

**BILL C-25: AN ACT TO AMEND  
THE NATIONAL DEFENCE ACT**

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## LEGISLATIVE HISTORY OF BILL C-25

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	4 December 1997
Second Reading:	31 March 1998
Committee Report:	15 May 1998
Report Stage:	10 June 1998
Third Reading:	11 June 1998

### SENATE

Bill Stage	Date
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First Reading:	11 June 1998
Second Reading:	18 June 1998
Committee Report:	24 November 1998
Report Stage:	25 November 1998
Third Reading:	1 December 1998

Message to House of Commons: 1 December 1998  
Concurrence in Senate Amendments: 7 December 1998

Royal Assent: 10 December 1998

Statutes of Canada 1998, c.35

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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be required to cause the accused to be brought before a military judge for another custody hearing.

At any time prior to the commencement of the accused's trial, a military judge's direction detaining or releasing the accused with or without conditions could, on application, be reviewed by a judge of the Court Martial Appeal Court.

d. Commencement of Proceedings (Clause 42: New Sections 160 to 162.2)

Sections 160 to 162 of the Act would be replaced by new sections 160 to 162.2. The key changes from the existing system in this area would be the proposed elimination of the requirement for an investigation *after* the laying of a charge (see section 161 of the Act) and the proposed elimination of the commanding officer's power to summarily dismiss charges under the Code of Service Discipline (see section 162 of the Act).<sup>(35)</sup>

Currently, a commanding officer has the authority to dismiss, at the outset, any charge under the Code of Service Discipline. This includes not only all offences of a military nature, but also *all civilian offences* incorporated by reference into the Code of Service Discipline (see sections 130 and 70 of the Act), *regardless of whether or not the commanding officer would have the authority to try the accused on the charge*.<sup>(36)</sup> Pursuant to section 66(1) of the Act, the effect of a decision by a commanding officer to dismiss a charge is that no other authority –military or civil – can thereafter proceed against the accused on the charge or any substantially similar offence arising out of the same facts.<sup>(37)</sup>

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(35) Elimination of the authority of commanding officers and superior commanders to summarily dismiss charges and the transfer to a Director of Military Prosecutions of the final decision on whether to proceed with a charge would address recommendations in the Somalia Inquiry report (recommendation 40.24). Under the Inquiry's recommendations, however, commanding officers and superior commanders would have retained the authority to summarily dismiss "minor disciplinary misconduct," which it defined as misconduct that did not amount to an offence under applicable civilian law and was not so serious as to warrant detention, imprisonment or dismissal from the CF (see recommendations 40.24, 40.21 and 40.1).

(36) QR&O article 106.11.

(37) New amendments to the regulations require a commanding officer to obtain an opinion from a legal officer prior to deciding whether to dismiss any charge in situations where the former would not have jurisdiction to try the accused or where the accused could elect trial by a court martial. A commanding officer who does not follow the advice of the legal officer must, within 30 days, state in writing the reasons for not doing so and provide a copy to his or her superior and the legal officer. See QR&O article 106.10 (effective 30 November 97).

The proposed elimination of the post-charge investigation requirement is, at least in part, related to the proposed elimination of the commanding officer's power to dismiss charges at the outset. The requisite post-charge investigation can take any form that the person conducting the investigation deems appropriate in the circumstances.<sup>(38)</sup> It can, for example, consist simply of the review of the results of the pre-charge investigation.<sup>(39)</sup> It has, therefore, been noted that the primary purpose of the post-charge investigation is to ensure that the commanding officer has some evidentiary basis for deciding whether or not to proceed with the charge and, if so, how to proceed with it (i.e., summary trial within the unit or referral to the next higher authority with or without a recommendation for trial by a court martial).<sup>(40)</sup>

Clause 82 would add a new section 249.17 to the Act which would expand the statutory right of the accused to representation under the Code of Service Discipline. The new section 249.17, which would effectively replace the current section 179, would allow for the expansion of this right to include situations beyond actual proceedings before a service tribunal. However, the new section would leave the precise extent and manner of that representation to be determined by the Governor in Council in regulations.

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(38) Former QR&O, article 107.05(2) (repealed – effective 30 November 1997).

(39) James B. Fay, "Canadian Military Criminal Law: An Examination of Military Justice," Part II (1975) 23 *Chitty's Law Journal* 156, 159.

(40) *Ibid.*