

**Military Traditions and Laws as Exercised in the Framework Created by Canadian
Social Legislation**

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Military Traditions and Laws as Exercised in the Framework Created by Canadian Social Legislation

The Values and Ethics of the Canadian People and the Charter of Rights and Freedoms Versus the Values and Ethics of the Military and Military Laws

Canadian Values and the Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is connected to the broader issues of societal values and ethics; it represents the fundamental beliefs and freedoms that are the backbone of the Canadian people. The Charter is part of the Constitution, which is the supreme law of Canada, in that all other laws must conform to it (Canada: 2002, 1).

Generally speaking, all laws must abide by the Charter in order to be considered valid.

Therefore, the Charter is the highest protection of the valued rights and freedoms of Canadians. The military must be consistent with the Charter in order to respect and represent the values and beliefs of the Canadian society that it serves.

The Charter reflects the dominant values and beliefs of the Canadian people. Sheila Copps, the Minister of Canadian Heritage, remarks that the Charter represents the rights and freedoms that Canadians believe are necessary in a free and democratic society (Canada: 2002). Martin Couchon, the Minister of Justice and the Attorney General of Canada, comments that the Charter preserves the balance between individual rights and responsibilities, protects minorities and respects the needs of the community (Canada: 2002). Most importantly, the Charter guarantees that all individuals are treated equally, regardless of race, national or ethnic origin, colour, religion, sex, age or mental or

physical disability. It also protects linguistic duality and multiculturalism (Canada: 2002). The Charter demonstrates that Canadians value respect for people, fairness, decency, democracy and respect for the rule of law. These basic Canadian values must not be taken for granted and must constantly be defended in order to preserve the fundamental principles and values of a democratic society and to ensure justice and equality for all (Canada: 2002).

The Values of the Canadian Forces

The military represents a unique society within Canada that has a very distinct purpose, culture and set of values and ethos. The military is a different organization as a result of its special function of protecting and defending the security of Canada. Military ethos is guided by military doctrine. Taylor states, “doctrine provides a military organization with a common philosophy, a common purpose, a common language and a unity of effort” (Taylor: 2001, 35). These are the four pillars of military doctrine. High standards of conduct, fitness, dress, deportment, integrity and preparedness are expected of the Canadian Forces (CF) by the Canadian public (Canada: 1997a, 4). Military personnel are expected to possess loyalty, integrity, initiative, good judgment, responsibility, fairness and compassion; these are said to be the values of the Canadian people.

A report to the Prime Minister on military ethos outlines the CF values as being duty, courage, discipline, dedication, teamwork and honour (Canada: 1997a, 7). Military personnel must have the duty to do what is right, the courage to take on dangerous tasks, the self-discipline to exercise good judgment and work effectively as a member of a

team, the honour of personal and institutional pride, as well as dignity and purpose for being a member of the military (Canada: 1997a, 8). It is argued that the character and spirit of the Canadian soldier values respect for the individual, resourcefulness, judgment and self-discipline (Canada: 1997a, 1). Military personnel must take risks and make sacrifices by being attached to these values, including risking their lives for the country and making personal and family interests second place to their service (Canada: 1997a, 8). The report to the Prime Minister on military ethos argues that risking one's life to protect the country and preserve its values while performing military service is the most dignified purpose in a democratic society. The Report also suggests that the standards of the military are noble and honourable in that they are dedicated to serving the country and its values, and that these values will sustain the Canadian Forces to meet the expectations of the Canadian people for the next hundred years (Canada: 1997a, 8).

Giving the Young Memorial Lecture at the Royal Military College (RMC) in October 2001, Dr. Michael Ignatieff argued that military ethics are especially relevant after the terrorist attacks in New York and Washington on September 11th, 2001. He explains that terrorists do not use ethics in war while Canadians must set an example by using rules, ethics and morals. Ignatieff claims that Canadian military leaders are obligated to uphold the principles of democracy and belief in human rights in order to represent the moral identity of the society that they defend (Ignatieff: 2001, 5-9). He continues that the military deals more closely with issues of ethics in violence and must use ethics as a positive force to enable Canadian values of peace and to multiply this on the world scale (Ignatieff: 2001, 9).

The Canadian Forces in the Broader Canadian Context

The purpose, culture and values of the CF situate them in the broader Canadian context (Canada: 1997a, 6). The CF is said to be based on the cardinal principles, norms, rules and decision-making procedures of the nation that it serves. National military regimes evolve from cultural, political, social and military histories that shape them into the present (Bland: 2001, 531). The CF “serves” Canada and the Canadian people with its army, navy and air regiment and is made up of an all volunteer force (Canada: 1997a, 6). The CF is the largest federal institution in the country with 60,000 members in the regular force, 30,000 members in the primary reserves and 20,000 civilian members of the Department of National Defence (Canada: 1997b, 6). In a liberal democracy, the military is under absolute civil control centralized in the federal government; the CF is accountable to the government of Canada. This is designed to protect civil society from arbitrary use of the military and to ensure that the armed forces serve to protect the people and carry out missions directed by them (Bland: 2001, 531).

Canada is not a militaristic nation. The focus of Canada’s military is that of peacekeeping, due to the fact that it is not a military power, has no direct military threat and because of its geography, history and small population. Canada has no major adversaries and is very unlikely to need security protection against external threats or to pursue coercive national interests abroad. The focus of the Canadian military is on the defence of freedom, collective security, the preservation of peace and a just international system (Canada: 1997a, 4). Canada must be prepared for war and peace operations to support foreign policy objectives, contribute to international peace and security and to protect traditions and borders should the need arise (Canada: 1997b, 5). Canada acts in

concert with other countries to preserve economic and security interests with allies and to magnify their influence on the world stage, such as with Canada's participation in the UN and NATO. The Canadian Forces is a multi-skilled and multi-purpose organization that is combat-capable as well as equipped for humanitarian and peacekeeping missions (Canada: 1997a, 4).

Military Discipline

The Canadian Forces is responsible for training high quality leaders to perform the duties of the armed forces. Military personnel are socialized upon entrance into the military to be loyal and committed to the profession of arms and to willingly serve their country on the battlefield. This socialization process shapes individual's identity, values and attitudes, which in turn influences behaviour and performance effectiveness. Other factors also mould values and attitudes of military personnel including, social, political and cultural influences (Volker and Heinecken: 2001, 567). The military uses unique disciplinary structures to control behaviour based on rewards to motivate desirable conduct (Freidland: 1996, 2).

Due to the nature of the CF and its purpose in society, it is a much more rigid and regimented institution than any other in Canada. Ultimately, the duty of the CF is to defend the nation. As a result, the CF must train members to obey commands, and in order to do this, a strict system is needed. If a member of the CF fails to follow orders, he or she must be punished. To allow a member to walk away from an infraction with a 'slap on the wrist' does not teach the individual the unquestioning obedience required in the military. They need a system that will distribute harsh punishments. In addition,

military personnel require speedy processing through the system so that the affected service members can have the situation resolved. For these reasons, the CF has its own unique system of justice. This system emphasizes respect for leadership, appropriate training, and a military justice system based on equality and fairness.

The CF has two different trial processes: court martial and summary trial. The court martial is a formal court similar to that of the civilian justice system. More serious cases are tried by court martial. In contrast, the summary trial system is much more informal. In this type of trial, “a single officer conducts a hearing involving a non-commissioned member of his own unit, ship, regiment, or command” (Heard: 1988, 521). Members of the armed forces who face a summary trial have the option of being tried by court martial. The majority of service people in this situation choose a summary trial because the punishments in a court martial trial are usually more severe than those in summary trial. For example, “during the 2000-2001 reporting period, of the 422 accused who were offered the opportunity to elect trial by court martial, only 29 (7%) chose to be tried in the more formal court martial system” (Canada: On-line [b]). In addition, the majority of cases are tried by summary trial: “Of the 1175 persons tried in the military justice system during 2000-2001, 1112 (95%) were tried summarily” (Canada: On-line [b]). It can be concluded that summary trials are at the heart of the military justice system.

