

Canadian  
Forces  
College

Collège  
des  
Forces  
Canadiennes



## CANADIAN ARMED FORCES: OPENING THE DOOR TO LEARNING DIFFICULTIES THROUGH AN OVER-ARCHING POLICY AND SOCIAL CHANGE

Maj M.J. Crosby

**JCSP 39**

**Master Of Defence Studies**

**Disclaimer**

Opinions expressed remain those of the author and do not represent Department of National Defence or Canadian Forces policy. This paper may not be used without written permission.

© Her Majesty the Queen in Right of Canada, as represented by the Minister of National Defence, 2015.

**PCEMI 39**

**Maîtrise en Études de la  
Défense**

**Avertissement**

Les opinions exprimées n'engagent que leurs auteurs et ne reflètent aucunement des politiques du Ministère de la Défense nationale ou des Forces canadiennes. Ce papier ne peut être reproduit sans autorisation écrite.

© Sa Majesté la Reine du Chef du Canada, représentée par le ministre de la Défense nationale, 2015.

**CANADIAN ARMED FORCES: OPENING THE DOOR TO LEARNING  
DIFFICULTIES THROUGH AN OVER-ARCHING POLICY AND  
SOCIAL CHANGE**

Maj M.J. Crosby

*“This paper was written by a student attending the Canadian Forces College in fulfilment of one of the requirements of the Course of Studies. The paper is a scholastic document, and thus contains facts and opinions, which the author alone considered appropriate and correct for the subject. It does not necessarily reflect the policy or the opinion of any agency, including the Government of Canada and the Canadian Department of National Defence. This paper may not be released, quoted or copied, except with the express permission of the Canadian Department of National Defence.”*

Word Count: 16 800

*“La présente étude a été rédigée par un stagiaire du Collège des Forces canadiennes pour satisfaire à l'une des exigences du cours. L'étude est un document qui se rapporte au cours et contient donc des faits et des opinions que seul l'auteur considère appropriés et convenables au sujet. Elle ne reflète pas nécessairement la politique ou l'opinion d'un organisme quelconque, y compris le gouvernement du Canada et le ministère de la Défense nationale du Canada. Il est défendu de diffuser, de citer ou de reproduire cette étude sans la permission expresse du ministère de la Défense nationale.”*

Compte de mots : 16 800

## TABLE OF CONTENTS

Table of Contents	ii
Abstract	iii
Chapter	
1. Introduction	1
2. Learning Disabilities or Learning Difficulties?	6
3. Laws and Regulations	21
4. Accommodation of Learning Difficulties	40
5. Policy Implications for the Canadian Armed Forces	60
6. Conclusion	80
Bibliography	83

## ABSTRACT

While the courts have determined that the Canadian Armed Forces have overarching *bona fide* occupational requirements founded on the *National Defence Act* and the principle of universality of service, as Canadian society becomes more accepting of learning disabilities, the Canadian Armed Forces may find itself under increasing pressure to actively offer reasonable accommodations. This research paper argues that the CAF should be proactive in creating an overarching policy for the accommodation of persons with learning difficulties that result from innate conditions that do not affect the intelligence quotient of a person, and that a social change strategy will be essential to successful policy implementation.

## CHAPTER 1: INTRODUCTION

Throughout history, many changes have had a significant impact on Canadian society and Canadian individuals – particularly those who fall within the four designated groups as defined by the *Employment Equity Act* (EEA).<sup>1</sup> Women, aboriginal people, persons with disabilities and members of visible minorities have not always been treated as “equal before and under the law” or given the right to “equal protection and equal benefit without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”<sup>2</sup>

The 1982 *Canadian Charter of Rights and Freedoms* (the Charter), and the EEA of 1995 are legislative milestones that have contributed to improving equality and fairness for all persons in order to “achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability.”<sup>3</sup>

This legislation is generally viewed as having provided the impetus to compel the Canadian Armed Forces (CAF) into a social change that has resulted in policies and investments that, for example, opened the doors to women who were not previously given equal opportunities to choose to work in occupations such as combat arms or aboard submarines.<sup>4</sup> The first women at military college, the first woman aboard a submarine, and the first women in combat arms occupations benefitted from changes in policies that

---

<sup>1</sup> *Employment Equity Act*, S.C., c. 44 (1995), accessed 1 March 2015, <http://laws-lois.justice.gc.ca/PDF/E-5.401.pdf>.

<sup>2</sup> *Constitution Act*, (1982), Canadian Charter of Rights and Freedoms, accessed 8 March 2015, <http://publications.gc.ca/collections/Collection/CH37-4-3-2002E.pdf>.

<sup>3</sup> *Employment Equity Act*, S.C., c. 44 (1995).

<sup>4</sup> The combat arms occupations are those trained to deploy in harm’s way: artillery, infantry, armoured, and combat engineer.

afforded them equal opportunity to serve their country within a military culture that continues to evolve.

Today, Canadian men and women, including aboriginal people and visible minorities, can join any of the hundreds of occupations that the CAF has to offer without discrimination. Persons with disabilities, however, are still not given the same opportunities. The term “persons with disabilities” is defined in the EEA as “persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment including learning disabilities.”<sup>5</sup> Although the CAF has in recent years put much effort into breaking the stigma attached to mental health issues through policies, programs, information seminars, and initiatives to support ill and injured members, similar policies and initiatives have not been put in place for persons with learning disabilities.

The CAF has opened the door to almost every group designated in the EEA except persons with disabilities. While the CAF is working diligently to increase its percentages of women, visible minority and aboriginal members through programs, visits to schools, television recruiting campaigns and social media, little has been done to accommodate military members with learning disabilities. Moreover, despite the fact that nothing prevents persons with learning disabilities from applying to the CAF, once enrolled, military members who experience difficulties during the training and education phase of their careers have very limited access to resources to help them succeed.

---

<sup>5</sup> Ibid.

Although the courts have determined that the CAF have over-arching *bona fide* occupational requirements founded on the *National Defence Act* (NDA) and the principle of universality of service, the CAF may find itself under increasing pressure to actively offer reasonable accommodations as Canadian society becomes more accepting of learning disabilities.<sup>6</sup> This research paper argues that the CAF should be proactive in creating an overarching policy for the accommodation of persons with learning difficulties that result from innate conditions that do not affect the intelligence quotient of a person, and that a social change strategy will be essential to successful policy implementation.

### **Research questions**

The following primary research questions are addressed through this paper:

- (1) What is the difference between a learning disability and a learning difficulty?
- (2) What are the legal considerations that constrain a discussion about learning difficulties in the CAF?
- (3) What are the emerging factors in Canadian society that may impact the CAF's approach to the accommodation of learning difficulties?
- (4) Should the CAF have a policy on the accommodation of learning difficulties and, if so, how should it be implemented?

---

<sup>6</sup> *National Defence Act*, R.S.C., c. N-5 (1985), accessed 8 March 2015, <http://laws-lois.justice.gc.ca/eng/acts/N-5/>.

## **Methodology**

This qualitative analysis research paper provides information about learning disabilities and learning difficulties, the laws and regulations governing employment equity and the duty to accommodate as well as details about what the CAF and society at large are doing to accommodate persons with learning disabilities in a changing society. The research includes information gathered from a variety of sources including academic journals, internet sites and research papers, as well as from books from libraries such as the National Defence Headquarters library, the Canadian Forces College virtual library, and the public library. Various reports and documents were also consulted, which have been written by and for Department of National Defence (DND) organizations such as the office of the Chief of Military Personnel (CMP), the Director General Military Personnel, the office of the Director General Military Personnel and Research Analysis and the Director Human Rights and Diversity (DHRD). Research for this paper further includes information gathered through informal consultations via emails and telephone calls with contacts at DHRD, the Canadian Military Colleges and Canadian Forces Naval Operations School (CFNOS). The author has also relied on her twenty-eight years of experience as an officer in the CAF, including as an Aerospace Controller, staff officer to CMP and, most recently, interacting with applicants to the CAF during her two-year tenure as Commanding Officer (CO) for the Canadian Armed Forces Recruiting Centre for Northern and Eastern Ontario.



## **Limitations**

Unlike most physical disabilities, learning disabilities and learning difficulties can go un-noticed. It is therefore difficult to determine how much of the Canadian population is actually affected by a learning disability. The main reason for this lack of data is that, despite the amount of research that has been done in this field, the definition of learning disabilities is not yet internationally agreed; nor is there an agreed list of what is considered and not considered a learning disability. Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD) is one example of a condition that is sometimes included in the list of learning disabilities affecting attention, concentration and memory, and sometimes not. Another reason why it is difficult to define the affected Canadian population is that any statistics rely on people self-identifying as having a disability. At the same time, while some Canadians may not want to divulge their disability, others may not even know or may not find out until later in their adult lives that they may have a learning disability. Moreover, the CAF does not currently have an effective, systematic approach to assessing or tracking military members with learning disabilities.

## **Further study**

In order to create a policy for learning difficulties in the CAF, more research will be required to establish the boundaries within which learning difficulties can be accommodated, from initial selection through basic training and occupational qualification to career progression, while still meeting *bona fide* occupational requirements. There will also be a requirement to determine how best to accommodate those already serving.

## CHAPTER 2: LEARNING DISABILITIES OR LEARNING DIFFICULTIES?

The word ‘disability’ is frequently perceived to be synonymous with ‘inability’ and a ‘learning disability’ can, by extension, be perceived to be synonymous with an inability to learn. As a consequence, a discussion about ‘learning disabilities’ can be circumscribed through misinterpretation and over-simplification. In this chapter, we will examine the language associated with learning disabilities, and investigate a number of common conditions associated with learning impediments. The variations within and between these conditions suggests that a more constructive CAF policy discussion should occur under the heading of ‘learning difficulties’, and not be overly simplified or prematurely generalized.

### Disabilities

Before looking at the difference between learning disabilities and learning difficulties, it is important to start by considering the definition of disabilities as it appears in the Canadian EEA.

The Canadian EEA defines persons with disabilities as:

persons who have a long-term or recurring physical, mental, sensory, psychiatric or *learning impairment* [emphasis added] and who

- (a) consider themselves to be disadvantaged in employment by reason of that impairment, or
- (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.<sup>7</sup>

---

<sup>7</sup> Ibid.

Though significant work has been done by the CAF in the area of mental health and physical disabilities, its approach to learning disabilities has been *ad hoc*. There is no overarching policy and only limited information for members of the CAF to guide supervisors or military members on support mechanisms for those with learning disabilities.

### **International conventions**

There is no internationally agreed definition of learning disabilities and difficulties. When comparing definitions used by Canada's closest allies, namely the United Kingdom, Australia and the United States of America, we can see that the terms are not consistently interpreted or applied.

The United Kingdom Foundation for people with learning disabilities specifies that unlike learning disabilities, learning difficulties do not affect overall intelligence (Intelligence Quotient (IQ)). The foundation links learning disabilities to an overall cognitive impairment.<sup>8</sup>

In contrast, an Australian model described by the Specific Learning Difficulties (SPELD) Foundation uses the term "learning difficulties" to describe factors which affect learning: "The generic term 'Learning Difficulties' refers to the 20 to 25% of students

---

<sup>8</sup> Foundation for People with Disabilities, "Learning difficulties," accessed 1 March 2015, <http://www.learningdisabilities.org.uk/help-information/learning-disability-a-z/1/204300/>.

who exhibit problems acquiring academic skills as a consequence of a range of causes.”<sup>9</sup> SPELD further remarks that learning difficulties “are likely to be resistant to intervention and will persist into adulthood.”<sup>10</sup>

The factors which, according to the Australian model, affect learning include: behaviour and emotional factors (Asperger Syndrome and ADHD would fall into this category), environmental, intellectual (IQ), physical and sensory and finally *specific learning disabilities* (dyslexia falls into this category). Specific learning disabilities “are not intellectual impairments” but result from “an impairment in one or more of the psychological processes related to learning” and can occur in the reading, written expression, mathematics, co-ordination and the language areas of academic skills.<sup>11</sup>

In 1968, learning disabilities in the United States were federally designated as “handicapping conditions.” Since then, much research has enabled significant progress in understanding learning disabilities involving reading (word recognition, fluency, and comprehension), mathematics (computations and problem solving), and written expression (handwriting, spelling, and composition).<sup>12</sup> Some of that research would even indicate that reading disabilities may be preventable with early intervention in childhood.<sup>13</sup>

---

<sup>9</sup> SPELD Foundation, “What is Specific Learning Disability (SLD)?” accessed 1 March 2015, <http://dsf.net.au/what-are-learning-disabilities/>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> J.M. Fletcher, et al., *Learning Disabilities: From Identification to Intervention* (New York: The Guilford Press, 2007), 1.

<sup>13</sup> Ibid.

A more recent model from the United States also uses the term learning disabilities.<sup>14</sup> The model depicts the factors that may, whether alone or together, affect someone's academic outcome. The model begins with the identification of an academic skills deficit such as word recognition or reading fluency affecting reading, mathematics or written expression and describes the variables which may be contributing to this deficit. In this framework, it is believed that the variables which may contribute to an academic skill deficit are in the areas of core cognitive processes (e.g. phonological awareness), behavioral/psychosocial factors (e.g. attention, social skills, anxiety), environment (e.g. schooling, intervention) and neurobiological (e.g. genetic factors, brain structure and function).<sup>15</sup> These variables may affect academic skills individually or they may inter-react between one another. In order to fully understand learning disabilities, all of these variables must be considered and analysed.

In Canada, the Learning Disabilities Association of Canada (LDAC) states that:

Learning Disabilities refer to a number of disorders which may affect the acquisition, organization, retention, understanding or use of verbal or nonverbal information. These disorders affect learning in individuals who otherwise demonstrate at least average abilities essential for thinking and/or reasoning. As such, learning disabilities are distinct from global intellectual deficiency.<sup>16</sup>

LDAC further states that learning disabilities are lifelong and “may co-exist with various conditions including attentional, behavioural and emotional disorders, sensory

---

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Learning Disabilities Association of Canada, “Official Definition of Learning Disabilities,” accessed 14 March 2015, <http://www.ldac-acta.ca/learn-more/ld-defined/official-definition-of-learning-disabilities>.

impairments or other medical conditions.”<sup>17</sup> The learning disabilities definition from LDAC is the generally accepted definition in Canada.

In a 2009 paper prepared for the Canadian Defence Academy, Directorate of Learning and Innovation, the term learning difficulties was defined as applying to “individuals with learning disabilities, as well as individuals with acquired physical or cognitive difficulties that may affect or impact learning”.<sup>18</sup> A report from the Gouvernement du Québec Ministère de l’Éducation (2002), referenced in this paper, states that in the case of individuals with acquired difficulties, “the brain has usually been seriously damaged, and its capacity has been significantly altered in every way.”<sup>19</sup>

As stated in a 2015 Director General Military Personnel presentation, learning difficulties “are considered to be lifelong and intrinsic to the individual.”<sup>20</sup> The presentation also acknowledged that learning disabilities are “distinct from global intellectual deficiency.”<sup>21</sup>

As briefly exposed here, there are many models to define learning disabilities and learning difficulties. It is therefore important to clearly define the subject under discussion, to avoid confusion or misunderstanding, particularly when benchmarking with Allies. At the same time – as has been the case in the context of mental health with the

---

<sup>17</sup> Ibid.

<sup>18</sup> Canadian Defence Academy Lessons Learned Division, Directorate of Learning and Innovation, *Training and Educating Individuals with Learning Difficulties*, (Goss Gilroy Inc., March 2009), 13.

<sup>19</sup> Ibid., 10.

<sup>20</sup> National Defence, Director General Military Personnel, Power Point Presentation on *Duty to Accommodate – Learning Disability – Policy Review*. 20 April 2015. 10.

<sup>21</sup> Ibid., 5.

evolution from the use of the term ‘shell shocked’ to the more descriptive and constructive ‘operational stress injury’ – adopting appropriate language is key to opening a meaningful policy dialogue.

The focus of this paper is *learning difficulties related to innate conditions that do not affect the intelligence quotient of a person*. In this context, learning difficulties can be mitigated with appropriate accommodations in order that a person can learn and function with their peers. Although the term ‘learning disability’ is in common use and better associated with Canadian labour laws, the more descriptive term ‘learning difficulty’ will be used through the remainder of this paper, except when quoting outside references.

### **Examples of learning difficulties**

Before making deductions or a judgement on the appropriateness of accommodating individuals challenged by apparent obstacles to learning, it is important to look into a few more specific examples of learning difficulties to see how they can differ or be similar to one another. The characteristics of various learning difficulties and how they might affect the ease with which an individual can learn and function in a given work environment are explored in the following paragraphs.

In a Statistics Canada report that was published in 2014, adults with learning disabilities were identified as “those whose daily activities were limited because of difficulties caused by a learning condition.”<sup>22</sup> This report observed that:

Approximately 622,300 of the adult population (2.3%) reported a learning disability....The most prevalent underlying learning condition reported included attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), and other developmental disorders of scholastic skills....These include conditions such as dyslexia, dyscalculia, dysgraphia, and developmental aphasia.<sup>23</sup>

## Dyslexia

The Canadian Dyslexia Association defines dyslexia as “a difficulty with the alphabet, reading, writing and spelling in spite of normal or above-normal intelligence, conventional teaching methods, and adequate sociocultural opportunity. Dyslexia is thought to be genetic and hereditary.”<sup>24</sup> The Association estimates that there are five millions Canadians who have dyslexia<sup>25</sup> and that dyslexia represents 80 to 90 percent of all learning disabilities in Canada.<sup>26</sup>

The Australian SPELD Foundation identifies that for some students, the barrier to learning effectively is a component of their “developmental make-up”. These students are often of average or above average intelligence, however, they have a condition which significantly impacts their ability to learn.<sup>27</sup>

---

<sup>22</sup> Statistics Canada, *Learning disabilities among Canadians aged 15 years and older, 2012*. Ottawa: Cat No 89-654-x, 3 December 2014, 3.

