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SPEAKING TRUTH TO POWER: WHOSE TRUTH AND WHICH POWER?

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ABSTRACT

“Speaking truth to power” has come to mean publicly presenting facts and expert advice to decision-makers that they may not want to hear, and the exposure of which in the public domain may raise questions about the decision-makers’ actions (or inactions). It is a fundamental aspect of effective accountability in a democracy and, in the area of defence policy and the operations of the Canadian Forces, it is a critical element that has been lacking for years.

This paper starts with an examination of ministerial accountability and the role of the Canadian parliament and parliamentary committees in holding ministers to account. It then considers the effectiveness of this system in Canada as it pertains to the management and capabilities of the Canadian Forces and considers the extent to which the constraints on military input to the process - legal, systemic, cultural and perceived - may have undermined the effectiveness of the committee work. The reasons for the constraints as they relate to the principle of ministerial responsibility and the risk of politicization of the military are then discussed. Finally, the paper offers some thoughts as to how the approach and the system may be adjusted to address some of these problems, while remaining true to the important principles.

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INTRODUCTION

Over the course of the last five decades, the military service in Canada has been subjected to a roller coaster of capability enhancement, equipment “rust-out”, force downsizing, restructuring and renewal that has left defence analysts perplexed and other western nations critical of our government’s ability to deliver on military commitments and to “pull Canada’s weight” in the world. Parliament – the mechanism in our system of government responsible for publicly holding ministers and the government to account, has been largely ineffective in the area of defence, as successive powerful majority governments elected to recurring terms in office have closely controlled the policy agenda.

Few in Canada now argue that all is well with the Canadian Forces (CF); indeed, there have been constant cries from many quarters - echoed in the media and in the public - for a significant increase in CF funding and capability. At the time of writing, the Government of Canada has only just articulated a general plan for addressing this crisis, yet funding questions necessary for its execution remain. How is it possible that, in a wealthy and functioning democracy like Canada’s, successive governments could gloss over problems of national defence, leaving the mechanisms of government accountability virtually ineffective? This question is the subject of this paper.

“Speaking truth to power” has come to mean publicly presenting facts and expert advice to decision-makers that they may not want to hear, and the exposure of which in the public domain may raise questions about the decision-makers’ actions (or inactions). It is a fundamental aspect of effective accountability in a democracy and, in the area of defence policy and CF operations, it is a critical factor that has been lacking for years.

This paper begins with an examination of ministerial accountability and the role of the Canadian parliament and parliamentary committees in holding ministers to account. It then

considers the effectiveness of this system in Canada as it pertains to the management and capabilities of the Canadian Forces and the extent to which the constraints on military input to the process - legal, systemic, cultural and perceived - may have undermined the effectiveness of the committee work. Specifically, it will argue that the input to the parliamentary committee process from the leaders of the Canadian Forces is critical to its role in effective oversight of the government. The reasons for the constraints on this input as they relate to the principle of ministerial responsibility and the risk of politicization of the military are then discussed. At the same time, and given the unique position of the CF in Canadian society and trust levels in senior officers compared to trust levels in politicians and ministers, the paper questions whether the silence imposed on senior military officers by these constraints regarding their ability to comment on issues of key military import may itself be a form of politicization. Finally, the paper offers some thoughts as to how the approach and the system may be adjusted to redress some of these problems, while remaining true to the important principles.

MINISTERIAL ACCOUNTABILITY AND THE ROLE OF PARLIAMENT

The Canadian federal system of government is based upon a Westminster model of parliamentary democracy and process. In this model, the cabinet, as the executive branch of the government, is responsible to parliament as a whole for policy, the allocation of resources to and within government, and the delivery of programmes and services through various departments, agencies and other instruments of government action. Ministers, as members of cabinet and heads of the various departments and agencies of government, are individually responsible to Parliament for the activities of their departments and of the officials therein.

The specific responsibility of the Minister of National Defence (MND) is described in the *National Defence Act* (NDA) as follows:

The Minister holds office during pleasure, has the management and direction of the Canadian Forces and of all matters relating to national defence and is responsible for

(a) the construction and maintenance of all defence establishments and works for the defence of Canada; and

(b)

does so “subject to the regulations and under the direction of the Minister”.⁴ The NDA does direct that “all orders and instructions to the Canadian Forces that are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister shall be issued by or through the Chief of the Defence Staff”⁵, thus vesting personal control over the CF in the CDS and placing a check and constraint on the government’s use of the CF and partisan interference in its internal functioning. In this way, the provisions of the NDA ensure that the government of the day does not possess an unchallengeable monopoly over the “management and direction” of armed force in Canada. Indeed, the NDA makes it clear that the CF are Her Majesty’s Forces, rather than those of the government of the day, and this fact is reinforced by the appointment of the Governor General as the Commander-in-Chief of the Canadian Forces. That being said, the CDS is appointed by the prime minister,⁶ and serves very much at his pleasure. Additionally, the CDS has limited control over the allocation of resources, that being the exclusive domain of the government and, once earmarked for defence, more related to the responsibilities of the deputy minister.

This characterization of the Canadian civil-military relationship is purposefully simplistic. The basic principles of democratic control of armed force are always conditioned by the actual exercise of control and power. Feaver, for example, has said that it is a more complicated, political relationship better described through agency theory⁷: ministers seek to monitor and influence the behaviour of the members of the military establishment, who in turn determine the degree of cooperation they are willing to offer corporately and individually, based

⁴ NDA, Section 18.

⁵ *ibid*

⁶ or, more accurately, by the Governor in Council.

