

PART III
CODE OF SERVICE DISCIPLINE

DIVISION 1

DISCIPLINARY JURISDICTION OF THE CANADIAN FORCES

Application

55. to 59. [Repealed, 1998, c. 35, s. 17]

Persons subject to Code of Service Discipline

60. (1) The following persons are subject to the Code of Service Discipline:

- (a) an officer or non-commissioned member of the regular force;
- (b) an officer or non-commissioned member of the special force;
- (c) an officer or non-commissioned member of the reserve force when the officer or non-commissioned member is
 - (i) undergoing drill or training, whether in uniform or not,
 - (ii) in uniform,
 - (iii) on duty,
 - (iv) [Repealed, 1998, c. 35, s. 19]
 - (v) called out under Part VI in aid of the civil power,
 - (vi) called out on service,
 - (vii) placed on active service,
 - (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
 - (ix) serving with any unit or other element of the regular force or the special force, or
 - (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;
- (d) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person who, pursuant to law or pursuant to an agreement between Canada and the state in whose armed forces the person is serving, is attached or seconded as an officer or non-commissioned member to the Canadian Forces;
- (e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or non-commissioned member of any force raised and maintained outside Canada by Her Majesty in right of Canada and commanded by an officer of the Canadian Forces;
- (f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;
- (g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section 47;
- (h) an alleged spy for the enemy;
- (i) a person, not otherwise subject to the Code of Service Discipline, who, in respect of any service offence committed or alleged to have been committed by the person, is in civil custody or in service custody; and
- (j) a person, not otherwise subject to the Code of Service Discipline, while serving with the Canadian Forces under an engagement with the Minister whereby the person agreed to be subject to that Code.

Continuing liability

(2) Every person subject to the Code of Service Discipline under subsection (1) at the time of the alleged commission by the person of a service offence continues to be liable to be charged, dealt with and tried in respect of that offence under the Code of Service Discipline notwithstanding that the person may have, since the commission of that offence, ceased to be a person described in subsection (1).

Retention of status and rank

(3) Every person who, since allegedly committing a service offence, has ceased to be a person described in subsection (1), shall for the purposes of the Code of Service Discipline be deemed, for the period during which under that Code he is liable to be charged, dealt with and tried, to have the same status and rank that he held immediately before so ceasing to be a person described in subsection (1).

R.S., 1985, c. N-5, s. 60; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 19.

Persons accompanying Canadian Forces

61. (1) For the purposes of this section and sections 60, 62 and 65, but subject to any limitations prescribed by the Governor in Council, a person accompanies a unit or other element of the Canadian Forces that is on service or active service if the person

(a) participates with that unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of the civil power, duties in a disaster or warlike operations;

(b) is accommodated or provided with rations at the person's own expense or otherwise by that unit or other element in any country or at any place designated by the Governor in Council;

(c) is a dependant outside Canada of an officer or non-commissioned member serving beyond Canada with that unit or other element; or

(d) is embarked on a vessel or aircraft of that unit or other element.

How persons accompanying Canadian Forces to be treated

(2) Subject to subsection (3), every person mentioned in paragraph 60(1)(f) who, while accompanying any unit or other element of the Canadian Forces, is alleged to have committed a service offence, shall be treated as a non-commissioned member.

Certificate entitling person to treatment as officer

(3) A person described in subsection (2) who holds, from the commanding officer of the unit or other element of the Canadian Forces that the person accompanies or from any other officer prescribed by the Minister for that purpose, a certificate entitling the person to be treated on the footing of an officer, revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, shall be treated as an officer in respect of any offence alleged to have been committed by the person while holding that certificate.

R.S., 1985, c. N-5, s. 61; R.S., 1985, c. 31 (1st Supp.), s. 60.

Command

62. (1) Every person to whom subsection 61(2) or (3) applies shall, for the purposes of the Code of Service Discipline, be deemed to be under the

command of the commanding officer of the unit or other element of the Canadian Forces that the person accompanies.

Spies

(2) Every person described in paragraph 60(1)(h) shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Canadian Forces that may be holding the person in custody from time to time.

Released persons serving sentence

(3) Every person described in paragraph 60(1)(i) who is alleged to have committed, during the currency of the imprisonment or detention of that person, a service offence shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the service prison or detention barrack, as the case may be, in which that person is imprisoned or detained.

R.S., c. N-4, s. 55.

Persons under special engagement

63. (1) Subject to subsection (2), every person mentioned in paragraph 60(1)(j) who, while serving with the Canadian Forces, is alleged to have committed a service offence shall be treated as a non-commissioned member.

Agreement entitling person to treatment as officer

(2) Where the terms of the agreement under which a person described in subsection (1) was engaged entitle the person to be treated as an officer, the person shall be treated as an officer.

Command where person under special engagement

(3) Every person to whom subsection (1) or (2) applies shall, for the purposes of the Code of Service Discipline, be deemed to be under the command of the commanding officer of the unit or other element of the Canadian Forces in which that person is serving.

R.S., 1985, c. N-5, s. 63; R.S., 1985, c. 31 (1st Supp.), s. 60.

64. [Repealed, R.S., 1985, c. 31 (1st Supp.), s. 44]

Persons under command of officer deemed their superior officer

65. (1) Every person subject to the Code of Service Discipline by virtue of paragraph 60(1)(f), (g), (i) or (j) shall, for the purposes of preparation, practice or execution of any plan, arrangement or manoeuvre for the defence or evacuation of any area in the event of attack, be under the command of the commanding officer of the unit or other element of the Canadian Forces that the person is accompanying or with which the person is serving or is in attendance and, for those purposes, the commanding officer shall be deemed to be a superior officer of the person.

Prohibited interpretation

(2) Nothing in subsection (1) shall be construed as requiring any person described therein to bear arms or to participate in any active operations against the enemy.

R.S., c. N-4, s. 55.

Plea in Bar of Trial

Autrefois acquit and autrefois convict

66. (1) A person may not be tried or tried again in respect of an offence or any other substantially similar offence arising out of the facts that gave rise to the offence if, while subject to the Code of Service Discipline in respect of that offence, or if, while liable to be charged, dealt with and tried under the Code in respect of that offence, the person

(a) has been found not guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence; or

(b) has been found guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence and has been punished in accordance with the sentence.

