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LIMITED REPRESENTATION FOR UNLIMITED LIABILITY: THE PROSPECT OF UNIONIZATION OF THE CANADIAN ARMED FORCES

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JCSP 43

Exercise Solo Flight

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You can go into this action feeling assured of this, and as the head of the government I give you this assurance: That you need not fear that the government and the country will fail to show just appreciation of your service to the country and Empire in what you are about to do and what you have already done.

- Prime Minister of Canada Sir Robert Borden on the Eve of the Battle of Vimy Ridge, The Royal Canadian Legion, “Historical precedent exists to care for those who served.”

INTRODUCTION

Members of the Canadian Armed Forces (CAF) are prepared to make the ultimate sacrifice. Their unlimited liability, derived from their military function, means that they are willing to enter into situations which could result in the loss of life in order to defend Canadians and their values.¹ The Government of Canada may choose to deploy forces on complex operations for extended periods, far away from families and friends, in order to leverage the military as an important element of national power. The CAF are eager and willing to deploy, embodying the fighting spirit to meet Canadian expectations at home and abroad. In all endeavours, the actions of the CAF are bounded to Canadian society through military ethos. As emphasized in *Duty with Honour*, this is the “foundation upon which the legitimacy, effectiveness and honour of the Canadian [Armed] Forces depend.”² Beyond this, the *Queen’s Regulations and Orders* (QR&Os), following the *National Defence Act* (NDA), outline the detailed administrative, disciplinary and financial rules and regulations with which members of the CAF must comply.

Despite all the regulations which are in place to govern the activities of the CAF, the relationship with the Government of Canada is not reciprocal. There are no formal mechanisms in place for collective representation of its members.³ Until recently, the

¹ Department of National Defence, A-PA-005-000/AP-001, *Duty with Honour: The Profession of Arms in Canada* (Ottawa: DND Canada, 2009), 27.

² *Ibid.*, 25.

³ Kelly Farley, Rick Walker, and Dan Mendoza, “Freedom of association and the Canadian forces,” in *Military Unionism in the Post-Cold War Era*, ed. Richard Bartle and Lindy Heinecken (New York: Routledge, 2006), 67.

CAF was not alone in this predicament. Under the *Public Service Labour Relations Act* (PSLRA), the CAF and the Royal Canadian Mounted Police (RCMP) are prohibited from collective bargaining and cannot benefit from unions such as the Professional Institute of the Public Service of Canada (PIPSC) and the Public Service Alliance of Canada (PSAC).⁴ Both the CAF and RCMP have faced complex organizational challenges relating to sexual harassment of female members and the care of members with post-traumatic stress disorder (PTSD) which have resulted in negative public spotlight.⁵ These and other concerns, such as pay and benefits, have led the RCMP to search for better methods for resolution. This occurred in January 2015 when the RCMP won a long fought battle within the Supreme Court to allow collective bargaining.⁶ This landmark decision has left the CAF as the sole government organization without the potential for

⁴ Ibid., 71; The Professional Institute of the Public Service of Canada, “Who we are,” last accessed 8 May 2017, <http://www.pipsc.ca/portal/page/portal/website/aboutinstitute>; Public Service Alliance of Canada, “About PSAC,” last accessed 8 May 2017, <http://psacunion.ca/about>.

⁵ “Accusations were leveled that RCMP management had ignored or inadequately dealt with systemic harassment, most notably of its female members in the workplace...” Civilian Review and Complaints Commission for the RCMP, “Public Interest Investigation Report into Issues of Workplace Harassment within the Royal Canadian Mounted Police,” Last modified 24 June 2016, <https://www.crc-ccecp.gc.ca/en/public-interest-investigation-report-issues-workplace-harassment-within-royal-canadian-mounted>; “One of the key findings of the External Review Authority (the ERA) is that there is an underlying sexualized culture in the CAF that is hostile to women and LGBTQ members and conducive to more serious incidents of sexual harassment and assault... non-commissioned officers (NCOs), both men and women, appear to be generally desensitized to the sexualized culture. Officers tend to excuse incidents of inappropriate conduct on the basis that the CAF is merely a reflection of civilian society... there is a broadly held perception in the lower ranks that those in the chain of command either condone inappropriate sexual conduct, or are willing to turn a blind-eye to such incidents.” Marie Deschamps, “External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces,” 27 March 2015, ii; “A former Mayerthorpe RCMP officer who developed post-traumatic stress disorder following the 2005 murder of four of his colleagues is claiming his Charter rights were violated when he was discharged from the force because of his disability.” Paige Parsons, “Discharge of Mountie who developed PTSD after four colleagues murdered violates Charter: lawyer,” *National Post*, 22 October 2016; “The problem faced by the Canadian Forces in relation to PTSD is so serious that it is affecting the ability of CF [CAF] leaders to properly lead. Recent research by the CF [CAF] shows lack of trust by members for taking care of those suffering from PTSD. As such, it has the potential to threaten the very combat capability of the Canadian [Armed] Forces.” Senate of Canada, “Standing Senate Committee on Defence and Security Proceedings of the Subcommittee on Veterans Affairs,” last modified 17 April 2002, <https://sencanada.ca/en/Content/Sen/committee/371/vete/05eva-e>.

⁶ Jim Bronskill, “Mountie Association Pushes For Collective Bargaining Rights Under New Bill,” *Huffington Post*, 14 March 2016.

union representation through which to hold the government accountable and address the collective struggles of those who serve.