⁷ Although he was describing the relationship in the US, the model could be usefully applied in Canada. See Feaver, Peter D, “The Informal Agency Theory” in *Armed Servants: Agency, Oversight, and Civil-Military Relations*. (Cambridge, Mass: Harvard University Press, 2003), 54-96.

upon convergence of interest and expectation of sanction.⁸ Bland, in a similar way, has characterized civil control of the military in Canada in terms of shared responsibilities.⁹ The prime minister, MND, the CDS and, to a lesser extent, the deputy minister all have responsibilities and a degree of mutual dependence for the formulation and execution of defence policy. In this climate of dependency, formal and informal checks and balances are established over arbitrary use of the CF (by the government or the CDS), while encouraging consultation in matters of policy and resource allocation.¹⁰

Ministerial responsibility is carried out within the context of the overall programme and objectives of the government of the day. The MND is bound by cabinet solidarity to support all of the policies of the government, and to ensure that the activities of DND and the Canadian Forces reflect the priorities, policies and objectives cabinet has established.

Given the role and powers of cabinet in governing Canada, the Canadian system of ministerial responsibility to parliament is generally realized after the fact. Particularly in the area of defence, few issues are considered by parliament before decisions have been taken¹¹, and only rarely does debate over legislation related to defence gain much traction in a majority government. Indeed, fundamental to the concept of ministerial responsibility is that parliament does not decide; rather ministers decide and must retain the confidence of parliament in those decisions. Parliament exercises oversight to assess confidence in ministers.

⁸ *Ibid*, 54-96.

⁹ Bland, Douglas L, "Shared Responsibilities for Defence" in *Chiefs of Defence: Government and the Unified Command of the Canadian Armed Forces*. (Toronto: Canadian Institute of Strategic Studies, 1995), 127-174. See also his "A Unified Theory of Civil-Military Relations" in *Armed Forces and Society* 26, no.1 (Fall 1999): 7-26.

¹⁰ Bland, "Shared Responsibilities for Defence".

¹¹ Although various governments have suggested that Parliament will have a chance to debate CF participation in missions, this has rarely been done and has never had a significant influence over the government's decision regarding deployment and contribution.

There are four basic methods by which parliament exercises oversight: through questions in the House of Commons and Senate, normally directed at the minister responsible or the prime minister; through debates in the House or Senate on matters of policy or legislation; through review of the annual Departmental Estimates; and through the review of proposed legislation, policy or departmental status conducted by parliamentary committees. Although the first three methods allow individual members of parliament to have a voice in the accountability process, Savoie has pointed out that the complexity of government and the density of the public policy environment have left MPs ill-equipped to participate effectively in these processes¹². As a result, by far the most thoughtful and detailed review of government performance is conducted by parliamentary committees, and this is certainly the case for matters relating to national defence and the Canadian Forces.

Two committees concern themselves with defence matters: the Standing Committee on National Defence and Veterans' Affairs (SCONDVA) of the House of Commons, and the Senate Committee on National Security and Defence (SCONSAD). The former has been in existence for a number of years (albeit under a number of different names; the current committee dates from 1999), and is made up of members of most political parties in the House. Needless to say, its work can be partisan at times, but it has historically maintained the primacy of national interest in its reporting.¹³ The Senate committee, SCONSAD, is relatively new, having been established in 2001.¹⁴ Although party differences do creep into hearings from time-to-time, this

¹² Savoie, Donald, *Breaking the Bargain: Public Servants, Ministers and Parliament*, (Toronto: University of Toronto Press, 2003), 204-205 and 239.

¹³ See, for example, the Committee's call in its first report for the government to substantially increase defence funding. House of Commons, Standing Committee on National Defence and Veterans' Affairs, *First Report – Revitalization and Modernization of the Canadian Forces*, (1 December 1999).

¹⁴ Although the Senate has had committees in the past to review defence issues.

committee has conducted its business to date more at arms length from political issues of the day than its counterpart in the House.

In cases where there is a particularly pressing matter for government consideration, matters have been referred to special joint committees of the House and the Senate, but this practice is not common.¹⁵ In general, then, it is the work of the two parliamentary defence committees that are designed to provide oversight of government decisions and activity in this area, and to hold MND accountable to Parliament. To what extent has this system been successful?

DOES THE SYSTEM WORK?

Bland and Remple have observed that the oversight role of Parliament in matters of national defence has historically been weak at best.¹⁶ Arguably, since the Somalia Inquiry of 1995-97, parliamentary interest in DND and the CF has been significantly rekindled, managed for the most part by parliamentary committees. Nevertheless, the report of the Somalia Commission of Inquiry raised some interesting concerns in its 1997 report, observing that “mechanisms for parliamentary oversight of the Department of National Defence and military activities are ineffective”, and pointing to a “need to strengthen the role of Parliament in defence matters”.¹⁷ This recommendation had already been put forward by the Special Joint Committee

¹⁵ The last such committee did its work in 1994 and had as its focus Canadian Defence Policy. It was something of an anomaly in the history of Canadian Defence policy, even though the majority of its recommendations were incorporated into the Government’s 1994 White Paper on Defence.

¹⁶ Bland, Douglas L. and Roy Remple, “A Vigilant Parliament: Building Competence for Effective Parliamentary Oversight of National Defence and the Canadian Armed Forces” in *Policy Matters* 5, no.1 (Institute for Research on Public Policy), 8

¹⁷ Canada, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, “Executive Summary – Accountability” in *Dishonoured Legacy: The Lessons of the Somalia Affair*, (Ottawa: PWGSC, 1997); available from <http://www.dnd.ca/somalia/somaliae.htm>; Internet; accessed March 2005.

on Canada's Defence Policy three years earlier,¹⁸ and it continues to hold relevance, having become a part of the current government's programme to reform Parliament.¹⁹

Notwithstanding these observations, little has been done to strengthen the role of the defence committees. Indeed, the committees themselves may have been their own worst enemies, with members often motivated more by the opportunity to make or "score" political points rather than to obtain information from witnesses.²⁰

The committees have been active over the last few years, and have systematically identified shortfalls not only in the readiness and capability of the Canadian Forces, but also in levels of government funding and attention to defence. A series of reports has been generated – supported by those of the Auditor General – to bolster this case, calling variously for spending increases of between 1.5 and 4 billion dollars and pushing for a broad review of defence policy to focus efforts in rebuilding the CF.²¹ Notwithstanding all of this pressure, the response from the government has been minimal – an injection of sufficient funds to pay most of the shortfall in costs related to operations, and a continuing pledge to review defence policy.

