



PUTTING SOLDIERS FIRST: THE INITIAL REQUIREMENTS FOR A UNIONIZED CAF

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Exercise Solo Flight

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INTRODUCTION

Given the short history of the Canadian Armed Forces (CAF), it was inevitable that it would be shaped by the colonial powers that settled Canada as well as Canada's closest military allies. The nature of the CAF is quite different than the British Armed Forces or the military might of the United States of America yet largely operates in the same fashion. The CAF is significantly smaller, has a different political calculus and contributes to the global world order in a much more localized manner. This proves to be an interesting dilemma for the CAF, yet for most, it would not even register as a consideration. The CAF is slowly breaking away from its dogmatic subscription to the leading western militaries way of doing business in several areas, but one area has yet to come to the foregrounds; unionization.

Over a half century ago, there was a large push for the CAF to be unionized within the Public Service Alliance of Canada (PSAC)¹. The idea was rejected based on the idea that military service was different. Highlighted more poignantly in 1966 by, the then Canadian Prime Minister, Lester B. Pearson when he proposed legislation for the Public Service in the House of Commons but said "Members of the Armed Forces, however, who are not employees in the normal sense of the term, will not be covered."² Ultimately, this meant that the PSAC would not be able to grow their numbers and clout by simply bolting on the Canadian Armed Forces and the possibility of a unionized CAF was gone.

After the surge of discussions in the 1960s, unionization of the CAF has not received any significant traction. However, over the last couple of years, and most notably, since the relaxation of the dress standards in 2022³, the CAF has taken real strides to become the employer of choice within Canada. Non-binary dress requirements, facial hair freedom, generous paternity, and maternity compensation, selecting of own boots vice an issued pair all highlight the individualization of soldier's day-to-day work.

A colleague of mine wrote an essay outlining the feasibility of unionizing the CAF. In their work, Major Sutton establishes that members of the CAF have a legitimate legal right to be able to have freedom of association.⁴ This essay will build upon Maj Sutton's assertions and advance the discussion of unionizing the CAF by positing the initial requirements for the CAF's first ever unionized contract. The essay will flow from a brief overview of how the CAF's working environment has developed and then transition into key aspects that warrant inclusion, or at the very least, consideration of inclusion, in the first collective agreement. Throughout the essay, other countries which

¹ Thomas, "Unionization and the Canadian Armed Forces, 1."

² Thomas, "Unionization and the Canadian Armed Forces, 3."

³ Canada, "Changes to the Canadian Forces Dress Instructions."

⁴ Sutton, "Freedom of Association for the Canadian Armed Forces."

have unionized militaries will be referred to as well as the Royal Canadian Mounted Police (RCMP) due to their similar circumstances to the CAF. Neither a pro-union nor counter-union stance will be made as this essay will focus solely on the unique requirements of the CAF should a collective bargaining agreement be pursued. This is because it is currently against the CAF rules to combine, under Queens Regulations and Orders (QR&O) 19.10 which forbids combinations. “No officer or non-commissioned member shall without authority combine with other members for the purpose of bringing about alterations in existing regulations for the Canadian Forces.”⁵ Due to the significant size of this topic, certain areas will not be fully explored but instead highlighted as areas for additional follow-up. Where possible, there will be explicit language for the contents, however, labour relations specialists should be the architects of the precise language where a conceptual item is offered. Additionally, this avoids specific service requirements. There are good reasons to incorporate specific aspects for each service, but it is beyond the scope of the paper to include unique considerations, which could be explored and refined as this conceptual idea moves through to implementation.