Exception

(2) Nothing in subsection (1) affects the validity of a new trial held pursuant to section 249.11 or 249.16 or a new trial directed by a court having jurisdiction to do so.

Effect of other offences admitted at previous trial

(3) A person who under section 194 has been sentenced in respect of a service offence admitted by that person may not be tried by a service tribunal or a civil court in respect of that offence.

R.S., 1985, c. N-5, s. 66; R.S., 1985, c. 31 (1st Supp.), s. 45; 1998, c. 35, s. 20.

Place of Commission of Offence

Service offence, wherever committed, is triable

67. Subject to section 70, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or outside Canada.

R.S., c. N-4, s. 57.

Place of Trial

No territorial limitation

68. Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or outside Canada.

R.S., c. N-4, s. 58.

Period of Liability

When person is liable

69. (1) A person who is subject to the Code of Service Discipline at the time of the alleged commission of a service offence may be charged, dealt with and tried at any time under the Code.

Sections 130 and 132

(2) Despite subsection (1), if the service offence is punishable under section 130 or 132 and the act or omission that constitutes the service offence would have been subject to a limitation period had it been dealt with other than under the Code, then that limitation period applies.

R.S., 1985, c. N-5, s. 69; 1990, c. 14, s. 7; 1991, c. 43, s. 12; 1993, c. 34, s. 92; 1998, c. 35, s. 21; 2008, c. 29, s. 2.

Limitations with respect to Certain Offences

Offences not triable by service tribunal

70. A service tribunal shall not try any person charged with any of the following offences committed in Canada:

- (a) murder;
 - (b) manslaughter; or
 - (c) an offence under any of sections 280 to 283 of the *Criminal Code*.
 - (d) to (f) [Repealed, 1998, c. 35, s. 22]
- R.S., 1985, c. N-5, s. 70; 1998, c. 35, s. 22.

Jurisdiction of Civil Courts

No interference with civil jurisdiction

71. Subject to section 66, 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.

R.S., 1985, c. N-5, s. 71; R.S., 1985, c. 31 (1st Supp.), s. 46.

DIVISION 2

SERVICE OFFENCES AND PUNISHMENTS

Responsibility for Offences

Parties to offences

- 72.** (1) Every person is a party to and guilty of an offence who
- (a) actually commits it;
 - (b) does or omits to do anything for the purpose of aiding any person to commit it;
 - (c) abets any person in committing it; or
 - (d) counsels or procures any person to commit it.

Attempts

(2) Every person who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence, whether or not it was possible under the circumstances to commit the offence.

Common intention

(3) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to and guilty of that offence.

R.S., c. N-4, s. 62.

Misconduct of Commanders in Presence of Enemy

Offences by commanders when in action

- 73.** Every officer in command of a vessel, aircraft, defence establishment, unit or other element of the Canadian Forces who
- (a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is the duty of the officer to engage, does not use his utmost exertion to bring the officers and non-commissioned members under his command or his vessel, aircraft or other materiel into action,
 - (b) being in action, does not, during the action, in the officer's own person and according to the rank of the officer, encourage his officers and non-commissioned members to fight courageously,
 - (c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, materiel, unit or other element of the Canadian Forces to the enemy,

(d) being in action, improperly withdraws from the action,
(e) improperly fails to pursue an enemy or to consolidate a position gained,
(f) improperly fails to relieve or assist a known friend to the utmost of his power, or
(g) when in action, improperly forsakes his station,
is guilty of an offence and on conviction, if the officer acted traitorously, shall be sentenced to imprisonment for life, if the officer acted from cowardice, is liable to imprisonment for life or less punishment, and in any other case, is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

R.S., 1985, c. N-5, s. 73; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 24.

Misconduct of any Person in Presence of Enemy

Offences by any person in presence of enemy

74. Every person who

(a) improperly delays or discourages any action against the enemy,
(b) goes over to the enemy,
(c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect,
(d) improperly abandons or delivers up any defence establishment, garrison, place, materiel, post or guard,
(e) assists the enemy with materiel,
(f) improperly casts away or abandons any materiel in the presence of the enemy,
(g) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of materiel,
(h) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk,
(i) behaves before the enemy in such manner as to show cowardice, or
(j) does or omits to do anything with intent to imperil the success of any of Her Majesty's Forces or of any forces cooperating therewith,
is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.

R.S., 1985, c. N-5, s. 74; 1998, c. 35, s. 25.

Security

Offences related to security

75. Every person who

(a) improperly holds communication with or gives intelligence to the enemy,
(b) without authority discloses in any manner whatever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of Her Majesty's Forces or of any forces cooperating therewith,
(c) without authority discloses in any manner whatever any information relating to a cryptographic system, aid, process, procedure, publication or document of any of Her Majesty's Forces or of any forces cooperating therewith,
(d) makes known the parole, watchword, password, countersign or identification signal to any person not entitled to receive it,

(e) gives a parole, watchword, password, countersign or identification signal different from that which he received,
(f) without authority alters or interferes with any identification or other signal,
(g) improperly occasions false alarms,
(h) when acting as sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk,
(i) forces a safeguard or forces or strikes a sentinel, or
(j) does or omits to do anything with intent to prejudice the security of any of Her Majesty's Forces or of any forces cooperating therewith,
is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.
R.S., 1985, c. N-5, s. 75; 1998, c. 35, s. 26.

Prisoners of War

Offences related to prisoners of war

76. Every person who

(a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war,
(b) having been made a prisoner of war, fails to rejoin Her Majesty's service when able to do so, or
(c) having been made a prisoner of war, serves with or aids the enemy, is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.
R.S., 1985, c. N-5, s. 76; 1998, c. 35, s. 27.

