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CHAPTER 118

VISITING FORCES

An Act respecting the armed forces of countries visiting Barbados.

1980-4.
1981/27.
1992/49.

[1st March, 1980]

Commence-
ment

Citation

1. This Act may be cited as the *Visiting Forces Act*.

Short title.

Interpretation

2. In this Act

Definitions.

- (a) "Barbados Defence Force" means the Barbados Defence Force established by section 4 of the *Defence Act*;
- (b) "civil court" means a court of ordinary criminal jurisdiction in Barbados and includes a court of summary jurisdiction;
- (c) "civil prison" has the meaning assigned to it by section 34(1) of the *Defence Act*;
- (d) "dependant" means, with reference to a member of a visiting force or to a member of the armed forces of a designated state, the spouse of the member or a child of the member depending on him for support;
- (e) "designated state" means a state other than Barbados, that is designated under section 4;
- (f) "military establishment" has the meaning assigned to it by section 34 of the *Defence Act*;
- (g) "military prison" has the meaning assigned to it by section 34(1) of the *Defence Act*;

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- (h) "service court" means a court-martial and includes the service authorities of a designated state who are empowered by the laws of that state to deal with charges;
- (i) "visiting force" means any of the armed forces of a designated state present in Barbados in connection with official duties, and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

Application

Application
of Act.

3. This Act applies in respect of a designated state when the Governor-General has, pursuant to section 4, declared it to be applicable in respect of that state; but it applies in respect of that state only to the extent declared by the Governor-General pursuant to that section.

Proclamation
of designated
state.
1992/49.

- 4.** The Governor-General may by proclamation
- (a) designate any country¹ as a designated state for the purposes of this Act;
 - (b) declare the extent to which this Act is applicable in respect of any designated state;
 - (c) designate civilian personnel as a civilian component of a visiting force; and
 - (d) revoke or amend any designation or declaration made under paragraph (a), (b) or (c).

PART I

Disciplinary Jurisdiction of Visiting Forces

Civil courts'
jurisdiction.

5. Except in respect of offences mentioned in subsection (2) of section 7, the civil courts have the primary right to exercise jurisdiction in respect of any act that constitutes an offence against any law in force in Barbados and that is committed by a member of a visiting force or a dependant.

¹Antigua and Barbuda, The Commonwealth of the Bahamas, Belize, Canada, The Commonwealth of Dominica, France, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, The Netherlands, Trinidad and Tobago, United Kingdom, United States of America, Venezuela: 1992/49.

6. Where a member of a visiting force or a dependant has been tried by a service court of that visiting force and has been convicted or acquitted, he may not be tried again by a civil court for the same offence.

Previous trial by service courts.

7. (1) Subject to this Act, the service authorities and service courts of a visiting force may exercise within Barbados in relation to members of that force and dependants all the criminal and disciplinary jurisdiction that is conferred upon them by the law of the designated state to which they belong.

Jurisdiction of service courts.

(2) With respect to the alleged commission by a member of a visiting force of an offence respecting

(a) the property or security of the designated state,

(b) the person or property of another member of the visiting force or a dependant, or

(c) an act done in the performance of official duty, the service courts of the visiting force have the primary right to exercise jurisdiction.

8. (1) Where a member of a visiting force or a dependant has been tried by a civil court and has been convicted or acquitted, he may not be tried again within Barbados for the same offence by a service court of that visiting force.

Previous trial by civil courts.

(2) Nothing in subsection (1) prevents a service court from trying within Barbados a member of the visiting force or a dependant for any violation of rules of discipline arising from an act that constituted an offence for which he was tried by a civil court.

9. Where under sections 5 to 8 a civil court or a service court of a visiting force has the primary right to exercise jurisdiction, the court having the primary right has the right to deal with charges against alleged offenders in the first instance, but that right may be waived in accordance with such regulations as may be made in that behalf.

Trial by court having primary right.