<sup>23</sup> Ibid.

<sup>24</sup> Canadian Dyslexia Association, accessed 13 April 2015, <http://www.dyslexiaassociation.ca>.

<sup>25</sup> The author is not aware of the basis for this estimate; however, it is much higher than the number given by Statistics Canada.

<sup>26</sup> Canadian Dyslexia Association, accessed 13 April 2015, <http://www.dyslexiaassociation.ca>

<sup>27</sup> SPELD Foundation, “What is Specific Learning Disability (SLD)?”



According to the Canadian Dyslexia Association, there are three fundamental types of dyslexia and seven permutation patterns.<sup>28</sup> The first type has to do with motor skills in that a person would have difficulty remembering the movement required to write a letter (e.g. writes b instead of d). The second type of dyslexia, auditory dyslexia is a deficit in the ability to sound or distinguish unfamiliar words (e.g. writes aminal instead of animal). The third, and likely most well-known, type of dyslexia is called visual dyslexia and is defined as a deficit to recognize words by sight (e.g. reads ball instead of bell). An article published in *The New England Journal of Medicine* concluded that, “Reading difficulties, including dyslexia, occur as part of a continuum that also includes normal reading ability. Dyslexia is not an all-or-none phenomena, but like hypertension, occurs in degrees.”<sup>29</sup>

Persons with dyslexia may therefore be poor readers and spellers. They may have poor vocabulary and difficulties with their handwriting. Learning multiplication tables may also be a challenge for some persons with dyslexia. Dyslexics however, have strong academic assets such as good reading comprehension, good mathematical reasoning, good spatial perception skills and perception in reading between the lines. Social skills are usually not impaired by dyslexia.<sup>30</sup> A publication by the Canadian Dyslexic Centre Inc. clarifies that:

Because dyslexics read or write slowly, poorly and inefficiently, it does not mean they are slow learners. They simply learn differently. Their IQ ranges from the average to the gifted range. They are often called visual-spatial

---

<sup>28</sup> Canadian Dyslexia Association, accessed 13 April 2015, <http://www.dyslexiaassociation.ca>.

<sup>29</sup> Sally E. Shaywitz, *et al.*, “Evidence that dyslexia may represent the lower tail of a normal distribution of reading ability,” *The New England Journal of Medicine* 326, no.3 (January 16 1992): 145. <http://www.annualreviews.org/doi/abs/10.1146/annurev.so.09.080183.001055>.

<sup>30</sup> Canadian Dyslexia Association.

learners. This means that they learn holistically rather than in a step-by-step fashion. In other words they see the whole picture “right away” like a web.<sup>31</sup>

Research demonstrates that children with dyslexia can learn given appropriate educational programs and instructional techniques in accordance with their strengths, weaknesses and preferred learning style.<sup>32</sup>

Dyslexics can learn with various degrees of accommodation. These accommodations can be as simple as changing the colour of printed paper, since black ink on white paper may be difficult for dyslexics to read. Other forms of accommodation may include additional time to write exams, allowing the use of a calculator, double spacing written material or providing electronic notes that may be read and highlighted on the student’s own time or decoded using one of many word recognition programs.<sup>33</sup>

It would appear that over 50% of National Aeronautics and Space Administration (NASA) employees are dyslexic. They are said to be “deliberately sought after because they have superb problem-solving skills and excellent [three-dimensional] and spatial awareness.”<sup>34</sup> Furthermore, Dr. Sally Shaywitz, leading neuroscientist and co-director of the Center for Learning and Attention at Yale University, reported that “dyslexics are

---

<sup>31</sup> Louise Brazeau-Ward, *I'm confused, is it dyslexia or is it a learning disability?* (Ottawa: Canadian Dyslexia Centre Inc., 2005), 55.

<sup>32</sup> Ibid.

<sup>33</sup> Sandra Hargreaves, *Study Skills for Dyslexic Students* (London: SAGE Publications Ltd., 2007).

<sup>34</sup> Brazeau-Ward, *I'm confused, is it dyslexia or is it a learning disability?...*, 56.

over represented in the top ranks of people who are unusually insightful, who bring a new perspective, who think out of the box.”<sup>35</sup>

An article in *Learning Disabilities Research & Practice* quotes Shaywitz (2003) in saying that we have learned from high-functioning adults with learning difficulties that “reading slowly tells nothing about the ability to comprehend” and conversely “poor spelling has little to do with one’s ability to write creatively.”<sup>36</sup>

### Asperger Syndrome (AS)

AS is a condition which falls within the Autistic spectrum.<sup>37</sup> Although this syndrome does not affect an individual’s intellectual capacity, its effect on behavior and emotion make it difficult for AS persons to navigate the social environment. Public awareness of AS has increased over the past decade, however there are still limited resources available.<sup>38</sup> This lack of resources is felt even more in the educational system because “people with AS tend to be highly individualized”<sup>39</sup> and need more one-on-one support to formulate strategies to develop their communication skills and deal with various social situations. Learning difficulties associated with AS are more closely

---

<sup>35</sup> Betty Morris, *Overcoming Dyslexia: The Dyslexic CEO*, (May 2002) quoted in C. Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities* (Toronto: ALDER Adult Learning Disabilities Employment Resources, 2005), 64.

<sup>36</sup> Sally Shaywitz, “*Overcoming Dyslexia: A New and Complete Science-Based Program for Reading Problems at any Level*,” (New York: Knopf, 2003): 341, quoted in Noel Gregg, *et al.*, “Who are Most, Average, or High-Functioning Adults?” *Learning Disabilities Research & Practice* 22, no. 4 (November 2007): 272, <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-5826.2007.00255.x/abstract>.

<sup>37</sup> Robert Harpur, Maria Lawlor, and Michael Fitzgeralds, *Succeeding in College with Asperger Syndrome – A student guide* (London: Jessica Kingsley Publishers, 2004), 14.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

associated with the challenges experienced by an individual within the learning environment than they are with the absorption, analysis or retention of information.

Coping with change is one of the biggest challenges for persons with AS.<sup>40</sup> An average person may from time to time have difficulties coping with change or stress but for someone with AS, the same experience will require more of their coping strategies to be able to work through that same situation.<sup>41</sup> Furthermore, persons with AS may find group work stressful due to the requirement to socially interact with other persons.<sup>42</sup> Because many AS persons will have had a difficult time socially in school they often suffer from fear and anxiety.<sup>43</sup> Victims of bullying, exclusion or isolation through school may lead to AS persons avoiding social situations and becoming further isolated by fear of being scrutinized by others. “Social anxiety disorder is a common condition in people with AS.”<sup>44</sup> Panic attacks are also not uncommon in persons with AS when faced with new environments, new routines, new people or a situation in which they do not know what to do which increase the uncertainty and fear of the unknown.<sup>45</sup>

Communication skills are also extremely difficult for persons with AS. Actually listening to what is being said, in addition to thinking about what they want to add to the conversation and thinking about when it is a good time to talk may be a multitasking challenge. Added to this is a difficulty in reading non-verbal body language and tone. As persons with AS become adults, their anxiety, tension and worry may develop into

---

<sup>40</sup> Ibid., 70.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid., 63.

<sup>43</sup> Ibid., 212.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., 213.

depression or generalized anxiety disorder which include nervousness or restlessness, poor concentration, irritability or depressed mood, muscle tension or disturbed sleep.<sup>46</sup>

Although persons with AS may not be suited for working in a team oriented, challenging, sometimes stressful and unpredictable and highly dynamic environment such as the military, it does not mean that they are less intelligent. In fact AS persons may be quite inventive, creative, and persistent problem solvers once they find their passion.<sup>47</sup> Isaac Newton and Wolfgang Amadeus Mozart are examples of persons who are believed to have had AS.<sup>48</sup>

#### Attention-Deficit Hyperactivity Disorder (ADHD)

Attention-Deficit Hyperactivity Disorder is a “neuro-cognitive disorder characterized by a persistent pattern of inattention and/or hyperactivity which is more frequent and severe than that experienced by others of the same developmental stage.”<sup>49</sup> It affects the frontal lobe which is vital for filtering out external distractions and irrelevant information in addition to targeting, integrating and synthesizing data received from other parts of the brain.<sup>50</sup> The principal characteristics of ADHD are inattention, hyperactivity,

---

<sup>46</sup> Ibid., 214.

<sup>47</sup> Ibid., 242.

<sup>48</sup> Ibid., 242.

<sup>49</sup> C. Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities* (Toronto: ALDER Adult Learning Disabilities Employment Resources, 2005), 78.

<sup>50</sup> Ibid., 79.

and impulsivity.<sup>51</sup> Some people can be predominantly hyperactive-impulsive, some may be predominantly inattentive and some may exhibit both of these symptoms combined.<sup>52</sup>

Studies differ in how they classify ADD/ADHD. The disorder is sometimes included as a specific type of learning difficulty involving attention, memory and concentration, and it is sometimes considered as separate from the spectrum of learning difficulties but a related and often co-existing disorder, and sometimes it is not mentioned at all.<sup>53</sup> ADHD reportedly affects approximately five to twelve percent of the population.<sup>54</sup>

Research has shown that children diagnosed with ADHD who have difficulties in school are either predominantly inattentive or combined hyperactive-impulsive and inattentive.<sup>55</sup> Hyperactive and impulsive children may do well academically. Though adults frequently become less hyperactive and impulsive as they grow older, they seem to remain inattentive.<sup>56</sup>

Given the difficulty that someone with ADHD may have in filtering information, situations requiring planning, prioritization, multitasking and rapid processing of

---

<sup>51</sup> Mental Health Canada, "Diseases and disorders – ADHD," accessed 15 April 2015, <http://www.mentalhealthcanada.com/ConditionsandDisordersDetail.asp?lang%20=e&category=60>.

<sup>52</sup> Learning Disabilities Association of Ontario, "Learning Disabilities Statistics," accessed 8 March 2015. <http://www.ldao.ca/introduction-to-ldsadhd/ldsadhs-in-depth/articles/about-lds/learning-disabilities-statistics/>.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

information may be beyond their capacity to cope.<sup>57</sup> However, positive traits of persons with ADHD may include good social skills, enthusiasm, infinite energy, and creative thinking. These traits may be attributes that make ADHD adults sometimes very good at responding to crisis and immediate problem solving.<sup>58</sup>

ADHD manifests itself differently from one person to another and many persons with this disorder have become quite successful. Benjamin Franklin, Winston Churchill and Albert Einstein are such examples.<sup>59</sup>

Ways to enhance the performance of persons with ADHD include providing them with a non-distracting and low stress workplace, flexible working hours, structured deadlines, written instructions, and checklists.<sup>60</sup> Over 50 percent of those with ADHD need medication as adults.<sup>61</sup>

## Summary

In this chapter, we examined the language associated with learning disabilities and argued that adopting the term ‘learning difficulties’ would support a more constructive policy discussion. Further, we briefly examined the variations within and between three conditions that are often associated with learning difficulties and can conclude that policy

---

<sup>57</sup> Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities...*, 80.

<sup>58</sup> *Ibid.*, 81.

<sup>59</sup> *Ibid.*, 80.

<sup>60</sup> *Ibid.*

<sup>61</sup> Mental Health Canada, “Diseases and disorders – ADHD.”

discussions related to learning difficulties must not be overly simplified or prematurely generalized.

There are a variety of identifiable impediments to learning and their implications for an individual's ability to learn ranges from an outright disability, through various levels of difficulty that can be overcome with various degrees of accommodation. Added to the complexity of the spectrum of characteristics that defines a learning disability is the fact that not all individuals impacted by the same disabilities will be affected the same way. And even with the possibility of suitable accommodation in a learning environment, some conditions are unlikely to be acceptable in the military operational environment.

*Bona fide* occupational requirements and the duty to accommodate, which will be looked at next, should be the guiding principles in the decision-making process when dealing with someone with a learning difficulty.



### CHAPTER 3: LAWS AND REGULATIONS

“If you are a person with disabilities, you are invisible at best, or an inconvenience at worst. There are no laws protecting you, or granting you access to special services.”<sup>62</sup> This was the reality of persons with disabilities including learning difficulties in the 1900s. Fortunately, a lot has changed since the 1900s when Darwin’s theories of “survival of the fittest” were applied even to persons, ultimately resulting in individuals with learning difficulties being left to their own demise.<sup>63</sup> Several changes in Canadian legislation have contributed to ensuring equal opportunities are given to persons with learning difficulties.

This chapter provides an overview of the evolution of laws that govern employment equity along with cases that have resulted in interpretation of the law by the Supreme Court of Canada. This information will help in understanding the external pressure that the CAF may face in the future when defining *bona fide* occupational requirements that justify whether or not the military can accommodate persons with learning difficulties. This chapter will also look at the responsibilities of employers under the principle of the duty to accommodate, as well as the universality of service as it applies to the CAF; this analysis will later support the suggestion that the CAF should be proactive in implementing an overarching policy for persons with learning difficulties.

---

<sup>62</sup> Canada. Canadian Human Rights Commission, “Canadian Human Rights: A historical perspective – Persons with Disabilities,” accessed 23 April 2015, <http://www.chrc-ccdp.ca/en/getBriefed/1900/persons-disabilities.asp>.

<sup>63</sup> Ibid.

### ***Canadian Human Rights Act (CHRA)***

The CHRA was introduced by the Parliament of Canada in 1977 to prohibit discrimination at the federal level. The focus of the CHRA is solely with equality rights as they pertain to pay, employment and the provision of goods and services. The purpose of the CHRA is to extend the laws in Canada to give effect to the principle that all individuals should have equal opportunities to have the lives that they want and could have and to have their needs accommodated without discriminatory practices based on “race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.”<sup>64</sup> The CHRA applies to private and public organizations at the federal level. At the provincial level, each province and territory has its own anti-discriminatory law that applies to activities that are not federally regulated.<sup>65</sup>

Through the CHRA, a Human Rights Commission system which includes the Canadian Human Rights Commission (CHRC)<sup>66</sup> and the Canadian Human Rights Tribunal (CHRT)<sup>67</sup> was also created. The CHRC investigates claims of discrimination and refers cases to the CHRT for adjudication.<sup>68</sup> Some cases have made their way to the

---

<sup>64</sup> *Canadian Human Rights Act*, R.S.C., c. H-6 (1985), accessed 28 April 2015, <http://laws-lois.justice.gc.ca/PDF/H-6.pdf>.

<sup>65</sup> Maple Leaf Web, “The *Canadian Human Rights Act*: Introduction to Canada’s Federal Human Rights Legislation,” accessed 4 May 2015, <http://mapleleafweb.com/features/canadian-human-rights-act-introduction-canada-s-federal-human-rights-legislation>.

<sup>66</sup> Government of Canada, “Canadian Human Rights Commission,” accessed 5 May 2015, <http://www.chrc-ccdp.ca/eng>.

<sup>67</sup> Canadian Human Rights Tribunal, “About the CHRT,” accessed 5 May 2015, <http://www.chrt-tcdp.gc.ca/NS/index-eng.asp>.

<sup>68</sup> Maple Leaf Web, “The *Canadian Human Rights Act*: Introduction to Canada’s Federal Human Rights Legislation.”

Supreme Court of Canada and have directly contributed to changes in the interpretation of the CHRA.

In order to understand the kinds of pressures to which the CAF can be subject, a look at those factors that led to the integration of women in all CAF occupations will be useful. While the CHRA played an important role in exerting pressure on the CAF to change its policies regarding the integration of women in the military, it was the Royal Commission on the Status of Women in 1970 that provided the initial impetus for change.<sup>69</sup> Mandated to “inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the federal government to ensure for women equal opportunities with men in all aspects of Canadian society.”<sup>70</sup> The Royal Commission on the Status of Women made six recommendations for the CAF in its report, including that: all occupations in the CAF be open to women; women be admitted to the military colleges; and, women be given the same terms of service, enrollment eligibility criteria and remuneration as men.<sup>71</sup>

The CHRA later imposed additional requirements on the CAF since it prohibited discrimination on ten grounds to include age, sex, and disability. The only exceptions to the CHRA were under *bona fide* occupational requirements in that “a job could be refused

---

<sup>69</sup> Library and Archives Canada, Commissions of Inquiry, *Report of the Royal Commission on the Status of Women in Canada*, September 1970, accessed 4 May 2015, <http://www.swc-cfc.gc.ca/rc-cr/roycom/index-eng.html>.

<sup>70</sup> Ibid.

<sup>71</sup> Donna Winslow, and Jason Dunn, “Women in the Canadian Forces: Between Legal and Social Integration,” *Current Sociology* 50, no. 5 (September 2002): 641.

to a person who could not perform it safely, efficiently and reliably”<sup>72</sup> and *bona fide* justifications which related to the provision of services.

### ***Charter of Rights and Freedoms (the Charter)***

The Charter is a bill of rights embedded in the Constitution of Canada of 1982.<sup>73</sup> Section 1 of the Charter “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”<sup>74</sup> The Charter protects the basic rights and freedoms of Canadians in order to preserve Canadian values, however, “the rights normally attached to Canadian citizenship are limited where they are inconsistent with the basic obligations of military service.”<sup>75</sup>

The focus of the Charter is broader than that of the CHRA. The basic rights included in the Charter are: democratic rights, mobility rights, legal rights, equality rights and the official languages of Canada. The Charter applies to all levels of government as well as to the legislature and government of each province.<sup>76</sup> The Supreme Court of Canada is the chief authority on the interpretation of the Charter. Any amendments to the

---

<sup>72</sup> Karen Davis, *Women and Military Service in Canada: 1885-Present* (Toronto: Canadian Forces Personnel Applied Research Unit, 1996): 9, quoted in Donna Winslow, and Jason Dunn, “Women in the Canadian Forces: Between Legal and Social Integration,” *Current Sociology* 50, no. 5 (September 2002): 655.

