

**Boundary Issues in National Security Agencies:
The Military and Police Forces in Canada**

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Traditionally, boundaries between the military and police have been oriented according to their respective spheres of influence in relation to the state: the military being externally and the police internally oriented toward the state. This external orientation of the military historically stems from the role it played, primarily via war, in creating the nation-state¹. After the creation of the nation-state, initial boundaries were drawn between the military and police, “The withdrawal of the military from direct participation in the internal affairs of state involved not the decline of war but a concentration of military power ‘pointing outwards’ toward other states in the nation-state system.”² As the nation-state evolved, the external focus of the military reduced the dependence for military force as a means of governance and gave policing agencies the role of domestically maintaining order. By the late twentieth century, some argue that, this distinction began to blur leading to claims of role and jurisdictional overlap, between these two professions.³

The international policing literature has looked at how police agencies have adopted military knowledge, technology and strategies in their approach to drug trafficking, public order maintenance and a host of other crime related issues.⁴ Moreover, this literature points to a:

growing fusion between law enforcement and national security missions, institutions, strategies, and technologies....[has led to] one of the most important blurrings of traditional boundaries occurring in the post cold war era is that between an internally oriented domestic police sphere and an external oriented military sphere.⁵

Most notably this “blur” is evident in the United States and Britain; however, is this the case in Canada? Given the current emphasis on security issues, Canadian civil libertarians⁶ have raised issues concerning the boundaries between these two organizations such as the overlap of roles, jurisdictions, powers, knowledge and technology.

In this paper, the aim is to address whether the international literature concerning military and police roles overlap, accurately depicts the situation in Canada. This paper argues that while

there has been increased interaction between the Canadian Forces (CF) and Canadian Police Agencies (CPA), primarily via the Royal Canadian Mounted Police (RCMP), due to the changing nature of security threats to the Canadian State. This increased interaction does not constitute an overlap of roles, but rather a complementary relationship between the professions in question. The paper begins with a conceptual discussion of professional boundaries and then proceeds to narrow the focus to: 1) the traditional roles these agencies have in society and the effects of recent restructuring; 2) jurisdictional boundaries and policies of cooperation between these organizations; and the 3) professional knowledge boundaries and transfer of knowledge between professions.

Conceptualizing Boundaries

The notion of boundaries is typically used as a point of demarcation, however, it also “captures a fundamental social process, [that of] relationality.”⁷ The analysis presented here works within the sociology of professions literature; specifically it builds on Abbott’s framework of a system of professions. He views professions as being engaged in an ongoing competitive struggle to claim and maintain jurisdictions.⁸ Within this framework, a profession is not studied in isolation, but among other professions that make competing claims within a culture or society. The ability to claim jurisdiction over specific tasks above other professions, provides professions with a monopoly over certain types of abstract knowledge and expertise.

The term jurisdiction is commonly employed as a legal term, referring to the authority of the state via law and the judiciary. The legal jurisdiction of professions is of import here considering the military and the police share the monopoly of controlling and exercising violence in a state.⁹ Sociologically the notion of professional jurisdiction, has been conceptually developed by Freidson, who points out that “to solve any abstract problem, one must have not

only have command over the body of knowledge connected [to] the problem, but also the rules of the discourseand the capacity or skill to employ them so as to arrive at an acceptable solution.¹⁰ Therefore skill is an integral part of the abstract knowledge that a profession lays claim to. A profession gains control of a jurisdiction through their abstract knowledge and expertise. Jurisdiction, as is used here, encompasses not only the legal usage but also the relationships between a profession, its work, and the institutional relations it shares.¹¹

Freidson also acknowledges the fact that all specialized types of work:

...takes place within a social division of labor, [and that] occupational control requires the negotiation of firm jurisdictional boundaries with other occupations within the same division of labor so that their work will be complementary rather than competitive.”¹²

The roles, tasks and jurisdictions that seem to be in question here is that of security or rather national security. Some scholars, particularly in the United States, emphasize that the contemporary military has adopted a crime-fighting stance.¹³ It is argued here that the police-military relationship in Canada has evolved into a complementary division of labour that allows them to deal with national security issues, “often a set of related professional groups work out a division of labour that allows them to function as complementary parts of a professional team.”¹⁴ Leicht and Fennell provide a useful example of how the relationship between psychiatrists, psychologists, and social workers, has evolved into a complementary division of labour. All three professions have similar roles in treating mental illness. Jurisdictions do vary in the sense that psychiatrists have prescribing powers that psychologists and social workers do not and all draw from the same or similar types of knowledge, as well as skill sets to deliver a service to a client. The division of labour is structured in a manner that allows the professions to work in concert with one another rather than competing with one another. Another example of a

complementary division of labour is how the Canadian Public Service deals with service delivery.

In the public service, an increasing number of organizations are becoming “increasingly dependent on each other to fulfill their primary roles and responsibilities.”¹⁵ This interdependence can be described as: “horizontality” or “horizontal management”. This has produced better service delivery for the end user, the public in this case. At the heart of this form of management is the ability to work in partnership “across organizational boundaries”¹⁶ towards the achievement of one goal. Whether that is providing security for the public or in health related issues. This has also been seen in the private sector, for example, when law firms have accountants on staff to consult or provide an accounting related service. In regards to the military and the police, this type of management has resulted in the military and the police being perceived as juxtaposing their roles in society. Especially when, the military becomes involved in domestic drug interdiction operations and police agencies are deployed to peace stabilization operations. On the surface seems to be case, but is this an accurate depiction?

Traditional and Restructured Roles

An oversight of the research in the field of policing, whether historical, sociological, or political, is that it fails to acknowledge the fact that the professional police as an institution inherited much from the military. This influence has taken many forms, for example, the first commissioners of the modern police services were military officers, as were many of the police officers who enlisted with them. It is interesting that despite being an organization formed from an acute fear of military control, the police would establish itself so closely along military lines. In Canada, some of the first North West Mounted Police constables, as well as command officers, were recruited from the Royal Military College and militia officers. “Military, rather

than police experience (not to mention political suitability) seems to have dictated the governments selection of North West Mounted Police commissioners.”¹⁷ Some policing scholars acknowledge that: “policing literature rarely examines police/military connections except when lamenting the [perceived] poor decision made by policing forefathers in choosing the traditional paramilitary police model.”¹⁸ This ‘paramilitary’ orientation towards policing has caused a tension within Canadian law enforcement that in many respects has yet to be resolved.