Miscellaneous Operational Offences

Offences related to operations

77. Every person who

(a) does violence to any person bringing materiel to any of Her Majesty's Forces or to any forces cooperating therewith,
(b) irregularly detains any materiel being conveyed to any unit or other element of Her Majesty's Forces or of any forces cooperating therewith,
(c) irregularly appropriates to the unit or other element of the Canadian Forces with which the person is serving any materiel being conveyed to any other unit or element of Her Majesty's Forces or of any forces cooperating therewith,
(d) without orders from the person's superior officer, improperly destroys or damages any property,
(e) breaks into any house or other place in search of plunder,
(f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving,
(g) steals from, or with intent to steal searches, the person of any person killed or wounded, in the course of warlike operations,
(h) steals any money or property that has been left exposed or unprotected in consequence of warlike operations, or
(i) takes otherwise than for the public service any money or property abandoned by the enemy,

is guilty of an offence and on conviction, if the person committed the offence on active service, is liable to imprisonment for life or to less punishment and, in any other case, is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

R.S., c. N-4, s. 67.

Spies for the Enemy

Offence of being spy

78. Every person who spies for the enemy is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., 1985, c. N-5, s. 78; 1998, c. 35, s. 28.

Mutiny

Mutiny with violence

79. Every person who joins in a mutiny that is accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., 1985, c. N-5, s. 79; 1998, c. 35, s. 28.

Mutiny without violence

80. Every person who joins in a mutiny that is not accompanied by violence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding fourteen years or to less punishment or, in the case of a ringleader of the mutiny, to imprisonment for life or to less punishment.

R.S., 1985, c. N-5, s. 80; 1998, c. 35, s. 28.

Offences related to mutiny

81. Every person who
(a) causes or conspires with any other person to cause a mutiny,
(b) endeavours to persuade any person to join in a mutiny,
(c) being present, does not use his utmost endeavours to suppress a mutiny,
or
(d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof,
is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., c. N-4, s. 71.

Seditious Offences

Advocating governmental change by force

82. Every person who publishes or circulates any writing, printing or document in which is advocated, or who teaches or advocates, the use, without the authority of law, of force as a means of accomplishing any governmental change within Canada is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., c. N-4, s. 72.

Insubordination

Disobedience of lawful command

83. Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., c. N-4, s. 73.

Striking or offering violence to a superior officer

84. Every person who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use or offers violence against, a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

R.S., c. N-4, s. 74.

Insubordinate behaviour

85. Every person who uses threatening or insulting language to, or behaves with contempt toward, a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

R.S., c. N-4, s. 75.

Quarrels and disturbances

86. Every person who
(a) quarrels or fights with any other person who is subject to the Code of Service Discipline, or
(b) uses provoking speeches or gestures toward a person so subject that tend to cause a quarrel or disturbance,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 76.

Resisting or escaping from arrest or custody

87. Every person who
(a) being concerned in a quarrel, fray or disorder,
(i) refuses to obey an officer, though of inferior rank, who orders the person into arrest, or
(ii) strikes or uses or offers violence to any such officer,
(b) strikes or uses or offers violence to any other person in whose custody he is placed, whether or not that other person is his superior officer and whether or not that other person is subject to the Code of Service Discipline,
(c) resists an escort whose duty it is to apprehend him or to have him in charge, or
(d) breaks out of barracks, station, camp, quarters or ship,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 77.

Desertion

Offence

88. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if the person committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.

Definition

(2) A person deserts who
(a) being on or having been warned for active service, duty during an emergency or other important service, is absent without authority with the intention of avoiding that service;
(b) having been warned that his vessel is under sailing orders, is absent without authority with the intention of missing that vessel;

(c) absents himself without authority from his place of duty with the intention of remaining absent from his place of duty;

(d) is absent without authority from his place of duty and at any time during such absence forms the intention of remaining absent from his place of duty; or

(e) while absent with authority from his place of duty, with the intention of remaining absent from his place of duty, does any act or omits to do anything the natural and probable consequence of which act or omission is to preclude the person from being at his place of duty at the time required.

Presumption of desertion

(3) A person who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of remaining absent from his place of duty.

R.S., c. N-4, s. 78.

Connivance at desertion

89. Every person who

(a) being aware of the desertion or intended desertion of a person from any of Her Majesty's Forces, does not without reasonable excuse inform his superior officer forthwith, or

(b) fails to take any steps in his power to cause the apprehension of a person whom he knows, or has reasonable grounds to believe, to be a deserter, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 79.

Absence without Leave

Offence

90. (1) Every person who absents himself without leave is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Definition

(2) A person absents himself without leave who

(a) without authority leaves his place of duty;

(b) without authority is absent from his place of duty; or

(c) having been authorized to be absent from his place of duty, fails to return to his place of duty at the expiration of the period for which the absence of that person was authorized.

R.S., c. N-4, s. 80.

False statement in respect of leave

91. Every person who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 81.

Disgraceful Conduct

Scandalous conduct by officers

92. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service.

R.S., c. N-4, s. 82.

Cruel or disgraceful conduct

93. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

R.S., c. N-4, s. 83.

Traitorous or disloyal utterances

94. Every person who uses traitorous or disloyal words regarding Her Majesty is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

R.S., c. N-4, s. 84.

Abuse of subordinates

95. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 85.

Making false accusations or statements or suppressing facts

96. Every person who

- (a) makes a false accusation against an officer or non-commissioned member, knowing the accusation to be false, or
- (b) when seeking redress under section 29, knowingly makes a false statement affecting the character of an officer or non-commissioned member or knowingly, in respect of the redress so sought, suppresses any material fact

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 96; R.S., 1985, c. 31 (1st Supp.), s. 60.

Drunkenness

97. (1) Drunkenness is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a non-commissioned member who is not on active service or on duty or who has not been warned for duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.

When committed

(2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,

- (a) is unfit to be entrusted with any duty that the person is or may be required to perform; or
- (b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.

R.S., 1985, c. N-5, s. 97; R.S., 1985, c. 31 (1st Supp.), s. 60.

Malingering, aggravating disease or infirmity or injuring self or another

98. Every person who

- (a) malingers or feigns or produces disease or infirmity,
- (b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders, or
- (c) wilfully maims or injures himself or any other person who is a member of any of Her Majesty's Forces or of any forces cooperating therewith, whether

at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service, is guilty of an offence and on conviction, if he commits the offence on active service or when under orders for active service or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.