<sup>73</sup> *Constitution Act*, 1982, accessed 6 March 2015, <http://laws-lois.justice.gc.ca/eng/const/page-15.html>.

<sup>74</sup> *Canadian Charter of Rights and Freedoms*, s. 1 (1982).

<sup>75</sup> Department of National Defence, B-GG-005-027/AF-011, *Military Justice at the Summary Trial Level - V2.2 1/11* (Ottawa: DND Canada, 2011), 1-7.

<sup>76</sup> Section 44 of the Charter amends the meaning of the term “province” to include the Yukon, the Northwest Territories and Nunavut.

Charter have to be pursued under strict circumstances since it is part of the basic framework of the Canadian Constitution.

Equality rights are defined in Section 15 of the Charter which came into force in 1985, three years after the Charter itself. Section 15 states that everyone is equal before and under the law and has the right to equal protection and equal opportunities without discrimination whether on the bases of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>77</sup> In the case of women's equality for example, Section 15 required the CAF to complete a review of military policy to reassess the *bona fide* occupational requirements that prevented women at the time from serving in many of the hundreds of occupations that the CAF had to offer.<sup>78</sup>

### ***Bona Fide* occupational requirements**

A *bona fide* occupational requirement is an attribute, a rule or a requirement that would in other contexts otherwise be considered discriminatory but that is deemed required for the efficient, proper, and safe functioning in the job.<sup>79</sup> *Bona fide* occupational requirements are exceptions recognized in practically every human rights code in Canada.<sup>80</sup> For a rule to qualify as a *bona fide* occupational requirement, it must be established honestly and in good faith, and “in the sincere belief that it is made in the

---

<sup>77</sup> *Constitution Act*, 1982.

<sup>78</sup> Winslow, “Women in the Canadian Forces: Between Legal and Social Integration,”...655.

<sup>79</sup> Canadian Human Rights Commission, “Canadian Human Rights: A historical Perspective – Bona Fide Occupational Requirements (BFORs),” accessed 26 April 2015, <http://www.chrc-ccdpc.ca/en/browseSubjects/bfors.asp>.

<sup>80</sup> *Ibid.*

interest of effectiveness, safety, and productivity.”<sup>81</sup> A *bona fide* occupational requirement will be found if there is sufficient risk of employee failure.<sup>82</sup> The rule must also be objectively reasonable in that it must be connected to the ability of an employee to do the job.

The CHRC highlights that “since the Canadian Human Rights Act (CHRA) was first passed in 1977, the law regarding the defence of *bona fide* occupational requirement (BFOR) and *bona fide* justification (BFJ) has undergone several changes.”<sup>83</sup> In 1999, two cases tried by the Supreme Court of Canada had major legal implications. These implications were most pertinent for employers who relied on *bona fide* occupational requirements to justify allegedly discriminatory standards, policies or practices. These two cases are known as *Meiorin* and *Grismer*.

The Supreme Court decision for these two cases referred to the need for employers to “build conceptions of equality into the workplace standards.”<sup>84</sup> The Court expanded by saying that “employers...are now required in *all cases* to accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them.”<sup>85</sup>

---

<sup>81</sup> Ibid.

<sup>82</sup> Office of the Commissioner for Federal Judicial Affairs, “*Canada (Attorney General) v. Robinson (C.A.)*,” 1994, 21 C.H.R.R. D/113 (F.C.A.), accessed 12 May 2015, <http://reports.fja-cmf.gc.ca/eng/1994/1994fca0290.html>.

<sup>83</sup> Canadian Human Rights Commission, “Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The implications of *Meiorin* and *Grismer*,” (Ottawa: Minister of Public Works and Government Services Canada, March 2007), 1.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

In the case of *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union* (1999) a female who had been a forest fire fighter for the province of British Columbia for three years lost her job for failing one part of a new fitness test implemented by the province of British Columbia for all fire fighters. The government of British Columbia believed that all elements of the new fitness test, including the aerobic standard, were *bona fide* occupational requirements for fire fighters. The employee, Ms. Meiorin could only get within 49.4 seconds of the pass mark for the run portion of the test. She claimed that the test was discriminating against women since the aerobic standards were set at a standard that most women could not achieve. The Courts determined that the aerobic standard was not a valid *bona fide* occupational requirement because Ms. Meiorin had been doing the job for three years when the new testing standard was implemented.<sup>86</sup>

The *Meiorin* case contributed to the Courts developing a unified test for all *bona fide* occupational requirements defences, regardless whether they were direct discrimination or adverse effect discrimination.<sup>87</sup> This test ensured from then on that employers, in all cases of *bona fide* occupational requirements, had to accommodate individuals to the point of undue hardship. Cost, health and safety requirements are three elements that may be considered when assessing undue hardship.<sup>88</sup>

---

<sup>86</sup> Ibid., 3.

<sup>87</sup> Ibid., 2.

<sup>88</sup> Ontario Human Rights Commission, "Undue Hardship," accessed 6 May 2015, <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate/5-undue-hardship>.

The unified test questions defined by the Supreme Court are as follows:

- (1) Is there a standard, policy or practice that discriminates based on prohibited ground?
- (2) Did the employer adopt the standard, policy or practice for a purpose rationally connected to the performance of the job?
- (3) Did the employer adopt the particular standard, policy or practice in an honest and good faith belief that it was necessary in order to fulfill that legitimate work-related purpose?
- (4) Is the standard, policy or practice reasonably necessary in order to fulfill that legitimate work-related purpose?<sup>89</sup>

In the *Meiorin* case, the new fitness standards were determined to provide adverse effect discrimination on the basis of sex since few women could achieve the cardio standard required to pass. In answering the test questions, although testing cardio capacity for fire fighters was found to be legitimately related to the health and safety of firefighters and was established in good faith, it was found that the standard was not reasonably necessary to the conduct of the job. The proof was that Ms. Meiorin had been doing the job for three years before the new standards came into effect. Finally, the Courts ruled that the employer failed to demonstrate that there had been accommodation to the point of undue hardship, or that there was no other way that the purpose could be achieved without discriminating.

The *Grismer* case also contributed to developing the unified test for *bona fide* occupational requirement defences. Mr. Grismer lost his driver's licence after he was diagnosed with a condition that reduced his peripheral vision in both eyes. Mr. Grismer

---

<sup>89</sup> "Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The implications of Meiorin and Grismer,"..., 3.



believed that he could compensate for the vision loss by wearing glasses with prisms, by having extra mirrors on his vehicle and by regular movement of his head.<sup>90</sup>

Mr. Grismer felt discriminated against because he was not given the opportunity to have an individual assessment to demonstrate that he could drive safely. There was, in fact, evidence that there were persons with the same disability as Mr. Grismer who could drive safely. There were also persons with other kinds of disabilities who were being issued driver's licences.

Although the Superintendent of Motor Vehicle in British Columbia believed that the standard was established in good faith in order to maintain road safety, he was found to have discriminated against Grismer because he never gave Mr. Grismer the opportunity to do a test to determine if he could in fact pass the driving test.

“The Court concluded that the Superintendent erred in this case because he abandoned his reasonable approach to licensing and adopted an absolute standard”<sup>91</sup> without convincing evidence. The Superintendent was obliged to give Mr. Grismer the opportunity to prove whether or not he could drive safely, by assessing him individually. The Superintendent's failure to do so was a breach of the B.C. *Human Rights Act*.

---

<sup>90</sup> Canadian Human Rights Reporter – Publisher of Human Rights Law, “Terry Grismer Wins,” accessed 29 April 2015, [http://www.cdn-hr-reporter.ca/hr\\_topics/reasonable-accommodation/terry-grismer-wins](http://www.cdn-hr-reporter.ca/hr_topics/reasonable-accommodation/terry-grismer-wins).

<sup>91</sup> Ibid.

## Undue hardship

Under [Section 15(2) of] the *Canadian Human Rights Act*, an employer or service provider can claim undue hardship when adjustments to a policy, practice, by-law or building would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.<sup>92</sup>

Experiencing an inconvenience is not considered undue hardship.

The case of *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)* (1990), demonstrated that undue hardship has to be very well justified or the case will not stand in court. In 1983 Mr. Jim Christie worked at the Central Alberta Dairy Pool. According to his religious beliefs, Mr. Christie asked to take a day of unpaid leave on an Easter Monday. He offered to work another day to compensate for his absence. His employer refused to give him the Easter Monday off because Monday was the busiest day of the week for the Dairy Pool. When he did not show up for work on that Monday, he was fired. While Mr. Christie believed that he was fired because of his religious beliefs, the Dairy Pool responded that working on Mondays is a *bona fide* occupational requirement that applied to all employees regardless of their religions.

The Court agreed that the Dairy Pool's rule about working on Mondays was justified as a *bona fide* occupational requirement in that it had been made honestly, in good faith and for objectively reasonable work related reasons. The Dairy Pool was not discriminating against Mr. Christie's religious beliefs, however, their rule was found to result in adverse effect discrimination. The Supreme Court of Canada with this case

---

<sup>92</sup> Canadian Human Rights Commission, "Duty to Accommodate," accessed 28 April 2015, <http://www.chrc-ccdp.ca/eng/content/duty-accommodate>.

determined that having a *bona fide* occupational requirement was not automatically a reasonable reason not to accommodate. The Court ruled that granting Mr. Christie's request would not have caused undue hardship to the Dairy Pool. In this case, the Dairy Pool was deemed to not have tried their best to accommodate.<sup>93</sup>

Before claiming undue hardship, employers must consider the impact of cost, health and safety on their organization. Given the financial means at the disposal of federal government departments such as DND, undue hardship based on costs would be difficult to justify. For example, even the costs associated with integrating women into ships' crews have not provided sufficient justification to continue discriminatory employment practices.

Other considerations that factor into an assessment for undue hardship include: disruption to a collective agreement; morale problems of other employees; interchangeability of work force and facilities; size of the employee's operation; and safety issues. In its description of undue hardship, the CHRC states that "these factors will be balanced against the right of the employee to be free from discrimination" and that "discrimination has to be determined on a case-by-case basis."<sup>94</sup>

This stated there are some instances wherein it may not be possible to accommodate. An employer can evaluate that certain standards, even though

---

<sup>93</sup> Canadian Human Rights Commission, "Canadian Human Rights: A historical Perspective – Adverse Affect Discrimination and Accommodation," accessed 26 April 2015, <http://www.chrc-ccdp.ca/en/timePortals/milestones/126mile.asp>.

<sup>94</sup> Ibid.

discriminatory, are essential attributes for a person to be able to do the job. In particular, the courts have determined there are *bona fide* occupational requirements related to the concept of universality of service for members of the CAF. The implications of universality of service for individuals with learning difficulties will be explored later in more detail.

### ***Employment Equity Act (EEA)***

*It is not that individuals in the designated groups are inherently unable to achieve equality on their own, it is that the obstacles in their way are so formidable and self-perpetuating that they cannot be overcome without intervention. It is both intolerable and insensitive if we simply wait and hope that the barriers will disappear with time. Equality in employment will not happen unless we make it happen.*<sup>95</sup>

– Judge Rosalie Silberman Abella, Royal Commission on Equality in Employment, 1985

The EEA came into force in June 1986.<sup>96</sup> The CAF, however, only came under the Act in November 2002.<sup>97</sup> The aim of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons other than abilities. The EEA also aims at correcting conditions of disadvantage in the workplace for women, aboriginals, visible minorities and persons with disabilities and gives effect to the principle that employment equity means “more than treating persons in the same way but also requires special measures and the accommodation of differences.”<sup>98</sup>

---

<sup>95</sup> Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities...*, 63.

<sup>96</sup> Canadian Human Rights Commission, “Equity in *Employment*,” accessed 5 May 2015, <http://www.chrc-ccdp.ca/en/timePortals/milestones/118mile.asp>.

<sup>97</sup> Minister of Justice, “*Canadian Forces Employment Equity Regulations*,” SOR/2002-421, accessed 1 July 2015, <http://laws-lois.justice.gc.ca/PDF/SOR-2002-421.pdf>.

<sup>98</sup> *Employment Equity Act*, S.C., c. 44 (1995).

The EEA applies to private sector employers, and to:

the portions of the federal public administration set out in Schedule I or IV to the Financial Administration Act, the portions of the federal public administration set out in of Schedule V to the Financial Administration Act that employ one hundred or more employees....<sup>99</sup>

The DND is listed in Schedule I of the *Financial Administration Act*. More specifically, Section 4(3) of the EEA specifically states that “Members of the Canadian Forces and the Royal Canadian Mounted Police are deemed to be employees for the purposes of this Act.”<sup>100</sup>

Under the EEA, employers such as the CAF have to break the barriers that are not authorized by law and that discriminate against women, visible minorities, persons with disabilities (including learning impairments), and aboriginals.<sup>101</sup> Employers must also set out positive policies, and practices as well as reasonable accommodations so that members of the designated groups may be represented in the work force.<sup>102</sup>

Under the EEA, the employer is not forced to take measures that would cause undue hardship or to create new positions to accommodate members of the designated groups. An employer should still select and promote based on merit and if the person in question has all the required qualifications.<sup>103</sup>

---

<sup>99</sup> Ibid., 3.

<sup>100</sup> Ibid., 4.

<sup>101</sup> Ibid., 5.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

## Duty to accommodate

According to a handbook produced by the Professional Institute of the Public Service of Canada, the duty to accommodate is a “legal principle that requires employers to identify and change any rules, practices, expectations or procedures that have or may have a discriminatory impact based on the CHRA’s prohibited grounds;”<sup>104</sup> such as age, sex and disabilities (which includes learning difficulties). In making these changes, federal sector employers will be able to provide a work environment that is barrier-free and in which all employees have equal access to benefits and opportunities.<sup>105</sup>

Equal opportunities do not mean that employers must treat every employee the same way. As recognised by the CHRC, “sometimes people need to be treated differently to prevent or reduce discrimination.”<sup>106</sup> For example, allowing time during work hours for prayer for employees who request it based on religious grounds reduces discrimination even though it may be perceived as an advantage in time away from work that is not given to everyone.

Accommodations can “add value to the workplace, and result in significant benefits for a company.”<sup>107</sup> In referring back to the many positive attributes of persons with learning difficulties, there may be many advantages in providing accommodation. For an organization such as the CAF, advantages of having employees who have good

---

<sup>104</sup> The Professional Institute of the Public Service of Canada, *Pocket Guide on the Duty to Accommodate*, 2.

<sup>105</sup> Ibid.

<sup>106</sup> Canadian Human Rights Commission, “Duty to Accommodate.”

<sup>107</sup> A. Cantor, Cantor Access Inc. – Hands-on consulting and Training, “The Costs and Benefits of Accommodating Employees with Disabilities” (Toronto: 1996), [http://www.cantoraccess.com/publications/accomm\\_1996\\_worksiteneews\\_2.shtml](http://www.cantoraccess.com/publications/accomm_1996_worksiteneews_2.shtml).

problem solving skills, who ‘think outside the box’, who have excellent spatial awareness and have developed good work ethic – potentially as a result of their difficulties – may far outweigh the costs associated with accommodation. Additionally, adequate accommodation may improve success rates in education and training for members with various years of service and experience in the CAF. This stated, there are circumstances in which accommodation is not possible.

Prior to 1999, the Courts would entertain a defence based on *bona fide* occupational requirements only if the employer exercised direct discrimination. *Bona fide* occupational requirements, in cases of indirect discrimination, were taken for granted often at the expense of the employee. The court cases of *Meiorin* and *Grismer*, have since changed the way the courts view accommodation. Today, application of the Supreme Court’s unified test to all *bona fide* occupational requirements defences ensures that employers provide accommodation to the point of undue hardship.<sup>108</sup>

### **Universality of service**

The mandate of the CAF is to defend Canada and its sovereignty at home and abroad, to defend North America in partnership with the United States and to contribute to international peace and security by participating in missions around the world alongside allies from other countries.<sup>109</sup> In order to be able to fulfill missions assigned by

---

<sup>108</sup> The Professional Institute of the Public Service of Canada, *Pocket Guide on the Duty to Accommodate*, 19.

<sup>109</sup> National Defence and the Canadian Armed Forces, “About the Canadian Armed Forces,” accessed 14 May 2015, <http://www.forces.gc.ca/en/about/canadian-armed-forces.page>.

the Government of Canada, the Canadian Armed Forces must be given “broad authority and latitude in utilizing C[A]F members and their skills.”<sup>110</sup>

The nature of the tasks assigned to the CAF requires every military member to be able to perform a wide range of general military duties, common defence and security duties in addition to the duties required by their own occupations. Section 33 of the NDA states that regular force (full time) officers and non-commissioned members are required to “be at all times liable to perform any lawful duties.”<sup>111</sup> This aspect of the military differentiates CAF members from civilian employees who only need to perform the duties related to their job.

The ‘soldier first’ principle was recognized by the Federal Court of Appeal in the case *Canada (Attorney General) v. Robinson (1994)*.<sup>112</sup> Mr. Robinson, a flight engineer, was released from the CAF because of a “complex partial epilepsy” condition. Mr. Robinson was released on the grounds that he had to be a ‘soldier first’, whatever the occupation he served in, and this also required his being “seizure-free”, which the CAF argued was a *bona fide* occupational requirement.

