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## Canadian Military Law

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Military law and its administration in the armed forces of the United Kingdom, the United States and Canada has, since the conclusion of the Second World War, been the subject of considerable inquiry. In both the United Kingdom and the United States commissions have been set up to investigate the subject and they have made comprehensive reports. Although no formal inquiry has taken place in Canada, the matter has been under careful study by the Government and in the Department of National Defence. As the result of these inquiries, there has been or will be enacted in all three countries legislation materially changing the administration of military law.

The new Canadian legislation is The National Defence Act, which was enacted during the first session of Parliament in 1950.<sup>1</sup> The purpose of this article is to examine briefly the history of military law and its place in the general law and to examine the National Defence Act in relation to them.

Canadian Military Law is that part of the law of Canada that applies to persons serving in or with the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force. The ordinary law that applies to all citizens applies to the members of the forces also, but by joining the forces they subject themselves to additional legal liabilities and disabilities and acquire certain additional rights.

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<sup>1</sup> 14 Geo. VI, c. 43.

These additional liabilities and additional rights are prescribed in the special code of law that is called military law.

In order to have discipline and organization in an armed service, it is essential that there be a special code of law prescribing that certain acts or neglects that are not offences under the ordinary law shall be offences under the special code and treating acts that may be minor offences under ordinary law as major offences. Many examples of offences of this nature can be found in Canadian military law. One of the most jealously guarded rights of the ordinary citizen is the right to refuse to work, that is, to strike in a peaceful manner, but a strike under military law is mutiny, the punishment for which, in certain circumstances, is death. Again, a fundamental right enjoyed by every Canadian citizen is the right to leave his employment at any time, subject only to a civil liability for breach of contract, but for a soldier to leave his employment with no intention of returning to it is desertion, which, in certain circumstances, may be punished by imprisonment for life. Mutiny and desertion are examples of new offences created by military law. An example of an offence regarded by the civil law as minor and by military law as serious is the act of striking a person. For one man to strike another a blow causing no actual bodily harm is in civil law a common assault, but for a soldier to strike his superior or for an officer to strike a soldier is, under military law, a serious offence involving a heavy punishment.

### *History of Military Law*

Military law, as we know it today, did not exist as a permanent part of the law of England until 1689. Before that date, military law was not enforceable in Britain in time of peace. It was, however, a part of the royal prerogative to issue what were called "Articles of War for the government of His Majesty's forces", but this prerogative could only be exercised in time of war or in respect of troops serving out of the country. It was, therefore, impossible for the King to maintain a standing army in England in time of peace. As soon as the war came to an end or the troops returned to England, the power to discipline the army disappeared. If a man deserted, he could not be punished for his desertion; if he struck a superior officer, he had to be brought before a civil court on a charge of common assault. Under these conditions, it was impossible to keep the army together. It is of interest to note that one of the causes that led to the revolution under Cromwell was the attempt by Charles I to extend the royal prerogative to

the issuance of such Articles of War in England in time of peace.

Some of the old Articles of War are extremely interesting and many of the present provisions of the Army Act of the United Kingdom and of the new Canadian National Defence Act are forecast in them. The earliest Articles of which we have any record are those issued by Richard I to his Crusaders. Most of the offences dealt with in Richard's Articles are prescribed as offences in the National Defence Act, but the punishments for them are no longer barbarous. For instance, Richard dealt with the serious military offence of stealing from a comrade by providing that if one of his Crusaders was guilty of this crime, his head was to be shaven and over it was to be poured a pot of boiling pitch. He was then to be put ashore at the next port, where his decorations would be self-explanatory and would enable him and his crime to be known to all men.

In 1689 the first Mutiny Act was passed. It is only from that date that there existed a permanent code of military law making it possible for the King to maintain a standing army in England in time of peace. In addition to the Mutiny Act the King could still exercise his prerogative to issue Articles of War. This dual system of military law persisted until 1803, when the royal prerogative was merged into an act of Parliament known as the Army Act and a system was developed that persists to this day, that is, an act of Parliament governing each of the services and establishing a code of military law applicable both in peace and war.

