

OPINION



PHOTO: COURTESY CANADIAN FORCES COMBAT CAMERA

Tinker, tailor: Canadian soldiers, pictured in Kandahar. Michel Drapeau says for the sake of our soldiers, sailors and air persons, the National Defence Act must be urgently amended to ensure that their 'right to grieve' is not an empty gesture.

WHAT'S WRONG WITH THE MILITARY GRIEVANCE SYSTEM?

While the current military grievance system has the outward trappings of a smoothly functioning system with precise jurisdictional responsibilities and prescribed timelines for the submission, investigation and determination of written grievances are in solid print in statutes, the reality is markedly different.



BY MICHEL W. DRAPEAU

The British *Mutiny Act of 1689* formalized the disciplining of a standing army and initiated modern Anglo-American military law. Plain reading of the act makes it clear that a good soldier must accept the constraint of military discipline, be deferential to the hierarchy of ranks and be respectful of orders, directives, instructions, customs, and traditions. His personal well-being and safety must be subordinated to the judgment of superiors who may order a soldier into harm's way in the performance of a military duty. However, such as is life in the military, on occasions, a soldier may become disillusioned, disappointed, frustrated or aggrieved by decisions or omissions of his superiors. Then what?

In 1949, the Royal Canadian Navy's inability to recognize and promptly deal with growing frustrations boiled over when dur-

ing a fuelling stop in Mexico, 90 members of *HMCS Arthabaskan* locked themselves in their mess decks, refusing to come out until the captain heard their grievances. Two weeks later, 83 junior ratings in *HMCS Crescent*, staged a similar protest while alongside in Nanjing, China. Then, 32 aircraft handlers aboard the carrier *HMCS Magnificent* in the Caribbean, refused to turn to morning cleaning stations as ordered. While collectively of great concern to the senior naval leadership, these sailors never became mutinous principally because the ships' officers, from the captain on down, recognized the validity of the complaints and took *immediate* action to address their grievances. A subsequent Commission of Inquiry, headed by Rear Admiral Rollo Mainguy, investigated the matter and his quintessential report became, one hopes, the blueprint for the modern Canadian Forces especially in terms of leadership and superior-subordinate relationships within the CF hierarchical system—at least for awhile.

Grievances in the military, whether dealing with mistreat-

ment, intimidation, faulty weapons or equipment, promotions, poor clothing, bad rations and medical care are as old as recorded military history. The modern-day *National Defence Act* which came of age in 1950 and remains to this day the governing statute of the Canadian military already provided for redress of grievances: "... an officer or a man who considers that he has suffered any personal oppression, injustice, ill-treatment or that he has any other cause of grievance, may as a matter of right, seek redress from such superior authorities in such a manner and under such conditions as shall be prescribed in regulations." On the other hand, the Queen's regulations and orders, provides crystal clear directions as to who should consider a grievance. The QR&Os requires the commanding officer or some other initial authority to determine the grievance and advise the grievor of his decision within 60 days. This is the law, sir.

While the current military grievance system has the outward trappings of a smoothly functioning system with precise jurisdictional responsibilities and prescribed timelines for the submission, investigation and determination of written grievances are in solid print in statutes, the reality is markedly different. Let me explain. First, the command elements of the Forces are for all intents and purposes, all but absent from the process which has been heavily bureaucratized. Second, the Chief of the Defence Staff (CDS)

who is the supreme authority, has delegated all of his powers to one of his juniors to settle any of the grievances that are not referred to the grievance board. Third, the independent civilian organization known as the grievance board only handles a very small fraction of the grievances. It possesses no corrective powers. Fourth, many grievances take as much as 36 months to be responded to, some longer. This is a matter of concern particularly when we take into account that this method of complaint is alone recognized in statute and, a soldier is forbidden to use any other method for obtaining redress for a grievance, real or supposed.