Prior to the case being heard by the Federal Court of Appeal, the CHRT had ruled that Mr. Robinson was discriminated against because being seizure-free was not a *bona fide* occupational requirement for all CAF occupations and Mr. Robinson had not been

---

<sup>110</sup> National Defence and the Canadian Armed Forces, DAOD 5023-0, “Universality of Service,” (May 2006), last accessed 1 August 2015, <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.

<sup>111</sup> *National Defence Act*, R.S.C., c. N-5, s. 158 (1985).

<sup>112</sup> *Canada (Attorney General) v. Robinson (C.A.), 1994*.



offered the possibility to transfer to another occupation such as a support occupation. At the time that the *Robinson* case was heard by the Federal Court of Appeal, the test for establishing a *bona fide* occupational requirement had been previously established in *Ontario Human Rights Commission v Etobicoke* (1982) and required a determination of “sufficient risk of employee failure.”<sup>113,114</sup> In *Robinson*, the Federal Court of Appeal interpreted this test in the context of military service and concluded that, based on Section 33 of the NDA, the CAF has the right “to base its policy regarding disability on a ‘soldier first’ policy.”<sup>115</sup>

Although the court acknowledged that support occupations are less likely to be called upon to perform combat duties, it determined that this was an irrelevant argument. Military members must be ready to engage in combat duties if and when called upon.<sup>116</sup> For example, during combat, cooks are expected to go to the magazines and load guns on a ship. They are also part of the first aid parties and firefighting teams, among other duties required to be performed on a ship.<sup>117</sup>

Amendments to the CHRA in 1998 reflected in legislation the Federal Court of Appeals’ decision by adding Section 15(9) which states that the accommodation of needs is “subject to the principle of *universality of service* [emphasis added] under which

---

<sup>113</sup> *Ibid.*

<sup>114</sup> The Etobicoke test for BFOR was subsequently superseded in 1999 by the test established in the *Meiorin* case, as previously described.

<sup>115</sup> Canadian Human Rights Reporter – Publisher of Canadian Human Rights Law, “Soldier First Policy for Armed Forces Upheld by Federal Court of appeal,” accessed 5 May 2015, [http://www.cdn-hr-reporter.ca/hr\\_topics/occupational-health-and-safety/soldier-first-policy-armed-forces-upheld-federal-court-appel](http://www.cdn-hr-reporter.ca/hr_topics/occupational-health-and-safety/soldier-first-policy-armed-forces-upheld-federal-court-appel).

<sup>116</sup> *Canada (Attorney General) v. Robinson (C.A.), 1994.*

<sup>117</sup> *Ibid.*

members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.”<sup>118</sup>

The principle of universality of service was later reaffirmed in *Canada (Attorney General) v. Irvine* (2003), a case in which a member of the CAF claimed to have been adversely discriminated against as the result of a disability. The Court concluded that:

Universality of service is the term given to a set of principles which govern employment of members of the CAF. The three essential principles are: 1) whatever their trade or profession might be, members of the CAF are soldiers first and foremost; 2) the duty of soldier is to be ready to serve at all times in any place and in any conditions; 3) the duty is universal in that it applies to all members of the CAF.<sup>119</sup>

Defence Administrative Orders and Directives (DAOD) 5023-1 (2006) goes on to define from these principles minimum operational standards related to the universality of service.<sup>120</sup> These standards include the requirement to be physically fit, employable and deployable. Common operational core tasks associated with each of the minimum operational standards are further defined in the policy. For example, to be employable, a CAF member is required to be able to “administer first aid” and “communicate using a radio”, among other tasks.

## Summary

This chapter provided an overview of the laws that govern employment equity along with cases that have resulted in interpretation of the law by the Supreme Court of

---

<sup>118</sup> *Canadian Human Rights Act*, R.S.C., c. H-6, (1985).

<sup>119</sup> Federal Court Decisions, “*Canada (Attorney General) v. Irvine*,” accessed 5 May 2015, <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/38551/index.do>.

<sup>120</sup> National Defence and the Canadian Armed Forces, DAOD 5023-1, “Minimum Operational Standards Related to the Universality of Service,” (May 2006), last accessed 1 August 2015. <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.

Canada and the Federal Court of Appeal. The various cases highlighted the evolution in thinking over the past 40 years that has led to definition of the principle of universality of service (or the ‘soldier first principle’) that is currently reflected in the CHRA. While this principle provides a clear legal foundation for the application of common minimum operational standards for all CAF members and justifies discrimination against some individuals, when developing policies and procedures relating to universality of service and accommodations, the CAF should remain mindful of the underpinnings of the 1998 amendment to the CHRA and later Supreme Court of Canada decisions related to the definition of *bona fide* occupational requirements and the duty to accommodate. These precedents may become relevant once again if, as society continues to evolve, the CAF’s policies related to the accommodation of learning difficulties are challenged under the EEA.

## CHAPTER 4: ACCOMMODATION OF LEARNING DIFFICULTIES

As a federal institution, the CAF are governed by both Canadian laws and Canadian values. As Canadian society evolves, so too must the CAF adapt to changing expectations. An article titled “Change in Military Organization,” that was published in 1983 in the journal *Annual Review of Sociology* observed that “Military organizations tend to be microcosms of the society that host them, and thus the rationalization of society and its civilian institutions should be reflected in the military as well.”<sup>121</sup>

This chapter will examine the link between the CAF and Canadian society, and the implications for the CAF of changes in the Canadian workforce and in other public institutions, particularly colleges and universities, as they relate to the accommodation of learning difficulties. It will also explore the implications of the CAF’s minimum operational standards on learning difficulty accommodation and will provide examples of how such accommodations are currently being addressed without the benefit of a clear, overarching national policy. The resulting inconsistencies could have strategic implications for the CAF.

### **The CAF in Canadian society**

The armed forces must be aligned with Government policies and Canadian law and be representative of the society it serves in order to effectively “shap[e] perceptions within the Government of Canada (GoC) and the C[A]F about the use of military

---

<sup>121</sup> David R. Segal, and Mady Wechsler Segal, “Change in Military Organization,” *Annual Review of Sociology* 9 (August 1983): 152, <http://www.annualreviews.org/doi/abs/10.1146/annurev.so.09.080183.001055>.

capabilities as an instrument of national power.”<sup>122</sup> In a democratic society, the confidence and support of Canadian citizens for the Government and the CAF are required in order to remain credible. According to the DND Report on Plans and Priorities 2013-14, the CAF and DND “need to take appropriate measures to keep pace with the growing diversification of the Canadian population.”<sup>123</sup> Since public support can be better achieved when citizens are able to associate themselves with their military, the CAF strives for “an applicant pool, and ultimately a CAF, that reflects the demographic profile of Canadian society.”<sup>124</sup>

At the same time, in order to fulfill its Strategic Intake Plan and sustain the long-term operational readiness of the CAF, the Recruiting Group must continue to seek out a suitable pool of candidates from across the Canadian population. Attracting citizens to increase the enrolment of underrepresented groups in the CAF is one of the Recruiting Group’s goals.<sup>125</sup> Underrepresented groups listed in the Canadian Forces Recruiting Group Recruiting Operations Plan 2015/2016 are women, visible minorities and aboriginals.<sup>126</sup> Persons with disabilities – and more specifically, learning difficulties – are not included in the recruiting group’s recruitment strategies.

---

<sup>122</sup> Department of National Defence, B-GJ-005-000/FP-001, *Canadian Military Doctrine*, (Ottawa: DND Canada, 2009), 1-4.

<sup>123</sup> Treasury Board of Canada Secretariat, *Department of national Defence – Report on Plans and Priorities 2013-2014*, last accessed 1 August 2015, <http://www.tbs-sct.gc.ca/rpp/index-eng.asp>.

<sup>124</sup> Department of National Defence, CDS Strategic Guidance – CAF Recruiting – *An Evolving Landscape*. (January 2014), quoted in Canadian Forces Recruiting Group *Commander’s Planning Guidance/FY 2015-2016* (23 July 2014).

<sup>125</sup> Department of National Defence. Canadian Forces Recruiting Group *Commander’s Planning Guidance/FY 2015-2016* (23 July 2015), 6.

<sup>126</sup> Department of National Defence, *Canadian Forces Recruiting group – CFRG Operations Plan 2015/2016* (31 October 2014), 10.

The 2010 CAF Employment Equity Plan indicated that while 1.2% of serving members had disabilities, the CAF did not have goals to recruit persons with disabilities.<sup>127</sup> It was explained that the ‘persons with disabilities rate’ was “largely as a cause related to employment (physical injuries, invisible injuries, or chronic disabilities identified after enrolment), but which [did] not violate Universality of Service.”<sup>128</sup> It is not specified if learning difficulties are included in the numbers under chronic disabilities. The 2015 CAF Employment Equity Plan does not speak to the number of members with disabilities.<sup>129</sup>

It is important to note that persons with learning difficulties may apply to join the CAF. A learning difficulty will not necessarily prevent someone from being successful in the selection process; however, the level of associated medical care (e.g. medication for ADHD) may exclude them. When screening applicants, the recruiting medical office takes into consideration factors such as the requirement for follow-up visits with a physician or specialist, the potential for significant exacerbation of a pre-existing condition, and occupational limitations – either physical or psychological, and either temporary or permanent.<sup>130</sup>

---

<sup>127</sup> Department of National Defence, *Canadian Forces Employment Equity Plan*. Revision 1 – November 2010, accessed 1 July 2015, [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/updated-cf-ee-plan\\_eng-dated-nov\\_09\\_eng-final.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/updated-cf-ee-plan_eng-dated-nov_09_eng-final.pdf).

<sup>128</sup> Ibid.

<sup>129</sup> Department of National Defence, *Canadian Forces Employment Equity Plan 2015-2020*, accessed 8 July 2015, [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/updated-cf-ee-plan\\_eng-dated-nov\\_09\\_eng-final.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/updated-cf-ee-plan_eng-dated-nov_09_eng-final.pdf).

<sup>130</sup> Canadian Forces Health Services Group, D Med Pol/RMO, “CFRC Training//Seminar” (2010).

## **Society is changing**

As awareness of learning difficulties has improved over time and accommodation strategies have become more accessible to students, their participation rate in post-secondary education and entry into the workforce have apparently increased.

Statistics compiled for 2006 – 2007 by the College Committee on Disability Issues reveal that students with learning disabilities represented 4.8% of the total number of college students.<sup>131</sup> Similarly, a 2007-2008 year-end report by the Ontario Ministry of Training, Colleges and Universities stated that the number of college students with learning disabilities had increased by 10.1% over five years, university students with learning disabilities had increased by 17.9% over five years and the total number of postsecondary students with learning disabilities had increased overall by 13.2% over five years. This significant increase of persons with learning difficulties participating in the post-secondary educational system will likely have a follow-on impact in the Canadian labour market and Canadian society.<sup>132</sup>

According to Statistics Canada, the unemployment rate of persons with learning difficulties decreased from 20.1% in 2001 to 11.7% in 2006.<sup>133</sup> It is not clear, however, what proportion of these individuals had found employment or simply left the labour

---

<sup>131</sup> Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities* . . . , 8.

<sup>132</sup> Learning Disabilities Association of Ontario, “Learning Disabilities Statistics.”

<sup>133</sup> Statistics Canada, “Table 2 - Unemployment rates for people with disabilities by disability type in Canada, 2001 and 2006,” accessed 12 June 2015, <http://www.statcan.gc.ca/pub/89-628-x/2008007/t/5201155-eng.htm>.

force. In 2012, the unemployment rate for adults aged 15-64 with a learning disability was reported by Statistics Canada as 7.7%.<sup>134</sup>

In order to meet the objective previously identified in DND's 2013-2014 Report on Plans and Priorities of "increasing diversity by creating a workforce that is reflective of the Canadian labour market, and seek to retain their current, valued employees by fostering an inclusive work environment"<sup>135</sup> the CAF must take into account ongoing changes in Canadian society.

### **CAF minimum operational standards**

As reviewed earlier in the chapter dealing with laws and regulations, the Federal Court of Appeal established in 1994 that, based on Section 33 of the NDA, the CAF has the right to base its policy regarding disability on a 'soldier first' principle – that every member of the military must be ready for combat, anywhere and at all times. Defence Administrative Orders and Directives (DAOD) 5023-0 (2006) states that:

The principle of universality of service or "soldier first" principle holds that CF members are liable to perform general military duties and common defence and security duties, not just the duties of their military occupation or occupational specification.<sup>136</sup>

DAOD 5023-1 (2006) contains a table listing minimum operational standards as they relate to the principle of universality of service. These minimum operational standards apply to all members of the CAF regular and reserve force. The three minimum

---

<sup>134</sup> Statistics Canada, *Learning disabilities among Canadians aged 15 years and older...*, 8.

<sup>135</sup> Treasury Board of Canada Secretariat, *Department of national Defence – Report on Plans and Priorities 2013-2014*.

<sup>136</sup> DAOD 5023-0, "Universality of Service."



operational standards are (1) to be physically fit, (2) to be employable, and (3) to be deployable.

### Be Physically Fit

Members of the CAF must “meet the common fitness requirements of general military service as indicated by the attainment of the CF minimum physical fitness standards as set out in the *Canadian Forces EXPRES Operations Manual*.”<sup>137</sup>

It is important to note that the 30-year-old Canadian Forces EXPRES Test as quoted from DAOD 5023-1 was replaced in April 2013 by the ‘Fitness for Operational Requirements of CAF Employment’ (FORCE) evaluation.<sup>138</sup> It is important to note that the FORCE evaluation is not a physical fitness test. “A physical fitness test is a measure of physical capability that may or may not be linked to the job, whereas a physical employment standard is a measure of job performance and is scientifically based on job demands.”<sup>139</sup> The FORCE evaluation assesses military members using four evaluation criteria that validate six common tasks that all military personnel might be expected to perform in time of emergency regardless of occupation, age and gender. These six common tasks are listed as: escape to cover, pickets and wire carry, sandbag fortification,

---

<sup>137</sup> DAOD 5023-1, “Minimum Operational Standards Related to the Universality of Service.”

<sup>138</sup> Department of National Defence, Canadian Forces Morale and Welfare Services, “FORCE Common Military Tasks Fitness Evaluation,” accessed 25 June 2015.  
<https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Pages/CMTFE.aspx>.CFSU(Ottawa)

<sup>139</sup> Department of National Defence, Canadian Forces Morale and Welfare Services, “FORCE Common Military Tasks Fitness Evaluation – The FORCE Program Operations Manual,” accessed 25 June 2015.  
[https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Documents/FORCE%20Operations%20Manual%20EN\\_Jan%202015.pdf](https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Documents/FORCE%20Operations%20Manual%20EN_Jan%202015.pdf).

picking and digging, vehicle extrication and stretcher carry.<sup>140</sup> Observing over 400 military tasks performed by military members in all environments (Army, Air Force and Navy) over a period of 20 years, the FORCE evaluation has been scientifically validated to be able to evaluate members' ability to "execute tasks that are directly linked to true-to-life physical challenges faced on military operations."<sup>141</sup> In other words, to the *bona fide* occupational requirements referred to in Sub-Section 15(9) of the CHRA.

The FORCE evaluation encompasses four tasks. The 20 meter rushes relate to the escape to cover common task. This task may be required on operations at home or abroad when there is a requirement to take cover. The intermittent loaded shuttle relates to the pickets and wire carry common task. These tasks represent the requirement to carry various equipment to a specific location – in this case pickets and wire from a drop zone to the location where a wire fence would be built. The sandbag lift relates to the common tasks of sandbag fortification and picking and digging. There are many examples of this task being performed both abroad and at home in instances such as during the 2014 Assiniboine River flood in Manitoba where CAF members provided assistance in keeping flood waters away from populated areas. And finally, the sandbag drag relates to the vehicle extrication and stretcher carry tasks.

DAOD 5023-1 states that these are the minimum physical fitness standards, although they may be increased for operational, environmental or military occupational

---

<sup>140</sup> Ibid.

<sup>141</sup> Department of National Defence, Welcome to CFSU (Ottawa), "New Canadian Armed Forces Minimum Physical Fitness Standard," accessed 25 June 2015. <http://www.cg.cfpsa.ca/CG-PC/OTTAWA/EN/FITNESSANDSPORTS/MILITARYFITNESS/CFEXPRESTESTING/Pages/NewCanadianArmedForcesminimumphysicalfitnessstandard.aspx>.

requirements. For example, military divers, military firefighters, Joint Task Force 2 members, Land Force Command personnel, search and rescue personnel, members of the Canadian Special Operations Regiment and officer cadets at the Royal Military Colleges have to meet higher fitness standards than that of the FORCE evaluation.<sup>142</sup>

### Be employable

Members of the CAF must also

be able to perform the skill elements of common operational core tasks, as indicated by satisfactory routine unit and pre-deployment training evaluation and be free of medical employment limitations that would preclude performance of core tasks.<sup>143</sup>

The common operational core tasks include but are not limited to: firing and maintaining a personal weapon, administering first aid, communicating using a radio, securing and locking up work areas, and preparing written military correspondence. DAOD 5023-1 states only that members must be able to perform these core tasks, not the methods by which they must be learned or by what means.

### Be deployable

Members of the CAF must “not have a medical or other employment limitation that would preclude deployment.”<sup>144</sup> Examples of minimum requirements that members have to meet include being able to deploy on short notice to any geographic locations in

---

<sup>142</sup> National Defence and the Canadian Armed Forces, DAOD 5023-2, “Physical Fitness Program,” (May 2006), last accessed 1 August 2015, <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.

