



MPPAC
ACPMP

Mounted Police Professional Association of Canada
Association Canadienne de la Police Montée Professionnelle

Submission to the Standing Committee on Public Safety and National Security on Bill C-7: *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*

**Mounted Police Professional Association of Canada
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INTRODUCTION

The Mounted Police Professional Association of Canada ("MPPAC") is a national not-for-profit association that is comprised of regular members of the Royal Canadian Mounted Police ("RCMP") in every region of the country.

MPPAC was formed in November 2010 by members of both the British Columbia Mounted Police Professional Association and the Mounted Police Association of Ontario, who sought to form a national organization dedicated to protecting and advancing the interests of RCMP members.

MPPAC assists and represents their members in grievances and appeals on work-related issues, pursuant to s. 47.1 of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 ("RCMP Act") and works to identify, resolve and reach consensus on professional and employment concerns with the RCMP. MPPAC is actively seeking to become the certified bargaining agent for all non-commissioned regular RCMP members and, thus, is directly affected by *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* ("Bill C-7").

While MPPAC is encouraged that, at long last, the right to engage in free collective bargaining is being extended to members of the RCMP, it has a number of significant concerns with Bill C-7. These concerns relate to the undue restrictions on the scope of bargaining, particularly in the areas of staffing levels, equipment, and harassment; the fairness of the interest arbitration process; the application of the *Government Employees Compensation Act* ("GECA") to RCMP members; and the need for greater clarity around the issue of "affiliation".

1. Eliminate Some Restrictions on Scope of Bargaining

Pursuant to the PSLRA as amended by Bill C-7, the scope of bargaining is severely and unduly restricted for RCMP members. Notably, the RCMP bargaining agent will be precluded from negotiating collective agreement provisions governing key areas affecting the safety and security of members, including staffing levels and equipment. As well, Bill C-7 explicitly prohibits provisions addressing the serious and on-going problems with harassment in the force from being included in a collective agreement.

Prohibitions this broad are not found in any other legislation governing police collective bargaining in Canada. MPPAC has concerns that these restrictions on the scope of bargaining, given their extent and nature, are inconsistent with s. 2(d) *Charter* rights and may be unconstitutional. Indeed, there is no justification for a number of them. Accordingly, MPPAC seeks amendments in this area.

(a) Protecting Members' Safety: Staffing Levels and Equipment

Ensuring the safety and security of RCMP members is a paramount concern for MPPAC. Every day RCMP members put their lives on the line to protect the Canadian public. Policing is difficult and dangerous work. As demonstrated by both the *Canada Labour Code* charges against the RCMP for health and safety violations arising from the tragic shooting deaths of three officers in Moncton and a federal Labour Department investigation's findings of health and safety violations by the RCMP in St. Albert, where another officer was tragically killed, these concerns are not hypothetical but very real. RCMP members need their association to be a strong advocate for them on the health and safety front. However, as the PSLRA and Bill C-7 are currently drafted, MPPAC will be unable to bargain key protections for its members in the areas of staffing levels and equipment.

For example, as a result of the operation of sections 7 and 113 of the existing *PSLRA*, public sector unions are not allowed to negotiate provisions into a collective agreement that affect the assignment of duties or that are related to staffing. As a result, these provisions would preclude a bargaining agent from being able to negotiate collective agreement terms governing, for example, minimum staffing levels aimed at improving member safety.¹

In contrast to what is being proposed for the RCMP, safety and staffing levels is an issue which can be addressed in collective agreements for other police forces in Canada. For example, article 22 of the collective agreement between the *Toronto Police Association and the Toronto Police Services Board*, provides that "[a]ll uniform patrol cars, except those assigned to traffic duties, shall be manned by two fully trained and armed police officers while on patrol between the hours of 4:00 p.m. one day and 4:00 a.m. the following day," subject to certain conditions and exceptions.² If certified, MPPAC would be interested in negotiating comparable provisions regarding minimal staffing levels for RCMP members on patrol. There is no legitimate reason why these type of measures are not an appropriate subject for bargaining.

Similarly, if certified as bargaining agent, MPPAC would like to be able to negotiate key protections for its members' safety in the area of equipment. However, proposed sections 238.03 and 238.19(i) of Bill C-7, state that "equipment" cannot be a subject of bargaining. Again, there is no legitimate basis for this exclusion and it only serves to preclude the bargaining agent from having a valuable say in member safety.