Unlike the military, the police is a relatively new organization in society, which in Canada stems from the British tradition of policing. During the early nineteenth century, “the old system of law enforcement began to collapse. By this time, London had developed into a large industrial city experiencing problems of poverty, disorder, ethnic conflict and crime”.¹⁹ As a result, Sir Robert Peel championed the cause of public safety and is principally remembered for his role in the founding of the London Metropolitan Police in 1829. However, the people of London were fearful that this new police service would be a repressive one. Peel’s blueprint for modern policing took great care to distinguish the police from the military. For example, while the military wore red tunics and carried firearms, the police would wear blue tunics and would not carry firearms. In Peel’s opinion, “the police existed to prevent crime and disorder as an alternative to repression by military force.”²⁰ Peel’s model for policing has since been introduced in Canada and in other countries. With the formation of the “modern police” mission, strategy, and an organizational structure were introduced to professional law enforcement.²¹

Since the late nineteenth century, policing has undergone a period of professionalization; the formation of professional associations, educational and technological centres paved the way for professional police system. In common usage, a police agency is an organization that is state sanctioned to maintain civil public order. What this definition overlooks is the number of other

agencies that contribute to the civil order within society. In Canada, for example, agencies such as Customs and Excise Canada or the Canadian Coast Guard also contribute to maintaining civil public order. In some cases, private security firms are contracted to maintain the civil order within a given territory and the military, under select conditions, has also maintained the public order, as seen during the events of October Crisis.

Despite the historical and organizational similarities between the police and the military, the role that each profession has in society is distinguishable. The police are primarily responsible for:

- Identification of criminal offenders and criminal activity and when appropriate, apprehension of offenders and participating in subsequent court proceedings.
- Reducing the opportunities for the commission of some crimes through preventive measures.
- Creating and maintaining a feeling of security in the community.
- Promoting and protecting the laws of Canada
- Providing other services on an emergency basis.²²

The primary responsibility of CPA is to enforce the laws of Canada and prevent these laws from being violated. Their members constantly apply the knowledge and skills of their profession in their daily encounters with the public. The primary role of the military is to act in times of war, “however they rarely engage in the central activity that defines their profession “real war”.²³

Likewise, the police do not apprehend criminals as often as most would think, most constables spend much of their time conducting administrative duties as well as answering calls for service, not the typical notion that they are fighting-crime.²⁴ Even though the primary objective of each organization is the security of the public, the police fulfil this objective internally and with the principles of justice at the forefront of their profession. The military on the other hand is externally focused and is primarily concerned with a political objective or victory over an adversary. Granatstein provides a useful definition of the role military professionals play in

Canadian society, they are:

- Experts with specialized and superior knowledge and skill, mastered through continuous study and practice and capable of being tested against measurable standards. Their task is the management of violence, the ordered application of force.
- In wartime, this expertise means learning how to apply technical skills on the battlefield, how to employ tactics and strategy to defeat the enemy.
- In peacetime, military expertise requires that soldiers study and draw the appropriate lessons from military history, identify and master the use of the weapons and equipment needed for future conflict, and prepare a doctrine based on those weapons and the capabilities of likely enemies.²⁵

Granatstein suggests that military professionalism can be tested against measurable standards, police work in certain respects cannot. For example, while you can measure how many criminals have been apprehended and found guilty of a crime, the absence of crime is difficult to quantify. Both agencies protect the laws and citizens of Canada although police agencies have a more active responsibility of doing so. Under exceptional circumstances, as seen during the Oka crisis of 1991 and the October Crisis where police agencies were unable maintain control of the situation, the military is viewed as the last option available to the state. The military is the nation state's force of last resort, this premise was reinforced in the *1994 Defence White Paper* and echoed in the Annual Report of the Chief of Defence Staff in 2002-03.

The combination of these roles and responsibilities is what separates the police personnel from members of a military organization. Another issue separates the police from the military, accountability. The military is primarily held accountable to the political branch of the government. While constables and soldiers are accountable to their respective chain of command and internal accountability mechanisms. Police constables are also accountable to the rule of law and the judiciary branch of government. CPA are also held accountable to local police boards and external review boards, such as the Special Investigations Unit in Ontario, which reviews all cases where individuals have been injured.

Effects of Recent Restructuring

Neo-liberal economic policies of fiscal downsizing affected both the CF and CPAs, both of which underwent a period of restructuring in the 1990's. The RCMP and other CPAs have the responsibility of enforcing Canadian laws, preventing crime and maintaining peace, order, and security.²⁶ This role includes responsibility for law enforcement, gathering of intelligence, public education of policing issues, crime prevention and alternative measures of justice.

The last three roles are recent additions to the RCMP's function in Canada. In the 1980s, crime rates were on the rise, "budgets were being cut for the first time in the RCMP's history and there was growing criticism from the communities the force policed"²⁷ In 1989, the RCMP Commissioner delivered a directional statement indicating that the RCMP would adopt a philosophy of community policing as the method of service delivery. This represented a major shift for the RCMP, the repercussions of which are still being felt today. At best, community policing is an elusive term with varying definitions employed by police organizations, academics, and the public. For the sake of clarity, community policing as used here, denotes the increased role of the public in maintaining public safety, a public that is more active and coordinated in enhancing safety. "The police cannot bear the responsibility alone....In an apt phrase the public should be seen as 'co-producers' with the police of safety and order."²⁸ Eventually, the RCMP and other CPAs developed models of community policing and incorporated other models of corporate management principles. Many would argue that this change was not based "upon a new found commitment to citizen involvement and democratic participation in governance, but because of an ideological commitment to reducing the size of government and to emulate the private sector."²⁹

This restructuring significantly altered the way policing is conducted not only for the RCMP, but for other CPAs that adopted this philosophy. Most notably, there was a change from reactive to proactive policing where the police would be more active in preventing crime as opposed to limiting themselves to investigating crime after the fact. Secondly, a decentralization of command occurred, community policing enables front line officers to make decisions that directly affect communities. This represents a restructuring of the previous top-down decision-making process in favour of empowering front line officers and middle managers to make decisions about how policy is implemented and enacted. Ten years later, the effects of this decentralization and community policing are still evident, in a recent survey of Canadian police executives, sixty-eight percent preferred a shared leadership style and sixty-six percent preferred a network structure that promotes lateral, upward and downward communication and contact.³⁰ In relation to the public, the RCMP especially, has made a transition from a paramilitary organization, which in part caused the public criticism of the early eighties, to one that is transparent, publicly accountable and emphasizes more responsibility for the individual constable.

