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## National Defence Act

### N-5

An Act respecting national defence

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## National Defence Act INTERPRETATION

Definitions	<b>2.</b> (1) In this Act,
“aircraft” « <i>aéronef</i> »	“aircraft” means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces, and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite;
“aircraft material” « <i>matériel aéronautique</i> »	“aircraft material” means engines, fittings, armament, ammunition, bombs, missiles, gear, instruments and apparatus, used or intended for use in connection with aircraft or the operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or the operation thereof;
“civil court” « <i>tribunal civil</i> »	“civil court” means a court of ordinary criminal jurisdiction in Canada and includes a court of summary jurisdiction;
“civil custody” « <i>garde civile</i> »	“civil custody” means the holding under arrest or in confinement of a person by the police or other competent civil authority, and includes confinement in a penitentiary or civil prison;
“civil prison” « <i>prison civile</i> »	“civil prison” means any prison, jail or other place in Canada in which offenders sentenced by a civil court in Canada to imprisonment for less than two years can be confined, and, if sentenced outside Canada, any prison, jail or other place in which a person, sentenced to that term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being be confined;
“Code of Service Discipline” « <i>code de discipline militaire</i> »	“Code of Service Discipline” means the provisions of Part III;
“court martial” « <i>cour martiale</i> »	“court martial” includes a General Court Martial, a Special General Court Martial, a Disciplinary Court Martial and a Standing Court Martial;
“Court Martial Appeal Court” « <i>Cour d’appel de la cour martiale</i> »	“Court Martial Appeal Court” means the Court Martial Appeal Court of Canada established by section 234;
“criminal organization” « <i>organisation criminelle</i> »	“criminal organization” has the same meaning as in subsection 467.1(1) of the <i>Criminal Code</i> ;
“criminal organization offence” « <i>infraction d’organisation criminelle</i> »	“criminal organization offence” means ( a ) an offence under section 467.11, 467.12 or 467.13 of the <i>Criminal Code</i> , or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization, or ( b ) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph ( a );
“defence establishment” « <i>établissement de défense</i> »	“defence establishment” means any area or structure under the control of the Minister, and the materiel and other things situated in or on any such area or structure;
“Department” « <i>ministère</i> »	“Department” means the Department of National Defence;
“Deputy	“Deputy Minister” means the Deputy Minister of National Defence;

<p>Minister” « <i>sous-ministre</i> »</p>	
<p>“detention barrack” « <i>caserne disciplinaire</i> »</p>	“detention barrack” means a place designated as such under subsection 205(1);
<p>“emergency” « <i>état d'urgence</i> »</p>	“emergency” means an insurrection, riot, invasion, armed conflict or war, whether real or apprehended;
<p>“enemy” « <i>ennemi</i> »</p>	“enemy” includes armed mutineers, armed rebels, armed rioters and pirates;
<p>“enrol” <i>Version anglaise seulement</i></p>	“enrol” means to cause any person to become a member of the Canadian Forces;
<p>“Grievance Board” « <i>Comité des griefs</i> »</p>	“Grievance Board” means the Canadian Forces Grievance Board established by subsection 29.16(1);
<p>“Her Majesty’s Canadian Ship” « <i>navire canadien de Sa Majesté</i> »</p>	“Her Majesty’s Canadian Ship” means any vessel of the Canadian Forces commissioned as a vessel of war;
<p>“Her Majesty’s Forces” « <i>forces de Sa Majesté</i> »</p>	“Her Majesty’s Forces” means the armed forces of Her Majesty wherever raised, and includes the Canadian Forces;
<p>“man”</p>	“man”[Repealed, R.S., 1985, c. 31 (1st Supp.), s. 42]
<p>“materiel” « <i>matériels</i> »</p>	“materiel” means all public property, other than real property, immovables and money, provided for the Canadian Forces or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;
<p>“mental disorder” « <i>troubles mentaux</i> »</p>	“mental disorder” means a disease of the mind;
<p>“military” « <i>militaire</i> »</p>	“military” shall be construed as relating to all or any part of the Canadian Forces;
<p>“military judge” « <i>juge militaire</i> »</p>	“military judge” means a military judge appointed under subsection 165.21(1);
<p>“Minister” « <i>ministre</i> »</p>	“Minister” means the Minister of National Defence;
<p>“mutiny” « <i>mutinerie</i> »</p>	“mutiny” means collective insubordination or a combination of two or more persons in the resistance of lawful authority in any of Her Majesty’s Forces or in any forces cooperating therewith;
<p>“non-commissioned member” « <i>militaire du rang</i> »</p>	“non-commissioned member” means any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Canadian Forces;
<p>“non-public property” « <i>biens non publics</i> »</p>	<p>“non-public property” means</p> <p>( a ) all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces,</p> <p>( b ) all money and property contributed to or by officers, non-commissioned members, units or other elements of the Canadian Forces for the collective benefit and welfare of those officers, non-commissioned members, units or other elements,</p>

