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HARNESSING THE POTENTIAL OF CANADA'S RESERVE FORCE UTILIZING THE CURRENT PROVISIONS OF THE NDA AND QR&O

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Exercise Solo Flight

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Since 1950 when the National Defence Act (NDA) harmonized the Army, Navy and Airforce Acts, and the “Defence in the 1970’s” White Paper, there have been a multitude of studies¹, audits², rationalizations, restructurings, directives³ and attempts to harness the potential of Canada’s Reserve Force.⁴ After years of studies and thousands of hours of staff effort, why is it that engaging and employing the Reserve Force is seemingly so complex? The Reserve Force continues to augment the Regular Force both domestically and abroad on operations in significant measures since the force reductions of the early 1990s. Commanders at all levels indicate that they could not have force generated capability without augmentation from Reservists, and once deployed, the distinction between Regular and Reservist faded. Yet outside of the shared space of fulltime service on operations and/or conditions of Class C service, there continues to be a great deal of complexity regarding the engagement, employment and administration of the Reserve Force in general and Reservists individually.

The complex and seemingly “wicked problem” of how to harness the potential of the Reserve Force continues today with the New Defence Policy, Strong Secure Engaged (SSE) with yet another “New Vision for the Reserve Force”.⁵ Once again the CAF searches for policy

¹ Canada, Primary Reserve Employment Capacity Study Final Report November 2011

² Assistant Deputy Minister (Review Services) website details multiple reviews regarding aspects of the CAF which include reference to the Reserve Force <http://www.forces.gc.ca/en/about-reports-pubs-audit-eval/index.page>

³ Canada, NDHQ Policy Directive P26 – The Development and Employment of the Primary Reserve and Supplementary List dated 11 Jan 1978

⁴ Canada, Reserve Force Employment Project (RFEP) Strategic Policy Analysis Document - The Reserve Employment Framework. 29 June 2001.

⁵ Canada, Strong Secure Engaged: Canada’s Defence Policy. 2017. p.67

solutions, possibly even changes to the National Defence Act (NDA) that will bring about a new CAF employment framework that could fundamentally change the “Constitution”⁶ of the CAF and move to a ‘One Force’ model with the intent of a seamless flow of members between full and part-time service. This paper will demonstrate that what is required are minor regulatory changes and cultural shifts in both the Regular and Reserve Force to fully enable the Total Force construct rather than wholesale change to the structure of the Canadian Forces. This shift can be achieved through the exercise of the existing NDA, the QR&Os as well as a leadership driven harmonized approach to managing the CAF members and the establishment.

The solution to the seemingly complex issues of the Reserve can be divided into four parts; Capability, Force Generation, Compensation and Benefits and Administration, each can be addressed for the most part independent of each other.

Capability – First and foremost here is a need for the articulation of the ‘what’; the capability or effect required and expectations for force generation. Individual members also need to know ‘what’ is required of them. Which capabilities are suitable to be generated by the Reserve? Once determined, outputs or force posture and readiness (FP&R) can be detailed down to the unit and the individual member level as far as qualifications required, level of individual readiness and availability or notice to move (NTM). Capability output translates into the Tables of Organization and Equipment (TO&E) required in order to have the correct force generation ratio required achieve a desired output. The desired level of readiness from mission task to declaration of operationally ready may vary from hours to months or potentially years in the case of a managed readiness model. As part of the Canadian Army’s efforts to Strengthen the Army

⁶ QR&O 2.01 Constitution of the Canadian Forces

Reserve (StAR) this aspect is relatively well defined and work in progress⁷. The RCAF and RCN have also made significant strides in the articulation of capabilities that the Reserve Force will generate however on a much smaller scale.

Another impact on the size of force required is the willingness of the Government of Canada (GoC) and CAF to exercise Reservist's obligations to serve under conditions of Active Service⁸, Aid to Civil Power⁹, Training and Duty¹⁰ and Service with Consent¹¹. Since the NDA was created, a Reservist's obligation to attend training and duty has not been actively or uniformly enforced and all 'call-outs' for Reservists to serve on operations have been filled by members who consent to serve under QR&O 9.05. Although such 'volunteerism' demonstrates that Reservists answer the call when required, it has also lead to an organizational cultural where obligation to serve is not exercised and expectations for the force generation of capability have been set lower than what there is potential for. If for example, in response to a domestic emergency the MND exercised their authority to "call-out" elements of the Reserve; provisions within job protection legislation could be enabled. This would move the liability for Reservists' service to the government rather than an individual's 'choice' to serve. Those with legitimate conflicts could be addressed during a Departure Assistance Group (DAG) and excused duty under current processes, more importantly however it puts responsibility for a member's absence from non-military obligations on the GoC and CAF not the member. Much like a Regular Force member, they simply 'have to go'.