NORMAL OR NOT NORMAL

The argument against unions has traditionally been that it just will not work for the unique nature of the military. To be bolder, you cannot have soldiers looking for their union representative when they are engaged on a two-way firing range. But this is an inaccurate understanding of a union. Moreover, the CAF is attempting to change its public perception and is moving along a spectrum where, on one side, there is an organization that is categorized as warfighters and that are different and cannot be understood by those who are not serving. On the other side, is an organization that is attempting to identify itself as a profession, no different than doctors or lawyers. To go back to Prime Minister Pearson’s comments, the CAF is trying to be a “normal” employer. It must be stated though that the purpose of the CAFs evolution is more focused on a retention crisis and rooting out harmful and inappropriate behavior then ever becoming unionized. For unionizing purposes, the best comparable for the CAF is the second to last federal government entity to unionize, the RCMP, which started to be represented by the National Police Federation in 2019.⁶ The RCMP were lumped into the same category as the CAF back in the 1960s when PSAC was allowed to collectively bargain. This ended in 2015 when a Supreme Court of Canada decision determined that “the current RCMP labour relations regime denies RCMP members that choice (freedom of association) and imposes on them a scheme that does not permit them to identify and advance their workplace concerns free from management’s influence”.⁷ Notably, one of the key aspects of initial negotiations was focused on compensation and this is the first requirement for the CAF’s agreement. In early 2023, the CAF rolled out a new wage and compensation package that led to significant frustration amongst the serving members. This was mostly due to the removal of one benefit, Post-Living Differential (PLD), being

⁵ Defence, “QR&O, 5.”

⁶ “About Us, para 1.”

⁷ “Supreme Court of Canada RCMP Union Ruling, 30.”

replaced by a new benefit, the Canadian Forces Housing Differential (CFHD).⁸ This change did not include a transition period and not all members currently receiving PLD are eligible for CFHD. It is doubtful that a unionized CAF would be subjected to significant financial reductions for some members, not due to punishment, without a grace period. For the initial CAF agreement, inclusion of legal language that indicates any changes to compensation and eligibility of said compensation requires consultation and significant implementation time is paramount for inclusion.

MODEL DOGMA

The CAF is a unique military power. It is small and under-resourced and yet holds a significant international reputation. Partly due to soldier's competence (just look at how well Ukraine has fought the Russians partly due to Canadian training) but also because of its southern neighbor. Given its colonial history, the CAF looks and operates like a British army. Small variations in uniform and strategy but similar thinking. This has been the case even through to the Afghanistan War. However, in the post-Afghanistan world, the CAF has seen its most significant deviations from its closest ally and the country from which it crafted its identity. On an internationally comprised parade, that is not taking place on a named operation, it would take very little time to notice the Canadians. Long beards, long-hair which is artificially colored, and painted fingernails are just a few of the early indicators of the Canadian in parade beside a short haired, smooth-faced peer from a less liberally leaning culture. This departure from the foundation of the institution, which focused on uniformity, is significant when contemplating the initial, bargained requirements. Some version of relaxation of dress and freedom to identify as one desires would have undoubtedly been negotiated as a key aspect of the first agreement. With rules in place that more align with Canadian values now established, the first agreement would simply amplify these existing freedoms. This amplification would come in the form of an article within the agreement which outlines that union representatives will routinely communicate the progress being made towards an inclusive workplace from a national perspective. This means that successes from more diverse or forward leaning areas are reinforced throughout the country, which will help the CAF establish a baseline workplace standard it is aiming for. If these efforts stall, another tangible benefit that a bargained agreement would provide, to the rights and freedoms of those serving, would be a simplification of the grievance process should any of these unalienable rights be infringed upon.

NO MORE GRIEVING THE GRIEVING PROCESS

The CAF grieving process is currently a hybrid solution which can be reduced to a single point of contact through a negotiated contract. This is beneficial for both the employee and the employer as it shortens timelines, places accountability and responsibility and increases transparency in the process. To illustrate the current situation, anecdotal evidence based on the authors experience is required as it is impossible to capture who pursued informal resolution instead of going through a

⁸ "Canadian Forces Housing Differential."