Military Justice and the Charter

The National Defence Act (NDA) is the legislation which governs the CF. In turn, the NDA has a legal obligation to be consistent with the *Charter*. According to

academic Andrew D. Heard, “when the *Charter* was first enacted, the military apparently sought a general exemption to the *Charter*, but this move was resisted by the Justice Department” (Heard: 1988, 532). Despite this attempt, all military legislation must conform to the regulations outlined in the *Charter*. Members of the CF are governed by a military laws in addition to civilian legislation. Thus it seems that members of the CF must give up some of their civilian rights in order to serve in the military. Are newly enlisted members aware of the differences between the two legal systems? Once enlisted in the military, many rights are lost. Are these rights protected by the *Charter*? These questions will now be explored.

According to the “Cadet Handbook” issued to all students at the Royal Military College (RMC), there are certain principles “upon which Canadian Forces officers base their service to Canada” (RMC: no date, i). Yet there is no mention of the specific rules which govern the lives of CF members. The only association that can be made between the CF and military justice in the handbook is a vague one: “[Officers] believe in the rule of law, the Armed Forces as an instrument of the Government of Canada and in the Armed Forces as representatives of all that is best in Canada and its society” (RMC: no date, ii). In sum, there is no mention of the notion that enrolment in RMC, and consequently the CF, involves being subjected to a legal system that is much more rigid and distinct from the civilian legislation to which they are accustomed.

An advisory group that evaluated military justice and the military police found that members of the CF were confused as to why they were treated differently than civilians:

[Service members] do not always comprehend, for example, the rationale for separate service tribunals, parallel to the civil courts. Nor do they

understand or accept why their substantive rights, such as the right to free speech, should be restricted as a result of becoming members of the CF. To many of them, free speech and equivalent treatment should not be incompatible with military justice.

(Canada: 1997c, 11).

It is evident that there is potential conflict between the strict system of the military and the individual freedoms stressed in civilian society. Many officers, particularly the younger officers who grew up learning about the rights and freedoms guaranteed in the *Charter*, believe that they are forced to relinquish their rights upon enlistment. Is this infringement lawful? The issue of “the extent to which a service person may be required to sacrifice his or her constitutionally entrenched rights to pursue a career in the armed forces” was raised in the case *R. v. Genereux* by the Supreme Court of Canada (Doi: 1993, 263-264). In its judgement in the case, the Supreme Court approved the separate military system of justice. They saw the necessity for the Canadian Forces’ own legal needs to be met in a military setting. Therefore, although members may not fully understand the relationship between civilian rights and military doctrine, the latter is valid in Canada, as long as it continues to abide by the *Charter*.

The Charter and Changes in the CF

As a result of eroding support for the military by Canadian society, the Canadian Forces is currently undergoing sweeping change in operational doctrine and redefinition in society. Many changes in Canada and abroad as well as highly publicized misconduct by the military in Somalia have led to great public criticism of the military¹. These

¹ For a detailed report of the Somalia affair, see:

Friedland, Martin L. Controlling Misconduct in the Military: a Study Prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia. Minister of Public Works and Government Services Canada: Ottawa, ON. 1997.

changes have also caused the public as well as the military to question and challenge the values and fundamental beliefs of the military, which are being re-evaluated and redefined in these times of change (Canada: 1997a, 3). The leadership, discipline, command, management and honour of the CF has been called into question (Canada: 1997b, 2). The CF is under review and reforms are being put forth to ensure clarity and mission of the military (Canada: 1997b, 2). The CF is currently adapting to changes by redefining and reaffirming military ethos, improving training, education, selection of leaders, professional development, and care of CF members. A report to the Prime Minister on leadership outlines many specific changes that should be made in these areas (Canada: 1997b, 14). The Somalia Inquiry found that immediate changes are needed in military discipline, values and ethics, leadership, command and rank structure, operational missions, terms and conditions of service, national headquarters and relations to the Canadian public (Canada: 1997b, 3).

The report to the Prime Minister on leadership stresses that in a democracy the military must adhere to common social values and that military effectiveness depends on the armed forces being an integral part of the societies that they serve (Canada: 1997b, 11). Many legal economic and social changes occur constantly in Canadian society and the Canadian Forces must respect these changes, such as respect for women's rights and the rejection of discrimination of race and sexual orientation. The CF must conform to Canadian legislation involving social values, such as the Charter in order to reflect and represent Canadian society (Canada: 1997b, 11). The military system of discipline must meet military requirements while also reflecting Canadian values and principles (Canada: 1997b, 9).

It is important for the CF to be consistent with the Charter and respect and represent the fundamental rights of the Canadian people. The Canadian Forces serves a unique function in society to serve Canada and Canadians in the protection and defence of the country. This separates them from the rest of society in many ways, causing many inevitable differences in values due to their unique missions and system. Although many differences do exist between the values of the military and those of civil society, the military should not isolate itself from the rest of society. The CF should attempt to preserve the values and beliefs of the society that it serves. It must adapt to new challenges and circumstances and actively guide its future. The CF can achieve this by constantly redefining its roles and responsibilities and improving organizational effectiveness to adapt to the ever-changing world. Continued research, ongoing renewal, adjustment and change are needed in order to keep ahead of the changes taking place in society.

Past Clashes Between Civilian and Military Regulations

As previously discussed, although the Supreme Court supports the military justice system, that does not mean that the CF has complete reign over its members. CF doctrine must still abide by the *Charter*. In the past differences between military legislation and the *Charter* have existed. The Queen's Regulations and Orders (QR&Os), Canadian Forces Administrative Orders (CFAOs), and other orders contain the specific outlines of military regulations. For example, they contain information such as when uniforms are to be worn, types of service offences, banking arrangements, types of accommodation, allowances, and rules for personal appearance. They specifically detail all aspects of

military life. In essence, these orders contain the information concerning how service members are to satisfactorily serve their country. With the increased attention concerning individual rights brought about by the *Charter*, the CF has been forced to adjust some of its policies to abide by federal legislation.

Before October 1992, homosexuals were not allowed to serve in the CF. Before this date, CFAO 19-20 required that,

if a member of the Canadian Armed Forces is suspected of being homosexual, the commanding officer conducts an investigation with the assistance of the Special Investigation Unit. If the suspicion is confirmed, the commanding officer makes a report to that effect to National Defence Headquarters. The member is then asked to resign with the promise of an honourable discharge.

(Canada: 1985a, 30).

The CF did not recruit openly gay personnel nor did they allow them to remain in the military if their sexual orientation was found to be homosexual. The military reasoned that “the overall effect of the presence of homosexuals would be a decrease in the operational effectiveness of the Canadian Forces” (Heard: 1988, 518). Quite simply, homosexuals were not welcome in the CF.

The stance of the CF against homosexuals violated the *Charter*. Gays and lesbians were being discriminated upon because of their sexual orientation. On October 27, 1992 the federal court of Canada allowed homosexuals to serve in the military, thus overruling CFAO 19-20. Rosemary Park, who studied the effects of allowing homosexuals in the CF noted,

Gay and lesbian service members may openly declare their sexual orientation without official censure. Same sex partners in uniform may now dance together at official military social functions with official approval. If gay or lesbian members feel harassed or have been sexually assaulted, their commanding officers must investigate the complaint and

take appropriate action in accordance with formal regulations dealing with personal harassment or sexual misconduct, as applicable.

(Park: 1994, 165).

The court decided that gays and lesbians are the same as all other member of the CF regardless of their sexual orientation.

The topic of women in the CF has also been an area of concern. As of 2001, of the approximately 57, 000 active members of the CF, 10% were women (Hill: 2001, 1). In the past, women served in very limited roles and usually as assistants. The CF believed that men had more physical and mental strength than women and reiterated this in CFAO 49-15. The CF had a variety of reasons why women should not be allowed in all trades of the military (see Appendix A). Despite their reasoning, it was later decided that females were allowed in all positions that did not require combat. When women were excluded from combat positions, they were essentially denied the right to approximately 25% of the available posts because they were designated as positions involving combat. If the women did not have the combat experience then they simply were not eligible for the position. Further along the line in their careers, women once again faced roadblocks because most senior command positions required experience in combat trades. Hence women were unable to serve in a large number of positions because of the restriction (Heard: 1988, 518).

