which provision is found in subclause 5 of that clause. It says in effect that the authority of a commanding officer may be exercised under certain circumstances by the person in command of a boat or tender or a person on detached service. We also wanted to put the amendment in because we had made no specific provision in the bill for giving certain powers of commanding officers to detachment commanders. Those are the reasons for the amendments to section 133, subsection 1.

Mr. LANGLOIS: I so move, Mr. Chairman.

Mr. HARKNESS: The only change there is that you have struck out "in lieu" and put in "to such other officer," is it not?

Brigadier LAWSON: What we have done, sir, is to enable it to be prescribed by regulation who the commanding officer is; in other words, you can provide in regulations, as is done at the present time, that a commander of a detachment—that is, not the commanding officer of a unit, the commanding officer of a detachment from that unit—can exercise certain powers of the commanding officer of a unit. It is a necessary provision. We have always had it. If a detachment is sent away from a unit, the commander of that detachment must have certain powers of punishment.

Mr. LANGLOIS: Mr. Chairman, I move that clause 133 be reopened and that the following amendment be considered—that subsection 1 be deleted and be replaced by the new subsection 1 which you have just read.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the section as amended carry.

Carried.

The next is section 134. We have now abolished or done away with section 135 by taking 135 and 136 out of the bill as printed and substituting a new

section 136, and it is proposed (*a*) that subsection 1 of 134 will become section 134, and subsection 2 will become section 135. That saves renumbering the succeeding sections. Agreed?

Carried.

We now come, I think, to section 137.

Mr. HARKNESS: Before we do that, how do you get around dropping 135?

The CHAIRMAN: We have already dealt with that.

Mr. HARKNESS: But you had two sections before and now you have only one section.

The CHAIRMAN: We divided section 134 into two sections. We made subsection 1 of section 134 section 134, and subsection 2 of 134 section 135. I am going to ask Brigadier Lawson to deal with section 137 as now proposed. I think it represents the department's attempt to meet the general views of the committee that the navy and air force and the army should all have the same procedure and treatment under summary trials. I would ask Brigadier Lawson to deal with the section in a little more detail before we consider it.

Brigadier LAWSON: Mr. Chairman, as you have said, the purpose of the amendment here is to make the provisions of section 137 apply to the Royal Canadian Navy as well as to the Canadian Army and the Royal Canadian Air Force.

The CHAIRMAN: If we agree it will mean the deletion of the existing section 137 and substitution of the following:

Summary Trials by Superior Commanders

137. (1) An officer of or above the rank of commodore, brigadier or air commodore, or any other officer prescribed or appointed by the Minister for that purpose, referred to in this section as a "superior commander", may in his discretion try by summary trial an officer below the rank of lieutenant-commander, major or squadron leader, or a warrant officer, charged with having committed a service offence, and in an emergency the Governor in Council may extend the provisions of this section to cases where the accused person is of the rank of lieutenant-commander, major or squadron leader.

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

(3) Subject to the conditions set out in this section and in Part V relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included,

(*a*) forfeiture of seniority;
(*b*) forfeiture of service toward progressive increase in pay;
(*c*) fine;
(*d*) severe reprimand;
(*e*) reprimand.

(4) A superior commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial.

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request.

The CHAIRMAN: Mr. George moves that section 137 be deleted and that the section which I have just read be substituted. Does the motion carry?

Carried.

There is a small amendment suggested by the departmental officials to section 170.

Wing Commander MCLEARN: Section 155?

The CHAIRMAN: I am sorry. Section 155 is the next section. This has to do with the suggestion made in the committee that where evidence is being taken on commission the accused should have some specified notice before the evidence of the commission is taken. This has been considered and I think it is not desirable to make a change, but I would like Brigadier Lawson or one of the officials to deal with it if they will.

Brigadier LAWSON: There were two points raised by the committee, sir, in connection with this section. One was that we did not specify the law of evidence which was to be applied by the commissioner in taking commission evidence; and the other was that there should be a definite time given to the accused to enable him or his representative to appear before the commission.

On the first point, it is felt that it is impossible to specify in the clause the law of evidence that should be applied, because in many cases you would not know that until the trial had commenced. Secondly, it does not seem to be of any great importance because the court in dealing with the evidence taken before the commissioner would apply to it the law of evidence that it was applying at the trial.

