

TABLE OF CONTENTS

<i>Foreword to the Second Edition</i>	iii
<i>Foreword to the First Edition</i>	v
<i>Preface</i>	vii
<i>A Word of Introduction by the authors</i>	ix
<i>Table of Cited Cases</i>	xlix
<i>Table of Acronyms and Abbreviations</i>	lxi

CHAPTER 1 – THE DEFENCE PORTFOLIO AND KEY ACTORS

PART 1 – BACKGROUND

A. Generally	5
B. Objectives of the <i>National Defence Act</i>	5
C. The <i>Code of Service Discipline</i>	6
(1) Generally	6
(2) Jurisdiction	7
(3) Application	7
(4) Content and Scope	7
D. Other legal consequences flowing from the fact that the <i>Criminal Code</i> or the federal statutory offences become a breach of the <i>Code of Service Discipline</i>	8
E. The Constitutional validity of the military penal justice system	10
F. The <i>Queen's Regulations and Orders</i> (QR&Os) for the Canadian Forces and their scope	16

PART 2 – SERVICE TRIBUNALS

A. Service Tribunals	16
B. Punishments	17
C. Differences between a court martial and a civilian trial	18
D. Differences between a court martial and a summary trial	19
E. Comparison of the CF Summary Trial with other military systems	20
(1) United States	20
(2) United Kingdom	21
(3) Australia	21
F. <i>International Covenant on Civil and Political Rights</i> guarantees a right of appeal	21

PART 3 – DEFENCE PORTFOLIO AND KEY ACTORS

A. The Defence Portfolio	22
B. Office of the Minister of National Defence	22
C. Office of the Chief Military Judge	23
(1) Chief Military Judge	23
(2) Deputy Chief Military Judge	23
(3) Military Judges	23
(4) Court Martial Administrator and Court Reporters	23
D. Department of National Defence	23
E. National Defence Headquarters	24
(1) Background	24
(2) National Defence Headquarters	25
(3) Deputy Minister of National Defence	26

(4) Chief of the Defence Staff	26
(5) Vice Chief of the Defence Staff	27
(6) Judge Advocate General	27
(7) Office of the Chief Military Personnel	28
(8) The Military Police Group	29
F. Operational Commands	31
G. Other Organizations	32
(1) DND/ CF Legal Advisor	32
(2) Communications Security Establishment (CSE)	32
(3) Defence Research and Development Canada (DRDC)	32
(4) Military Police Complaints Commission (MPCC)	32
(5) Military Grievances External Review Committee (MGERC)	32
(6) Canadian Forces Morale and Welfare Services (CFMWS)	33
(7) Cadets and Junior Rangers	33
(8) Canadian Forces Housing Agency (CFHA)	33
(9) The DND/CF Ombudsman	33
(10) The National Search and Rescue Secretariat (NSRS)	34

CHAPTER 2 — WINDS OF CHANGE

PROPOSALS FOR THE MODERNIZATION OF THE CANADIAN MILITARY JUSTICE SYSTEM

1 Introduction	39
2 Complexity, ambiguity and disparity and questionable differential treatment	40
3 An accused's differential treatment under the military penal justice system	42
3.1 The constitutional right to a jury trial	42
3.2 The loss of the benefits of a hybrid offence	48
3.3 The loss of a preliminary inquiry	49
3.4 The right of appeal	49
3.5 The chain of command's power to review and substitute findings and punishments or to commute or remit punishments	50
3.6 The sentencing range	52
4 A criminal record for disciplinary offences	53
5 Military Judges	55
6 Summary Trials	56
7 Military Boards of Inquiry	61
8 Grievances	64
9 Judge Advocate General	67
10 Conclusion	69

CHAPTER 3 – National Defence Act Annotated

Short title and Interpretation

1 Short Title	82
2 Definitions	90

PART I DEPARTMENT OF NATIONAL DEFENCE

Establishment of the Department

3 Formation of department	100
---------------------------------	-----

Minister		
4	Duties	101
5	Designation of person to execute Minister's functions	102
6	Associate Minister	103
Deputy Minister		
7	Appointment	103
8	Associate Deputy Ministers	103
Judge Advocate General		
9	Appointment	104
9.1	Legal adviser	106
9.2	Superintendence of military justice	108
9.3	Responsible to Minister	109
9.4	Rank	110
10	Authority to act for Judge Advocate General	110
10.1	Non-derogation	110
Materiel		
11	Delivery of materiel for sale or disposal	111
Regulations		
12	Power of Governor in Council to make regulations	111
13	Limitation on Minister's power	114
13.1	Military Police Professional Code of Conduct	114
PART II		
THE CANADIAN FORCES		
Constitution		
14	Canadian Forces	119
15	Regular force	122
16	Special force	127
Units and Other Elements		
17	Organization	128
Chief of the Defence Staff		
18	Appointment, rank and duties of Chief of Defence Staff	129
18.1	Vice Chief of the Defence Staff	131
18.2	Absence or incapacity of Chief of the Defence Staff	131

Canadian Forces Provost Marshal

18.3	Appointment	133
18.4	Duties and Functions	133
18.5	General Supervision	134
18.6	Annual Report	135

Powers of Command

19	Authority of officers and non-commissioned members	136
-----------	--	-----

Enrolment

20	Commissioned officers	138
21	Ranks of officers and non-commissioned members	142
22	Numbers in ranks and trade groups	145
23	Obligation to serve	145
24	Consent to transfer	147
25	Effect of receipt of pay if not enrolled	148
26	Effect of receipt of pay if irregularly enrolled	148

Attachment and Secondment

27	Manner and conditions of attachment and secondment	149
-----------	--	-----

Promotion

28	Authority to promote	150
-----------	----------------------------	-----

Grievances

29	Right to grieve	154
29.1	Authorities for determination of grievances	157
29.101	Grievances submitted by military judges	159
29.11	Final authority	159
29.12	Referral to Grievances Committee	161
29.13	Chief of the Defence Staff not bound	163
29.14	Delegation	163
29.15	Decision is final	165