Far from holding the government and the Minister to account for decisions and policy, the defence committees appear to be attempting to fill what they perceive to be a policy vacuum. Recent reports are comprehensive reviews of policy options and capability gaps, with clear recommendations for the way ahead. Savoie has identified this trend in committee work, pointing out that

¹⁸ Parliament of Canada, Special Joint Committee on Canada's Defence Policy, *Security in a Changing World* 1994 (Ottawa: PWGSC, 1994), 57-62.

¹⁹ Canada, Privy Council Office, *Ethics, Responsibility Accountability: An Action Plan for Democratic Reform* (Ottawa: PCO, 4 February 2004), in "Statement of General Principles"; available from http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=dr-rd/dr-rd_doc_e.htm#Statement; Internet; accessed May 2004.

²⁰ Interview with Hon. Colin Kenny, Chair of SCONSAD, 11 February, 2005.

²¹ See House of Commons, SCONDVA, *Facing our Responsibilities: The State of Readiness of the Canadian Forces*, (May 30 2002), and Senate, SCONSAD, *Canadian Security and Military Preparedness* (February 2002) and *For and Extra \$130 Bucks* [sic]... (November 2002).

[s]uccess for committees, it seems, is the ability to shape or influence policy. This explains why they attach such a great deal of importance and much of their limited resources to producing special reports or studies. Some of their reports have enjoyed high public profile and have forced the government to act or to respond to their suggestions and recommendations. MPs, the media, lobby groups and many Canadians equate power with the ability to shape new policy, not with the ability to hold the government to account.... It looks as if the House is trying to be a major actor in the policy-making realm, albeit with limited success.²²

So why have the defence committees met with limited success in influencing the government, and why have they had limited success in holding the ministers accountable for what the committees have both identified as a crisis in the Canadian Forces? There are three main reasons.

First, despite the plethora of headlines and apparent newsworthiness of the crisis in the CF, there has not been, nor is there likely to develop a large constituency for defence in Canada.²³ Canadians, generally speaking, have not been willing to mobilize political pressure to address funding shortfalls and readiness and capacity deficiencies in defence; their priorities have been on other issues. As a result, despite widespread support in principle for the findings of the committees in relation to the need for increased funding, it would appear that insufficient pressure has been brought to bear on the government to address this issue as a priority over the last two years.²⁴

The second reason the committees have been unsuccessful is that the narrow agenda of government has been focused elsewhere. In *Governing from the Centre*, Savoie discussed the

²² Savoie, *Breaking the Bargain*, 230.

²³ Albert Legeault, among many others, has discussed this. See his *Report to the Prime Minister: Bringing the Canadian Armed Forces into the Twenty-First Century* (Ottawa: DND, 25 March, 1997), 30-34.

²⁴ I am quick to add that, in the last few months, significant progress has been made towards addressing this problem. With the active interest of the Prime Minister and a new MND, the policy review has been moved into high gear and appears to address many of the issues raised by both committees. Furthermore, the financial plan laid out in Budget 2005 - if it is followed - would appear to provide the means commencing in 2007 to implement the new policy.

restrictions both on the capacity of government and on the ability of individual ministers to effect change on their own.

The prime minister, much more often than not, now embodies political authority within the federal government rather than Cabinet or individual Cabinet ministers. But the prime minister, more than anyone else in Ottawa, suffers from an ‘overload problem’ so that he can only focus on a handful of major policy issues in any given mandate. When the prime minister does focus on an issue and provides clear political direction, the system responds and decisions are made and things do happen. As for the rest, the system will manage the process and the issues, but bold action will hardly be forthcoming.²⁵

Thus, despite in many cases strong efforts by ministers of National Defence to institute the changes necessary to tackle the larger problems outlined in the defence committees’ reports, these initiatives fell neither within the policy nor the spending priorities of the Chrétien government. Similarly, despite declarations of intent and allusions to a ‘vision’ of a stronger Canadian role in the world, the Martin government has only just offered a policy to articulate the vision, and its funding is still in question. Defence policy and capabilities have drifted for years in an ambiguous environment, half-way between the constraint-driven 1994 White Paper and the promise of a new statement on defence by the government, with the result that the system simply “managed the process and the issues.”

The third reason that the committees’ work has failed to trigger substantive change in defence is related to the first two. The leaders of the Canadian Forces have not made an effective public case regarding the state of crisis in the CF. Indeed, in some cases, military leaders have appeared to downplay the problems. For example, the support²⁶ offered by the

²⁵ Savoie, Donald J, *Governing from the Centre: The Concentration of Power in Canadian Politics*, (Toronto: University of Toronto Press, 1999), 8.

²⁶ The contention that the CF was more combat capable in 2002 than it had been ten years earlier was repeated many times in various public fora by the CDS and other senior leaders. Notwithstanding the arguments in favour of this statement based on varying interpretations of combat capability, the original contention was designed to respond to accusations that the government was neglecting and under-funding the CF. Those who supported the MND’s

senior leaders of the CF to Minister Eggleton's assertion in 2002 that the CF was more combat capable than it had been ten years beforehand was perceived by many as undermining the arguments of other defence advocates.