R.S., c. N-4, s. 88.

Offences in relation to Service Arrest and Custody

Detaining unnecessarily or failing to bring up for investigation

99. Every person who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 89.

Setting free without authority or allowing or assisting escape

100. Every person who
(a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody,
(b) negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody, or
(c) assists any person in escaping or in attempting to escape from custody, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment and, in any other case, is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 90.

Escape from custody

101. Every person who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes or attempts to escape is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 91.

Failure to comply with conditions

101.1 Every person who, without lawful excuse, fails to comply with a condition imposed under Division 3, or a condition of an undertaking given under Division 3 or 10, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

1998, c. 35, s. 29.

Hindering arrest or confinement or withholding assistance when called on

102. Every person who
(a) resists or wilfully obstructs an officer or non-commissioned member in the performance of any duty pertaining to the arrest, custody or confinement of a person subject to the Code of Service Discipline, or
(b) when called on, refuses or neglects to assist an officer or non-commissioned member in the performance of any such duty

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 102; R.S., 1985, c. 31 (1st Supp.), s. 60.

Withholding delivery over or assistance to civil power

103. Every person who neglects or refuses to deliver over an officer or non-commissioned member to the civil power, pursuant to a warrant in that behalf, or to assist in the lawful apprehension of an officer or non-commissioned member accused of an offence punishable by a civil court is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 103; R.S., 1985, c. 31 (1st Supp.), s. 60.

Offences in relation to Vessels

Losing, stranding or hazarding vessels

104. Every person who wilfully or negligently or through other default loses, strands or hazards, or suffers to be lost, stranded or hazarded, any of Her Majesty's Canadian ships or other vessels of the Canadian Forces is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

R.S., c. N-4, s. 94.

105. [Repealed, 1998, c. 35, s. 30]

Disobedience of captain's orders

106. (1) Every person who, when in a ship, disobeys any lawful command given by the captain of the ship in relation to the navigation or handling of the ship or affecting the safety of the ship, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Command in ship

(2) For the purposes of this section, every person of whatever rank shall, when the person is in a ship, be under the command, in respect of all matters relating to the navigation or handling of the ship or affecting the safety of the ship, of the captain of the ship, whether or not the captain is subject to the Code of Service Discipline.

R.S., c. N-4, s. 96.

Offences in relation to Aircraft

Wrongful acts in relation to aircraft or aircraft material

107. Every person who

(a) in the use of or in relation to any aircraft or aircraft material, wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person,

(b) wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any of Her Majesty's aircraft or aircraft material or of aircraft or aircraft material of any forces cooperating with Her Majesty's Forces, or

(c) during a state of war wilfully or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of

any of Her Majesty's aircraft or of aircraft of any forces cooperating with Her Majesty's Forces,
is guilty of an offence and on conviction, if the person acted wilfully, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 97.

Signing inaccurate certificate

108. Every person who signs an inaccurate certificate in relation to an aircraft or aircraft material without taking reasonable steps to ensure that it was accurate, the proof of taking which steps lies on that person, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 98.

Low flying

109. Every person who flies an aircraft at a height less than the minimum height authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 99.

Disobedience of captain's orders

110. (1) Every person who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of Service Discipline, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Command in aircraft

(2) For the purposes of this section,

(a) every person of whatever rank shall, when the person is in an aircraft, be under the command, in respect of all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft, whether or not the captain is subject to the Code of Service Discipline; and

(b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall, so long as the glider is being towed, be under the command, in respect of all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the captain of the towing aircraft is subject to the Code of Service Discipline.

R.S., c. N-4, s. 100.

Offences in relation to Vehicles

Improper driving of vehicles

111. (1) Every person who
(a) drives a vehicle of the Canadian Forces recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case, or, having charge of and being in or on such a vehicle, causes or by wilful neglect permits it to be so driven,
(b) while the person's ability to drive a vehicle of the Canadian Forces is impaired by alcohol or a drug, drives or attempts to drive such a vehicle, whether it is in motion or not, or

(c) having charge of a vehicle of the Canadian Forces, knowingly permits it to be driven by a person whose ability to drive such a vehicle is impaired by alcohol or a drug,

is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

Occupant of driver's seat deemed attempting to drive

(2) For the purposes of paragraph (1)(b), a person who occupies the seat ordinarily occupied by a driver of a vehicle shall be deemed to have attempted to drive the vehicle, unless that person establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

R.S., c. N-4, s. 101.

Improper use of vehicles

112. Every person who

(a) uses a vehicle of the Canadian Forces for an unauthorized purpose,

(b) without authority uses a vehicle of the Canadian Forces for any purpose, or

(c) uses a vehicle of the Canadian Forces contrary to any regulation, order or instruction,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 102.

Offences in relation to Property

Causing fires

113. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any materiel, defence establishment or work for defence is guilty of an offence and on conviction, if the person acted wilfully, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 103.

Stealing

114. (1) Every person who steals is guilty of an offence and on conviction, if by reason of the person's rank, appointment or employment or as a result of any lawful command the person, at the time of the commission of the offence, was entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment and, in any other case, is liable to imprisonment for a term not exceeding seven years or to less punishment.

Definition

(2) For the purposes of this section,

(a) stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, any thing capable of being stolen, with intent

(i) to deprive, temporarily or absolutely, the owner of it or a person who has a special property or interest in it, of the thing or of that property or interest,

(ii) to pledge it or deposit it as security,

(iii) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform, or
(iv) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time when it was taken and converted;
(b) stealing is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it;
(c) the taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment; and
(d) it is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person who converts it.

When movable inanimate things capable of being stolen

(3) Every inanimate thing that is the property of any person and that either is or may be made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order that it may be stolen.

R.S., c. N-4, s. 104.

Receiving

115. Every person who receives or retains in his possession any property obtained by the commission of any service offence, knowing the property to have been so obtained, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

R.S., c. N-4, s. 105.

Destruction, damage, loss or improper disposal

116. Every person who

(a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of Her Majesty's Forces or of any forces cooperating therewith,
(b) wilfully destroys, damages or improperly sells any property belonging to another person who is subject to the Code of Service Discipline, or
(c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration granted by or with the approval of Her Majesty,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 106.

