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Recognizing the Social Contract Between the Canadian Armed Forces and Canada

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Exercise Solo Flight

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Recognizing the Social Contract Between the Canadian Armed Forces and Canada

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Recognizing the Social Contract between the Canadian Armed Forces and Canada: The time has Come

You can go into this action feeling assured of this, and as 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. 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.¹

This pledge given by Sir Robert Borden in 1917 was at the heart of a 2014 lawsuit that became a national focal point about the rights of Veterans in Canada. The lawsuit was simple, it argued that those who have served and serve in Canada's Armed Forces (CAF), have a social contract with the government. This lawsuit became a political scandal that engulfed both leading political parties and came to a head when the current Prime Minister in 2018 stated that the lawsuit was, "because they're [veterans] are asking for more than we are able to give right now"² Ultimately the lawsuit failed in achieving its specific goals of overturning past governmental decisions regarding veteran's pensions and compensation. At the core of this litigation was the central idea that the Government of Canada has a social contract to help those that serve and have served. This lawsuit demonstrated that support to those that serve and have served rests within the prevue of

¹ Murray, Brewster "Ottawa has no special obligation to soldiers, federal lawyers say" The Canadian Press March 18, 2014. Accessed April 23, 2022. <https://www.ctvnews.ca/canada/ottawa-has-no-special-obligation-to-soldiers-federal-lawyers-say-1.1735587?cache=yesclipId104062%3FclipId%3D1723871>

² Peter, Ziminjic "Some veterans want more than Ottawa can afford, Trudeau tells town hall" CBC News Feb 1, 2018. Accessed April 23, 2022. <https://www.cbc.ca/news/politics/justin-trudeau-town-hall-edmonton-1.4515822>

political prerogative. This realization and the accompanying sounds bite from the Prime Minister caused significant angst and re-ignited long-standing discussions about the rights of serving members the inequities and the cost of service. This stems from the decade of darkness which resulted in renewed vigor in supporting the Armed Forces and its members culminating during the war in Afghanistan. Although significant strides have been made such as the appointment of an Ombudsman, and the creation of family support through CAF organizations such as the Canadian Forces Morale and Welfare, so many challenges remain as typified by the host of problems current members face with the rising cost of living, diminished quality of life, and high operational tempo - all of the which require political will and action to resolve. The argument and challenge then is to bridge the political reality and add accountability to protect those who serve. In fact, the Royal Canadian Mounted Police (RCMP), sought and won the right to organize themselves and seek labour rights in order to hold their employer to task for supporting RCMP members. Is unionization of CAF members a possibility, perhaps? Given the current climate of culture change and massive human resources challenges faced by the CAF, this issue needs to be resolved. The legal acknowledgment that a social contract exists between CAF members and the Crown is a first step in resolving this matter. The outcome of that acknowledgment could mean moving along the lines of the RCMP or it could be replicating NATO countries such as Germany's unique military union. It is important to understand the historical context and prove the existence of the social contract along with Canada's long history of supporting those that have served. The social contract has evolved with the types of wars we fought and their unique military needs, especially the differences between wartime service and the standing armed forces

Canada has maintained since the Cold War. The service of those Canadians coalesced into the idea of *Unlimited Liability* which frequently gets intertwined with the social contract. This concept needs to be explored to justify the necessity of codifying the social contract, it means that service has a cost because of the risk to members. Without a contract, there is no guarantee the political will exists to support and pay the costs for that service. Finally, acknowledging the contract is a first step in creating a new relationship and ensuring that obligations can be met, a survey of different schemes utilized by other nations and their relative attributes will demonstrate that choosing a way forward requires careful consideration. However, given the host of examples it should leave space for political leadership to choose a path that supports the unique nature of Liberal Democracies possessing and maintaining Armed Forces.