⁷ FRAG O 001 – Mission Tasks Trance 1 to Canadian Army Op Order 17 June 2017 - Strengthening the Army Reserve dated 22 April 2018

⁸ QR&O 9.01

⁹ QR&O 9.03

¹⁰ QR&O 9.04

¹¹ QR&O 9.05

Force Generation (FG): The recruitment, training and management of an effective force capable of delivering capability is essential. This process is institutionalized for the Regular Force within Military Personnel Command (MILPERSCOM) which manages all aspects of Regular Force pay and career administration. The fundamental difference between force generation is that the Regular Force is centralized vs the Reserve Force which is decentralized within each force generator i.e. Army, RCN and RCAF. Regular Force members can be moved to where a capability resides and Reserve Force capabilities need to be located where the people are.

In the force generation of Reserve capabilities one must consider that Reservists enroll for “other than continuing fulltime service” and have fulltime obligations outside of military service. As such, members prioritize their time based on what they deem to be most important between competing obligations of civil employment, education, family or personal pursuits. The CAF can assist the member in prioritizing their time by indicating the relative importance of each training or service opportunity as well as match member availability with service opportunity in order to maximize the time that a member makes available for service. If service obligations are not enforced, it indicates the degree of priority a member should give to Reserve duty and training.

Compensation and Benefits: The application of compensation and benefits to any workforce is key to attraction, retention and morale as well as indicative of the organization’s value of its members. Compensation for CAF members is based upon a team concept where rank is used to determine pay benchmarked against the federal public service, a military factor

added to cover “unique aspects of military service such as Code of Service Discipline, separation from family and posting turbulence.”¹²

Compensation in both the private and public sector as well as the military is a very emotive topic. It is arguable that those who are ‘fulltime permanent’ should be compensated at a greater rate in exchange for their experience in the job and their commitment to the ‘employer’. The Reserve daily rate of pay (Class A or B)¹³ is based upon 85% of 1/365th of an equivalent ranked Regular Force member’s annual salary. When a Reservist serves on operations or duties deemed operational (Class C)¹⁴ they are entitled, to near equal pay and benefits as a Regular Force member. The justification being that they are working under the same conditions and share the same risks. Reservists serving on Class A or B service although liable to be placed on active service or ordered to perform duty and training typically are not typically obliged to do so in practice. Therefore as more flexibility given to the Reserve member to pursue other than military activities the 85% rate of pay has been justified. The lower rates of pay and conditions of service are well known upon enrolment; this is accepted by Reservists similarly to how it is accepted in private industry; part-time employees accept lower wages in exchange for employment. When serving on operations however, there are several other benefits that are applied that address increase risk, hazard, foreign service allowance and tax free status while deployed. This then raises question if Regular Force members are compensated even more when on operations, or when they relocate, then why the discrepancy for Class A and B pay for training and duty in Canada? As we have seen by training accidents and the murder of Cpl

¹² CAF Pay overview <http://www.forces.gc.ca/en/caf-community-pay/pay-overview.page> dated 2017-12-05 accessed 24 May 2018

¹³ QR&O 9.06 – 9.07

¹⁴ QR&O 9.075 - 9.08

Cirillo at the National War Memorial and WO Vincent at the Recruiting Centre in Quebec; both Regular and Reservists share the same risk.

In 2001 there was an attempt to establish a ‘New Reserve Employment Framework’ that was to eliminate the three “Types” of Reserve service (Class A,B,C) and replace them with Limited Liability Service (LLS) and Unlimited Liability Service (ULS). Aside from the fact that all members of the profession of arms are obliged to serve until released and subject to unlimited liability, this poorly titled fulltime/part-time model never came into effect. Unfortunately however the use of Class C for fulltime service outside of operations as described in QR&O 9.08(1)(b) has not been authorized since¹⁵. This has resulted in a vast array of problems associated with applying Class B policies designed for duties of a temporary nature to situations of long term fulltime service by Reservists comparable to the Regular Force.