The CF grievance system begins to falter with the selection of the Initial Authority. The Initial Authority can be anyone from the commanding officer or a director general at National Defence Headquarters. Not explicitly stated, but of paramount importance, is the fact that the Initial Authority should not be in a conflict of interest. It goes without saying that an officer relieved from duty by his commanding officer should not have his grievance addressed by the same commanding officer. But, incredibly as it seems, it happens. A soldier grieving about deficient CF medical care will have his grievance examined at the first level by the Director General Health Care.

The regulation states that the Initial Authority has 60 days in which to make a determination. One would expect that the 60 days period would only be exhausted in the most difficult cases. Yet, in 2008 only 14 per cent of all the grievances were responded to within 60 days. The average time taken to adjudicate a grievance at the first level is 18 months. One could only imagine what would happen if the grievance were to deal with some urgent operational matter faced by a soldier deployed on a tour of duty in Afghanistan.

It gets worse. There is evidence that in many cases, the Initial Authority, upon receipt of a grievance, automatically generates a request for a one-year extension without even looking into the matter. Attached to the extension requests is the information that if consent is not provided, the grievance would be immediately elevated to the final level for adjudication where there is no statutory time limit and where the average wait is expressed in years. This *laissez-faire* treatment of the legitimate grievances of soldiers stands in stark contrast with the unlimited commitment and service demanded of them by their leaders.

Since its inception, the Canadian Forces Grievance Board has done magnificent work by providing an independent, impartial and fair review of the very few grievances it is allowed to review each year. That independence and impartiality has now been severely compromised, however, by militarizing every one of the leadership positions on the grievance board. Also, contrary to popular belief, the grievance board plays a very minor and diminishing role in the handling grievances because its jurisdic-

tion is limited to an infinitesimal small segment of the grievances.

Neutered by the legislation, the CF Grievance Board is deprived of any real power to order a remedy. It only provides findings and recommendations. With one exception, the power to order a remedy is vested and remains in the hands of the Chief of the Defence Staff. However, the CDS cannot award pecuniary compensation to an injured party. Somewhat surprisingly, that authority is given to Justice Canada lawyers who, in most cases, have been parsimonious with claims for compensation. Strangely, the military authorities seem to have been very accepting of this sorry state of affairs.

Lastly, in 2003, the military created a ubiquitous and potent CF Grievance Authority with a staff as large as that of the CF Grievance Board charged with the responsibility for monitoring all of the grievances and staffing grievances submitted to the Grievance Board. More exceptionally, the Grievance Authority can also settle any grievance at the CDS level that is not subject to a mandatory referral to the Grievance Board. What this all means is that for the first time ever, the CDS and senior generals have divested to a Colonel one of the most important tools of generalship to be immediately, directly and personally involved in addressing or redressing instances of abuses and/or other systemic deficiencies brought to their attention by soldiers aggrieved by the actions or omissions of junior commanders. They have also empowered a CF bureaucracy to get between the grievance board and the CDS in adjudicating grievances.

The CF must recruit and retain sufficient, capable and motivated people—our sons and daughters. It is an organization where commanders lead by example, where the environment is free from harassment, intimidation, coercion of any sort, and where soldiers know that they are truly valued as individuals and that their rights, including the right to grieve, are scrupulously respected and enforced. This must be done transparently so as to sustain their trust and confidence and to demonstrate to those of us who observe from the outside that the Canadian values of fairness, impartiality, independence and justice are upheld by the military.

Although no armed forces want to foster a grievance culture, everyone needs to have the confidence that soldiers may, as required on some rare occasions, submit a grievance to someone in authority if they feel that they have been unfairly treated. Soldiers will also have the trust that they will be listened to and that, acting on the expert independent advice of a civilian body such as the grievance board, their grievances will be dealt with properly and promptly by someone in command. At present this is lacking. For the sake of our soldiers, sailors and air persons, who are now serving the nation in many places around the world under exacting and sometimes perilous conditions, the *National Defence Act* must be urgently amended to ensure that their 'right to grieve' is not an empty gesture.

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