

### **Dramatis Personae (in order of speaking)**

Joseph-Alfred Dion, Robercal (Liberal) – Committee Chair

Brooke Claxton, Minister of National Defence, St. Lawrence—St. George (Liberal)

George Randolph Pearkes, Nanaimo (Progressive Conservative)

George Drew, Carleton (Progressive Conservative)

Howard Charles Green, Vancouver Quadra (Progressive Conservative)

Clarence Gillis, Cape Breton South (C.C.F.)

Alphonse Fournier, Hull (Liberal)

John Alpheus Charlton, Brant-Wentworth (Progressive Conservative)

James Garfield Gardiner, Melville (Liberal)

Douglas Harkness, Calgary East (Progressive Conservative)

Léon Balcer, Trois-Rivières (Progressive Conservative)

John Horne Blackmore, Lethbridge (Social Credit)

Arthur LeRoy Smith, Calgary West (Progressive Conservative)

James Macdonnell, Greenwood (Progressive Conservative)

Edmund Davie Fulton, Kamloops (Progressive Conservative)

Major James Coldwell, Rosetown—Biggar (C.C.F.)

Herbert Wilfred Herridge, Kootenay West (C.C.F.)

James Arthur Ross, Souris (Progressive Conservative)

Percy Ellis Wright, Melfort (C.C.F.)

Gordon Graydon, Peel (Progressive Conservative)

## **House of Commons Debates, 21st Parliament, 2nd Session : Vol. 2**

From the House of Commons Debates of the 21<sup>st</sup> Parliament, Second Session Volume II of March 23, 1950, The Minister of National Defence Brooke Claxton, explained that the purpose of the national defence bill [the National Defence Act (NDA)] which will be introduced if the resolution is adopted is to modernize and consolidate in one statute all legislation respecting the Department of National Defence and the armed forces of Canada.

[https://en.wikipedia.org/wiki/21st\\_Canadian\\_Parliament](https://en.wikipedia.org/wiki/21st_Canadian_Parliament)

From the House of Commons Debates of the 21<sup>st</sup> Parliament, Second Session Volume II of April 16, 1950 ([http://parl.canadiana.ca/view/oop.debates\\_HOC2102\\_02/1?r=0&s=1](http://parl.canadiana.ca/view/oop.debates_HOC2102_02/1?r=0&s=1)):

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### **NATIONAL DEFENCE**

CONSOLIDATION AND REVISION ALL THE EXISTING LEGISLATION-ORGANIZATION FOR DEFENCE-CODE OF SERVICE DISCIPLINE, ETC.

Mr. Brooke Claxton (Minister of National Defence) moved that the house going to committee to consider the following resolution:

*That it is expedient to present a bill to review and consolidate in one act as several acts respecting*

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*The Department of National Defence and the armed services of Canada, with provision inter alia for the payment of pay and allowances of officers and men of the forces, the salaries and expenses of members of the defence research board, fees and allowances of the members of the court martial appeal board, compensation for loss or damage due to the exercise of emergency powers, advances to meet expenses and costs of calling out forces in aid of several power, the acquisition and disposition of property and generally the costs of and incidental to the operation of the act, and all other matters directly concerning defence.*

**Mr. Pearkes:** Would the minister make a statement now?

Mr. Claxton: Could we not have it in committee?

Mr. Pearkes: Very well.

*Motion agreed to hand the house went into committee, Mr. Dion and the chair*

**Mr. Claxton:** "Mr. Chairman, the purpose of the national defence bill which will be introduced at the resolutions adopted is to modernize a consolidating one statute all legislation respecting the Department of National Defence and the armed forces of Canada.

The bill is a further step in the announced purpose to unify and co-ordinate all of the defence forces of Canada.

The bill is also a further step towards a complete Canadianization of the armed forces of Canada. If this bill is passed, all provisions governing the armed forces of Canada will, for the first time, be found in a statute enacted by the Canadian parliament representing the Canadian people.

In content the bill is the largest to be put before this house and secession of 1934. Eight contains 251 of these will replace over 600 in the seven statutes now applicable.

During the last session of parliament the bill was introduced in the other place where it was my privilege to give an explanation before it was refer to the committee on banking on the motion of the government leader. In that committee and in the house itself, the bill was carefully and fully considered and passed with certain amendments on December 8, 1949. Since the prorogation 12 parliament took place on December 10, 1949, it was impossible to proceed with the bill in this house but, as hon. members are aware, the very earliest opportunity has been taken up footing the bill before you. In addition, hon. members here, many of whom have had distinguished careers in the armed forces of Canada in one or both of the world wars, have had an opportunity of examining the bill as it was put before the other place.

As I indicated in the house last year, it is the intention of the government to refer the bill that will be introduced in consequence of this resolution, and also the other two defence bills, to a special committee. I hope this suggestion will appeal to hon. members of the house has obviously it is a measure which can be dealt with most effectively in that way. I am in the hands of the committee and I can go on and make a full statement, or I can do it on a second reading.

**Mr. Drew:** Mr. Chairman, I did not want to interrupt the minister but I think perhaps it might be as well to consider a point that should be borne in mind and we should do our utmost to avoid a certain

possibility arising. You will recall that emotion was dealt with in this house which asked for a committee to be set up to deal with the broad problem of defence. Then at a later time proposals were put forward in discussion and it was suggested that there be a committee to deal with the more limited aspect of the defence problems, and that the estimates be referred to that committee. Contrary to all our request and fully conscious of what the effect of that would be, we urged that they should be dealt with ---

**The Deputy Chairman:** I'm sorry to interrupt—

**Mr. Drew:** Are you not prepared to listen to the rest of this?

**The Deputy Chairman:** Order. When the chairman rises it is the rule of the hon. member who has the floor must resign his seat. The chairman does not rise to a state simply to interrupt an hon. member or for his own pleasure. There is a rule that provides that the member who has the floor should not be interrupted except for the purpose of raising a question of privilege or a point of order. In this case the leader of the opposition stood up and said that he was sorry to interrupt the minister who was speaking.

**Some hon. members:** No

**The Deputy Chairman:** One second, please. The ministers sat down, indicating his willingness to listen to the remarks of the leader of the opposition. The leader of the opposition is talking about a matter which has been decided by the house by a vote and that votes stand as the judgment of the house. Later when the matter was brought up again and there was an appeal from a ruling by the chairman which was confirmed by the house. I am quite willing to let the leader of the opposition continue the remarks he has started, but I want to warn him that he must not get into a discussion of the question which has been decided by the house.

**Mr. Green:** Mr. Chairman, i.e. a ruling that because—

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**The Deputy Chairman:** It is not a ruling. I am only warning that I do not want a repetition of the discussion of the other day. I said I was quite bony to permit the leader of the opposition to speak up by a warning him that it should not go into the question that was decided the other day by the house.

**Mr. Drew:** I have no thought of going into the subject. It is quite obvious that this will not come up for consideration tonight, but for the purpose of facilitating the consideration of what course should be followed I would point out that as a result of that unfortunate ruling the other night the ministers should find some way it was this committee can be setup.