A code of law is ineffective unless there are courts charged with the duty of enforcing it. It has therefore been necessary from the earliest times to have military courts to enforce military law. Such a court was first set up at the time of William the Conqueror. It was known as the Court of Chivalry. In addition to administering military law, it had jurisdiction over matters of honour, armourial bearings and other matters of that nature. Its members were the two highest military officials in the land, the Lord High Constable and the Earl Marshal. The Lord High Constable was the Chief General of the King, equivalent to the Chief of Staff of a modern service, and the Earl Marshal was the forerunner of the present Adjutant-General. The court came to be known as the Court of the Constable and Marshal and it is from the Marshal that courts martial derive their name. The Court of Chivalry existed until 1521 when the office of the Lord High Constable was discontinued, its incumbent, the then Duke of Buckingham, having been beheaded by Henry VIII. Subsequently,

military law was administered by what might be called a permanent court martial appointed by the King to accompany the army and to administer law each time Articles of War were issued. From this basis our present system of courts martial in the army and air force has been developed.

Naval law goes back to the time of Richard I, who laid down a code of law to govern a fleet raised by him for a crusade. There was in early times no fixed code of naval law. For each expedition the Lord High Admiral or the Commander-in-Chief issued regulations for the punishment of offences and the maintenance of discipline. These were characterized by the considerable summary powers of commanding officers and the severity of the punishments prescribed. No formal provision seems to have been made for courts martial, but councils of war appear to have been contemplated to advise the commander in connection with serious offences and it is probably out of these bodies that naval courts martial grew. The Royal Navy, as a regular force, dates from the time of Henry VII, but it was not until the Long Parliament that an attempt was made to codify the naval disciplinary system. In 1648 ordinances were enacted authorizing the Lord High Admiral and his Council of War to inflict punishment "according to the Civil Laws, Law Martial and Customs of the Sea". In 1653, provision was made for councils of war of captains or other officers attended by a judge advocate to try members of the navy and army at sea who had offended against the Articles of War. In 1661 Articles of War were passed by Parliament laying down a code of laws for the enforcement of discipline in the navy. This Act, for the first time, referred to a naval court as a court martial. The naval code, which had been amended on several occasions since 1661, was consolidated in 1749. In 1880 an Act, which may be considered as the first edition of the present Naval Discipline Act, was passed. This legislation retained the principal features of the 1749 Act, but modified the severity of some of the punishments to conform with the civil law.

When the Royal Air Force was formed at the conclusion of the First World War, the Air Force Act was passed by the British Parliament. It is in practically the same terms as the Army Act and applies to the Royal Air Force the same code of service law as applies to the army.

Throughout their history, the people of England have taken great care to ensure that the armed services should never take control of the civil government, as has happened so often in other countries. Such care was not considered necessary in the case

of the navy since it was out of England. The Naval Discipline Act is, therefore, a permanent statute, but Army and Air Force Acts are only in force for one year and, if they were not renewed annually by Parliament, the whole system of military law in the United Kingdom would collapse and the army and air force would disintegrate. The Canadian Parliament did not think it necessary to perpetuate the system of an annual act in The National Defence Act, since modern methods of financial control give Parliament the final word as to the size and composition of the forces. If supply is not voted each year, the forces cannot be maintained, for there would be no money with which to pay the men or purchase supplies. In Canada, therefore, Parliament under the National Defence Act has the same effective control over the forces as has the United Kingdom Parliament under the Army and Air Force Acts.