( c ) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection 39(2), and

( d ) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for, money and property described in paragraphs ( a ) to ( c );

<p>“officer” « <i>officier</i> »</p>	<p>“officer” means</p> <p>( a ) a person who holds Her Majesty’s commission in the Canadian Forces,</p> <p>( b ) a person who holds the rank of officer cadet in the Canadian Forces, and</p> <p>( c ) any person who pursuant to law is attached or seconded as an officer to the Canadian Forces;</p>
<p>“penitentiary” « <i>pénitencier</i> »</p>	<p>“penitentiary”</p> <p>( a ) means a penitentiary established under Part I of the <i>Corrections and Conditional Release Act</i>,</p> <p>( b ) includes, in respect of any punishment of imprisonment for life or for two years or more imposed outside Canada pursuant to the Code of Service Discipline, any prison or place in which a person sentenced to imprisonment for life or for two years or more by a civil court having jurisdiction in the place where the sentence is imposed can for the time being be confined, and</p> <p>( c ) means, in any place outside Canada where there is no prison or place for the confinement of persons sentenced to imprisonment for life or for two years or more, a civil prison;</p>
<p>“personal equipment” « <i>équipement personnel</i> »</p>	<p>“personal equipment” means all materiel issued to an officer or non-commissioned member for the personal wear or other personal use of that officer or non-commissioned member;</p>
<p>“possession”</p>	<p>“possession”[Repealed, 1995, c. 39, s. 175]</p>
<p>“public property” « <i>biens publics</i> »</p>	<p>“public property” means all money and property of Her Majesty in right of Canada;</p>
<p>“regular force” « <i>force régulière</i> »</p>	<p>“regular force” means the component of the Canadian Forces that is referred to in subsection 15(1);</p>
<p>“release” « <i>libération</i> »</p>	<p>“release” means the termination of the service of an officer or non-commissioned member in any manner;</p>
<p>“reserve force” « <i>force de réserve</i> »</p>	<p>“reserve force” means the component of the Canadian Forces that is referred to in subsection 15(3);</p>
<p>“scale of punishments” « <i>échelle des peines</i> »</p>	<p>“scale of punishments” means the scale of punishments as set out in subsection 139(1);</p>
<p>“serious offence” « <i>infraction grave</i> »</p>	<p>“serious offence” means an offence under this Act or an indictable offence under any other Act of Parliament, for which the maximum punishment is imprisonment for five years or more, or an offence that is prescribed by regulation under subsection 467.1(4) of the <i>Criminal Code</i>;</p>
<p>“service convict” « <i>condamné militaire</i> »</p>	<p>“service convict” means a person who is under a sentence that includes a punishment of imprisonment for life or for two years or more imposed on that person pursuant to the Code of Service Discipline;</p>
<p>“service custody” « <i>garde militaire</i> »</p>	<p>“service custody” means the holding under arrest or in confinement of a person by the Canadian Forces, and includes confinement in a service prison or detention barrack;</p>
<p>“service detainee” « <i>détenu militaire</i> »</p>	<p>“service detainee” means a person who is under a sentence that includes a punishment of detention imposed on that person pursuant to the Code of Service Discipline;</p>
<p>“service</p>	<p>“service offence” means an offence under this Act, the <i>Criminal Code</i> or any other Act of Parliament,</p>