grievance process as an example. Right now, members may require leveraging access to information requests to substantiate a grievance, receive benefits and advice from Veterans Affairs, collect barracks room lawyer advice from peers and sometimes supervisors, informal resolution, or go to the ombudsman. This is only if they are unwilling to go through the official grievance procedure outlined in Defence Administrative Orders and Directives (DAOD) 2017-1, “Military Grievance Process”.⁹ These mechanisms that members are leveraging instead of adopting the grievance process is based on the hierarchical nature of the military. In a unit, the commanding officer and the accompanying sergeant-major represent the organization more than a sergeant or a lieutenant who are seen as closer to the troops. By pursuing a grievance through DAOD 2017-1, a grieving member is essentially going against the institution, through the unit top brass. This is unpalatable because a grievance is a temporary opposition which has a negative connotation and there is a perceived expectation that a grievance today will be used *against* the member later. The unit chain of command has significant influence over every member’s career, work tempo, deployment opportunities and short-term wins for the member are considered against a long-term career. With a third-party union representative, fears of consequence are reduced for the griever and maintains the perception of objectivity on the union side. This inclusion in the CAF’s first agreement requires a bit of refinement for an already established protocol outlined in the National Joint Council (NJC). Notably, the NJC outlines that some are not eligible for grievances as explained “employees in excluded positions do not have the right to grieve through the NJC procedure”.¹⁰ The CAFs hierarchy means that everyone has a supervisor or boss to report to and everyone should have the right to grievance. The change to the NJC which requires inclusion in the CAF agreement, is an exclusion clause which prevents grievances from being initiated when operational necessity takes precedence. Grievances can be initiated once the griever is in a safe location and can be afforded the opportunity to complete the grievance process without undue aggravating circumstances.

NATIONAL JOINT COUNCIL

It requires mentioning that the NJC can be leveraged significantly to get the first contract established. As a review, the NJC is “a forum for co-development, consultation and information sharing between the government as employer and public service bargaining agents.”¹¹ The tangible benefits of this, is that the NJC has 19 agent side members, including PSAC and five employer side members, including Treasury Board of Canada Secretariat¹² which means the CAF is already benefiting from some of the aspects already negotiated by these large groups. This includes the Public Service Health Plan, travel directives, and rates such as kilometric or meal allowances¹³ that CAF members receive when relocating either temporarily or permanently for work requirements. These items should be simply listed in the first paragraphs of a new agreement much like what is contained in the RCMP contract. “7.03 The following

⁹ Defence, “DAOD 2017-1, Military Grievance Process, para 2.”

¹⁰ “Grievance Process and Procedures, 1.”

¹¹ “Welcome to the National Joint Council, 1.”

¹² “NJC Membership, 1.”

¹³ “Rates & Allowances, 2.”

directives, policies or regulations, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this collective agreement”¹⁴ By adopting significant portions of an agreement that are already nationally accepted, it allows the more nuanced aspects of a CAF agreement to be focused on.

UNIQUENESS REQUIRES RESTRAINT

While Prime Minister Pearson’s words have not aged well, there is a grain of truth in them. The fact of the matter is that the CAF has different requirements than every other department, agency, or business in Canada. The easiest to point to is the unlimited liability¹⁵ that is required for enrollment. Additionally, the CAF only serves the state. “In essence, armed forces are the creation of the state and act as an arm of the elected government. Therefore, the military professional does not practice his or her profession outside the organizational structure of the armed forces.”¹⁶ It was mentioned above that there are times which may necessitate operational priorities over an agreed upon work environment, but there are also some items that should be explicitly outlined as non-starters, or simply restraints. This undoubtedly would be the most contentious aspect of forming a military union. Most straightforward is the non-adjustment of the unlimited liability provision. It simply is inherent to the profession and any movement towards unionizing would be vehemently rejected both publicly and privately if soldiers were able to decide for themselves when, where and if, they are to put themselves in harm’s way.

South Africa formed the South African National Defence Union (SANDU) in 1994 and it contained notable restraints. No permanent member can join a trade union, no striking or protesting, and no involvement of outside entities to deal with labour issues.¹⁷ Slovenia, coincidentally, also had military members represented in one union in 1994, which has now since grown into two comparable unions and one union just for pilots.¹⁸ While there are nuanced differences, a key restraint came up again. This was that members of the Slovenian Armed Forces are paid a financial supplement that replaces their right to protest.¹⁹ The consensus is that soldiers on a picket line is a political and international relations disaster. The CAF is not allowed to do this now and this should remain so that CAF members are never in a position where they cannot defend Canada or its interests. This is even further restricted by QR&O 19.44²⁰ to only being able to participate in municipal politics with Chief of Defence Staff approval. Members cannot engage in Provincial/Territorial and Federal elections even as a volunteer, due to the requirement to keep the military apolitical. This should remain extant.