Today, community policing is no longer the priority it once was when originally introduced, but rather perceived as the normal state of affairs. The RCMP has begun adopting a new philosophy over the past several years that focuses upon: integrated policing, defined as the, “ability to work cohesively with each other - exchanging strategic and criminal intelligence, sharing tactical and operational knowledge, planning joint and individual actions, and communicating effectively.”³¹ This philosophy is meant to operate both domestically and internationally on four different levels. At the community level with the public; at all levels of government, as well as other national and international police agencies; and on international

peacekeeping missions. In the RCMP Report on Plans and Priorities for 2002-2003 and the recently released directional statement, the Commissioner of the RCMP outlines four strategic priorities “to bring down the "barometer of crime,"³² organized crime (OC), youth, international policing, and terrorism. OC is an increasingly dominant issue for policing, as OC groups are conduits into Canada for illicit drugs, human smuggling, computer crimes and money laundering. These issues are further exacerbated by the growing trend in transnational crime, usually connected to OC. This issue, along with an increased call for police officers in UN peace operations, has led to international policing becoming a greater priority for the RCMP. Police agencies have a mandate to educate the public concerning crime issues. In today’s society, educating Canadian youth is an especially important role since statistically persons in the fifteen to twenty-four age cohort commit more crime and are more likely to be victims of crime than any other age group. Finally, the events of September 11, 2001 demonstrated the need for the prevention of terrorist actions. This issue has quickly become a top priority for the RCMP, with resources being reallocated to the prevention and investigation of terrorist related issues.

The CF has also undergone a period of restructuring, the end of the Cold War and the events of the Somalia Inquiry had lasting impacts upon the CF. Similar to the public criticisms concerning how the RCMP conducted business, the Somalia Inquiry and the resulting disbandment of the Canadian Airborne Regiment (CAR) tainted the public image of the CF. While many factors, such as dysfunctional group practices and poor leadership, among other issues, contributed to the disbandment of the CAR; in the end what had been an elite unit in war time quickly became a dysfunctional unit in peacetime.”³³ The CF also faced fiscal constraints during the 1990’s, “the aim [of which] is to cut costs by reducing bureaucratic overhead and

increasing efficiency of “service delivery”. A major element of this effort is to retain only core CF competencies.”³⁴

With the Cold War over the CF needed to make a shift to a peacetime military. Despite this shift, the mandate of the CF remains the same, “to defend Canada and Canadian interests and values while contributing to international peace and security.”³⁵ This mandate can be broken down into three main roles. Firstly, to defend Canada; secondly, to contribute to Continental Security in collaboration with the US military; and, lastly, to contribute to international peace and security; which the CF have undertaken on numerous occasions in concert with the United Nations (UN), and the North Atlantic Treaty Organization (NATO) members.³⁶

With Canadian demographics shifting to a predominantly older population and a substantial number of current CF members reaching the point of retirement in the next five to ten years, human resources issues have become a major priority for the CF. With the change to a peacetime military, significant modifications have taken place in areas of leadership and professional development. Six areas of “investment” were highlighted in the 2002-2003 National Defence Report on Plans and Priorities and echoed in the DND planning document Defence Strategy 2020:

- recruiting and retention;
- training, leadership, and professional development;
- interoperability, command and control, and intelligence;
- equipment modernization—through procurement and upgrades—in areas considered most relevant to modern military demands and challenges;
- domestic security, emergency preparedness, protection of critical infrastructure, and nuclear, biological, and chemical defence; and
- counter-terrorism.³⁷

Military leaders are now adopting a stance of “selectively [applying] military force to help resolve conflicts.”³⁸ New professional development programs, academic and military have

become more accessible in an attempt to foster an environment of critical thinking among CF members to challenge the status quo.³⁹ In the midst of the CF adopting a proactive stance, there needs to be an innovative culture that breeds forward thinking.⁴⁰ With coalition task forces as the mainstay of current military operations, witnessed in the 1991 Gulf War and in peace operations missions, the CF has made it a priority to achieve *interoperability*, the ability to work seamlessly with other militaries and allies. In light of the new security environment interoperability will become imperative in coordinating responses to terrorism and continental security.

The restructuring of management principles and downsizing has had similar effects upon the CF and CPAs. Both were asked to be more efficient in their service delivery methods and to do more with less. In light of tainted public images, these agencies fostered an environment that is expected to bring about not only a cultural but a corporate change as well. These organizations are shifting in a similar fashion to that of the private sector. One acute observer of the RCMP restructuring notices:

The corporate culture becomes that of a serve industry to the public, borrowing values from the private sector such as partnerships, search for excellence, continuous quality assurance. . . . The subculture becomes one of a white collar profession that is responsible, responsive to community needs, and driven by a code of professional ethics. . . . Interagency cooperation is a key strategy involving a branching out to other service delivery agencies to form a strategic partnership and a more cooperative and productive division of labour. . . . within a service network of agencies addressing. . . . safety.⁴¹

The same could also be said of the CF. These agencies have made it a priority to respond to community needs (international or domestic) most notably, in the current national security issue of terrorism. The call for a more efficient service delivery method produced the need for increased interagency cooperation, whether it is with fellow police agencies via integrated

policing by the RCMP or the CF being interoperable with international military allies. This emphasis upon interagency cooperation