**Mr. Claxton:** I have indicated already that there will be no difficulty of setting up the committee if that that is the wish of the house. I made the suggestion that the last session that we should have a committee specially set up to deal with this bill. I had indicated in the words which the leader of the opposition followed that was the intention of the government to set up a committee to deal with this bill and with the other two bills dealing with defence. This is quite a different matter from anything the leader of the opposition had in mind.

Our thought is that just as soon as the resolutions relative to the three defence measures are adopted the bills will be distributed. Then on the occasion of their second reading I propose to move that they'd

be referred to a special committee. I have indicated already that that's is the procedure the gov't hopes to follow and I do not think the leader of the opposition or anyone else would like to object to that.

I am in the hands of the committee as to how far I should devote the exposition of the bills before us at this time. It seems to me that having one act to cover the defence forces of Canada, at which will bring up to date legislation which has been on the statute books since 1868, with few amendments, is something that would appeal to the common sense and good judgment of this house. That is the purpose of the legislation.

If it is the wish of hon. members, I can make a full statement at this stage, but it seems to me that the time for that will more properly be when the bills were before us and the intentions of the government made known. My suggestion to the committee is that the most sensible course to follow would be for me to propose any more extended remarks until the bills have received first reading and are in the hands of hon. members in all parts of the house. Then tomorrow if the business of the house from its us we could proceed with them in the most orderly way possible. If that were done that it would be my hope that in consequence of the discussion tomorrow it will be possible for us to set up the special committee to deal with these three bills in order that we could have these measures, which I regard as of great importance, dealt with by a committee of the house. Th I suggest that, because of their peculiar character, because they are rather technical—Sydney two of them—that is much the convenient way of giddy with them.

**Mr. Pearkes:** The view of the extreme importance of this resolution, I think the house would like to have a full explanation at this time. The minister appeared in the other place and gave a very full explanation to its members. I feel that members of this house would like to have the same full explanation now because many of them I've not had an opportunity to see the bill.

**Mr. Claxton:** I shall be very glad indeed to respond to the invitation of the hon. member for Nanaimo.

**Mr. Gillis:** I should like to make a few remarks of the question of order. I agree with the chairman's ruling that the leader of the opposition was not in order in the remarks he made, but I also agree with the leader of the opposition as to the importance of setting up a defence committee. I do not agree with the hon. member for Nanaimo as to the resolutions to which the Minister of National Defence was referred at this time. I do not think that any law more detail explanation is required. They merely involved technical changes in the pension set-up, military law and all that kind of thing. An explanation at this time would mean very little to us. So far as I am concerned I would be quite prepared to move the whole thing along as rapidly as possible to a committee so that we may have something done about it.

At the same time I do not want the Minister of National Defence to create the impression that the bills to be based on these resolutions, in which it is intended to refer to a committee of the house, have anything to do with matters of national defence. I think there is no more serious, urgent an important problem facing members of the house today than a competent committee to sit down with the minister of national defence, his advisers and everyone else concerned, they go into the whole matter of defence. Personally I often feel sorry for the minister. He supervises the army, navy, Air Force, atomic energy, everything that has a tool of the defence of

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Canada, and in a very threatening atmosphere. If I were he he would welcome handing over a lot of his responsibility to all the members of the house rather than be the spokesman in the house, the apologist and the one who was to take it on the chin for a lot of people outside home he knows very little about, or bob walk they are doing. He must accept their word for things.

The resolutions before us did not mean anything, so far as I am concerned. I am quite prepared to precede, let them go through tonight, he get them to a committee where the technical details and the changes in regulations and so forth can be looked after. Before the minister goes any further, I should like him to tell us whether in his intention of the government's in the foreseeable future to set up a committee of the house on the whole matter of national defence.

**The Deputy Chairman:** In view of the remarks made by the hon. member for Cape Breton South, does the hon. member for Nanaimo still insist on having a full statement?

**Mr. Parkes:** I think the remarks made by the hon. member for Cape Breton South just illustrates the importance of a full explanation at this time.

**The Deputy Chairman:** shall I call it eleven o'clock?

**Mr. Claxton:** Mr. Chairman, I appreciate the hopeful remarks of the hon. member for Cape Breton South, and I should also like to meet the wish of the hon. member for Nanaimo. In view all the difference of opinion, I think perhaps the only possible course to follow is to make a statement on this resolution, and then look forward with hopefulness to the appointment of the committee about which I have spoken, not the one to which the hon. member for Cape Breton South has referred to, to deal with these bills as soon as possible.

**April 18, 1950 -- (page 1681)**

**Hon. Brooke Claxton (Minister of National Defence):** When this resolution was before the committee on March 23 last, I was making a brief statement explaining the purposes of the bill which would be introduced to the resolution was adopted. At the outset may I repeat that it is the desire of the government to refer to a select committee of the house this resolution and also the other two resolutions standing in my name, mainly with regard to a measure of the inking with prize money and with regard to amendment of the Militia Pension Act. Our whole would be that it would be possible to setup that committee at the earliest possible moment so they could start its work of studying these measures and that detailed way that that procedure would permit.

In emphasizing the desirability of this procedure I should like to call the attention of the committee to the fact that the defence bill alone as a largest single measure to be put before parliament to session of 1934. I do not believe that many of its provisions are controversy. Certainly when it was discussed—and it was thoroughly discussed in the other place last session—it was not evident that there was much in it that was the subject of controversy. Walk we would want to do would be to see that the measure received detailed consideration and we would hope that, in consequence of that consideration, the measure might be substantially improved. While it has had, as I have indicated, extensive consideration and the department, also by officers of the crown and by a committee and the chamber itself in the other place, there is still room for improvement in this bill. Our hope would be that we would work together to make it the best possible piece of legislation of its kind to be found anywhere.

In its preparation we have had the advantage of similar work being carried on in the United States and in the United Kingdom. In the United Kingdom a committee called the Lewis committee was set up to report on proposed changes in court martial procedure. In the United States there's also a committee set up which resulted in legislation being proposed which is still before the courts. We have had the advantage of considering both the report of the Lewis committee in the United Kingdom and the steps that have been taken in the United States. This bill, in its preparation, I think as gone through no less than some eleven complete redrafts and has been subjected to examination not only by the legal advisers of the department but also by senior officers in the services; and on a number of locations it has received the consideration of the chiefs of staff committee. It was considered by a special subcommittee of the cabinet, and I think I myself have been through five or six of the drafts completely. While the bill has had that study, I again emphasize the fact that we do not think it is perfect; and we would hope that hon. members would sit down with us an endeavor to make every possible necessary change in it. The purpose of the legislation is far more than simply to consolidate existing defence measures. The purposes are:

- (1) to include in one statute whole 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 the legislation applicable to service personnel Canadian legislation;
- (4) to obtain uniformity in the administration of service justice;

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- (5) to provide a right of appeal from the findings at sentences of courts martial;
- (6) to abolish field general courts martial;
- (7) to provide for in 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 levee en masse and enrollment 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.