Due to mounting social pressure, women were then welcome in any division of the CF with one exception: they were not allowed to serve on submarines. Despite the reasoning provided for by the CF, the exclusion of women is illegal in Canada. As McDonald argues, “the exclusion policy is based on sex. Sex is a category specifically protected against discrimination in subs. 15 (1) of the *Charter*” (McDonald: 1986, 154).

Thus, all restrictions based on gender, including the ban of women on submarines, were removed in 2001; women are now allowed to serve in all areas of the CF (Canada: 2001, 14). The military was forced to modify their requirements beginning in slight alterations and culminating in the complete acceptance of women as equal to men in all aspects of the military.

In the past, the military also failed to recognize common law marriages. As a result, only legally married couples benefited from reimbursement of moving expenses, foreign service allowances, and accommodation in married persons military housing (Canada: 1985b, 61). For clarification purposes, moving expenses do not just include the moving of the furniture but also, “transportation expenses and interim meals and lodgings are covered for both the member and the dependants” (McDonald: 1986, 283). With the high number of times members of the military must move due to frequent postings, moving expenses can be quite costly. If the couple was not legally married, then the non-military spouse was not eligible for any type of reimbursement.

The CF defended its policy on the non-recognizance of common law marriages through an explanation of the culture of the military. First, they explained that the military is very dependent on tradition and values, meaning that they hold an institution such as marriage in high regard. The CF argued that the values they instil in their members may be weakened by acceptance of alternative living arrangements. Secondly, the CF believed that legal marriages can better withstand the stresses which come with military careers. In addition, the military felt that close-knit military communities may be disrupted by alternative living arrangements (Canada: 1985b, 62).

Despite its reasoning, the CF lost its battle for its stance on common law marriage. At present, QR&O 1.075 describes a relationship that is considered to be common law (see Appendix C). As long as members meet the criteria, they are now granted the same benefits as legally married couples.

Although the right to be free from discrimination based on marital status is not literally stated in the *Charter*, it seems to be a right that is included in the legislation. R. A. McDonald, who wrote on the effect of the Charter on certain policies of the CF in 1986, believed that common law marriage was protected as a non-enumerated ground in the *Charter*. He stated that if the trend of acceptance of common law marriage continued, “there is little doubt that it will eventually achieve constitutional protection against discrimination due to a belief that common law marriages have become an acceptable equivalent to legal marriage” (McDonald: 1986, 275). Furthermore, Section 26 of the *Charter* states, “the guarantee in the Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada” (Canada: On-line [a]). The right to common law marriage is a non-enumerated right provided for by the *Charter*. Therefore, due to the hierarchy in legislation, the CF had no choice but to recognize common law marriages as equivalent to traditional marriages.

Present Discrepancies Between Civilian and Military Regulations

There are also examples of differences between military doctrine and the *Charter* that still exist today. As previously discussed, the CF has its own justice system in place. Summary trials come into question regarding the *Charter*. According to section 11(d) of

the *Charter*, “any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal” (Canada: On-line [a]). The summary trial process seems to violate this right because in these types of trials, the hearings involve the accused as well as another officer. The presence of the other officer raises the question of whether or not summary trials involve the independent and impartial tribunal guaranteed in the *Charter*. This second officer is usually someone in “direct command over the accused” (Heard: 1988, 525). Heard goes on to theorize about this situation:

An accused may have faced the presiding officer on previous occasions in the course of his regular duties and received informal, or even formal, warnings from the officer about his behaviour or attitudes. In such circumstances, the presiding officer may well approach the trial with the intention of ‘teaching Cpl. X a lesson this time’.

(Heard: 1988, 525).

This example illustrates the possible encroachments of service members’ rights through the use of summary trials. If one of the purposes of a summary trial is “to provide prompt, fair justice in respect of minor service offences” (Canada: On-line [b]), it seems to fail in its main function. The structure of the summary trial does not provide fair justice. Not only that, but it also violates the *Charter* right to a fair trial by an impartial tribunal.

The *Charter* also states that Canadians with disabilities are not to be discriminated against. Although this may be the law, it does not always seem to be the case, as Prince argues:

The struggle for the status of full citizenship for people with disabilities began relatively recently, and it has been struggle characterized by rhetoric, setbacks, and frequent delays, a few major successes, and many

marginal gains. For Canadians with disabilities, the promise of inclusion and equal status has meant citizenship by instalments.

(Prince: 2001, 177-178).

According to Prince, people with disabilities in Canada do not feel they are treated equally in comparison to able-bodied people. This is also a problem in the CF. People with disabilities are not given a chance to participate in the CF.

The CF enforces General Specifications (GS) which outline tasks and skills common to all service members (see Appendix B). These specifications require military members to have sufficient physical abilities. Not only does the CF have these GS but they also have certain medical categories. Every military member is assigned to a certain category: “Recruits are required to have a certain score in their medical category to be fit for basic training and to be eligible for the widest selection of trades” (Canada: 1985b, 34). According to a discussion paper issued by the federal government, “the effect of these Forces requirements is to exclude Canadians with physical or mental disabilities which prevent them from meeting the medical requirements” (Canada: 1985b, 34). Consequently, the medical requirements and general specification utilized by the CF violate *Charter* rights for people with disabilities because they ensure the disabled cannot join the military.

Other examples of conflict between the Charter and military regulations involve the prohibition against political activity on a base, mandatory urine testing, and mandatory retirement. According to QR&O 19.44, political meetings, advertising, and canvassing are not permitted on a defence establishment. In addition, section 7 (a) of the QR&O states, “no member of the Regular Force shall take an active part in the affairs of a political organization or party” (Canada: On-line [c]). This political ban is a violation

of s. 2 (b) of the *Charter* which guarantees the right to freedom of expression. According to the QR&Os used presently, this expression is not allowed on military bases if it involves politics.

The second QR&O in question deals with mandatory urine testing for drugs. QR&O 20.06 and 20.14 state that when ordered to provide a urine test, all service members must do so. Failure to comply with the order will result in disciplinary and/or administrative action. (Canada: On-line [c]). This order violates the right to unreasonable search guaranteed in the *Charter*.

The final present day example of conflict between legislation revolves around mandatory retirement. In the military, officers must retire when they reach a certain age or when they have served for a certain number of years, whichever comes first. The number of years of service required for retirement differs according to rank. Tables A and B list the different ages in relation to rank. These age requirements are static and must be followed. There is no review of the officer to determine if he or she is still fully capable of performing duties, or whether or not he or she is the best person for the job; as soon as one fulfills a condition of the QR&O, retirement is mandatory.

Section 15 of the Charter includes age as one of the criteria from which Canadians are free from discrimination: “[Mandatory retirement] involves the arbitrary treatment of individuals simply because they are members of an identifiable group....It is an easy way of being selective that is based in whole or in part, on stereotypical assumptions about the performance of older workers” (Canada: 1985a, 21). The CF is directly infringing upon Charter rights because military members cannot work for the CF when they reach a certain age or number of years of service.

Analysis of the Results of Changed Legislation

The vast majority of the changes that have come about in military legislation have occurred fairly recently, giving rise to results that must be critically analyzed. Since the lifting of the gay ban in October 1992, there appear to be no major problems: “The policy change has not resulted in increased levels of sexual misconduct, human rights violation complaints, or rates of sexual harassment” (Belkin & McNichol: 2001, On-line). The results presented in Belkin and McNichol’s paper, “Effects of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the Canadian Forces”, stated that there was no effect on military performance in the CF. The authors go on to point out the reasons why Canadian officials believe the transition went so well:

First, the military leadership had acknowledged the inevitability of the change in policy. Because the process had occurred over time, the military had been able to acculturate itself to the idea of including openly homosexual soldiers. Second, the military adopted a conscious leadership strategy in the implementation phase. Highest priority was given to ensure compliance with the policy change. Military leaders decided that it was not appropriate to try to change the beliefs or attitudes of individual personnel; they did, however, prioritize acceptance of the policy to minimize possible friction. Third, military officials emphasized the fact that the implementation had been accomplished in a low-profile fashion, without numerous public pronouncements or media scrutiny. Finally, officials cited the content of the policy itself as a reason for the smooth change. Officials pointed out that the policy change itself did not formally institute a policy on gay and lesbian conduct; rather, it established new equitable policies that applied to homosexuals and heterosexuals alike.