In its second report, SCONSAD devoted an entire section to a discussion of the public responsibilities of CF leaders in this regard, stating that “[m]isguided loyalty appears to be muting the military's strongest voices.”²⁷

The Committee was not always convinced that senior officers and bureaucrats appearing before it were being perfectly frank....Our military leaders, including senior DND bureaucrats, must be frank with parliamentary committees about what kind of performance Canada's armed forces can be expected to deliver on the assortment of tasks they will be asked to perform with the resources available to them. The government, on its part, should encourage – *not discourage* – the offering of genuine professional opinions by Canada's military leaders when they appear before parliamentary committees.²⁸

Committee members contend that frank input to the committee process from the leaders of the Canadian Forces is critical to the committees' role in effective oversight of the government. It is the contention here that the absence of a public case for immediate corrective action by senior leaders in the CF was the key missing enabler for the success of the committees' reports and the mobilizing of public pressure to act.²⁹

CONSTRAINTS TO MILITARY INPUT

The Armed Forces have a problem in a parliamentary system. How free are they to say what's really on their mind? This issue is going to become, at least in my view, much more the subject of debate. There is a notion that in a parliamentary system where you have a minister who's responsible for defence, those who are involved, both in the Department of National Defence and in the Armed Forces, are severely restricted about what they can say about the state of the Armed Forces.

perspective on this were therefore perceived to be saying that the CF was neither under-funded nor neglected, or at least that “things were not so bad”..

²⁷ SCONSAD, “Our Military Leaders Have Public Responsibilities” in *For an Extra \$130 Bucks...*

²⁸ *Ibid.*

²⁹ This will be discussed later in the paper.

...[W]hen you're in front of a parliamentary committee, whether it's the House of Commons or the Senate, and you're asked direct questions, then there is an obligation not to fudge. That's a very important obligation to keep in mind because if members of Parliament are told, not lies, but only half the truth, they are not going to be in a position to do their duty as elected members from this country.³⁰

Nevertheless, members of the Canadian Forces, and particularly senior officers, face several constraints - regulatory, systemic, cultural and perceived - on their ability to speak publicly about defence issues. A review of these will help put the problem into context.

First of all, however, it is worth examining why it is that, in the climate of openness and access to information legislation that exists in Canada today, defence committees are so reliant on testimony by defence officials rather than a review of records and documents. Many of these records, where they exist, contain information that has been classified by the originator and their release is often problematic (and subject to severance). Far greater, however, is the problem that records in matters of interest to the committees are often not well kept. The Report of the Somalia Commission of Inquiry noted a significant deficiency in this regard. "Official reporting and record-keeping requirements, policies, and practices throughout DND and the Canadian Forces are inconsistent, sometimes ineffective, and open to abuse." It also noted "an unacceptable hostility toward the goals and requirements of access to information legislation, an integral aspect of public accountability."³¹ Notwithstanding the specific context of these observations and the significant progress that has been made in these areas since the Somalia Inquiry, it can be argued that some of the same issues are still encountered by defence

³⁰ Fraser, Hon. John quoted in John Wood, ed. *Talking Heads, Talking Arms Vol 3: Playing the Ostrich*, (Toronto: Breakout Educational Network, 2003), 294.

³¹ "Executive Summary – Accountability", 2.

committees today.³² Testimony in person of defence authorities, therefore, is an important input to the defence committee process because it can overcome these weaknesses and draw out issues and concerns that would otherwise remain hidden.

There are several regulations pertaining to public statements by members of the Canadian Forces. *Queen's Regulations and Orders for the Canadian Forces* (QR&O) articles 19.36 and 19.37³³ prohibit a member of the CF - other than the CDS - from communicating information to the public without the permission of the CDS or his/her representative. The 2008 series of Defence Administrative Orders and Directives (DAOD) amplify and ease these restrictions somewhat by providing a comprehensive policy for the release of information to the public. Although they establish MND as the principal spokesperson on defence issues, they recognize that the minister is supported in this regard by the CDS as the principal spokesperson for the CF and the deputy minister as the principal spokesperson for DND. Furthermore, they establish a climate within which CF members are free to speak publicly about their own work and responsibilities, within the restraints of regulation and legislation. In most cases, these regulations serve the purposes of transparency quite well. In matters of policy, however, the situation is not so clear, and these matters are generally at the heart of committee inquiry - particularly that directed at senior leaders in the CF.

Members of the CF, in providing testimony before defence committees, have been subject to the Government of Canada Communications Policy that states:

Spokespersons, particularly senior managers, are often called upon to represent institutions before parliamentary committees and boards of inquiry. To ensure effective

³² Various conversations with Hon. Colin Kenny, Chair, SCONSAD. This is not just a problem in DND. The Canadian Information Commissioner recently chastised the federal government as a whole for an inability to keep records and track policy decisions. Sutton Eaves, "Record Keeping in Crisis", *Ottawa Citizen*, 13 April 2005, A4.

³³ Entitled "Disclosure of Information or Opinion" and "Permission to Communicate Information" respectively.

communication that respects official protocol, spokespersons must be familiar with Privy Council Office guidelines on appearing before Parliament and other official bodies.

Spokespersons at all times must respect privacy rights, security needs, matters before the courts, government policy, Cabinet confidences and ministerial responsibility. When speaking as an institution's official representative, they must identify themselves by name and position, speak on the record for public attribution, and confine their remarks to matters of fact concerning the policies, programs, services or initiatives of their institution.³⁴

The Privy Council Office guidelines referred to above elaborate considerably on this policy, noting that “[o]fficials have no constitutional responsibility to Parliament, nor do they share in that of Ministers. They do, however, support Ministers in their relationship with Parliament and to this extent they may be said to assist in the answerability of Ministers to Parliament.”³⁵ The guidelines go on to describe “an obligation to behave in a manner that allows Ministers to retain full confidence in the loyalty and trustworthiness of those who serve them.”³⁶ In particular, they direct public servants to defer to their minister³⁷ on issues of policy or political controversy, since “political answerability on the part of officials would inevitably draw them into controversy, destroy their permanent utility to the system and, indeed, undermine the authority and responsibility of their Ministers.”³⁸ Specific guidance is given in relation to answering questions:

Officials may give explanations in response to questions having to do with complex policy matters, but they do not defend policy or engage in debate as to policy alternatives. In other matters, principally those having to do with the administration of the department and its programs, officials answer directly on behalf of their Ministers. Again the answers should be limited to explanations.³⁹

³⁴ Canada, Treasury Board Secretariat, Requirement 20 of *Government of Canada Communications Policy*, available from http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/comm1_e.asp#01; Internet; accessed April 2005.