This measure, which will be introduced once the resolution is carried in the bill receives first reading, contains all the amendments made in the other place and a number of minor technical changes proposed by the legal advisers of the government and of the department in consequence of subsequent study. However, these are not matters of substance, and can be explained in detail when the bill is before the committee.

I do ask the committee now if they would not agree to receive first three of the bill so they can be distributed. Our hope would be that for the reasons I have given there would not be too extensive a debate and we might proceed to the setting up of the committee before the session gets too well advanced, so this very important bit of legislation can receive consideration at this session of parliament. If that course were accepted, following the second reading of the bill at some future date, we would propose to refer the prize money bill and the Militia Pension Act amendments to the same committee.

**Mr. Pearkes:** Mr. Chairman, it is our desire to co-operate with the government and facilitating the movement of this legislation by one step. Therefore I do not propose to make any extensive remarks today, on the understanding that when the bill is brought down for second reading there will be an opportunity for full discussion before it is submitted to the committee—

**Mr. Claxton:** Quite so.

**Mr. Pearkes:** -- if the minister desires to send it to the committee—because there were one of two points in connection with the bill which was presented to the other house which at least require further explanation and elaboration.

**Mr. Claxton:** The hon. member's attitude is greatly appreciated.

**Mr. Pearkes:** We will facilitate it to that extent. Of course nothing can be set today regarding the decision to refer it to a committee.

*Resolution reported, reads the second time and concurred in.*

Mr. Claxton thereupon moved for lethal introduce Bill No. 133, respecting national defence.

Motion agreed to end bill rate the first time.

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June 7, 1950 -- Page 3317

### NATIONAL DEFENCE

#### CONSOLIDATION AND REVISION OF EXISTING LEGISLATION— ORGANIZATION FOR DEFENCE—CODE OF SERVICE, DISCIPLINE, ETC.

**Hon. Brooke Claxton (Minister of National Defence)** moved that the house go into committee to consider a Bill No. 133, respecting national defence.

Motion agreed to end the house went into committee, Mr. Dion in the chair.

On section 1 —*Short title*

**Mr. Claxton:** Mr. Chairman, before the house takes up consideration of the bill I should like to express my appreciation and the members of the committee established especially to consider this and the other two defence measures. I think it was their experience, as well as that of others concerned with these important measures, that during their thirteen meetings they met together and discussed objectively the matters contained in the bills, was the sole purpose of having just as good a set of legislation relative to national defence as well as possible.

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Bill No. 133 is the largest single bill put before the house and this committee says 1934, I believe. It contains 251 sections incorporating in the text of provisions of a number of statutes in a relative to

defence, totaling approximately 600 sections in all. This is far more than a consolidation. It is a new act which unifies and consolidates all the legislation having to do with defence.

I am sure I express the views of other members of the special committee when I say that the expeditious and thoroughly conscientious way in which their work was carried out was in no small measure due to the excellence of the chairmanship of the hon. member for Vancouver Center. In that regard I'm sure he would be the first to say that he had the support of members of the committee representing all parties in the house.

The bill contains some forty-seven different amendments made by the committee, of which about 30 were proposed by representatives of the department, and the remainder originated in the committee. I do not think the general trend of the amendments is controversial. If they had any general pattern it was to provide measures which would be even more uniform in respect of the three services than those in the bill as it was referred to the committee. Also the changes in the provisions generally tended to favor the position of the accused, but they are entirely acceptable to the department and to the government.

I commend the bill in its amended form to the consideration of the committee.

**Mr. Harkness:** Mr. Chairman, the minister has said that the bill was carefully considered in the special committee. We received fine co-operation from the representatives of the three service departments which are particularly concerned that the administration of justice in the services, and I should like to thank them for their co-operation. As a result of the contact that members of the committee had with them, I am sure that we were all convinced that the administration of justice in the services will be well looked after by them.

The minister has said that the committee suggested a considerable number of amendments. Of course some were suggested which were not adopted, and I presume that is always bound to be so. Everything suggested is not acceptable to the services concerned or to the government. By and large, however, I think the amendments adopted improved the bill to a considerable extent. I think the useful work done by the committee is an indication of the fact that a committee to deal with defence matters in a broader matter would be a useful instrument for investigation of all matters concerning the facts.

All members of the committee expressed their views fully as to changes that should be made in the various segments of the bill, and as far as I'm concerned I will have very little more to say now. The amendments were numerous, and in the committee we passed a motion that the bill being reprinted before was brought back to the house. I do not know whether or not that has been done. I have not had a new copy of the bill, and I think it might be a little difficult for members who were not in the committee to follow it without having everything to bill before them. I presume we can go ahead with the old bill, however, we have had the amendments re-read as they arise.

**Mr. Gillis:** As one of the members who had the privilege of serving in the special committee, I have a few observations to make. The first is that the title of the bill may be misleading. We may think we are starting to discuss a measure concerning national defence as such. My conception of the present bill is that we are not devising ways and means to build forts, an air force, and so on. The main objective of the bill is to bring about some uniformity in the matter of military law so far as the army, navy and air force are concerned. In the past the army was largely guided by the old British army act. Being a relatively new organization, the air force had their own rules and regulations in matters of discipline.



The navy has its own formulas. The main objective of this bill is to arrive at some uniformity in matters of discipline, and I think in that particular the bill has achieved its objective. I do not think you will ever be able to have a workable arrangement that will tie the navy, the army, and the air force together; the navy should have some latitude because of difference in its operations. Looking at the record of all three services I think we must admit that during the last war there was an excellent job of the administration by all services.

I had the opportunity to go over this bill section by section, and I'm satisfied with it; I think it is as good a job as could be done under the circumstances. I found the committee could be a most efficient committee, and its meetings were well attended. The chairman did an excellent job. He was cool-headed and seem to have a lot of common sense, something which is rather rare today.

If there is any particular credit to be given to anyone in connection with this bill I think it should go to the officials of the different branches who were called as witnesses. There are three young men before (page 3319)

the committee who were very well qualified, most efficient, and had all the answers at the fingertips. The dispatch with which the bill went through the committee was due largely to these men from the navy, army and air force will come before the committee with a bill which they had drafted themselves at which they thoroughly understood. Each one accepted the responsibility in his own field. If amendments were suggested there were not considered reasonable, our minds were soon clarified.

As weak as that of the bill section by section there may be other matters that I shall deal with, but, I repeat, it is about as good a job as to be done under the circumstances.

**Mr. Balcer:** Mr. Chairman, as a member of the committee I want to say that I think a real job has been done with this bill. The work of this committee proves the necessity of having a committee on national defence, which would be to the advantage of the three services as well as to Canada as a whole. From the work of this committee we have seen that matters of national defence can be studied by cool heads and real progress made. I do not see that any argument can be offered against the setting up of the committee on national defence.

**Mr. Blackmore:** I had the privilege of representing the Social Credit group on this committee. First of all I would like to commend the chairman. I do not believe I've ever served under finer chairman, and I doubt if I have ever served under as fine a chairman as the hon. member for Vancouver Center. Considering the fact that this was his first experience, he deserves the highest praise.