¹ Comparable restrictions also apply with respect to interest arbitration awards. See s. 150 of the PSLRA.

² See also *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association*, 1975 CanLII 645 (ON CA) where the Ontario Court of Appeal held that an arbitrator designated under the *Police Act* had the jurisdiction to award that "all uniform patrol cars...be manned by two fully trained and armed police officers while on patrol".

PROPOSED AMENDMENTS ON STAFFING AND EQUIPMENT

MPPAC seeks the right to bargain over key member safety issues including staffing levels and equipment.

Accordingly, MPPAC proposes to amend Bill C-7 as follows:

- ***Add new provision***

Despite s. 7 and s. 113 of the Act, in respect of a bargaining unit determined under section 238.14, the collective agreement may include terms or conditions of employment regarding staffing levels where the safety and security of RCMP members is at issue.³

- ***Delete reference to “equipment” in proposed sections 238.19(c)(viii) and 238.22(1)(d)(viii).***

(b) Ending Harassment in the Workplace

At the present time, the RCMP is facing serious problems with respect to the issue of how harassment is handled in the workplace. MPPAC, if chosen as the bargaining agent for RCMP members, believes it can make a significant contribution towards improving the current situation for all members.

However, as a result of proposed sections 238.19(c)(vi) and 238.22(1)(d)(vi) in Bill C-7, collective agreements and arbitral awards will not be able to include any terms and conditions that relate to harassment.

Again, MPPAC submits that this is without justification and forecloses the bargaining agent from fulfilling an important role in helping to resolve the current challenges facing the RCMP in this area.

PROPOSED AMENDMENTS ON HARASSMENT

MPPAC seeks to have a say in addressing the current challenges facing the RCMP with respect to harassment in the workplace.

Accordingly, MPPAC proposes to amend Bill C-7 as follows:

- ***Delete reference to “including harassment” in proposed sections 238.19(c)(vi) and 238.22(1)(d)(vi).***

³ A comparable change would also need to be made with respect to s. 150 of the PSLRA and arbitral awards.

- **Add new provision:**

Despite s. 238.19(c)(vi) and s. 238.22(1)(d)(vi). of the Act, in respect of a bargaining unit determined under section 238.14, the collective agreement and arbitral award may include terms or conditions of employment regarding harassment.

(c) Discipline

As currently drafted, proposed section 238.19(c) of Bill C-7 precludes the collective agreement from including terms and conditions of employment regarding discipline matters, including conduct. While MPPAC understands that these issues are generally excluded from collective bargaining for other police associations across Canada and are adjudicated through a separate process, it has concerns about the adequacy and independence of the current process. At present, the procedure under sections 2(3), 41(2) and 43(1) of the *RCMP Act* gives the Commissioner authority for appointing conduct authorities and conduct boards – the bodies that are responsible for deciding discipline and conduct issues. Appeals from these bodies are decided by the Commissioner. As a result, the current procedure lacks any independence from the RCMP Commissioner.

In comparison, in Ontario, for example, the Ontario Civilian Police Commission is much more independent. Although the first level decision on most misconduct issues is decided by the chief of police, under s. 87 of the Ontario *Police Service Act*, R.S.O. 1990, c. P.15, police officers or complainants can appeal the decision to the Ontario Civilian Police Commission, which is appointed by the Lieutenant Governor in Council, with a further appeal to the Divisional Court under s. 88.

MPPAC calls upon the government to amend the current RCMP procedures for code of conduct and discipline matters to ensure a greater level of independence from the RCMP Commissioner.

2. Need for A Fair Dispute Resolution Process Tailored to Police Officers

As set out in Bill C-7, RCMP members are precluded from striking and the process for dispute resolution is binding arbitration if the parties cannot reach a collective agreement. As a result, it is vital that the arbitration process be fair and independent as it is the sole dispute resolution mechanism available to them and replaces their constitutional right to strike.

However, MPPAC has serious concerns about the fairness and constitutionality of the dispute resolution process for RCMP members as a result of the skewed interest arbitration factors under the PSLRA, as amended by Bill C-7.