10. A certificate of the service authorities of a designated state that anything alleged to have been done by a member of a visiting force of that state was or was not done in the performance of

Certificate concerning official duty.

official duty, is receivable in evidence in any civil court and for the purposes of this Act is *prima facie* proof of that fact.

Witnesses. 11. The members of a service court of a visiting force that is exercising jurisdiction by virtue of this Act, and witnesses appearing before such a service court, have the like immunities and privileges as a court-martial exercising jurisdiction under the Cap. 159. *Defence Act*, and witnesses appearing before any such court-martial.

Sentences. 12. Where any sentence has been passed by a service court within or outside Barbados upon a member of the armed forces of a designated state, or a dependant thereof, then for the purposes of any legal proceedings within Barbados,

- (a) the service court shall be deemed to have been properly constituted;
- (b) its proceedings shall be deemed to have been regularly conducted;
- (c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the law of the designated state; and
- (d) if the sentence has been executed according to the tenor thereof, the sentence shall be deemed to have been lawfully executed.

Detention. 13. Any member of a visiting force or any dependant who is detained in custody

- (a) in pursuance of a sentence mentioned in section 12, or
- (b) pending the determination by a service court of a charge brought against him,

shall, for the purposes of any legal proceedings within Barbados, be deemed to be in lawful custody.

Certificate of service court. 14. (1) For the purposes of any legal proceedings within Barbados, a certificate under the hand of the officer in command of a visiting force stating that the person specified in the certificate sat as a service court is receivable in evidence and is conclusive proof of that fact.

(2) A certificate under the hand of an officer described in subsection (1) stating that a member of a visiting force or a dependant is being detained in either of the circumstances described in section 13, is receivable in evidence and is conclusive proof of the cause of his detention, but not of his being a member of the visiting force or a dependant.

15. For the purposes of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers conferred upon them by this Act, the Minister if so requested by the officer in command of the visiting force or by the designated state, may from time to time by general or special orders to the Barbados Defence Force, or any part thereof, direct the officers and men thereof to arrest members of the visiting force or dependants alleged to have been guilty of offences against the law of the designated state and to hand over any person so arrested to the appropriate authorities of the visiting force. Arrest.

16. (1) Where a member of a visiting force or a dependant has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with the regulations, be served wholly or partly in a civil prison, military prison or military establishment, and the provisions of the *Defence Act*, respecting the carrying out of punishments of incarceration imposed upon officers and men of the Barbados Defence Force *mutatis mutandis* apply. Place of incarceration. Cap. 159.

(2) The Minister must, in accordance with the regulations, and having regard to the nature of the place of incarceration to which the offender would have been committed under the law of the designated state, determine whether the offender's punishment is to be served in whole or in part in a civil prison, military prison or military establishment.

17. The authority of members of a visiting force to exercise police functions, including the power of arrest are such as are prescribed in the regulations; but no such regulation may empower a member of a visiting force to exercise police functions in respect of any person who is not a member of the visiting force or a dependant. Police functions.

Common
law arrest.

18. Nothing in section 17 shall be construed to prevent a member of a visiting force from exercising any common law power to make an arrest.

Application
of *Defence*
Act.

Cap. 159.

19. (1) Subject to such limitations as may be prescribed in the regulations, section 106 of the *Defence Act*, apply in relation to courts-martial of a visiting force, except that a person required to give evidence before a court-martial of a visiting force may be summoned only by a magistrate whose authority in that respect is to be exercised in accordance with the regulations.

(2) Section 106 of the *Defence Act* applies to any person duly summoned under subsection (1) as though the court-martial before which he is summoned to appear were a court-martial within the Barbados Defence Force.

Death
sentence.

20. Notwithstanding sections 5 to 19, a sentence of death passed by a service court may not be executed in Barbados unless, under the law of Barbados, a sentence of death could have been passed for a similar offence.

Firearms
and
drilling.

21. Members of a visiting force acting in the course of their duties, except civilian personnel,

- (a) may, if authorised to do so by orders of service authorities of the visiting force, possess and carry explosives, ammunition and firearms; and
- (b) are not subject to any law of Barbados relating to unlawful drilling or the making or possessing of explosives.