<sup>143</sup> DAOD 5023-1, “Minimum Operational Standards Related to the Universality of Service.”

<sup>144</sup> Ibid.

any physical environment, being able to sustain irregular or prolonged working hours, being able to function on irregular meals or no meals altogether, being able to perform duties under physical and mental stress and being able to perform effectively without any critical medication.

### **Policy considerations**

The characteristics of various learning difficulties, when assessed against the minimum operational standards defined in DAOD 5023-1, would lead to the conclusion that anyone with learning difficulty conditions necessitating medication to function – such as some cases of ADHD – would not be able to serve in the CAF. The specialist appointments that may be required along with follow-ups to adjust medication and the need to renew prescriptions would directly contravene the *bona fide* occupational requirement to be deployable. Similarly, the need to deal with physical and mental stress may be difficult for some persons within the Autistic spectrum who do not deal well with the types of changes, stress and irregular routines that are associated with employment in the military.

On the other hand, the minimum operating standard that would most likely prevent persons with a particular type of dyslexia that affects writing abilities (as opposed to auditory or visual dyslexia) from meeting the employability requirements defined in DAOD 5023-1 is the requirement to be able to ‘prepare written military correspondence’. It could be argued whether or not this standard is in fact linked to the ‘soldier first’ policy recognized by the Federal Court of Appeal in 1998 and to the principles underlying

universality of service as reflected in the CHRA; or, whether or not it happens to be common to the *bona fide* requirements of every CAF occupation.

In the event that the CAF's overarching minimum operational standards or specific occupational requirements are eventually challenged in court, the unified test articulated by the Supreme Court of Canada as a result of the *Meiorin* and *Grismer* cases and described earlier for determining whether a discriminatory standard is a *bona fide* occupational requirement would be informative. Similarly, *bona fide* occupation-specific requirements, as defined in 'Job Based Specifications' and 'Qualification Standards' could also be challenged.

Clearly defining the job to be performed – whether as a 'soldier first', or as a member of the CAF (which implicates both occupational and career considerations) – would be fundamental to a general discussion of employability and accommodations. Additionally, the decision of the Supreme Court of Canada in the *Dairy Pool* case, that having a *bona fide* occupational requirement is not automatically a reasonable reason not to accommodate an individual, should be kept in mind.

### **Support for persons with learning difficulties**

The opportunity to complete civilian college or university and find employment is no longer out of reach for many Canadians who have learning difficulties. "Most provincial governments provide publicly funded colleges with operating funds to set up

special services for students with disabilities”<sup>145</sup> and many universities now have a programme to support and assist persons with learning difficulties.

Whether in large or small universities, services are available to students with learning difficulties in order to provide them with equal opportunities to succeed. For example, Algonquin College, a small community college located in Ottawa, offers services for students with learning difficulties through their ‘Centre for Students with Disabilities’.<sup>146</sup> Their website provides information about how to access available services. It also lists in detail the associated administrative requirements, including an example of a letter of accommodation, examples of available accommodations and other services which includes seminars on learning strategies and stress management.

The University of Guelph, a medium size University close to Toronto has renamed its centre ‘Student Accessibility Services’ from the former name ‘Centre for Students with Disabilities’.<sup>147</sup> Their website provides information not only to students on how to register and access the available services but also includes information for specialists. The university’s guidelines for ‘Recommending Accommodations for Students with Learning Disabilities’ are meant “to assist psychologists and psychological

---

<sup>145</sup> Learning Disabilities Association of Ontario, “Students with Learning Disabilities at Canadian Colleges and Universities,” accessed 5 May 2015, <http://www.ldao.ca/introduction-to-ldsadhd/ldsadhs-in-depth/articles/about-issues-specific-to-adults-with-lds/students-with-learning-disabilities/>.

<sup>146</sup> Algonquin College, “Centre for Students with Disabilities,” accessed 1 July 2015, <http://www.algonquincollege.com/csd/registering-for-services/#accommodations>.

<sup>147</sup> University of Guelph, “Student Accessibility Services,” accessed 1 July 2015, <https://www.uoguelph.ca/csd/node/1136>.

associates when making recommendations for accommodations appropriate to a university setting.”<sup>148</sup>

The University of Ottawa, a large university in the heart of downtown Ottawa, works collaboratively with ‘Access Service’ to facilitate assessment and the provision of academic accommodations for students with disabilities.<sup>149</sup> As described on the University of Ottawa website, “the mission of Access Service is to assist students with documented disabilities in achieving equal access to educational opportunities while maintaining academic integrity.”<sup>150</sup> In addition to being the overarching platform which ensures accommodations are provided in consideration of standards of achievement that are essential to academic integrity, Access Services is an active actor in social change while inspiring the community to promote academic accommodation, accessibility, and inclusion.

The University of Ottawa also provides a guide to professors on strategies that can be applied to create an inclusive academic environment. To ensure a smooth accommodation process for both students and professors, the university has an innovative Information Technology system which, for example, alerts teachers whenever a student requiring accommodation registers in their class.<sup>151</sup>

---

<sup>148</sup> Ibid.

<sup>149</sup> University of Ottawa, “Academic Accommodation Process,” accessed 1 July 2015, <https://sass.uottawa.ca/en/access/>.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

The types of accommodations for the college and the two universities introduced here include: extended time on exams, quiet exam space, alternate format exams, use of word processors, alternate format textbooks, scribe or reader, text-to-speech and voice recognition software. The philosophy is to provide students with learning difficulties the tools they need to have access to equal educational opportunities while maintaining academic integrity.<sup>152</sup>

In general, the most popular accommodation is to give more time to write exams.<sup>153</sup> There are, however, concerns with extended time being used too readily as an accommodation, “without concern for how it changes the skills measured by tests, leading to scores that cannot be compared fairly with those of other students.”<sup>154</sup>

Meanwhile, within the CAF, CMP’s Employment Equity Officer’s Guidelines (2015)<sup>155</sup> indicate that, “accommodations for a medical disability, be it visible (e.g. physical injury, chronic disease) or invisible (e.g. mental health related, learning disabilities) may ... be granted by a CO, but is more complex due to [universality of service] UoS.”<sup>156</sup> As discussed earlier, learning difficulties are complex and do not affect everyone the same way; there is much to be considered when granting accommodations in consideration of the universality of service.

---

<sup>152</sup> Ibid.

<sup>153</sup> Learning Disabilities Association of Ontario, “Learning Disabilities at Canadian Colleges and Universities.”

<sup>154</sup> Benjamin J. Lovett, “Extended Time Testing Accommodations for Students with Disabilities: Answers to Five Fundamental Questions,” *Review of Educational Research* 80, no. 4 (December 2010): 611. [http://www.jstor.org/stable/40927295?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/40927295?seq=1#page_scan_tab_contents).

<sup>155</sup> CMP’s Employment Equity Officer’s Guidelines were first issued in 2014.

<sup>156</sup> Canadian Armed Forces, Chief of Military Personnel – “Employment Equity Officer’s Guidelines,” accessed 29 June 2015, [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/eeog-ldeo-eng.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/eeog-ldeo-eng.pdf).



A brief review of articles in various journals highlights the importance of leveraging the growing academic expertise related to learning difficulties<sup>157</sup> and the need “for individually selected accommodations matched to students’ needs and academic contexts.”<sup>158</sup> Further, articles that focus on specialized topics such as accommodation even for ‘high-functioning’ adults, “with strong cognitive abilities who demonstrate significant problems in learning” underscore the breadth and complexity of the topic of determining suitable accommodations.<sup>159</sup>

In the meantime, while there is no CAF national policy at the level of a long-term DAOD for accommodation of persons with learning difficulties, there are CAF organizations that have developed their own policies, or local procedures without a written policy, to tend to members who, during their academic journey or occupation training, show signs of learning difficulties. For example, both Canadian Military Colleges, Base Borden and the CFNOS have each developed their own local policies or informal procedures.

The Royal Military College of Canada (RMCC) has, since January 2005, developed ‘Academic Policy Directive No 5: Accommodation of Learning Disabilities’. This Policy Directive states that if a RMC Cadet is suspected of having a learning difficulty, he or she should be referred to the Health Services Care Delivery Unit (CDU)

---

<sup>157</sup> Noel Gregg, *et al*, “Decoding and Spelling Accommodations for Postsecondary Students with Dyslexia – It’s More than Processing Speed,” *Learning Disabilities: A Contemporary Journal* 3, no. 2 (September 2005): 1, <http://connection.ebscohost.com/c/articles/17549255/decoding-spelling-accommodations-postsecondary-students-dyslexia-more-than-processing-speed>.

<sup>158</sup> Robert Weis, R., Dean, E.L., and Osborne, “Accommodation Decision Making for Postsecondary Students with Learning Disabilities: Individually Tailored or One Size Fits All?” *Journal of Learning Disabilities* (November 2014): 1. <http://ldx.sagepub.com/>.

<sup>159</sup> Noel Gregg, *et al*, “Who are Most, Average, or High-Functioning Adults,” ..., 264.

for referral and assessment. The learning difficulty has to be confirmed by proper expert assessment. However, even if a learning difficulty is not confirmed, the directive states that “faculty may make any accommodations to individual learning needs which their experience suggests and which their teaching duties permit. Due consideration should be given to equity for all students.”<sup>160</sup>

Academic Policy Directive No 5 also states that if a cadet has been assessed as having a learning difficulty, accommodations may be made even during final in-hall exams. The onus is on the Commanding Officer to confirm that it is in the interest of the service to accommodate the special needs of a cadet with learning difficulties. The Registrar, in such situations, is the approving authority for additional time or special tests to be administered in conjunction with the professor involved. The policy does not explicitly refer to an assessment of the impact of various accommodations on the universality of service or on the *bona fide* requirements of a cadet’s specific occupation.

Examples of accommodations provided to cadets include: additional time, segregated rooms, permission to get up and walk to clear thoughts during tests and exams, as well as the provision of laptops (without internet). Individual Education Plans are based on recent psycho-educational assessments to accurately reflect the needs of the cadet. Those who do not have a recent assessment or were never assessed are directed to the Regional Assessment Centre at Queen’s University which bases its fees on salary.

---

<sup>160</sup> Royal Military College of Canada, “Academic Policy Directive NO 5: Accommodation of Learning Disabilities,” 10 January 2005.

Given the low salary of an officer cadet, the assessment is heavily subsidized.<sup>161</sup>

RMCC's numbers of accommodations have grown in the past ten years and the college is exploring more options every year.<sup>162</sup>

At the same time, the Collège militaire royal (CMR) de Saint-Jean has been providing accommodations to cadets with learning difficulties since about 2008 or 2009.<sup>163</sup> Statistics tracked at CMR Saint-Jean on learning difficulties suggest that about 4% of cadets have learning difficulties ranging from various degrees of Dyslexia to Attention Deficit with or without hyper-activity. CMR Saint-Jean is in the process of developing directives for students and the professorial team to highlight the services available to students, to describe the process to access these services and to define the role of everyone within this process.<sup>164</sup>

Within existing procedure at CMR Saint-Jean, students can be referred for assessment for learning difficulties by a psychologist through the 'service d'adaptation scolaire' of the Cégep de Saint-Jean<sup>165</sup> and the report will be signed off by a military doctor before it is shared with the professors. (The research for this paper did not verify if the military doctor signs the report as having evaluated that the accommodation recommendations – such as access to specialized software tools (e.g. WordQ and SpeakQ,

---

<sup>161</sup> Office of the Registrar – Undergraduate Student Services / Royal Military College of Canada, e-mail correspondence with the author, 13 July 2015.

<sup>162</sup> Ibid.

<sup>163</sup> Director of programs / Royal Military College Saint-Jean, e-mail correspondence with the author, 2 July 2015.

<sup>164</sup> Coordinator – Student Education Services / Service Pédagogique aux Etudiants, Royal Military College Saint-Jean, telecon with the author, 2 July 2015.

<sup>165</sup> Cégep Saint-Jean sur Richelieu, «Service d'aide à l'intégration des étudiantes et étudiants en situation de handicap, » accessed 2 July 2015, <http://www.cstjean.qc.ca/services-et-vie-etudiante/soutien-aux-etudiantes-et-etudiants/tdah-ted-handicap-dyslexie-trouble-auditif>.

which are word prediction and speech recognition software for students who struggle with writing) – meet universality of service requirements, or simply to ensure the information is documented in the cadets’ medical file.)

In the suite of subsidized CAF entry programs available, military members may be selected to attend either military or civilian educational institutions. It can be assumed that while attending civilian institutions, CAF members have access to all the same support that other college or university students have access to, including support for persons with learning difficulties. There may be more CAF members who are being accommodated in their education without the oversight of CAF authorities. Also worth noting is the suggestion of some research that “college students with learning disabilities or Attention Deficit/Hyperactivity Disorder may benefit from the structure that a military college provides and requires, especially in the area of time management.”<sup>166</sup>

At the level of occupational training, the CFNOS in Halifax, for example, had at one time also drafted a local policy for learning difficulties. The purpose of the draft directive was to “provide guidance to CFNOS Staff in the handling of students who may self-identify with a learning disability, or may exhibit symptoms consistent with a possible learning disability.”<sup>167</sup> The directive acknowledged that students could arrive at CFNOS with a psychological assessment for a learning difficulty or they might find themselves having difficulty progressing in training and wonder why this was so.

---

<sup>166</sup> Tammy J. Graham, *et al.*, “Perceptions and Practices: The Impact of Military Structure on the Academic Success of Students with Disabilities Attending a Military College,” *American Journal of Educational Studies* 6, no.1, (2013): 17. <http://web.ebscohost.com/>.

<sup>167</sup> CFNOS, “3## Learning Disabilities/Difficulties,” draft policy (June 2012), e-mail correspondence with the author.

The draft CFNOS directive provided direction to follow if a member came forward suspecting a learning difficulty, as well as the steps to follow should the staff believe that a candidate was showing symptoms of a learning difficulty. The directive included an informal 'learning disability screening tool' that was essentially a questionnaire to be interpreted by Training Development Officers (TDO) on whether or not a member would benefit from being referred to the Learning Disability Association of Nova Scotia for an assessment.

Upon receipt of an official psychological assessment, the directive stated that a meeting would be arranged with the TDO Coordinator and appropriate Standards Quality Assurance Representative to review the assessment and the applicable Qualification Standard and Plan. Accommodations could be made to instructional methods or assessment format with or without an assessment in order to increase the chances of success of the member. In cases where accommodation was possible, an Individual Educational Plan was to be developed by the instructional and Standards Staff with the assistance of the TDO Coordinator. In the case where accommodation could not be granted, the member could opt to carry on with training or request to be ceased trained. The policy did not stipulate exactly what occupational or other factors should contribute to the decision to accommodate, or suggest a need to consult with occupational advisors.

Given that members are typically only temporarily assigned to training units while on occupational courses, the Naval Operations School found that it became difficult to manage the costs of assessments from unit resources and the school leadership directed that the draft CFNOS policy not be formalized or implemented. The formal assessment

of learning difficulties was seen to be outside of the school's mandate.<sup>168</sup> CFNOS today provides only limited accommodations following discussion with members rather than in accordance with a professional assessment.

During approximately the same period as CFNOS, Canadian Forces Base Borden was also providing accommodations to CAF members attending courses. Though there was no formal policy in place, on a case-by-case basis, the BPSO would administer the 'Delta Screener'<sup>169</sup> which is a tool to help detect possible learning difficulties.<sup>170</sup> Depending on the results from the 'Delta Screener', a referral to a psycho-educational psychologist would be arranged in order to receive a formal assessment.<sup>171</sup>

In the case of CMR Saint-Jean and the RMCC, CAF members may be given accommodations during their training, however, once they leave these institutions, there is no CAF Policy or continuity of support for these members and money invested in training and education may be lost if these same members are unsuccessful in future training. Contributing to the situation are the *Privacy Act* implications associated with storing and sharing members' personal information.

---

<sup>168</sup> Acting Standards Division Commander TDO Coordinator, Canadian Forces Naval Operations School, telecon with the author, 24 July 2015.

<sup>169</sup> College Committee on Disability Issues, "The Delta Screener: Questionnaire and Interview," September 2006, accessed 1 August 2015, [http://www.disabilityissues.ca/english/Link\\_docs/Delta%20Screener%20September%202006%20Printable%20Screen%20Reader%20Version.doc](http://www.disabilityissues.ca/english/Link_docs/Delta%20Screener%20September%202006%20Printable%20Screen%20Reader%20Version.doc).

<sup>170</sup> The following internet link provides a description of a number of screening tools for learning difficulties: <http://www.nald.ca/library/research/ldtrain/tools/134.htm>.

<sup>171</sup> Personnel Selection Officer, e-mail correspondence with the author, 28 July 2015.

## Summary

In order to remain credible, the Government and the CAF must be representative of the demographics of the Canadian population. The CAF aims to reach national employment equity goals in three of the four designated employment equity groups, however, there has been little concerted effort toward persons with learning difficulties. Meanwhile, persons with learning difficulties are acceding to civilian post-secondary education where the approach to accommodation has significantly matured, and these persons are moving into the labour market. As Canadians become more understanding of learning difficulties, the CAF may find itself under increasing pressure to provide similar accommodations.

In the meantime, it is clear that there are already members with learning difficulties being accommodated in the CAF. Inconsistencies in how local policies are being developed and implemented suggest that there may be a lack of subject matter expert involvement and of strategic oversight of the resulting risks to the CAF's long-term operational readiness, the viability of current minimum operational standards and the institution's ability to fulfill its obligations under human rights and employment equity legislation. Given the ongoing responsibility of the CAF for its members, from enrollment through basic and occupation training and career development to retirement, a holistic national policy on learning difficulty accommodation is likely to have particularly far-reaching consequences for the institution.