Most problematically, s. 148 of the existing PSLRA requires that the Board give preponderant weight to two factors: the necessity of attracting and retaining personnel and “Canada’s fiscal circumstances relative to its stated budgetary policies”. In other

words, the factors are skewed in favour of the government's position. Rather than allowing an arbitrator to independently consider and weigh all the factors, including what other police officers in Canada are paid, he or she must give preponderance to the government's stated policy. This is the opposite of independent and fair. Notably, there is no other police collective bargaining legislation, nor indeed any collective bargaining legislation, in Canada that requires an arbitration board to give preponderant weight to certain arbitral factors.

Also of concern is that fact that some of the existing factors are not truly relevant considerations for RCMP members. Notably s. 148(2)(b) of the PSLRA allows an arbitration board to compare compensation and terms and conditions of employment "as between different classification levels within an occupation and as between occupations in the public service." However, RCMP members are not civil servants and thus it is not relevant to compare their compensation to other occupations in the federal public service.

Bill C-7 already recognizes that a police bargaining unit has unique considerations at arbitration in comparison to other federal public servants, by requiring in proposed s. 238.21 that an arbitration board consider the "operational effectiveness" of the RCMP. Consistent with this tailored approach, MPPAC would propose that the phrase "and as between occupations in the public service" be deleted from the arbitral factors in the PSLRA, when dealing with a bargaining unit of RCMP members.

PROPOSED AMENDMENTS ON ARBITRATION FACTORS:

MPPAC proposes that Bill C-7 be amended to return to the interest arbitration factors that existed prior to the amendments to the PSLRA in 2013 and that the phrase "as between occupations in the public service" be deleted with respect to the RCMP bargaining unit.

Specifically, MPPAC proposes that s. 238.21 be amended to read as follows:

- ***238.21 (1) Section 148 does not apply in respect of a bargaining unit determined under section 238.14.***

(2) In the conduct of its proceedings and in making an arbitral award in respect of a bargaining unit determined under section 238.14, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

(b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;

(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation;

(d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;

(e) the state of the Canadian economy and the Government of Canada's fiscal circumstances; and

(f) the impact of the determination on the operational effectiveness of the Royal Canadian Mounted Police.

3. Reverse the application of the *Government Employees Compensation Act* to RCMP members

Section 40 of Bill C-7 applies the *Government Employees Compensation Act (GECA)* to RCMP members. Notably, under the *GECA*, members will only be entitled to the compensation that they would receive from the workers' compensation board in the province where they are usually employed. The amount of compensation is determined by the board or authority responsible for adjudicating the matter in that province.

Currently, when RCMP members suffer an occupational injury, it is dealt with internally by the RCMP. They are granted unlimited sick leave, in recognition of the dangerous and physically strenuous nature of their positions. They equally have access to 11 Occupational Health and Safety Services offices across Canada, which have a multi-disciplinary team of health experts tasked with assisting RCMP members, and can access Veterans' Affairs Operational Stress Injury (OSI) Clinics in certain circumstances. The RCMP internally manages its disability and sick leave program, which is "managed nationally with the objective of helping members to return to work in a safe and timely manner".⁴

If permanently disabled, RCMP members can receive a disability pension through the Grant to Compensate Members of the RCMP for Injuries Received in the Performance of their Duties, which is administered by Veterans' Affairs Canada, but paid by the RCMP.

⁴ Royal Canadian Mounted Police, "Audit of Long-Term Sick Leave" (February 2014), online: <http://www.rcmp-grc.gc.ca/aud-ver/reports-rapports/lts-cml-d-eng.htm#Background>. See also Royal Canadian Mounted Police, "Disability", online: <http://rcmp-grc.pension.gc.ca/act/ppntact-actmubr-eng.html#a5> (accessed March 23, 2016); Royal Canadian Mounted Police, "Mental health services available to RCMP employees", online: <http://www.rcmp-grc.gc.ca/fam/ptsd-tspt-eng.htm> (accessed March 23, 2016).

At this stage, it is unclear what effect the application of GECA will have on the benefits available to RCMP members following an occupational injury. However, MPPAC has two concerns at this stage:

1. Under the *GECA*, RCMP members will be subject to a different process and potentially receive different benefits depending on the region of the country in which they are posted. While other police forces have their occupational injuries assessed by workers' compensation boards, no other police force works across multiple jurisdictions. This could lead to significant unfairness in individual cases.
2. While Bill C-7 brings RCMP members under the *GECA*, members of the Canadian Forces are still excluded. This is illogical, as many of the same factors that mandate in favour of a single, national system for occupational injuries for members of the Canadian Forces apply to members of the RCMP: both groups are subject to being posted in varied and often remote locations and both groups engage in work that involves significant risk of injury.