The social contract's history stems from the beginning of western philosophy itself, it has been influenced and shaped by Socrates, Rousseau, and Locke.³ It underpins the foundation of liberal democracies like Canada, this social contract theory describes the relationship between citizens and their government. Society accepts to be governed and in a democratic case, elections serve as a way of choosing who governs, this form of the social contract is not the same as the *social contract* being discussed in this paper. The *social contract* being discussed in this paper relates to the relationship between a democratic state and its armed forces. This contract represents the understanding that these forces are subordinate to civilian oversight and direction and can ultimately be harmed or killed in this role. That sacrifice means that society has an obligation to them, it

³ Internet Encyclopedia of Philosophy, "Social Contract Theory," Accessed April 22, 2022.
<https://iep.utm.edu/soc-cont/>

means that decisions about how military members are supported, equipped, and employed are, “thus of paramount importance for a healthy relationship between a democratic society and the military.”⁴

Successive Canadian governments have strived to live up to the promise made by Sir Robert Borden in 1917. The veterans of the great war, the second world war and the Korean war were indeed looked after. This paternalistic relationship led to tangible outcomes including, demobilization, the countless Veterans hospitals crisscrossing Canada, and veterans’ pensions all demonstrating the covenant being fulfilled. It is important to also conceptualize that during these examples Canada had been served by a militia and minuscule permanent force. This mainly citizen militia was mobilized for local emergencies and in times of war. This means that supporting injured soldiers and supporting their loved ones was a generational occurrence. Although the idea of a social contract or obligation existed, states were acting in a paternal fashion and meeting the obligations to service members in times of war. The cold war saw a new security paradigm that required Canada to pursue a standing armed force. This period saw significant changes to society and left the Canadian Military in a post-cold war world facing significant challenges. This was typified by the *decade of darkness*, the colloquial term for a period of significant hardships for CAF members while budget reductions and changes to society resulted in financial hardships, physical and mental harm from operations, and outdated equipment resulting in more risk. The landmark investigation

⁴ Müller, Harald, Marco Fey, Sabine Mannitz, and Niklas Schörnig. “Introduction: Democracy, the Armed Forces and Military Deployment: A Problematic Relationship.” *Democracy, the Armed Forces and Military Deployment: The ‘Second Social Contract’ Is on the Line*. Peace Research Institute Frankfurt, 2011, 5.

and report by the Standing Committee on National Defence and Veterans Affairs (SCONDVA) in 1998 led to sweeping changes with hundreds of recommendations instituted. This was a truly watershed moment for those in uniform, the reports opening remarks stated the following, “During our hearings, it was suggested that we need to make explicit the unwritten “social contract” ... The contract, so the argument goes, is an implicit one - guaranteeing military members adequate recognition and benefit for the sacrifices they make and the service they render.”⁵ No recommendation was made to enact a social contract, instead, it recommended adopting, *a national commitment* to the Canadian Armed Forces. Three years after the publication of the report Canada was thrust into the war in Afghanistan which led to the lawsuit from the introduction of the paper. The legal and political outcome of that lawsuit was reaffirming the government’s position that legally no social contract exists, but the government will continue to support the CAF and veterans – this is effectively a continuation of the paternalistic relationship.

One of the principles of the social contract is an equilibrium between the armed forces remaining willing to sacrifice and commit violence for the state while remaining under civilian control. In fact, these concepts are enshrined in the CAF professional ethos, under the concept of the profession of arms, in the profession of arms the concept is centered on the unique nature of “unlimited liability”.⁶ This term is useful to unpack, it helps contextualize what is at stake for members, what they must live by, and what the expectation of service in the armed forces are. The social contract is an old idea whereas

⁵ House of Commons, Standing Committee on National Defence and Veterans’ Affairs, *Moving Forward, A Strategic Plan For Quality of Life Improvements in the Canadian Forces*”, Third Committee Report, 28 October 1998, 1.