The Canadian Armed Forces has failed the needs of members through mechanisms which provide insufficient opportunities for advocacy and lack of consultation with senior leaders. Unionization may be the best solution to remedy the situation and strengthen the organization. This paper will first provide background on the current status of the CAF, including an analysis of the methods for recourse available to members. Second, it will explore the attitudes of members of the CAF and society which favour a collective association. Third, it will investigate the RCMP experience in gaining the right to collective bargaining in order to explore implications for the CAF. Finally, I will provide recommendations for the CAF to move forward in exploring the establishment of a union. The imbalance of limited representation, through lack of collective bargaining, for those pledging unlimited liability to Canada must be remedied.

CURRENT CAF PROCESSES

Presently members of the CAF are prohibited from forming a union through the QR&Os. Under Article 19.10, members shall not “combine with other members for the purpose of bringing about alterations in existing regulations for the Canadian [Armed] Forces” or “sign with other members memorials, petitions or applications relating to the Canadian [Armed] Forces.”⁷ This also extends to endeavours to promote collaboration of members via means within the organization, such access to emailing address and networks.⁸ Failure to comply with this regulation may result in prosecution or have grave

⁷ National Defence and the Canadian Armed Forces, “QR&Os: Volume 1- Chapter 19 Conduct and Discipline,” last modified 31 August 2015, <http://www.forces.gc.ca/en/about-policies-standards-queens-regulations-orders-vol-01/ch-19.page#cha-019-10>.

⁸ Farley, Walker, and Mendoza. *Freedom of association...*, 75.

career implications. In the absence of an association to represent shared interests, the duty falls upon the chain of command for proper representation concerning benefits and policies.⁹ Charged with the “control and administration of the Canadian [Armed] Forces” the task ultimately falls to the Chief of the Defence Staff (CDS), who must further delegate some of the responsibility to subordinate commanders.¹⁰ Potential challenges and conflicts may arise as individual supervisors do not always have the same intent as subordinates, often do not view a situation from the same perspective, or have access to feedback loops which convey the true sentiments among members.¹¹

The primary process for individual members to appeal matters concerning their interests is the Canadian Forces Grievance Process. As outlined in section 29(1) of the NDA, “An officer or non-commissioned member who has been aggrieved by any decision, act or omission in the administration of the affairs of the Canadian Forces for which no other process for redress is provided under this Act is entitled to submit a grievance.”¹² The grievance system allows a member to make a formal registered appeal to their leadership in order to remedy a potential wrong-doing. The initial authority for review is generally the member’s Commanding Officer, who has a four month time limit to review the information and reach a decision on the matter.¹³ Grievances may be furthered to the CDS (or Grievance Committee when directed) as final authority, should

⁹ National Defence and the Canadian Armed Forces, “DAOD 2017-1, Military Grievance Process,” last modified 19 April 2017, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-2000/2017-1.page#int>.

¹⁰ Government of Canada, Justice Laws Website, “National Defence Act,” last modified 1 June 2015, <http://laws-lois.justice.gc.ca/eng/acts/n-5/FullText.html>.

¹¹ Fred Hassan, “The Frontline Advantage,” *Harvard Business Review* 89, no. 5 (May 2011): 107.

¹² Government of Canada, Justice Laws Website, “National Defence Act,” last modified 1 June 2015, <http://laws-lois.justice.gc.ca/eng/acts/n-5/FullText.html>.

¹³ National Defence and the Canadian Armed Forces, “DAOD 2017-1, Military Grievance Process,” last modified 19 April 2017, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-2000/2017-1.page#int>.

the member not concur with the initial handling and decision on the matter. Although this process allows a member to individually advocate for interests, the grievance system is not without many serious challenges and flaws. Most disconcerting to members are issues of perceived fairness and timeliness. Although the goal for ruling is 12 months, there is no official timeline for return from the final authority, which often results in several years having passed before a decision is made.¹⁴ There are also significant concerns regarding the fairness associated with the grievance process, in which members may often appeal to the chain of command on a matter which may reflect actions or inactions of the organization.¹⁵ Furthermore, although the CDS is the ultimate authority on decisions regarding grievances, the powers of decision are actually quite limited. In matters relating to the compensation of members final authority rests with the Department of Justice, even if the CDS believes that the member's claim is justified.¹⁶ This is not a straight forward process, as often claims are held up or denied during this final stage in the process.¹⁷ This significantly limits the power of the CDS, and subordinate commanders, to advocate for and support the well-being of members.

Another important mechanism enabled by leaders to support members is the harassment prevention and resolution process. This process must be empowered by supervisors at all levels, with the ultimate authority resting with the Chief of Military

¹⁴ Michel W. Drapeau and Joshua M. Juneau, "Coexistence & Convergence: The lawful formation of a Military Professional Association," *Esprit de Corps*, 20, no. 8 (Fall 2013): 61.

¹⁵ Nancy Otis and Michelle Straver, *Review of Attrition and Retention Research for the Canadian Forces* (Ottawa: Defence Research & Development Canada Centre for Operational Research and Analysis, 2008), 18.

¹⁶ Pierre Daigle, *The Canadian Forces Grievance Process: Making it right for those who serve*, (Ottawa: National Defence and Canadian Forces Ombudsman, 2010). 2.

¹⁷ *Ibid.*, 8. A complaint appeared before the ombudsman, Pierre Daigle, in which the CDS, as the final authority on a grievance, agreed that a member of the reserves had suffered financial loss as a result of being wrongly relieved from duty. The file was then forwarded to the Director Claims and Civil Litigation to reward the determined financial compensation. However, the claim was denied at this final stage and the member never received any form of compensation.