¹⁴ Secretariat, “RCMP Regular Members (below the Rank of Inspector) and Reservists (RM), 17.”

¹⁵ Defence, “Duty with Honour, 27.”

¹⁶ Defence, 9.

¹⁷ Bartle and Heinecken, *Military Unionism in the Post Cold War Era*, 90-91.

¹⁸ Bartle and Heinecken, 112.

¹⁹ Bartle and Heinecken, 115.

²⁰ Defence, “QR&O, 15 - 18.”

With two straightforward restraints in place, a third restraint is less likely to be universally accepted but does not mean it should not be included. This aspect is tied to promotion and dismissal. Both items should be clearly stated as not involving union representation unless an egregious act is being declared. The promotion system in the CAF is not perfect but it is rooted in multiple levels with emphasis and initiatives placed to reduce partiality at the selection boards: “Key amongst the initiatives were a Gender-Based Analysis Plus (GBA+) review of scoring criteria and the inclusion of at least one voting member from a designated group such as a woman, visible minority or Indigenous member of the Defence Team.”²¹ Furthermore, while seniority is considered as a factor, a top performer can leapfrog other competent people in the promotion line. There is no need to adjust this working system, which just received an overhaul in late 2021.²² Most unions focus heavily on seniority which is not congruent with the expectation of military personnel to advance based on merit. Union considerations for promotion should only be if a member is or perceives to being disadvantaged for promotion unjustly.

The other side of promotion is demotion, and sometimes demotion plus dismissal, from the CAF. This should also have similar language used for promotions with a view to have the union involved only in exceptional circumstances. Currently, it is very difficult for members to be dismissed or demoted without a significant, unacceptable action being taken. Inclusion of local representatives at every step as another remit to be satisfied can cause delays and blur the lines between representation and the chain of command. The military chain of command should be the sole entity responsible for dismissal.

The last item that could be included in the first agreement is less of a restriction in execution, but more so a restriction on location. This is the removal of the court martial system except when outside of Canada. It is an antiquated system that is predicated on the reasoning that military lawyers are the only government officials who are capable to undertake the responsibility of administering military justice. Inside Canada, members are fortunate to have significant overarching civilian rights that enable justice to be pursued fairly. Outside Canada, the same cannot be guaranteed and that is why the court martial system must remain; serving Canadians expect and deserve to have a fair trial no matter where they have been shipped off to.

This is not a new concept. When looking at a small Francois Maspero collection from France outlining unionizing requirements, it’s interesting to see the items that are being requested to be removed almost 50 years ago. For example, « suppression immediate des tribunaux militaires »²³ translates to immediate termination of military courts. Bill C-77 in Canada, which was passed in June 2022, was a step towards this by removing the lower-level criminal proceeding known as “summary trial” and replacing them with “summary hearings”, an administrative process.²⁴ While the criminal court martial system remains extant, it does showcase that the soldier-citizen concept proves challenging when a system designed to discipline the soldier infringes on the rights of the

²¹ Defence, “CAF Improves Promotion Selection Process, Beginning with General and Flag Officers, 2.”

²² IBID.

²³ Information pour les droits du soldat, *La Lutte pour un syndicat de soldats*, 65.

²⁴ Defence, “Enhancing Victims’ Rights in the Military Justice System, 5.”

citizen. Notably, the justness of a court martial when viewed through the lens of a civilian being judged, vice just a soldier. This item requires substantial exploration beyond the scope of this paper as the ramifications domestically both in and out of the CAF are significant.

EUROPEAN INTEROPERABILITY

When discussing CAF unionization, a detractor for unionization might state that unionizing might make the CAF less compatible with the work expectations of the United States, Canada's closest ally. This type of absolutism commentary does not offer any indication on how compatibility is being measured and what are the measure of effectiveness. While this argument might satiate those already in the anti-union camp, it does not hold weight when you can consider Canada's position in Latvia.