Miscellaneous offences

117. Every person who

(a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Canadian Forces,
(b) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department or the Canadian Forces,
(c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to any of Her Majesty's Forces, or to any forces

cooperating therewith or to any mess, institute or canteen operated for the use and benefit of members of those forces,
(d) demands or accepts compensation, consideration or personal advantage for conveying a vessel entrusted to his care,
(e) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorized to take or receive on board, or
(f) commits any act of a fraudulent nature not particularly specified in sections 73 to 128,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 117; 1998, c. 35, s. 31.

Offences in relation to Tribunals

Definition of "tribunal"

118. (1) For the purposes of this section and section 119, "tribunal" includes, in addition to the tribunals referred to in the definition "service tribunal" in section 2, the Grievance Board, an Inquiry Committee established for the purpose of subsection 165.1(2) or 165.21(2), the Military Police Complaints Commission, a board of inquiry and a commissioner taking evidence under this Act.

Contempt

(2) Every person who
(a) being duly summoned or ordered to attend as a witness before a tribunal, fails to attend or to remain in attendance,
(b) refuses to take an oath or make a solemn affirmation lawfully required by a tribunal to be taken or made,
(c) refuses to produce any document in the power or control of, and lawfully required by a tribunal to be produced by, that person,
(d) refuses when a witness to answer any question to which a tribunal may lawfully require an answer,
(e) uses insulting or threatening language before, or causes any interruption or disturbance in the proceedings of, a tribunal, or
(f) commits any other contempt of a tribunal
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 118; 1998, c. 35, s. 32.

Failure to appear or attend

118.1 Every person who, being duly summoned or ordered to appear as an accused before a service tribunal, fails, without lawful excuse, the proof of which lies on the person, to appear as summoned or ordered, or to remain in attendance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

1998, c. 35, s. 32.

False evidence

119. Every person who, when examined on oath or solemn affirmation before a tribunal, knowingly gives false evidence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

R.S., 1985, c. N-5, s. 119; 1998, c. 35, s. 32.

Offence in Relation to the Sex Offender Information Registration Act
Failure to comply with order or obligation

119.1 (1) Every person who, without reasonable excuse, fails to comply with an order made under section 227.01 of this Act or section 490.012 of the *Criminal Code*, or with an obligation under section 227.06 of this Act or section 490.019 of the *Criminal Code*, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Reasonable excuse

(2) For greater certainty, a lawful command that prevents a person from complying with an order or obligation is a reasonable excuse.

2007, c. 5, s. 2.

Offence in Relation to DNA Identification

Failure to comply with order or summons

119.2 (1) Every person who, without reasonable excuse, fails to comply with an order made under subsection 196.14(4) or 196.24(4) of this Act or subsection 487.051(4) or 487.055(3.11) of the *Criminal Code*, or with a summons referred to in subsection 487.055(4) or 487.091(3) of the *Criminal Code*, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

For greater certainty

(2) For greater certainty, a lawful command that prevents a person from complying with an order or summons is a reasonable excuse.

2007, c. 22, ss. 34, 49.

Offences in relation to Billeting

Ill-treatment or non-payment of occupant or person on whom billeted

120. Every person who

(a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any person is billeted or of any premises in which accommodation for materiel has been provided, or
(b) fails to comply with regulations in respect of payment of the just demands of the person on whom he or any officer or non-commissioned member under his command is or has been billeted or the occupant of premises on which materiel is or has been accommodated,
is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., 1985, c. N-5, s. 120; R.S., 1985, c. 31 (1st Supp.), s. 60.

Offences in relation to Enrolment

Fraudulent enrolment

121. Every person who, having been released from Her Majesty's Forces by reason of a sentence of a service tribunal or by reason of misconduct, has afterwards been enrolled in the Canadian Forces without declaring the circumstances of that release is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 111.

False answers or false information

122. Every person who knowingly

(a) makes a false answer to any question set out in any document required to be completed, or

(b) furnishes any false information or false document, in relation to the enrolment of that person is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 112.

Assisting unlawful enrolment

123. Every person who is concerned in the enrolment of any other person and who knows or has reasonable grounds to believe that by being enrolled that other person commits an offence under this Act is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 113.

Miscellaneous Offences

Negligent performance of duties

124. Every person who negligently performs a military duty imposed on that person is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

R.S., c. N-4, s. 114.

Offences in relation to documents

125. Every person who

(a) wilfully or negligently makes a false statement or entry in a document made or signed by that person and required for official purposes or who, being aware of the falsity of a statement or entry in a document so required, orders the making or signing thereof,

(b) when signing a document required for official purposes, leaves in blank any material part for which the signature is a voucher, or

(c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

R.S., c. N-4, s. 115.

Refusing immunization, tests, blood examination or treatment

126. Every person who, on receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 116.

Injurious or destructive handling of dangerous substances

127. Every person who wilfully or negligently or by neglect of or contrary to regulations, orders or instructions does any act or omits to do anything, in relation to any thing or substance that may be dangerous to life or property, which act or omission causes or is likely to cause loss of life or bodily injury to any person or damage to or destruction of any property, is guilty of an offence and on conviction, if he acted wilfully, is liable to imprisonment for

life or to less punishment and, in any other case, is liable to imprisonment for less than two years or to less punishment.

R.S., c. N-4, s. 117.

Conspiracy

128. Every person who conspires with any other person, whether or not that other person is subject to the Code of Service Discipline, to commit an offence under the Code of Service Discipline is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

R.S., c. N-4, s. 118.

Conduct to the Prejudice of Good Order and Discipline

Prejudicing good order or discipline

129. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

Offence and contraventions prejudicial to good order and discipline

(2) An act or omission constituting an offence under section 72 or a contravention by any person of

(a) any of the provisions of this Act,

(b) any regulations, orders or instructions published for the general information and guidance of the Canadian Forces or any part thereof, or

(c) any general, garrison, unit, station, standing, local or other orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Attempts to commit offences

(3) An attempt to commit any of the offences prescribed in sections 73 to 128 is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

Saving provision

(4) Nothing in subsection (2) or (3) affects the generality of subsection (1).