³⁵ Canada. Privy Council Office, *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*. (Ottawa: PCO Canada, December 1990), 1.

³⁶ *Ibid.*

³⁷ Meaning refuse to answer questions involving these issues.

³⁸ *Ibid.*

³⁹ *Ibid.*, 2.

Given the extent to which most major defence issues - like major procurement, budget cutbacks and their effect on readiness, capacity and morale, and CF involvement in operations abroad - have been politicized over the last few years, it is easy to see how the guidelines above place senior leaders in the CF in awkward positions when appearing before defence committees.⁴⁰

There are systemic constraints on CF leaders when speaking to parliamentary committees as well. The climate of shared responsibility discussed earlier leads inevitably to bargaining between the key players involved in defence – particularly between the CDS and the deputy minister. A former MND admitted that he was impressed by the extent to which advice from the “Defence Team” was harmonized, such that the CDS and DM were speaking with practically a single voice.⁴¹ Notwithstanding the convenience of this approach for the smooth operation of the department, Bland has pointed out potential problems.

Traditionally, officers try to find a politically acceptable option for the government, but they are not acting responsibly if they offer compromises that might harm national defence or soldiers in their care. Public servants, on the other hand, may be more flexible. They can take the long view and are not tied to the soldier’s code. In a system in which ministers expect these diverse views to come forward, no permanent harm arises from them because ministers will finally decide. However, serious civil-military problem [*sic*] can develop in a system in which views must be settled below the minister.⁴²

One would certainly expect that serious differences in opinion between the CDS and the DM would be brought forward to MND rather than glossed over. That being said, it is equally clear that, in general, the two halves of the Defence Team find it advantageous to resolve differences through bargaining amongst themselves rather than providing separate streams of

⁴⁰ For a recent example, see the testimony of VAdm Buck, VCDS, in SCONSAD, *Evidence*, Ottawa, 6 Dec 2004, available at <http://www.parl.gc.ca/38/1/parlbus/commbus/senate/Com-e/defe-e/42102-e.htm?L>; Internet; accessed April 2005.

⁴¹ Telephone interview with former MND (name withheld by request), 7 February 2005.

⁴² Bland, Douglas L, *National Defence Headquarters: Centre for Decision*, A Study Prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, (Ottawa: PWGSC, 1997), 57-58.

advice to the minister or the government. Consider, for example, General Manson's views on the subject, reflecting on his time as CDS.

[T]he fact is, because the military and the civilian [sic] have their own interests and their own responsibilities, sometimes there are instances where we can't find total harmony in the way in which we look upon a given situation. But during my time as chief of the defence staff, never did the situation break down into a public argument of any substance whatsoever. We worked very hard at presenting ourselves as thinking of like mind.⁴³

This process of harmonization of interests and priorities serves to intertwine the military position on issues with that of the department, and, to a certain extent, with that of central agencies like the Privy Council Office as well.⁴⁴ The result, for our purposes here, is to make it difficult for senior officers appearing before defence committees to explain the CF position on many strategic defence issues in isolation from that of the Defence Team, particularly where the harmonized advice appears to place the military at a disadvantage. Indeed, this apparent subjugation of military interests inevitably results in challenges and questions by committee members to defend this position. Given the regulatory and policy restrictions these officers face, they must defer these questions to the minister, generating a sense of obfuscation or avoidance of the issue.⁴⁵

Another constraint senior officers face in speaking to defence committees could be cultural. English has speculated that there is a problem with leadership in the CF, where caution, bureaucratic and political manoeuvring, and careful protection of perceived interests - both service and personal - characterize activity.⁴⁶ Another study on the Canadian Army postulates that the exclusivity and basic nature of small unit military culture breed a lack of respect for

⁴³ General Paul Manson, quoted in John Wood, ed. *Talking Heads, Talking Arms Vol. 3: Playing the Ostrich*, (Toronto: Breakout Educational Network, 2003), 215.

⁴⁴ For an excellent discussion of the power and influence of the PCO on departmental approaches and recommendations, see Savoie, Donald J, *Governing from the Centre*, 109-155.

⁴⁵ Interview with Hon. Colin Kenny, 11 February 2005.

⁴⁶ English, Allan d, *Understanding Canadian Military Culture: A Canadian Military Perspective*, (Montreal & Kingston: McGill-Queen's University Press, 2003), 110.

authority outside the organization,⁴⁷ and this could have a residual effect on senior officers' views. Although both of these positions probably overstate the problem for the purposes here, they may help to explain what the Chair of SCONSAD has characterized as a "scornful attitude" on the part of some senior officers towards dealing with Parliament.⁴⁸

from which they hope to emerge as unscathed as possible.⁵⁰ In short, although the CF has developed a strong culture of openness towards parliamentary committees engaged in fact-finding, it would appear that this new culture has yet to extend to many senior officers appearing as witnesses on behalf of MND. This hesitancy to change is probably aggravated by two other factors: the risk of being drawn into political areas in such a public forum on one hand, and the natural tendency of senior professionals to feel uncomfortable when their judgement seems to be publicly questioned.

The final constraint many senior officers may face is again self-imposed. Military professionals, by and large, when faced with unfamiliar circumstances and in the face of important constraints, will often interpret these constraints very conservatively to avoid making mistakes⁵¹ Reviewing testimony from both committees, it is clear that senior officers have a tendency to anticipate the line of questioning of a committee member and to couch answers in very careful terms to avoid the perception of support for politically contentious statements that appear to be following. This, in turn, creates an impression of evasiveness on the part of the senior officer that has more often than not been interpreted as overly cautious or overtly uncooperative. While not necessarily a failing on the part of the officer in question, their perception of risk and reaction to it may well add to the climate of dissatisfaction with military input to the committee process.

POLITICIZATION OF THE MILITARY

Both the government and the CDS are on record as recognizing the importance of a stronger role for defence committees in defence oversight. In his *Report to the Prime Minister*

⁵⁰ Here, I draw on personal experience and anecdotal evidence.