Military Grievances External Review Committee

29.16	Grievances Committee	166
29.17	Chairperson	168
29.18	Head office	168
29.19	Staff	169
29.2	Duties and functions	169
29.21	Powers	170
29.22	Restriction	170
29.23	Witness not excused from testifying	170
29.24	Expenses	171
29.25	Return of documents, etc.	171
29.26	Rules	171

29.27	Protection of members	172
29.28	Annual Report	173
Release		
30	Entitlement	173
Active Service		
31	Placing forces on active service	179
32	Proclamation for meeting of Parliament	182
Service		
33	Liability in case of regular force	184
Limitation on Deployment		
34	Persons under eighteen	186
Pay and Allowances		
35	Treasury Board to establish	188
Supply and Issue of Materiel		
36	Ministerial approval	189
Public Property		
37	Liability for loss or damage	189
Non-public Property		
38	Non-public property of units	190
39	Other non-public property	192
40	Liability for loss or damage	192
41	Ministerial directions	193
Service Estates		
42	Collection, administration and distribution	193
Presumption of Death		
43	Authority to issue certificate	196
Personal Effects of Absentees		
44	Vesting and disposal	197

Boards of Inquiry		
45	Convening boards	197
45.1	Witness not excused from testifying	200
Cadet Organizations		
46	Formation	201
Educational Institutions		
47	Establishment	204
Service Associations		
48	Establishment	207
Exercise of Authority		
49	Exercise of authority of officer or non-commissioned member by another	208
50	Method of signifying orders	210
Notification of Orders		
51	Publication	210
Validity of Documents		
52	Authenticity of documents	211
53	Signature on commissions	211
54	Validity of bonds	211
PART III		
CODE OF SERVICE DISCIPLINE		
Summary	.....	213
DIVISION 1 – DISCIPLINARY JURISDICTION OF THE CANADIAN FORCES		
Application		
55-59	Repealed	
Commentary	.....	222
60	Persons subject to Code of Service Discipline	229
61	Persons accompanying Canadian Forces	236
62	Command	238
63	Persons under special engagement	240
64	Repealed	
65	Persons under command of officer deemed their superior officer	241
Plea in Bar of Trial		
66	Autrefois acquit and autrefois convict	242

Place of Commission of Offence		
67	Service offence, wherever committed, is triable	247
Place of Trial		
68	No territorial limitation	249
Period of Liability		
69	When a person is liable	249
Limitations with respect to Certain Offences		
70	Offences not triable by service tribunal	253
Jurisdiction of Civil Courts		
71	No interference with civil jurisdiction	254
DIVISION 2 – SERVICE OFFENCES AND PUNISHMENTS		
Commentary	.....	256
Responsibility for Offences		
72	Parties to offences	256
Civil Defences		
72.1	Rules and principles of civil counts applicable	262
Ignorance of the Law		
72.2	Ignorance not to constitute excuse	263
Misconduct of Commanders in Presence of Enemy		
73	Offences by commanders when in action	263
Misconduct of any Person in Presence of Enemy		
74	Offences by any person in presence of enemy	266
Security		
75	Offences related to security	267
Prisoners of War		
76	Offences related to prisoners of war	269

Miscellaneous Operational Offences

77	Offences related to operations	270
-----------	--------------------------------------	-----

Spies for the Enemy

78	Offence of being spy	271
-----------	----------------------------	-----

Mutiny

79	Mutiny with violence	272
80	Mutiny without violence	272
81	Offences related to mutiny	273

Seditious Offences

82	Advocating governmental change by force	275
-----------	---	-----

Insubordination

83	Disobedience of lawful command	276
84	Striking or offering violence to a superior officer	279
85	Insubordinate behaviour	280
86	Quarrels and disturbances	282
87	Resisting or escaping from arrest or custody	283

Desertion

88	Offence	286
89	Connivance at desertion	288

Absence without Leave

90	Offence	289
91	False statement in respect of leave	291

Disgraceful Conduct

92	Scandalous conduct by officers	292
93	Cruel or disgraceful conduct	294
94	Traitorous or disloyal utterances	295
95	Abuse of subordinates	296
96	Making false accusations or statements or suppressing facts	297
97	Drunkenness	299
98	Malingering, aggravating disease or infirmity or injuring self or another	300

Offences in relation to Service Arrest and Custody

99	Detaining unnecessarily or failing to bring up for investigation	303
100	Setting free without authority or allowing or assisting escape	304
101	Escape from custody	307
101.1	Failure to comply with conditions	309

102	Hindering arrest or confinement or withholding assistance when called on	310
103	Withholding delivery over or assistance to civil power	314
Offences in relation to Vessels		
104	Losing, stranding or hazarding vessels	315
105	Repealed	
106	Disobedience of captain's orders	316
Offences in relation to Aircraft		
107	Wrongful acts in relation to aircraft or aircraft material	318
108	Signing inaccurate certificate	319
109	Low flying	320
110	Disobedience of captain's orders	320
Offences in relation to Vehicles		
111	Improper driving of vehicles	322
112	Improper use of vehicles	325
Offences in relation to Property		
113	Causing fires	326
114	Stealing	327
115	Receiving	328
116	Destruction, damage, loss or improper disposal	329
117	Miscellaneous offences	330
Offences in relation to Tribunals		
118	Definition of "tribunal"	331
118.1	Failure to appear or attend	333
119	False evidence	333
Offence in Relation to the Sex Offender Information Registration Act		
119.1	Failure to comply with order or obligation	334
Offence in Relation to DNA Identification		
119.2	Failure to comply with order or summons	335
Offences in relation to Billeting		
120	Ill-treatment or non-payment of occupant or person on whom billeted	335
Offences in relation to Enrolment		
121	Fraudulent enrolment	336
122	False answers or false information	337