On the other point, we thought that to give the accused a specific time, ten days I think was the suggestion, would be taking away a protection which he already has rather than giving him an additional protection. You will notice that sub-clause 5 provides that "in any proceedings before a commissioner the accused person shall be entitled to be represented." We read that to mean, and I might say we have referred this point to law officers who agree with our interpretation, that that right must be made effective and that you must give him time to be represented, that is you cannot carry out the commission the day after it is appointed. You must give him the right that the Act guarantees him, that is, the right to be represented and, therefore, to insert a period of ten days would be depriving the accused of a protection rather than giving him any additional protection.

The CHAIRMAN: Does section 155 carry?

Carried.

We now come to section 170. This was carried but it is necessary to amend it to change the numbering to conform to the changes made in 136. Mr. Roberge moves that paragraph (*c*) of 170, subsection 4, be deleted and the following substituted:

CLAUSE 170(4)—

(*c*) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under sub-section two or five of section one hundred and thirty-six, as the case may be.

Shall the amendment carry?

Carried

Shall the section as amended carry?

Carried.

We now come to section 190. Section 190 deals with the setting up of a court martial appeal board. There was a new section proposed to the committee

in lieu of the one that was printed in the bill and then there was some discussion as to whether—the judge advocate general or his representative should meet with the court in the absence of the accused. There were one or two other minor suggestions. In any event, the department have now prepared a new section 190, which makes several changes and possibly before I ask Brigadier Lawson to deal with it I should read it so that you will have it before you.

190. (1) There shall be a Court Martial Appeal Board which shall hear and determine all appeals referred to it under this Part.

(2) The Court Martial Appeal Board shall consist of the following members:

(*a*) a Chairman, who shall be a judge of the Exchequer Court or of a "superior court of criminal jurisdiction" as that expression is defined in the Criminal Code; and

(*b*) two or more other persons each of whom shall be a judge or retired judge of the Exchequer Court or of a "superior court of criminal jurisdiction", as that expression is defined in the Criminal Code, or a barrister or advocate of not less than five years standing,

all of whom shall be appointed by the Governor in Council.

(3) The Chairman of the Court Martial Appeal Board shall preside at sittings of the Board, unless he appoints another member to be the presiding member in his place.

(4) The Minister may require the Court Martial Appeal Board to sit and hear appeals at any place or places, and the Chairman of the Board shall arrange for sittings and hearings accordingly.

(5) Three members of the Court Martial Appeal Board shall be a quorum, and the decision on any appeal shall be determined by the vote of the majority of the members present, and in the event of an equality of votes, the Chairman or other presiding member shall have a second or casting vote.

(6) Where an appeal has been wholly or partially dismissed by the Court Martial Appeal Board, and there has been dissent in the Board, the appellant shall forthwith be informed of that dissent.

(7) The Court Martial Appeal Board may hear evidence, including new evidence, as it may deem expedient, and the Board may sit in camera or in public, and for the performance of its duties shall have all of the powers vested in commissioners under Part I of the *Inquiries Act*.

(8) The members of the Court Martial Appeal Board shall be paid such fees and allowances as may be prescribde by the Governor in Council.

Mr. LANGLOIS: Mr. Chairman, I had moved that the original clause be deleted and replaced by the first amended clause which we have before us and now I think we will have to amend this amendment to accept this third version of clause 190. I will amend my first motion to that effect.

The CHAIRMAN: Carried?

Carried.

Mr. WRIGHT: Can the judge advocate general give us some idea of how this differs?

Brigadier LAWSON: The only difference between the proposed new clause and the clause considered before by the committee is that we have dropped subclauses 5 and 6, which provided respectively for the attendance with the court martial appeal board of the judge advocate general and a representative of a service chief of staff. We reconsidered these two clauses in the light of observations

made by members of the committee and decided that it would be better if they were dropped entirely. If the members of the board require the assistance of the judge advocate general they can call him as an expert witness.

Mr. STICK: Subject to cross-examination?

Mr. HUNTER: Expert witness fees?