#### *The Judge Advocate General*

The history of the Office of the Judge Advocate General is interesting in that it illustrates the growth of the military legal system. Articles of War issued in 1639 by Charles I contain the first mention of the Judge Advocate General. They gave the Council of War and the Advocate of the Army authority to inquire into offences committed in the army. Orders issued in 1662 by Charles II gave authority to the "Judge Advocate of the Forces" to take informations and depositions, as occasion should require, in all matters triable before a court martial. After the passing of the Mutiny Act in 1689, the Judge Advocate General acted as legal adviser in all matters to the Commander in Chief. He and his deputies advised on the charges and the evidence in cases of difficulty before a court martial was convened. Provision was also made for the attendance of a judge advocate at general courts martial both as a prosecutor and as legal adviser to the court. This combination of duties came to be regarded as undesirable and the judge advocate gradually ceased to act as prosecutor. It was not, however, until 1860 that it was provided that the judge advocate should no longer be the prosecutor. For over a century before 1893, the Judge Advocate General was a privy councillor, a member of the government and usually a member of parliament. He had direct access to the Sovereign on matters pertaining to his office. In 1893 the office ceased to be a political appointment and from that year until 1905 was held by the President of the Probate, Divorce and Admiralty Division of the High Court. In 1905 it was decided that the office should in

future be filled by a person having suitable legal attainments who would be subject to the orders of the Secretary of State for War. In 1948, a further change was made and the Judge Advocate General in the United Kingdom was made responsible to the Lord Chancellor and given largely judicial, as distinct from advisory and administrative functions.

In Canada, the Judge Advocate General is responsible to the Minister of National Defence and, as well as exercising judicial functions in connection with courts martial in the navy, army and air force, acts as legal adviser to the Department, the three services and the Defence Research Board. He is assisted by three deputies, one from each service, and a staff of officers stationed in Ottawa and at key centres throughout Canada where, acting for him, they sit as judge advocates on courts martial and advise service commanders on legal questions.

### *History of Defence Legislation in Canada*

The first military force organized in Canada was the Canadian Army. It was organized under the Militia Act which was passed by the Parliament of Canada in 1868, the year after Confederation. The present Militia Act is chapter 132 of the Revised Statutes of 1927, and it is substantially the same Act as the one enacted in 1868. It has become, because of changed conditions, quite inappropriate as a basis for the organization of the Canadian Army and very little of it has been carried forward, without substantial change, into the National Defence Act.

The first Naval Service Act was passed in 1910, when the Royal Canadian Navy was organized. Under it discipline was administered pursuant to the provisions of the Naval Discipline Act of the United Kingdom. It remained the basic statute of the Navy until 1944, when a new Naval Service Act was passed. This Act differs materially from the Militia Act and the Royal Canadian Air Force Act, in that it contains a Canadian disciplinary code for the Navy. The disciplinary codes in force in the United Kingdom Army and Air Force, as embodied in the Army Act and Air Force Act respectively, are applied to the Canadian Army and Royal Canadian Air Force by the Militia Act and the Royal Canadian Air Force Act. The naval disciplinary code embodied in the Naval Service Act was used as the basis for drafting many of the sections of the National Defence Act.

The first legislation dealing with the Royal Canadian Air Force was the Air Board Act of 1919, the title of which was

changed in 1927 to the Aeronautics Act. This Act dealt not only with the Royal Canadian Air Force but also with civil aviation. The Aeronautics Act is still on the statute books but the Royal Canadian Air Force is now organized and administered under the Royal Canadian Air Force Act, which was first enacted in 1940.

Until 1922, each service also had a separate civil administration. The Army was administered by the Department of Militia and Defence, the Navy by the Department of Naval Service, and the Air Force by the Air Board. In 1922, Canada took its first step towards service unification when the Department of National Defence Act was passed. This Act set up one civil department of government, the Department of National Defence, to administer the three armed services.

Before the enactment of the National Defence Act in 1950, anyone who wished to ascertain the law as it applied to the Canadian forces had to look at no less than six basic statutes, the Militia Act, the Naval Service Act, the Royal Canadian Air Force Act, and the Department of National Defence Act, all acts of the Parliament of Canada, and the Army Act and the Air Force Act of the United Kingdom.