123	Assisting unlawful enrolment	338
------------	------------------------------------	-----

Miscellaneous Offences

124	Negligent performance of duties	338
125	Offences in relation to documents	341
126	Refusing immunization, tests, blood examination or treatment	343
127	Injurious or destructive handling of dangerous substances	345
128	Conspiracy	345

Conduct to the Prejudice of Good Order and Discipline

129	Prejudicing good order or discipline	347
------------	--	-----

Offences Punishable by Ordinary Law

130	Service trial of civil offences	353
131	Reference to Attorney General	368
132	Offences under law applicable outside Canada	369

Conviction of Cognate Offence

133	Person charged with desertion	370
134	Person charged with violent offence against officer	370
135	Conviction of offence in circumstances involving lower punishment	371
136	Powers on service trial of civil offences	371
137	Offence charged, attempt proved	371
138	Where tribunal may make special finding of guilty	372

Punishments

139	Scale of punishments	373
140	Imprisonment for shorter term	397
140.1	Dismissal as accompanying punishment	397
140.2	Reduction in rank as accompanying punishment	398
140.3-140.4	Repealed	
141	Dismissal with disgrace	398
142	Detention	401
143	Reduction in rank	402
144	Forfeiture of seniority	403
145	Fine	406
145.1	Civil enforcement of fines	407
146	Minor punishments	407
147	Limitation	409

Prohibition Orders

147.1	Prohibition order	409
147.2	Requirement to surrender	413
147.3	Forfeiture	414
147.4	Authorizations revoked or amended	414
147.5	Return to owner	414

Sentences		
148	One sentence only to be passed	415
Incarceration under more than one Sentence		
149	Concurrent punishment	417
149.1	Repealed	
Punishment for Certain Offences		
149.2	Punishment for certain offences	417
150-152	Repealed	
DIVISION 3 – ARREST AND PRE-TRIAL CUSTODY		
Interpretation		
153	Definitions	418
Authority to Arrest		
154	General authority	419
155	Powers of officers	420
156	Powers of military police	421
157	Issue of warrants	425
Action following Arrest		
158	Release from custody	426
158.1	Report of custody	429
Initial Review		
158.2	Review of report of custody	430
158.3	Continuing duty to release	431
158.4	Duty to retain in custody if designated offence	431
158.5	Duty to review where charge not laid	431
158.6	Release with or without conditions	432
Review by Military Judge		
158.7	Review of directions [Proposed]	433
159	Hearing by military judge	434
159.1	Onus on Canadian Forces	435
159.2	Justification for retention in custody	436
159.3	Onus on person in custody	438
159.4	Release with or without undertaking	438
159.5	Hearing may be adjourned	439
159.6	Alternate means of hearing	439
159.7	Reasons	440

Duty of Director of Military Prosecutions		
159.8	Review after 90 days	440
Review by Court Martial Appeal Court		
159.9	Review of direction	441
Direction Cancelled [Proposed]		
159.91	Regulations [Proposed]	442
DIVISION 4 – COMMENCEMENT OF PROCEEDINGS		
Interpretation		
160	Definition of “commanding officer”	443
Laying of Charge		
161	Laying of charge	443
161.1	Referral to commanding officer	447
Duty to Act Expeditiously		
162	Duty to act expeditiously	447
Right to Trial by Court Martial		
162.1	Election	450
162.2	Referral of charge	450
DIVISION 5 – SUMMARY TRIALS		
Commentary		
Interpretation		
162.3	Definitions	463
Summary Trials by Commanding Officers		
163	Jurisdiction	463
163.1	When no summary trial	473
Summary Trial by Superior Commanders		
164	Jurisdiction	474
164.1	When no summary trial	478
Referral to Director of Military Prosecutions		
164.2	Duty to Refer	479

DIVISION 6 – TRIAL BY COURT MARTIAL**Charge must be Preferred**

165	Charge must be preferred	480
------------	--------------------------------	-----

Director of Military Prosecutions

165.1	Appointment	481
165.11	Duties and functions	482
165.12	Preferring charges	483
165.13	Referral of charge	485
165.14	Repealed	
165.15	Barristers and advocates to assist	485
165.16	Acting Director of Military Prosecutions	486
165.17	Relationship to Judge Advocate General	486

Court Martial Administrator

165.18	Appointment	487
165.19	Duties	487
165.191	Convening General Court Martial	489
165.192	Convening Standing Court Martial	490
165.193	Choice of accused	490
165.2	Acting Court Martial Administrator	492

Military Judges

165.21	Appointment	492
---------------	-------------------	-----

Reserve Force Military Judges

165.22	Panel established	494
165.221	Removal from panel	494
165.222	Chief Military Judge	495
165.223	Restriction on activities	495

Duties and Immunity of Military Judges

165.23	Judicial duties and functions	495
165.231	Immunity	496

Chief Military Judge

165.24	Chief Military Judge	496
165.25	Duties and functions	497
165.26	Delegation	497
165.27	Delegation	497
165.28	Deputy Chief Military Judge	497
165.29	Power, duties and functions	497
165.3	Rules of practice and procedure	498

Military Judges Inquiry Committee

165.31	Composition of Committee	498
165.32	Inquiry required	499

Military Judges Compensation Committee

165.33	Composition of Committee	500
165.34	Mandate	502
165.35	Other inquiries	503
165.36	Extension	503
165.37	Minister's duties	503
165.38	Costs payable [Proposed]	504

General Courts Martial

166	Jurisdiction	504
166.1	Punishment limitation	509
167	Composition	510
168	Ineligibility to serve	511
169 - 172	Repealed	