Jurisdictions and Polices of Cooperation

Issues relating to national defence operate only at the federal level in Canada, as directed by Part VI the *Canadian Constitution Act of 1867*. Part VI of the Constitution establishes the distribution of legislative powers between the federal and provincial governments. Section 91 (7) provides federal legal authority to conduct matters related to military and defence.⁴² Section 92 (14) of the Constitution empowers provinces with the authority to enforce and administer justice within their jurisdiction.⁴³ While provinces have the authority to administer justice, only the federal government has the authority to amend the Criminal Code. Each province has a Solicitor General, or like position, that is responsible for administering the Provincial Police Act, thereby enabling the province to establish a police force to legitimately enforce laws within their jurisdiction. For example, a member of the Metropolitan Toronto Police Service is not legally responsible for stopping a crime in Montreal. Federally, the *Royal Canadian Mounted Police Act*⁴⁴ provides for a police force whose officers are peace officers, but are mandated to “enforce all Acts of Parliament and regulations made there under, and render such assistance to departments of the Government of Canada as the Minister may direct.”⁴⁵

While the jurisdiction of the RCMP is generally contained within the borders of Canada, the RCMP Act allows, “the Force to be employed in such places within or outside Canada as the Governor in Council prescribes.”⁴⁶ For instance, the RCMP in addition to sending members to peacekeeping missions may be involved in taking “commissioned evidence” in other countries for the purpose of presentation at trial. This role is becoming increasingly common with the rise of transnational crime. Transnational crimes such as drug trafficking, human smuggling and

terrorism have had profound impacts upon not only the Canadian law enforcement community but also implications for security related policies. The RCMP Act allows members to be deployed outside of Canada at the behest of the Governor in Council. The legal jurisdiction of these agencies is central to our discussion. The CF has been used in a domestic capacity, however, what allows the CF to engage in police related functions or to cooperate with domestic law enforcement agencies and do members of the CF have the same powers that members of CPA do. While the term *officer* is commonly used in relation to members of police agencies it is not in the same context as a military officer. Not all members of a police agency are officers, typically that is reserved for members that hold the rank of Inspector or higher, just as the members of the military who have the rank of lieutenant or higher are considered part of the officer corps. The term officer, when used in relation to members of police agencies is in reference to the position of authority and responsibility a person possesses. However, who has the authority of being a police officer in Canada?

Peace Officer Status

Although, the *Canadian Criminal Code*⁴⁷ does not explicitly define the term *police officer*, it uses the term *peace officer*⁴⁸, to which a wide interpretation can be applied. As stated in the *Criminal Code* a peace officer includes:

- (a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace,
- (b) a member of the Correctional Service of Canada who is designated as a peace officer pursuant to Part I of the Corrections and Conditional Release Act, and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in Part I of the Corrections and Conditional Release Act,
- (c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,
- (d) an officer or a person having the powers of a customs or excise officer

- when performing any duty in the administration of the Customs Act or the Excise Act,
- (e) a person designated as a fishery guardian under the Fisheries Act when performing any duties or functions under that Act and a person designated as a fishery officer under the Fisheries Act when performing any duties or functions under that Act or the Coastal Fisheries Protection Act,
- (f) the pilot in command of an aircraft
 - (i) registered in Canada under regulations made under the Aeronautics Act,
- or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations, while the aircraft is in flight, and
- (g) officers and non-commissioned members of the Canadian Forces who are
 - (i) appointed for the purposes of section 156 of the National Defence Act, or
 - (ii) employed on duties that the Governor in Council, in regulations made under the National Defence Act for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;⁴⁹

When applied to specific law enforcement agencies, such as Customs and Excise officers, they are empowered only with ‘peace officer’ status insofar as they enforce specific pieces of legislation, such the Customs Act, while police officers have the primary duty to enforce all the laws within their authority. For example, the *Ontario Police Services Act* empowers an Ontario police officer with the “authority to act throughout Ontario”⁵⁰ and officers of the RCMP are charged with enforcing all acts of parliament across Canada.

The *National Defence Act (NDA)* affords peace officer status to CF personnel under select conditions such as in times of emergencies. This presents the CF with a host of issues for which they may not have been trained, not the least of which is the use of force and liability. “Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.”⁵¹ Police officers receive extensive training in the collection of evidence, the use of force and new technologies of the “less lethal”⁵² variety, such as pepper spray. It is a distinction between the military and the police services that: the military trains its members in the use of lethal force, while the police

train their members to use the least amount of force necessary. To some it may seem contradictory for the military to engage in the non-lethal use of force. Further, military personnel are not trained as criminal investigators in either the legal aspects of crime or the application of laws within Canada.⁵³ With the exception of the military police, the majority of CF members do not receive training, in issues of due process and even then, laws that apply to military personnel are different from the laws that apply to civilians.

Policies of Cooperation

Legally, the jurisdictions of the military and police are separate. However, there are several policies that allow for cooperation between the CF and CPA across Canada. Legislation that allows the CF to engage in domestic operations are in sections 273.6 and 274 through 285 of the *National Defence Act (NDA)*; sections 274 to 285 relate to the Aid of the Civil Power. This portion of the NDA enables the CF, through a formal request by a province or territory, to act in cases where a riot or disturbance is occurring or likely to occur.⁵⁴ If the CF performs any related domestic law enforcement function, a formal request must be made by the federal Solicitor General or the Commissioner of the RCMP:

.... pursuant to an Act, a regulation, a statutory instrument, or a Memorandum of Understanding between the Solicitor General of Canada and the Minister of National Defence, are duties of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers.⁵⁵

Even though CF members are granted peace officer status, the official position of the CF when in aid to the civil power is not to, “replace the civil authorities but [assist] them in the maintenance of law and order.”⁵⁶ Further, while they may “exercise all of the powers and duties of constables; [they] are not to be considered constables in the service of the civil authorities.”⁵⁷