(Belkin & McNichol: 2000, On-line).

Although the military officials were quick to congratulate themselves for their efforts, other members of the military questioned the results. For example, an officer interviewed for Belkin and McNichol’s paper commented on the situation at the base

where he was posted after the lifting of the gay ban: “Morale on the base is the same. No one’s quit, no one’s complained, no one has been harassed, no one has come out of the closet. There’s been absolutely no difference” (Belkin & McNichol: 2000, On-line).

This officer brings up an excellent point: nothing has changed in the military. Even with the new policy in place to allow homosexuals in the military, service members remained uncomfortable revealing their sexual orientation. Not only are CF members insecure about coming out of the closet, but perhaps the traditional values of the institution have not changed as well. An assessment of the CF completed in 2000 found that “culture based homophobia persists below the surface” (Pinch: 2000, 169). Consequently, the environment within the CF is not conducive to accepting and encouraging homosexuals.

Rosemary Park’s paper “Opening the Canadian Forces to Gays and Lesbians: An Inevitable Decision but Improbable Reconfiguration”, also examines the results of the lifting of the gay ban. She finds that although the CF does allow open homosexuals, it does not encourage them: “The CF has not endorsed homosexuality but rather has said it should not matter” (Park: 1994, 174). As an example, she points out that the CF treats homosexuals as though they are invisible. They are treated the same as everyone else. In theory, this should be the ideal situation but in reality it is not: “This is quite different from an organizational endorsement of, let alone enthusiasm for, homosexuality as an alternative or accepted sexual orientation” (Park: 1994, 175). The CF was forced to allow homosexuals into the military but, according to Park, they are not going out of their way to welcome them. It seems as though at the core, the CF is still very much a heterosexual organization:

The model strongly suggests that incoming homosexuals will be assimilated into the larger heterosexual group as long as the homosexual

member accepts the dominant heterosexual worldview and does not cause others to think differently. It requires the homosexual member to support the values of the dominant group after having taken advantage of the legal right to serve in the CF, i.e. nothing has changed.

(Park: 1994, 176).

It appears as though the CF is just complying with the legislation. The military is not allowing homosexuals to enter the CF because they want to, but rather because they are forced to do so. From a general perspective, the decision to allow gays and lesbians in the CF was a positive move in terms of equal rights. Yet when one magnifies the situation, many questions arise, such as, what is the actual situation like in the CF? Are service members revealing their sexuality? If so, how are they treated? It seems that although the laws may have changed, the actual situation in the military has not.

As previously discussed in this paper, women are now allowed to serve in all areas of the CF; they legally have equal status with men. Although this may be the case in an ideal situation, it is not so in reality. The CF does not appear to be the welcoming place it portrays, not only for homosexuals, but also for women. For example, since 1992, “the CF adopted a policy of zero tolerance for harassment of any kind” (Pinch: 2000, 168). However, the majority of the literature cited harassment, both personal and sexual, to be the largest problem related to women in the CF². As will be shown, despite the policy adopted in 1992, harassment seems to continue in the military.

² For examples, refer to:

Davis, Lieutenant (Navy) K.D. “Gender Integration in the Canadian Forces: The Army Challenge”. On-line: www.internationalmta.org/1997/97IMTAproceedings.pdf

Park, Rosemary E. (1994). “Opening the Canadian Forces to Gays and Lesbians: An Inevitable Decision but Improbable Reconfiguration”. *Gays and Lesbians in the Military*.

Pinch, Franklin C. (2000). “Canada: Managing Change with Shrinking Resources”. *The Postmodern Military: Armed Forces After the Cold War*. Moskos, Charles C., Williams, John Allen, Segal, David R. (eds). Oxford University Press: New York, 2000.

The issue of harassment in the military was depicted in a 1997 conference paper, “Gender Integration in the Canadian Forces”:

Women who have spent time in the combat arms training and/or employment environment consistently describe a total experience which includes harassment, intimidation, and petty incidents on a daily basis. They report that women are commonly referred to as bitches, sluts, cunts, etc. Most women report experiencing this directly and frequently, while others indicate that they were aware that they were being referred to in this way ‘behind their back’.

(Davis: 1997, 109-110).

The environment described by Davis is very inhospitable to women; it is not the harassment-free setting that is depicted by the CF.

In 1998, a cover story in *Maclean’s* magazine sent shockwaves through the CF as well as the civilian community. The article told the story of 13 female military members and civilian employees who claimed they were sexually assaulted by male CF members. The article also reveals that many of the cases reported were mishandled by the CF: “Investigations were perfunctory, the victims were not believed and often they- not the perpetrators- were punished by senior officers who either looked the other way or actively tried to impede investigations” (O’Hara: 1998a, 15). The article describes the confusion in the military system for a woman who is sexually assaulted. Her options include telling a superior, the military police, or the civilian police. If she decides to tell a superior officer, it is up to the officer to decide whether or not to report it to the military police. There is no clear or effective path for women to take if harassment occurs.

There is no doubt that women who are sexually assaulted suffer repercussions, even years after the assault. The following is a quote from a female officer who was raped by a fellow CF officer:

I went to supervisors, base commanders, social workers and padres. But nothing was done. It wore me down- I was tired all the time. Finally, in 1994, a psychiatrist diagnosed me with chronic post-traumatic stress disorder. I quit the air force in 1997, after 20 years, and I'm now getting three separate disability pensions. They ruined my life.

(O'Hara: 1998a, 18).

A lawyer quoted in the *Maclean's* article who works for assault victims fighting for disability pensions states that sexual assault in the CF is very different from an assault that occurs in civilian society. He argues that because the CF is such a tight knit community, members become like family to one another: "So in many ways, these rapes were the same thing as incest. That is why it might be more devastating than if it happens out on [civilian] street" (O'Hara: 1998a, 19). He would conclude that sexual assaults that occur in the military have a more severe effect on women in the military because of their close living and working arrangements with their attackers.

Like sexual assaults in civilian communities, the actual numbers of these assaults in the CF are not available. Women may feel shame and embarrassment and may be too scared to report the assault to anyone. As a result, an accurate number of assaults cannot be published. After the first article in *Maclean's*, a second article was published in which female CF members opposed the view that the magazine depicted. They "deeply resented the suggestion that sexual assault and harassment was rampant in the Forces, at a time when, they say, the situation for women is drastically improving" (O'Hara: 1998b,

14). Yet despite what these women say, other women in the CF continued to reveal to *Maclean's* the sexual assaults they had survived. These women's voices cannot be ignored.

In order for military members to succeed in the CF, they need a positive environment, with support and leadership. Davis' conference paper, "Gender Integration in the Canadian Forces: the Army Challenge", states that this environment does not exist for women: "Leaders and instructors do not express confidence that they have the required skills and knowledge to train, motivate, and lead individuals within an increasingly diverse environment" (Davis: 1997, 110). She goes on to argue that until there are a large number of motivated women in the CF, unmotivated women will continue to join and make it more difficult for those motivated women. Also, she believes that if men do not support a mixed environment, women will leave the CF at a much higher rate than men.

Rosabeth Kanter studied women who work in male dominated corporations. She found that women were focused upon more than men because there were fewer of them. They were more visible because they were different; in her words, they were a 'token population'. She concludes that stereotyped gender roles about women are unlikely to change if women are a token population. This is because, "when sex ratios are imbalanced in working environments, the members of the minority sex become highly visible and this, in turn, increases polarization between men and women (Pershing: 2001, 420). Using Kanter's words, women in the CF are a token population because of their low numbers relative to those of men. It appears that the CF needs to recruit more

women so that they will not be so visible in the CF. Perhaps then, they will truly be regarded as equal.

Finally, the CF has not changed its legislation regarding people with disabilities and, as previously discussed, these people cannot enter the military. As Appendix B outlines, the Forces has certain medical and physical criteria which ensure disabled military personnel do not exist in their organization. The CF claims that the reason for this is because the overall goal of the Forces is to defend Canada, and there is a need for soldiers who can physically fight for the nation: “Members may be called upon to risk danger or death in many of their roles” (Canada: 1985a, 38). Yet in reality, Canada’s military is rarely in combat. They are usually seen on peacekeeping missions and helping communities in disasters. The need for high standards of physical fitness, which ultimately excludes disabled Canadians, may not be necessary. The argument used by the CF that the military is required to defend the country is difficult to comprehend in the present day: “This simple logic is much less obvious in a time of prolonged peace, in a time when Canada has no obvious enemies” (Blythe: 1994, 2).