Standing Courts Martial

173	Jurisdiction	512
174	Composition	518
175	Punishment limitation	518
176 - 178	Repealed	

Powers

179	Courts martial	519
------------	----------------------	-----

Admission to Courts Martial

180	Trials public	524
------------	---------------------	-----

Rules of Evidence

181	Regulations to establish rules	526
182	Admission of documents and records	530

Witnesses at Courts Martial

183	Procurement of attendance of witnesses	531
------------	--	-----

Evidence on Commission

184	Appointment of commissioner to take evidence	532
185	Copy to accused	533

Objections		
186	Objections	534
Preliminary Proceedings		
187	Preliminary proceedings	534
Amendment of Charges		
188	Amendment if defence not prejudiced	536
Adjournments		
189	Adjournment	536
Views		
190	Authority for viewing	536
Decisions of General Court Martial		
191	Questions of law	537
191.1	Plea of guilty	538
192	Decision of panel	538
192.1	Disagreement of panel	539
193	Sentence	540
Similar Offences		
194	Similar offences may be considered in imposing sentence	540
Absconding Accused [Proposed]		
194.1	Accused absconding during court martial [Proposed]	541
Pronouncement of Findings and Sentence		
195	Manner and effective date of pronouncement	542
Death or Incapacity		
196	Death or incapacity to continue of judge	543
196.1	Dissolution	544
DIVISION 6.1 – FORENSIC DNA ANALYSIS		
196.11	Definitions	544
196.12	Information for DNA warrant	547
196.13	Telewarrants	548
196.14	Order – primary designated offences	550
196.15	Repealed	
196.16	Timing of order	552

196.161	Failure to appear	553
196.17	When collection to take place	553
196.18	Report of peace officer	554
196.19	No criminal or civil liability	555
196.2	Investigative procedures	555
196.21	Duty to inform	556
196.22	Verification	557
196.23	Destruction of bodily substances	557
196.24	Collection of additional bodily substances, etc.	558
196.241	Review by Director of Military Prosecutions	559
196.25	Order denying access to information used to obtain a warrant	560

DIVISION 6.2 – IDENTIFICATION OF ACCUSED PERSONS AND OFFENDERS

196.26	Meaning of “designated offence”	561
196.27	Fingerprints and photographs	563
196.28	No liability for acting under this Division	566
196.29	Destruction of fingerprints, photographs, etc.	566

DIVISION 7 – MENTAL DISORDER

Interpretation

197	Definitions	566
------------	-------------------	-----

Fitness to Stand Trial

198	Presumption of fitness	567
199	Postponing trial of issue	568
200	Trial proceeds where accused fit to stand trial	569
201	Disposition	569
202	Treatment disposition	570
202.1	Where Review Board or chairperson sends accused back to court martial	572
202.11	Accused person to remain in hospital	573
202.12	<i>Prima facie</i> case	573
202.121	Recommendation of Review Board	574

Mental Disorder When Offence Committed

202.13	Defence of mental disorder	577
202.14	Finding of not responsible on account of mental disorder	578
202.15	Disposition hearing	579
202.16	Disposition	580

High-Risk Accused [Proposed]

202.161	Application to court martial [Proposed]	581
202.162	Referral to court martial for review [Proposed]	583

General Provisions Respecting Assessment Orders, Dispositions and Assessment Reports

202.17	Conditions for custody	584
202.18	No custody or release orders during assessment	585
202.19	Assessment report	586
202.2	Effective date of disposition	586
202.201	Procedure at disposition hearing [Proposed]	586
202.202	Additional conditions — safety and security [Proposed]	594
202.21	Status quo pending Review Board's hearing	595
202.22	Procedural irregularities	596
202.23	Definition of "justice"	597

Protected Statements

202.24	Definition of "protected statement"	600
---------------	---	-----

Provisions of *Criminal Code* Applicable

202.25	Powers of Review Board	601
202.26	Application of ss. 672.67 to 672.71 of <i>Criminal Code</i> to findings	604
203	Repealed	

Division 7.1 Sentencing [Proposed]

Interpretation [Proposed]

203	Definitions [Proposed]	605
------------	------------------------------	-----

Purposes and Principles of Sentencing by Service Tribunals [Proposed]

203.1	Fundamental purposes of sentencing [Proposed]	605
203.2	Fundamental principle of sentencing [Proposed]	607
203.3	Other sentencing principles [Proposed]	607
203.4	Abuse of persons under age of 18 [Proposed]	608

Facts Relevant to the Determination of a Sentence [Proposed]

203.5	Disputed facts [Proposed]	608
--------------	---------------------------------	-----

Victim Impact Statement [Proposed]

203.6	Duty to consider victim impact statement [Proposed]	609
203.7	Inquiry by court martial [Proposed]	610

Absolute Discharge [Proposed]

203.8	Absolute discharge [Proposed]	610
--------------	-------------------------------------	-----

Restitution [Proposed]

203.9	Restitution order [Proposed]	611
203.91	Enforcing restitution order [Proposed]	612

203.92	Moneys found on offender [Proposed]	612
203.93	Notice of orders of restitution [Proposed]	612
203.94	Civil remedy not affected [Proposed]	613

Passing of Sentence [Proposed]

203.95	Only one sentence to be passed [Proposed]	613
---------------	---	-----

DIVISION 8 – PROVISIONS APPLICABLE TO IMPRISONMENT AND DETENTION

Computation of Term

204	Commencement of term	614
------------	----------------------------	-----

Service Prisons and Detention Barracks

205	Service prisons and detention barracks	615
206 - 214	Repealed	

Suspension of Imprisonment or Detention

215	Service tribunal may suspend	616
215.1	Varying conditions [Proposed]	618
215.2	Hearing into breach of conditions [Proposed]	618
215.3	Non-appearance of accused person [Proposed]	619
216	Definition of “suspending authority”	619
216.1	Effect of suspension before committal	622
217	Review and remission	623
218	Committal after suspension	623