⁵¹ Again, I draw on personal experience and anecdotal evidence, both in this subject area and in the application of law to military operations.

on the Leadership and Management of the Canadian Forces, Hon. Douglas Young, MND at the time, declared his intent to “continue to work to enhance the role of Parliament and its committees in their consideration of security issues and, in particular, ensure that the Department and the Forces are responsive to the need for Parliamentarians to be well informed in a timely manner.”⁵² As well, General Maurice Baril, CDS at the time, stated that “I welcome increasing parliamentary consultation and scrutiny of the Canadian Forces” and “I welcome any opportunity to assist in deepening and expanding the knowledge, the interest and the engagement of Parliamentarians in our work.”⁵³

So, if both the government and the CF desire to strengthen the capacity of defence committees to exercise oversight, what is preventing the encouragement of more frank and less constrained dialogue between senior officers and the committees? At the root of this issue is the fear of politicizing the Canadian Forces. In essence, this refers to a condition in which the military as a whole, or individuals therein, attempt to influence political decisions outside the established mechanisms for the provision of military advice to government. It can also refer to providing partisan advice or adopting a partisan position in favour of political rather than military or national considerations.

A former MND has suggested that there is a need to balance the need for civilian oversight (referring to Parliament) with a high degree of military professionalism.⁵⁴ This line of argument holds that it is not appropriate for members of parliament to expect responses to political issues from serving officers, nor is it appropriate for the latter to offer them. It holds as paramount that the CF cannot engage in political debate and recognizes that there is often a very

⁵² (Ottawa: DND, 25 March 1997), 37.

⁵³ “The Role of the Chief of Defence Staff in Relations with Parliament”, speaking notes for an address to the Conference of Defence Associations Annual Seminar, Ottawa, 27 January 2000 (found in CFC NSSC readings for N/SS/CNS 433/LD-6), 5/5.

⁵⁴ Interview with former MND, name withheld by request, 7 February 2005.

fine line between this and the explanation of policy; managing this fine line relies more on case-by-case judgement than on overarching guidance. He stated that opinion on military affairs and priorities are more appropriately offered and argued in public by agencies like the Canadian Defence Association, and by senior officers only after they have retired from the CF. The fundamental aim of this approach is to keep the military out of political issues, thereby retaining the objectivity, the sense of service to country rather than government, and the unquestioned obedience to civil control that are the hallmarks of military service in a democratic society.⁵⁵

Another perspective has been offered by the Chair of SCONSAD, who feels that the risk of politicization of senior officers is low compared to the benefit of relaxing the regulations regarding offering military advice in testimony before defence committees.⁵⁶ In his view, the current system – that is to say the constraints on witnesses before committees – was set up by risk-averse politicians to protect themselves. He feels that the system needs to change, and that the government needs to develop a higher tolerance for criticism if parliamentary committees are to be free to do their jobs. In supporting this argument, he suggests that it is most often the desire to control newsworthy issues that motivates restrictions on testimony, and that resulting over-classification of information and “hiding behind the system” damage Parliament’s interest in and ability to understand and to have input into national security issues.⁵⁷ He feels that, unlike in virtually all other areas of government activity, the only source of credible, current and objective military advice and comment in Canada is the CF itself.⁵⁸

These divergent perspectives are not necessarily irreconcilable, but they do give a good spectrum of views on the risk of politicization of the military if the CF speaks openly and

⁵⁵ *Ibid.*

⁵⁶ Interview with Hon Colin Kenny, 11 February 2005.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.* He does not consider that CDA, other advocacy organizations or retired officers meet these criteria.

unconstrained about defence matters. There is another way, however, in which the military in Canada risks politicization.

An Ipsos-Reid poll in 2003 ranked professions in Canada in terms of their “trustworthiness” with a sample and methodology that the firm suggested was representative of the views of Canadians as a whole. Fifty-four percent of the respondents felt that the Canadian Forces were highly trustworthy or trustworthy, ranking the institution seventh of those examined. This compared with only nine percent of respondents who felt that national politicians were trustworthy or highly trustworthy (ranking them last). The criteria for trustworthiness were identified by respondents as honesty (most important), integrity, reliability, commitment to promises, professionalism, reputation, personal experience and education.⁵⁹

The results of this poll suggest that Canadians are sceptical about statements by federal politicians, but are much less so about statements by CF leaders. This finding supports the contention that, if the CDS or other senior officers speak out on an issue affecting the CF, the majority of Canadians are likely to listen. A corollary to this is that, if they do not speak out on such an issue, the public may decide that the issue is not important.

It has been contended earlier in this paper that the absence of a public case for immediate corrective action by senior leaders in the CF was the key missing enabler for the success of the parliamentary oversight and accountability mechanism in spurring government to address the major issues. The 2003 Ipsos-Reid poll may support this contention, since, in the absence of a case by the CF, public pressure for the government to act was not mobilized. If this argument is valid, then those who represent the voice of the CF to the public – the CDS and other senior officers – may already be unconsciously politicized. Under the conditions and expectations

⁵⁹ Ipsos-Reid poll *So, Whom Do We Trust*, released in Toronto on 22 January 2003.

suggested above, in general statements of support for the policies of government in relation to the CF – necessary to retain the minister’s “full confidence” in their “loyalty and trustworthiness” under the regulations applying to Public Servants – the senior leadership of the CF may be convincing the public of the appropriateness of policies that reflect political considerations at the expense of the CF – even, perhaps, of policies with which they are in strong disagreement. In this sense, they are systemically politicized and are unable to meet the expectations of trust in the Canadian public.