#### *Purpose of The National Defence Act*

The purpose of the National Defence Act was clearly explained by the Honourable Brooke Claxton, Minister of National Defence, when he introduced the Bill in the House of Commons on April 18th, 1950. On that occasion he said:

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 levee en masse and enrolment by ballot; and

- (11) to authorize the employment of the regular forces to meet a national disaster, such as a major flood, and to permit the use of reserve forces for these purposes.

The National Defence Act represents some three years of study by officers of the Department and of the services. In drafting the new Act, advantage was taken of the investigations into service law that were conducted in the United Kingdom and United States, and many of the recommendations made by the investigators there were embodied in the Act.

The drafting of an entirely new and comprehensive bill such as the National Defence Act was an intricate and formidable task. It was undertaken by a group of service legal officers under the supervision of the then Judge Advocate General, Brigadier R. J. Orde. This group was assisted by a senior officer of each of the services who was in a position to advise authoritatively on the various service considerations that arose during the preparation of the Bill. Meetings were held almost daily between the service advisers and the draftsmen over a period of many months. Every section of the new Bill was thoroughly discussed and, in many instances, drafted and redrafted at these meetings. When the first draft was completed, the whole Bill was gone over by the draftsmen with senior counsel of the Department of Justice and further changes made. All provisions having financial implications were examined by the Department of Finance. The Minister, who is a lawyer with considerable experience in and a great knowledge of military law, carefully studied every section and made many valuable suggestions, as did also Colonel Hugues Lapointe, the present Minister of Veterans Affairs, then Parliamentary Assistant to the Minister of National Defence, and Mr. C. M. Drury, the Deputy Minister.

The Bill, having been drafted in final form, was introduced in the Senate by the Minister on November 8th, 1949. This incident is of interest in that it was only the second occasion on which a Minister of the Crown who was not a member of the Senate appeared on the floor of the Senate to introduce a government bill. The Bill was referred by the Senate to a standing committee of experienced senators. This committee examined the Bill clause by clause and made many useful suggestions for its improvement.

The Bill was passed by the Senate, but it was not possible to get it before the House at the 1949 session. It lapsed and had to be reintroduced at the first session of 1950. At that session it was introduced in the House of Commons and a Special Committee



on National Defence, under the chairmanship of Mr. R. O. Campney, now Parliamentary Assistant to the Minister of National Defence, was set up to examine the Bill. This Committee was composed largely of members who had seen military service. It sat almost daily for several weeks and examined the Bill clause by clause. Many valuable amendments were suggested by the Committee and incorporated in the Bill. The Committee reported favourably on the Bill and it was passed by the House of Commons and the Senate, and on June 30th, 1950, received Royal Assent. Royal Assent did not bring the whole of the National Defence Act into effect, however, since section 251 of the Act provides that apart from the five sections mentioned in it, the Act should only come into force on the day or days to be fixed by proclamation of the Governor in Council. Sections 1, 211, 248, 249 and 250 came into force on the passing of the Act; sections 2 to 14 inclusive, 53, 54, 55, 190, 195, 205 to 210 inclusive, 212, 213, 214, 228, 229, 230, 238, 244, 246 and 247, on August 1st, 1950; sections 15 to 37 inclusive, 47 and 48, on August 7th, 1950; and sections 38, 42, 46, 50, 51, 52, 57, 61, 62, 126, 150, 154, 155, 156, 159, 161, 163, 166, 167, 182, 183, 199, 200, 215, 216, 231 to 237 and 239 to 243 inclusive, and 245, on February 1st, 1951. Before all the Act could be brought into effect, the new King's Regulations required to implement it had to be written. These could not be prepared before the Act was passed because they were dependent upon the provisions of the Act. The Regulations have now been completed and it is expected that they will shortly be approved and issued to the forces. When this is done, the remainder of the National Defence Act will be proclaimed and the three Canadian forces will be wholly administered under this new Canadian statute and the new regulations.

