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Freedom of Association for the Canadian Armed Forces

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Exercise Solo Flight

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Freedom of Association for the Canadian Armed Forces

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INTRODUCTION

The Canadian Charter of Rights and Freedoms, signed in 1981, details four fundamental rights and freedoms to which all Canadians are entitled. They are “the freedom of conscience and religion, freedom of thought, belief, opinion and expression, including freedom of the press and other medians of communication, the freedom of peaceful assembly, and the freedom of association.”¹ However, over forty years later, the Canadian Armed Forces (CAF) is the only government agency denied one of these fundamental freedoms: the freedom of association.

The Canadian government has determined that it is necessary to restrict the freedom of association of its military to preserve its ability to protect Canadians at home and abroad and maintain national security. However, is this restriction required, and does it represent the most effective way to maintain the organisation given its current state? Has the CAF demonstrated that it is capable of self-managing? The CAF is currently short approximately 10,000 personnel and has recently entered a reconstitution period. Over the last several decades, it has struggled to eliminate sexual and hateful misconduct within its ranks, resulting in harm to its members. Furthermore, the only legal recourse available to members who feel unjustly treated, the military grievance process, has been mismanaged for decades.

Canadian allies, most notably in Europe, have permitted their militaries the freedom of association for many years. Furthermore, the protection of Canadians at home and abroad is a shared responsibility spanning other government departments, which are vital to this task, all of whom are permitted the freedom of association. This paper will

¹Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982, being Schedule B to the Canada Act 1982 (UK), 1982, C 11.

argue that conditions have been created within the CAF that give rise to the need for the freedom of association and that this association can be considered without jeopardizing national security and the CAF's mandate.

First, this paper will discuss pertinent aspects and benefits of the federal Public Service Labour Relations Act (PSLRA) and the Canadian Charter of Rights and Freedoms that enable the crown to restrict the freedoms of association for the CAF. This will lead to a discussion surrounding the 2015 decision of the Supreme Court of Canada enabling the Royal Canadian Mounted Police (RCMP), the right to freedoms of association, which could be perceived as setting a precedence for the CAF. Next, it will highlight the CAF leadership's inability to effectively manage the military grievance process and a sustained sexualized culture, demonstrating an inability to self-manage, creating the conditions for freedom of association. From there, it will discuss how freedom of association could be beneficial for recruiting and retention efforts before highlighting other allied nations that have successfully permitted their militaries the freedom of association.

REPRESENTATION OF THE FEDERAL PUBLIC SERVICE

The existence of legitimate trade unions in Canada dates back to April 18, 1872, when Prime Minister John A. Macdonald introduced the Trade Union Act. This Act served to legalize and protect unions within Canada. In Canada, the unionization and freedom of association of Federal Government employees are regulated through the federal Public Sector Labour Relations Act (PSLRA). This document serves as a commitment from the Federal Government to its employees to establish a safe, respectful, harmonious, fair, and diverse working environment in the interest of the Canadian public.

As part of this commitment, the PSLRA acknowledges that “effective labour-management relations represent a cornerstone of good human resource management and that collaborative efforts between the parties, through communication and sustained dialogue, improve the ability of the public service.”² While there is not one specific union representing all Canadian Federal Government Employees, the Public Service Alliance of Canada (PSAC) is one of Canada's largest unions and represents nearly 230,000 employees.³ As part of their mandate, PSAC, when required, can “pressure the employer at all levels to end discriminatory practices, implement special measures to eliminate barriers to employment, and redress past and present systemic discrimination which has an adverse impact on [its] membership.”⁴

While the freedom of association is one of the fundamental freedoms extended to all Canadians as detailed in the Canadian Charter of Rights and Freedoms, the crown does have the authority to limit it. As detailed in the Charter, “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.”⁵ This interpretation indicates that the crown may restrict these fundamental freedoms “to protect other rights or important national values,” but in doing so, their actions must be justified.⁶ Until recently, the CAF and the RCMP were the only two agencies within the Federal Government that were denied the

²Federal Public Sector Labour Relations Act, S.C. 2003, C.22, s 2. (2019).

³Public Service Alliance of Canada, "About Us", accessed 22 April 2022, <https://psacunion.ca/about-us>.

⁴Public Service Alliance of Canada, "Human Rights", accessed 2 May 2022, <https://psacunion.ca/human-rights>.

⁵The Canadian Charter of Rights and Freedoms, Para 1.

