

## OPINION

**Defence news:** Defence Minister Peter MacKay quietly militarized DND's Office of the Ombudsman on Feb. 19, 2009 when he directed the appointment of retired major-general Pierre Daigle.



Photograph by Jake Wright, The Hill Times

# It's the militarization of civilian oversight organizations

Parliamentarians should change the National Defence Act to ensure that a civilian accounting structure, with real powers, be put in place in order to bring it more in harmony with Canadian values of independence, fairness and impartiality.



BY MICHEL DRAPEAU

OTTAWA—The issue of Parliamentary oversight of the Armed Forces as well as the relationship between the military and civil authority was reviewed by the Somalia Commission of Inquiry which concluded that the Canadian military leadership should be guided by the imperative that the Canadian Forces be prepared to conduct their operations in peace and war in accordance with Canadian standards, values, laws and ethics. In its June 1997 report, *The Lessons of the Somalia Affair*, the commission concluded that civil control of the military should come from attentive citizens acting through an informed, concerned and vigilant Parliament.

Civilian control of the military is a principle that places ultimate responsibility for a country's military force under the control of democratically-elected leaders and civilian institutions rather than professional military officers. Civilian control of the military is considered the best means of preserving the loyalty of the armed forces towards civilian authorities, by preventing the development of an independent caste of warriors that might

see itself as existing fundamentally apart from the rest of society. Obviously, professional military respect and willing compliance with the creation and operation of these civilian institutions is an important element or condition precedent for democratic oversight and the internalization of evolving democratic values by military personnel.

## A civilian accountability structure

As the core element of this accountability structure, the Somalia Commission recommended that, as a matter of priority, an "independent review body, the Office of the Inspector General, with well-defined and independent jurisdiction and comprehensive powers" be created. Uncompromisingly opposed to the creation of the Office of the Inspector General, the military brass persuaded instead the then minister of National Defence to create three separate "independent" oversight organizations, each headed by a civilian, with no order-making powers: the Office of the Ombudsman; the Canadian Forces Military Police Complaints Commission; and the Canadian Forces Grievance Board.

At the same time, the National Defence Act was amended to authorize the Chief of the Defence Staff (CDS) to delegate his powers, duties and functions to one of his officers. This permitted the creation of the CF Grievance Authority. This military officer was vested, with all of the very broad and significant powers of the CDS to settle a grievance.

## Can a leopard change its spots?

Given that a full decade has now passed since the introduction of this accountability structure, it is perhaps time to briefly review the operation of these national institutions.

## DND/CF Ombudsman, annual budget for 2008-2009: \$6.1-million

The Office of the Ombudsman was created in 1998 to act as a neutral sounding board

independent from the chain of command for reviewing and investigating concerns and complaints from current and former CF members, departmental employees and their immediate family members who believe that they have been treated improperly or unfairly by the Department of National Defence (DND) or the Canadian Forces (CF). Therefore, in accordance with his ministerial mandate, the ombudsman cannot investigate any complaint related to a legal advice provided to the DND or the CF, the professional conduct of lawyers, military policy issues, military discipline issues, bargaining issues, or matters that fall within the jurisdiction of Veterans Affairs Canada or the Veterans Review and Appeal Board, or occurrences prior to June 1998 unless approved previously by the minister. Despite this rather limited mandate and despite serving at the pleasure of the minister of National Defence, the sterling performance of two first incumbents, André Marin and Yves Côté, have indicated the value and utility of this 'independent' position in providing a 'neutral' informal means of conflict resolution with DND and CF while making great strides in increasing openness, transparency and transparency.

## Militarization of the ombudsman position

On the recommendation of the senior DND officials, on Feb. 19, 2009, Defence Minister Peter MacKay quietly militarized the position by directing the appointment of retired Major-General Pierre Daigle, Royal 22e Régiment. Since Daigle's appointment, the office has adopted a very low profile and major investigations are few and far between. It appears that the office is suffering from its own human resources problems including, ironically, grievances submitted by several of its senior investigators. Paradoxically, these grievances will likely be settled by the ombudsman himself as he is the final level of review.