With changes to the civilian workforce dynamic ‘part-time workers’ are being used more and more and attracting and retaining them is good business. “Part-time employees need to be treated as well as full-time employees are treated. If you invest in them the same way in which you invest in your other team members, you will be rewarded with quality work and loyalty”¹⁶. Under Ontario’s “Equal Pay for Equal Work” legislation that came into force in 2017 “No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status.”¹⁷ It is recognized that there is value in having a ‘part-time workforce’ and only paying employees when they are required a part-time

¹⁵ CANFORGEN 095/01 announced the “New reserve Employment Framework” and directed that all serving on Class C be converted to Class B so that all reservists serving on fulltime service outside of operations would be compensated at the 85% pay rate rather than some on Class C at 100% and others on Class B.

¹⁶ Galic, Bavid. 7 Tips for Managing Part-time Staff the Right Way. Humanity.com blog, 24 April 2015

¹⁷ Ontario. Employment Standards Act, 2000, S.O. 2000, c.41 Section 42(1)

workforce can be surged or decline as required without the overhead of a large number of fulltime employees.

Administration: The complexities in administering the Reserve Force are due in large part to treating the Reserve component as a separate entity rather than harmonizing process and policy under the CAF umbrella. For example centralized establishment, career management and military pay is presently only done for the Regular Force. This leaves an excessive burden on the Reserve Force and its chain of command to manage HR and pay and makes it difficult to manage a ‘total force’.

From a legislative standpoint, the NDA provides simple picture. A “Total Force” or a “One Force” construct already exists; “The Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces” (Sect 14 NDA). The distinction between the Regular and Reserve Force is equally simple. The Regular Force “consists of officers and non-commissioned members who are enrolled for continuing, full-time military service”¹⁸ and the Reserve Force “consists of officers and non-commissioned members who are enrolled for other than continuing, full-time military service when not on active service”¹⁹. Simply put there is a full and other than fulltime workforce. In examining the obligations of the ‘workforce’, “The enrolment of a person binds the person to serve in the Canadian Forces until the person is, in accordance with regulations, lawfully released”²⁰; as illustrated, once one volunteers to serve they consent to the terms of service under which they

¹⁸ Section 15(2) NDA

¹⁹ Section 15(3) NDA

²⁰ Section 23(1) NDA

enroll and are obliged to serve until released. Important to the CAF narrative is that members volunteer to enroll and then consent to serve IAW conditions of enrolment.

Once enrolled, a member is entitled to release; “except during an emergency, an officer or non-commissioned member who is not on active service is entitled to be released at the expiration of the term of service for which the officer or non-commissioned member is enrolled or re-engaged”²¹. The aspect of active service is important, members of both the Reserve and Regular Force may be placed on active service at any time by the Governor in Council. Being a member of either the Regular or Reserve Force does not under the NDA in itself make it any more difficult to release. Presently, however “in consequence of action undertaken by Canada to provide forces for collective defence under the North Atlantic Treaty”²² Order in Council [OIC] 89-103²³ places “officers and non-commissioned members of the Regular Force of the Canadian Forces on active service anywhere in or beyond Canada; and officers and non-commissioned members of the Reserve Force of the Canadian Forces on active service anywhere beyond Canada”. This OIC was in part due to Canada contributing troops to NATO coalition efforts in the Balkans and the first Gulf War that were not under a United Nations Command. UN Missions in the past each had an OIC declaring all members that participated in the Mission on Active service, the last example being the UN Transition Assistance Group in Namibia in 1989²⁴.

Although members of the Regular Force are technically on active service upon enrolment, members are permitted to release upon request and unless a member has a restricted release date due to specialized training they are released. Therefore in practical terms, members

²¹ Section 30(1) NDA

²² Order Placing Members of the Canadian Forces on Active Service for the Purpose of Fulfilling Canada’s Obligations Under the North Atlantic Treaty SI/89-103

²³ Ibid

²⁴ Order Placing Members of the Canadian Forces on Active Service (UNTAG-Namibia) SI/89-104

of the Regular and Reserve Force may release or component transfer at any time with between 6 months and 30 day notice depending on their Terms of Service (TOS) or Statement of Understanding (SOU). The withdrawal of consent to serve has been cited as a rationale for paying Reservists less however in reality both Regular Force and Reserve members have similar opportunity to release from a period of fulltime service.

Where there is a distinction is in the liability to perform service; “The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty”²⁵. This is reasonable since they are on fulltime service. Liability in case of the Reserve Force follows a similar thread; they “may be ordered to train for such periods as are prescribed in regulations made by the Governor in Council”²⁶. Again this makes sense, when held ‘in reserve’ there is an obligation to train and be ready in the event there is a requirement to be called out on service. It is understood that Reservists have fulltime commitments elsewhere; maintaining a Reserve in a state of high readiness in peacetime is not economical.