### *The National Defence Act*

The National Defence Act is an attempt to amalgamate in one statute all legislation relating to the Canadian Forces and to unify in so far as is possible, having regard to differing conditions of service, the fundamental organization, discipline and administration of the three armed services. The Act is divided into three divisions, thirteen parts and 251 sections. The first division deals with organization for defence, the second contains the Code of Service Discipline and the third the general rules respecting defence.

Part I deals with the Department of National Defence and

replaces the Department of National Defence Act. In it provision is made for the organization of the Department, the appointment and powers of the Minister, the deputy ministers and other civilian employees, and the appointment of a judge advocate general. Probably the most interesting feature of this Part is the provision for additional ministers and deputy ministers in time of war or other emergency. Two possibilities are contemplated. One is the appointment of additional ministers of National Defence, all of whom would have equal status and among whom would be divided the powers vested in the Minister by the Act, probably on a service basis. This was the scheme adopted during the Second World War. The second possibility is the appointment of associate ministers who would be ministers of the Crown but subordinate to the Minister of National Defence. This is the system now in use in both the United Kingdom and the United States, in each of which there is a minister of defence with three subordinate ministers or secretaries, one in charge of each of the three services. By section 13, the Governor in Council and the Minister are given very wide powers to make regulations for the organization, training, discipline, efficiency, administration and good government of the forces, and generally for carrying the purposes and provisions of the Act into effect.

Part II of the Act deals with the constitution of the Canadian Forces. The Canadian Forces are defined as the naval, army and air forces of His Majesty raised by Canada. They consist of three services, the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force. Each service is divided into two components, the regular or full-time service component, and the reserve or part-time service component. Provision is also made for the constitution in an emergency of an active service component in which the regular and reserve components, together with persons enlisted from civil life, could be placed. The numbers in each component are controlled by the Governor in Council. Section 19 provides for the appointment and powers of the chiefs of staff and a chairman of the chiefs of staff committee. The Chairman of the Chiefs of Staff Committee and the three chiefs of staff are the principal service advisers to the Minister. The chairman is responsible for the co-ordination of the training and operations of the Canadian Forces. The chiefs of staff are charged with the control and administration of their respective services and are the medium through which the orders and instructions required to give effect to the decisions and directions of the government and of the Minister are issued to the forces. Provision is

also made in this Part for the enlistment, promotion and release of personnel by the services and for the redress of grievances. The types of service which the forces may be called upon to perform are also dealt with. The first of these is active service. All members of the forces are liable to be called out on active service by the Governor in Council in the event of war, invasion, riot or insurrection, real or apprehended, or in consequence of any action taken by Canada under the United Nations Charter, the North Atlantic Treaty or any other similar instrument for collective defence. If any part of the forces is placed on active service, Parliament, if not in session, must be summoned to meet within ten days. The regular forces have been placed on active service under this section and in September last Parliament was called into special session to approve this and other action taken by the government to deal with the then existing military situation. In addition to their liability to be placed on active service, the regular forces are at all times liable to perform any lawful duty and the reserve forces may be ordered to drill or train periodically and may be called out on full-time service to perform any naval, army or air force duty. A third type of service is also contemplated by the Act. This is service in a national disaster. In such an event the regular forces may be used at once and the reserve forces may be used if authorized by the Governor in Council.

Part III of the Act deals with the constitution and organization of the Defence Research Board. The Board is composed of a chairman, vice-chairman and representatives of the services, the Department, universities, industries and other research interests appointed by the Governor in Council. The Chairman of the Board is its chief executive officer and has a status equivalent to that of a chief of staff.