In addition to federal legislation, there are also two Memoranda’s of Understanding (MOU) between the Solicitor General and the Minister of National Defence. The first deals with

the provision of Dedicated Assistance by Canadian Forces in Support of the RCMP for Counter-Drug Operations⁵⁸. There have been several incarnations of these Memoranda dating back to the early 1990's, the last version was signed in 1999 and is scheduled to sunset in 2004. Unlike the previous mechanisms, this MOU explicitly indicates that RCMP will:

be responsible for all direct law enforcement activities, CF personnel will act in a support role in relation to the RCMP, and will only provide assistance where there is neither the intention nor significant probability that CF personnel will be used to apprehend arrest or detain suspects.⁵⁹

Thus, CF members are not deemed peace officers in such operations, however, the “CF definition of self-defence will be extended to include all law enforcement officers or other personnel actively participating...”⁶⁰ which can also become problematic. “Military forces operating in a domestic situation, where the rules of engagement limit the use of force to ‘self-defence’ situations might still have an interpretation the term that differs from that of local police forces.”⁶¹ CPA has increased education and training of its personnel in use of force as well as self-defence to insulate themselves from wrongful death shootings or public complaints. Where the rules of engagement differ for the CF and CPA may have consequences that are now operationally or legally unclear in cases where the CF members are given peace officer status.

The second MOU pertains to a Joint Biological and Chemical Response Team. The purpose of the MOU “is to establish the conditions under which the RCMP and DND cooperatively train for and respond to terrorist or criminal use of devices or material”⁶² believed to be of a chemical or biological origin. The MOU further allows DND to train and provide equipment to other police services across Canada in addition to the RCMP. RCMP members of the Joint Biological and Chemical Response Team have two key roles to play in operations of this type: to support a police investigation and to collect forensic evidence.⁶³ In this regard we

see the RCMP take on a role that is complementary to the military. While the military deals with the actual threat, the RCMP deals with issues of law.

Although though Sections 22.01 (3) of the Queens Regulations and Order provides “peace officer” status to CF personnel when performing any related domestic law enforcement role, the mechanisms reviewed here indicate that the CF does not replace nor represent the civil authorities in a law enforcement capacity. The role of the CF in such situations is for the benefit of the civil authorities, by providing, I would argue, three types of support: human, technical, and tactical. In cases of natural disaster such as flooding, we have witnessed the CF provide human resources on the ground to fill sand bags, to reduce the risk of damage. The CF provides technical resources when training police officers to respond to situations where weapons of mass destruction may be a threat to the public. Finally, the CF made tactical resources available in situations such as OKA or the October Crisis. Using the CF in a police related function requires a functional change in how the CF operates which may not be possible considering the legal and public ramifications that could follow. One of the major criticisms following the October Crisis was that the *War Measures Act* was too draconian. While considered sound in wartime, the Act did not have an accountability-based framework built in to deal with abuses during domestic situations. In the post 9/11 world “where the military sees “enemies” of the ... [state], a police agency... sees “citizens” suspected of crimes until proven guilty in a court of law.”⁶⁴ The circumstances of 9/11 and its aftermath provide the potential for drawing the CF into domestic policing. There are issues of due process and rules of evidence that police officers are given extensive training for, however, how will the CF deal with such situations and what are the potential risks of extensively allowing the CF to engage in domestic operations. The last major collaboration between the CF and CPA was during the Group of Eight G-8 in Kananaskis,

Alberta. During the meetings, upwards of five thousand troops were deployed to support police in patrolling an “exclusion zone” around the meeting site.⁶⁵ This was not limited to patrol duties but also to deal with potential high-risk situations that could arise such a terrorist attack or if protesters become uncontrollable. This was a far different arrangement than what was seen during the Asian Pacific Economic Conference (APEC) in Vancouver five years earlier. Where considerable less CF resources were deployed and were not as visible as in Kananaskis.

Fears of anti-terrorist legislation have fueled public concern over proposed “military-zones” or “controlled access military zones” which could have the effect of restricting democratic freedoms, especially surrounding freedom of speech and the right to protest.⁶⁶ The 1997 APEC meetings in Vancouver were seen as a disaster for the RCMP and tainted its image and the public attitudes towards other CPAs involved in maintaining order during protests. Normally during large protests, police public order units are highly visible and on the front lines between protests and government leaders, at Kananaskis this tactic was not used. Regular constables, although in large numbers, patrolled the areas where protesters had gathered. The police public order unit was not highly visible and was placed in a support as needed role, rather than being actively involved. This was also seen in other cities, which hosted G-8 protesters such as Ottawa and Vancouver. The result was peaceful situation, marked by the absence of violence and mass arrests that have become common at such protesters. Since APEC the public is less amenable to the idea of perceived repressive police tactics during protests and for CPA this has been a lesson learned. The role of the CF, during such operations has been a support capacity, however, in light of recent terrorist events the CF will be called upon more frequently to provide knowledge and technology during similar international gatherings.

Professional Knowledge Boundaries

Specialized knowledge has been used in the past to as basis for distinguishing between professions.⁶⁷ “Professions define themselves and there jurisdiction in terms of control of abstract knowledge and the practical technologies and techniques abstract knowledge generates.”⁶⁸ As previously discussed, knowledge and skill are essential to one another and are used here in the same vein.⁶⁹ The status of a profession is “based upon its control over formal knowledge systems, which confers social power to those who produce knowledge.”⁷⁰ To what extent has the knowledge of these agencies in question been appropriated by each other? As demonstrated in previous sections, the CF and CPA deal with each other a regular basis. The focus here is to look at peace operations and counter-terrorism where the military and police operate in conjunction with one another and what effects this has had upon knowledge, skills and technology.

Peace Operations

The CF has been extensively involved in the peace operations since 1948 when the United Nations asked for “forty officer observers to patrol the demarcation line in Kashmir between India and Pakistan.”⁷¹ However, CPA have only been involved in peacekeeping operations since 1989 when CPA first sent its members to Haiti to form part of the United Nations civilian police (CIVPOL) contingent. At first, only RCMP officers were enlisted for this duty. Presently, there are more than one hundred police officers from police services across Canada serving in this capacity. “Over the past decade, Canada has successfully completed more than 25 missions worldwide involving over 1,500 police officers from 30 different police departments.”⁷² Prior to 1989, peacekeeping missions for the most part dealt with maintaining or supporting the peace process between two states and prevention of renewed hostilities.