## CHAPTER 5: POLICY IMPLICATIONS FOR THE CAF

The issue of learning difficulties accommodation has implications for the CAF related to selection, basic military and occupational training, member career progression and departmental resource allocations. As has been shown in the preceding chapters, discussion of this issue must take into account the nature and complexities of learning difficulties, associated Canadian legal requirements and evolving societal expectations.

This chapter argues that the CAF should implement a national policy for the accommodation of learning difficulties. Successful institutionalization of the policy should consider lessons learned from previous social change initiatives in the CAF.

### **CMP policy is required for accommodation of learning difficulties**

At the heart of our democratic system, and as reflected in the Charter, everyone is equal before and under the law, and has the right to equal protection and equal opportunities without discrimination. This notion is also reflected in the CAF Statement of Defence Ethics, which directs that the CAF shall respect the dignity of all persons at all times by helping to create a workplace that is free from harassment and discrimination.<sup>172</sup>

The only exceptions to the *Charter* that can be made are as a result of *bona fide* occupational requirements, a provision which is included in every human rights code in Canada. During the *Robinson* case, the Federal Court of Appeal recognized the CAF

---

<sup>172</sup> National Defence and the Canadian Armed Forces, “Statement of Defence Ethics,” last accessed 1 August 2015, <http://www.forces.gc.ca/en/about/statement-of-defence-ethics.page>.



universality of service as an over-arching *bona fide* occupational requirement because of the nature of the tasks assigned to the military by the Government, which requires that all members be a ‘soldier first’. This exception is underpinned by Section 1 of the *Charter* and Section 33 of the NDA, and is reflected in Section 15(9) of the CHRA.

The implication of the universality of service for the CAF as it relates to accommodations is that if the implementation of a specific accommodation would prevent someone from meeting the legitimate ‘soldier first’ *bona fide* occupational requirement, then no accommodation should be given as it would ultimately undermine the operational readiness of the CAF.

For situations in which the CAF is currently providing accommodations that do not violate the ‘soldier first’ principle, accommodation must be provided to the point of undue hardship in accordance with CHRA Section 15(2), unless a *bona fide* occupational requirement has been established for the specific occupation of the individual. These occupation-specific requirements are documented in ‘Job Based Specifications’ and ‘Qualification Standards’. As an example, an artillery officer who requires accommodation in a classroom setting in order to solve math equations may be able to meet the minimum operational standards associated with the ‘soldier first’ principle, but not able to meet the *bona fide* occupational requirements of an artillery officer who must be able to quickly solve mental math problems under stressful conditions.

Factors to consider when determining if an accommodation leads to ‘undue hardship’ include the necessity for adjustment to a policy, practice or to a building or a

CAF asset that would cost too much, or that would lead to the creation of a risk to health or safety. For example, accommodation for an aerospace controller in training to be given additional time and a quiet room in which to write knowledge exams may be feasible, however, once working with live aircraft in a control tower, an inability to quickly absorb and analyse information would pose risks to safety that could not be accommodated.<sup>173</sup>

In contrast, given that the CAF and DND have access to federal government resources through Treasury Board, arguing undue hardship related to cost could be particularly difficult. In order to ensure consistency, a CAF over-arching policy on learning difficulties could centralize approval authority for accommodations, ensuring consistent application and resourcing to the point of undue hardship from the employer's perspective, rather than from the points of view of local Commanding Officers.

As was concluded earlier, the risk in having local interpretations and policies relating to the accommodation of members with learning difficulties is that it could lead to inconsistencies and potentially undermine the 'soldier first' principle and the CAF's operational readiness or, conversely, expose National Defence to legal risk under Canadian labour law. In this vein, accommodations that are deemed to be acceptable for serving members' education and programs related to career development should be given consideration for implementation in the selection process to ensure consistency and fairness for everyone. At the moment, there are no accommodations given to persons

---

<sup>173</sup> When occupation-specific *bona fide* requirements are a limiting factor, the CAF could consider occupational reassignment as a form of accommodation.

with learning difficulties who wish to challenge the Canadian Armed Forces Aptitude Test (CFAT) which is the CAF entry test.

The CFAT is a cognitive test that is described as a reliable predictor of training success that has been “validated against all occupational families and against many specific occupations”.<sup>174</sup> In other words, the CFAT is currently being used during the selection process to screen applicants for both cognitive abilities linked to minimum operational standards (i.e. ‘soldier first’), and for higher-level abilities required to meet any additional occupation-specific *bona fide* requirements. This stated, the fact that some occupational training is already being delivered with accommodations draws into question the fact that accommodation is not offered during CFAT testing.

A Technical Note (2006) prepared by the Directorate of Personnel Applied Research recommended that, if individuals with ‘learning disabilities’ (LDs) can be accommodated in the CAF, “Alternative measures of intelligence (e.g. Raven’s Standard Progressive Matrices) for individuals with LDs should be adopted [during selection] and a norming process developed, so that a person’s learning ability can be estimated.”<sup>175</sup> Other militaries such as the Israeli Defence Force have utilised a geometric analogies test to measure reasoning as part of an investigation into learning difficulty and leadership.<sup>176</sup> This study’s authors concluded that this type of test captured the ability of commanders

---

<sup>174</sup> Department of National Defence, PPD/DPP 202, *Personnel Psychology Directive 202 – Canadian Forces Aptitude Test (CFAT)*, n.d. 3.

<sup>175</sup> A. Skomorovsky, “The Impact of Learning Disabilities on Cognitive Abilities Testing,” (Technical Note 2005-04, July 2006), 16.

<sup>176</sup> Gil Luria, Yuval Kalish, and Miriam Weinstein, “Learning disability and leadership: Becoming an effective leader,” *Journal of Organizational Behavior* 35, (2014): 753, <http://psychsource.bps.org.uk/details/journalArticle/6456191/Learning-disability-and-leadership-Becoming-an-effective-leader.html>.

and soldiers to understand and be able to mentally transpose the material discussed before a manoeuvre into real life situations, and “because of its suitability for individuals with LD.”<sup>177</sup>

In order to ensure that its selection test results reflect the true cognitive abilities of each applicant, the Israeli Defence Force reportedly requires applicants to present formal learning difficulty assessments when enlisting:

for the approval of the professional committee of the Army Medical Corps. Soldiers with LD are entitled to benefits (extra time and exemptions from certain test), which mitigate their difficulties during the initial cognitive testing, so they tend to report their LD in order to better succeed in the selection process.<sup>178</sup>

It should be noted that alternate selection testing methods are being considered by the Director General Military Personnel, as indicated in a 2015 presentation titled ‘Duty to Accommodate – Learning Disability’.<sup>179</sup> Presumably, alternative testing strategies would consider the measurement of cognitive abilities, as well as other suitability factors related to *bona fide* operational requirements (e.g. language or math proficiency).

DAOD 5023-0 states that “CMP has the authority to develop and approve policy concerning Universality of Service.”<sup>180</sup> Although the CAF does not have a national policy for persons with learning difficulties, there is an acknowledgement in various documents that we already have serving members with learning difficulties in the CAF.

---

<sup>177</sup> Ibid., 753.

<sup>178</sup> Ibid., 752.

<sup>179</sup> Director General Military Personnel, Power Point Presentation on Duty to Accommodate – Learning Disability – Policy Review, 20 April 2015.

<sup>180</sup> DAOD 5023-0, “Universality of Service.”

Moreover, the Director Human Rights and Diversity has statistics that reveal that there are over 200 military members that have disclosed having a form of learning difficulty.<sup>181</sup> This number, however, is based on voluntary self-disclosure and may not be a true representation of the actual number of affected serving members.<sup>182</sup> It should be acknowledged that these same members passed the CFAT during the selection process without accommodations.

It could be argued that, all CAF members are selected following the same structured, validated and highly competitive process and all CAF members should be treated the same during education and training: If commonly offered support such as from peers, professors and instructors is not enough to enable a member to succeed then, in order to ensure the operational effectiveness of the CAF, no further special accommodation should be given. Such an approach would be inconsistent with the *Employment Equity Act*.

Another opinion may be that a relatively restrictive interpretation of undue hardship should apply to the CAF based on the ‘soldier first’ principle and Section 1 of the Charter which “guarantees the rights and freedoms set out in it subject *only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society* [emphasis added].”<sup>183</sup> Though Section 1 of the Charter allows that there are reasonable limits required in a democratic society, as has already been described, a military that does

---

<sup>181</sup> Director Human Rights and Diversity, Power point presentation on “Duty to Accommodate – Learning Disability – Policy briefing, 24 March 2015.”

<sup>182</sup> A simple extrapolation of the 4% of cadets at CMR St. Jean reported to have learning difficulties to the CAF population suggests that in the order of 2500 currently serving members may be affected to some degree.

<sup>183</sup> *Canadian Charter of Rights and Freedoms*, s. 1 (1982).

not reflect the society it defends may lose its credibility. The fact is that there are currently members within the CAF who may benefit from accommodations and who have valuable years of experience. Precious administrative, financial and human resources have already been invested in these members, albeit sometimes inefficiently given a lack of awareness and expertise relevant to accommodating learning difficulties. There is much to be gained from enabling each member to exploit their full potential by properly focusing resources – both money and time. A CAF-wide policy on learning difficulties would enable units to have members properly assessed and either oriented towards an occupation suitable to their accommodation needs or, if universality of service requirements cannot be met, released from the CAF.

At the same time, going so far as to establish recruiting goals for persons with learning difficulties could have an unacceptable impact on the ability of a size-limited CAF to fulfill its mandate. Every member of the military must be a ‘soldier first’; however, not every member of an effective military can simply be a ‘soldier’. There are *bona fide* requirements associated with each occupation, and also with increasing leadership responsibilities. A personnel management system that supports the operational readiness of the CAF must be allowed the discretion required to enable selective progression through the CAF’s hierarchical rank structure of sufficient individuals to effectively lead the institution.

An analogy could be drawn between the current approach to the accommodation of learning difficulties by the CAF and the ‘Don’t Ask Don’t Tell’ (DADT) approach to

gays and lesbians that until recently existed in the United States military.<sup>184</sup> The DADT policy indirectly encouraged individuals to hide their sexual orientation in order to be able to serve their country. As long as no one knew about it, it was tolerated.

Members of the Human Rights Campaign (HRC), the United States' largest civil rights organization, made the repeal of this law a top priority because it discriminated against persons based on sexual orientation.<sup>185</sup> The HRC conducted many polls to understand public opinions and educate decision makers. Contributing to this repeal were 19 million emails sent to HRC members and supporters, 625,000 e-mails sent to members of Congress, 20,000 pro-repeal veterans identified and 50,000 handwritten pro-repeal messages delivered to Capitol Hill.<sup>186</sup> The efforts of the HRC along with that of its supporters contributed to DADT being officially repealed in September 2011 by US President Obama. In his statement on the repeal of DADT, President Obama's words were powerful. He stated that with the repeal of DADT policy, the American Armed Forces "will no longer lose the extraordinary skills and combat experience of so many gay and lesbian service members."<sup>187</sup>

The current absence of a national CAF policy on the accommodation of learning difficulties may lead to a belief that there is no institutional acknowledgement of, or place for persons with learning difficulties in the CAF. As long as individuals can quietly find

---

<sup>184</sup> Encyclopædia Britannica, "Don't Ask, Don't Tell (DADT)," last accessed 20 August 2015, <http://www.britannica.com/event/Dont-Ask-Dont-Tell>.

<sup>185</sup> Human Rights Campaign, "HRC Statement on the End of 'Don't Ask Don't Tell'," accessed 6 May 2015, <http://www.hrc.org/press-releases/entry/hrc-statement-on-the-end-of-dont-ask-dont-tell>.

<sup>186</sup> Human Rights Campaign, "Repealing 'Don't Ask, Don't Tell'," [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/RepealingDADTOverview\\_2010](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/RepealingDADTOverview_2010).

<sup>187</sup> Ibid.

coping mechanism to overcome learning difficulties, they can continue to serve their country. Added to the complexity is the fact that some members may not know that they have a learning difficulty. The resulting inconsistent management of personnel with learning difficulties is counter-productive to an efficient, combat-ready force. Actively offering accommodations for learning difficulties – in other words, ensuring that applicants and members are aware that reasonable accommodations are available – would best facilitate the CAF and individuals realizing the potential for improved personnel management.

### **Social change in the CAF**

*Although [Employment Equity] EE policies are important tools to level the playing field, by removing barriers and increasing representation, legislation is only the first step. The next step is changing the corporate culture and influencing peoples' attitudes and behaviors.<sup>188</sup>*

— Grazia Scoppio, *Leadership in a Diverse Environment*, 2007

Should the CAF commit to formally recognize and provide accommodations to persons with learning difficulties, it must ensure that all levels of leadership are educated about learning difficulties and adequately prepared to play an active role and be fully engaged in “changing the corporate culture and influencing peoples’ attitudes and behaviors.”<sup>189</sup> The end result should be an inclusive and welcoming work environment without preconceived ideas and the resulting stigma about learning difficulties, but rather with a common understanding that accommodations are in place to ensure that everyone has equal opportunities to contribute fully to the success of the CAF.

---

<sup>188</sup> Grazia Scoppio, “Leadership in a Diverse Environment: Diversity Strategies in Military and Police Forces in Canada, Australia, the United Kingdom and the United States” (report sponsored by: Director Human Rights and Diversity, 22 August 2007): 98.

<sup>189</sup> Ibid.



In the past, the CAF has had to adapt to legislative and regulatory changes or to respond to pressures from society at large. An example of an important change that impacted the CAF was the legalization of same-sex marriages in Canada in 2005. While this change created challenges for various aspects of personnel management in the CAF, by appointing in 2013 the first openly gay Anglican padre as Head Officer in charge of the CAF Chaplaincy,<sup>190</sup> the CAF leadership sent a clear message to CAF members and society at large about the military culture change, and the equality and inclusivity for gays and lesbians.

In other instances of culture change in the CAF, the message has not been as clear. The integration of women into every CAF occupation really began in Canada in the 1960s when the second wave of the women's movement gained momentum. Women advocated for equal rights and opportunities, choosing higher education and paid employment over traditional roles. The women's movement contributed to the creation of the Royal Commission on the Status of Women in Canada in 1967 and to the appointment of the first Minister responsible for the Status of Women in 1971. The Royal Commission's report concluded that women were not being given equal opportunity to enter and advance in Government service and that their skills and abilities were not utilized to their full potential as the result of the perpetuation of occupational segregation by sex. "Attitudes and practices seem[ed] to be at fault."<sup>191</sup> Finally in 1982, the Charter was enacted as part of the *Constitution Act* and specifically prohibited discrimination based on various factors such as gender and persons with learning disabilities.

---

<sup>190</sup> The CAF Chaplaincy includes Roman Catholic, Protestant, Jewish, Muslim, and Orthodox faiths.

<sup>191</sup> Library and Archives Canada, "Royal Commission on the Status of Women in Canada," September 1970.

Nevertheless, resistance continued to opening all CAF occupations to women, partly in the belief that employment of women in combat units would have a negative impact on cohesion and motivation in battle.<sup>192</sup> Despite that belief, following Air Force, Sea and Land trials, which were conducted in the 1980s to specifically assess the “effect of mixed-gender groups on operational capabilities,”<sup>193</sup> the CHRT’s decision was that women were capable with training to assume combat roles. The CHRT found that attitude was a major factor in making integration work and that a *bona fide* occupational requirement restricting the employment of women to ensure operational effectiveness of the combat arms could no longer be sustained.<sup>194</sup> The CHRT stated that “[s]ometimes it takes nothing short of a binding order to remove a systemic barrier... This has been the case in the military profession.”<sup>195</sup>

In 1989, after much resistance from the CAF, the CHRT ordered the CAF to carry out full integration of women within the next 10 years. Today there are women being successfully employed in every occupation of the CAF. In this case, a more effective social change strategy, unambiguously supported by the Chain of Command, could have contributed to a shorter implementation period.

While social change for the full integration of women in the CAF continues more than 45 years after the Royal Commission on the Status of Women, changes in Canadian society appear to be taking place now for persons with learning difficulties. As evidence

---

<sup>192</sup> Donna Winslow, and Jason Dunn, “Women in the Canadian Forces: Between Legal and Social Integration,” . . . , 643.

<sup>193</sup> *Ibid.*, 655.

<sup>194</sup> *Ibid.*, 658.

<sup>195</sup> *Ibid.*, 660.

of this broader acceptance, “[t]oday, most provincial governments provide publicly funded colleges with operating funds to set up special services for students with disabilities.”<sup>196</sup> Universities and colleges, as described above, are providing comprehensive services for students with learning difficulties who are increasingly making their way into the workforce. Nevertheless, while some scholars have identified that “a critical mass is necessary for a group to transform the institutional culture, norms, and values,”<sup>197</sup> given the relatively low percentage of individuals with learning difficulties in society and more particularly in the CAF, a proactive plan for social change would better support successful policy implementation in this case.

Much has been learned by the CAF as a result of its experiences with social change. This stated, in order to understand how crucial a social change strategy can be to the successful implementation of policy changes in the military, it is important to reflect on fundamental theory about social organizational behavior.