Due to the increased need of specialization in the CF, there is a demand for people who work in the areas of administration, logistics, and medicine (Blythe: 1994, 2-3). If the CF were required by law to allow disabled members into the organization, it can be argued that the disabled could fill certain non-combat positions. Yet allowing disabled members in the military would likely be a negative situation for the CF for two reasons. First, this would reduce the number of able-bodied CF members: “The CF would not have the same capacity to fight (or deter) a conflict, mount a peace-keeping force, respond to emergencies such as natural disasters, provide aid to the civil power, or

conduct penitentiary patrols” (Blythe: 1994, 31). Although Canada is not at war, situations can instantly change. No one can anticipate when the nation may be required to go to war. As a result it is theorized that the military must have a physically able-bodied force to serve the nation. Second, Blythe asks why this sedentary position should be filled with a service person if she or he is not able to respond to conflicts. The position could be filled by a civilian employee at a lower cost to the government (Blythe: 1994, 32).

Even if the CF is not often in a position where it needs to defend the country, one must keep in mind the main goal of the military. Canadians want the best people possible defending their country. CF members are soldiers first, meaning that their first priority is combat while their learned trades follow second: “It is all too easy to forget that the day-to-day tasks represent only a part of the commitment” (Blythe: 1994, 45). In anticipation of a legal decision to allow disabled people to serve in the military, some negative repercussions may result if it were brought into effect.

It becomes evident that there are differences in the way that the CF portrays itself and the actual situation in the organization. The military focuses on the ideal circumstances while ignoring what is happening in reality. For example, homosexuals and women are now allowed in the military but the CF is not a welcoming environment for them. The military has made changes in its policies in order to include minorities but it does not provide a setting that is conducive to their inclusion. The CF has changed its procedures not because it wants to be more representative of society, but because it is forced to do so by civilian courts in order to be consistent with the Charter. The literature cited reveals that the CF has a long way to go in order to become a military where the legislation actually serves to create inclusion and equality for minority groups.

The Gap between the Military and Civil Society

After discussing the differences in values, ethics and legislation between the military and Canadian civil society, it is valuable to discuss the relationship between these two groups. This will serve to uncover the issues behind the conflict in military and civil legislation. Civil-military relations are important to maintaining a balance between civil authority and military power. A gap in values, attitudes and opinions exists between the military and civilian society that has recently been the cause of much concern. For example, Canadian civil society values personal freedom, civil liberty, individual autonomy and democratic governance, which can be seen in Canadian social legislation, while military institutions subordinate the individual and personal well-being to the group to accomplish missions (Feaver et al: 1998, 1). These differences in values can account for the problems and discrepancies between military and civil laws. Because of the military's unique function, CF personnel must risk their lives and give up personal freedoms to allow for unquestioning obedience in order to succeed in battle. Although the gap is not a new concern, the perceived dangers of it have recently resulted in considerable research and reports, especially in the U.S. Many believe that the military should be a representative model of Canadian societal values; however this may not be the case, which leads to concerns about the danger of the differences in these values.

The Threat of the Gap

Many believe that the gap between military and civil society poses an urgent threat to the country's national and international security and democracy. Some believe the cultural gap in values and attitudes between the military and society may pose a threat to the effectiveness of the armed forces and civil-military cooperation. Peter D. Feaver et al, writing on the gap between the military and society for the Triangle Institute for Security Studies in the U.S., argues that the gap may cause a loss of support by society for an adequate military, while the military may diminish in loyalty to the democratic values and civilian leaders it serves (Feaver et al: 1998, 1). Civilian control of the military is a cornerstone of military ideology; this is why the CF must rely on civilian control in order to avoid the threat to society and ensure the military serves the public interest (Feaver et al: 1998, 2).

Some feel that there is contempt for societal values and civilian authority by the military. If the military has too much disdain for Canadian societal values and civilian authority, many fear that the military will not respect and defend the values of the Canadian people that they serve. Thomas Ricks, in "A Soldier's Duty" speaks of an eroded trust between society and the military, or a lost honour, based on this fear of a lost loyalty (Hoffman: 2001, 2). However, the Constitution requires that the military be subordinate to civilian authority in order to ensure that the military protects the interests of the people it serves. Unquestionable acceptance of civilian control is necessary to ensure democracy. Tangredi believes that conflicts between civilian and military authorities are normal policy debates of strong minded individuals and do not represent a severe problem (Tangredi: 2002, 37).

The changes to the military legislation discussed in this paper have come about because the military laws did not conform to those of civilian society. The military system was changed by civilian judges. The CF has been forced little by little to more closely resemble civilian society. It should be noted that, “civilian society tends to disparage martial values as antiquarian, just as professional soldiers often disparage civilian society as decadent or morally corrupt” (Osiel: 1998, 957). It can be assumed that if service members believe civilian society to be below theirs in status, changing their laws to conform with society’s is not viewed as a positive move by CF members. Likely it is seen as a sign of weakness: “A significant portion of the leadership of the Canadian Forces believes military morale and values have been eroded by the transference of civilian values and management techniques to the Forces” (Kasurak: 1982, 108). If this is the case, this seems to be a ‘no win’ situation for the CF. According to Andrew Heard, as military legislation continues to conform, morale may decrease because members see the military becoming more like society. They may see this as degrading the military and eroding combat readiness. Morale may also decrease for another reason. Members of the military may feel as though they are being denied rights enjoyed by the rest of society (Heard: 1988, 534).

Others believe that the military feels that they lead civil culture with superior ethics, rather than representing it (Tangredi: 2002, 36). Service members see civilian society as an imperfect institution and one that is lower in status than their own. For example, Captain John Byron of the U.S. Navy feels that his organization is becoming out of balance with the society that it serves. He suggests that strong internal cohesion and conformity develop within the Navy from loyalty and professionalism, which creates

an elite culture in the military group that feels it is superior to the culture that it serves (Byron: 2002, 44). Admiral Stanley Arthur supports these claims by stating that, “more and more, enlisted [men and women] as well as officers are beginning to feel that they are special, better than the society they serve” (Harbaugh: 2001, 35).

The military is a closed organization that separates itself from the broader society; the military becomes the ingroup while the rest of society becomes the outgroup. This self-chosen separation leads to isolation and segregation from the outgroup. Byron sees the dangers in putting the military values ahead of society’s and argues that the Constitution demands that the military must follow civilian leaders and not develop an elite group that serves their own interests. He also argues that this isolated and closed military organization must be redefined and controlled to balance military values with the rest of the nation (Byron: 2002, 46). Lieutenant Kenneth E. Harbaugh of the U.S. Navy reiterates this point by stating that soldiers consider themselves distinct from the rest of society and that this needs to be closely watched (Harbaugh: 2001, 34).

Theorists who support the ideas of Morris Janowitz, who contributed greatly to the study of the military and the armed forces and society, argue that the military is drifting too far away from civilian society, which is causing problems for civilian control and the all-volunteer force. These theorists believe that the military is increasingly ideologically different from civil society, in that it is more politically right wing, more religious and resistant to change, as with delays and opposition to introducing women and homosexuals into the military. Janowitz theorists caution against the increasing autonomy of the military because they feel it will lead to loss of civilian control and military effectiveness as well as loss of respect and support for civilian society (Feaver: 1998, 2).

Janowitz theorists argue that the military needs to more closely align the military profession with civilian society.

The Gap is Good

Those who support the ideas of Samuel Huntington, a key theorist examining civil-military relations, contrast those of Janowitz, in that they believe that the differences in military and civil culture are healthy. These theorists believe that civilian culture does not have traditional values and that the general public supports the military. Huntington theorists argue that the main differences in culture exist between the mainstream military cultural values and the values of the political and cultural elite whose values also differ from mainstream society. These theorists do not believe that all of society and all of the military should have a common viewpoint. Samuel Huntington declares in “The Soldier and the State”:

No dichotomy exists between the ‘military mind’ and the ‘civilian mind’ because there is no single ‘civilian mind’. There are many ‘civilian minds’, and the difference between any two civilian ethics may be greater than the difference between any one of them and the military ethic. Consequently, the military ethic can only be compared with particular civilian ethics.