This is a difficult and sensitive issue, and one that gets to the heart of civil control of the military in Canada, and the role of the CF leadership in the national interest. In considering this issue, Bland has observed that “controlling the armed forces in democracies means more than simple, unquestioning obedience of the military to the government of the day because it entails protecting the military from politicians who would use their authority over it to enhance partisan interests and their own power.”⁶⁰ He further states that civil control

...should be conceptualized not just as a shield against the coup d’etat, but as an exercise in the management of a regime that legitimizes and restricts the actions of all the players in the interest of society. Although the regime sets the boundaries for the decisions and actions of players, accountability is the concept that provides the actual control over the decisions and actions of politicians and military officers who hold temporary authority in government and the armed forces.⁶¹

It has been established that the work of the defence committees of parliament is central to government accountability, and that shortfalls in frank, unconstrained military advice and opinion have limited their effectiveness. The factors limiting this military input have been discussed, and they relate to regulatory, systemic and cultural constraints, as well as self-imposed limitations. Addressing this issue while preserving the CF as an institution removed from

⁶⁰ Bland, “A Unified Theory of Civil-Military Relations”, section 5.

⁶¹ *Ibid*, section 9.

politics will require some fundamental changes in the way military responsibility is defined and controlled in Canada. These changes, however, if undertaken fully and in a spirit of creating a larger culture of national interest, will strengthen democratic process and military effectiveness in Canada.

SPEAKING TRUTH TO POWER: Some Suggestions For Improvement

First among the changes required to resolve this dilemma is a recognition that senior officers in the CF are not public servants. That this interpretation was never intended is clear in the structure and language of the NDA. By defining the CF as “Her Majesty’s Forces” and stipulating that all orders and instructions to the Canadian Forces required to give effect to the decisions and directions of the government or MND shall be issued by or through the CDS, the NDA assigned a higher trust and responsibility to the CDS than that of a public servant. Indeed, by making the Governor General the Commander-in-Chief of the CF, it clearly split the CDS’s responsibility between the minister on one hand, and the people of Canada on the other. To the former, the CDS is responsible for the day-to-day control and administration of the CF; to the latter, he/she is responsible – assisted by other senior leaders - for the ability of the CF to respond effectively in the defence of Canada and Canadian interests. There is little doubt that Canadians hold the CDS and senior leaders responsible for this, and that the prestige of the former’s office has suffered over time by the public’s perception that it has been politicized.⁶²

⁶² For example, Hon. David Pratt, when he was MND, referred in a speech to the CDA to a Pollara poll conducted in the fall of 2000 titled “Canadians’ Opinions of the Canadian Forces and Related Military Issues.” He said it indicated that 81% of Canadians believed that the Canadian Forces were doing a good job, 88% had a strong or somewhat positive impression of CF personnel, yet only 61% believed that the CF leadership was doing a good job. *The Attitudes of the Canadian Public to the Canadian Forces*, remarks for an address to the CDA Conference, 22 February 2001. Available at <http://www.cda-cdai.ca/seminars/2001/pratt.htm>; Internet; accessed April 2005.

In the extreme case where the CDS must take a stand against the policies of the government of the day, he/she is expected to turn to the Governor General; such an action would clearly result in a constitutional crisis⁶³ that would not necessarily resolve the situation; recent Canadian history suggests that the likelihood of the Governor General exercising significant power to constrain the prime minister in this regard is quite slim. That being said, this recourse clearly points to a set of unique, personal responsibilities for the CF that transcend political interests, and an expectation that the CDS will exercise judgement to determine when these responsibilities are threatened. In practice, the authority and power that this structure brings to the office of CDS allows him/her to bargain effectively with the PM and MND of the day to protect these unique interests and to discharge these unique responsibilities. In view of this authority and power, how is the CDS accountable to Canadians for these responsibilities? Clearly, it cannot be through the prime minister or MND, nor is the office of the Governor General equipped to hold the CDS to account. Rather, the most effective mechanism of accountability for the CDS in this respect is to permit him/her to speak frankly and thoroughly about the military perspective on defence issues in the public forum of defence committees.

If the last two arguments are accepted, then senior leaders, when testifying before defence committees about military issues,⁶⁴ should speak on behalf of the CDS, not MND. As such, they should be permitted to present frank and thorough military advice, distinct from the harmonized advice that is presented to the Minister, in order to allow the committees to understand the context of government decisions and the military issues related to them. Clearly, this would require some significant adjustments in several areas, not the least of which would be the preparation of distinct and detailed military advice on defence issues, the creation of a culture

⁶³ Bland, *Chiefs of Defence*, 131.

⁶⁴ As distinct from those who speak on departmental issues, such as those in the Policy, Finance and other branches of DND.

of larger national interest and respect for legislative oversight and process within the officer corps of the CF, the production of specific guidelines by the CDS related to testimony before parliamentary committees, and a clarification of the relationship of the CDS to Parliament through the Governor General.

The preparation of distinct military advice on defence issues would have advantages and disadvantages. It would illustrate the trade-offs necessary to achieve consensus in advice to MND, and would clarify the somewhat blurred functions in the unified headquarters. On the other hand, it may encourage disharmony and posturing by officials, slowing down the business of defence management. In questions of equipment acquisition, distinct military advice for the public domain may have to be limited to the military statement of requirement, with full justification in relation to existing defence policy, in order to avoid the inevitable politics of Canadian national procurement. It would not deal with areas that fall under the exclusive domain of the deputy minister, and this may remove the voice that the CDS now enjoys in these issues in the current, collegial environment. Nevertheless, advice cannot be derived after the fact, so that, if it is to be offered and reviewed by defence committees, it must be considered and presented separately.