Personnel (CMP).¹⁸ In order to support its members, the CAF acknowledges that “all DND employees and CAF members have the right to be treated fairly, respectfully and with dignity in a workplace free of harassment, and they have the responsibility to treat others in the same manner.”¹⁹ Although the CAF has a program in place to deal with situations involving harassment and conflict, it is limited in its perceived effectiveness. This is primarily due to the fact that the leaders which members are required to rely upon to support them through these difficult and personal proceedings may also be the subject of the complaint or also responsible to the individual with whom the complaint is against.²⁰ This may create a situation in which a complainant is reluctant to come forward, or does not receive adequate support. In recent years these concerns have manifested itself in the CAF’s inability to independently affect its “underlying sexualized culture.”²¹ An external review by Justice Marie Deschamps revealed that a major contributor to underreporting was an underlying concern of “a deep mistrust that the chain of command will take such complaints seriously.”²² To remedy this, an external Sexual Misconduct Response Centre was created to provide the necessary support to members, while operating outside the chain of command and reporting to the Deputy Minister (DM).²³ This represents an acknowledgement by the CAF that external structures are sometimes needed to represent the best interests of its members.

¹⁸ National Defence and the Canadian Armed Forces, “DAOD 5012-0, Harassment Prevention and Resolution,” last modified 27 January 2017, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-5000/5012-0.page>.

¹⁹ Ibid.

²⁰ Drapeau and Juneau, “Coexistence & Convergence...,” 61.

²¹ Deschamps, “External Review into Sexual ...,” i.

²² Ibid., iii.

²³ National Defence and the Canadian Armed Forces, “Sexual Misconduct Response Centre,” last modified 29 March 2017, <http://www.forces.gc.ca/en/caf-community-support-services/sexual-misconduct-response-centre.page>.

A valuable external resource available to members of the CAF is the Ombudsman. The purpose of the office is to “increase openness and transparency... and to ensure the fair treatment of concerns raised by Canadian Armed Forces members, departmental employees and their families.”²⁴ In this capacity, the Ombudsman reports directly to the Minister of National Defence (MND). Each year this individual views over one thousand files pertaining to “benefits, release from military service, medical issues, military postings, harassment, redress of grievance, and recruiting.”²⁵ The majority are outstanding issues which the chain of command has not been able to suitably rectify in a manner perceived as fair by the member. The nature of the office is such that the Ombudsman has no official authority. The outcomes of individual cases cannot be altered, but such cases enable recommendations to make improvements for the future of the entire Department of National Defence (DND) community. In 2012, the Ombudsman was warned by the MND to remain in a mediator role, vice as an advocate for the members of the CAF.²⁶ Although the government and the Ombudsman have changed since this time, it appears that a strained relationship still exists. In 2017, the Ombudsman highlighted the need for the independence of the office from government, reporting “I held the view that it was possible to work collaboratively within the departmental framework to deliver the mandate and bring positive change... Regrettably, after three years in office, I have reached the same conclusions as my predecessors.”²⁷ Despite this

²⁴ National Defence and the Canadian Forces Ombudsman, “About Us,” last modified 10 July 2015, <http://www.ombudsman.forces.gc.ca/en/about-us.page>.

²⁵ Ibid.

²⁶ Lee Berthiaume, “Military ombudsman shouldn’t act as advocate for Canadians in uniform: MacKay,” *The National Post*, 24 September 2012.

²⁷ National Defence and Canadian Forces Ombudsman, “The Case for a Permanent and Independent Ombudsman,” last modified 11 April 2017, <http://www.ombudsman.forces.gc.ca/en/ombudsman-reports-stats-investigations-the-case-for-a-permanent-and-independent-ombudsman-office-/the-case-for-a-permanent-and-independent-ombudsman-office.page>.

dynamic, the Ombudsman continues to facilitate improvements for current and former members of DND.²⁸ Nonetheless, both the views of the Ombudsman and the sheer volume of complaints received annually, further amplify the argument for an independent third-party to provide representation for the CAF.

THE NEED FOR CHANGE

Despite the best efforts of senior leaders, the processes available within the CAF are not appropriately structured to achieve the desired results on behalf of members, and the need for change exists. This is most prevalent in the feedback received from current and serving members. According to research conducted by the Defence Research & Development Canada Centre for Operational Research and Analysis, “The CF[CAF] Retention Survey results from 2003 to 2006 showed that the most consistent and influential factors in determining turnover intentions are CF[CAF] fairness...[and] confidence in senior leadership and perceived organizational support.”²⁹ Similarly, results from the 2004 Army Socio-cultural Survey and Army Culture and Climate Survey indicated that members do not feel that they have appropriate input and feedback into matters which directly affect them, as well as in matters relating to the relationship between government and the CAF.³⁰ Likewise, many expressed dissatisfaction and

²⁸ “Previous investigations from the Office have led to substantial and long-lasting improvements in the Canadian Forces, including important changes in the areas of post-traumatic stress disorder and operational stress injuries and improvements in the treatment received by the families of military members who are killed in the course of their duties.” National Defence and the Canadian Forces Ombudsman, “About Us,” last modified 10 July 2015, <http://www.ombudsman.forces.gc.ca/en/about-us.page>.

²⁹ Otis and Straver, *Review of Attrition and Retention...*, iii.