(Tangredi: 2002, 38).

Huntington theorists believe that there is too much civilian control of the military and that the government and elite political culture are ignorant and crippling to the military’s ability and effectiveness (Feaver: 1998, 3).

Captain Sam J. Tangredi of the U. S. Navy believes the cultural gap between civilian and military attitudes and behaviours is a natural one and that it is diminishing and nothing to worry about (Tangredi: 2002, 35). George F. Will supports these beliefs

by saying that we need to understand that the gap is real but that it is not necessarily bad (Schulz: 2001, 42). Tangredi comments that, “the ‘gap’ represents a simple fact that military life is vastly different from civilian life” (Tangredi: 2002, 36). For example he argues that military personnel are unique from the rest of society in that they are prepared for combat operations, willingly subjugate their own interests to that of the group, participate in intensive operational missions and endure long separations from their family and home; this leads them to have different cultural attitudes than the rest of society (Tangredi: 2002, 35). Tangredi believes these natural differences in attitudes should not be cause for concern.

Tangredi goes on to argue that the real gap is between professional ethics and not societal values. He feels that there is an inevitable conflict between the professional ethics and responsibilities of the military and the rest of society. Tangredi believes that this gap is a natural distinction and not a problem because it reflects the professional ethics that are the basis of the military profession (Tangredi: 2002, 38-39). Also, certain types of personal attitudes may lead people to a voluntary career in the military (Tangredi: 2002, 36). Many argue that the military represents a more conservative, religious and political cross section of society. Tangredi believes that these divergences from social norms are inaccurate or misunderstood. For example he feels that military professionals may be more conservative because they accept discipline voluntarily, may be more religious because they need more spirituality to deal with death and provide comfort and that they may be more political because their attitudes are more broadcast in the public sphere (Tangredi: 2002, 37). George F. Will also argues that the military has different functions and demands than the rest of society, such as higher standards, higher

stakes, such as death, and less freedom. He believes that the gap should exist and that society needs to be more sympathetic and understanding of the position of the military profession (Schulz: 2001, 42).

What Can be Done About the Gap?

Despite the arguments made for and against the gap, the debate continues about whether the gap is good or bad. Many suggestions have been made in order to bridge the gap in civil-military relations. Frank G. Hoffman of the U.S. Marine Corps argues that the professional military ethic should include a “sacred trust” between the military services and the democratic society that they serve. He sees the need for civilian leaders to connect civilian society and military subculture by enforcing professional ethics. Hoffman wants to see an increase in guiding principles and obligations that require obedience to civil authority and selfless service to the nation to preserve the “sacred trust” between civil society and the military (Hoffman: 2001, 2). Douglas L. Bland, a professor of defence management, supports this point by arguing that democratic civil control of the military must be put into individual beliefs and attitudes of military personnel to be demonstrated in their actions and decisions (Bland: 2001, 525). Bland suggests that this can be accomplished by implementing a framework of ideas, principles and norms into the military, political culture and the defence establishment, designed to shape and harmonize civil-military behaviour in a liberal-democracy (Bland: 2001, 526).

Lieutenant Kenneth E. Harbaugh suggests that we need to reinvest the military in society through domestic operations in order to improve civil-military relations and rebuild the citizen-soldier. This means increased operations for public services and the

collective good, such as building shelters, barricading floods and other emergency and community services. He believes that by encouraging community development by service members, the military will increase interaction between civilians and military personnel and gain more public interest. This will help close the gap by uniting the military and society with a common experience and identity (Harbaugh: 2001, 34-36).

Lieutenant Colonel Brendan Greeley of the U.S. Marine Corps feels that the media must be granted open access to the military in order to bridge the civil-military gap. He believes that the media needs unfettered access to military operations in order to get the message across to the society they are defending. He also believes that the media can better educate the American society on military operations and will attract more candidates to the force. By getting the message across to the public about what the military is doing, Greeley feels that they may gain more recruits from the elite academic institutions of society (Greeley: 2002, 52). Accordingly, a report to the Prime Minister on leadership advocates for the public to be more informed about the military. The report states that the Canadian military must be more accessible and responsive to Canadians in order to gain public understanding, trust, support and resources to perform their missions. This can be accomplished through improved communications, visibility and media responses (Canada: 1997b, 35).

Although there are many concerns over the gap, it poses no urgent threat. The military has a unique mission to protect and defend the country and therefore possesses a distinct set of ethics and values to guide it in this mission. Therefore, some differences in the ethics and values of the military and the rest of society must be expected, which leads to a gap in civil-military relations. This break between military and civil culture is

unavoidable due to their special role in society, and some natural distinction between the two groups may be necessary and desirable in order for the military to function effectively. The gap in values should be acknowledged, understood and tolerated but also needs to be carefully monitored. If the military were better integrated with society it would also create more consistency with military and civil legislation. Civil-military relations represent a delicate balancing act between civil authority and military power that needs to be carefully managed. The military should effectively represent the society that it serves and the military must always be subordinate to civilian control in a democratic society. As Bachman argues, the military should be guided by civilian leadership, integrated with larger civilian society and be staffed with individuals from many ideological perspectives (Bachman: 1977, 1). Some reforms may be necessary to create healthier civil-military relations which are essential for national security and democratic rule.

The Individual Versus Society

Debates about the fundamental Canadian rights and values guaranteed by the Charter can be related to debates about individual rights versus the rights of the collective society. In recent years, there has been greater emphasis on individuals and their personal rights and freedoms, which is evident with the inception of the Charter in the Constitution of Canada. As previously mentioned, a gap exists between individual civilian rights guaranteed by the Charter and subjugation to individual rights to the group in the military. John Dickinson points to some important questions about the individual and the

state. He asks, “what sort of military organization goes better with democratic government and most conforms to democratic ideals of individual conduct and national policy? What is the connection between the obligation to military service and civic obligation in general?” (Cohen: 1985, i). These and other questions about the individual and the state will now be explored.

Individual Rights, the Charter and the CF

Individual rights and freedoms are valued by the Canadian people and were legitimately recognized and enshrined in the Charter in 1982, which is designed to uphold these beliefs. The Charter affirms our basic individual rights and reminds us of our responsibility to respect the rights of others (Freedoms: 2002). The Charter focuses on human rights and ensures basic rights and freedoms based on elementary Canadian values. These rights are the supreme law of Canada under the Constitution (McDonald: 1986, 1).

As demonstrated, the Charter greatly affects policies of the Canadian Forces, being the largest federal employer. After the inception of the Charter of Rights and Freedoms, government organizations were given three years to bring legislation, regulation and policy in line with equality requirements under the Charter; after this time they were bound to comply (McDonald: 1986, 3). As was outlined, the CF has made many policy changes to necessitate basic restructuring and practices in order to comply with Charter standards involving equality and discrimination, such as allowing women in all positions of the CF, recognition of common law marriages, and open enrolment of homosexuals (McDonald: 1986, 3).

Although there has been considerable action taken in the federal government to change the policies of the CF to meet the Charter standards or to ensure that the appropriate justifications are available to maintain current policies, there are still great strides to be made (McDonald: 1986, 6). For example, although women are permitted to enter all positions in the military, they still face harassment from their male counterparts. Also, homosexuals may be permitted to join the CF, but may still not feel able to openly express their sexual orientation. Therefore, although changes have taken place in policy, it may take a long time for true equality and lack of discrimination to actually exist in the CF.

Military Control of the Individual and Leadership

As previously outlined, the CF has a different character and ethos of the society that it serves, which relates to a unique impression of individual rights. In a society of selfishness, the military demands that individuals willingly accept selflessness and self sacrifice of risk and hazard in order to have effective military forces (Freidland: 1996, 21). Techniques of control and discipline are used to ensure unconditional obedience of military personnel. Military professionals are expected to obey lawful rules, commands and meet military objectives. Training is designed to instil automatic obedience to commands, duties and obligations thought to be necessary in battle (Freidland: 1996, 12). Lawrence Radine studied social control in the U.S. army, and was concerned with the progressive erosion of individual freedom within bureaucratic military organization and techniques of dominance. Radine suggested that there was a subtle and gradual overall shift in army controls from coercion to manipulation of thought and feeling that more

closely resembled civilian controls and diminishing personal freedoms (Radine: 1977, 1). According to him, military subordination produces the destruction of civilian rights.