Committal to Imprisonment or Detention

219	Committing authority	624
220	Committal of service convicts	626

Temporary Removal from Incarceration

221	Authority of temporary removal	628
------------	--------------------------------------	-----

Rules Applicable to Service Convicts and Service Prisoners

222	Rules of penitentiaries and civil prisons to apply	628
------------	--	-----

Validity of Documents

223	Legalization and rectification	629
------------	--------------------------------------	-----

Mental Disorder during Imprisonment or Detention

224	Persons in penitentiaries or civil prisons	629
225	Repealed	

Transfer of Offenders

226	Transfer of offenders	629
------------	-----------------------------	-----

Parole Eligibility [Proposed]

226.1	Sentence of imprisonment for life [Proposed]	630
226.2	Power of court martial to delay parole [Proposed]	632

DIVISION 8.1 – SEX OFFENDER INFORMATION**Interpretation**

227	Definitions	633
------------	-------------------	-----

Order to Comply with the *Sex Offender Information Registration Act*

227.01	Order	635
227.02	Date order begins	637
227.03	Application for termination order	638
227.04	Termination order	639
227.05	Requirements relating to notice	639

**Notice and Obligation to Comply with the *Sex Offender Information Registration Act*
— Convictions Before September 12, 2008**

227.06	Obligation to comply	641
227.07	Persons who may be served	641
227.08	Period for and method of service	641
227.09	Date obligation begins	642
227.1	Application for exemption order	643
227.11	Requirements relating to notice	644
227.12	Application for termination order	644
227.13	Termination order	646
227.14	Deemed application	646

Suspension of Time Limits, Proceedings and Obligations

227.15	Determination — inability to act for operational reasons	646
227.16	Determination — information relating to an operation	649
227.17	<i>Statutory Instruments Act</i>	649
227.171	Annual Report	650

Disclosure of Information

227.18	Disclosure	650
227.19	Disclosure	652

Authorizations, Designations and Regulations

227.2	Regulations by Governor in Council	653
227.21	Authorization	654

DIVISION 9 – APPEALS

Commentary	654
-------------------------	-----

General Provisions

228 Definition of “legality” and “illegal”	655
229 Repealed	

Right to Appeal

230 Appeal by person tried	656
230.1 Appeal by Minister	668
230.2 Appeal from order	672
231 Other rights preserved	672

Entry of Appeals

232 Form	672
-----------------------	-----

Appeals from Dispositions

233 Automatic suspension of certain dispositions	675
---	-----

Court Martial Appeal Court of Canada

234 Court established	677
235 Sittings and hearings	679
236 Superior court of record	680
237 Expenses	683

Disposition of Appeals by Court Martial Appeal Court of Canada

238 Powers on appeal against finding of guilty	683
239 Substitution of finding	688
239.1 Appeal against not guilty finding	689
239.2 Appeal against decision	690
240 Substitution of new sentence where illegal sentence set aside	690
240.1 Appeal against severity of sentence	690
240.2 Appeal against finding of unfit or not responsible	694
240.3 Appeal against disposition	695
240.4 Appeal	695
240.5 Appeal against order or decision	695
241 Special power to disallow appeal	696
241.1 New sentence	698
241.2 Repealed	
241.3 New trial	698
242 Powers to mitigate, commute, remit and suspend new punishment	698
243 Appeal deemed abandoned	699

Rules of Appeal Procedure

244 Chief Justice may make rules	699
---	-----

Appeal to Supreme Court of Canada

245	Appeal by person tried	706
246 – 248	Repealed	

DIVISION 10 – RELEASE PENDING APPEAL

248.1	Release by court martial	708
248.2	Release by judge of the CMAC	709
248.3	Court may direct release	709
248.4	Right of representative of Canadian Forces	711
248.5	Undertaking if application granted	711
248.6	Release from detention or imprisonment	712
248.7	Return to duty	712
248.8	Review of conditions	712
248.81	Breach of undertaking	712
248.82	Rules	713
248.9	Appeal to CMAC	713
248.91	Surrender into custody	714

DIVISION 11 – REVIEW**Review Authorities**

249	Governor in Council	714
249.1	Royal prerogative	716

Quashing of Findings

249.11	Authority to quash	718
---------------	--------------------------	-----

Substitution of Findings

249.12	Substitution of illegal and unsubstantiated findings	721
---------------	--	-----

Substitution of Punishments

249.13	Authority to substitute punishment	721
---------------	--	-----

Mitigation, Commutation and Remission of Punishments

249.14	Authority to mitigate, commute and remit punishments	722
---------------	--	-----

Conditions Applicable to New Punishments

249.15	Conditions	722
---------------	------------------	-----

Petition for New Trial

249.16	Right to petition on new evidence	723
---------------	---	-----

DIVISION 12 – MISCELLANEOUS PROVISIONS**Right to be represented**

249.17	Right to be represented	723
---------------	-------------------------------	-----

Defence Counsel Services

249.18	Appointment	724
249.19	Duties and functions	725
249.2	Relationship to Judge Advocate General	725
249.21	Barristers and advocates to assist	726
249.211	Appeal committee [Proposed]	726

Witnesses at Courts Martial and before Commissioners

249.22	Summons to witnesses	726
---------------	----------------------------	-----

Warrant for Arrest on Non-Appearance of Accused

249.23	Non-appearance of accused	727
---------------	---------------------------------	-----

Effect of New Punishment

249.24	Force and effect	727
---------------	------------------------	-----

Restitution of Property

249.25	Restitution of property in case of conviction	728
---------------	---	-----

Reference to Ranks

249.26	Reference to ranks	729
---------------	--------------------------	-----

Criminal Record [Proposed]