<p>offence” « <i>infraction d'ordre militaire</i> »</p>	<p>committed by a person while subject to the Code of Service Discipline;</p>
<p>“service prison” « <i>prison militaire</i> »</p>	<p>“service prison” means a place designated as such under subsection 205(1);</p>
<p>“service prisoner” « <i>prisonnier militaire</i> »</p>	<p>“service prisoner” means a person who is under a sentence that includes a punishment of imprisonment for less than two years imposed on that person pursuant to the Code of Service Discipline;</p>
<p>“service tribunal” « <i>tribunal militaire</i> »</p>	<p>“service tribunal” means a court martial or a person presiding at a summary trial;</p>
<p>“special force” « <i>force spéciale</i> »</p>	<p>“special force” means such component of the Canadian Forces as may be established pursuant to subsection 16(1);</p>
<p>“summary trial” « <i>procès sommaire</i> »</p>	<p>“summary trial” means a trial conducted by or under the authority of a commanding officer pursuant to section 163 and a trial by a superior commander pursuant to section 164;</p>
<p>“superior officer” « <i>supérieur</i> »</p>	<p>“superior officer” means any officer or non-commissioned member who, in relation to any other officer or non-commissioned member, is by this Act, or by regulations or custom of the service, authorized to give a lawful command to that other officer or non-commissioned member;</p>
<p>“terrorism offence” « <i>infraction de terrorisme</i> »</p>	<p>“terrorism offence” means</p> <ul style="list-style-type: none"> <li>( a ) an offence under any of sections 83.02 to 83.04 or 83.18 to 83.23 of the <i>Criminal Code</i>,</li> <li>( b ) 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 <i>Criminal Code</i> or any other Act of Parliament, that is committed for the benefit of, at the direction of or in association with a terrorist group,</li> <li>( c ) 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 <i>Criminal Code</i> or any other Act of Parliament, where the act or omission constituting the offence also constitutes a terrorist activity, or</li> <li>( d ) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph ( a ), ( b ) or ( c );</li> </ul>
<p>“terrorist activity” « <i>activité terroriste</i> »</p>	<p>“terrorist activity” has the same meaning as in subsection 83.01(1) of the <i>Criminal Code</i>;</p>
<p>“terrorist group” « <i>groupe terroriste</i> »</p>	<p>“terrorist group” has the same meaning as in subsection 83.01(1) of the <i>Criminal Code</i>;</p>
<p>“unfit to stand trial” « <i>inaptitude à subir son procès</i> »</p>	<p>“unfit to stand trial” means unable on account of mental disorder to conduct a defence at any stage of a trial by court martial before a finding is made or to instruct counsel to do so, and in particular, unable on account of mental disorder to</p> <ul style="list-style-type: none"> <li>( a ) understand the nature or object of the proceedings,</li> <li>( b ) understand the possible consequences of the proceedings, or</li> <li>( c ) communicate with counsel;</li> </ul>
<p>“unit” « <i>unité</i> »</p>	<p>“unit” means an individual body of the Canadian Forces that is organized as such pursuant to section 17, with the personnel and materiel thereof.</p>
<p>Meaning of “possession”</p>	<p>(2) For the purposes of the Code of Service Discipline and Part VII,</p> <ul style="list-style-type: none"> <li>(a) a person has anything in possession when the person has it in the person’s personal possession or knowingly <ul style="list-style-type: none"> <li>(i) has it in the actual possession or custody of another person, or</li> </ul> </li> </ul>