³⁰ Mike Capstick et al, *Canada’s Soldiers: Military Ethos and Canadian Values in the 21st Century* (Ottawa: Land Personnel Concepts and Policy, 2005), 41. The Army Socio-cultural Survey was conducted by Environic Canada. It “mapped the core values of soldiers against those of Canadian society and examined the predominant values of different groups within Canada’s Army.” The Army Culture and Climate Survey was conducted by the Royal Military College of Canada and “focused on dimensions of organizational climate.” Both were commissioned in support of the Army Campaign Plan.

isolation within the CAF's ineffective and complicated complaint system.³¹ Those attaining the rank of Lieutenant-Colonel reported the highest levels of career dissatisfaction, prompting follow-on studies. The insights of these individuals were considered extremely valuable given their level of experience and commitment to the organization. Nonetheless, they reported frustration in many policies and procedures including insufficient resources, lack of consistent and transparent promotion and reward systems, organizational bureaucracy and lack of opportunity to communicate with senior leaders.³² The latter is especially interesting as the current mechanisms for representation of members' well-being is dependent on advocacy and understanding by senior leaders.

The need for change is also apparent in the application of pay and benefits, which limits the control of vital financial resources by the CDS and precludes input from members. Under the NDA, the Treasury Board (TB) is given responsibility for the provision of funds for pay and benefits.³³ Without a union to represent collective interests, the distribution of funds is determined through consultation with the Directorate of Compensation Benefits Administration (DCBA). Generally, members of the CAF receive benefits that mirror that of the PIPSC or PSAC so that when contracts are negotiated by several of its federal bargaining agents, members of the CAF automatically receive equivalent compensation.³⁴ However this is not always the case. In 2012, the

³¹ Ibid.

³² Donald R. McCreary et al, *Factors influencing career satisfaction and dissatisfaction in five groups of Land Force Lieutenant-Colonels* (Toronto: Defence Research & Development Canada, 2006), vi.

³³ Government of Canada, Justice Laws Website, "National Defence Act," last modified 1 June 2015, <http://laws-lois.justice.gc.ca/eng/acts/n-5/FullText.html>.

³⁴ National Defence and the Canadian Armed Forces, "Pay Increases and Changes to Severance Benefits for Canadian Armed Forces Personnel," last modified 6 November 2013, <http://www.forces.gc.ca/en/caf-community-benefits/pay-increase-backgrounder.page>. DCBA reports to CMP, which ultimately reports to the CDS. Nonetheless, this does not provide a means for input by members. Overall funding is determined by the TB, with limited consultation from the CDS down the Chain of Command.

CAF ceased severance pay for voluntary retirements in parallel with other bargaining organizations representing almost 100,000 public employees.³⁵ The Union of Taxation Employees (UTE) within PSAC representing the Canadian Revenue Agency (CRA) did not agree to these conditions until almost four years later when a tentative agreement was reached in 2016.³⁶ Although striving for fairness, this demonstrates that the current process allows for the policies to be applied inconsistently. This process also fails to recognise the uniqueness of the CAF from the public service. The former are often subjected to extreme physical and psychological work conditions, as well as frequent last-minute tasks in response to an emergency or threat situation anywhere in Canada or the world.³⁷ It should not be assumed that a parallel application of policy provides sufficient compensation and representation for the CAF.

Currently CAF members need not be consulted when senior leaders negotiate with Treasury Board on matters that gravely impact their quality of life. This was demonstrated in Canadian Forces General Order (CANFORGEN) 145/12, which was promulgated to explain that “[T]hrough recent initiatives, the CF have been engaged in efforts to support the Government of Canada’s Goal of returning to a balanced budget...”³⁸ As a result, several allowances were eliminated, such as separation expenses for members on imposed restriction and unaccompanied postings as well as benefits covering the repayment of mortgage breaking penalties due to posting. Although much

³⁵ National Defence and the Canadian Armed Forces, “Severance Pay FAQ,” last modified 16 June 2015, <http://www.forces.gc.ca/en/caf-community-benefits/cfsp-faq.page#Q1>.

³⁶ Public Service Alliance of Canada, “We have an agreement with the CRA,” last modified 12 August 2016, <http://psacunion.ca/we-have-agreement-cra-0>.

³⁷ Alan Okros, “Becoming an Employer of Choice: Human Resource Challenges within DND and the CF,” in *Public Management of Defence in Canada*, ed. by Craig Stone (Toronto: Breakout Educational Network, 2009), 144.

³⁸ Department of National Defence, “CMP Compensation and Benefit Framework Cuts,” Canadian Forces General Order (CANFORGEN) 145/12, 301435Z JUL 12. CANFORGEN are general messages which are pertinent to the entire CAF and require widest distribution.

deliberation was conducted by senior leaders and cost savings were diverted to allow other needed benefits as identified in a Standing Committee on National Defence and Veterans Affairs (SCONDVA) report, no consultation occurred with the general membership of the CAF and many were caught by surprise with the new changes.³⁹ A collective bargaining organization would have prevented such occurrences.

Finally, the need for change is being driven by the changing values of Canadian society. The current “post-deferential society” allows less prominence and autonomy to state institutions and symbols of authority, such as the church and military.⁴⁰ In times of financial restraint and reduced government spending, this translates into the demand for increased transparency and input into the functioning of these organizations.⁴¹ Similarly, a 2004 Canadian Army values survey indicated that the majority of members view their service as neither occupational nor vocational.⁴² This indicates that although they do not join the CAF purely for pay and benefits, they do possess a level of expectation regarding exchanges with the organization.⁴³ The military agreement with the Government of Canada has long depended on an unwritten social contract to ensure the needs of

³⁹ CBC News, “Military meal program cut will cause undue hardship,” last modified 16 August 2012, <http://www.cbc.ca/news/canada/new-brunswick/military-meal-program-cut-will-cause-undue-hardship-1.1175087>; Ibid. According to CANFORGEN 145/12, “So as to meet the government’s intent while ensuring a balancing of the four pillars (personnel, equipment, readiness and infrastructure) of the Canada First Defence Strategy (CFDS), a critical review of personnel programs have been undertaken.” Yet, most members were not made aware of the changes until they were in effect.