For example, one such theory, the Social Identity Theory, examines the interaction between individuals as they associate with groups, broadly defined as ‘in-groups’ and ‘out-groups’.<sup>198</sup> The theory argues that social identification is a perception of oneness with a group and it stems from the distinctiveness and prestige of the group. The theory maintains that individuals “identif[y] with social categories partly to enhance self-

---

<sup>196</sup> Learning Disabilities Association of Ontario, “Learning Disabilities at Canadian Colleges and Universities.”

<sup>197</sup> Grazia Scoppio, “Diversity Best Practices in military Organizations in Canada, Australia, The United Kingdom, and the United States,” *Canadian Military Journal* 9, no. 3 (2009): 19, <http://www.journal.forces.gc.ca/vo9/no3/doc/05-scoppio-eng.pdf>.

<sup>198</sup> Blake E. Ashforth, and Fred Mael, “Social Identity Theory and the Organization”, *Academy of Management Review* 14, no. 1 (1989): 20, <http://www.jstor.org/stable/258189>.

esteem.”<sup>199</sup> The CAF’s focus on being an employer of choice may lend to this sense of prestige for the select CAF members who have already made it through a demanding selection and qualification process.

The theory explains that the “in-group may develop negative stereotype of the out-group and de-individuate and depersonalize its members.”<sup>200</sup> In this case, the in-group develops self-serving implicit theories of why the group is different. Similarly, Dr. Segal, Faculty Associate at the Maryland Population Research Centre overseeing research into the impact of social change on the military, states that the military seems to have a “desire to maintain social solidarity in an increasing individualistic social environment.”<sup>201</sup> A social change strategy for implementation of a CAF policy for the accommodation of learning difficulties would need to highlight the advantages of enabling individual persons with various degrees of learning difficulties to contribute their unique talents and full potential to the CAF’s operational effectiveness.

The Social Identity Theory further argues that “awareness of the out-group underscored the existence of a boundary and caused subjects to assume in-group homogeneity.”<sup>202</sup> In one specific example cited in the article by Ashforth and Mael, “Kanter (1977) found that the presence of females in a male dominated sales force induced the males to exaggerate perceived masculine traits and differences between the

---

<sup>199</sup> Ibid., 22.

<sup>200</sup> Ibid., 32.

<sup>201</sup> Segal, “Change in military Organization,”..., 166.

<sup>202</sup> Ashforth, “Social Identity Theory and the Organization,”..., 25.

sexes.”<sup>203</sup> This may have been a consideration during the integration of women into CAF occupations. Without any form of social change strategy, it could be argued that the land trials that the Army conducted to find out if women could be integrated to the combat arms occupations were not set for success. The in-group, being the men, would have, in the presence of women, exaggerated perceived differences between the sexes. The same could happen with persons with learning difficulties. Up until recently, there were no discussions about the possibility of accommodating members with learning difficulties. Without any form of communication plan and education and information strategies, persons experiencing learning difficulties could be perceived as an ‘out group’, meaning those who are different from ‘in group’ members. Team cohesion may ultimately be affected as the groups become more divided.

Moreover, the Social Identity Theory states that when competition for resources is perceived, “group lines are drawn more sharply, values and norms are underscored, and we/they differences are accentuated.”<sup>204</sup> An example given by Ashforth and Mael about high-status and low-status nurses could be interchanged with ‘persons without learning difficulties’ and ‘persons with learning difficulties’ respectively. In the example, high-status (trained) nurses, when led to believe that they would be merged with low-status (in training) nurses, increased their in-group favoritism, emphasizing their distinctiveness and superiority over the low-status group. Groups may have a vested interest in

---

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

“perceiving or even provoking greater differentiation than exists and disparaging the reference group on this basis.”<sup>205</sup>

In the context of the CAF, competition may also be perceived in various circumstances, including with the selection process, education and training courses, career progression and resources allocations including compensations and benefits. Members with learning difficulties may be perceived as being provided an advantage that others are not. Education of CAF members at all levels of leadership about learning difficulties and related accommodations, and about the objective of providing every member an equal opportunity to contribute to their full potential, could help reduce ‘we/they’ differences and foster cohesion and team work. Centralized funding might also contribute to more consistent application of the policy, and would alleviate unit COs from being perceived as prioritizing learning difficulty accommodations ahead of other investments.

In order to set the conditions for successful implementation of an overarching policy, organizations must be accepting of change. As previously stated, in some instances, the CAF has been proactive in recognizing the need for “standardized national initiative[s]”<sup>206</sup> and the requirement for the involvement of senior leadership to lead a cultural organizational and social change. It was in 2008 that the CAF Health Services group “realized there was no standardized national initiative aimed at preparing military

---

<sup>205</sup> Ibid., 31.

<sup>206</sup> Neil Faba, “A force to reckon with: How the Department of National Defence keeps its employees mentally fit,” *Benefits Canada* (October 2011): 14, <http://www.benefitscanada.com/wp-content/uploads/2011/11/BC1011-Mental-Health.pdf>.

personnel for deployment. This was the impetus behind the creating of the Road to Mental Readiness, launched at the end of 2009.”<sup>207</sup>

The work that the CAF Health Services has done both nationally and internationally in the field of mental health was concurrent with the efforts of CMP to try to break the stigma of mental health. In 2010 and 2011, CMP invested significant effort in participating in conferences, town halls and giving presentations to civilian and military audiences about mental health to try to convey the message that it is okay to admit that we need help.

Throughout this period, the use of terms such as ‘Operational Stress Injury’ and ‘ill and injured’ may have contributed to break the stigma associated with mental health issues. Although there is still much work to be done in the field of mental health, as a result of the programs that have been put in place, CAF members are seen to more readily seek help and some have fully recovered and gone back to full time duty while others who could no longer be ‘soldiers first’ have transitioned to civilian life. The use of descriptive language may be similarly important when discussing learning difficulties. Although in common use in the context of employment equity, the stigma attached to the term ‘learning disability’ may not be as conducive to breaking barriers in an organization that is traditional and conservative in nature and “historically reactive to change.”<sup>208</sup>

---

<sup>207</sup> Ibid.

<sup>208</sup> Scoppio, “Leadership in a Diverse Environment: Diversity Strategies in Military and Police Forces in Canada, Australia, the United Kingdom and the United States,”..., 98.

Looking at what has been done in the CAF for mental health in such a short period of time, it could be argued that the Canadian military organization has learned from previous social change efforts. Should the CAF proactively commit to an overarching policy on learning difficulties, various factors would contribute to its successful implementation. A few such key considerations include:

- a clear and unambiguous policy issued on the authority of CMP, as authorized under DAOD 5023-0;
- visible support of the new policy, particularly at the level of Commanders of commands, through proactive communications and timely promulgation of enabling directives related to selection, training and career development;
- establishment of a center of expertise to advise supervisors and members on topics such as the assessment of potential accommodations against the universality of service and established 'undue hardship' limits;
- a centralized fund for the initial provision of enabling resources and specialist support to members with learning difficulties and their supervisors. For example, for the evaluation of members with learning difficulties by professionals such as psychologists, and through the provision of funds to acquire adaptive technologies and software; and
- education about learning difficulties to all CAF members through, for example, information being made available on-line as well as in print about learning difficulties and the objective of enabling every member of the CAF to contribute to their full potential.



As was mentioned earlier, highlighting the successes and the contributions of persons with learning difficulties would also be important to a social change strategy. Bill Gates, Winston Churchill and Richard Branson, to name a few, are among those who are believed to have had learning difficulties.<sup>209</sup> It is also noteworthy that a study by Luria, Kalish and Weinstein concluded that there were “no significant differences among leaders with and without LD in regard to leadership effectiveness.”<sup>210</sup>

The Canadian Forces Employment Equity Plan dated November 2010 and published on the intranet (DND only internet) spoke about a strategy to attract more Designated Group Minorities (DGMs) to the CAF, and to adapt policies and practices to a changing composition of the CAF “while maintaining and enhancing operational effectiveness and finally, allowing all members of the C[A]F to flourish in their careers in accordance with their own abilities and aspirations.”<sup>211</sup> In that vein, the CAF had set three strategic initiatives, one of which was to “Facilitate career development of DGMs.”<sup>212</sup> The objective of this initiative was to ensure that “all CAF members are given the opportunity to serve in an environment conducive to personal achievement, career advancement and opportunity in accordance with their abilities and aspirations.”<sup>213</sup> As part of this initiative, the Canadian Defence Academy had been identified as the Office of Primary Interest to “Design and utilize training and development programs with alternative testing measures (e.g. oral vs written, computer-assisted aids) to allow

---

<sup>209</sup> Hammett, *et al.*, *Benchmarking – A guide to hiring and managing persons with learning disabilities*..., 15.

<sup>210</sup> Gil Luria, *et al.*, “Learning disability and leadership: Becoming an effective leader,”..., 747.

<sup>211</sup> *Canadian Forces Employment Equity Plan*..., 12.

<sup>212</sup> *Ibid.*, 12.

<sup>213</sup> *Ibid.*, 18.

members with learning disabilities to participate and contribute fully.”<sup>214</sup> More recently, in a February 2015 speech given at the recruiting center in Ottawa, the then CMP spoke about a possible change to how terms of service are given to military members. CMP was at the time exploring the possibility of giving terms of service to members based on their individual requirements. This would be a fundamental change from the CAF’s ‘one size fits all’ approach to terms of service and could have positive implications for persons with learning difficulties who meet universality of service requirements, but who might struggle over the long-term to advance in their military careers. (The author does not know if the current CMP will consider these options during her tenure.)

The new CAF Employment Equity Plan 2015-2020 demonstrates the continuing engagement of CAF leadership. The plan’s covering letter, signed by the Chief of Defence Staff, states that “the entire chain of command must get engaged to resolve issues as the CAF evolves into a truly diverse, inclusive, and heterogeneous public defence institution for the 21<sup>st</sup> Century.”<sup>215</sup>

## **Summary**

Accommodation of learning difficulties to the point of undue hardship is a CAF obligation under the CHRA when learning difficulties do not violate the ‘soldier first’ principle or more specific *bona fide* occupational requirements. Consistent, appropriate assessment of learning difficulty accommodations against universality of service minimum operational standards and occupation-specific requirements is difficult to

---

<sup>214</sup> Ibid.

<sup>215</sup> *Canadian Forces Employment Equity Plan 2015-2020...*, 1.

achieve when decisions are devolved to local commanders who may not have access to appropriate resources. Similarly, inconsistent assessment of what constitutes ‘undue hardship’ may preclude the CAF from realizing the full potential of members with learning difficulties. Although service in the CAF is recognized to come with some limitations to personal rights and freedoms, the CAF must strive to remain representative of the people that it defends and remain an employer of choice.

Successful implementation of an over-arching learning difficulties accommodation policy must allow for the development of appropriate procedures and for the assignment of required resources, including access to subject matter experts and funding. Moreover, implementation must consider a social change strategy in order to mitigate ‘in group’ and ‘out group’ social factors. As has been learned from other institutional change initiatives, visible and unambiguous support by senior military leadership and the adoption of a constructive communication strategy will be essential to overcoming preconceived biases about a subject that up until recently has received relatively little attention.

## CHAPTER 6: CONCLUSION

While there are inconsistencies in the international definitions of learning disability and learning difficulty, this paper recommends that the term *learning difficulty* – *related to innate conditions that do not affect the intelligence quotient of a person* – be adopted by the CAF to support a more constructive policy discussion and to facilitate integration and implementation within the military culture.

The spectrum of characteristics of learning difficulties is complex and may vary from an outright disability to various levels of difficulties that may be overcome with various accommodations. Added to the complexity of the spectrum of characteristics of each learning difficulty or multiple learning difficulties combined is the fact that not all individuals affected by a learning difficulty are impacted the same way. Discussions about learning difficulties must therefore not be overly simplified or prematurely generalized and must benefit from the advice of professionals such as appropriately trained psychologists or psychological associates.

In consideration of accommodations for learning difficulties, the ‘soldier-first’ principle provides a clear legal foundation for the application of the minimum operational standards when developing policies and procedures relating to the universality of service for all CAF members. This stated, when assessing the need for general or occupation-specific accommodations, the CAF should also keep in mind the underlying legal considerations that contributed to the amendment of the CHRA and to more recent decisions of the Supreme Court of Canada.

Meanwhile, the number of persons recognized to have learning difficulties in Canada has continued to increase and is currently estimated to affect between two and five percent of the Canadian population. As society has become more understanding of learning difficulties, institutions such as colleges and universities have developed comprehensive accommodation policies along with support for students who require the services. The result is an increase in students with learning difficulties attending post-secondary institutions and joining the labour market. The CAF only recently started to consider learning difficulties and has yet to put in place a national policy that provides leadership and members of the CAF with clear and unambiguous direction. As Canadians become more accepting of learning difficulties and aware of the suite of support and services already being offered at civilian colleges and universities, the CAF may find itself under increasing pressure from society to actively offer reasonable accommodations under the CHRA and Employment Equity legislation.

According to a self-identification survey, the CAF has over 200 serving members with learning difficulties. In the absence of a national policy, local policies have been developed and accommodations have nevertheless already been provided selectively since at least 2008. Inconsistencies in how local policies have been developed and implemented suggest a lack of strategic oversight that risks undermining minimum operational standards and the CAF's long-term operational readiness. Justice Robertson (in *Robinson* 1994) wrote, "One of the distinguishing features of a valid 'lawful' policy is the consistency of its application."<sup>216</sup> An efficient way to achieve consistency would be for the CAF to implement an over-arching policy that is clear and provides required

---

<sup>216</sup> *Canada (Attorney General) v. Robinson (C.A.), 1994.*

direction and access to resources to all CAF organizations. At the same time, an overarching policy on accommodations of learning difficulties would fulfill CAF obligations under the EEA while providing a frame of reference for accommodations that could be provided to the point of undue hardship, as well as those that cannot be provided as a result of *bona fide* occupational requirements.

Successful implementation of a national policy on accommodation of learning difficulties will necessarily involve the development of associated procedures, the allocation of resources, and will require the development of a strategy for effectively achieving social change within the CAF. Based on previous institutional change initiatives within the CAF, clear and unambiguous support of senior military leadership will be essential to whatever course of action is chosen.

## BIBLIOGRAPHY

- Algonquin College. "Centre for Students with Disabilities." Accessed 1 July 2015.  
<http://www.algonquincollege.com/csd/registering-for-services/#accommodations>.
- Ashforth, Blake E., and Fred Mael. "Social Identity Theory and the Organization."  
*Academy of Management Review* 14, no. 1 (Jan 1989): 20-39.  
<http://www.jstor.org/stable/258189>.
- Australia. SPELD Foundation. "What is a Specific Learning Disability (SLD)?" Accessed  
 1 March 2015. <http://dsf.net.au/what-are-learning-disabilities/>.
- Brazeau-Ward, Louise. *I'm confused, is it dyslexia or is it a learning disability?* Ottawa:  
 Canadian Dyslexia Centre (CDC) Inc., 2005.  
<http://www.dyslexiaassociation.ca/english/files/confused%20is%20it%20dyslexia.pdf>.
- Canada. Canadian Armed Forces. Chief of Military Personnel – Employment Equity  
 Officer's Guidelines. April 2015. Accessed 1 July 2015. [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/eeog-ldeo-eng.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/eeog-ldeo-eng.pdf).
- Canada. Canadian Heritage. "The Canadian Charter of Rights and Freedoms." Accessed 8  
 March 2015. <http://publications.gc.ca/collections/Collection/CH37-4-3-2002E.pdf>.
- Canada. "Canadian Human Rights Commission." Accessed 5 May 2015.  
<http://www.chrc-ccdp.ca/eng>.
- Canada. Canadian Human Rights Commission. "Bona Fide Occupational Requirements  
 and Bona Fide Justifications under the Canadian Human Rights Act – The  
 implications of Meiorin and Grismer." Accessed 5 March 2015. [http://www.chrc-ccdp.ca/sites/default/files/bfore\\_0.pdf](http://www.chrc-ccdp.ca/sites/default/files/bfore_0.pdf).
- Canada. Canadian Human Rights Commission. "Canadian Human Rights: A historical  
 perspective – Persons with Disabilities." Accessed 23 April 2015. <http://www.chrc-ccdp.ca/en/getBriefed/1900/persons-disabilities.asp>.
- Canada. Canadian Human Rights Commission. "Duty to Accommodate." Accessed 28  
 April 2015. <http://www.chrc-ccdp.ca/eng/content/duty-accommodate>.
- Canada. Canadian Human Rights Commission. "Equity in Employment." Accessed 5  
 May 2015. <http://www.chrc-ccdp.ca/en/timePortals/milestones/118mile.asp>.