The Enhanced Forward Presence (EFP) Group in Latvia is comprised of 11 countries and is lead by Canada since 2017.²⁵ These countries rotate from time to time but mostly come from continental Europe. This is important because the appetite and expectation for an independent collective voice is certainly larger in these contributing countries. Of note, there are 32 military associations in European Organization of Military Associations and Trade Unions (EUROMIL). EUROMIL can be loosely compared to the NJC in that it attempts to achieve a commonality amongst federal employees. It is, however, different, in that its main goal is to be a "forum for cooperation among professional military associations on issues of common concern".²⁶ This translates into focusing on human rights issues and fundamental freedoms, not establishing monetary or allowance policies.

Outside of EUROMIL, there are also several significant allies and partners to Canada which have unions. These include Slovenia²⁷, which is contributing to the Canadian EFP, the Danish, who are leading the Multi-National Division which Canada's EFP is subordinate to²⁸ and even the Australian Defence Force who is a part of the Five Eyes community (with the United States, Canada, New Zealand, and the United Kingdom), and a common comparable to the CAF, has had independent representation since 1984²⁹. There are friction points between that many different nations as not only language challenges are persistent, but also national caveats on what can be done by which country in what situation. This notwithstanding, a non-unionized CAF has been able to lead EFP Latvia effectively, and it has been tasked to grow in overall strength and Canadian commitment³⁰.

With this larger more complex formation, having the CAF more understanding of how a union works can improve international worker relations. For example, Canadian

²⁵ "NATO Enhanced Forward Presence | Ārlietu Ministrija."

²⁶ "Who We Are, 2."

²⁷ Bartle and Heineken, *Military Unionism in the Post Cold War Era*, 3-4.

²⁸ "Multinational Divisions, 3."

²⁹ Bartle and Heineken, *Military Unionism in the Post Cold War Era*, 138.

³⁰ Yun, writer, and Contact, "Operation REASSURANCE, 2."

EFP Latvia leaders could conceive of a training exercise on a weekend in advance and then come to find out after announcement that certain countries will not participate due to union work hour violations. A unionized CAF would already have the mindset that its workers are not always available. This mindset ties into a larger interoperability piece, in that, with the leadership of a large international entity being unionized, the non-unionized subordinate countries also benefit from predictable hours that a union offers, as an example. This is a net positive as it does not de-link previously obtained strong connections, even if that means more traditional countries such as the US will have to adjust their work-rest cycle expectations of Canada if the US is in the lead of a coalition. For inclusion into the original framework agreement, this would necessitate two key sections to be expounded upon. Firstly, it would require significant emphasis elaborating on when the agreement is in effect and when it is not. There will have to be an art in the wordsmithing. To pull from the RCMP agreement further, “where operational requirements permit”³¹ is mentioned nine times and can be leveraged for the CAF. It is permissive enough to allow the in-theatre commander to fulfill operational requirements, however this will have to be measured against the necessity to deny bargained agreements. A different option that could be explored further is the idea of having two separate agreements, one for domestic and another for international operations, however this essay will focus on just one.

The second aspect that needs to be covered is that not all people are going to join an association. This proves to be a trickier notion for employment in the CAF as, largely, actions are completed by teams. An overseas team is not effective if for example, after the fourth 12-hour workday in a row, some members are now on leave for the remainder of the week and the non-unionized members must continue to work. Extrapolate that further to a multi-national construct, such as EFP Latvia, and the erosion of capability would be significant enough to render the entity largely ineffective (depending on membership numbers). To rectify this, it would make sense to extend the agreed upon work environment to non-members when the task requirements do not afford an equitable distribution of labor. In essence, the unionized CAF working hours becomes the default working hours or the norm for non-members and allies under CAF command, until such time as an adjustment can be required. This could mean that for operational requirements, such as the requirement to complete 24-hour operations, union and non-unionized workers are required to work six 12-hour days in a row. This would continue until such time as more personnel can arrive in theatre to reduce the tempo of everyone or the requirement for 24-hour operations has subsided.

