

THE NEED FOR A VIGILANT PARLIAMENT

The proposals discussed in this chapter are not a panacea for all that ails the military. Rather, a few thoughts and some modest suggestions are put forward to stimulate debate on a serious subject.

Canada has begun a new relationship with its armed forces, one that arguably requires greater involvement by members of Parliament and Canadians generally in the direction, supervision, and control of the Canadian Forces (CF). Civil control of the military may be a defining characteristic of liberal democracies, but it does not occur invariably. Civil control of the military in Canada and abroad should come from attentive citizens acting through an informed, concerned, and vigilant Parliament.

There is a perceived need to strengthen the role of Parliament in the development and scrutiny of defence policy. Moreover, it is possible that this goal can be achieved by establishing an effective mechanism in Parliament to oversee the defence establishment and by making a few, but significant, amendments to the *National Defence Act*.

PARLIAMENT AND CIVIL CONTROL OF THE MILITARY

The quintessential condition for control of the military and all aspects of national defence is a vigilant Parliament. Between 1949 and 1989, the missions, tasks, organization, and functioning of the armed forces were fixed largely by the circumstances of the Cold War. Oversight of the armed services by Parliament during this period was largely *pro forma*. Since 1989, however, the CF has been called on increasingly to serve Canada in complex situations involving uncertain alliances, where the missions or the applicable doctrine are not always clear and resources, too often, are inadequate.

Given this reality, Parliament must exercise greater diligence in critically monitoring the terms agreed to or set by the government for the employment of the CF overseas and for safeguarding members of the armed forces from unreasonable risk. It must also monitor the operations of commanders and troops in the field. In 1994, a special joint committee of the Senate and the House of Commons reported that "whatever our individual views on particular issues of defence policy or operations, there was one matter on which we agreed almost from the beginning — that there is a need to strengthen the role of Parliament in the scrutiny and development of defence policy."¹ Proponents of a greater role for Parliament also see a need to strengthen Parliament's involvement in other important areas of national defence. Their argument proceeds on the basis that Canada requires a modern and more effective mechanism for greater control of national defence — one that is better suited to a sovereign liberal democracy and to the circumstances that the CF will most likely encounter at home and abroad.

Conducting inquiries of this nature arguably should be Parliament's responsibility, although it does not do this as yet. To achieve more effective oversight, Parliament's mechanisms for inquiry must be improved. A starting point might be to have the powers and responsibilities of the minister of National Defence, the chief of the defence staff (CDS), and, in particular, the deputy minister (DM) of the Department of National Defence clarified in law.

Should We Strengthen the Role of Parliament?

Directing the CDS and the DM is the duty and responsibility of the minister of National Defence acting for the government of the day.² Parliament has a role in enhancing public awareness of defence issues through debate and reasoned questioning of important decisions. If Parliament is to oversee the armed forces and the broader defence establishment effectively, then it should arguably have a greater ability to influence and monitor the actions and decisions of senior officers of the CF and senior officials in the Department of National Defence (DND). In the opinion of joint committee members, "defence policy cannot be made in private and the results simply announced" to Parliament and Canadians.³

Defence policy and the operations of the CF, especially in international security operations, are complex matters. Members of Parliament, in all parties, have often remarked that they have neither the information nor the resources and expertise to monitor and debate defence policy adequately, whether generally or with regard to specific operations. Parliament might be able to play a more significant part in scrutinizing policy and the actions and decisions of leaders in the CF and DND if an oversight body with the

proper resources devoted to this purpose was created to give members of Parliament a reasonable opportunity to understand the situations they are responsible for reviewing.

A body of this nature could be created as a special parliamentary committee. Whether such a committee should be housed in the Senate or the House of Commons or should be a joint committee with members from both chambers is a matter that need not be settled here, although the virtues of each model are easily stated.

Members of Parliament, although representative of the electorate, may not hold their seats long enough to become 'expert' in defence issues. Senators, on the other hand, while appointed, do have the opportunity to follow defence policy and the activities of the armed forces, often through many governments and in various contexts. Where members of the House of Commons and the Senate act together in special committees, they can bring a mix of fresh ideas and experience to the exercise, but the experience with joint committees has been uneven.