⁶Canadian Heritage, "Guide to the Canadian Charter of Rights and Freedoms", 23 October 2017, <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>.

right of freedom of association and the ability to benefit from the provisions detailed in the PSLRA.

On January 16, 2015, the Supreme Court of Canada ruled that denying the RCMP the freedom to select labour representation of their choosing was unconstitutional. Prior to this decision, the RCMP Staff Relations Representative Program (SRRP) was the primary mechanism of labour relations and was also imposed upon the membership.⁷ The SRRP representation consisted of elected officials from within the organisation and was managed by the National Executive Committee, consisting of senior RCMP officers.⁸ In rendering the decision, the Court noted that the SRRP “imposes on them a scheme that does not permit them to identify and advance their workplace concerns free from management’s influence.”⁹ Furthermore, the Court noted that the crown failed to substantiate how “the exclusion of RCMP members from a statutorily protected collective bargaining process ensures the neutrality, stability or even reliability of the Force” and how allowing them to engage in collective bargaining “would disrupt the stability of the police force or affect the public’s perception of its neutrality.”¹⁰

All non-commissioned members of the RCMP (below the rank of Inspector) are now entitled to be represented by the National Police Federation (NPF), an independent association whose mission is to “provide strong, fair and progressive representation to promote and enhance the rights of [its] Members.”¹¹ It is important to note that following the Court’s decision to permit the freedom of association of their choosing, the Federal

⁷Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, [2015] 1 S.C.R. 3.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

¹¹National Police Federation, "About Us," last accessed 25 April 2022, <https://npf-fpn.com/about-us/>.

Government did impose the restrictions prohibiting the RCMP from taking collective action or striking. This detail is vital as it ensures that the RCMP can continue to be employed as required by the crown and that there is no additional risk of it failing to meet its mandate, which is to “prevent crime, enforce the law, investigate offences, keep Canadians, and their interests, safe and secure, and assist[ing] Canadians in emergency situations/incidents.”¹²

Similarities can be drawn between the SRRP and the military grievance system. The grievance system is imposed upon CAF members and represents their only means of legal recourse or labour relations. This process is managed internally by the organization, similar to that of the RCMP, and as such, is not entirely free of leadership influence. Given the similarities identified, the decision to allow the RCMP external representation of their choosing represents a historical moment. It could be interpreted as setting a precedent for reconsidering the restrictions imposed on the CAF.

CAF GOVERNANCE AND THE GRIEVANCE PROCESS

The functioning and governance of the DND and the CAF are detailed in the NDA. From this directive stems the Queen’s Regulations and Orders (QR&Os) and the Defence Administrative Orders and Directives (DOADs). Collectively, these documents provide the framework for all administrative, disciplinary, and financial aspects of the organisation. These directives forbid the CAF the freedom of association, stating that combining with other members, signing or soliciting signatures with the “purpose of

¹²Royal Canadian Mounted Police Government of Canada, "About the RCMP," last modified 22 November 2022, <https://www.rcmp-grc.gc.ca/en/about-rcmp>.

bringing about alterations in existing regulations” is prohibited.¹³ Furthermore, they indicate that CAF members “have no union, contract, collective agreement or bargaining process”¹⁴, and they are required to “serve anywhere and perform any lawful duty required by the crown, with no reciprocating obligation on the part of the crown.”¹⁵ While these orders and directives provide clear direction for the governance of CAF by which its members are bound to abide by, there is currently no similar document detailing the responsibilities and accountabilities of the Canadian government to the CAF, and “an informal social contract has appeared to be successful in maintaining the status quo.”¹⁶

Unable to benefit from freedoms of association, the military grievance process is the primary mechanism available for CAF members to raise concerns about performance assessments, promotions, work environment, release from the forces, or any labour relations. As indicated in 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.”¹⁷ The final authority (FA) of this process rests with the Chief of the Defence Staff (CDS), and is responsible for dealing with matters as “expeditiously as the circumstances and the considerations of fairness permit.”¹⁸ In order

¹³Department of National Defence, "QR&O: Volume I - Chapter 19 Conduct And Discipline," last modified 1 June 2014, <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-19-conduct-discipline.html>.

¹⁴Department of National Defence, "DAOD 2017-1, Military Grievance Process" Last modified 26 November 2015, <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html>.

¹⁵Ibid.

¹⁶Kelly Farley, Rick Walter, and Dan Mendoza, “Freedom of association and the Canadian forces”, in *Military Unionism in the Post-Cold War ERA: a Future Reality*, ed. Richard Bartle and Lindy Heinecken, (New York: Routledge, 2006), 67.