(ii) has it in any place, whether or not that place belongs to or is occupied by the person, for the use or benefit of the person or of another person; and

(b) where one of two or more persons, with the knowledge and consent of the rest, has anything in the person's custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

R.S., 1985, c. N-5, s. 2; R.S., 1985, c. 31 (1st Supp.), ss. 42, 60; 1991, c. 43, s. 11; 1992, c. 20, s. 216; 1993, c. 34, s. 91(F); 1995, c. 39, s. 175; 1998, c. 35, s. 1; 2001, c. 32, s. 67, c. 41, s. 97; 2004, c. 15, s. 74.

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## National Defence Act

### PART III: CODE OF SERVICE DISCIPLINE

#### DIVISION 2: SERVICE OFFENCES AND PUNISHMENTS

##### Punishments

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.

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## National Defence Act

### PART III: CODE OF SERVICE DISCIPLINE

#### DIVISION 2: SERVICE OFFENCES AND PUNISHMENTS

##### 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.

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## National Defence Act

### PART III: CODE OF SERVICE DISCIPLINE

#### DIVISION 3: ARREST AND PRE-TRIAL CUSTODY

##### Interpretation

Definitions **153.** The definitions in this section apply in this Division.

“custody review officer”  
« officier réviseur »

“custody review officer”, in respect of a person in custody, means

(a) the officer who is the person’s commanding officer, or an officer who is designated by that officer; or

(b) if it is not practical for an officer referred to in paragraph (a) to act as the custody review officer, the officer who is the commanding officer of the unit or element where the person is in custody or an officer who is designated by that officer.

“designated offence”  
« infraction désignée »

“designated offence” means

(a) an offence that is punishable under section 130 that is

(i) listed in section 469 of the *Criminal Code*,

(ii) contrary to subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act* and punishable by imprisonment for life, or

(iii) an offence of conspiring to commit an offence under any subsection referred to in subparagraph (ii);

(b) an offence under this Act where the minimum punishment is imprisonment for life;

(c) an offence under this Act for which a punishment higher in the scale of punishments than imprisonment for less than two years may be awarded that is alleged to have been committed while at large after having been released in respect of another offence pursuant to the provisions of this Division or Division 10;

(d) an offence under this Act that is a criminal organization offence; or

(e) an offence under this Act that is a terrorism offence.

R.S., 1985, c. N-5, s. 153; R.S., 1985, c. 31 (1st Supp.), s. 47; 1998, c. 35, s. 40; 2001, c. 41, s. 100.

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## National Defence Act

### PART V.1: COMMUNICATIONS SECURITY ESTABLISHMENT

Definitions	<b>273.61</b> The following definitions apply in this Part.
“Canadian” « <i>Canadien</i> »	“Canadian” means a Canadian citizen, a permanent resident within the meaning of subsection 2(1) of the <i>Immigration and Refugee Protection Act</i> or a body corporate incorporated and continued under the laws of Canada or a province.
“entity” « <i>entité</i> »	“entity” means a person, group, trust, partnership or fund or an unincorporated association or organization and includes a state or a political subdivision or agency of a state.
“foreign intelligence” « <i>renseignements étrangers</i> »	“foreign intelligence” means information or intelligence about the capabilities, intentions or activities of a foreign individual, state, organization or terrorist group, as they relate to international affairs, defence or security.
“global information infrastructure” « <i>infrastructure mondiale d’information</i> »	“global information infrastructure” includes electromagnetic emissions, communications systems, information technology systems and networks, and any data or technical information carried on, contained in or relating to those emissions, systems or networks.
“Minister” « <i>ministre</i> »	“Minister” means the Minister of National Defence or such other member of the Queen’s Privy Council as may be designated by the Governor in Council to be responsible for the Communications Security Establishment.
“private communication” « <i>communication privée</i> »	“private communication” has the same meaning as in section 183 of the <i>Criminal Code</i> . 2001, c. 41, ss. 102, 128.

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