⁴⁰ Christopher Dandeker, “The Military in Democratic Societies,” *Society* 38, no. 6, (Fall 2001): 21. Post-deferential societies, also known as post-traditional societies, emerged at the end of the Cold War. This period brought a redefinition of the global threat and a concurrent reframing of the role of militaries in society. With the likelihood of state on state conflict no longer a threat, the military was no longer viewed as the most essential instrument for policy and security. In this context other social matters, such as health and equality, became more important and the military was compared to other business models in terms of efficiencies and practices.

⁴¹ Richard Bartle, “Placing military unionism in a comparative perspective,” in *Military Unionism in the Post-Cold War Era*, ed. by Richard Bartle and Lindy Heinecken (New York: Routledge, 2006): 212.

⁴² Capstick et al, *Canada’s Soldiers: Military Ethos...*, 31.

⁴³ Lindy Heinecken, “An overview of military unionism in the post-Cold War era,” in *Military Unionism in the Post-Cold War Era*, ed. Richard Bartle and Lindy Heinecken (New York: Routledge, 2006): 4.

members are protected by the military organization to which they pledge their lives.⁴⁴ However, in a 2014 veterans class action lawsuit, federal government representatives insisted that “At no time in Canada’s history has any alleged ‘social contract’ ...been given effect in any statute, regulation or as a constitutional principle written or unwritten.”⁴⁵ This infers that beliefs which held for century have faded with time, indicating the emergence of an era with the need for a formal contract. The first step in this process is gaining the right to collective bargaining.

ACHIEVING THE RIGHT TO COLLECTIVE BARGAINING

Despite the current status of the NDA forbidding any form of unionization, collective bargaining may be possible based on the recent successes of the RCMP in this matter. The RCMP organization is comparable to the CAF in that it exists in accordance to the *Royal Canadian Mounted Police Act* (RCMP Act), with ultimate command afforded to the Commissioner.⁴⁶ It also possesses a two-level grievance process, with the final authority resting in the Commissioner, in order to address the individual concerns of its members. However, the RCMP had a unique Staff Relations Representation Program (SRRP) which allowed members input into management decisions on employment issues, and vice versa.⁴⁷ Although not an independent body, the SRRP was an internal organization composed of members of the RCMP, who ultimately served under the same

⁴⁴ Murray Brewster, “Ottawa Not Bound To Soldiers Social Contract, Federal Lawyers Argue,” *Huffington Post*, 18 March 2014. This contract dates back to a speech by Prime Minister, Sir Robert Borden, to soldiers before the battle at Vimy Ridge in which he vowed; “The government and the country will consider it their first duty to see that a proper appreciation of your effort and of your courage is brought to the notice of people at home that no man, whether he goes back or whether he remains in Flanders, will have just cause to reproach the government for having broken faith with the men who won and the men who died.”

⁴⁵ Kristen Everson, “Veterans don’t have social contract, Ottawa says in lawsuit response,” *CBC News*, 18 March 2014.

⁴⁶ Robin MacKay and Mayra Perez-Leclerc, *Bill C-7” An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (Ottawa: Library of Parliament, 2016), 2.

⁴⁷ *Mounted Police Association of Ontario v. Canada (Attorney General)*, S.C.C. 34948.

chain of command with which they collaborated. While the SRRP facilitated a dialogue into policy, it was non-adversarial and limited in its power. It could not seek external council and could be prohibited from engaging in activities that were viewed as a potential conflict by senior leadership.⁴⁸ Therefore like the CAF, despite the best interests of senior leaders, many within the organization felt disillusioned and unrepresented.⁴⁹

A lack of accountability and input mechanisms for member to advocate for their needs created many challenges within the RCMP. Problems included continual reports of harassment and bullying, an inadequate grievance system, poor support for injured personnel, and lack of resources for critical mental health services.⁵⁰ Likewise, there were numerous accusations concerning the treatment of female members which resulted in several lawsuits, including one involving the alleged harassment and discrimination of more than 300 uniformed and civilian members.⁵¹ These occurrences prompted the establishment of the Experts Summit on Challenges facing the RCMP, which investigated these reports and deduced that the organization would benefit from an approach in which “police should be tasked with policing while the administration of the force would be better placed in the hands of those experienced and trained in governance and administration.”⁵² To this end, nine recommendations were provided, including the

⁴⁸ Ibid.

⁴⁹ Kathryn May, “Demoralized RCMP want union to force change,” *Ottawa Citizen*, 11 July 2016.

⁵⁰ Judy A. Sgro and Grant Mitchell, “Shattered Dreams: Addressing Harassment and Systemic Discontent within the RCMP,” Last accessed 8 May 2017, http://liberalsenateforum.ca/wp-content/uploads/2014/12/Shattered-Dreams_Final.pdf.

⁵¹ Chris Madsen, “Legal issues in the Canadian Forces,” in *Military Law and Operations* (Aurora, ON: The Cartwright Group Ltd, 2017) 22-23; Mike Blanchfield, “Mounties have right to Collective Bargaining, Supreme Court Says,” *Huffington Post*, 16 January 2015.