¹⁷Government of Canada, Justice Laws Website, “National Defence Act,” last modified 1 August 2019. <https://laws-lois.justice.gc.ca/eng/acts/N-5/index.html>.

¹⁸Ibid.

to function correctly, this process requires all delegated officers to apply sound, equitable and impartial judgement.

In the absence of external representation, the monitoring and enforcement of the military grievance process are left solely to the highest levels of CAF leadership. This has proven to be an area where the organisation has struggled to manage for decades effectively. When a CAF member submits a grievance to the Initial Authority (IA), acknowledgement of its receipt must be confirmed within ten days. It is then expected that the appropriate authorities will review the file, and a response will be issued to the member from the FA within 120 days. If this deadline cannot be met, an extension may be requested. In 2003, there were approximately 800 grievances that were backlogged, which has increased to over 1,350 by March of 2021.¹⁹ The CAF Ombudsman, who is independent of the military chain of command and works “to ensure the Department of National Defence (DND) and the Canadian Armed Forces (CAF) are fair in treating serving and former CAF members”²⁰ Wrote a letter to the CDS on October 12, 2021, expressing concern about the number of outstanding grievances. This letter detailed that two grievances were awaiting FA decision for 912 and 3,285 days, respectively, and that “as of 26 July 2021, 664 grievances were pending FA decision, with an average wait time of 564 days.”²¹ In 2015, Operation RESOLUTION was initiated to address grievances

¹⁹Lee Berthiaume, "Military's Grievance System Plagued by Backlog, Needs Urgent Reform: Retired Judge", *National Post*, 2 October 2021, <https://nationalpost.com/news/canada/militarys-grievance-system-plagued-by-backlog-needs-urgent-reform-retired-judge>.

²⁰Office of the National Defence and Canadian Armed Forces Ombudsman, "Office of the National Defence and Canadian Armed Forces Ombudsman" last modified 2 May 2022, <https://www.canada.ca/en/ombudsman-national-defence-forces.html>.

²¹Office of the National Defence and Canadian Armed Forces Ombudsman, 'Letter to CDS: Military Grievance Process Final Authority Delays', 15 November 2021, <https://www.canada.ca/en/ombudsman-national-defence-forces/reports-news-statistics/ombudsman-letters/2021/letter-to-cds-military-grievance-process-delays.html>.

promptly. The CDS noted that “delays in the CAF grievance process undermine both the confidence CAF members have in the chain of command and their loyalty to our institution.”²² In 2021, a Canadian Forces General Order (CANFORGEN) indicated that military grievances are at a "historic level" and accordingly delegated the FA in the cases about the annual assessments of personnel to ten other level one (L1) commanders across the nation to reduce the existing backlog.²³ While this initiative had the best intentions, it has not been effective in reducing the number of outstanding grievances to an acceptable level, nor has it ensured that they are dealt with in a timely and efficient manner.

The CAF leadership has demonstrated a history of ineffectively managing the only legal mechanism for recourse its members have at their disposal. As noted by the current CDS, “the failure to afford our personnel a CAF-owned mechanism through which to provide recourse for its members calls into question our very status as a profession and undermines the very principles of command.”²⁴ Several audits under former Supreme Court Chief Justices, dating as far back as 2008, have identified that the system is broken, and implementing strategies to repair it has yet to be proven effective. The absence of an external body, such as an association to hold CAF leaders accountable, has allowed an ineffective system to remain in existence for several decades to the detriment of CAF members.

FAILURE TO MANAGE A HARMFUL CULTURE

²²Joshua Juneau and Michel Drapeau, "How to Fix the Canadian Forces' Grievance System", *The Hill Times*, 15 October 2020, <http://www.hilltimes.com/2020/10/15/fixing-the-canadian-forces-grievance-system/267259>.

²³Department of National Defence, “Personnel Evaluation Report (PER) Grievance Delegation of Final Authority Powers, Duties, and Functions - Implementation,” Canadian Forces General Order (CANFORGEN) 126/20. 22 September 2020.

²⁴Canada. Canadian Armed Forces, “CDS Directive for CAF Grievance System Enhancement”, 3 March 2021, <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/acts-regulations/third-independent-reviews-nda/schedules/schedule-r.html>.