One thing that was observable in connection with the work of the committee was to fine spirit of sincerity and objectivity which prevailed generally among the members. I found no member of the committee who was not prepared to listen to suggestions from other members and weigh them. Generally speaking the members would hold on until everybody came to a sort of unity of faith as a result of considering the opinions of others.

We were fortunate in having on the committee so many men with such wide experience. I mention the hon. member for Nanaimo as only one, and when I say that there were several members on the committee who seemed quite as much at home with the matters concerning the fighting forces as that hon. member, it will be realized that we had a genuinely fine committee which rendered the best of service to our country.

We're not saying that the bill as it now stands is the acme of perfection, but I think under the conditions under which we labored the costumes the finest contribution that we in our generation can make to a finer and better military service.

**Mr. Smith (Calgary West):** After listening to these paeans of praise I hesitate to say anything which might be regarded as a discordant note, particularly as I was not a member of the committee. There is a good reason for that. As I told a house on another location some years ago, my total military experience consisted of having been a lance-corporal and the boys brigade of a Methodist church and Regina.

Ever since I came to Ottawa I have been interested in courts martial. I want someone to explain to me why in peacetime serious crimes are to be dealt with by courts martial within the armed forces. I know that there is an amendment dealing with murder, rape and other crimes, and I know that the attorney general of any province may direct that the matter be tried in a civilian court on the basis that the civilian authorities must always be paramount. But I have yet to hear a satisfactorily explained why serious crimes such as robbery with violence, armed robbery, things which are becoming too prevalent to this country, should be dealt with by courts martial. Why is it that the armed services insist on having what is practically exclusive jurisdiction in matters of that kind?

We must remember that in the administration of justice generally all prosecutions begin by the laying of what we call an information. Sometimes an investigation is carried out by the police or the protective authorities before information is laid, but when a crime is openly committed no further investigation is needed before the laying of an information. What I have in my mind is this. We say that the attorney general may remove a case on service jurisdiction to a court; yet that seems to me to be a nebulous thing to say when civilian officers of the law have had no part in the investigation of what may result in a charge under military law when the information is in our civilian courts.

I accept the word of hon. gentlemen who have spoken as to the excellent job that was done, but it does seem to me, if I am correctly informed as to what the law, even though amended is, that the civilian court jurisdiction is practically ousted, except in cases of rape and murder; and there is one other which escaped by memory at the moment. Let us consider robbery with violence, or breaking and entering. When someone makes up his mind to break and enter a dwelling house, you often see violence. In

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fact just the other day I was reading in one of the Ottawa papers about a householder shooting a housebreaker dead. The judge, in an Ottawa court I presume, directed the jury that there was nothing for them to decide, because the individual was acting within his rights. Someone died as a result of that incident. I wish, therefore, the minister or someone would explain to us why we have narrowed these serious crimes and confined the jurisdiction within the service.

**Mr. Claxton:** Mr. Chairman, while the observations of the member for Calgary West might properly be made under section 62 of the bill, I am sure that hon. members will allow me to follow him and deal with his remarks, because I agree with him that they have a rather wider connotation and their relationship to section 62 and the following sections.

I should like to point out, with respect, that the hon. member is clearly under a misapprehension as to the state of the existing service law, and also as to what is proposed under this bill concerning the

relationship of service law to civil law. In the first place, it is part of the existing law of the land, whether it be service or civil, and it is fundamental to our system of law, that the civil authority is supreme.

**Mr. Smith (Calgary West):** I said that, of course.

**Mr. Claxton:** That is stated in section 62, subsection 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.*

Quite contrary to the service courts ousting the jurisdiction of the civil courts, this provision, and indeed the common law, expressly provides that the civil court shall be supreme. In any cases which service courts or service law purport or attempt to deal with, it is stated that that is exclusive of civil jurisdiction.

**Mr. Smith (Calgary West):** I agree with that, of course.

**Mr. Claxton:** Service courts have no exclusive jurisdiction in respect of civil offenses. In fact, they do not try civil offenses where the civil courts try civil offenses, because if a civil offence is tried by a civil court in the service court has not jurisdiction. Under no circumstances does the service court oust the jurisdiction of the civil court. If the offense is in fact tried by the latter, in consequence of the civil attorney general laying an indictment or commencing other civil procedure, then the service court by that very fact has not any jurisdiction.

**Mr. Smith (Calgary West):** Yes, that is right.

**Mr. Claxton:** The reason, therefore, for providing that a number of civil offences shall also be service offences is to take care of the case where the civil court does not act or cannot act. It is for that reason that our statute makes the express provision that civil offences are also service offences. In that respect it is similar to the service law of the United Kingdom and the United States, as well as every other country of which I know. There is no other way of doing it. We must provide a complete system of law which is ready to go into effect if the civil law authorities do not act.

The reasons for that, I think, are threefold. In the first place, in the event of war, service personnel may be serving overseas where no civil court is set up. That was true of a large part of the areas in which our forces were joined the second world war. In the second place, even in peacetime service establishments are set up at places where there are no organized civil courts, and if a man commits an act of assault against a fellow soldier there is no civil court operating there to deal with the case. The case should be dealt with. Then there is the third reason, and that is that civil authorities themselves, and a considerable number of cases, prefer to have the matter dealt with by the military authorities. Take as an illustration the case I mentioned a moment ago. If within the confines of a camp a soldier commits an act of assault against another soldier, ordinarily the civil authorities prefer that we deal with it. We do deal with it. But if the civil authorities do with it, then we cannot deal with it and we have no means of indicating to them our preference. The civil authority is always supreme.

**Mr. Smith (Calgary West):** If the minister looks at section 61, he will see it is headed "Limitations with respect to certain offenses."

It reads:

*A service tribunal shall not try any person charged the fence of murder, rape or manslaughter, committed in Canada.*

May I also say that I agree with everything the minister has said about the law as it is or has been. But here we have those three things specifically excepted from the jurisdiction of service courts in Canada. My only suggestion is, and will continue to be, that other major offences should be added to section 61, such as those I mentioned a moment ago – robbery with violence, and breaking and entering. In these days those are the most serious offences which are committed. Obviously I was referring to

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peacetime. I was not suggesting that in wartime the army should not have all the jurisdiction in the world.

**Mr. Macdonnell (Greenwood):** Mr. Chairman, there is a matter which I should like to bring to the attention of the committee. In doing so perhaps I shall need something more than the latitude which we are allowed on the first section of the bill. I hope the minister will be patient with me, because I shall take only a minute or two.

I should like to take this occasion to bring to the attention of the committee a matter which I have often thought of since I was in the army and on service myself. That is the fact that in the British army a chaplain is a commissioned officer and a non-combatant. In the French army I understand that chaplains are non-commissioned officers and are combatant. My observation was that being an officer and a non-combatant put a chaplain in our army under the greatest possible disability. First of all, he was separated from the men. He was associating with the officers, a man who wanted to consult with him about the state of his soul had to be paraded before him by a non-commissioned officer, and that always struck me as an extremely off way to enter upon an intimate conversation.