“Peacekeeping operations since 1988 have proliferated, primarily in response to the fallout from the numerous failed states and a resurgence of ethnic claims of self-determination, primarily in less-developed parts of the world.”⁷³ In cases where the state’s political and legal structure is active the military cannot do more than support the peace process between two factions. In situations of failed states, the military does not have the capacity or knowledge base to put a legal system in place; however, police officers have that ability. “The UN seeks to deliver police services which are community-based, client focused and problem oriented.”⁷⁴ Given the priority that CPA have placed upon community initiatives, it is most likely that the CPA will continue to play an increased role in peace operations. We have started to see this in the evolution of peace operations that are today no longer the fully comprised of military units but also heavily weighted in police personnel.

When Canadian police officers are involved in peace operations, they have two central roles: “To monitor and advise local police forces and train, reform, professionalize and democratize police organizations”⁷⁵ and as part of CIVPOL missions. In the past they have:

- Investigated human rights violations
- Overseen the security and human rights of returned refugees and displaced persons
- Encouraged a neutral political environment, free from intimidation during the electoral process
- Monitored the disarmament and demobilization of police and security forces
- Acted as liaisons between factions, NGOs and UN agencies
- Assisted in humanitarian activities⁷⁶

Further, depending upon the mission requirements of the peace operation CIVPOL members are unarmed, for the most part they act as monitors. In addition, the CF and CPA members deployed in peace operations do not always work in the same area as one another. CF maybe working with Argentinean police while members of CPA maybe working with Indian military personnel.

While members of the military have engaged in some of these activities, their primary role in peacekeeping operations is not to directly involve itself in reforming the police structure. Further, while the military can bring peace to a region, does it have the ability to lower the crime rate. “The military is responsible for re-establishing a stable and orderly environment; however, only CIVPOL can [foster] the capability and will among local authorities to maintain the rule of law in conformity with internationally accepted standards after the mission has ended.”⁷⁷ Both these styles can have mutually benefiting secondary results. For example, if the CIVPOL contingent is effective in its role the military will have less violence to deal with. Conversely, if the military is effective in its role, the police will have an environment that is conducive to reforming the police structure.⁷⁸

Organized crime has historically been major issue for policing, in not only combating it but also making, police personnel who have been influenced by members of organized crime groups accountable. Peace operations have been a hot bed of organized crime activity, with an ineffective or no police agency to enforce the law. Such groups are able to flourish not only to profit from there business but also in some cases replace the government. Issues of police corruption especially surrounding drugs have been issue at one time or another for most major police agencies in Canada. Military personnel are educated and trained to deal with the stress of combat situations, “are they prepared to deal with criminals that are aiming to corrupt them.”⁷⁹

However, in some situations the military cannot not help but take on police related functions, until CIVPOL operations can begin. In such cases, a ‘security-gap’ is created and has to be filled by the military units already on ground.⁸⁰ Security-gaps also occur during peace operations when the CIVPOL mission parameters do not include its members being armed or with authority to enforce the law, as in cases were CIVPOL is monitoring elections. A solution

to this situation seems to have been developed by NATO in 1998 during peace operations in the former Yugoslavia with the creation of Multinational Specialized Units (MSU) to deal with 'security-gaps' of this nature.

[They] contribute to the fight against crime and corruption, which remain major threats to security. SFOR also continues to work closely with the UN International Police Task Force (IPTF), providing assistance with surveillance, communications, transportation and security, and with the United Nations Mission to Bosnia and Herzegovina (UNMBIH) on training local police anti-riot units.⁸¹

MSU are comprised of international police and military personnel "currently from the Italian Carabinieri, French Gendarmes and Estonian Soldiers,"⁸² that are attached to the military headquarters. To date no Canadians have been assigned to MSU, this however may change in future NATO operations. Carabinieri and Gendarmes unlike Canadian police agencies are attached to the military; they represent a fusion of police and military knowledge, skills and technology. They are able to operate as regular police constables enforcing the law but also as specialized police units for high-risk situations, such as hostage takings units similar to Canadian police tactical units. In cases of protests they are able to operate as public order police squads and "can switch to a light-infantry unit in case prevention fails."⁸³

The nature of peace operations have changed the presence of both the police and military among other agencies is considered necessary. Further, a cross-disciplinary specialized division of labor is needed in situations where these "security-gaps" occur. This new division of labor has manipulated in the short term the police-military interface of professional knowledge and technology.⁸⁴ Traditionally, military commanders resist deploying their troops in police related functions because of "the practical issue that it diminishes combat readiness... despite what the casual observer may, think there are surprisingly few synergies between law enforcement and military missions."⁸⁵ Considering only NATO uses MSU and in a singular situation, the effects

of this new division of labour will have upon the CF and CPA involved in peace operations is unclear.

Domestic Counter-Terrorism Units

The CF does not directly involve itself in domestic policing duties and we have discussed the polices which facilitate cooperative or support role that the CF may take in relation to CPA. With the events of September 11th, 2001, there is a heightened need for counter-terrorist units and cooperation between the military and police. It is important to note that the coordination of counter-terrorist activities is a responsibility that is shared between three federal departments – DND, RCMP, and the Solicitor General. The CF have a national-international level mandate to respond to terrorist acts within Canada via the Joint Task Force-2 (JTF), commonly referred to as JTF-2. The pursuant and ongoing investigations of terrorist acts are the purview of the RCMP, and the Solicitor General, who under the *National Counter Terrorist Plan* has the, “lead role for overall planning and coordination of Canada’s counter-terrorism program and for responding to a terrorist threat or incident in Canada”.⁸⁶

These delineations were established in 1992 when the federal government decided that the DND would assume some of the counter-terrorist responsibilities from the RCMP⁸⁷. As such, on April 1, 1993, the RCMP devolved its responsibilities in this area, except those related to the investigation of terrorist activities, to the newly formed JTF-2. The JTF-2 has counter-terrorism as its primary mandate; however, it may also be used in other capacities, as demonstrated recently in the war on terrorism when they were deployed in Afghanistan. As a result, Canada’s counter-terrorist response capabilities became a media and public issue.