Leadership is used to enforce desired behaviour in military personnel. The Hewson Report states that, “good discipline depends on good leadership. Discipline is established and maintained by officers and non-commissioned officers” (Freidland: 1996, 14). Leadership is defined by a military brief concerning the events in Somalia as, “the art of influencing human behaviour so as to accomplish a mission in the manner desired by the leader” (Freidland: 1996, 13). Commanders in the military plan and organize their troops to carry out the tasks as desired using techniques of control.

Loyalty to the group is a very important motivating force in the military (Freidland: 1996, 15). Walter Korpi studied the social process of military training and found that the social norms of whatever small peer reference group officers aligned themselves with affected the attitudes and behaviour of the group members that belonged to it (Korpi: 1959, 21). Charles Moskos and Frank Wood argue that emphasis on institutional identity creates a greater commitment to the organization (Freidland: 1996, 3). Internal cohesion is important to the functioning of the military, but Freidland argues that isolating the military from Canadian society, its values and the Charter is not desirable or easy to accomplish (Freidland: 1996, 5). The military is a powerful force in subverting the individual interests of the soldier to that of the group, thus diminishing individual human rights.

Institution or Occupation?

Another important debate when discussing control of individuals in the military is whether or not the military is an institution or an occupation. Because the military appears to be set apart from the rest of society, it is often thought of as an institution. An extreme definition of an institution is that of Erving Goffman's total institution, which he describes as, "a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life" (Freidland: 1996, 3). This definition would be more applicable to a mental institution or a correctional facility, but connections can still be seen between it and the military establishment. Samuel Huntington defines institutions as, "stable, valued, recurring patterns of behaviour" (Cohen: 1985, 20). He goes on to say that, organizations and procedures vary in their degree of institutionalization. Harvard University and the newly opened suburban high school are both organizations, but Harvard is much more of an institution than the high school" (Cohen: 1985, 21). This definition exemplifies more clearly how the military is more of an institution than an organization because the military is a very structured and controlled system.

Eliot Cohen argues that the military system carries social and political values and it has influences and roles outside that of training and providing sufficient military service (Cohen: 1985, 20). In his view, the military is a political institution because military service is designed for war and war is a political matter. General Louis Trochu claimed in 1867 that military service should be treated as a political institution because of the "direct, powerful, and permanent effect they have on the dearest interests, aspirations, mores and practices of the entire population" (Cohen: 1985, 20). However, some students

of war argue that the military is independent of politics and social factors (Cohen: 1985, 21).

The all-volunteer military can also be considered an occupation. The military can be thought of as an occupation because military personnel receive wages for their work. Becoming a military soldier is often thought of as a profession with specialized positions and the division of labour (Cohen: 1985, 122). Charles Moskos argues that the military is the same as other occupational systems in that compensation is given based on skills and that monetary inducement makes the military reliant on the operation of the supply and demand of the marketplace. In his view, the military is part of the labour force based on market principles and no longer relies on citizen-soldiers, but rather on economic man to comprise their force (Moskos: 1988, 43-44). Military service is considered by many members of society to be a high status occupation because of its moral virtues (Cohen: 1985, 119).

Voluntary or Mandatory National Service?

Currently, the Canadian military is an all volunteer force. During peacetimes it is more difficult to maintain manpower in the military, which raises challenges about how to continue to meet the manpower needs of the military while being consistent with basic liberal democratic national values. Many believe that the volunteer force will not maintain the numbers necessary to serve its operational functions. This leads to questions about recruiting methods, including conscription, or mandatory military service. The issue of voluntary or mandatory service relates to the rights of the federal government versus the rights of individual citizens; the individual right to choose to serve versus

collective civic responsibility to serve the nation (Segal: 1989, 1). Military manpower issues during peacetimes lead to questioning the obligations of the citizen to the state.

The shift from war to peacekeeping functions of the military has changed citizens' perspective on military service. Historically wartime brought about conscription which forced mandatory military service, while in peacetimes military service became a voluntary civic virtue (Cohen: 1985, 19). With the industrial revolution, democracy and the extension of citizenship rights, social welfare and education came to be granted in exchange for military service to compliment citizenship obligations and rights (Segal: 1989, 1). With less of a threat to national security there was less need for a large military defence and the obligations of citizens to serve lessened while citizen rights grew. The military became an employer, providing wages for service and linking citizens to service with fiscal benefits. The all-volunteer force is maintained by principles of the labour market, diminishing the principle of the citizen-soldier that is needed in times of major war (Segal: 1989, 2).

Many believe that there is an obligation to serve in the military by being citizens of a community. Charles C. Moskos in "A Call to Military Service" argues that the all-volunteer army focuses on individual rights and neglects the civic responsibility to serve the country. In his view by being members of society citizens are interdependent, need to actively participate in civic life and should share a commitment to community and values (Moskos: 1988, 6). Moskos presents a case for national service, or the performance of short-term public service of socially needed tasks at the state, local and community level outside the marketplace for government agencies or non-profit organizations (Moskos: 1988, 2). For Moskos, the promotion of a spirit of civic mindedness is necessary to

accomplish much needed national tasks. He believes that shared civic duties are, “the social glue that holds a society together” (Moskos: 1988, 1). Moskos sees the benefits of national service in providing job training, basic education, aiding social and environmental needs and enhancing citizenship (Moskos: 1988, ix). He believes that national service by citizen-soldiers can be accomplished by the all-volunteer force (Moskos: 1988, 129).

Morris Janowitz enforces these points in “The Reconstruction of Patriotism”, by claiming that citizen rights and citizen duties have become disconnected. With the increasing emphasis on individual human rights, such as those outlined in the Charter, people feel less of an obligation to serve in the military for their country. He also suggests that formal education no longer creates a sense of community consciousness and that national service can provide a more effective lesson in civics than academic courses can. Janowitz believes that civic consciousness is created by a shared sense of public participation (Moskos: 1988 6).

Eliot Cohen, in “Citizens and Soldiers”, discusses the liberal obligation of the citizen-soldier to the state while viewing the military as a political institution (Cohen: 1985, 1) Universal and compulsory military service is tied to democratic forms of government, but is not the primary selection (Cohen: 1985, 117). In a liberal theorist’s view, as part of a nation, citizens of a liberal democracy are encouraged to serve and protect their country, home and community, but they are not forced to do so (Cohen: 1985, 125). Mandatory service is not preferred in a liberal society because as Adam Smith argues, “No state can impose very great and intolerable hardships, as the military service would be, in a refined state” (Cohen: 1985, 119-120). Although voluntary

military service is the preferred ideal of the liberal ideology, compulsory service sometimes becomes an economic necessity in times of war in order to defend and preserve the state (Cohen: 1985, 117).

Other people resist and object to the obligations to serve the country. Many see the dangers of mandatory service as work for welfare. The Gates Commission in the U.S. in the 1970's recommended to abolish conscription because they viewed it as "a form of taxation" (Cohen: 1985, 20). In this view, mandatory service is seen as an economic matter because it involves acquiring free service for a fixed amount of time (Cohen: 1985, 20). Others do not agree with the demand that citizens risk their lives for the country and forfeit their individual rights while submitting to the martial law. Some disagree with the discipline and regimentation in the military as well as the interruption of personal careers and education required in order to serve. The military is seen in these views to impose habits and doctrines that are diametrically opposed to free and civilized man (Cohen: 1985, 139).

Egalitarian theorists want equality in military service recruiting. They believe that an equal distribution of service in the military should occur and that wealth or education should not determine whether or not someone serves. These theorists wish to eliminate divisive external differences and inequalities, however difficult this is to achieve. Egalitarians argue that the all-volunteer force causes certain groups in society to bear the burden of service. Monroe Smith claims that national service "spares the inert, the timid, and the selfish" (Cohen: 1985, 147). Certain individuals simply choose not to serve the country, leaving the burden unequally distributed on other sectors of society. Egalitarian theorists claim that historically there has been a disproportionate amount of minorities

that served in an all-volunteer force due to the monetary and educational rewards received for service. A civil war slogan stated that the war was, “a rich man’s war and a poor man’s fight” (Cohen: 1985, 145). Egalitarians argue for universal service and equality of the burden of service in a democratic society (Cohen: 1985, 151).