COMMUNITY OF INTEREST

Keep in mind that the idea of unionizing doesn't come naturally to military members for three main reasons. Firstly, CAF members are disproportionately from the east coast with Veterans Affairs Canada listing a veteran population of about 3.5% for the Atlantic Provinces compared to 1.3% and 1.5% for Quebec and Ontario respectively.³²

³¹ Secretariat, “RCMP Regular Members (below the Rank of Inspector) and Reservists (RM), 12 -13.”

³² “Veteran Affairs Canada. Facts and Figures, Table 1-1, 12.”

Atlantic Canada does not have a union mentality nor a large regional union representation. Most unions are national and international locals; Prince Edward Island only has four local unions.³³ This means there is not the same history or understanding of a union. Secondly, there is a monopoly on military personnel management right now and unions are seen as possibly eroding the power of the serving, middle or upper management. Lastly, military members are generally rule followers as that is nested within being disciplined. And as mentioned above, there is a clear rule that prohibits members from acting on unionization, QR&O 19.10.

While these reservations come from lack of exposure, fear of losing power and simply being forbidden, there is a possibility for this community of interest, to mutually benefit from unionizing. Junior members, for example, do not have the same sense of control or power over their careers as their supervisors and by being represented, they can have a unified voice. The institution on the other hand, benefits by having one entity to deal with instead of dealing with individual cases creating efficiency in communication. Having a union also helps expand serving members understanding of the significance of social norms. For example, going to the mess on Thursdays or Fridays after work and having food and potentially a drink is a legacy activity. While everyone is included, a gender-based assessment might showcase that women have a higher propensity to go to pick up children from after school care or go home to let animals out or start preparing supper for an older generation they are currently supporting instead of having a pint at the mess. Assuredly, this is not done with malice or even intent, but it does not mean that the CAF community does not perpetuate socially divisive behavior. As part of the initial agreement, wording to the effect of gender-based assessments will be done by membership request to analyze negative and positive outcomes.

SUMMARY

Canada has a liberal leaning democracy. In this democracy, there is the freedom of association. This, however, seems to be a concept that is not suitable for the military. This is bizarre at first glance but not when you consider just how misunderstood the CAF has historically been. In addition to Pearson's comments about the CAF not being normal, you have Dr. James Eayrs comments which indicate the CAF is not only different than other organizations in Canada, but has a different milieu than other militaries:³⁴

"When armed forces are maintained, as Canada's are maintained, not for defending the homeland but for some other reason – prestige, diplomatic influence, law and order at home – certain liberties may be taken with their organization which might be rather too risky to take with forces meant for fighting."

³³ "Directory_2020_ongoing_- _updated.Pdf, 16-25."

³⁴ Bartle and Heineken, *Military Unionism in the Post Cold War Era*, 69.

So, what is required? A recruiting and retention crisis has provided union like concessions to the military without the need for a union agreement. Indeed, even well before the CAF was receiving favourable considerations. There is the principle of comparability which was established by the Department of National Defence and the Treasury Board Secretariat to keep military wages comparable to the Public Service “so that CAF members benefit from the results of collective bargaining.”³⁵

While unionizing the CAF may seem like an overwhelming concept, it is not if the desire is there. Maj Sutton made the case for the legality of unionizing and with the Supreme Court of Canada’s decision with regards to the RCMP’s ability to unionize, it would seem likely that CAF would be able to unionize if it challenged for it. Canada is very progressive in a lot of respects, and it is somewhat astonishing that there is not a collective agreement for its armed forces. To really reinforce just how large an outlier the CAF is, there are currently only four countries in the 31 country NATO framework that do not have some form of representation.³⁶ Canada would appear to be the most leftist of the group with the United Kingdom, France, and the United States as the only other countries without military representation but perhaps is deterred by dogmatic following of former colonial powers models. Whether the CAF is or ever was normal is debatable, but it seems that the CAF is moving towards a unionized force in every respect, except formalizing it. Some of the key characteristics on how to make this happen have been expanded upon here, with a more refined focus required in key areas coalesced with deftly crafted labour relations lawyer language to make it come to fruition. It remains to be seen if the CAF will be so bold to break away from tradition.

³⁵ Defence, “Pay Overview for the Military, 1.”

³⁶ Bartle and Heineken, 212- 213.