⁶ Department of National Defence, A-PA-005-000/AP-001, *Duty With Honour* (Ottawa: DND Canada, 2009), 27.

unlimited liability is a relatively new term. First coined by legendary British general Sir John Hackett in the 1980's, unsurprisingly coined in the book titled the "profession of arms" its influence on the Canadian military ethics and culture should be self-evident. The British influence is of interest as it is the only other country that uses the concept of unlimited liability.⁷ Given Canada's historical roots it should be no coincidence, however, the similarities do not end there, in fact, the outcome of the British involvement in the Iraq and Afghan Wars was a similar reckoning to Canada's and a recommendation to recognize the social contract because of the inability for the issue to, remain non-political.⁸

Reinforcing the one-sided nature of the inequity in this power dynamic is that military members in Canada not only must personally uphold the profession of arms and carry out their duty but are legally compelled too as part of the contract. The CAF and the Government of Canada have a multitude of laws, orders, and conventions that are imposed on military members including the cessation of certain rights. What this means is that CAF members have a legal duty to obey and execute their end of the social contract, namely, to accept unlimited liability, and respect the authority of the democratically elected government. The inequity in the relationship demonstrates that the reciprocity of who takes risk within the social contract is not satisfied. The obligation to those people must be fulfilled, by not reinforcing and acknowledging the social contract it reinforces this very inequity. The current paradigm of an unwritten promise means that unless a

⁷ Patrick Mileham, "Unlimited Liability and the Military Covenant," *Journal of Military Ethics*, 9:1, 23-40 (2010): 25

<https://www-tandfonline-com.cfc.idm.oclc.org/doi/pdf/10.1080/15027570903353836?needAccess=true>

⁸ Müller, *Democracy, and its Armed Forces...*, 4.

specific imperative or reason to act exists the government will continue to act in its self-interest. This inequity is amplified by the fact that rules also exist limiting CAF members from self-representation, organizing unions, or other modern labour practices that their fellow Canadians are afforded. Simply put this means it is critical that the social contract be recognized by the Canadian government. This heavily counterweighs the value proposition of military service in a democratic nation. If the state expects its armed force to remain servile and committed to its duty by law shouldn't the state, be held to that same standard? This is reinforced by Milner, "no similar oaths or acts bind any partisan politician to view or treat the armed forces differently from any other departmental."⁹ At the root of this paradox is the fact that was pointed out previously, the decision to litigate and deny the social contract was about finances and politics, this transcended both major political parties, similar to the actions of the UK government in that the unwritten social contract "thus becoming party political instruments".¹⁰ Recognizing this contract is a first step in confronting this issue, it begins balancing out the equation and respects those who serve, veterans and their loved ones.

Rebalancing and acknowledging the social contract mean the logical next step is to understand and determine what a relationship within a new contract would look like or could look like. At its heart, a disparity exists in mechanisms to ensure accountability and a way to resolve grievances with policies or actions. Association could be a model to emulate, the RCMP successfully sought collective bargaining rights and the right to unionize. Another concept could be the CAF Ombudsman and CAF leadership being

⁹ Milner, Marc and Canada. Department of National Defence. A Proposal for a New Social Contract for the Canadian Armed Forces. Ottawa: Department of National Defence, 1998.

¹⁰ Mileham, Unlimited liability..., 35.

empowered to address issues head-on, a mechanism for legally binding the Ombudsman could be an evolution of our current system. At its heart, the perplexity of the challenge led the SCONDVA 98 report to complete their observations on the social contract stating, “Tacit understandings do not easily lend themselves to articulation. That the drafting of abstract statements was unlikely to help solve the immediate problems at hand”.¹¹ The authors of “Freedom of Association and the Canadian Forces: Current Status and Future Trends” cite access to information reports from the CAF in 2001 which highlight 4 potential options to allow association for CAF members:

- Regulatory – Allow formation of representative associations under regulations and guidelines specified by the CF.
- Facilitative – Proactive approach whereby CF would take initiative and develop a framework that allows CF member input on conditions of service and compensation.
- Permissive – Hands-off, non-interference in the formation of representative associations, with any recognition at managerial discretion.
- Unionisation – Legislative approach that amends exception of the CF under the Public Service Staff Relations Act.¹²

Associations or unions offer a means for members to resolve issues within their respective contracts, numerous liberal democracies have some form of association this includes Germany, The Netherlands, Belgium, and Denmark. Each of these relationships is unique in how they are integrated into the greater democratic states. The German association or *Bundeswehr Verband* is a legislated union whose independent hierarchy is managed by active military members. It grants legal protection in matters of employment to serving members and advises government and military leadership on matters of policy and

¹¹ House of Commons, Moving Forward..., 1.

