

▶ OVERSIGHT OF THE MILITARY ESTABLISHMENT: *Tempus Agendi*

by Michel W. Drapeau and Joshua M. Juneau

AN AGE-OLD PROBLEM of political governance is a military's subordination to political authority. In other words, how should a society control those who possess the ultimate power of coercion by physical force?

A concise definition of such 'civil control' was once offered by a political scientist, the late Prof. Samuel P. Huntington, who wrote: "the proper subordination of a competent, professional military to the ends of policy as determined by civilian authority." In its fullest sense, the Harvard University scholar continued: "civilian control means that all decisions regarding a country's defence—the organization, deployment and use of armed forces, the setting of military priorities and requirement and the allocation of the necessary resources are taken by a civilian leadership."

In Canada, modern-day civil society exercises very little and inconspicuously quiet oversight over the Canadian Armed Forces (CAF), and this is problematic. To make matters worse, the few civilian oversight agencies that are provided for in the *National Defence Act* have not only been granted a limited oversight responsibility, but some of them have been overtaken, so to speak, by retired senior CAF officers counterbalancing the original purpose of establishing these 'civilian' oversight bodies. In doing so, there has been an inhibition on transforming the CAF's organizational culture in a positive way.

Currently, there are six such oversight agencies, four deal with the concerns of military rank and file directly, and two operate more at the corporate level.

THE FRONT LINE

The Military Grievances Review Committee (MGERC) was established by Parliament under the *National Defence Act* following the Somalia Inquiry. Its mandate is limited to reviewing grievances and making non-binding findings and recommendations to the Chief of the Defence Staff on grievances from the rank and file. As an administrative tribunal, the MGERC is allegedly "independent" from DND and the CAF. Its purpose is

to provide in-depth, fair and impartial review of every grievance referred to it. It is currently chaired by retired Colonel Vihar Joshi, a recent former member of the Judge Advocate General Branch. Its part-time Vice-Person is retired Colonel Francois Malo, a former Commander, CFB North Bay and Director General Canadian Forces Grievance Authority, who advised the Final Authority on many grievance files. Another part-time Committee Member is retired Major Eric Strong.

The Military Police Complaints Commission (MPCC) is an independent quasi-judicial body was also established by Parliament under the *National Defence Act* following the Somalia Inquiry. It provides avenues of complaints against the military police similar to that of civilian police. The MPCC reports its findings and makes recommendations to the military police and the national defence leadership. It is currently chaired by retired Lieutenant-Colonel Tammy Tremblay, a former member of the Judge Advocate General Branch.

The DND/CAF Ombudsman, a position created by the Minister of National Defence, not Parliament, has no statutory powers nor independence from the military establishment. This is far cry from an Inspector General, appointed by and responsible to Parliament, which was recommended by the Somalia Commission in 1997.

- A key finding of the Somalia Commission was the "mechanisms for parliamentary oversight of DND and the military activities were ineffective." The Somalia Commission determined that an Inspector General was necessary to promote greater accountability throughout the DND and the CAF, in part because Parliament and the Minister should not rely entirely on the expert advice of the DM and the CDS.
- The Somalia Commission concluded that such a body was required "to review and report on an ongoing basis on defence affairs and the actions and decisions of leaders in the CF and DND," and to ensure that members had a "protected channel of communication to the Minister's office."

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- The proposed Inspector General would “form an essential part of the mechanism Canadians use to oversee and control the CAF and the defence establishment. The Inspector General should be appointed by the Governor in Council and made accountable to Parliament.” “[He] should be a civilian and have broad authority to inspect, investigate, and report on all aspects of national defence and the armed forces.”

In her May 2022 report on Sexual Misconduct in the Military, retired Justice Louis Arbour recommended the appointment of an External Auditor tasked with overseeing the implementation of her report and other external recommendations accepted the Minister of National Defence. The External Monitor was tasked to provide monthly updates to the Minister and bi-annual public reports. According to Justice Arbour, the External Auditor would ensure ongoing accountability for DND and CAF leadership and challenge the insularity with which senior leadership has, to date, reacted when faced with recommendations from outsiders. Interestingly, Justice Arbour also noted that “the external monitor could, eventually, take on a permanent role, like that of an inspector general.”

In October 2022, Madame Jocelyne Therrien was appointed as the External Auditor “to oversee the military’s efforts to address sexual misconduct.” following the tabling the Arbour Report. It took five months for the Minister to appoint the External Auditor. Three months following its appointment the public has yet to hear from Madame Therrien about progress or results, if any, by the military to address sexual misconduct.

CORPORATE LEVEL

The Communication Security Establishment (CSE) is established by Parliament under the National Defence Act. The CSE operates under a system of independent oversight provided by the following: 1) National Security and Intelligence Review Agency (NSIRA); 2) an Intelligence Commissioner; and 3) the National Security and Intelligence Committee of Parliamentarians (NSICOP). The oversight provided to the CSE activities is second to none.

The Court Martial Appeal Court (CMAC) is established under the National Defence Act. As the name indicates the Court has



jurisdiction to hear appeals of decisions from Courts Martial. Judges appointed to the CMAC are drawn from the Federal Court, various Superior Courts from the provinces and territories and the Federal Court of Appeal.

CONCLUSION

The need for greater civilian oversight of Canada’s military has never been clearer; by all accounts, at present, the CAF is at a most critical stage with declining recruiting levels and retention shortfalls of trained personnel. When coupled with its tainted institutional reputation and prestige, as perceived by a variety of stakeholders, the time to act with both solemnity and unrestrained accountability could not be more critical.

The military is not alone in the need to ‘up their game’. It is the duty of the legislature and the Minister of Justice to be ever more vigilant to not cede any more control of our armed forces. The full and effective functioning of statutory oversight bodies to the military is crucial to restore it to its former grandeur and trustworthiness. This includes but is not limited to only appointing qualified individuals drawn from civil society to leadership position at the MGERC and the MPCC. As Clémenceau once said: “War is too important a matter to be left to the military.”

The current oversight regime of the Defence establishment is seriously lacking. DND and the CAF are not subject to any true oversight at the front line level. To make matters worse, there is even less parliamentary superintendence.

To sum up, close to three decades after the first major sexual misconduct scandal and the tabling of the Somalia Commission Report, the case for a statutory independent Inspector General to ensure effective oversight of the Defence establishment has never been stronger. The ongoing sexual misconduct allegations against general officers alone should have brought the conversation back, as questions over parliamentary control and accountability, monitoring and reporting have resurfaced.

Tempus Agendi. 🍁

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