Another area in which the CAF has demonstrated the inability to self-regulate is the management of wicked problems. Discrimination, racism, and hateful conduct exist within the organisation. Furthermore, a sustained sexualized culture has brought harm to its members, decreased morale, and eroded public trust. Despite the best efforts of CAF leadership to address these deeply rooted issues, they still exist.

In 2015, an external review (referred to as Deschamps' Report) executed under the leadership of Marie Deschamps, Former Chief Justice of the Supreme Court of Canada, was commissioned at the request of the CDS due to a gross discrepancy in the number of sexual harassment and assault cases reported internal to the CAF versus those brought forward to the media.²⁵ This report confirmed the existence of a deeply-rooted sexualized culture inherent within the military, including unreported cases of sexual harassment and assault, and described an environment that was hostile to women and members of LGTBQ communities.²⁶ The report identified various reasons why incidents of sexual harassment and assault within the CAF went unreported, which included fear of repercussion on career status, not being believed, retaliation from peers and supervisors, lack of confidentiality, and a "deep distrust that the chain of command will take such complaints seriously."²⁷ In response to this report, the CDS, General Jonathan Vance, issued Operation HONOUR, a directive intended to eliminate harmful and inappropriate sexual behaviour within the CAF, "with a primary focus of ensuring the health, safety,

²⁵Marie Deschamps. *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*. Ottawa: National Defence and the Canadian Forces, 27 March 2015. 16. <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/sexual-misbehaviour/external-review-2015.html>.

²⁶Ibid, i.

²⁷Ibid, iii.

and dignity of all CAF members.”²⁸ Included in this directive was the creation of the Sexual Misconduct Response Centre (SMRC), as recommended in the external review (Deschamps’ Report). The SMRC “operates as part of DND under the authority of the Deputy Minister (DM)” and “benefits from an External Advisory Council on Sexual Misconduct, comprised of subject matter experts and leaders in Canada’s public and private sectors who provide independent, third-party advice to the DM and CDS.”²⁹ The fact that it was necessary to establish an organisation external to the CAF to deal with issues within the organisation sends a strong message that it has thus far been proven incapable of self-managing. Despite being labelled as the CAF's highest priority, Op HONOUR, culminated in 2021 after unsuccessfully addressing the existing problem, with a new strategy required. Primarily left to its own devices, it was noted that none of the recommendations highlighted in the Deschamps’ Report, nor the “seven recommendations from a 2018 Auditor General’s report” were fully implemented by the CAF.³⁰ What can be interpreted from the failed attempts to stymie the sexualized culture and crimes committed against CAF members is that intermittent oversight of the organisation has proven insufficient to address some of the most sustained and serious issues that have ever existed. In the absence of persistent oversight, CAF morale has

²⁸Canada. Department of National Defence. *Operation Honour Manual*. Ottawa: DND Canada, 2019. 11. Accessed 27 April 2022, https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/operation_honour_manual.pdf

²⁹Canada. Department of National Defence. *Sexual Misconduct Response Centre Charter*. Ottawa: DND Canada. October 2017. Accessed 27 April 2022, http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/caf-community-support-services/2017-11-23-smrc-charter-signed.pdf

³⁰Jacques Gallant, "Canadian Military Overstated Its Progress on Recommendations to Tackle Sexual Misconduct, Assessment Concludes", *The Toronto Star*, 17 November 2021, <https://www.thestar.com/politics/federal/2021/11/17/canadian-military-overstated-its-progress-on-recommendations-to-tackle-sexual-misconduct-assessment-concludes.html>.

suffered, and a safe, inclusive, and diverse working environment for all organisation members has not been realized.

Military trade unions and associations are capable of assisting organisations with addressing concerns of harassment and were the topic of discussion at a recent European Organisation of Military Associations and Trade Unions meeting in November of 2020. Testimony from the President of the Swedish Association of Military Officers (SAMO), an association in existence for over 100 years, reinforced that cases of harassment are present within the organisation, but emphasized that associations “play an essential role in tackling discrimination in the armed forces and can bring structural changes.”³¹ In the wake of the #MeToo movement in 2017, and at the request of the Swedish government officials, the association established a group to “provide guidance to employees on discrimination and harassment, investigate cases, and ensure follow-up to prevent discrimination and unwelcomed behaviour in the future.”³² While the association has not been successful in eradicating cases of harassment, a persistent body to ensure accountability within the Swedish military has set the organisation on the correct path and is something that the CAF can benefit from.