PART II

Claims for Personal Injuries and Property Damage

Claims
against
designated
states.
Cap. 197.

22. For the purposes of the *Crown Proceedings Act*,

- (a) a tort committed by a member of a visiting force while acting within the scope of his duties or employment shall be deemed to have been committed by a servant of Her Majesty in right of Barbados while acting within the scope of his duties or employment;
- (b) property owned, occupied, possessed or controlled by a visiting force shall be deemed to be owned, occupied,

possessed or controlled by Her Majesty in right of Barbados; and

- (c) a service motor vehicle of a visiting force shall be deemed to be owned by Her Majesty in right of Barbados.

23. No proceedings lie against Her Majesty in right of Barbados by virtue of section 22, or against any member of a visiting force who is deemed a servant of Her Majesty in right of Barbados under that section in respect of a claim by a member of a visiting force or his personal representative or a dependant arising out of the death, or injury to the person, of the member, if compensation has been paid or is payable by a designated state, or out of any funds administered by any agency of a designated state, for the death or injury.

Proceedings when pension payable.

24. A member of a visiting force is not subject to any proceedings for the enforcement of any judgment given against him in Barbados in respect of a matter that arose while he was acting within the scope of his duties or employment.

Enforcement of judgment.

25. Except as section 22 may be made applicable by order of the Governor-General in respect of the ships of any particular designated state, that section does not apply to a claim arising out of or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of a cargo, unless the claim is a claim arising out of death or injury to the person.

Ships.

26. Where a question that cannot be settled by negotiation between the parties arises under this Part as to whether

Official duty.

- (a) a member of a visiting force was acting within the scope of his duties or employment, or

- (b) a matter in respect of which judgment was given against a member of a visiting force arose while he was acting within the scope of his duties or employment,

the question must be submitted to an arbitrator appointed in accordance with section 26, and for the purposes of this Part the decision of the arbitrator is final and conclusive.

27. (1) An arbitrator must be appointed for the purposes of section 26 by agreement between the designated states concerned

and Barbados from among the nationals of Barbados who hold or have held high judicial office.

(2) If the designated state and Barbados are unable, within 2 months, to agree upon an arbitrator, either the designated state or Barbados may request any person designated in an agreement with the designated state or acceptable to the designated state and Barbados to appoint the arbitrator from among the nationals of Barbados who have held high judicial office.

PART III

Security Provisions

*Official
Secrets
Acts*
applicable.
1 & 2
Geo. v.
ch. 28.

28. Subject to section 29, the *Official Secrets Acts, 1911 and 1920* of the United Kingdom Parliament (hereinafter referred to as "that Act"), applies and shall be construed as applying in respect of a designated state as though

- (a) a reference in that Act to "public officer" included any office or employment in or under any ministry, department or branch of the government of a designated state;
- (b) a reference in that Act to "prohibited place" included a reference to
 - (i) any work of defence belonging to or occupied or used by or on behalf of a designated state including arsenals, armed forces establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, cable, telephone, television, microwave, wireless or signal stations or offices, and places (other than diplomatic premises of designated states) that are used for the purpose of building, repairing, making or storing any munitions, instruments, vehicles or means of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war; and
 - (ii) any place, not belonging to a designated state, where any munitions, instruments, vehicles or means of war or any sketches, models, plans or documents relating

thereto, are being made, repaired, obtained or stored under contract with, or with any person on behalf of a designated state, or otherwise on behalf of a designated state;

- (c) a reference in that Act to "safety or interests of the state", or to "interests of the state" or to "public interest" included the safety and security interests of a designated state;
- (d) a reference in that Act to "contract made on behalf of the Crown" included a contract made on behalf of a designated state; and
- (e) a reference in that Act to "any member of Her Majesty's Forces in right of Her Government of Barbados" included a member of the visiting force of a designated state.

29. Section 10(1) of the *Official Secrets Act, 1911* of the United Kingdom Parliament does not apply in respect of a designated state.