As has been stated, there is a culture of cooperation with defence committees in the CF already where their work has related to fact-finding and matters of personnel welfare. The various committees have enjoyed strong support and garnered much goodwill for their recommendations in these areas, many of which have been accepted and implemented. In areas of policy, procurement and strategic approach, the record of support is quite different, and the reasons for this were presented earlier. Recent improvements in senior officer training and exposure - with the creation of the National Security Studies Course, for example, and the

emphasis on understanding the mechanisms of government – have the potential to improve the understanding of and support for Parliament and its institutions, but an expanded programme of exposure would enhance these results. It has occasionally been the practice in the past⁶⁵ to assign officers at the rank of Colonel or Brigadier General to defence committees to act as subject matter experts and to assist in the coordination of committee work with the CF. Bland has argued that such a practice, if institutionalized, offers a good opportunity for the sort of mutual understanding that has been discussed here. He admits, though, that the initiative would have to be carefully monitored and controlled to achieve the desired results without raising concerns or suspicions about the officers involved.⁶⁶

Similarly, the Chair of SCONSAD feels that senior officers, like senior members of other important institutions, need to have an understanding of and relationship with politicians. He offered an analogy to the practice of the Royal Bank of cycling promising executives through the office in Ottawa, not so much for banking experience, but so as to build relationships and an understanding of the mechanisms of politics and government.⁶⁷ This approach may go too far, creating perceptions of loyalty or influence between senior officers and politicians that would undermine their neutrality in political issues, but the objective of better mutual understanding through a programme of mutually rewarding interaction is supported.

Key to making this new approach work and avoiding the involvement of senior officers in the politics of defence issues would be the guidance provided by the CDS for testimony on his behalf. In many respects, this guidance could mirror that of the Privy Council Office, but it should differ in some important ways. First, when dealing within their areas of responsibility and competence, these senior officers are in a position to defend military advice and positions on

⁶⁵ For example, in the case of the Special Joint Committee on Canada's Defence Policy.

⁶⁶ Bland, "A Vigilant Parliament", 52-53.

⁶⁷ Interview with Hon. Colin Kenny, 11 February 2005.

appropriate issues, and should be given a mandate to do so. A distinction should be drawn between issues that are awaiting decision by government, in which case military advice should be treated as a confidence if the minister or cabinet so desires, and issues where decisions have been taken and are being reviewed by the committees, in which case the military advice provided should be presented and defended if necessary. Finally, before offering a professional opinion in matters that may become political in nature, or on issues where military advice has not yet been presented to government,⁶⁸ senior officers must be clear about the fact that personal opinion is being offered, must explain how that opinion may be biased by service affiliation, current or past responsibilities or experience, and must indicate, if there are other perspectives on the issue, how these may be made available to the committee. This general approach will preserve the professionalism and apolitical nature of the officer corps while considerably enhancing the value of its testimony before Parliament.

The final requirement – that of clarifying the relationship between the CDS and parliament through the Governor General, need not involve constitutional or legislative change. It could be achieved through one of two ways. First, the prime minister and Governor General could jointly publish an interpretation of this relationship, acknowledging the larger responsibilities of the CDS and clarifying the mechanism by which he/she discharges these responsibilities using the mechanism of parliament. This is a natural extension of the CDS's current practice of publishing an annual report to parliament, submitted through and tabled by MND, in which he/she offers personal accountability to parliament for the control and administration of the Canadian Forces over the previous year.

⁶⁸ Particularly in the areas of future operations, defence relations, procurement and force structure and organization.

Another way in which the relationship could be clarified is through a mandate letter, again jointly issued by the prime minister and the Governor General. Similar to those issued to ministers and deputy ministers by the prime minister or the Clerk of the Privy Council, this letter would outline to a particular CDS in a particular time period the approach and limitations on his/her association with parliament, as well as a reinforcement of the general priorities of government with respect to defence. Either way, a context should be created within which the CDS can appropriately and accountably discharge his/her obligations to the Canadian public without relying on confrontation or crisis.

Some excellent work has gone into suggesting methods for enhancing the role of parliamentary committees in the review and oversight of national defence.⁶⁹ Among these is the suggestion that senior appointments⁷⁰ in the CF be reviewed by the committees, not to confirm them so much as to establish a relationship, and in doing so “facilitate the development of a consensus on national issues between senior members of the defence establishment and the political leaders who must oversee how these issues are addressed.”⁷¹ This would be very much in keeping with the new practice of parliamentary committees reviewing the appointment of other key officials heading government agencies.⁷²

It is likely that, with this new approach, meaningful dialogue in many areas would be quite difficult in an unclassified forum. To be effective, members of defence committees involved (review and discussion of classified information, for example, could be conducted *in camera* by a sub-committee) should have appropriate security clearances.⁷³ To be cost-effective,

⁶⁹ See, for example, Bland, “A Vigilant Parliament”, 47-55.

⁷⁰ In this case, and for the purposes here, it is suggested that this should be limited to the CDS and select senior General and Flag Officer appointments.

⁷¹ Bland, “A Vigilant Parliament”, 50-51.

⁷² Although it is acknowledged that early instances of this practice have been controversial.

⁷³ Bland has identified this requirement as well. “A Vigilant Parliament”, 52.

these members should make a long-term commitment to the appropriate committee, although this may be difficult in SCONDVA.

CONCLUSION

This paper has attempted to review the mechanisms for the oversight of government in Canada, and to relate them specifically to those for review and oversight of defence issues and decisions. Against the backdrop of the arrangements in place to manage civil-military relations, the limitations on military input to this process of oversight – principally the work of defence committees – and the effects of these limitations have been discussed. In addressing ways of improving the system, the concern regarding the politicization of the Canadian Forces, or of its senior leaders, was discussed, along with their status (or principally that of the CDS) in the machinery of government. Some thoughts have been offered regarding ways of improving accountability not just of the government and MND, but also of the CDS and other senior leaders.

Appropriate mechanisms for civil control over the military have been central to the entire

The provision of military advice to government must be public, thorough and presented appropriately so that it does not become an element of the political process. The forum that has been suggested to give effect to this is the defence committee system of parliament, and controls have been suggested to maintain the integrity of the minister in decision-making.

It appears that practically every military issue has become a political one in the Canadian political context. It follows that there is no way to prevent some sort of involvement by senior leaders of the CF in that reality if they are to discharge their responsibilities to Canadians. The key is not to keep them out of the process, but to ensure that their input is balanced, thorough, apolitical, and reflects clearly the CDS' views on the issue. The military must have a mechanism for "speaking truth to power" in Canada – the military truth to both the government and to the larger community of elected representatives – the Parliament of Canada.

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