⁵² Judy A. Sgro and Grant Mitchell, “Shattered Dreams: Addressing Harassment and Systemic Discontent within the RCMP,” Last accessed 8 May 2017, http://liberalsenateforum.ca/wp-content/uploads/2014/12/Shattered-Dreams_Final.pdf. Experts on the panel included Hon. Judy Sgro (MP), Hon. Grant Mitchell (Senator), Hon. Romeo Dallaire (Senator), Hon Carolyn Bennett (MP), Hon. Kristy Duncan (MP), Hon Wayne Easter (MP), Dr. Jennifer Berdahl (Professor of Organizational Behaviour at the University of Toronto), Ms. Jane Hall (Co-chair of the RCMP Veterans Women’s Council), Chief Rick

suggestion to “[E]stablish the ability of the RCMP membership to vote on creating a dedicated member advocacy association.”⁵³

The struggle to allow collective bargaining within the RCMP was not without challenges. The organization could not simply have members sign union cards; it first had to prove its right to do so. The association sought to build upon past cases in order to challenge the statute as violating the right to freedom of association under the *Charter*.⁵⁴ Recent attempts at reform began in 1999, with *Delisle v. Canada* (Deputy Attorney General). This was a challenge by an RCMP officer concerning the exclusion of the RCMP under the PSLRA as a direct infringement of the *Charter* right to freedom of expression and freedom of association.⁵⁵ However, the court did not side with the member in this case, citing that “[T]he freedom of association guaranteed by s.2(d) of the *Charter* does not include the right to establish a particular type of association defined in a particular statute.”⁵⁶ In 2006, the case of *Mounted Police Association of Ontario v. Canada* (Attorney General) was put before the Ontario Superior Court of Justice.⁵⁷ It expanded on the previous case to include “a direct challenge to the sufficiency of the

Hanson (Chief of Police for the City of Calgary), Mr. Michael Kempa (Associate Professor of Criminology at University of Ottawa), Mr. Ron Lewis (National Advocate, RCMP Veterans Association), Ms. Margaret Michaels (Human Resources Consultant), and Dr. Jeff Morley (former RCMP officer and Ph. D in counselling/psychology).

⁵³ Ibid.

⁵⁴ The Constitutional Law Group, *Canadian Constitutional Law*, 3rd ed. (Toronto: Emond Montgomery Publications Limited, 2003), 1031. Early reference to the challenge of freedom of association is known as the “Labour Trilogy.”

⁵⁵ Lexum, “Judgements of the Supreme Court of Canada, *Delisle v. Canada* (Deputy Attorney General),” last modified 28 April 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1721/index.do>. The case of *Delisle v. Canada* (Deputy Attorney General) was first trialed in Quebec and subsequently appealed to the Supreme Court of Canada.

⁵⁶ Ibid.

⁵⁷ *MacKay and Perez-Leclerc, Bill C-7...*, 1. The case of *Mounted Police Association of Ontario v. Canada* (Attorney General) was first tried at the Court of Appeal for Ontario.

entire RCMP relations scheme.”⁵⁸ To this end, it challenged the SRRP. Referring to previous precedents, the court defined collective bargaining as a derivative right, which must be demonstrated on a case by case basis.⁵⁹ Following a nine-year battle which concluded with a successful appeal to the Supreme Court of Canada in 2015, a ruling was made in favour of the RCMP. The court stated that the SRRP permitted members of the RCMP the freedom of association therefore the derivative right of collective bargaining must be allowed. However, the function of the SRRP prevented the need for collective bargaining and in doing so, denied members their entitled rights. This landmark decision redefined the right to association that had been previously denied in 2006. Moreover, the decision effectively overrode the PSLRA as interfering with the right to freedom of association of RCMP members.⁶⁰ A very similar argument could be made for members of the CAF.

The judgment that sections of the PSLRA were unconstitutional was the first step in the long battle for change; the next required the amendment of the PSLRA through government. Through suspension of invalidity, the court provided the government 12 months to make the necessary amendments to allow collective bargaining for the RCMP.⁶¹ Bill C-7 was developed to meet this requirement and allow for “the ability of RCMP members and reservists to choose whether to be represented by a bargaining agent [as well as] independent, binding arbitration as the dispute resolution process for

⁵⁸ Lexum, “Judgment of the Supreme Court of Canada : Mounted Police Association of Ontario v. Canada (Attorney General),” last modified 28 April 2017, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14577/index.do>.

⁵⁹ Mounted Police Association of Ontario v. Canada (Attorney General). S.C.C. 34948. Previous cases referred to were Heath Service v. Canada, and Fraser v. Canada .

⁶⁰ CanLII Connects, “RCMP Permitted to Form Unions; A Purposive Approach to Freedom of Association in Mounted Police Association of Ontario v Canada,” last accessed 28 April 2017, <http://canliiconnects.org/en/commentaries/38582>.

⁶¹ James Fiz-Morris, “RCMP officers have right to collective bargaining, Supreme Court rules,” *CBC News*, 16 January 2016.

bargaining impasses, with no right to strike.”⁶² The bargaining organization would hold the representation of the RCMP as its primary mandate, ensuring it was free of obligation to the government.⁶³ This was an important inclusion, addressing the concern of members that senior leaders could not sufficiently represent organizational interests. Also important were the elements that were to be precluded in collective bargaining, which pertained to “duties and responsibilities and the deployment of RCMP members, the RCMP Code of Conduct and conduct management systems, RCMP uniforms, medals and order of dress, and law enforcement techniques.”⁶⁴ Bill C-7 also assured the authority of the Commissioner in accordance with the RCMP Act. The bill received final reading in the Senate in June 2016 and was sent back to the House of Commons for final approval, where it currently remains among a list of pending new bills.⁶⁵ While the RCMP has received official recognition of the right for collective bargaining, exact details of the agreement are unresolved. Nonetheless, the progress to date is a major step forward for the organization.