Part IV of the Act deals with the disciplinary jurisdiction of the services. The first section, 56, sets out the persons who are subject to the Code of Service Discipline. They include all officers and men, persons attached to the forces, persons accompanying the forces, spies, as well as service convicts and service prisoners notwithstanding that they may have been released from the service. From the civilian standpoint, the most interesting of these categories is "persons accompanying the forces". This category includes war correspondents and other persons who in fact live with the forces. Since, under the Interpretation Act, any expression including the male also includes the female, women in the forces are subject in all respects to the Code of Service Discipline. Provision is made, however, permitting the Governor in Council

to limit the application of the Code to women. From the standpoint of constitutional practice, section 62 is extremely interesting. In it is set out the well established principle of the supremacy of the civil over military courts. It provides that nothing in the Code of Service Discipline shall affect the jurisdiction of any civil court to try persons for any offence triable by that court, notwithstanding that such persons may have already been tried by a military court for the same offence.

Part V of the Act sets out the service offences and the punishments for them. The offences prescribed in this Part do not differ materially from the offences prescribed in the Naval Service Act, the Army Act and the Air Force Act. The wording has been modernized and complete uniformity achieved among the three services. By section 119 all civil criminal offences are made service offences and may be tried by service courts, but this does not affect the supremacy of the civil courts in any way. Punishments prescribed for all offences have been brought in line, so far as practicable, with punishments prescribed by the Criminal Code for similar civil offences. The distinction between punishments which may be awarded to officers and to men for various offences has been largely eliminated. Section 125 specifically provides that all defences available before a civil court shall be available to an accused before a military court.

Part VI of the Act deals with arrest and custody. Provision is made in the Part for the issue of warrants and for the appointment of service police. Under section 132 a person who is held in custody for twenty-eight days without a summary trial having been held or a court martial having been ordered to assemble is entitled to petition the Minister to be freed from custody and in any event must be freed after a period of ninety days. It is hoped that this will eliminate the delays in trials that have caused some criticism of the administration of service justice in the past.

Part VII of the Act deals with service tribunals. Under it three classes of tribunals are set up, general courts martial, disciplinary courts martial (which replace the old district courts martial in the Army and Air Force and the disciplinary court in the Navy) and commanding officers and superior commanders with power to try accused persons summarily. General courts martial have power to try any person subject to the Code of Service Discipline for any service offence and to impose any punishment prescribed by the Act. Disciplinary courts martial are limited by the Act in the punishments they can award and may be limited by regulations as to the persons they may try and the

offences with which they may deal. Commanding officers have power to try men serving under their command and to award minor punishments, and superior commanders have power to try junior officers and warrant officers summarily and to award minor punishments. Provision is made for the appointment of judge advocates and for their powers, duties and functions. An interesting feature of the new Act is that findings and sentences of courts martial are no longer subject to confirmation. Findings and sentences are now to be pronounced at the conclusion of the trial and the sentence commences to run immediately. They are still subject however, to review by superior authorities in the service. An interesting new departure is made in section 163, which provides that a court martial may, at the request of the offender and in its discretion, take into consideration, for the purpose of sentence, other service offences similar in character to the one the offender has been found guilty of, which are admitted by him, and impose punishment in respect of those offences. If this is done, the offender is not liable to be tried again for the similar offences he has admitted.

Part VIII contains a number of provisions applicable to findings and sentences after trial. Provision is made here for quashing of findings and mitigation, commutation and remission of punishments by senior authorities.

Part IX is one of the most interesting parts of the Act. It provides for a right of appeal to a civilian court known as the Court Martial Appeal Board. This Board has recently been established under the chairmanship of the Honourable Mr. Justice Cameron of the Exchequer Court of Canada. The other members of the Board are Mr. D. K. MacTavish, Mr. B. M. Alexandor, Mr. Louis Audette and Mr. Leonce Plante. Any person convicted by a court martial has the right to appeal to the Board on any question relating to the legality of all or any of the findings of the court or the legality of the whole or any part of the sentence. Counsel may appear before the Board to argue the appeal in the same manner as before any other court of appeal. Any three members of the Board may hear an appeal. It is contemplated that in time of peace only one tribunal of the Board will be required for appeals, but that in war several tribunals will be set up at convenient places both in Canada and overseas so that appeals may be heard and disposed of speedily. On the hearing of an appeal the Board may set aside any or all findings or direct a new trial. If they find the sentence to be illegal they are not empowered to substitute a new sentence but must refer the proceedings to