In the second place, my observation was that only those chaplains who persistently disregarded what was supposed to be the conduct laid down for them were able really to have influence among the troop; by that I mean only those chaplains who persistently went into the danger zone and who, to all intent and purposes, were combatants – that is, at any rate, to the extent of sharing the dangers of combat. But in a great many cases chaplains through no fault of their own, found themselves relegated to rear areas. Perhaps the most serious work they did apart from conducting funerals – there were no marriages – was to act as secretary of the officers' mess. In general, this disability seemed to me to be a great pity. It seemed to me to deprive nine out of ten chaplains of the great influence which they might have had. I suggest that it might be well for us to consider whether what I understand to be the practice of the French army is not sound and worthy of consideration.

**The Chairman:** Before proceeding with the bill, may I suggest that we call clauses 1 and 2, and then that I might call the bill by parts instead of calling each clause. We have twelve parts of the bill and 251 clauses. Is it the unanimous wish of the committee that we proceed by parts?

**Some hon. Members:** Agreed.

**Some hon. Members:** No.

**The Chairman:** Shall clause 1 carry?

**Mr. Smith (Calgary West):** I am through, Mr. Chairman; but to suggest that we are going to call a bill of this length by parts and not by sections would immediately allow the critics of the House of Commons to say, and with some justice, that we were completely disregarding our duties here. Let us go through the motions anyway.

Section agreed to.

Sections 2 to 15 agreed to.

**Mr. Wright:** This is the clause which regulates the size of our forces in the army, the navy and the air force. I should like to draw to the attention of the committee the fact that in this clause we are departing from a principle which has a long tradition in British history; that is the tradition that the numbers in our armed forces are directly under the control of parliament as distinguished from the governor general and the minister in charge of that department. Formerly, by act of the House of Commons, a limit was placed on the numbers of our armed forces in the army. Under clause 16 this matter is left entirely to the discretion of the governor in council. Formerly the air force and the navy were left to the governor in council, but the number of the men directly in the army was provided for by act of parliament. It is an old tradition in British history, dating back to the time of Cromwell if not before that time, that parliament itself should control the size of the army in the country.

I just wanted to bring to the attention of the committee the fact that here we are making a distinct departure from the customs that have prevailed down through history in Great Britain and in Canada. It is all right to say that we control the size of our armed forces through the vote we pass here each year for the carrying on of our armed forces, but this is an indirect way. In Great Britain today each year there is passed the army act – and I understand there is also passed every year what is called the mutiny act – which directly controls the pay and allowances of the armed forces. Thus parliament itself keeps within its control the size of the army at any time in that country.

I did not want anybody to misunderstand me and say that I am trying to restrict the size of the armed forces we may wish to have in Canada at any given time. Under conditions as they exist in the world today, I think we must be prepared to meet any

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emergency. Nevertheless, this is a distinct departure and leave within the control of the governor in council the size of our armed forces. That is a matter which is fairly important in a democratic country, and is a departure from traditional procedure in the British commonwealth of nations.

**Mr. Claxton:** The hon. member for Melford is, of course, completely correct in both his statement of his position as it has been and of the change proposed. I think the justification for it is that, under existing arrangements for defence, the number of men actually involved in the defence of any country at any time is only one of a great number of factors that constitute the control of defence. At the time when the annual army act was brought into effect, in consequence of three uprisings in Britain in which the army had taken a leading part, the number and size of the army really determined what its effect would be on the state. The provision to which the hon. gentleman has referred, under which the size of the army in Britain is controlled by the annual army act, was introduced some two hundred years ago in order to prevent the army, through its size, from being a threat to the state. In Canada, there never has been such a possibility, and I am sure there never could be such a possibility. With forces such as we envisage, of the magnitude of 50,000 for all three services, the army could not be a threat. But in

modern times what is more important really than the size of the forces is the kind of equipment they have. In order to effect control it would be desirable not only to control the number of men but also the number of aircraft, tanks and so on. I shall submit to you, Mr. Chairman, that that is done most effectively today through the control of estimates and the appropriation bill. We believe that parliament in that way has, from year to year, complete control over the armed forces. That is certainly our intention.

**Mr. Fulton:** I am interested in this section. I recall that we had a similar discussion two or three years ago when the minister's predecessor was minister of national defense. My recollection is that at that time a similar change was incorporated in one of the acts, removing the actual control over the limits of numbers of the army from parliament and vesting it was the governor in council. My recollection, although not clear, is that as a result of the discussion some modification was made in the proposed removal of control from parliament. While I quite appreciate the force of the ministers explanation, I am wondering is whether it should not be possible, without making it inefficient or cumbersome from the point of view of administration, to set the maximum number in the statute itself, and leave it still open to the governor in council to set the ceilings which from time to time may be authorized within that maximum number. Would that make it a matter of great difficulty in administering the forces or in bringing about the necessary changes from time to time? — because if not I would think that consideration should be given to that suggestion.

**Mr. Claxton:** the only time when any government should feel it desirable to go beyond the limits imposed in consequence of the last appropriation bill enacted would be in the event of an emergency that was anticipated in the immediate future.

If an emergency were anticipated in the immediate future, certainly if I were minister of defense and had the powers available under the War Measures Act, I would not hesitate to increase the forces over the statutory limit, and it were legally permissible. Therefore it can be the only case—

**Mr. Fulton:** that is true in an emergency, yes.

**Mr. Claxton:** -- in which we would wish for a second, were conceive it possible, to go beyond the limits of parliamentary control as exercised the last time an appropriation bill was passed would be in the event of an emergency. Then, if it were justified, we would have to take action contrary to the limitation.

**Mr. Coldwell:** Is not the emergency which the minister visualizes the emergency which would require the calling of parliament, in any event? Parliament would then immediately be able to authorize the necessary extension, if an extension were necessary. I think under the Atlantic agreement it is understood that each country will decide what it will do for itself. I take it that will involve, as it did in 1939, the calling of parliament authorizing the necessary action in the event of an emergency of the kind which I think the minister visualizes.

**Mr. Claxton:** If my recollection is correct, no effort was made by parliament in 1939 to fix the number of the forces. I would think that parliament would hesitate to put any limits on the activities of the government at that time.

**Mr. Coldwell:** This is peacetime; it is a little different.

**Mr. Claxton:** Yes; I say that in peacetime no government would find it possible to go

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beyond the limits imposed by the appropriate bill. In the event of an emergency parliament would not wish to impose any restriction.

**Mr. Coldwell:** Parliament would be called and could deal with the emergency and authorize the maximum –

**Mr. Claxton:** Yes, but I do not think parliament would even authorize the maximum except to day there shall be no limits.

**Mr. Fulton:** That is right.

**Mr. Coldwell:** Parliament would decide it in wartime . It seems to me to be unnecessary in peacetime to have this provision in the act.

**Mr. Claxton:** My point is this: in peacetime it is not possible because there will not be that money available than parliament agreed to at the time the appropriate bill is passed, you see.

**Mr. Coldwell:** Yes, I see.

**Mr. Claxton:** In wartime parliament itself would not want to impose a restriction. Therefore, from the practical point of view we are better without it.