## CF Military Police Complaints Commission, annual budget for 2008-2009: \$4.6-million

The Military Police Complaint Commission (MPCC) was established in 1998 by Parliament in order to promote public confidence in the professionalism and accountability of the Military Police, to ensure the integrity of Military Police investigations, and to ensure that both complainants and the approximately 1,500 members of the Military Police are dealt with fairly and impartially. Its mandate contributes also to the maintenance of high standards with respect to the conduct of Military Police members in the performance of their policing duties and functions.

The first incumbent to that position was Louise Cobetto who was drawn from the civilian sector. She served with great distinction in that position between 1999 and 2004 providing DND/CF with the first ever real 'independent review' capability of the Military Police.

## Militarization of the Office of the Chair MPCC

Without either fanfare or competition, the position was militarized when on Dec. 12, 2005, retired Lieutenant-Colonel Peter A. Tinsley, a former CF officer with the Office of the Judge Advocate General, was appointed as Chair of the Military Police Complaints Commission.

## CF Grievance Board, annual budget for 2008-2009: \$3.2-million

Prior to reforming the CF justice system in 1998, the then CF grievance system was perceived as involving too many levels of review and being slow and unresponsive. In addition, the grievance process was seen as being too closely linked to the chain of command and lacking any external and independent input. The Canadian Forces Grievance Board (CFGB) was established in 1998 by Parliament as an impartial, independent civilian body to review certain types of grievances and to make recommendations to

the CDS for adjudication.

The first two chairs of the Grievance Board were drawn from civil society (Paul André Massé; 1999-2003 and Diane Laurin; 2003-2008). They each served with great distinction.

## Militarization of the CFGB

On March 2, 2009, retired lieutenant-colonel Bruno Hamel was appointed as chair. He joined retired captain (Navy) Jim Price, retired colonel Denis Brazeau, retired lieutenant-colonel Mike Auger, retired lieutenant-colonel Fred Blair and Carina Anne de Pellegrin as members of the board.

## CF Grievance Authority, annual budget for 2008-2009: Estimated \$5-million

On Jan. 1, 2003, Armed Forces Council authorized the creation of a CF Grievance Authority with a staff of approximately 35 persons. Not only is the CF Grievance Authority responsible for the CF grievance system, but the CDS has also delegated to him his full and final authority to settle any and all grievances at the CDS level that are not subject to a mandatory referral to the CFGB.

Since its creation, all incumbent to that position have been military officers. The current incumbent is Colonel Guy Maillet.

## Recommendation

Grievances and complaints, though submitted individually, can sometimes serve as valuable indicators of trends or broader systemic issues percolating under the surface. Their fair, just and prompt investigation permits the institution to become cognizant, in real time, of the abuses, injustices, unfairness and dissatisfiers of military service prompting them to take corrective actions.

Most obviously, the military brass is not adverse in sharing its vast powers. For instance, an officer in the rank of colonel, not the CDS, now settles the bulk of the grievances at the final level. This is odd, to say the least, because in creating the Grievance Authority, for the first time ever, a CDS has divested himself of one of the most important tool a military leader has to become directly and personally involved in addressing or redressing reported instances of abuses or other systemic deficiencies brought to his attention by individuals aggrieved by the actions of his juniors commanders.

On the other hand, in the case of the three civilian oversight organizations, not only has the military brass provided them with no powers except the opportunity to make findings and recommendations but potentially further reduced their impact in the administration and management of the armed forces, by taking quiet measures to ensure that only trusted retired military officers are appointed to lead these organizations. While I am not questioning the competence and professionalism of the officers appointed to these positions and while I do not see any crisis or scandal in doing so, I am nevertheless concerned that after a mere decade the recommendation to put in place a civilian accountability structure has been pushed aside. And, this should be a concern to all.

I have great respect for and trust in the current generation of CF military officers. Canada is truly blessed to have men and women of the highest character leading its youth and safeguarding its security. However, I detect a trend of repeated efforts on their part to become, like their predecessors in office, inward-looking and insular, to either frustrate or evade civilian oversight particularly when such control seems likely to produce outcomes the military dislike. In bringing this issue to the attention of Parliamentarians, I hope this set in motion changes to the National Defence Act to ensure that a civilian accounting structure, with real powers, be put in place in order to bring it more in harmony with Canadian values of independence, fairness and impartiality.

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