Exception.
1 & 2
Geo. v.
ch. 28.

PART IV

Taxation

30. Where the liability for any form of taxation in Barbados depends upon residence or domicile, a period during which a member of a visiting force is in Barbados by reason of his being a member of the visiting force shall, for the purposes of that taxation, be deemed not to be a period of residence in Barbados and not to create a change of residence or domicile.

Tax and
residence.

31. (1) A member of a visiting force is exempt from taxation in Barbados on the salary and emoluments paid to him as a member of a visiting force by a designated state and in respect of any tangible movable property that is in Barbados temporarily by reason of his presence in Barbados in that capacity.

Salaries.

(2) For the purposes of section 30 and this section, the term "member of a visiting force" does not include a citizen of Barbados who is resident or ordinarily resident in Barbados.

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Service
vehicle.

32. No tax or fee is payable in respect of the licensing or registration of service vehicles of a visiting force or in respect of the use of those vehicles on any road in Barbados.

Imports.

33. (1) Subject to the regulations, a visiting force may import into Barbados, free of customs duty and any tax, equipment for the visiting force and such quantities of provisions, supplies and other goods for the exclusive use of the visiting force as in the opinion of the Minister responsible for Finance are reasonable.

(2) The Minister responsible for Finance may authorise the import into Barbados, free of duty and tax, of goods for use by dependants of members of a visiting force.

Personal
effects.

34. A member of a visiting force may, in accordance with the regulations,

(a) at the time of his first arrival to take up service in Barbados and at the time of the first arrival of any dependant to join him, import his personal effects and furniture free of customs duty and any tax; and

(b) import, free of customs duty and any tax, his private motor vehicle for personal use of himself and his dependants temporarily,

but paragraph (b) shall not be construed as granting or authorising the granting of any exception from taxes or fees in respect of the licensing or the registration of private vehicles or the use of the roads by private vehicles in Barbados.

Fuel, oil,
etc.

35. Subject to compliance with such conditions as are prescribed by the regulations, no customs duty or any tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting force.

PART V

Attachments to and from Barbados Defence Force

Applica-
tion of
Part.

36. (1) The forces (other than the Barbados Defence Force) to which this Part applies are the armed forces raised in a country declared by the Governor-General as a country in respect of which this Part is applicable.

(2) The Governor-General

- (a) may attach temporarily to the Barbados Defence Force a member of another force to which this Part applies who is placed at the disposal of the Barbados Defence Force for the purpose by the service authorities of the country to which the other force belongs; and
- (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the Barbados Defence Force at the disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force to which this Part applies.

37. While a member of another force is by virtue of section 36 attached temporarily to the Barbados Defence Force he is subject to the law relating to the Barbados Defence Force, and shall be treated and have the like powers and command, punishment and, notwithstanding section 17, arrest over members of the Barbados Defence Force as if he were a member thereof of relative rank.

Law
applicable.

38. The Governor-General may direct that, in relation to members of another force to which this Part applies, the statutes relating to the Barbados Defence Force apply with such exceptions and subject to such adaptations and modifications as may be specified by the Governor-General.

Application
of
Barbados
statutes.

39. When the Barbados Defence Force and another force to which this Part applies are serving together, whether alone or not,

Mutual
power of
command.

- (a) any member of the other force has over members of the Barbados Defence Force the like powers of command as if he were a member of the Barbados Defence Force of relative rank; and
- (b) if the forces are acting in combination, any officer of the other force appointed, by agreement between the Governor-General and the government of the country to which that force belongs, to command the combined force, or any part thereof, has over members of the Barbados Defence Force the like powers of command, punishment and arrest,

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and may be invested with the like authority as if he were an officer of the Barbados Defence Force of relative rank and holding the same command and shall be so treated.

Forces
serving
together,
etc.

40. For the purposes of this Part, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Governor-General, and the relative rank of members of the Barbados Defence Force and of other forces shall be such as may be prescribed by regulations made by the Minister.