Although many parallels can be drawn for the CAF from the experiences of the RCMP, each organization is unique and possesses its own culture and challenges. The CAF tends to focus on the group for matters concerning mission and welfare, whereas the RCMP is more inclined to be individually focused.⁶⁶ Nonetheless, “overlapping areas of

⁶² MacKay and Perez-Leclerc, *Bill C-7...*, 1.

⁶³ *Ibid.*, 2.

⁶⁴ Government of Canada, “News Release: Government of Canada to introduce RCMP Labour Relations Bill,” last modified 7 December 2015, <http://news.gc.ca/web/article-en.do?nid=1023859&%3Btp=1&wbdisable=false>.

⁶⁵ Alison Crawford, “Still no answers for Mounties on pay raise or unionization,” *CBC News*, 21 September 2016; Rachel Aiello, “Liberals not ruling out using time allocation in last three weeks before House adjourns,” *The Hill Times*, 28 November 2016.

⁶⁶ David Smith, Lianne McLellan, and Dwayne K. Hobbs, *Cultural Differences between the Canadian Forces and the Royal Canadian Mounted Police* (Toronto: Defence Research & Development Canada, n.d.), 6-4.

their defence and security mandates” and exclusion by legislation from forming unions, enables sufficient similarity for comparison.⁶⁷ Therefore the benefits of collective bargaining, which promotes teamwork by allowing a mechanism to work together in order to strengthen the organization, would be especially relevant in the CAF.⁶⁸

APPLICATION FOR THE CAF

There is overwhelming evidence that the CAF would benefit from, and could lawfully form, a union to facilitate collective bargaining. Similar to the purposed construct for the RMCP, this organization would represent the interests of its members concerning non-operational issues.⁶⁹ Currently military associations and trade unions provide collective bargaining and other representation for militaries in 19 countries throughout the world.⁷⁰ This includes other NATO nations such as Austria, Belgium, Denmark, Finland, Germany, Hungary, Ireland, Norway, Romania, Sweden, Switzerland and The Netherlands.⁷¹ Many of the bargaining organizations of these nations belong to the European Organization of Military Associations (EUROMIL). EUROMIL supports the “citizen in uniform,” enforcing the belief that those members of a state that chose to enter the military service should be afforded the same rights and privileges as the rest of society.⁷² EUROMIL performs many functions such as advocating for rights and freedoms, promoting equal application of social policy for military personnel and facilitating information sharing and collaboration between member organizations.⁷³

⁶⁷ Ibid., 6-3.

⁶⁸ Mike Blanchfield, “Mounties have right to Collective Bargaining, Supreme Court Says,” *Huffington Post*, 16 January 2015.

⁶⁹ Madsen, “Legal issues in the...,” 37.

⁷⁰ Farley, Walker and Mendoza, “Freedom of association...,” 68.

⁷¹ Drapeau and Juneau, “Coexistence & Convergence...,” 37.

⁷² European Organisation of Military Associations, “About Us,” last accessed 1 May 2017, <http://euromil.org/who-we-are/>.

⁷³ Ibid.

Each military association within EUROMIL is unique to the needs of the specific country and force which it represents.⁷⁴ The most structured military organizations are referred to as unions and often include multiple alliances to represent the officer corps and enlisted members independently.⁷⁵ They regularly advocate for the needs of members through collective bargaining with government agencies. The majority of these unions are not afforded the right to interfere in operational matters or pursue strike action, although there are some exceptions to these constraints.⁷⁶ In contrast, other organizations resemble “vocational associations.”⁷⁷ These have developed a collaborative relationship with the government, which allows frequent and open dialogue to best serve the interests of members. Regardless of the organizational structure, components of EUROMIL find value in the collective organization of members. Together they pursue the betterment of each organization in terms of human rights and socio-professional interests of members.

In order to achieve similar successes as the organizations within EUROMIL, the prospective of unionizing the Canadian military must occur in a deliberate and careful manner. This is not only because of the legal issues and constitutional amendments that would have to be overcome, but also due to a negative stigma that often surrounds the concept of a military union, which includes the belief that allowing an association would undermine authority and threaten morale.⁷⁸ In this respect, it is likely that the CAF will only be afforded one opportunity to attempt implementation of a union as the

⁷⁴ Bartle, “Placing military unionism...,” 217.

⁷⁵ Heinecken, “An overview of military...,” 12.

⁷⁶ Ibid. Noted exceptions include Denmark where members may strike (although not in uniform). Moreover, as soldiers deploy on more frequent operations, the span of union influence has increased to include matters pertaining to operations.

⁷⁷ Ibid., 11.

⁷⁸ Thomas P. Easum, *Factors Favoring Military Unions in the United States Armed Forces* (Carlisle, PA: US Army War College, 1982), 16.

consequence of failure will only perpetuate such negative beliefs and prevent support for further attempts.

The first step in the process to unionization should be education. As each union is unique, senior military leadership should study other military organizations to gain an appreciation of the most effective structure for the CAF. This could best be accomplished through application for observer status in EUROMIL in order to translate best practices into the Canadian context.⁷⁹ Likewise, regular consultation with members from the RCMP, who are further along the same process, could provide valuable lessons learned. Until appropriate studies have been concluded, it would be premature to define the exact structure that would benefit a Canadian military union in terms of membership composition and exact rights and exclusions. Nonetheless, it can be assumed from Bill C-7 that such an association would not allow comment on matters concerning operations or allow the right to strike, but would potentially have access to interest arbitration.⁸⁰ This construct is also beneficial to the CAF, as interest arbitration ensures that a fair agreement will be achieved should attempts at collective bargaining fail.⁸¹ Moreover, the preclusion of the right to strike will provide public reassurance in the constant protection and availability of their military. This would benefit the CAF by strengthening public confidence in the organization while promoting the interest of its members.