¹² Richard Bartle, and Lindy Heineken. Military Unionism In The Post-Cold War Era : A Future Reality? Cass Military Studies. London: Routledge, 2006. 80. <https://search-ebscohost-com.cfc.idm.oclc.org/login.aspx?direct=true&db=nlebk&AN=603368&site=ehost-live&scope=site>.

legislation regarding pay, human rights, and a host of other issues.¹³ The German union stands as an example of a highly successful plan, it benefited from being incorporated at the conception of the Armed Forces in the 1950's and was integrated into a society with a historical affiliation with trade unions. Although a voluntary organization, it enjoys high overall membership.

Australia as a nation is generally seen as comparable to Canada given their shared colonial history, language, size of the economy, and comparative political institutions. In fact, the Australian Defence Forces (ADF) early history mimics Canada in that until the 1970's it relied on the unwritten paternalistic contract. The end of the Vietnam war saw the ADF reeling from discontent in its Armed Forces. Politically, there was a significant appetite by the then labor-leaning government to enable unionization in the ADF. In fact, the committee making recommendations sought to replicate the then-West-German model.¹⁴ The outcome was the creation of three mechanisms, an independent pay tribunal that still exists today, an ADF Ombudsman, and a voluntary federation that existed for roughly 20 years but dithered. The challenge was twofold for the federation, it was voluntary, and membership never flourished like Germany, this was partly due to senior leaders frowning on the association and utilizing the Ombudsman to undermine the federation. Political interaction also influenced the federation, as parties swung back and forth each took advantage or dis-advantaged the union making it susceptible to political upheaval. Even though this federation had privileges to formally effect and shape policy and represented interests at the pay tribunal, the federation never succeeded as ADF

¹³ Deutsche BundeswehrVerband, "Grundsätze der Verbandsarbeit," Accessed April 22, 2022. <https://www.dbwv.de/der-verband/grundsaeetze-der-verbandsarbeit>

¹⁴ Bartle, Military Unionism..., 135.

members remained more comfortable with the Tribunal and Ombudsman.¹⁵ The Australian example serves as a cautionary example of the pitfalls and challenges facing this type of reform, association may not offer the outcome sought by addressing the social contract.

Associations and unions may offer some advantages, but it should be emphasized that great care must be taken in implementing and moving forward with reform in the Canadian context. A key takeaway from both examples is the challenges in maintaining the effectiveness of any potential changes. The ADF example demonstrates other viable mechanisms such as an independent non-partisan tribunal. Perhaps a hybrid of a tribunal covering quality of life, compensation, and policy matters be combined with an Ombudsman with legislated teeth to spur action? The current CAF ombudsman currently makes an insightful and relevant report indicating the systemic issue that have plagued CAF members, if this instrument is already established and trusted perhaps CAF members would feel more agency than being asked to join an association or being forced to unionize by law. Finally, the possibility of political interference, meddling or influencing any scheme should be avoided. Could an a-political bureaucracy or institution serve the same function? Given Canada's mixed history in this realm, great care must be taken in selecting a path forward.

The current CAF culture and retention crisis along with the recent litigation regarding the social contract has reinvigorated the necessity to evolve Canada's relationship with members of the Armed Forces, families, and veterans. Historically

¹⁵ Ibid., 146.

Canada's armed forces relied on an unwritten social covenant and contract, this paternalistic approach and the type of society and wars which were fought was a satisfactory arrangement, regardless of whether the social contract was real or not it was respected. Changes to society and culture combined with the changing security paradigm of the post cold war era saw the decade of darkness and a renewed push to reconcile the social contract. The concept of unlimited liability serves as a mechanism to contextualize the cost of service in a democracy, in that members of democratic militaries are bound by laws, orders, and ethos to safeguard democratic states and remain subordinate to civilian control. The fact that the social contract is not legally recognized serves political practicalities. The reality is that there remains an inequity in members being bound to this reality while those elected to fulfill the obligations of the social contract are not bound. The first step in resolving this inequity is to acknowledge the social contract and move toward a system that rises above partisanship to see long-term stability and support for those who fulfill their duty of unlimited liability. Finally, it is naïve to point to a silver bullet that will fix this issue. The unionization of the RCMP can serve as an example, but the relative strengths and weaknesses of different plans must be carefully weighed, unionism may have unintended consequences or fail such as the ADF example, perhaps an association will face political interference negating the benefits. Another approach could see an entire realignment of the nature of politics to create an apolitical oversight solution building on the current CAF Ombudsman. Regardless, without acknowledging the social contract and binding the democratic state to fulfill the social contract the CAF will continue to exist in the state it currently finds itself in. It is an absolute necessity to acknowledge the unique relationship CAF members, their families and Veterans have