However, according to a study conducted for the Department of National Defence, recruitment continues to be an issue for the CF. Instead of recruiting a large number of people who are considered minorities, it is revealed that the CF over-recruits from the majority white population. This leaves a large gap in the number of visible minorities in the military: “Over the last 20 years, the gap between the proportion of visible minorities in the source recruitable population (17-24 year olds), and the proportion of visible minorities in the CF strength has more than doubled from 7% to 15%” (Wait: 2001, v). The paper concludes by saying, “if not corrected, under-representativeness will become a critical liability to the credibility of the CF as a national institution in the future” (Wait: 2001, vi). If the CF can already see problems with recruitment, they need to evaluate and change their recruiting targets.

Many questions arise in discussing methods of recruitment for the military. The civic obligation to perform national service periodically expands and contracts throughout time. Depending on the dominant politics and values of the time the civic obligation may be ideal or marginal (Moskos: 1988, 13). The liberal democracy mix creates tensions of choice and implementation of the type of system of military service. While liberal theorists hope to minimize oppression and conflict, egalitarian theorists wish to spread the burden of service equally (Cohen: 1985, 151). Military manpower issues and the type of recruitment depend on the circumstances of the time. Military

service obligations are emphasized in times when the country is convinced that civic obligation is necessary to meet the public needs (Moskos: 1988, 25). Recent changes in the social and military organization, the rise of the welfare state, times of peace and increases in awareness of individual rights, such as those outlined in the Charter, have led the current military to be a professional all-volunteer force that works for wages.

Currently there appears to be a need to balance citizen rights and duties. Citizenship does have some moral dimensions and some obligation does exist toward serving to protect the values of the country. However, serving in the military should not mean loss of civil rights. In these times of heightened awareness of individual rights, the option to serve in the military must be a voluntary one.

Leadership Conclusion

A special relationship exists between the public and the armed forces. There is sometimes an antagonistic relationship between military norms and civilian values due to the different culture of the military. The CF has a unique mission to maintain order and protect society from external harm. The unique relationship between the military and society needs to be carefully monitored and guided. The public must always be critical of the military in order to make it legitimate itself to the public that it serves. There is a need to constantly ask important questions such as, does the system do what it is supposed to do? Do alternatives exist? The world is constantly changing with globalization, digitization, demographic shifts, migration and individualization. Fast change and restructuring are occurring all over and the emerging future is less predictable. W. Brian

Arthur et al argue in “Illuminating the Blind Spot” that, “in this environment, real power comes from recognizing the patterns of change” (Arthur et al: 2002, 11). Leaders must recognize emerging patterns in society and position themselves strategically to be part of the force reshaping the world (Arthur et al: 2002, 11). Charles Handy reiterates this point, by arguing that organizations need to constantly reinvent themselves in order to survive in a changing and turbulent world. Leaders must be creative and innovative and have the desire to make a difference (Handy: 2002, 29).

From the study of the *Charter* and its impact on the CF, it becomes evident that the two do not coincide peacefully; they represent two very different things. While the *Charter* is grounded in the rights and freedoms of the individual, the CF is concerned with group processes such as obedience and discipline. No matter how different they are, there is no choice but to ensure that the two exist and compliment one another. At present, this is not the case. It seems as if the *Charter* is being used as a tool to challenge and even attack the legislation and traditions of the military. The legislation of the military is found to be lacking when compared to the *Charter*. As Kenneth Watkin points out, there are two different scenarios that could result from this predicament. First, military personnel may feel that the *Charter* is forcing inappropriate civilian standards on their institution. In the end, the changes may possibly erode the military’s ability to defend the nation. This may be due to many possibilities including a lack of interested recruits or decreased morale. Second, supporters of the *Charter* may use it as a vehicle to alter an organization that downplays the rights of individuals. These supporters may endorse change at any price even if it means a weakened military system (Watkin: 1990, 2). In any case, the two scenarios both result in negative outcomes. It becomes evident

that the *Charter* and the traditions of the military need to be evaluated to determine how they can exist peacefully. There is a need for both individual rights as well as the discipline required for an effective military. One should not attack the other.

The CF should be proactive rather than reactive. In other words, rather than wait until they are forced to do so by the federal justice system, they should conduct their own inquiries and studies to determine whether or not the military is conforming to all relevant legislation. The military must take an active approach to ensure that they follow the rights and freedoms guaranteed to all Canadians. The CF can prepare by studying and understanding itself first and then using this information to develop a process to actively guide the future of the organization with intention, direction and mission (Arthur et al: 2002, 12). If the CF does not do this, the courts will continue to find problems with military protocol and force it to change its policies. To take an active stance shows both military personnel and civilians that the CF is concerned about both the people it employs and those it protects. The CF must find a balance between individual rights and the discipline required in the military. Handy suggests that leaders must use vision and values to guide the future (Handy: 2002, 32). Today's leaders must focus on mapping the invisible future using a deeper level of knowledge and awareness to enhance the decisions and guidance of the future (Arthur et al: 2002, 13). The CF should attempt to maintain its unique purpose and mission, while also respecting and representing the values and ethos of the people it serves.

Appendix A

The military effectiveness arguments raised by the Canadian Forces are that:

Unrestricted employment of women may jeopardize national security, because a potential enemy may view a mixed force as less capable. The effect of a mixed force on the relationship of Canada and its allies is not certain.

Women's reaction to combat situations is unknown, since there is no Canadian experience with women in combat roles and only limited international experience.

There is potential for adverse social and sexual relationships in mixed units operating under conditions of great stress. What difficulties this would create for / commanders in the field or at sea? Would the aggressiveness of servicemen on the battlefield be affected by the presence of women?

The advantage that female prisoners would present to an enemy and the impact on national and military morale is unknown, but concerns exist.

Some anatomical and physiological differences between men and women are evident with respect to strength, cardio-respiratory capacity, endurance in climatic extremes, quickness of reaction, speed and ability to throw and jump. Not all of these work to the disadvantage of women. The question here is what problems uneven performance will create for commanders.

It is anticipated that opening up all trades and classifications to women would increase costs. What effect will this have on the defence budget?

(Source: Canada: 1985, 30-31).

Appendix B

The officer General Specification requires every officer to:

- (a) accommodate mental stress from 'normal to extremely high'; under some circumstances 'hazards will involve disability or death';
- (b) maintain a level of physical fitness which will enable them to meet the physical demands of their normal duties and have sufficient reserve to meet any emergency;
- (c) attain and maintain the Basic Military Swimming Level;
- (d) be capable of rendering emergency first aid including cardiopulmonary resuscitation;
- (e) be skilled in performing foot drill movements with and without arms;
- (f) be skilled in the operation and safe handling of the service pistol, service rifle and sub-machine gun; /
- (g) be capable of eating, drinking, firing service pistol, and performing their primary duty while dressed in the full chemical warfare suit; and
- (h) be semi-skilled in fire fighting.

(Source: Blythe: 1994, 11-12).

Appendix C

1.075 Common-Law Partner and Common-Law Partnership

(2) ‘common-law partner’, in relation to an officer or non-commissioned member, means a person who has been cohabiting with the member in a conjugal relationship

(a) for a period of at least one year; or

(b) for a period of less than one year, if the member and the person have jointly assumed the support of a child.

‘common-law partnership’ means the relationship between an officer or non-commissioned member and the common-law partner of that member’.

(Source: Canada: On-line [c]).

Table A

RELEASE AGES
General Service Officers

RANK	AGE
Colonel and above	55
Lieutenant-Colonel	51
Major	47
Captain and Lieutenant	45

(Source: Canada: On-line [c]).

Table B

RELEASE AGES
Specialist Officers

RANK	AGE
Brigadier General and Above	60
Colonel	58
Lieutenant-Colonel and Above	55
Captain and Lieutenant	50

(Source: Canada: On-line [c]).

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