the Minister or such authority as he may appoint, who may substitute a new sentence. A further appeal is permitted to the Supreme Court of Canada, with leave of the Attorney General, where there has been dissent in the Board. The accused is also given the right to appeal against the severity of the sentence, but this appeal is dealt with by the service authorities, since it is considered that only they can appreciate the service considerations affecting the sentence. Apart altogether from the right to appeal to the Court Martial Appeal Board, the Judge Advocate General is charged with the duty of reviewing the proceedings of all courts martial, whether or not an appeal has been taken, and of advising the chiefs of staff of the services as to what, if any, action should be taken to quash the findings or to mitigate, commute or remit the sentence. The accused is also given the right to petition for a new trial on the ground that new evidence is available that was not available at his trial. The Judge Advocate General is also charged with the duty of examining such petitions and referring them with his recommendations to the appropriate chief of staff, who may order a new trial.

Part X contains miscellaneous provisions of general application. Such matters as the conduct of witnesses and counsel at courts martial, disposal by civil authorities of deserters and absentees without leave, the imprisonment of service offenders in civil prisons, the conduct of manoeuvres, emergency powers in relation to property, salvage and limitation of civil liability are dealt with.

Part XI deals with the important subject of aid to the civil power. Very little change in substance is made from the provisions formerly contained in the Militia Act, which have proved satisfactory in the past. Liability to aid the civil power is however extended to both the air force and navy as well as the army, although it remains primarily an army responsibility and a matter for overall direction by the army authorities.

Part XII contains a number of sections which, since they establish civil offences that may be committed by any person in Canada in relation to the services, might appropriately be in the Criminal Code. They deal with false answers on enrolment, false medical certificates, personation, interruption of drill or training, hampering manoeuvres, assisting or harbouring deserters and other miscellaneous offences.

Part XIII contains certain unrelated special provisions which can ultimately be dropped from the Act. Section 250, which deals with the repeal of the existing legislation, provides that it may be

repealed by proclamation of the Governor in Council. This provision was necessary because the services have had to operate under the old legislation pending the completion of the new regulations and proclamation of all the new Act.

The National Defence Act effects three major changes in Canadian military law. These are:

(1) Canada's armed forces will henceforth be governed entirely by Canadian law and not in part by the law of the United Kingdom. In the future, when a Canadian soldier is accused of theft, the charge against him will be framed under the Criminal Code and not under the English Larceny Act, at his trial Canadian and not English rules of evidence will be applied and, if he is convicted, the sentence will be that prescribed by Canadian and not by English law. The National Defence Act provides a single source of statutory law relating to the armed forces and it will no longer be necessary to refer to several Canadian and United Kingdom statutes to ascertain the law.

(2) The same code of service discipline will apply to all servicemen irrespective of the service to which they belong or whether they are officers or men. Although in the past the army and air force have been subject to very similar codes, the naval code has differed materially. Under the National Defence Act only a few minor differences, necessitated by differing conditions of service, remain. The punishments prescribed for officers and men are the same and have been brought into line, so far as practicable, with those prescribed by the Criminal Code.

(3) The administration of military law will be subject to review by a civilian court of appeal and, in certain circumstances, by the Supreme Court of Canada. Lawyers will appreciate the salutary and far-reaching effect the right of appeal will have on the whole administration of military law.

It is likely that as the Canadian forces grow, as it seems they inevitably must under existing world conditions, the subject of military law will become of increasing interest to members of the legal profession in Canada. Many lawyers will be called upon to appear before courts martial and the Court Martial Appeal Board as counsel and to advise their clients on matters of military law. It is important that lawyers practising in this field should appreciate that military law is not, as many seem to think, a code of law separate and apart from the ordinary law. It is an integral part of the law of the land based on the same fundamental principles of justice and giving the same protection to an accused as our civil law.