Recent years have seen a rash of some of the CAF's most senior leaders facing allegations of sexual misconduct or demonstrating an inability to handle files relating to the matter effectively. In fact, "13 senior Canadian military officers, current and former, have been sidelined, investigated, or forced into retirement from some of the most powerful and prestigious posts in the defence establishment" which included two

³¹European Organisation of Military Associations and Trade Unions, "The Role of Military Trade Unions in Tackling Discrimination in the Armed Forces," 18 November 2022, last accessed 4 May 2022 <http://euromil.org/the-role-of-military-trade-unions-in-tackling-discrimination-in-the-armed-forces/>.

³²Ibid.

separate CDS', Admiral McDonald and General Vance.³³ While neither were convicted on charges of sexual misconduct, an investigation into General Vance resulted in the charge of Obstruction of Justice, to which he pled guilty.³⁴

Lacking confidence that the CAF investigative authorities could objectively and thoroughly investigate sexual harassment and misconduct cases following an external investigation, the newly appointed MND, Anita Anand, decided to transfer “the investigation and prosecution of military sexual misconduct cases to civilian authorities.”³⁵ These events have demonstrated that the CAF is an institution in crisis and has substantiated a lack of confidence in military leadership. It also stands as a justifiable reason in which the organization could benefit from the freedom of association. An external body that CAF members could rely upon to hold the military leadership accountable is a viable solution to the problems at hand.

CONSIDERATIONS FOR RECRUITING AND RETENTION

Personnel shortages are impacting the CAF's ability to carry out its full mandate, and on July 21, 2022, the CAF entered into a reconstitution period. The shortage of nearly 10,000 Senior Non-Commissioned Officer, junior and senior officer leadership billets, referred to as the missing middle, represents a “significant shortfall in the leadership needed to plan and oversee activities” and the effects of this shortage are

³³Ashley Burke and Murray Brewster, "A Military in Crisis: Here Are the Senior Leaders Embroiled in Sexual Misconduct Cases", CBC News, 21 October 2021, <https://www.cbc.ca/news/politics/sexual-misconduct-military-senior-leaders-dnd-caf-1.6218683>.

³⁴Amanda Connolly, "Gen. Jonathan Vance Pleads Guilty to Obstruction of Justice, Gets Conditional Discharge", *Global News*, accessed 27 April 2022, <https://globalnews.ca/news/8720429/jonathan-vance-guilty-plea-obstruction-of-justice/>.

³⁵Lee Berthiaume, "Defence Minister Says Military Sexual Misconduct Cases Will Be Handled by Civilians", *CTV News*, 4 November 2021, <https://www.ctvnews.ca/politics/defence-minister-says-military-sexual-misconduct-cases-will-be-handled-by-civilians-1.5652020>.

anticipated to last for a period of at least five to seven years.³⁶ While one solution to this problem could be to reduce the operational capability of the forces by minimizing the number of operational taskings and training exercises, this would likely not be a palatable option for either the CAF or the Government of Canada. A more effective means of rebuilding the missing middle leadership would be attracting more recruits, retaining them, and staving off attrition.

The CAF needs to be perceived by the Canadian public as being an employer of choice with favourable working conditions as it faces “substantial competition in the Canadian labour market for applicants between the ages of 17 to 34.”³⁷ However, a report into systemic racism in the CAF, released in April 2022, has uncovered that “more and more Canadians will have no interest in joining until the military fixes its long-standing, interconnected issues of racism, abuse of power, gender discrimination and sexual misconduct.”³⁸ It is suggested that unionization could make military organisations more attractive.³⁹ It is conceivable that a person would be more attracted to an organisation with an independent body capable of advocating to provide an employee “safer and fairer workplaces, better pay and benefits, more work-life balance, and regular wage increases. Union members also tend to have more predictable schedules than non-unionized

³⁶Canada. Canadian Armed Forces. *CDS Planning Directive for Canadian Armed Forces Reconstitution*. Ottawa: DND Canada. 9 July 21. 5.

³⁷Canada. Canadian Armed Forces. *Canadian Armed Forces Employment Equity Plan 2021 – 2026*. Ottawa: DND Canada. 2021. 11.