Whatever form it takes, a specialized committee could arguably assist in creating an informed parliamentary consensus on policies and proposals on important defence issues.⁴ Such a committee would be independent of the minister of National Defence and should be free to initiate studies, investigations, and inquiries on its own authority.

However, a committee without appropriate resources is unlikely to succeed. It requires at least a modest research capacity and, occasionally, outside experts. We do not wish to suggest that Parliament needs a 'counter-expert' body to challenge the authority and responsibilities of the minister, the CDS, and the DM. Rather, this committee of Parliament would require resources to research projects, issues, and problems of national defence to assist in developing its own assessment of national defence issues.

Consideration might also be given to entrusting such a committee with other important duties. For example, it could

- provide advice to the Governor in Council (in effect, the cabinet) when the appointment of a CDS is being considered;
- consider annually a report from the CDS on the operational effectiveness and readiness of the CF to meet the missions and tasks set for the CF by the government; and/or
- hold annual meetings at selected CF bases to listen to the views of members of the CF, their dependants, community leaders, and local authorities on issues of importance to the CF.

Of these suggested activities, overseeing the preparations and operations of the CF on international security operations would be, perhaps, the most important function.

In considering the role and responsibilities of such a committee, we should ask not only whether it would be preferable for Parliament to inquire into the future activities of the CF and DND but also whether it should do so proactively, *before* the CF is committed to a serious operation, rather than after. This is an important issue. Giving the committee the authority to act in advance of a deployment could be regarded as unrealistic or naïve given the current political reality concerning the role and activity of parliamentary committees.

Whether it is given the authority to conduct oversight in advance of, during or after operations, one would expect that when the government decides to make a commitment to a particular operation in which CF members would be deployed or at unusual risk, special hearings would be convened to examine the appropriateness of the commitment. At these hearings, the committee could be informed about the nature and quality of mission planning and evaluation, including whether the CF has had a reasonable time to prepare and train for the mission, and whether the CDS is prepared to declare the force operationally ready for employment, in all respects, in the mission. In pursuit of its objectives, the committee could also conceivably interview the commander of each CF contingent of an international security operation involved in the deployment.

During hearings of this kind, the committee would likely wish to consider the guidelines, criteria, or standards against which the mission has been assessed. In this regard, the 1987 white paper on defence described the government's policy for deciding when to deploy the CF in international missions. The white paper policy, which was reiterated in government statements in 1991 and 1992, proposed that:

Each request for a Canadian contribution to peacekeeping has to be considered on its own merits. The Government's decision will be based upon the following criteria: whether there is a clear and enforceable mandate; whether the principal antagonists agree to a cease-fire and to Canada's participation in the operation; whether the arrangements are, in fact, likely to serve the cause of peace and lead to a political settlement in the long term; whether the size and international composition of the force are appropriate to the mandate and will not damage Canada's relations with other states; whether Canadian participation will jeopardize other commitments; whether there is a single identifiable authority competent to support the operation and influence the disputants; and whether participation is adequately and equitably funded and logistically supported. Moreover, each of our current commitments is routinely reviewed in light of these criteria.⁵

These are reasonable criteria to be considered in deciding whether the CF should be deployed in a particular international security operation.⁶

In discharging these duties, the proposed committee could also ask for and receive an assessment from the CDS of all significant proposed missions based on these criteria. The point is to ensure that the advice given in regard to any particular deployment be made according to previously known and agreed criteria.

Responsibility for accepting risks to the CF and the defence of Canada rests with the government, and it is the government that must be accountable for every decision to deploy the CF on international operations. But the government cannot make realistic assessments if it has no gauge against which to measure available information. A committee of Parliament could render a valuable service to the government, to Parliament and to Canadians by conducting formal reviews of operational and other assessments made by the CDS and/or the DM and of any questions or reviews presented to the committee by the minister.