Section agreed to

*On section 17 – Continuation of existing constitution*

**Mr. Smith (Calgary West):** I heard something said about reprinting the bill. Has it been reprinted?

**Mr. Claxton:** It has not been reprinted. It is being rushed through just as fast as it can be.

**Mr. Smith (Calgary West):** I am not criticizing. It just is not available?

**Mr. Claxton:** It will be available late tonight or early tomorrow.

Section agreed to

Sections 18 to 20 inclusive agreed to

*On section 21 – Commissioned officers*

**Mr. Herridge:** I should like to say a few words in support of the remarks of the hon. member for Greenwood with respect to the question of chaplains having commissioned rank. What I have to say I say from a certain amount of experience with the armed forces and from observations during the last war, and from conversation with veterans of all three services. I think the suggestion made by the hon. member was a good one. It has always appeared to me that by giving a chaplain commissioned rank you are separating him to a great extent from the rank and file of the regiment, the group or ship. I could never imagine one of the apostles having a batman to clean his boots, or somebody springing to attention and saying to them, "Sir". I have comments made to me on many occasions by troops in various places and in various stations on the question. I realize the necessity of army discipline but I would suggest, Mr. Chairman, it would be good enough if the chaplains had warrant rank instead of commissioned rank. That would not separate the chaplains as officers from the men probably so

completely as it does at the present time, I would like the Minister of National Defence to inform the committee what a chaplain receives as an honorary colonel, as an honorary major, and as an honorary captain; what allowance he receives per diem and what services he is entitled to, such as batmen and so on.

**Mr. Claxton:** Mr. Chairman, the point raised by the hon. gentleman who has spoken is of course one of considerable interest, which obviously does not come under this bill, but I should be very glad indeed to make some comment on it now.

In the first place, the point of view which hon. gentlemen have expressed is one which has often occurred to many of us. I must say that when I came into this office three years ago and was seeking to unify the forces as much as possible I discussed with representatives of the various churches and services the possibility of having a single chaplain service for all three services, and of having no ranks for all chaplains. I took this up with representatives of the Catholic and of the Protestant churches at a booth at who were represented by a special committee dealing with the armed forces. I consulted with the Vicar Apostolic of the armed forces and the representative of the Protestant churches with regard to all matters regarding the chaplain service and religion in the armed forces. I should tell you that their view unanimously was opposed to the view set forth by the hon. members. They felt that in the military organization rank is of importance. People know where they stand in relation to each other. For the chaplains to exercise their functions properly they must have not only the respect which is attached to their cloth and to their service, but the status which comes from their having that rank. Further, if the directorate of military engineering or of infantry training is to be headed by a full colonel the chaplain service, being equally important, should be headed by an officer of the rank of colonel or equivalent. I can assure hon. members that I voiced the same point of view as they have. I found the representatives of all the churches and of all the services unitedly all opposed to me in that contention.

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With regard to the suggestion made by the hon. member for Greenwood that it was necessary that men be prorated by an N.C.O. before chaplains, that simply is not so in the armed forces today. The men and officers have access to the chaplains and exactly the same way as they would have access to the spiritual advisers and private life. May I add that I have met almost all the chaplains in our armed forces. We had none in the permanent force before the war; now we have nearly a hundred. They are chosen in consultation with their churches. These are men who have fine records, usually both academic and in the services. They perform an exceedingly valuable continuing service from day to day not only as spiritual advisers but also acting as they would in their normal pastoral capacity as applied to the service personnel, their dependents and children, at the service camps. I can assure hon. members that this matter has received consideration; and on the basis of all the information received and recommendations made I believe we should leave things as they are.

Section agreed to.

Sections 22 to 27 inclusive agreed to.

**Mr. Smith (Calgary West):** one is the difference between a member of the armed forces been attached and been seconded?

**Mr. Claxton:** the terms are defined in service regulations. When anyone is "attached" to another organization he continues to be paid by his own service and to form part of it. When he is "seconded"



he is paid by the other organization and is really totally though temporarily detached from his own service.

Section agreed to.

Sections 29 to 31 inclusive agreed to.

On section 32—Active service, placing forces on active service

**Mr. Smith (Calgary West):** This section states that 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 to do so by reason of an emergency.

Does the word “emergency” refer to defense measures, or is the word broad enough to cover, let us say, the recent Winnipeg flood? From a reading of the section I should not think it would be. Does the authority reside within the army itself when forces are sent to meet emergency conditions such as those which developed in connection with the floods? I asked the question only to be sure that we have some authority for doing that splendid thing which was done at Winnipeg.

**Mr. Claxton:** the hon. member is quite right in his assumption. The meaning of “emergency” is set house in section 2(1), has been the war, invasion, riot or insurrection, real or apprehended. So that the word would not cover the Winnipeg flood. That would be covered by clause 35 in the bill. The legal justification or authority for use in the armed forces and the Winnipeg flood, the Fraser valley flood or similar disasters, is in the power of the governments to employ forces on training or exercises, or for any other national purpose.

**Mr. Smith (Calgary West):** Then the minister is satisfied that the authority is there? Then, what is the proper definition of the word “component” as it is used in this section? Has it in the specific meaning?

**Mr. Claxton:** By clause 15 the Canadian forces shall mean-

*-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.*

Clause 16 (1) states:

*There shall be a component of each service of the Canadian forces consisting of officers and men who are enrolled for continuing, fulltime military service.*

**Mr. Smith (Calgary West):** it refers to the individuals?

**Mr. Claxton:** Yes.

**Mr. Ross (Souris):** Is it customary, where the army performs such splendid work as it did in connection with the Winnipeg flood, to charge up the cost of that work for the time being to the province affected? Is it customary to charge up the pay and allowances of the entire personnel who, in this instance, did such a splendid job in Winnipeg, two of the provincial governments for the time being, until a later adjustment is made?

**Mr. Claxton:** That is a matter of four arrangement. In respect of the Fraser valley and Winnipeg floods it was arranged with those provinces before service personnel went. In that the provinces would cover the costs. In the case of the Fraser valley flood, the cost of

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That personnel was one of them matters which entered into the negotiation of the contribution to be made by the Federal government.

**Mr. Ross (Souris):** But for the time being it discharged to the province.

**Mr. Claxton:** we're keeping the counts on that basis.

Section agreed to  
Sections 33 to 40 inclusive agreed to.

**Mr. Smith (Calgary West):** May we anticipate any complications in view of the conditions surrounding presumption of death and civil life? In civil life, after an absence of seven years, the onus is on the person seeking the order of presumption of death to show that all steps have been taken to find the missing person. Then the court will issue an order of presumption of death. However, under our law, the wife of the absent person who has married a can is still guilty of bigamy.

The last part of the section contains these words:

*-in relation to his status and service and the Canadian forces, be deemed to have died on that date.*

As any consideration been given to the civil position where there is a presumption that a person has died on a certain date?

**Mr. Claxton:** Yes, of course this has relation only to his status is serving in the Canadian forces. We are endeavoring only to deal with the matter on that point of view of a man's interest, and his dependents' interest, and having some determination as to his death so that, for example, a pension may become available to his widow. We do not purport to make any declaration or presumption of death that will have any bearing on his estate from the point of view of the civil jurisdiction of the provinces. I should add, however, that the provinces have found it very convenient and the two of a declaration made by us. In the case of several of the provinces may have said price statute that a declaration or presumption of death made by us shall for provincial purposes be deemed to be a declaration or presumption of death. There is no conflict, and in fact there is a good deal of complementary action.