249.27	Conviction for certain offences [Proposed]	729
---------------	--	-----

PART IV
COMPLAINTS ABOUT OR BY MILITARY POLICE

Interpretation

250	Definitions	732
------------	-------------------	-----

DIVISION 1 – MILITARY POLICE COMPLAINTS COMMISSION

Commentary	735
-------------------------	-----

Establishment and Organization

250.1	Commission established	737
--------------	------------------------------	-----

	Chairperson	
250.11	Chief executive officer	738
	Head Office	
250.12	Head Office	739
	Staff	
250.13	Staff	739
	Duty to Act Expeditiously	
250.14	Duty to act expeditiously	740
	Rules	
250.15	Rules	740
	Immunity	
250.16	Protection of members	740
	Annual Report	
250.17	Annual Report	741
	DIVISION 2 – COMPLAINTS	
	SUBDIVISION 1 – RIGHT TO COMPLAIN	
	Conduct Complaints	
250.18	Complaints about military police	741
	Interference Complaints	
250.19	Complaints by military police	744
	Time Limit	
250.2	Time limit	745
	To Whom Complaint May be Made	
250.21	To whom complaint may be made	746
250.22	Notice to subject of conduct complaint	747
250.23	Notice to subject of interference complaint	747
	Withdrawal of Complaint	
250.24	Withdrawal	747

Record of Complaints

250.25	Record of complaints	747
---------------	----------------------------	-----

SUBDIVISION 2 – DISPOSAL OF CONDUCT COMPLAINTS

250.26	Provost Marshal responsible	748
250.261	Deadline for resolving or disposing of complaint	748
250.27	Informal resolution	748
250.28	Duty to investigate	750
250.29	Report on investigation	750
250.3	Status reports	751

Review by Complaints Commission

250.31	Reference to Complaints Commission	751
250.32	Review by Chairperson	752
250.33	Status reports	752

SUBDIVISION 3 – DISPOSAL OF INTERFERENCE COMPLAINTS

250.34	Responsibility	753
250.35	Duty to investigate	753
250.36	Report on investigation	754
250.37	Status reports	755

DIVISION 3 – INVESTIGATIONS AND HEARINGS BY COMPLAINTS COMMISSION

250.38	Public interest	755
250.39	Report on investigation	758
250.4	Assignment of members to conduct hearing	758
250.41	Powers	758
250.42	Hearing in public	759
250.43	Notice of hearing	760
250.44	Rights of persons interested	760
250.45	Witness not excused from testifying	760
250.46	Expenses	761
250.47	Return of documents, etc.	761
250.48	Report	761

DIVISION 4 – REVIEW AND FINAL REPORT

250.49	Review – conduct complaint	762
250.5	Review – interference complaint	762
250.51	Notice of action	762
250.52	Notice of action	762
250.53	Final report by Chairperson	763

PART V – MISCELLANEOUS PROVISIONS HAVING GENERAL APPLICATION**Oaths**

251	Oaths	763
251.1	Solemn affirmation instead of oath	764

Witness Fees and Allowances		
251.2	Witness fees and allowances	764
Disposal by Civil Authorities of Deserters and Absentees without Leave		
252	Definition of “justice”	765
253	Disposal of person brought before justice	766
254	Delivery by constable into service custody	767
Certificate of Civil Courts		
255	Transmission of certificate where person tried civilly	767
Duties respecting Incarceration		
256	Execution of warrants	767
Manoeuvres		
257	Authorization by Minister	768
258 - 259	Repealed	
260	Compensation	769
Exemption from Tolls		
261	Duties or tolls on roads, bridges, etc.	769
Ships in Convoy		
262	Master of merchant ship to obey convoying officer	770
Salvage		
263	Crown may claim for salvage services	770
264	Consent of Minister to salvage claim	771
265	Minister may accept offers of settlement	771
266	Repealed	
Limitation or Prescription Periods, Liability and Exemptions		
267	Restriction of execution against officers and non-commissioned members	772
268	Exemption from jury service	772
269	Limitation period	773
270	Actions barred	776
Compensation		
271	Compensation to certain public service employees	777

Dependants		
272	Arrest of dependants	779
Jurisdiction of Civil Courts		
273	Offences committed outside Canada	779
Inspections		
273.1	Regulations	780
Searches		
273.2	Searches	781
273.3	Warrant by commanding officer	782
273.4	Investigating commanding officer	783
273.5	Military police	783
Public Service		
273.6	Public service	783
Independent Review		
273.601	Review	785
PART V.1 – COMMUNICATIONS SECURITY ESTABLISHMENT		
Commentary		
273.61	Definitions	788
273.62	Communications Security Establishment continued	789
273.63	Appointment of Commissioner	792
273.64	Mandate	793
273.65	Ministerial authorization	794
273.66	Limits on activities	797
273.67	Protection of persons	797
273.68	Effective period of authorization	797
273.69	Exclusion of Part VI of <i>Criminal Code</i>	797
273.7	<i>Crown Liability and Proceedings Act</i>	798
Part V.II Authorizations [Proposed]		
Computer Systems and Networks [Proposed]		
273.8	Ministerial authorization [Proposed]	798
273.9	Duties of Commissioner [Proposed]	801
PART VI – AID OF THE CIVIL POWER		
Commentary		
274	Definition of “attorney general”	804
275	Riot or disturbance	805

276	Exception in case of certain reserves	805
277	Attorney general of province may requisition aid	806
278	Call out of Canadian Forces	806
279	Form of requisition	806
280	What requisition must state	807
281	Inquiry and report by attorney general	809
282	When officers and non-commissioned members have powers of constables	809
283	Duration, increase and diminution of aid of civil power	814
284	Repealed	
285	Advances	814

PART VII – OFFENCES TRIABLE BY CIVIL COURTS
[PROPOSED]

Interpretation [Proposed]

285.01	Definitions [Proposed]	814
---------------	------------------------------	-----

Reinstatement [Proposed]

285.02	Employer's duty to reinstate [Proposed]	815
285.03	Hospitalization or incapacity [Proposed]	815
285.04	Benefits and obligations on reinstatement [Proposed]	816
285.05	Agreements or arrangements [Proposed]	816
285.06	Termination without reasonable cause [Proposed]	816

Administration and Enforcement [Proposed]