Not intended to cover offences elsewhere provided for

(5) No person may be charged under this section with any offence for which special provision is made in sections 73 to 128 but the conviction of a person so charged is not invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention.

Officer's responsibility not affected

(6) The responsibility of any officer for the contravention of subsection (5) is not affected by the validity of any conviction on the charge in contravention of that subsection.

R.S., c. N-4, s. 119.

Offences Punishable by Ordinary Law

Service trial of civil offences

130. (1) An act or omission
(a) that takes place in Canada and is punishable under Part VII, the *Criminal Code* or any other Act of Parliament, or

(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the *Criminal Code* or any other Act of Parliament,

is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

Punishment

(2) Subject to subsection (3), where a service tribunal convicts a person under subsection (1), the service tribunal shall,

(a) if the conviction was in respect of an offence

(i) committed in Canada under Part VII, the *Criminal Code* or any other Act of Parliament and for which a minimum punishment is prescribed, or

(ii) committed outside Canada under section 235 of the *Criminal Code*, impose a punishment in accordance with the enactment prescribing the minimum punishment for the offence; or

(b) in any other case,

(i) impose the punishment prescribed for the offence by Part VII, the *Criminal Code* or that other Act, or

(ii) impose dismissal with disgrace from Her Majesty's service or less punishment.

Code of Service Discipline applies

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under paragraph (2)(a) or subparagraph (2)(b)(i).

Saving provision

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 73 to 129 and to impose the punishment for that offence described in the section prescribing that offence.

R.S., 1985, c. N-5, s. 130; 1998, c. 35, ss. 33, 92.

Reference to Attorney General

131. For the purposes of this Act, a reference in the definition "analyst" or "qualified technician" in subsection 254(1) of the *Criminal Code* to the "Attorney General" includes the Attorney General of Canada.

R.S., 1985, c. N-5, s. 131; R.S., 1985, c. 27 (1st Supp.), s. 187.

Offences under law applicable outside Canada

132. (1) An act or omission that takes place outside Canada and would, under the law applicable in the place where the act or omission occurred, be an offence if committed by a person subject to that law is an offence under this Division, and every person who is found guilty thereof is liable to suffer punishment as provided in subsection (2).

Punishment for offence under law applicable outside Canada

(2) Subject to subsection (3), where a service tribunal finds a person guilty of an offence under subsection (1), the service tribunal shall impose the punishment in the scale of punishments that it considers appropriate, having regard to the punishment prescribed by the law applicable in the

place where the act or omission occurred and the punishment prescribed for the same or a similar offence in this Act, the *Criminal Code* or any other Act of Parliament.

Application of Code of Service Discipline

(3) All provisions of the Code of Service Discipline in respect of a punishment of imprisonment for life, for two years or more or for less than two years, and a fine, apply in respect of punishments imposed under subsection (2).

Saving provision

(4) Nothing in this section is in derogation of the authority conferred by other sections of the Code of Service Discipline to charge, deal with and try a person alleged to have committed any offence set out in sections 73 to 130 and to impose the punishment for that offence described in the section prescribing that offence.

Contravention of customs laws

(5) Where an act or omission constituting an offence under subsection (1) contravenes the customs laws applicable in the place where the offence was committed, any officer appointed under the regulations for the purposes of this section may seize and detain any goods by means of or in relation to which the officer believes on reasonable grounds that the offence was committed and, if any person is convicted of the offence under subsection (1), the goods may, in accordance with regulations made by the Governor in Council, be forfeited to Her Majesty and may be disposed of as provided by those regulations.

R.S., 1985, c. N-5, s. 132; 1998, c. 35, ss. 34, 92.

Conviction of Cognate Offence

Person charged with desertion

133. (1) A person charged with desertion may be found guilty of attempting to desert or of being absent without leave.

Person charged with attempt to desert

(2) A person charged with attempting to desert may be found guilty of being absent without leave.

R.S., c. N-4, s. 122.

Person charged with violent offence against officer

134. (1) A person charged with any one of the offences prescribed in section 84 may be found guilty of any other offence prescribed in that section.

Person charged with insubordinate behaviour

(2) A person charged with any one of the offences prescribed in section 85 may be found guilty of any other offence prescribed in that section.

R.S., c. N-4, s. 122.

Conviction of offence in circumstances involving lower punishment

135. A person charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.

R.S., c. N-4, s. 122.

Powers on service trial of civil offences

136. Where a person is charged with an offence under section 130 and the charge is one on which he might, in the event of trial by a civil court in Canada for that offence, have been found guilty of any other offence, the person may be found guilty of that other offence.

R.S., c. N-4, s. 122.

Offence charged, attempt proved

137. (1) Where the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused person may be convicted of the attempt.

Attempt charged, full offence proved

(2) Where, in the case of a summary trial, an attempt to commit an offence is charged but the evidence establishes the commission of the complete offence, the accused person is not entitled to be acquitted, but may be convicted of the attempt unless the officer presiding at the trial does not make a finding on the charge and directs that the accused person be charged with the complete offence.

Conviction a bar

(3) An accused person who is convicted under subsection (2) of an attempt to commit an offence is not liable to be tried again for the offence that he was charged with attempting to commit.

R.S., 1985, c. N-5, s. 137; 1992, c. 16, s. 1.

Where tribunal may make special finding of guilty

138. Where a service tribunal concludes that
(a) the facts proved in respect of an offence being tried by it differ materially from the facts alleged in the statement of particulars but are sufficient to establish the commission of the offence charged, and
(b) the difference between the facts proved and the facts alleged in the statement of particulars has not prejudiced the accused person in his defence,

the tribunal may, instead of making a finding of not guilty, make a special finding of guilty and, in doing so, shall state the differences between the facts proved and the facts alleged in the statement of particulars.

R.S., c. N-4, s. 124.