The CHAIRMAN: We shall have one section left in this bill, section 121, I understand it is being considered at the moment, I would therefore like to let it stand for the time being. Possibly, we could deal with the amendments to the Military Pensions Act and then come back and consider this remaining section. By the way, I should like to interject here before to the amendments to the Military Pensions Act that some days ago I received a telegram which was provoked apparently by some comment which took place in this committee on section 73. In at least in eyes of the people who sent this telegram some reference was made to Canadian communists as a result of which I received the following wire from Toronto:

MAY 26, 1950.

> Canadian Press reports today infer that Commons Defence Committee assumes that Canadian communists, organized in Labor Progressive Party, advocate overthrow of government by force, and on this basis is recommending repressive legislation regarding armed forces to parliament. May I on behalf of National Executive of Labor Progressive Party inform you and committee that Canadian communists have not, and do not advocate in any shape or form the overthrow of Canadian government by force and violence. On contrary anyone holding such ideas is expressly barred from membership in L.P.P. In order to set record crystal clear on this vital question I am instructed by L.P.P. National Executive to request that a representative, or representatives of the Labor Progressive Party be granted permission to appear before your committee to testify and nail this despicable slander against our party which stands foursquare for Canadian loyalty in the great struggle for national security, independence, peace and democracy, against the ever increasing danger of a Wall street inspired atomic bacteria war.
>
> Stanley B. RYERSON,
> *National Organizational Secretary.*

Mr. VIAU: I move that the telegram be filed.

Carried.

The CHAIRMAN: Gentlemen, before we come to the amendments to the Military Pensions Bill I undertsand that we may now deal with section 121 of the National Defence Act, if you will agree, we will clear it off first.

Of section 121, subsections 8 and 9 only were stood over. They have to do with the difference between the provisions as to reduction in rank as between the Canadian Army and the Royal Canadian Air Force on the one hand and the Royal Canadian Navy on the other. Before we proceed further I would ask Brigadier Lawson to make some observations.

Brigadier LAWSON: You will recall, Mr. Chairman, that when these clauses were considered by the committee some members pointed out that they thought it desirable that the same punishments should apply to all members of the services. These subclauses as contained in the draft bill applied only to the Canadian Army and the Royal Canadian Air Force. You will remember at that time it was said that the navy did not consider the punishment of reduction in rank as a suitable punishment for the naval service. Now, Mr. Chairman, while the navy's view is as stated previously, if it is the desire of the committee that there should be uniformity as between the three services, the department

is prepared to adopt the approach of the majority of the three services. That would mean adopting this amendment which would make this punishment apply in the three services.

The CHAIRMAN: This proposal would mean deleting subsection 8 and subsection 9 of section 121 and substituting the following therefor:

CLAUSE 121 (8) and (9)

Reduction in Rank

(8) The punishment of reduction in rank shall apply to officers, warrant officers, chief petty officers, petty officers, non-commissioned officers and leading ratings.

(9) The punishment of reduction in rank shall not

(*a*) involve reduction to a rank lower than that to which under regulations the offender can be reduced;

(*b*) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and

(*c*) in the case of a subordinate officer, involve reduction to a rank lower than an inferior grade of subordinate officer.

Before we deal with the foregoing amendments, I might add that it is also proposed to add a new subclause to the section to be known as subclause 14. It reads as follows:

CLAUSE 121

Limitation

(14) The authority of a service tribunal to impose punishment may be limited in accordance with regulations made by the Governor in Council.

Mr. LANGLOIS: Has the navy considered what the procedure will be in future? Are they going to avail themselves of this amendment or are they going to carry on as they did before?

Commander HURCOMB: Well, Mr. Chairman, the punishment will be there and all I can say is that it remains to be seen whether we will or will not use it. I have not heard any announcement on that point.

Mr. STICK: Does it mean this, Mr. Chairman, that this is more or less an experiment?

The CHAIRMAN: That is right, it is a new departure. This Act can be corrected or amended at any time and there will no doubt be amendments made from time to time. The idea is to give it a trial, I presume.

Mr. HARKNESS: There is no obligation that this has to be used? If the navy does not want to use it they do not have to?

Brigadier LAWSON: The new subclause 14 covers that, sir.

Mr. LANGLOIS: Is there anything in this new clause as amended to prevent the navy from making it known to its personnel that they do not want them to use that clause?

Commander HURCOMB: There is nothing in the Act and there cannot be.

The CHAIRMAN: But the Governor in Council can make regulations as desired.