In response to the October Crisis of 1970 and the terrorist action at the 1972 Munich Olympics, the Canadian Police services began to develop Police Tactical Units (PTU) that could

deal with terrorist and/or high-risk situations that ‘normal’ police officers were unable to deal with. By the 1976 Olympics in Montreal, there were thirteen PTUs in Canada. Initially some CPAs, which created these units, went to the CF for help in developing a police unit that could deal with such high-risk situations.⁸⁸ By 1997, there were over six-hundred and fifty officers devoted to fulltime tactical operations and deployed on a daily basis.⁸⁹ Today, fifty-four police agencies operate eighty-three police tactical units with over 1200 officers.

Initial, development of PTUs in Canada was buttressed by a strong reliance upon the military to provide knowledge, skills and technology. By 1997, training with the CF was no longer a primary source of knowledge for PTU. The three primary methods of training were with other PTUs in Canada, as well as in United States but also training provided by professional tactical schools such as the National Tactical Officers Association based in the United States. While some units still receive training or train with military units such as JTF-2 in Canada, other have trained with other special forces in American and British militaries as well.⁹⁰

Since the 1970s, there has been a noticeable change in the mandate of PTUs in Canada. The scope of their responsibilities and deployments has broadened, making them a more proactive than reactive police body. Nearly half of the operations conducted by these units, have been devoted to warrant execution, and roughly a quarter of their deployments deal with hostage or barricade situations.⁹¹ In addition to these more mainstream activities, PTUs have also executed warrants on behalf of Immigration Services and Customs Canada; conducted armed ship-boarding at-sea; manhunts or search-and-rescue operations for missing persons; and been involved with organized crime and motorcycle gang operations. This list of PTU deployments demonstrates several issues to our discussion of boundaries between the CF and CPA: primarily, when the police are unable to deal with certain high-risk situations there seems to be a strong

reliance upon the military model to produce an effective response. Military knowledge and technology appropriated by CPA has changed over time and has become “uniquely” the domain of policing.⁹² Military units do not often execute warrants on behalf of the judiciary. As military knowledge has been disseminated, PTU have been able to apply this knowledge to the environment they work in, as well as create professional schools to provide training to police agencies.

Technology

As we have seen the police tactical units, use not only the knowledge but technology that originated in the military. Today there is a greater emphasis placed upon use of less-lethal technology in policing. This has been the result of the public’s intolerance towards the state using what is perceived to be excessive force, for example, instances of wrongful shootings. At the same time, the CF have also seen the need for less-lethal technology in future operations as well.

The expected size of the battlespace, coupled with the velocity of those forces executing operations within it, impose the requirement to see and effect opposing forces well beyond the current battlefield framework of close, deep and rear operations. This capability must include the ability to achieve both moral and physical effects—through a combination of extended lethal and non-lethal means.⁹³

The bean-bag gun, a type of less-lethal technology which fires a shell stuffed, orange nylon bag filled with lead-pellets was first introduced to CPA by the CF.⁹⁴

The CF today faces a similar media environment that CPA have faced for decades. Society is less likely to accept excessive force without accountability and with the omnipresent media; the CF and other militaries need to be careful in how they deal with civilians or non-combatants in a deployments.⁹⁵ This type of technology, which the CPA have been using can have potential uses in CF deployments. However, the military based technology is more likely

to flow to CPA rather than police technology to the military.⁹⁶ A recent Canadian Senate report states that “To enhance overall interoperability to conduct coalition and/or joint operations. [T]here is a now a clear need for Canadian troops to train with U.S. forces. Improvements in U.S. military technology continues to outstrip that of its allies.⁹⁷ With an increased emphasis upon interoperability, American military technology most likely will permeate into CF as well as CPA. In the 1990’s the,

US Department of Justice and the Department of Defence entered into a Memorandum of Understanding on “Operations Other Than War,” which sought to develop technologies valuable to both agencies. This initiative led to the creation of five law-enforcement technology centers designed to apply war-fighting technology to criminal justice.⁹⁸

With CPA and CF operating and in frequent contact with their counterparts in the US, military technology is more than likely to be used by both the CF and CPA, in the near future. Even though, the Canadian government has not made a similar decision to develop and share technology between these agencies. Technology with military origins or applications is readily available to CPA. For example, CPA can now use “satellites and geographic positioning systems with direct military roots now subject the earth to a mind-boggling level of scrutiny.⁹⁹ Compact infrared scanners, which the military has used for some time, is now being employed by CPA to catch drug traffickers.¹⁰⁰ During the Gustafsen Lake standoff in September of 1995 between the RCMP and armed militants, the RCMP requested from the CF, several armored personnel carriers and CF personnel to operate them. Once again, we see the CF taking on a support role and not being actively involved in a policing function. In June of 1997, the RCMP took possession of four used armored vehicles so that it would not have to borrow them from the CF in the future, as it did during the Gustafsen Lake situation.¹⁰¹ It is common for police agencies across the world to have these types of vehicles, a few other CPA also have similar vehicles to deal with crowd control or in high-risk situations. Rarely is there a transfer of policing

technology into the CF. As we can see, military technology has been “trickling down”¹⁰² into the hands of CPA; this type of technological transfer will continue, as the need arises, in a policing aspect.

Summary and Conclusions

This paper sought to address if the international literature concerning military and police boundaries accurately depicts the state of affairs in Canada. In exploring this issue, the roles, jurisdictions and knowledge of both professions were examined. Despite the existence of historical and organizational similarities between the police and the military, the roles that each profession have with in Canadian society are distinguishable. The discussion of the roles that each institution has in Canada supports the argument that these professions are complementary rather than competing.

The primary function of the police in Canada is the enforcement of laws and the prevention of crime. Other organizations, whose members have peace officer status, also have their respective roles to play. Conversely, the primary function of the military is to act in times of war and in defence of the state. However, under exceptional circumstances; the *National Defence Act* affords peace officer status to CF personnel under select conditions as in times of emergencies. The CF cannot involve itself directly in domestic policing without a request by the civil authorities. Even when such circumstances arise, the CF is not seen as replacing the local civil authorities but aiding them. In several memoranda of understanding, the CF and CPA outline a complementary division of labour. It must be underscored that the domestic involvement of the CF is to the benefit of the civil authorities in Canada.