³⁸Amanda Connolly, "Widespread Systemic Racism in Canadian Military “Repulsing” New Recruits: Report", *Global News*, accessed 28 April 2022, <https://globalnews.ca/news/8784238/canadian-forces-systemic-racism-repulsing-new-recruits/>

³⁹I. Leigh and H. Born, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw, Poland: OSCE Office for Democratic Institutions and Human Rights, 2008). 66.

workers.”⁴⁰ The absence of a formal authority to independently engage in collective bargaining on behalf of the membership puts the organisation in a disadvantaged position. The choice of associations is readily available to highly skilled and educated applicants from Canadian society, and over 4 million personnel belong to a union of some form.⁴¹ This puts the CAF at a disadvantage where it must appeal to individuals on the excitement of enlisting and personal calling for a military career.

Access to an association for existing CAF members could assist in its mission to retain highly trained personnel. The benefits of an external body to assist in the shortcomings and the mishandling of the CAF grievance process, cases of sexual misconduct, hateful conduct, and discrimination have already been discussed; however, there are other matters concerning pay and compensation where the organisation could also benefit.

In 2021, the CAF negotiated with the Treasury Board to increase the pay rates, specifically for pilots, search and rescue technicians, and select members of the Canadian Special Forces to retain essential talent and stave off attrition. While the effectiveness of this retention approach will require time to confirm its success, this can be interpreted as a signal that the CAF is willing to compete with industry to foster retention, particularly concerning the pilot trade. While it is difficult to compare military careers directly to civilian industry, a recent analysis has noted that nearly half of the CAF occupations are unique to the organisation, meaning the remainder have some direct comparison with

⁴⁰UFCW Canada, "UFCW - Canada's Private Sector Union", accessed 2 May 2022, http://www.ufcw.ca/index.php?option=com_content&view=article&id=32573&Itemid=2451&lang=en#what-makes-a-good-union.

⁴¹UFCW Canada, "Facts about Unions", accessed 2 May 2022, http://www.ufcw.ca/index.php?option=com_content&view=article&id=29&Itemid=49&lang=en.

civilian industry.⁴² The results of a recent a CAF administered well-being survey indicated that only 62.2% of the nearly 1,500 Regular Force members that were polled felt satisfied with the pay and compensation that they received for the work that they do, while 21.4% indicated that they were actively looking to leave the organisation.⁴³ While a survey does not indicate whether or not a pay raise is justified, the ability of an association and a formal means of negotiation could be beneficial, as recently demonstrated by the NPF's success in obtaining a much-needed raise for the RCMP Constables.⁴⁴ While CAF members receive periodic pay raises, this is negotiated in the absence of a formal collective agreement. A collective agreement could enable members to be compensated commensurate with those in the private industry and serve as a mechanism to attract talent and retain it.

NATIONAL SECURITY AND PERSPECTIVES FROM ALLIED NATIONS

Whether or not militaries should benefit from belonging to a union or association has existed for many years. It understandably raises concerns about National Security and a state's ability to effectively control and employ its forces. As noted on the Department of Public Safety websites, "the first priority of the Government of Canada is to protect the safety and security of Canadians both at home and abroad." This complex task is not assigned to a single agency or department; instead, it is a collaborative effort undertaken

⁴²Canada. Canadian Armed Forces. *Canadian Armed Forces Employment Equity Plan 2021 – 2026*. Ottawa: DND Canada. 2021. 10.

⁴³Carina Daugherty, "TTCP Canadian benchmarking results, Spring 2019 Your Say Survey", Defence Research and Development Canada. 23, 25, August 2020. <https://www.macleans.ca/politics/ottawa/a-crisis-of-confidence-in-the-canadian-armed-forces/>

⁴⁴Christopher Nardi, "RCMP Union First-Ever Tentative Deal with Ottawa Could Mean \$20,000 Hike for Constables", *National Post*, 2 July 2021, <https://nationalpost.com/news/politics/rcmp-union-first-ever-tentative-deal-with-ottawa-could-mean-20000-hike-for-constables>.

by many. From a Canadian construct, the Department of Public Safety and DND can be considered the most vested departments working collaboratively for this collective goal.

The DND has over 24,000 civilian employees and works closely with the CAF to advise and support the Minister of National Defence (MND) in executing their mandate to protect Canadians at home and abroad.⁴⁵ Furthermore, the Department of Public Safety has approximately 67,000 employees throughout five partner agencies, which include the Canada Border Services Agency (CBSA), the Canadian Security Intelligence Services (CSIS), the Correctional Service of Canada (CSC), the Parole Board of Canada (PBC), and the RCMP.⁴⁶ Members from each of these agencies play a vital role in Canadians' daily safety and security and often collaborate and support the CAF during its mission. This serves to question whether or not restricting the CAF from freedom of association is a safeguard to national security. However, it is accepted that military organisations around the globe serve a unique function for the protection and projection of power for any government and are a means of last resort. In order to ascertain if permitting the freedom of association of the CAF members represents a risk to national security, it is necessary to discuss allied nations that both support and oppose the ideas of freedom of association for their militaries.