Commander HURCOMB: Yes, it is entirely up to the court, sir, and I am sure that is true of all the services. We do not tell the court what to do; it is up to them.

Mr. STICK: I will move the amendments to Clause 121.

The CHAIRMAN: Shall the amendments carry?

Carried.

Mr. GILLIS: Is this the desired effect: does the navy want this or are they opposing it? I know no one wants this committee to force something on the navy which they say is impractical.

The CHAIRMAN: As I read these two subsections—you will correct me if I am wrong, Brigadier Lawson—I would think that the section as amended makes it possible for the same procedure to be followed by the navy, but by subsection 14. which we are adding, it is left pretty much in the hands of the Governor in Council by regulation as to what extent the proposals are carried out in the various services.

Mr. HARKNESS: Under this new subsection reduction in rank will now apply to all officers regardless of rank?

Brigadier LAWSON: I am sorry, that is another point I intended to mention. Another criticism of these subsections made by the committee was that they applied only to officers up to the rank of major or equivalent rank. We have now taken that out and made the punishment apply to all officers of whatever rank.

The CHAIRMAN: Shall the section as amended carry?

Carried.

That completes the detailed consideration of bill 133. Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill as amended?

Carried.

Mr. GEORGE: There is another matter I believe I should refer to. I move that Bill 133 as amended be reprinted.

The CHAIRMAN: Yes, the suggestion has been made that, after all, there have been a good many amendments made, and if we send it into the House with these amendments without reprinting the bill it will probably lead to considerable confusion. I think the motion is quite in order and I would ask your approval.

Carried.

Now, we revert to the bill dealing with amendments to the Military Pensions Act. According to my notes there were three sections stood—4, 5 and 8 (2). These sections were stood, I think, principally because of some extended observations made by Mr. Pearkes, who is not here today, covering certain specific cases to which he referred in the discussion, and they were stood in order that his views might be further considered before we dealt finally with the sections. I think the same points were raised in connection with sections 4 and 5 so that in dealing with those points we will couple these two sections. Shall we then consider clauses 4 and 5 together?

Mr. HARKNESS: The point, as I understand it is that the committee has no power to make any changes in sections 4 and 5 because they are financial matters which can only emanate from the cabinet, and the only action that we can take would be to make a recommendation if we desire to do so.

The CHAIRMAN: I think I made two observations in that connection, Mr. Harkness, one of which you have mentioned namely that we have no power, as I understand it, to amend a bill to give effect to anything which would affect payment out of government funds, and the second by that if we wish to deal with the matter at all we could only do so by way of recommendation. To this I would add a further observation namely that the Minister has stated

in the House that within a year or two it is intended the Militia Pension Act shall be completely revised. It is my personal view, though it may not be the view of the committee, that under such circumstances the amendments which have been prepared after very careful consideration of all their implications by the department should not be added to at the present time even by way of recommendation. We are not empowered to consider the original bill, and it could be dangerous for us to suggest amendments—by way of recommendation—without having the full understanding of what the effect of these might be. That understanding we cannot have, unless we make a study of the whole original Act.

What is the wish of the committee?

Some Hon. MEMBERS: Carried.

Mr. HARKNESS: The point General Pearkes was making was that any recommendation made by this committee in connection with these matters would be taken into consideration when further amendments to the bill were being dealt with or being considered by the cabinet next year. I think that was essentially what he was getting at. Any recommendations that were made would in that way get consideration which they might not get otherwise.

The CHAIRMAN: I think I commented on that to the effect that presumably the very clear and explicit statement that General Pearkes has placed on the records of this committee, will be carefully considered by Departmental officials when they come to draft a revised act. Personally, although I am in the hands of the committee, I am quite averse to making recommendations unless they are going to be effective.

Mr. HUNTER: I think it would be a great mistake to enter into recommendations which might affect the policy or the fundamental principle of the Act, especially when we have not gone into the Act to any great length. Just because some member has some prepared recommendations before him I would not be prepared to endorse recommendations which affect the principle of the Act until we had gone into the whole principle of the Act, had witnesses here to tell us what they were, and until we were able to decide whether they were good or bad. If this is to be revised in a year or two, and apparently as this has come from the department as a sane and sensible recommendation, then I think further recommendations would be a task which has not been asked of us.

The CHAIRMAN: Would you move then that clauses 4 and 5 be carried?