As the spectre of war loomed over Canada in the late 1930s, Prime Minister Mackenzie King, responding to questions about Canada's future role in the event of war in Europe, declared, "The policy of the government...is that Parliament will decide what is to be done."⁷ The *National Defence Act*, which came into force in 1950, does not require that Parliament consent to sending the CF on a mission. Indeed, the act gives the Governor in Council power to place the CF on active service, that is, to give it a status usually conferred on troops involved in armed conflict.⁸ However, although not legally required, it has become parliamentary tradition (since 1950) for the government to reaffirm that the Canadian Forces is on active service for specific United Nations, North Atlantic Treaty Organization, and other operations involving substantial numbers of CF personnel and that are considered potentially hazardous.

This parliamentary tradition grew out of a decision by Prime Minister Louis St. Laurent on September 8, 1950. Parliament was debating the *National Defence Act* when hostilities broke out in Korea. Prime Minister St. Laurent declared that, henceforth, whenever significant numbers of members of the Canadian military were to be deployed outside Canada, the decision would be announced in the House of Commons and an enabling order in council would be tabled. However, under the *National Defence Act*, a governor-in-council (cabinet) decision is all that is lawfully required to place the CF on active service. Furthermore, the CF does not have to be placed on active service to participate in an operation. If the CF is placed on active service while Parliament is not sitting, Parliament must meet within 10 days to consider the governor-in-council decision.⁹ Under the arrangements suggested above, the proposed committee, if acting proactively, could also serve Parliament by reporting on its detailed review of defence decisions concerning such deployments.

Consideration might also be given to enacting legislation requiring that Parliament receive notice of deployments (which in any important context would be expected to provoke a debate in Parliament) when placing the CF on active service is proposed, or even whenever the government contemplates deploying any sizable unit or other element of the CF outside Canada. In such circumstances, the CDS could be required to make a report to Parliament on the effectiveness and readiness of the CF not simply to deploy overseas, but to undertake the proposed mission in all respects.

LEADERSHIP FOR NATIONAL DEFENCE

Although the *National Defence Act* (NDA) specifies authority, relationships, and organization of the DND and the CF, it is arcane in some respects and has been interpreted so freely in recent years that the duties and responsibilities of, and relationships between and among, the minister of National Defence, the CDS, and the DM have become unclear.

Members of Parliament and Canadians need an unequivocal and straightforward arrangement of these matters if they are to control and hold accountable the leaders of the armed forces and the wider defence establishment. This could conceivably be achieved with a few significant amendments to the NDA.

The structure of the NDA and custom confirm that the CF and the DND are two separate entities, notwithstanding their being housed and administered within an overarching organization. This division could be clarified and made more specific in the act and enhanced through separate provisions clarifying the minister's responsibilities and powers regarding the Department of National Defence and the Canadian Forces.¹⁰

Consideration could also be given to amending section 18 of the NDA to reflect the *de facto* status of the CDS as the commander of the CF. Such an amendment should seek to clarify the relationship of the CDS to the minister and confirm the position of the CDS as head of the service and senior military adviser to the government.

In making such an amendment, care should be taken not to impinge on the authority of Her Majesty and the Governor General as commander-in-chief of the CF. The legislation should therefore stipulate that final and ultimate authority over the military resides with Her Majesty and the Governor General as commander-in-chief of the CF. Thus framed, the amendment would respect the prerogatives of the Governor General and the relationship between the Governor General as commander-in-chief of the CF and the CDS as commander of the CF.

The Deputy Minister

The NDA states simply that "there shall be a Deputy Minister of National Defence" appointed by the Governor in Council. It does not state or define in any way the powers or authority of the office. Somewhat surprisingly, the act does not specify the relationship of the DM to the CDS or the CF. Hence, it is left to other statutes and custom to establish the powers and authority of the deputy minister of National Defence, in particular the *Financial Administration Act* and the *Interpretation Act*. Although the DM's authority, if any, over the CDS and the CF is not clear in law, the Glassco Commission stated in 1963 that the DM's authority "is exercised subject to the limitations set out in the NDA."¹¹ Since the NDA states expressly that it is the CDS who has the "control and administration of the CF", the deputy minister of DND should not act in military matters that are the province of the CDS under the NDA. However, the influence of the DM in all areas of defence policy, including "direction of the CF", has increased significantly over the years, especially since 1972, when military and public service staffs were amalgamated at National Defence Headquarters.