Additional studies should be conducted to ensure that all stakeholders have been identified and consulted. Failure to place the appropriate attention on this phase of development could lead to failure. Stakeholders should be considered according to their

⁷⁹ European Organisation of Military Associations, "About Us," last accessed 1 May 2017, <http://euromil.org/who-we-are>.

⁸⁰ MacKay and Perez-Leclerc, *Bill C-7...*, 1.

⁸¹ Canadian Union of Public Employees, "Stand up for fairness: Interest arbitration," last accessed 8 May 2107, <http://cupe.on.ca/wp-content/uploads/2015/03/Backgrounder-Interest-Arbitration.pdf>.

power, legitimacy and urgency in order to determine their potential role in a union, while understanding that these attributes may be fluid.⁸² Although it would be impracticable to allow all stakeholders a role in the collective bargaining process, it is critical to ensure all parties understand if they may be affected by any changes to the CAF. It could be necessary to assure non-unionized allies that critical alliances, such as the United States of America (USA) and the North America Aerospace Defence Command (NORAD), will remain unchanged.

Finally, messaging should be established in order to effectively promote potential benefits and calm any fears. As it is unlikely that CAF members will have past experiences with unions, the potential benefits of collective bargaining should be clearly explained. Highlighting the construct of EUROMIL, leaders should relay the reality that “[M]ilitary associations entirely respect and abide by the chain of command and neither condone or support insubordination and mutiny. [Likewise] Associations do not intend to comment on strategic or operational matters.”⁸³ The CAF should aim to market the union as a means to care for its members, allowing balance and compromise while strengthening the organization.

Some leaders may feel that a union would replace some of their responsibilities while undermining their role in the CAF, however the opposite is true. Although a period of transition would be required for such a significant organizational change, the slow and deliberate approach purposed to facilitate this process will aide in this transition.

Moreover, leaders should acknowledge the benefit provided by a union in strengthening

⁸² Ronald K. Mitchell, Bradley R. Agle, and Donna J. Wood, “Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts,” *The Academy of Management Review* 22, no. 4 (Fall 1997): 854.

⁸³ European Organisation of Military Associations, “About Us,” last accessed 1 May 2017, <http://euromil.org/who-we-are>.

the organization. Likewise, the presence of such an organization could allow leaders to focus on the transformational element of military leadership, as aspired to in CAF leadership models, rather than the transactional elements.⁸⁴ This will enhance morale, improve commitment, increase organizational effectiveness through innovation and creativity, and potentially influence retention. The organization as a whole will function better under such a construct as members at all levels benefit from the relationship.

CONCLUSION

The time has come for the Government of Canada to reciprocate on the vow of unlimited liability which the CAF pledges to the nation. At a moment's notice, members of the CAF are prepared to selflessly subject themselves to harsh physical and physiological conditions in order to defend national interests. Yet government legislation in the form of the PSLRA currently precludes the CAF from engaging in collective bargaining or providing collective input on policies and decisions that have a significant impact on a member's wellbeing and morale. This is unconstitutional as it denies members the right to freedom of association guaranteed by the *Charter*. Subject to the same exclusions, the RCMP embarked on a lengthy struggle to win the right to collective bargaining. Their success in this matter marks a significant milestone towards acknowledgement of the fundamental rights of those who serve.

The CAF has failed the needs of members through mechanisms which provide insufficient opportunities for advocacy and lack of consultation with senior leaders. The processes that exist to allow the CDS to represent the interests of subordinates no longer adequately fulfill this function. The Canadian Forces Grievance Process and Office of the

⁸⁴ Department of National Defence, A-PA-005-000/AP-004, *Leadership in the Canadian Forces: Conceptual Foundations* (Ottawa: DND, 2005), 68-69.

Ombudsmen are overwhelmed with submissions from members, while other channels for reporting matters, such as harassment, are inefficient and in need of third party intervention. This creates a situation in which members of the CAF feel frustrated and isolated, the CDS can no longer effectively attend to all matters as an advocate and leader, and the expectations of society are no longer reflected in the practices of the CAF. Likewise, funding allotted by TB, is allocated into benefits and programs by DCBA, without the feedback of the members. Given the lack of input afforded members into matters which are critical to the CAF and the absence of a social contract with government, the need for a formalized agreement allowing collective bargaining exists. Unionization may be the best solution to remedy the situation and strengthen the organization. This process should be explored in a deliberate and careful manner, through education, stakeholder analysis and consistent messaging. The right to collective bargaining can potentially resolve the grave imbalance created by providing limited representation for advocacy to those who pledge unlimited liability.

There are many lessons which can be gained from this analysis for application in other areas of CAF and government operations. Governments and public organizations should aim to be more proactive in anticipating the changing views of society and its members regarding expectations within the construct of the public sector. Systems of recourse should not have to fail, or persistent organizational issues be brought to light in the media, before action is initiated. To this end, it is important to develop mechanisms for continuous dialogue with members and leaders as critical stakeholders. Equally vital is the acknowledgement by organizations of the benefits gained from the empowerment of its members through representation. This translates to a strengthening of many aspects

of the CAF including increased public legitimacy, the ability of its leaders to better apply transformational leadership, and other benefits produced from the synergy of meaningful collaboration in allowing collective ownership of organizational challenges.

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