Both the CF and CPA have undergone a period of restructuring due to neo-liberal economic policies throughout the 1990s. This restructuring of management principles and

downsizing has had similar effects upon the both organizations. Both were asked to be more efficient in their service delivery methods and to do more with less, which mirrored the situation occurring in the private sector. This restructuring, as well as international trends in crime and warfare, made the CF and CPA elevate interoperability with international military allies and integrated policing, a priority. This trend also reflects the current management principle of horizontality in the Federal Public Service.

The notion of a complementary division of labour between these two professions is not confined only to domestic operations. As peace operations continue to evolve, they will be more heavily weighted in police personnel. While the military is not to directly involve itself in reforming the police structure, security-gaps will be created and will need to be filled, as they are currently by military units already on ground. As aforementioned, NATO has in the short term manipulated the police/military division of labour and professional knowledge into MSUs, to address these security gaps during peace operations. To date no Canadians have served with these units, the implications of their participation in these units and the extent to which these units will continue to be used in peace operations remains in question.

Domestically, police tactical units have dealt with domestic security-gaps that regular constables have been unable to deal with since the early 1970s. Hybrid units such as PTUs are becoming more common in Canadian policing. Although initially developed and heavily reliant upon the military for knowledge and technology, they have become self-sufficient and rarely depend upon the military as primary means of knowledge. PTUs in Canada have gone on to develop their own knowledge base, resulting in a new specialized division of labour in policing. As military knowledge was been disseminated, PTUs have applied this knowledge to the environment in which they work and have created professional schools to provide training to

police agencies. With the events of September 11th, 2001, there has been a heightened need for these types of units.

While the international policing literature points to boundaries being ‘blurred’ between the police and the military, especially in the United States where we have seen “[a]ll branches of the military [are] now engaged in fully cooperative arrangements and operations with civilian police, the only restriction being that soldiers cannot take the lead in arresting or searching US citizens.”¹⁰³ Unlike the US military, the CF is not involved in border security, nor are they actively involved in law enforcement operations such as those currently seen at US airports. While some Canadian civil-libertarians argue that the CF are too involved in domestic law enforcement; it can also be said that the CF have taken great steps to complement and support CPA when involved with domestic law enforcement. However, the American influence has already been seen in the police and military communities principally in regard to technology. With an emphasis being placed by both the CF and CPA upon inter-connectiveness with their respective American counterparts, this increased interaction at a military and policing level will have consequences surrounding how technology and knowledge is disseminated in Canada. What the impacts of this will be on how the CF and CPA missions are conducted remains an issue for future research.

In the uncertainty of late modernity, professional roles, knowledge, skills and technology have been destabilized giving rise to new divisions of labor and organizational forms.¹⁰⁴ The changing nature of security issues, from the drug trade, transnational crime, and terrorism coupled by the fact that these issues are not constrained by geopolitical boundaries, has placed the police and the military in a position to deal with national security issues as part of and within an international framework.¹⁰⁵ As security issues evolve along these lines, boundaries issues will

arise between these professions. Should they evolve along similar lines as witnessed in the United States, or maintain a complementary division of labor as in Canada, is an ever present question for the CF, CPA and the Canadian public.

Notes

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- ² Giddens, *The Nation-State and Violence*, 192.
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- ⁴ Peter Kraska *Militarizing: The American Criminal Justice System* (Boston: Northeastern University Press, 2000); Tony Jefferson, *The Case Against Paramilitary Policing* (Open University: Milton Keynes, 1990); Peter Kraska and Victor Kappler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units" *Social Problems* (Fall, 1997)44. 1.
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- ¹⁰ Eliot Freidson, *Professionalism: The Third Logic* (Chicago: University of Chicago Press, 1999). 25.
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- ¹⁸ Kraska and Kappler, "Militarizing American Police,".2.
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- ²⁰ Melville Lee, *A History of Police in England* (London: Methuen, 1901)
- ²¹ Samuel Walker and Charles Katz *The Police In America*, 26.
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- ³⁷ National Defence (2002) 2002-2003 Report on Plans and Priorities (Canada: Public Works), 17.
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- ⁴⁵ Royal Canadian Mounted Police Regulations, 1988. 17, a.
- ⁴⁶ Royal Canadian Mounted Police Act R.S., c. R-9, s. 4.
- ⁴⁷ Herein known as the Criminal Code
- ⁴⁸ Canadian Criminal Code R.S., c. C-34, s. 2.
- ⁴⁹ Ibid
- ⁵⁰ Ontario Police Services Act R.S.O. 1990, c. P.15, s. 42 (1); 1997, c. 8, s. 28.
- ⁵¹ Canadian Criminal Code R.S., c. C-34, s. 26
- ⁵² The term Less Lethal is used here, because no weapon is entirely non-lethal.
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¹⁰² See Richard Ericson and Kevin Haggerty, "The Military Techostructures of Policing" in ed Peter Kraska, *Militarizing: The American Criminal Justice System* (Boston: Northeastern University Press 2000). 43-65 for a review of trickle and directed efforts of military technology into law enforcement.

¹⁰³ Peter Kraska *Militarizing: The American Criminal Justice System*, 21.

¹⁰⁴ Ulrich Beck, *Risk Society: Towards a New Modernity*, (London: Sage Books, 1992) Ulrich Beck "The reinvention of politics: towards a theory of reflexive modernity" and "Self-dissolution and self-endangerment of industrial society: what does this mean?", in *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order*, ed. Ulrich Beck Anthony Giddens and Scott Lash (Cambridge: Polity Press) 1-55, 174-83. See also Anthony Giddens, *The Consequences of Modernity* (Stanford: Stanford University Press, 1990).

¹⁰⁵ See: James, Burk, *Theories of Democratic Civil-Military Relations. Armed Forces and Society*, Vol. 29, No. 1 Fall 2002 and David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995).