Punishments

Scale of punishments

139. (1) The following punishments may be imposed in respect of service offences and each of those punishments is a punishment less than every punishment preceding it:

- (a) imprisonment for life;
- (b) imprisonment for two years or more;
- (c) dismissal with disgrace from Her Majesty's service;
- (d) imprisonment for less than two years;
- (e) dismissal from Her Majesty's service;
- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) severe reprimand;
- (j) reprimand;

(k) fine; and

(l) minor punishments.

Definition of "less punishment"

(2) Where a punishment for an offence is specified by the Code of Service Discipline and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

R.S., 1985, c. N-5, s. 139; 1998, c. 35, s. 35.

Imprisonment for shorter term

140. Every person who, on conviction of a service offence, is liable to imprisonment for life, other than as a minimum punishment, or for a term of years or other term may be sentenced to imprisonment for a shorter term.

R.S., 1985, c. N-5, s. 140; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 36.

Dismissal as accompanying punishment

140.1 (1) Where a court martial imposes a punishment of imprisonment for life or for two years or more on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of dismissal with disgrace from Her Majesty's service or a punishment of dismissal from Her Majesty's service.

Dismissal as accompanying punishment

(2) Where a court martial imposes a punishment of imprisonment for less than two years on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of dismissal from Her Majesty's service.

1998, c. 35, s. 36.

Reduction in rank as accompanying punishment

140.2 Where a court martial imposes a punishment of imprisonment on an officer or a non-commissioned member, the court martial may in addition, notwithstanding any other provision of this Division, impose a punishment of reduction in rank, that may be

(a) in the case of an officer, to the lowest commissioned rank; and

(b) in the case of a non-commissioned member, to the lowest rank to which under the regulations the non-commissioned member can be reduced.

1998, c. 35, s. 36.

Sentence of imprisonment for life

140.3 (1) Where a court martial imposes a punishment of imprisonment for life, the sentence to be pronounced shall be

(a) in respect of a person who has been convicted of having committed traitorously an offence of misconduct in the presence of an enemy contrary to section 73 or 74, an offence related to security contrary to section 75 or an offence in relation to prisoners of war contrary to section 76, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(b) in respect of a person who has been convicted of an offence of high treason or an offence of first degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(c) in respect of a person who has been convicted of an offence of second degree murder if that person has previously been convicted of culpable homicide that is murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served twenty-five years of the sentence;

(d) in respect of a person who has been convicted of an offence of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or any greater number of years, not being more than twenty-five, that has been substituted under subsection (2); and

(e) in respect of a person who has been convicted of any other offence, that the person be sentenced to imprisonment for life with normal eligibility for parole.

Provisions of *Criminal Code* apply

(2) Sections 745.1 to 746.1 of the *Criminal Code* apply, with any modifications that the circumstances require, to a sentence of life imprisonment imposed under this Act, and

(a) a reference in sections 745.2 and 745.3 of the *Criminal Code* to a jury is deemed to be a reference to the panel of a General Court Martial; and

(b) a reference in section 745.6 of the *Criminal Code* to the province in which a conviction took place is deemed, in respect of a conviction that took place outside Canada, to be a reference to the province in which the offender is incarcerated when the offender makes an application under that section.

1998, c. 35, s. 36.

Power of court martial to delay parole

140.4 (1) Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where a person receives a sentence of imprisonment for life that is imposed otherwise than as a minimum punishment or a sentence of imprisonment for two years or more on conviction for an offence set out in Schedule I or II to that Act that is punishable under section 130 of this Act, a court martial may order that the portion of the sentence that must be served before the person may be released on full parole is one half of the sentence or ten years, whichever is less.

Condition

(2) The court martial may only make an order under subsection (1) if it is satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the person, that the expression of society's denunciation of the offence or the objective of specific or general deterrence requires that the order be made.

Criminal organization offences

(3) Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where a person receives a sentence of imprisonment for life that is imposed otherwise than as a minimum punishment or a sentence of imprisonment for two years or more on conviction under this Act for a criminal organization offence, the court martial may order that the portion of the sentence that must be served before the person may be released on full parole is one half of the sentence or ten years, whichever is less.

Power of court martial to delay parole

(3.1) Notwithstanding section 120 of the *Corrections and Conditional Release Act*, where an offender receives a sentence of imprisonment of two years or more, including a sentence of imprisonment for life, on conviction under this Act for a terrorism offence, the court martial shall order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less, unless the court martial is satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender, that the expression of society's denunciation of the offence and the objectives of specific and general deterrence would be adequately served by a period of parole ineligibility determined in accordance with the *Corrections and Conditional Release Act*.

Principles

(4) For greater certainty, the paramount principles that are to guide the court martial under this section are denunciation and specific or general deterrence, with rehabilitation of the person, in all cases, being subordinate to those paramount principles.

1998, c. 35, s. 36; 2001, c. 32, s. 68(F), c. 41, s. 98.

Dismissal with disgrace

141. (1) Where a service tribunal imposes a punishment of dismissal with disgrace from Her Majesty's service on an officer or non-commissioned member, the service tribunal may in addition, notwithstanding any other provision of this Division, impose a punishment of imprisonment for less than two years.

Effective date of dismissal

(1.1) A punishment of dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service is deemed to be carried out as of the date on which the release of an officer or a non-commissioned member from the Canadian Forces is effected.

Consequences

(2) A person on whom a punishment of dismissal with disgrace from Her Majesty's service has been carried out is not, except in an emergency or unless that punishment is subsequently set aside or altered, eligible to serve Her Majesty again in any military or civil capacity.

R.S., 1985, c. N-5, s. 141; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, ss. 37, 92.

Detention

142. (1) The punishment of detention is subject to the following conditions:

(a) detention may not exceed ninety days and a person sentenced to detention may not be subject to detention for more than ninety days consecutively by reason of more than one conviction; and

(b) no officer may be sentenced to detention.

Reduction in rank during detention

(2) If a non-commissioned member above the rank of private is sentenced to detention, that person is deemed, for the period of the detention, to be reduced to the rank of private.

R.S., 1985, c. N-5, s. 142; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 38.

Reduction in rank

143. (1) The punishment of reduction in rank applies to officers above the rank of second lieutenant and to non-commissioned members above the rank of private.

Restrictions

(2) The punishment of reduction in rank does not
(a) involve reduction to a rank lower than that to which under regulations the offender can be reduced; and
(b) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank.