- Canada. Canadian Human Rights Commission. “Human Rights in Canada: A Historical Perspective – Adverse Affect Discrimination and Accommodation.” Accessed 26 April 2015. <http://www.chrc-ccdp.ca/en/timePortals/milestones/126mile.asp>. Canada. *Canada (Attorney General) v. Robinson* (1994), 21 C.H.R.R. D/113 (F.C.A.). Accessed 12 May 2015, [http://www.hrcr.org/safrica/equality/canada\\_robinson.html](http://www.hrcr.org/safrica/equality/canada_robinson.html).
- Canada. Canadian Human Rights Commission. “Human Rights in Canada: A Historical Perspective – Bona Fide Occupational Requirements (BFORs).” Accessed 26 April 2015. <http://www.chrc-ccdp.ca/en/browseSubjects/bfors.asp>.
- Canada. Canadian Human Rights Tribunal. “About the CHRT.” Accessed 5 May 2015. <http://www.chrt-tcdp.gc.ca/NS/index-eng.asp>.
- Canadian Defence Academy Lessons Learned Division. Directorate of Learning and Innovation. *Training and Educating Individuals with Learning Difficulties*. Report prepared by Consultant. Goss Gilroy Inc. March 2009.
- Canada. Department of National Defence. B-GG-005-027/AF-011, *Military Justice at the Summary Trial Level - V2.2 1/11*. Ottawa: DND Canada, 2011.
- Canada. Department of National Defence. B-GJ-005-000/FP-001, *Canadian Military Doctrine*. Ottawa: DND Canada, 2009.
- Canada. Department of National Defence. *Canadian Forces Employment Equity Plan*. Revision 1 – November 2010. Accessed 1 July 2015. [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/updated-cf-ee-plan\\_eng-dated-nov\\_09\\_eng-final.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/updated-cf-ee-plan_eng-dated-nov_09_eng-final.pdf).
- Canada. Department of National Defence. *Canadian Forces Employment Equity Plan 2015-2020*. Accessed 8 July 2015. [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/updated-cf-ee-plan\\_eng-dated-nov\\_09\\_eng-final.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/updated-cf-ee-plan_eng-dated-nov_09_eng-final.pdf).
- Canada. Department of National Defence. Canadian Forces Morale and Welfare Services. “FORCE Common Military Tasks Fitness Evaluation.” Accessed 25 June 2015. <https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Pages/CMTFE.aspx>.
- Canada. Department of National Defence. Canadian Forces Morale and Welfare Services. “FORCE Common Military Tasks Fitness Evaluation – The FORCE Program Operations Manual.” Accessed 25 June 2015. [https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Documents/FORCE%20Operations%20Manual%20EN\\_Jan%202015.pdf](https://www.cfmws.com/en/AboutUs/PSP/DFIT/Fitness/FORCEprogram/Documents/FORCE%20Operations%20Manual%20EN_Jan%202015.pdf).



- Canada. Department of National Defence. *Canadian Forces Recruiting Group Commander's Planning Guidance/FY 2015-2016*. Canadian Forces Recruiting Group, 23 July 2015.
- Canada. Department of National Defence. *Canadian Forces Recruiting Group Operations Plan 2015/2016*. Canadian Forces Recruiting Group, October 2014.
- Canada. Department of National Defence. *CDS Strategic Guidance – CAF Recruiting – An Evolving Landscape*. Chief of the Defence Staff, January 2014. Quoted in *Canadian Forces Recruiting Group Commander's Planning Guidance/FY 2015-2016*. Canadian Forces Recruiting Group, 23 July 2014.
- Canada. Department of National Defence. PPD/DPP 202, *Personnel Psychology Directive 202 – Canadian Forces Aptitude Test (CFAT)*. N.d.
- Canada. Department of National Defence. Welcome to CFSU(Ottawa). "New Canadian Armed Forces Minimum Physical Fitness Standard." Accessed 25 June 2015. <http://www.cg.cfpsa.ca/CG-PC/OTTAWA/EN/FITNESSANDSPORTS/MILITARYFITNESS/CFEXPRESTESTING/Pages/NewCanadianArmedForcesminimumphysicalfitnessstandard.aspx>.
- Canada. Federal Court Decisions. *Canada (Attorney General) v. Irvine*. Ottawa: Deputy Attorney General of Canada, 2003 FCT 660. Accessed 5 May 2015. <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/38551/index.do>.
- Canada. Federal Courts Reports. Office of the Commissioner for Federal Judicial Affairs. *Canada (Attorney General) v. Robinson (C.A.)*, 1994. Accessed 12 May 2015. <http://reports.fja-cmf.gc.ca/eng/1994/1994fca0290.html>.
- Canada. Justice Laws Website. "Canadian Human Rights Act." Accessed 28 April 2015. <http://laws-lois.justice.gc.ca/PDF/H-6.pdf>.
- Canada. Justice Laws Website. "Constitution Act, 1982." Accessed 6 March 2015. <http://laws-lois.justice.gc.ca/eng/const/page-15.html>.
- Canada. Justice Laws Website. "Employment Equity Act." Accessed 1 March 2015. <http://laws-lois.justice.gc.ca/PDF/E-5.401.pdf>.
- Canada. Justice Laws Website. "National Defence Act." Accessed 8 March 2015. <http://laws-lois.justice.gc.ca/eng/acts/N-5/>.
- Canada. Minister of Justice. Canadian Forces Employment Equity Regulations. SOR/2002-421. Accessed 1 July 2015. <http://laws-lois.justice.gc.ca/PDF/SOR-2002-421.pdf>.

- Canada. National Defence and the Canadian Armed Forces. DAOD 5023-0, Universality of Service. May 2006. Last accessed 1 August 2015. <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.
- Canada. National Defence and the Canadian Armed Forces. DAOD 5023-1, Minimum Operational Standards Related to the Universality of Service. May 2006. Last accessed 1 August 2015. <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.
- Canada. National Defence and the Canadian Armed Forces. DAOD 5023-2 Physical Fitness Program. May 2006. Last accessed 1 August 2015. <http://intranet.mil.ca/en/defence-admin-orders-directives/index.page>.
- Canada. National Defence and the Canadian Armed Forces. "Statement of Defence Ethics." Last accessed 1 August 2015. <http://www.forces.gc.ca/en/about/statement-of-defence-ethics.page>.
- Canada. Ontario Human Rights Commission. "Undue Hardship." Accessed 6 May 2015. <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate/5-undue-hardship>.
- Canada. Royal Military College of Canada. "Academic Policy Directive NO 5: Accommodation of Learning Disabilities." 10 January 2005.
- Canada. Statistics Canada. "Insights on Canadian Society: Persons with disabilities and employment." Accessed 6 April 2015. <http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14115-eng.pdf>.
- Canada. Statistics Canada. *Learning disabilities among Canadians aged 15 years and older, 2012*. Ottawa: Catalogue No 89-654-x, 3 December 2014.
- Canada. Statistics Canada. "Table 2 - Unemployment rates for people with disabilities by disability type in Canada, 2001 and 2006." Accessed 12 June 2015. <http://www.statcan.gc.ca/pub/89-628-x/2008007/t/5201155-eng.htm>.
- Canada. Status of Women Canada. "Royal Commission on the Status of Women in Canada." Accessed 4 May 2015. <http://www.swc-cfc.gc.ca/rc-cr/roycom/index-eng.html>.
- Canada. The Professional Institute of the Public Service of Canada. *Pocket Guide on the Duty to Accommodate*. <https://www.pipsc.ca/portal/page/portal/website/stewards/pdfs/dutyaccommodate.en.pdf>.
- Canada. Treasury Board of Canada Secretariat. *Report on Plans and Priorities*. Last accessed 1 August 2015. <http://www.tbs-sct.gc.ca/rpp/index-eng.asp>.

- Canadian Dyslexia Association. Accessed 13 April 2015.  
<http://www.dyslexiaassociation.ca>.
- Canadian Forces Health Services Group – D Med Pol/RMO. “CFRC Training // Seminar.” 2010.
- Canadian Human Rights Reporter – Publisher of Canadian Human Rights Law. “Soldier First Policy for Armed Forces Upheld by Federal Court of appeal.” Accessed 5 May 2015. [http://www.cdn-hr-reporter.ca/hr\\_topics/occupational-health-and-safety/soldier-first-policy-armed-forces-upheld-federal-court-appel](http://www.cdn-hr-reporter.ca/hr_topics/occupational-health-and-safety/soldier-first-policy-armed-forces-upheld-federal-court-appel).
- Canadian Human Rights Reporter – Publisher of Canadian Human Rights Law. “Terry Grismer Wins.” Accessed 29 April 2015. [http://www.cdn-hr-reporter.ca/hr\\_topics/reasonable-accommodation/terry-grismer-wins](http://www.cdn-hr-reporter.ca/hr_topics/reasonable-accommodation/terry-grismer-wins).
- Cantor Access Inc – Hands-on consulting and Training. “The Costs and Benefits of Accommodating Employees with Disabilities.” Toronto: 1996.  
[http://www.cantoraccess.com/publications/accomm\\_1996\\_worksiteneeds\\_2.shtml](http://www.cantoraccess.com/publications/accomm_1996_worksiteneeds_2.shtml).
- Cégep Saint-Jean sur Richelieu. «Service d'aide à l'intégration des étudiantes et étudiants en situation de handicap. » Accessed 2 July 2015.  
<http://www.cstjean.qc.ca/services-et-vie-etudiante/soutien-aux-etudiantes-et-etudiants/tdah-ted-handicap-dyslexie-trouble-auditif>.
- College Committee on Disability Issues. “The Delta Screener: Questionnaire and Interview.” September 2006. Accessed 1 August 2015.  
[http://www.disabilityissues.ca/english/Link\\_docs/Delta%20Screener%20September%202006%20Printable%20Screen%20Reader%20Version.doc](http://www.disabilityissues.ca/english/Link_docs/Delta%20Screener%20September%202006%20Printable%20Screen%20Reader%20Version.doc).
- Davis, Karen. *Women and Military Service in Canada: 1885-Present*. Toronto: Canadian Forces Personnel Applied Research Unit, 1996. Quoted in Winslow, Donna, and Jason Dunn. “*Women in the Canadian Forces: Between Legal and Social Integration*.” *Current Sociology* 50, no. 5 (September 2002): 641-667.  
<http://csi.sagepub.com/content/50/5/641.full.pdf>.
- Encyclopædia Britannica. “Don’t Ask, Don’t Tell (DADT).” Last accessed 20 August 2015. <http://www.britannica.com/event/Dont-Ask-Dont-Tell>.
- Faba, Neil. “A Force to Reckon with: How the Department of National Defence Keeps its Employees Mentally Fit.” *Benefits Canada* (October 2011): 14-15.  
<http://www.benefitscanada.com/wp-content/uploads/2011/11/BC1011-Mental-Health.pdf>.
- Fletcher, J.M., G. Reid Lyon, L.S. Fuchs, and M.A. Barnes. *Learning Disabilities: From Identification to Intervention*. New York: The Guilford Press, 2007.

- Graham, Tammy J., Stephenie M. Hewett, Jane M. Warner, and Charles H. Graham. "Perceptions and Practices: The Impact of Military Structure on the Academic Success of Students with Disabilities Attending a Military College." *American Journal of Educational Studies* 6, no.1 (2013): 17-32. <http://web.ebscohost.com/>.
- Gregg, Noel, Cheri Hoy, Donna Ann Flaherty, Peggy Norris, Christopher Coleman, Mark Davis, and Michael Jordan. "Decoding and Spelling Accommodations for Postsecondary Students with Dyslexia – It's More than Processing Speed." *Learning Disabilities: A Contemporary Journal* 3, no. 2 (September 2005): 1-17. <http://connection.ebscohost.com/c/articles/17549255/decoding-spelling-accommodations-postsecondary-students-dyslexia-more-than-processing-speed>.
- Gregg, Noel, Chris Coleman, Jennifer Lindstrom, and Christopher Lee. "Who are Most, Average, or High-Functioning Adults?" *Learning Disabilities Research & Practice* 22, no. 4 (November 2007): 264-274. <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-5826.2007.00255.x/abstract>.
- Hammett C., J. Greene-Black, Dr. J. Douglas Salmon Jr., and G. Mascarenhas. *Benchmarking – A guide to hiring and managing persons with learning disabilities*. Toronto: ALDER Adult Learning Disabilities Employment Resources, 2005.
- Hargreaves, Sandra. *Study Skills for Dyslexic Students*. London: SAGE Publications Ltd, 2007.
- Harpur, Robert, Maria Lawlor, and Michael Fitzgeralds. *Succeeding in College with Asperger Syndrome – A student guide*. London: Jessica Kingsley Publishers, 2004.
- Human Rights Campaign. "HRC Statement on the End of 'Don't Ask Don't Tell'." Accessed 6 May 2015. <http://www.hrc.org/press-releases/entry/hrc-statement-on-the-end-of-dont-ask-dont-tell>.
- Human Rights Campaign. "Repealing 'Don't Ask, Don't Tell'." [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/RepealingDADTOverview\\_2010.pdf#\\_\\_utma=149406063.609007712.1433615324.1433615324.1433615324.1&\\_\\_utmb=149406063.0.10.1433615324&\\_\\_utmc=149406063&\\_\\_utmz=149406063.1433615324.1.1.utmcsr=google|utmccn=\(organic\)|utmcmd=organic|utmctr=\(not%20provided\)&\\_\\_utmv=-&\\_\\_utmj=230161820](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/RepealingDADTOverview_2010.pdf#__utma=149406063.609007712.1433615324.1433615324.1433615324.1&__utmb=149406063.0.10.1433615324&__utmc=149406063&__utmz=149406063.1433615324.1.1.utmcsr=google|utmccn=(organic)|utmcmd=organic|utmctr=(not%20provided)&__utmv=-&__utmj=230161820).
- Learning Disabilities Association of Canada. "Official Definition of Learning Disabilities." Accessed 14 March 2015. <http://www.ldac-acta.ca/learn-more/ld-defined/official-definition-of-learning-disabilities>.
- Learning Disabilities Association of Ontario. "Learning Disabilities Statistics." Accessed 8 March 2015. <http://www.ldao.ca/introduction-to-ldsadhd/ldsadhs-in-depth/articles/about-lds/learning-disabilities-statistics/>.

- Learning Disabilities Association of Ontario. "Students with Learning Disabilities at Canadian Colleges and Universities." Accessed 5 May 2015.  
<http://www.ldao.ca/introduction-to-ldsadhd/ldsadhs-in-depth/articles/about-issues-specific-to-adults-with-lds/students-with-learning-disabilities/>.
- Learning Disabilities Association of Ontario. "What is ADHD?." Accessed 14 April 2015. <http://www.ldao.ca/introduction-to-ldsadhd/introduction-to-ldsadhd/what-is-adhd/>.
- Library and Archives Canada, Commissions of Inquiry, *Report of the Royal Commission on the Status of Women in Canada*, Ottawa: Information Canada, September 1970. Accessed 4 May 2015, <http://www.swc-cfc.gc.ca/rc-cr/roycom/index-eng.html>.
- Lovett, Benjamin J., "Extended Time Testing Accommodations for Students with Disabilities: Answers to Five Fundamental Questions." *Review of Educational Research* 80, no. 4 (December 2010): 611-638.  
[http://www.jstor.org/stable/40927295?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/40927295?seq=1#page_scan_tab_contents).
- Luria, Gil, Yuval Kalish, and Miriam Weinstein. "Learning Disability and Leadership: Becoming an effective leader." *Journal of Organizational Behavior* 35, (2014): 747-761. <http://psychsource.bps.org.uk/details/journalArticle/6456191/Learning-disability-and-leadership-Becoming-an-effective-leader.html>.
- Maple Leaf Web. "The Canadian Human Rights Act: Introduction to Canada's Federal Human Rights Legislation." Accessed 4 May 2015.  
<http://mapleleafweb.com/features/canadian-human-rights-act-introduction-canada-s-federal-human-rights-legislation>.
- Mental Health Canada. "Diseases and Disorders – ADHD." Accessed 15 April 2015.  
<http://www.mentalhealthcanada.com/ConditionsandDisordersDetail.asp?lang%20=e&category=60>.
- National Defence. Director General Military Personnel. Power Point Presentation on *Duty to Accommodate – Learning Disability – Policy Review*. 20 April 2015.
- Scoppio, Grazia. "Diversity Best Practices in Military Organizations in Canada, Australia, the United Kingdom, and the United States." *Canadian Military Journal* 9, no. 3 (2009): 17-30. <http://www.journal.forces.gc.ca/vo9/no3/doc/05-scoppio-eng.pdf>.
- Scoppio, Grazia. "Leadership in a Diverse Environment: Diversity Strategies in Military and Police Forces in Canada, Australia, the United Kingdom and the United States," Report Sponsored by: Director human Rights and Diversity, 22 August 2007.
- Segal, David R., Mady Wechsler Segal. "Change in Military Organization." *Annual Review of Sociology* 9 (August 1983): 151-170.  
<http://www.annualreviews.org/doi/abs/10.1146/annurev.so.09.080183.001055>.

- Shaywitz, Sally E., Michael D. Escobar, Bennett A. Shaywitz, Jack M. Fletcher, and Robert Makugh. "Evidence that Dyslexia may Represent the Lower Tail of a Normal Distribution of Reading Ability." *The New England Journal of Medicine* 326, no. 3 (January 16, 1992): 145-150.  
<http://www.nejm.org/doi/pdf/10.1056/NEJM199201163260301>.
- Skomorovsky, A. "The Impact of Learning Disabilities on Cognitive Abilities Testing." Technical Note 2005-04, July 2006.
- Weis, Robert, Emily L. Dean, and Karen J. Osborne. "Accommodation Decision Making for Postsecondary Students with Learning Disabilities: Individually Tailored or One Size Fits All?" *Journal of Learning Disabilities* (November 13, 2014): 1-15.  
<http://ldx.sagepub.com/>.
- Winslow, Donna, and Jason Dunn. "Women in the Canadian Forces: Between Legal and Social Integration." *Current Sociology* 50, no. 5 (September 2002): 641-667.  
<http://csi.sagepub.com/content/50/5/641.full.pdf>.
- United Kingdom. Foundation for people with learning disabilities. "Learning difficulties." Accessed 1 March 2015.  
<http://www.learningdisabilities.org.uk/helpinformation/learning-disability-a-z/1/204300/>.
- University of Guelph. "Student Accessibility Services." Accessed 1 July 2015.  
<https://www.uoguelph.ca/csd/node/1136>.
- University of Ottawa. "Academic Accommodation Process." Accessed 1 July 2015.  
<https://sass.uottawa.ca/en/access/accommodation-process>.