285.07	Reinstatement Officers [Proposed]	816
---------------	---	-----

Offence and Punishment [Proposed]

285.08	Offence [Proposed]	817
285.09	Offence [Proposed]	817
285.1	Minister may prosecute [Proposed]	817
285.11	Time limit [Proposed]	818

General [Proposed]

285.12	Inconsistency with other laws [Proposed]	818
285.13	Consultation [Proposed]	818

PART VIII – OFFENCES TRIABLE BY CIVIL COURTS

Application

286	Liability to civil trial	818
287	Limitation period	819

Offences

288	Breach of regulations respecting defence establishments, works and materiel	819
289	False answer on enrolment	819
290	False medical certificate	820
291	Unlawful usage in advertising, trade or service	820
292	Personation	821
293	False representation of desertion	821
294	Failure to attend parade	821
295	Neglecting personal equipment	822
296	Interruption or hindering of training or march	822
297	Hampering manoeuvres	822
298	Unlawful disposal, removal or possession of property	822
299	Accessories to desertion and absence without leave	823
300	Aid to intending deserters or absentees	824
301	Miscellaneous offences	825
302	Offences of contempt	826
303	Repealed	
304	Breach of regulations respecting quartering, billeting and encamping	827
305	Improper exaction of tolls	828
306	Failure to comply with convoy orders	828
307	Applications for employment [Proposed]	828
SCHEDULE	.....	829
Related Provisions	.....	832

CHAPTER 4 – MILITARY RULES OF EVIDENCE

Commentary	851
-------------------------	-----

Can. Reg. 1049 — Military Rules of Evidence

1	Short Title	852
2	Interpretation	852
3	Application	855
4	Cases not Provided for	855
5	Functions of Judge Advocate under Rules	856
6	Effect of failure to Comply with Rules	856

PART I – EVIDENCE AND PROOF GENERALLY

Division I
Admission of Evidence Generally

7	Admission of Evidence	856
8	Necessity for Evidence	856

Division II
Burden of Persuasion and Rebuttable Presumptions of Law

9	Burden of Persuasion – General Rule	857
10	Burden of Persuasion on Prosecutor	857
11	Burden of Persuasion on Accused	857

12	Burden of Producing Evidence	858
13	Rebuttable Presumptions of Law	858

PART II – JUDICIAL NOTICE

Division III Judicial Notice

14	Limitation on Judicial Notice	858
15	Required Judicial Notice	862
16	Discretionary Judicial Notice	863
17	Judicial Notice on Request	864
18	Determination of Propriety of Taking Judicial Notice	864
19	Effect of Taking Judicial Notice	865

PART III – METHODS OF PROOF AND FORBIDDEN TYPES OF EVIDENCE

Division IV Character and Similar Facts

20	Evidence of Character and Similar Facts Not Ordinarily Admissible before Finding	865
21	Character Evidence	866
22	Evidence of Similar Facts	866
23	Possession of Property Obtained by Commission of Offence	867
24	Offences under <i>Security of Information Act</i>	868
25	Admissibility after Finding	868

Division V Hearsay Evidence

26	Hearsay Generally Excluded	868
27	Words as Facts in Issue	869
28	Words Essential to Give Character to Acts that are Facts in Issue	870
29	Words Essential to Prove Relevant Mental or Internal Physical State	870
30	Spontaneous Words in Emergency Situation	871
31	Complaints	871
32	Dying Declarations	871
33	Statements Made in Course of Duty by Persons since Deceased	872
34	Declarations on Character Reputation of Accused	872
35	Self-Serving Evidence	872

Division VI Confessions of Accused Persons

36	Types of Confessions	873
37	Judicial Confession Explained	873
38	Effect of Judicial Confession	873
39	Official Confession Defined	874
40	Admissibility of Official Confession	874
41	Unofficial Confession Defined	875
42	Admissibility of Unofficial Confession	875
43	Statements in Presence of Accused	877

44	Evaluation of Unofficial Confession	877
45	Accomplice's Evidence	877
46	Conspirator's Evidence	878
47	Evidence Discovered from Inadmissible Confession	878
48	Self-Incrimination	878
49	Statements not Treated as Confessions	879

Division VII
Other Kinds of Hearsay Evidence

50	Statements by Persons Other than Accused made in Judicial or Other Official Proceedings	879
51	Public Documents	879
52	Public Documents of Other Countries	880
53	Documents of Canadian Forces	881
54	Regular Entries	881
55	Limitations on Admission of Certain Documents	881
56	Expert Opinion as Hearsay	882
57	Statements in Learned Treatises	882
58	Statutory Declarations	882
59	Mode of Proving Documentary Statements and Effect of Admission	883
60	Kinds of Hearsay not Specifically Covered	883

Division VIII
Opinion

61	Opinion—General Rule	883
62	Expert Witness	883
63	Opinion of Expert Witness	884
64	Opinion Evidence of Ordinary Witness	884
65	Opinions of Experts and Ordinary Witnesses	885
66	Opinion in Comparison of Writing	885

Division IX
Effect of Public Policy and Privilege

67	Secrecy	885
68	Effect on Trial if Secrecy Precludes Disclosure	885
69	Decisions on Secrecy	886
70	Concealment of Identity of Informants	886
71	Governmental Privilege on Disclosure	886
72	Privilege – Generally	887
73	Privilege of Accused	887
74	Privilege of Spouse of Accused	887
75	Communication during Marriage	888
76	Witness – Incriminating Questions	888
77	Solicitor-Client Privilege	889
78	Penitential Privilege	889

PART IV – PERMITTED METHODS OF PROOF**Division X
Oral Testimony**

79	Competence of Witnesses	890
80	Testimonial Qualification of Witness	890
81	Qualification of Expert Witness	890
82	Testimony by Graphic Media	891
83	Testimony of Accomplice	891
84	Meaning of Corroboration	892
85	Corroboration of Certain Offences	893
86	Witness Whose Capacity is in Question	893