**Mr. Smith (Calgary West):** It strengthens the position instead of weakening it.

**Mr. Claxton:** that is right.

Section agreed to  
Sections 42 to 53 inclusive agreed to.

*National Defence*

On section 54 – *powers of the defense research board*

**Mr. Wright:** In speaking a few moments ago the minister stated-and I think quite rightly-that that type of equipment and armament with which our forces are supplied is much more important today the numbers and the forces. Under section 54 (c) the defense research board may, with the approval of the minister:

*Enter into contracts and the name of his majesty for research and investigations with respect only to matters relating to defence.*

Under this section the defense research board is given the power to conduct the various types of research necessary for the armed forces today, and that is entirely under the control of the minister. The type of research necessary today to develop a radar, atomic and other weapons which may be used in a future war requires several years to complete and the expenditure of vast sums of money. There is very little use in commencing a research project involving new weapons unless you are prepared to carry it on for a number of years until you arrive at a successful conclusion. I think the power to institute this type of research is a pretty wide one to place in the hands of one minister of the government. I have every respect for the present minister, and I am sure if he were instituting a new research project the matter would go to the governor in council before it was started.

I understand there is a regulation providing that where an expenditure for research fish to be more than \$15,000 the matter must be taken to the governor in council. Nevertheless that is not in the act. It is a regulation which can be changed from time to time without the consent of parliament. It is true that parliament will be notified of any change in the regulation when his made. It seems to me, however, that the initiation of major research projects should be undertaken by the governor in council rather than the minister. At the present time I cannot conceive of the power being abused, body of one stops to think about it this is a permanent act. It will be on the statute books twenty-five years from now when we have passed on and other people will be concerned with it. With the world constituted as it is today it is possible that such a wide power placed in the hands of a minister might be abused. I would have preferred to see a provision in the act stating definitely that the governor and council should be the body to institute matters of major research rather than the minister on his own initiative.

**Mr. Claxton:** I appreciate the remarks of the hon. member. I think the situation here is the same as in the case of the national

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research council. The national research council can inaugurate research without reference to the governor in council but with the authority of the Minister of Trade and Commerce to whom it reports. The national research council is a most successful organization. It has operated very well and has never given cause for anything but congratulation and praise. In setting up the defense research board we followed closely the general set-up of the research council. We have sent out here the constitution of the defense research board. And subsection 2 of section 53 the members of the defense research board and include the president of the national research council and representatives of universities, industries and other research interests. Our thought was that the defense research board would have powers and corresponding roughly to those of the national research council, and that they would use the moneys made available by parliament for defense research in the way they thought desirable, but subject to the approval of the minister.

I can assure the committee that I have of course checked every recommendation they have made, and the major cases have secured the consent of the cabinet defence committee or of cabinet itself. I think the hon. member's proposal would unnecessarily hamstring the activities of the board and load cabinet with a great deal more work than would be justified by the results that would be obtained. I do not think the hon. member appreciates that we probably have been in existence somewhere between 500 and 600 contracts of this kind. Sums of money ranging from two large and \$250 to \$50,000 a year are paid to virtually every university in Canada and a great number of industries to assist them or an individual, to do some bit of defense research. To require that each one of those, or even any of them, should go to the cabinet would, I think, burden a body that is already heavily burdened with an amount of detailed work which is greater than in any other country that I know of.

**Mr. Gillis:** I listened to this argument in the special committee, and I have listened to it a game now. Under the circumstances existing ten or twelve years ago I think perhaps the hon. member for Mel fort would be absolutely right. There is a lot of merit in the argument advanced by the minister. As things are now I think even this provision in the act is going to cause some shifts within the cap that itself in matters of research. For example, the act provides that in the event of an emergency there can be set up army, air force and naval ministers. If that is so the powers delegated to the minister would then be delegated to the new ministers. I think the minister is in a better position than anybody else to know the requirements of the services. The governor in council has a rather abstract thing in the mind of most of us, and this would presuppose that the government has a whole was responsible. I would rather have somebody in this house if I could see, some minister, whether it was army, navy or air or a joint ministerial post such as the present minister holds. There should be somebody coming into the house who was responsible for the appropriations been asked for, for the contracts being made and so on.

I think for the purposes of administration and clarity in the minds of hon. members the arrangement provided by this section is the best. The governor in council leaves nothing but a blank in my mind. There is nothing you can fasten to. The buck can be passed in nineteen different directions.

Take the matter of defense research. Atomic energy research is definitely defence research, and will be for a long time. It will involve a lot of money. At the present time the Minister of Trade and Commerce is administering that particular research job. If it is continued as a matter of defence research I think that will have to be transferred to the Minister of National Defence to whom it rightly belongs. The same thing applies to the purchasing of stores and all that kind of thing. I notice there is a resolution on the order paper providing for powers to be given to the Minister of Trade and Commerce in this connection.

I am satisfied with the section as it is, and I say that with all due respect to my hon. friend. This indicates the flexibility of the C.C.F., how it is possible for us to have different problems. This may involve some shifts in the cabinet, but that would not be a bad thing.

**Mr. Wright:** I do not want the impression to go abroad that I think that every little piece of research should go to the governor in council, because that was not my intention. I was referring to major projects or the development of new weapons or new methods of warfare, which I consider are important enough to be dealt with by then governor in council rather than by the minister. I am sorry the hon. member for Cape Breton South thinks so little of our governor in

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council. I think it is a pretty important body in our democratic procedure and it certainly has more responsibility to parliament to any single minister.

Section agreed to

On section 53-*Expenses of the defence research board*

**Mr. Harkness:** This section makes it possible to appoint persons to the board without reference to the civil service commission. Will these employees come under the benefits of superannuation we, pension and everything else?

**Mr. Claxton:** they are appointed in the same way as civil servants, and the salaries are closely related. They have all the benefits of the Civil Service Superannuation Act.

**Mr. Harkness:** But all appointments can be made without reference to the civil service commission?

**Mr. Claxton:** That Is Right.

**Mr. Harkness:** that may be necessary as far as scientific and technical employees are concerned, but I cannot see the need for it in connection with cleaners, clerical workers and others.

**Mr. Claxton:** The provision is the same as that in connection with the national research council, with which we have close working relations. It permits of more flexibility and that carrying on of research work in isolated centers.

**Mr. Graydon:** What yardstick is used by the cabinet to decide whether appointments will be taken away from the civil service commission?

**Mr. Claxton:** the national research council and the defence research board are intended to co-operate with universities and industry and have close working relationships with them. As a matter of fact, they have salary scales are worked out in conjunction with the universities and industries so as to arrive at a fair figure. I do not think there is much room for argument in the case of scientific and technical personnel, but in the case of others it has frequently been found that a stenographer may have some scientific training-I know of many in the service-and be more valuable because she is familiar with scientific terms or may be able to do a bit of research work herself. Such a girl does not fit exactly into the categories set up by the civil service commission. We think this works much better than it would if these /people came under the civil service commission.