with the state and its citizens. These members accept curtailing their rights and accept that they may have to pay the ultimate sacrifice to defend and serve the Nation. Not addressing this issue, could have long-term implications for the defense of Canada and its democracy. What if retention issues and dissatisfaction continue, and the CAF is unable to defend the nation or its interests. With a shortage of tens of thousands of members, no simple solutions exist that will resolve our problems but acknowledging the social contract is the first step in moving forward and strengthening our democracy.

Bibliography

- Bland, Douglas L., and Maloney Sean M.. “Budgeting for National Defence in the 1990s.” In *Campaigns for International Security: Canada’s Defence Policy at the Turn of the Century*, 155-190. Montreal: McGill-Queen’s University Press, 2004.
- Brewster, Murray “Ottawa has no special obligation to soldiers, federal lawyers say” *The Canadian Press* March 18, 2014. Accessed April 23, 2022. <https://www.ctvnews.ca/canada/ottawa-has-no-special-obligation-to-soldiers-federal-lawyers-say-1.1735587?cache=yesclipId104062%3FclipId%3D1723871>
- Canada Department of National Defence, A-PA-005-000/AP-001, *Duty With Honour*. Ottawa: DND Canada, 2009.
- Canada. House of Commons, Standing Committee on National Defence and Veterans’ Affairs, *Moving Forward, A Strategic Plan For Quality of Life Improvements in the Canadian Forces*, Third Committee Report 28, October 1998.
- Heinecken, Lindy. “Discontent Within the Ranks?: Officers’ Attitudes Toward Military Employment and Representation—A Four-Country Comparative Study.” *Armed Forces & Society* 35, no. 3 (April 2009): 477–500. <https://doi.org/10.1177/0095327X08322563>.
- Internet Encyclopedia of Philosophy, “Social Contract Theory,” Accessed April 22, 2022. <https://iep.utm.edu/soc-cont/>
- Bartle, Richard, and Heinecken, Lindy. *Military Unionism In The Post-Cold War Era : A Future Reality?* Cass Military Studies. London: Routledge, 2006. 80. <https://search-ebscohost-com.cfc.idm.oclc.org/login.aspx?direct=true&db=nlebk&AN=603368&site=ehost-live&scope=site>.
- Mileham, Patrick. “Unlimited Liability and the Military Covenant,” *Journal of Military Ethics*, 9:1, 23-40 (2010): 25. <https://www-tandfonline-com.cfc.idm.oclc.org/doi/pdf/10.1080/15027570903353836?needAccess=true>
- Milner, Marc and Canada. Department of National Defence. *A Proposal for a New Social Contract for the Canadian Armed Forces*. Ottawa: Department of National Defence, 1998.
- Müller, Harald, Marco Fey, Sabine Mannitz, and Niklas Schörnig. “Introduction: Democracy, the Armed Forces and Military Deployment: A Problematic Relationship.” *Democracy, the Armed Forces and Military Deployment: The ,Second Social Contract‘ Is on the Line*. Peace Research Institute Frankfurt, 2011. <http://www.jstor.org/stable/resrep14470.3>.
- Ziminjic, Peter “Some veterans want more than Ottawa can afford, Trudeau tells town hall” *CBC News* Feb 1, 2018. Accessed April 23, 2022. <https://www.cbc.ca/news/politics/justin-trudeau-town-hall-edmonton-1.4515822>