Bureaucratic practices, on occasion, can be a cause for serious concern. Bureaucracies quite naturally can expand their duties and responsibilities in an attempt to fill legislative gaps or inadequacies. The notion of civil control of the military should not be confused with control exercised by public servants.¹² Indeed, this latter state of affairs undermines the traditional and necessary responsibilities of Parliament. Therefore, the NDA arguably should be amended to articulate the duties and responsibilities, as well as the limits of the powers and duties of the deputy minister of National Defence with regard to the CDS and the CF.

The NDA could expressly prohibit the deputy minister from assuming the powers or prerogatives of the minister as regards the authority to direct the CDS in any matter concerning the "command and administration of the CF". To clarify the DM's mandate further, the NDA could specify the DM's authority in matters that do fall within a deputy minister's responsibilities, such as financial administration and the management of public servants in DND, and acting as the senior departmental policy adviser to the minister, for example, as regards public service administration.

National Defence Headquarters

Clear, unambiguous lines of accountability and responsibility should be in the forefront of factors to be considered in any revision of the organization of national defence. The lack of clarity in matters of structure and organization at NDHQ is of concern to us. On occasion, we found it exceedingly

difficult to unravel or adequately separate the actions and decisions of senior officers of the Canadian Forces from those of senior public servants in the Department of National Defence, including the CDS and the DM. This confusion, in practical terms, extends beyond the Inquiry setting and affects the ability of the government of the day to secure effective accountability for official actions.¹³

A cogent argument in this regard could be framed in the following terms: if Parliament is to maintain civil control of the CF and the broader defence establishment, then members of Parliament require an organization for the direction of national defence that plainly and unequivocally defines authority for actions and decisions taken in the realms of the civilian 'department' and the military 'Canadian Forces'. This kind of clarity to ensure accountability is not reflected in either the current definitions or the organization of NDHQ. Parliament, perhaps through a committee of the kind outlined here, should examine this matter urgently.

NOTES

1. Parliament of Canada, Senate and House of Commons, Special Joint Committee, *Security in a Changing World*, Report of the Special Joint Committee on Canada's Defence Policy (October 25, 1994), p. 57.
2. *National Defence Act* (NDA), sections 4 and 18(1).
3. *Security in a Changing World*, p. 58.
4. It has been recommended specifically that Parliament create a standing joint committee of the Senate and the House of Commons to assist the government and the minister of National Defence in overseeing the CF and DND: see *Security in a Changing World*, p. 57.
5. DND, *Challenge and Commitment, A Defence Policy for Canada* (Ottawa: Supply and Services, 1987), p. 24.
6. We would note, however, that in peace enforcement or peace making operations — as distinct from peacekeeping — the parties to an armed conflict may not have agreed to a cease-fire.
7. House of Commons, *Debates*, vol. III (1938), p. 3183.
8. NDA, section 31.
9. NDA, section 32, states in part: "Whenever the Governor in Council places the Canadian Forces or any component or unit thereof on active service, if Parliament is then separated by an adjournment or prorogation that will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days..."
10. There are different ways to achieve this. The minister now "has the management and direction of the CF and of all matters relating to national defence" (NDA, section 4). The terms management and direction can be confused with the responsibilities of the CDS, who is "charged with the control and administration of the

CF" (NDA, section 18(1)). This confusion might be reduced and accountability clarified with a few amendments to Part I of the NDA. The minister's relationship to the CDS should also be clarified so he or she 'presides' over DND, and has 'direction over the CDS and all matters relating to national defence'. However, the day-to-day ordering and supervising of the CF, in all respects, is the responsibility of the CDS, not the job of a civilian authority.

11. Royal Commission on Government Organization, Vol. 4, Report 20, p. 74.
12. Testimony of Robert Fowler, Transcripts vol. 50, p. 10155; and J.L. Granatstein "A Paper Prepared for the Minister of National Defence", March 25, 1997, p. 7.
13. We note that others, including the Auditor General of Canada, have repeatedly brought this serious matter to the attention of governments. See, for example, *Report of The Auditor General of Canada*, March 31, 1984, p. 12-2, paragraph 12.9; and *Security in a Changing World*, pp. 57-62.