The unionization of professional militaries in Europe has existed for many years, and studies have suggested that their purpose is generally to

defend moral and professional interests, defend material interests, enhance the profession in the eyes of public opinion, inform commanders on the problems of the personnel, collaborate with commanders to solve such problems, inform public opinion on national defence, inform the officers

⁴⁵Department of National Defence, "Mandate of National Defence and the Canadian Armed Forces", last accessed 3 May 2022, <https://www.canada.ca/en/department-national-defence/corporate/mandate.html>.

⁴⁶Department of Public Safety Canada, "Public Safety Portfolio Pocket Book", last modified 18 March 2020, <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/trnstn-bndrs/20191120/050/index-en.aspx>.

themselves, defend the interests of retired personnel, mediate between commanders and other union organisations, [and] participate in bodies for social and cultural promotion.⁴⁷

The Council of Europe, the continent's most prominent human rights organisation, consists of 46 nations, 22 of which have granted their militaries the right to freedom of association, collectively representing more than 500,000 soldiers.⁴⁸ During a roundtable discussion, the President of EUROMIL emphasized: "that studies conducted on the functioning of unions or associations in the armed forces had shown that there was no evidence of the right to association being a problem for the proper functioning of the armed forces."⁴⁹ Close Canadian allies and NATO members, such as Belgium, Denmark, Germany, Norway, and The Netherlands, serve to reinforce these studies. Furthermore, associations of military forces also exist in non-NATO nations, such as Sweden, Finland, and Ireland. While the functioning of each of these national military unions or associations varies, all of these countries, except for Sweden, restrict their militaries from taking collective action or striking altogether.⁵⁰ The Befalets Felles Organisasjon (BFO), a Norwegian military officers union that has existed since 1957, has had additional restrictions above and beyond their ability to strike implemented to safeguard the employment of military forces by the state. These aspects include the inability of the union to interfere with military law, to represent its members when they are being

⁴⁷Giuseppe Caforio. "Unionization of the Military, Representation of the Interests of Military Personnel." In *Handbook of the Sociology of the Military*. Handbooks of Sociology and Social Research. New York: Springer, 2006. 319.

⁴⁸European Organisation of Military Associations and Trade Unions. Roundtable on Military Unions and Associations. 2006. <https://www.osce.org/files/f/documents/9/3/22610.pdf>

⁴⁹Ibid.

⁵⁰Caforio, Unionization of the Military..., 316.

employed during national emergencies or during times of war, and being restricted from interfering with the military's mission.⁵¹

Suppose we consider the challenges facing the CAF and its leadership highlighted throughout this document and compare them with the purposes mentioned above that guided the successful military associations in Europe. In that case, it stands to reason that freedoms of association for CAF members are possible and could be beneficial. Adequate safeguards can be implemented to ensure that the CAF can function as required by the government during times of peace and war, allowing the associations to work with CAF leadership to focus on the existential social and leadership challenges. By leveraging the lessons learned from both allied militaries and the PSLRA framework, a tailored solution for the CAF is possible. While there is insufficient data presented to indicate that discussed associations would provide a model to alleviate some of the CAF's most pressing concerns, studies have confirmed that "trade unions contribute positively to military efficiency"⁵² and that the leadership is better able to understand the perspectives of other members and augment their abilities to recognize and address problems, thereby increasing confidence in their leadership and "better treatment, and improved working conditions."⁵³

The establishment of an association representing members of the Australian Defence Force (ADF) is a case where government officials supported the association.

⁵¹R.V. Grabler, "Military Unions: An Analysis of Unionization in Norway and Germany As It Relates to the United States." US Department of Commerce, National Technical Information Service. August 1971. 15.

⁵²Henning Sorensen, "Danish military trade unions and their political role", in *Military Unionism in the Post-Cold War ERA: a Future Reality*, ed. Richard Bartle and Lindy Heinecken, (New York: Routledge, 2006), 199, 210.

⁵³Jean Callaghan, "Unions in the Irish defence forces: From Struggle for representation to mutually beneficial cooperation.", in *Military Unionism in the Post-Cold War ERA: a Future Reality*, ed. Richard Bartle and Lindy Heinecken, (New York: Routledge, 2006). 127.