Reservists “may be called out on service to perform any lawful duty other than training at such times and in such manner as by regulations or otherwise are prescribed by the Governor in Council”²⁷ this too is detailed in both QR&O 9.03 Aid to Civil Power and also QR&O 9.04 Training and Duty “In an emergency, the Minister may call out on service to perform any lawful duty other than training, such members of the Reserve Force, except members of the

²⁵ Section 33(1) NDA

²⁶ Section 33(2)(b) NDA enables QR&O 9.04 provides up to 60 days Class A and 14 days Class B. This covers off periodic training throughout the year as well as a period of fulltime service on course or exercise.

²⁷ Section 33(2)(b) NDA

Supplementary Reserve, and such units and elements thereof as the Minister considers necessary”²⁸

The exception of the Supplementary Reserve (Supp Res) is important as it is often taken out of context to apply to all subcomponents of the Reserve Force.

“Nothing in subsection (2) shall be deemed to impose liability to serve as prescribed therein, without his consent, on an officer or non-commissioned member of the reserve force who is, by virtue of the terms of his enrolment, liable to perform duty on active service only”²⁹

Detailing that Reservists are obliged to serve on duty and training and may be called out in an emergency by the MND as well as be called out in aid to the civil power and then contradicting it in the next paragraph does not make sense yet it is often referred to when the assertion is made that Reservists are strictly volunteers. The assertion that the obligations of Reserve service are ‘voluntary’ is counterintuitive and the root of a cultural problem that reinforces a laissez-faire attitude towards a member’s requirement to parade and remain trained and effective. No civilian workforce would function in this manner, why would there be lower expectations of members of the armed forces? A little know, and seldom if ever applied element of the NDA is that Reservists are liable to be tried in civil court for “failure to attend parade”:

294 (1) Every officer or non-commissioned member of the reserve force who without lawful excuse neglects or refuses to attend any parade or training at the place and hour appointed therefor is guilty of an offence and liable on summary conviction for

²⁸ QR&O 9.04 (3)

²⁹ NDA 33(3)

each offence, if an officer, to a fine not exceeding fifty dollars and, if a non-commissioned member, to a fine not exceeding twenty-five dollars.

(2) Absence from any parade or training referred to in subsection (1) is, in respect of each day on which the absence occurs, a separate offence.³⁰

Although it could be argued that enforcing a member's obligation to serve may turn many away, the exact opposite is likely to happen. Once the CAF defines what is important to its members, they will be able to prioritize their lives in order to achieve what is asked of them. Particularly as members enter the workforce and have families, time becomes more scarce and of more value. Members are more likely to commit to service that is scheduled well in advance and is based on their role in the unit than given an open ended request. Members often become disengaged when they are not gainfully employed and determine their time would be better spent addressing other priorities in life. By better defining expectations and opportunities in turn there is likely to be better motivated workforce.

Moving forward the following recommendations are offered. The definition of capability is reasonably well done, the next step would be to define the level of readiness that a mission element is required to maintain inclusive of each member and build an achievable training schedule around the capability. Harmonize compensation and benefits; it is recommended that all CAF members move to a single pay scale based on a daily rate, Class C incentive pay categories (IPCs) would be based on pure time in rank rather than paid service. Allowances would be retained and expanded to incentivize certain service conditions. Administration of the Reserve Force would be harmonized with the Regular Force and centralized within MILPERSCOM allowing for the management of the "Total Force" and ease movements between

³⁰ Section 294 National Defence Act

full and part-time career paths. The adoption of a single CAF pay and HR system with an internet accessible Reserve workforce management capability allowing the chain of command and members to manage tasks, availability and training schedules. Once a schedule is in place the requirement to manually register attendance would be eliminated and the shift made to absence management as applied to those on fulltime service. With a single career management authority members could be seamlessly transferred between full or part-time positions on either Regular or Reserve establishments. Members of the Reserve Force filling fulltime permanent positions on the CAF establishment would be placed on Class C service IAW QR&O 9.08(1)(b) in order to apply policies related to fulltime service of a non-temporary nature to both Regular and Reserve members equally.

The NDA and QR&O demonstrate that in order to achieve a total force model, the CAF must first and foremost culturally consider itself one service with two equal yet distinct components. It also demonstrates that the Reserve Force and Reservists are capable of force generating capability and can individually and collectively be held far more accountable for their obligation to serve.

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