Section 57 agreed to.

On section 58-*No limitation.*

**Mr. Smith (Calgary West):** Is there anything in the act or the regulations to indicate we're within Canada and offense shall be tried?

**Mr. Claxton:** Section 59, just over the page, reads:

*Every person alleged to have committed a service offense may be charged, dealt with and tried above the code of service discipline, whether in Canada or out of Canada.*

Mr. Smith (Calgary West): if an offense were committed and Alberta the offender could be tried in Ottawa?

**Mr. Claxton:** Yes.

**Mr. Smith (Calgary West):** Do you think that is advisable?

**Mr. Claxton:** Yes.

Section agreed to.  
Sections 59 to 63 inclusive agree to.  
Sections 64 to 66 inclusive, as amended, agreed to.  
Sections 69 to 78 inclusive agreed to.  
Section 79 as amended to agree to.  
Sections 80 to 82 inclusive agreed to.

On section 83-*Scandalous conduct by officers.*

**Mr. Smith (Calgary West):** This section reads:

*Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence ...*

I am asking whether or not that word "scandalous" has always been in the act?

**Mr. Claxton:** Yes, sir, that is in the existing naval service act, the army, and navy and air force acts.

Section agreed to.  
Sections 84 to 87 inclusive agree to.

On Section 88-*Drunkenness.*

**Mr. Smith (Calgary West):** I should like to ask the minister if he is satisfied with this section which refers to drunkenness. The same language is used with respect to other offences. It says:

*Drunkenness, whether on duty or not on duty, is an offence and every person convicted thereof his libel to imprisonment for less than two years or to less punishment . . .*

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I am wondering about the second word "less" in that line. A man could be convicted and sentenced to two years less one day. He could be sentenced to one day's imprisonment or one hour. Now, what is less than that? The point I am trying to make is this, and once more it is merely to ensure that these things shall be clear. Let us say a man receives one hour's imprisonment, and another man, for the same offence, might have his pay and allowances stopped for a month. Now, with anyone say that the second man's punishment, because he was not imprisoned, was less than the first man's? I merely thought, sir, that might need some clarification. I know there are many punishments which may be meted out other than imprisonment, and I was wondering who would decide on what punishment would be less than two years or something of that sort.

Mr. Claxton: What is less than each superior punishment is set out in section 121, subsections 1 and 2. In subsection 1 there is an order of punishment running from paragraph (a), death, to paragraph (n), minor punishments. Each one of those, in order, is less than all those prior to it and the enumeration.

**Mr. Smith (Calgary West):** The word "less" is defined there.

**Mr. Claxton:** That is right.

**Mr. Balcer:** If this is the proper time, I should like to ask the minister whether his department is contemplating a change in the rum rationing to the navy, such as substituting beer for rum? Does the minister intend to apply a rum rationing to the three services and the spirit of unification?

Mr. Claxton: This is a very complicated matter, have I do not want to say too much about it because I might get into some trouble. I will say that no immediate changes contemplated in the navy rum rationing. A man may take money, of course, in lieu of the rum ration.

**Mr. Balcer:** has there been any change in substituting beer for rum in the navy?

Mr. Claxton: No.

Section agree to.

Sections 89 to 165 agreed to.

On section 166- *Trial of issue of insanity*

**Mr. Smith (Calgary West):** action reads as follows:

*Where any time after a trial by a court martial finishes 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 eight, capable of conducting his defence, an issue shall be tried and decided by the court martial as to whether the accused person is not then, on account of insanity, unfit to stand or continue his trial.*

The section states that whenever it at any time, after a truck commences disappears, and the issue shall be tried. Is that just the usual criminal procedure, making a distinction between insanity at the time of the trial, which will affect a continuation of the trial, and insanity at the time of the offense is committed? I gather that somewhere, perhaps subsequently, that other branch of that is taking care of.

**Mr. Claxton:** Yes, the hon. member's assumption is quite right. This section 166, subsection one, is practically identical with section 967 of the Criminal Code, and is intended to perform the same function. Section 167 deals with a case where the accused was insane when the offense was committed.

**Mr. Smith (Calgary West):** pass to the question of whether or not he is sane enough to stand his trial at the moment, are there any special provisions for the examination of witnesses? In other words, all military units have medical officers or M.O.'s, as I think they're called. Is there anything in the act with respect to the evidence necessary to come to that conclusion of insanity at the time of trial?

**Mr. Claxton:** The provision is exactly the same as in the Criminal Code.

**Mr. Smith (Calgary West):** it is just the same?

**Mr. Claxton:** Yes. It has to be tried as an issue. The usual practice is to have specialists in that kind of medicine give evidence in addition to the ordinary medical officers.

**Mr. Smith (Calgary West):** That, of course, if so. But I was asking if there's any special provision, for this reason. With regards to a man on an insanity plea-that would be at the time the offense was committed-hour courts have said that there is no location one ever, and I mean that is not a "must", to call expert or medical evidence with respect to the question. The English judges have gone so far as to say that if a man is crazy, to use their expression, no one knows that as well as his friends and neighbors, and that they rely greatly on conduct as a observed by his friends and neighbors. What I have in mind is this. The other day we were discussing something in the house at the suggestion of the Hon. member for Lanark. We put into the act-and I have just forgot the name of the act which was under discussion-a provision that certain things might

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happen on satisfactory evidence of that insanity being given. Perhaps the minister may remember the incident. It took place only a few days ago in the house here. My memory is so bad that I cannot remember just what it was. In any event, the authorities have not seen fit to specify in any way the kind of evidence upon which you might act?

**Mr. Claxton:** No.

**Mr. Smith (Calgary West):** they have left it the same?

**Mr. Claxton:** Any evidence that may be relevant.

Section agreed to.

Sections 167 to 191 inclusive agreed to.

On section 192-*Substitution of new punishment where illegal punishment set aside.*

**Mr. Smith (Calgary West):** I just blew my nose, Mr. Chairman, and lost twelve sections. Is this the new appeal board that has been created?

**Mr. Claxton:** Yes, sir.

Section agreed to.

Sections 193 to 251 the close of agreed to.

Bill reported.

**Mr. Claxton** moved the third reading of the bill.

He said: I should like to express to hon. members what I think everyone must feel, and that his appreciation for their co-operation. I should also like to acknowledge the fair and appreciative remarks made by hon. members with regard to the officers of the services, and I am sure they will include the officers of the Department of Justice also who, as I think all hon. members will agree, have done a really great work in preparing this monumental piece of legislation. I shall be glad indeed to convey to these officers the messages of appreciation that hon. members have voiced, and to add my own to this location as on others. In addition, I should once more like to thank the members of the committee, and particularly the chairman, for the excellent job they did in preparing the bill for our consideration which,



I think, was probably record-breaking in view of the fact that we have been one hour and five minutes on the 251 sections.

Motion agreed to and bill read the third time and passed.

-end of text-

Copied from the original Hansard transcripts by Major (retired) Tim Dunne.