While effective at representing its membership, it eventually culminated in 2006. The Armed Forces Federation of Australia (ArFFA) came into existence in the 1980s and advocated on behalf of the ADF in matters relating to working conditions and pay but would refrain from industrial action, challenging the CoC and injecting themselves into broader political issues.⁵⁴ In its infancy, they were successful in lobbying and speaking on behalf of the members in times when they felt unable to do so, and the relationship between the ArFFA and the senior military leadership was generally a positive one.⁵⁵ However, membership for the association remained relatively low, and a period of high tempo operations paired with increased consideration from government officials in matters concerning pay and working conditions negated the requirement for the association.⁵⁶ This represents an interesting comparison to the European nations that have embraced the sustained concept of a military association to advocate for its members. It does stand as a lesson that when armed forces members are satisfied with the level of support from senior leadership, the need and desire for external representation are drastically reduced. It also suggests that when ADF was required to project power around the globe at the request of the Australian government, the association did little to prevent it from doing so. It also reinforces the concept that military associations can successfully operate in parallel with military leadership, much like those permitted in the aforementioned European nations.

It is noteworthy that larger military powers and close Canadian allies, such as the United States of America (USA) and the United Kingdom (UK), do not permit freedom

⁵⁴Hugh Smith, "The Armed Forces Federation of Australia", in *Military Unionism in the Post-Cold War ERA: a Future Reality*, ed. Richard Bartle and Lindy Heinecken, (New York: Routledge, 2006), 138.

⁵⁵Ibid.

⁵⁶Ibid, 141, 146.

of association for their military forces. However, it has been previously debated and rejected. In the early 1970s, when the USA became an all voluntary force, the American Federation of Government Employees (AFGE) “voted to allow military personnel to join its union in 1976” after nearly half a dozen other NATO nations from Europe had unionized.⁵⁷ The debate over the issue lasted for more than two years and was eventually quashed by Congress as many perceived that permitting freedoms of association would represent a risk to national security.⁵⁸ In the decades that followed, the idea has not gained traction. In 2006, the consideration was raised during a British Parliament session but was met with resistance and dismissed by senior military leadership, citing concerns that it would “weaken the chain of command” and could impact the employment of their forces during operations.⁵⁹ Given the size and scale of both the USA and UK militaries, as well as their ability and propensity to exert military power around the globe, it would be difficult to make a credible comparison between them and the CAF, despite the existence of similar organisational challenges, such as discrimination, harassment, and recruiting. It is noteworthy that despite the organizational challenges aforementioned, there was no evidence uncovered in writing this paper that suggests either are investigating the premise of freedom of association as a potential solution.

CONCLUSION

The CAF has been experiencing multiple crises simultaneously and has yet to overcome them despite the best efforts of its leadership. The sustained existence of a

⁵⁷Jennifer Mittelstadt, ““The Army Is a Service, Not a Job”: Unionization, Employment, and the Meaning of Military Service in the Late-Twentieth Century United States”, *International Labor and Working-Class History*, no. 80 (2011): 29.

⁵⁸Ibid.

⁵⁹Aitch, "Does The Military Need A Union?" *Wavell Room* (blog), 1 March 2019, <https://wavellroom.com/2019/03/01/does-the-military-need-a-union/>.

sexualized culture, hateful conduct, and racism within its ranks has eroded the trust of the Canadian public and brought harm to members of the organisation. Among others, these issues have contributed to recruiting and retention challenges, forcing the organisation into a reconstitution period, and challenging its ability to execute its full mandate. Additionally, the military grievance process has proven inefficient for decades. Collectively, these issues have raised doubts about the CAF's leadership ability to self-manage and given rise to the premise that enabling freedom of association could be beneficial to the organisation.

Despite being one of many organisations charged with ensuring the safety and security of Canadian citizens at home and abroad, the CAF is the only one within the Federal Government in which the crown has deemed it necessary to restrict its freedom of association. As alluded to in the Canadian Charter of Rights and Freedoms, this action must be justified. Until 2015, a similar restriction was placed on the RCMP, which was deemed unconstitutional, and overturned by the Supreme Court of Canada. Furthermore, many European nations and Canadian allies have permitted their militaries the freedom of association without compromising national security or the state's ability to employ their forces. For these reasons, the restrictions on freedoms of association for the CAF should be reconsidered.

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