PART VI

Miscellaneous

Enactments
relating to
Defence
Force.

41. (1) Where under any enactment a power is exercisable by any authority or person,

- (a) respecting the Barbados Defence Force, its members, its service courts or any person connected therewith, or
- (b) respecting any property used or to be used for the purposes of the Barbados Defence Force, or for taking possession of any property to be so used, or for acquiring, whether by agreement or compulsorily, any property so used or to be so used,

the Governor-General may by order provide that the power be exercisable by that authority or person, as the case may be, in the case of a visiting force to which the order applies to any extent to which it would be exercisable if the visiting force were a part of the Barbados Defence Force.

(2) The Governor-General may, by order

- (a) exempt a visiting force or its members, its service courts, any other person connected therewith or any property used or to be used for the purposes thereof from the operation of any enactment specified in the order to any extent to which the force, members, courts, persons or property would be, or would be capable of being exempted, if the force were a part of the Barbados Defence Force; and

(b) confer on that force or any members, courts, persons or property referred to in paragraph (a) any other privilege or immunity specified in the order, being a privilege or immunity that would be enjoyed, by, or would be capable of being conferred on, the force, members, courts, persons or property if the force were part of the Barbados Defence Force.

(3) Where under any enactment the doing of anything is prohibited, restricted or required in relation to

(a) the Barbados Defence Force, its members, its service courts or any other person connected therewith, or

(b) any property used or to be used for the purposes of the Barbados Defence Force,

the Governor-General may by order extend the prohibition, restriction or requirement to any visiting force in the same manner as if the visiting force were a part of the Barbados Defence Force.

(4) An order made under this section may contain such incidental, consequential and supplementary provisions as the Governor-General thinks necessary for the purposes of the order, including provisions for applying, modifying, adapting or suspending any enactment.

(5) Subsections (1) and (4) apply whether the power is exercisable, or the prohibition, restriction or requirement is imposed, by a provision expressly relating to the Barbados Defence Force or by a more general provision; and subsection (3) applies whether the exemption, privilege or immunity subsists, or is capable of being conferred, by virtue of such a provision or by reason of any enactment not binding the Crown.

42. (1) Where a coroner who has jurisdiction to hold an inquest touching a death is satisfied that the deceased person at the time of his death had a relevant association with a visiting force, then, unless the Governor-General otherwise directs, the coroner may not hold the inquest, or, if it has been begun but not completed, shall adjourn it.

Coroner's
inquest.

(2) Subject to subsection (1), a coroner referred to in that subsection shall, unless the Governor-General otherwise directs, adjourn the inquest if he is satisfied

- (a) that a person who is subject to the jurisdiction of the service courts of a visiting force has been charged before a service court with the homicide of the deceased person referred to in subsection (1), whether or not that charge has been dealt with, or
- (b) that a person referred to in paragraph (a) is being detained by an authority of a visiting force with a view to being so charged.

(3) Where an inquest is adjourned under this section the coroner may resume the inquest only on the direction of the Governor-General.

(4) Where an inquest that was adjourned under this section is resumed, the coroner shall proceed in all respects as if the inquest had not been previously begun.

(5) In this section

- (a) "homicide" includes murder, manslaughter, infanticide and any offence under the law of the country in question that is analogous to any of those offences;
- (b) references to a person having a relevant association with a visiting force are references to this being at the time
 - (i) a member of the visiting force or a member of a civilian component of that force, or
 - (ii) a person who, not being a citizen of Barbados or a permanent resident thereof within the meaning of the *Immigration Act*, is a member of the visiting force or of a civilian component of that force.

(6) In determining for the purposes of this section whether a person is, or was at any time, a permanent resident of Barbados, no account shall be taken of any period during which he has been, or intends to be, present in Barbados

- (a) as a member of a visiting force or of a civilian component of such a force, or

(b) as a dependant of a member of a visiting force or of a civilian component of such a force.

43. The Defence Board, established by the *Defence Act*, may Regulations.
make such regulations as are required for the purposes of this Cap. 159.
Act.