R.S., 1985, c. N-5, s. 143; R.S., 1985, c. 31 (1st Supp.), s. 60.

Forfeiture of seniority

144. Where a court martial imposes a punishment of forfeiture of seniority on an officer or non-commissioned member, the court martial shall in passing sentence specify the period for which seniority is to be forfeited.

R.S., 1985, c. N-5, s. 144; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 39.

Fine

145. (1) A fine must be imposed in a stated amount.

Terms of payment

(2) The terms of payment of a fine are in the discretion of the service tribunal that imposes the fine.

Variation of terms of payment

(3) The terms of payment of a fine may be varied, in the case of a summary trial, by the officer who conducted the trial, and in the case of a court martial, by the military judge who imposed the fine or a military judge designated by the Chief Military Judge.

R.S., 1985, c. N-5, s. 145; R.S., 1985, c. 31 (1st Supp.), s. 60; 1998, c. 35, s. 39.

Minor punishments

146. Minor punishments shall be such as are prescribed in regulations made by the Governor in Council.

R.S., c. N-4, s. 125.

Limitation

147. The authority of a service tribunal to impose punishments may be limited in accordance with regulations made by the Governor in Council.

R.S., c. N-4, s. 125.

Prohibition Orders

Prohibition order

147.1 (1) Where a person is convicted by a court martial of an offence
(a) in the commission of which violence against a person was used, threatened or attempted,
(b) that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance,
(c) relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*, or
(d) that is punishable under section 130 and that is described in paragraph 109(1)(b) of the *Criminal Code*,
the court martial shall, in addition to any other punishment that may be imposed for that offence, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting

the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court martial decides that it is so desirable, the court martial shall so order.

Duration of prohibition order

(2) An order made under subsection (1) begins on the day the order is made and ends on the day specified in the order.

Application of order

(3) Unless the order specifies otherwise, an order made under subsection (1) against a person does not apply to prohibit the possession of any thing in the course of the person's duties or employment as a member of the Canadian Forces.

Notification

(4) A court martial that makes an order under subsection (1) shall without delay cause the Registrar of Firearms appointed under section 82 of the *Firearms Act* to be notified of the order.

1995, c. 39, s. 176; 1996, c. 19, s. 83.1.

Requirement to surrender

147.2 A court martial that makes an order under subsection 147.1(1) may, in the order, require the person against whom the order is made to surrender to an officer or non-commissioned member appointed under the regulations for the purposes of section 156, or to the person's commanding officer,

(a) any thing the possession of which is prohibited by the order that is in the possession of the person on the commencement of the order, and

(b) every authorization, licence and registration certificate relating to any thing the possession of which is prohibited by the order that is held by the person on the commencement of the order,

and where the court martial does so, it shall specify in the order a reasonable period for surrendering such things and documents and during which section 117.01 of the *Criminal Code* does not apply to that person.

1995, c. 39, s. 176.

Forfeiture

147.3 (1) Unless an order made under subsection 147.1(1) specifies otherwise, every thing the possession of which is prohibited by the order that, on the commencement of the order, is in the possession of the person against whom the order is made is forfeited to Her Majesty.

Disposal

(2) Every thing forfeited to Her Majesty under subsection (1) shall be disposed of or otherwise dealt with as the Minister directs.

1995, c. 39, s. 176.

Authorizations revoked or amended

147.4 Every authorization, licence and registration certificate relating to any thing the possession of which is prohibited by an order made under subsection 147.1(1) and issued to a person against whom the order is made is, on the commencement of the order, revoked, or amended, as the case may be, to the extent of the prohibitions in the order.

1995, c. 39, s. 176.

Return to owner

147.5 Where the Minister is, on application for an order under this section, satisfied that a person, other than the person against whom an order under subsection 147.1(1) was made,
(a) is the owner of any thing that is or may be forfeited to Her Majesty under subsection 147.3(1) and is lawfully entitled to possess it, and
(b) had no reasonable grounds to believe that the thing would or might be used in the commission of the offence in respect of which the order was made,
the Minister shall order that the thing be returned to the owner or the proceeds of any sale of the thing be paid to that owner, or, if the thing was destroyed, that an amount equal to the value of the thing be paid to the owner.

1995, c. 39, s. 176.

Sentences

One sentence only to be passed

148. Only one sentence shall be passed on an offender at a trial under the Code of Service Discipline and, where the offender is convicted of more than one offence, the sentence is good if any one of the offences would have justified it.

R.S., c. N-4, s. 126.

Incarceration under more than one Sentence

Concurrent punishment

149. Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, after the date of the pronouncement of the new sentence, run concurrently but the punishment higher in the scale of punishments shall be served first.

R.S., c. N-4, s. 127.

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149.1 [No section 149.1]

Punishment for Certain Offences

Punishment for certain offences

149.2 (1) Notwithstanding anything in this Act, the *Criminal Code* or any other Act of Parliament, a person convicted of an offence under this Act for which the maximum punishment is imprisonment for five years or more, or an offence punishable under section 130 that is an indictable offence under the *Criminal Code* or any other Act of Parliament, other than an offence for which a sentence of imprisonment for life is imposed as a minimum punishment, where the act or omission constituting the offence also constitutes a terrorist activity, is liable to imprisonment for life.

Offender must be notified

(2) Subsection (1) does not apply unless the Director of Military Prosecutions satisfies the court martial that the offender, before making a plea, was notified that the application of that subsection would be sought by reason of the act or omission constituting the offence also constituting a terrorist activity.

2001, c. 41, s. 99.

Ignorance of Law

Ignorance not to constitute excuse

150. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by the person.

R.S., c. N-4, s. 128.

Civil Defences

Rules of civil courts applicable

151. All rules and principles from time to time followed in the civil courts that would render any circumstance a justification or excuse for any act or omission or a defence to any charge are applicable in any proceedings under the Code of Service Discipline.

R.S., 1985, c. N-5, s. 151; R.S., 1985, c. 31 (1st Supp.), s. 47.

152. [Repealed, R.S., 1985, c. 31 (1st Supp.), s. 47]