**Division XI
Examination of Witnesses**

87	Order of Testimony	894
88	Direct Examination – General Rules	894
89	Direct Examination – Leading Questions	894
90	Hostile Witness	895
91	Recorded Past Recollection	896
92	Refreshing Memory of Witness	896
93	Cross-Examination – General Rules	897
94	Cross-Examination – Exemptions	898
95	Postponement of Cross-Examination	898
96	Re-Examination	898
97	Examination of Witnesses – Incriminating Questions	899
98	Credibility of Witness Generally	899
99	Credibility – Effect of Answers	899
100	Credibility – Use of Former Statements to Contradict	900
101	Credibility – General Reputation of Witness for Veracity	901

**Division XII
Documents**

102	Original Documents – Explanation	901
103	Proof of Documents by Primary Evidence	902
104	Proof of Documents by Secondary Evidence	903
105	Proof of Public Documents	903
106	Proof of Regular Entries	904
107	Bankers' Books	905
108	Proof of Date, Handwriting and Signature of Documents	906
109	Proof of Execution of Attested Documents	907

**Division XIII
Real Evidence**

110	Admissibility of Real Evidence	907
111	Introduction of Real Evidence	907

Division XIV
Foreign Law

112 Foreign Law	907
------------------------------	------------

**CHAPTER 5 – RULES OF APPEAL PRACTICES AND PROCEDURES OF THE COURT
MARTIAL APPEAL COURT OF CANADA**

Introduction	913
1 Short Title	918
2 Interpretation	918
3 General	920
4 The Judges	921
4.1 Schedule of Hearings	921
4.2 Form of Documents	921
5 Commencement of Proceedings	923
6 Obligations of the Court Martial Administrator	924
6.1 Obligations of the Court Martial Administrator	925
7 Appellant's Memorandum of Fact and Law	925
8 Quashing an Appeal	926
9 Respondent's Memorandum of Fact and Law	927
10 Memorandum in Reply	927
11 Request for Hearing	928
11.1 Constitutional Questions	928
12 Release from Pre-trial Custody and Release Pending Appeal	929
13 Release from Pre-trial Custody and Release Pending Appeal	930
13.1 Petition for New Trial	930
14 Production of New Documents and Particulars	931
15 Production of New Documents and Particulars	931
16 Production of New Documents and Particulars	931
17 Time	932
18 Time	933
19 Representation by Counsel	933
20 Appointment of Counsel by the Director of Defence Counsel Services	934
21 Fees and Costs	936
22 Fees and Costs	940
23 Service of Documents	940
23.1 Filing of Documents	944
24 Applications, Motions and Notices	945
25 Applications, Motions and Notices	946
26 Applications, Motions and Notices	946
27 Application by Party under Custody to Attend Hearing	947
28 Special Dispositions	948
29 Practice and Procedures at Hearings	949
30 Practice and Procedures at Hearings	950
31 Practice and Procedures at Hearings	950
32 Evidence and Witnesses	950
33 Evidence and Witnesses	952
34 Evidence and Witnesses	952
35 Judgments and Orders	952
36 Abandonment of Proceedings	954
37 Abandonment of Proceedings	954
38 Seal	955
39 Judicial Administrator	955

40 Duties of the Administrator	956
--------------------------------------	-----

Schedules	957
-----------------	-----

CHAPTER 6 – CANADIAN *CHARTER OF RIGHTS AND FREEDOMS***PART VII – GENERAL**

52 Primacy of Constitution of Canada	975
--	-----

PART I – CANADIAN CHARTER OF RIGHTS AND FREEDOMS**Guarantee of Rights and Freedoms**

1 Rights and freedoms in Canada	975
---------------------------------------	-----

Fundamental Freedoms

2 Fundamental freedoms	976
------------------------------	-----

Democratic Rights

3 Democratic rights of citizens	976
---------------------------------------	-----

4 Maximum duration of legislative bodies	976
--	-----

5 Annual sitting of legislative bodies	976
--	-----

Mobility Rights

6 Mobility of citizen	977
-----------------------------	-----

Legal Rights

7 Life, liberty and security of person	977
--	-----

8 Search and seizure	977
----------------------------	-----

9 Detention or imprisonment	977
-----------------------------------	-----

10 Arrest or detention	978
------------------------------	-----

11 Proceedings in criminal and penal matters	978
--	-----

12 Treatment or punishment	979
----------------------------------	-----

13 Self-incrimination	979
-----------------------------	-----

14 Interpreter	979
----------------------	-----

Equality Rights

15 Equality before and under law and equal protection and benefit of law	979
--	-----

Official Languages of Canada

16 Official languages of Canada	980
---------------------------------------	-----

16.1 English and French linguistic communities in New Brunswick	980
---	-----

17 Proceedings of Parliament	980
------------------------------------	-----

18 Parliamentary statutes and records	981
---	-----

19 Proceedings in courts established by Parliament	981
--	-----

20 Communications by public with federal institutions	981
---	-----

21	Continuation of existing Constitutional provisions	982
22	Rights and privileges preserved	982

Minority Language Educational Rights

23	Language of instruction	982
-----------	-------------------------------	-----

Enforcement

24	Enforcement of guaranteed rights and freedoms	983
-----------	---	-----

General Dispositions

25	Aboriginal rights and freedoms not affected by Charter	984
26	Other rights and freedoms not affected by Charter	984
27	Multicultural heritage	984
28	Rights guaranteed equally to both sexes	984
29	Rights respecting certain schools preserved	984
30	Application to Territories and territorial authorities	985
31	Legislative powers not extended	985

Application of Charter

32	Application of Charter	985
33	Exception where express declaration	985

Citation

34	Citation	986
-----------	----------------	-----

Appendix A — QROs Summary Table of Contents	APP-1
--	-------

**For full text and full Table of Contents to QROs, please consult
accompanying CD**

Index	I-1
--------------------	-----