Mr. HUNTER: Yes.

Carried.

Mr. HARKNESS: If the committee does not wish to make any recommendations along this line General Pearkes did want to have put on the record what his views and recommendations were so that they would appear there. I have a typewritten document which I received from him and in which he sets forth:

Recommendations

I desire to have recorded in the Minutes of Proceedings and Evidence of the Special Committee on National Defence, the following recommendations for amendments to the Militia Pension Act by the Government,—

(*a*) It is recommended that an officer who was appointed prior to 1st May, 1929, may have his pension computed either on the basis of the pay and allowances received by him during the last day of service or on the basis of the average annual amount of pay and allowances received by him during the three years immediately preceding retirement, whichever is the greater.

(*b*) It is recommended that an other rank having pension status under Parts I to IV of the Militia Pension Act may have his pension

computed on either the pay and allowances of which he was in receipt on the last day of service or on the average annual amount of pay and allowances received by him during the three years immediately preceding retirement, whichever is the greater.

(*c*) It is recommended that a retired officer who has been granted a pension under Parts I to V of the Militia Pension Act and who is employed in the public service of Canada or appointed to or enlisted in the naval, army or air forces of Canada, be entitled to receive that part of his pension which when added to his salary or pay and allowances as the case may be, will not exceed the pay and allowances of which he was in receipt at the date of retirement or will not exceed the average annual amount of the pay and allowances on which his pension was computed, whichever is the greater.

(*d*) It is recommended that provision be made in Part V of the Militia Pension Act to allow time served by a member of the reserves who is called out to perform full time service with pay and allowances, to count that service as full time service for pension purposes if later appointed to the forces.

Those, in brief form, are the recommendations which General Pearkes had when the matter was under discussion in the committee.

The CHAIRMAN: Are you tendering those as recommendations or just as representations?

Mr. HARKNESS: I would like to see them go forward as recommendations of this committee but I take it from what has gone on that the committee does not wish to do that. I would therefore not press the matter. I am satisfied that the recommendations are in the minutes of the committee and they will presumably come to the attention of the department when further amendments are being brought in next year.

The CHAIRMAN: We only have remaining clause 8, subclause 2, para. (iv) which was stood over as another exception at the request of Mr. Pearkes.

Mr. GILLIS: Could we have a clarification of subsection (i)—time served in the civil service or the Royal Canadian Mounted Police. That does not mean that time served in the Mounted Police or in the civil service previous to a man being attached to the military service may be computed for military service? Does it mean a man in the civil service or a Mounted Policeman attached to the forces would be able to count that time as military service?

Major READY: This means that a person, appointed to or enlisted in the forces, who, prior to that appointment or enlistment served as a member of the R.C.M.P. or the civil service, may count that time as contributory time towards his pension. It will not count as qualifying time—that is the length of time that he serves in the forces before he becomes eligible for pension.

Mr. LANGLOIS: The reason is that he has contributed, whilst in the R.C.M.P. or civil service?

Major READY: Yes, and that contribution is turned over to the permanent force pension account.

The CHAIRMAN: Shall the clause carry?

Carried.

I am told there is a small technical amendment proposed to section 11. After the word "economy" in section 11, clause (*b*), subclause (iii) after the word in line 17, insert the words "or efficiency" should be added.

Shall that amendment carry?

Carried.

Shall the section as amended carry?

Carried.

Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill with amendments?

Carried.

Mr. GEORGE: I move that we reprint the bill.

Carried.

The CHAIRMAN: Gentlemen, I think that completes our activities for this session so far as we now know. I would like on your behalf to extend our very great appreciation to Brigadier Lawson and his associates for the helpful and co-operative way in which they have dealt with the intricate and technical matters covered by the Bills before us. I would also wish to express our sincere thanks to our clerk, Mr. Chassé, and the reporters, and other officials of the House for their guidance and assistance at all times. They have by their efforts made our work much easier and our courses much smoother than would otherwise have been the case.

May I also personally extend to the members of the committee my deep appreciation of their co-operation, of the spirit of fairness which has actuated the activities of the committee, and for the splendid way in which we have together been able to work our way through these very long onerous and detailed bills.

Mr. BENNETT: We appreciate the talent and efficiency of the chairman.

The committee adjourned.