PROPOSED AMENDMENT ON GECA

MPPAC proposes that section 40 of Bill C-7 be deleted.

4. Clarity Around the Meaning of “Affiliation”

MPPAC also has concerns around the lack of clarity regarding the use of the term “affiliated” in Bill C-7.

New proposed section 238.13(2)(b) provides that an employee organization seeking to certify RCMP members cannot be “affiliated with a bargaining agent or other association that does not have as its primary mandate the representation of police officers.” Section 238.17(1) further provides that the Board must revoke the certification of any bargaining agent that is found to be affiliated within the meaning of the act.⁵ Unfortunately, with the exception of the clarification that participation in the National Joint Council is not considered affiliation,⁶ the term “affiliated” is not defined in Bill C-7 or any of the legislation it is modifying.

The vagueness of the term “affiliate” is problematic for employee organizations like MPPAC who are looking to certify a RCMP bargaining unit. Given the requirements of Bill C-7, any employee organization seeking to certify the RCMP, must have as its primary mandate the representation of RCMP members, and thus cannot by definition be an existing union with established resources and finances.

⁵ See also s. 65 of the transitional provisions.

⁶ s. 238.13(3) and 238.17(2).

At the same time, however, employee organizations such as MPPAC should not be precluded from benefiting from the expertise and assistance of other unions, particularly given the long history of exclusion of RCMP members from access to collective bargaining. Yet, if the term “affiliated” is interpreted broadly, it could potentially be used to prevent employee organizations such as MPPAC from getting assistance with an organizing drive from established unions in the form of basic agreements for services, including during the certification period. This could greatly limit RCMP members from effectively exercising their constitutional right to associate by forming and certifying a union.

Even more problematic, under Bill C-7, an employee organization would only find out if it had violated the prohibition on “affiliation” after it presented a certification application, which could then be rejected by the Board if it concludes that the employee organization was improperly “affiliated” with another union. This would happen *after* the employee organization had signed up thousands of members and would add a great degree of uncertainty into the certification process.

Historically, provisions of this sort, which prohibit affiliation, were intended to guard against affiliations that might conflict with members’ duties as police.⁷ The purposes of this provision could therefore be accomplished through language that prevented RCMP members from certifying themselves as a union local or component within a broader public sector union or from joining broader labour organizations, such as the Canadian Labour Congress, but does not preclude basic agreements for the provision of certain services.

PROPOSED AMENDMENT ON AFFILIATION:

MPPAC seeks an amendment to Bill C-7 that would define the term “affiliated” more specifically, in order to give better guidance to employee associations as to what is allowed.

Specifically, MPPAC proposes the following amendment:

- ***238.13 (3) For greater certainty,***
 - (a) for the purposes of subsection (2), a bargaining agent will only be “affiliated” with a bargaining agent or other association where:***
 - (i) the bargaining agent joins or becomes a member of a bargaining agent or other association;***

⁷ See *Canadian Union of Public Employees v. Hachey*, 2010 NBQB 319, at paras. 17-19; *Regina v. Ontario Labour Relations Board, Ex parte Canadian Union of Public Employees, Local 543*, 1964 CanLII 272 (ON SC).

(ii) the bargaining agent is bound together with or controlled by a bargaining agent or other association through constitutional obligations; or,

(iii) the bargaining agent engages in a relationship with another bargaining agent or other association where one of the parties exercises a substantial degree of control, direction, or restriction on the activity of the other.

MPPAC also proposes similar amendments to s. 238.17.

5. SUMMARY OF PROPOSED AMENDMENTS

PROPOSED AMENDMENTS ON STAFFING AND EQUIPMENT

- **Add new provision**

Despite s. 7 and s. 113 of the Act, in respect of a bargaining unit determined under section 238.14, the collective agreement may include terms or conditions of employment regarding staffing levels where the safety and security of RCMP members is at issue.⁸

- **Delete reference to “equipment” in proposed sections 238.19(c)(viii) and 238.22(1)(d)(viii).**

PROPOSED AMENDMENTS ON HARASSMENT

- **Delete reference to “including harassment” in proposed sections 238.19(c)(vi) and 238.22(1)(d)(vi).**
- **Add new provision:**

Despite s. 238.19(c)(vi) and s. 238.22(1)(d)(vi) of the Act, in respect of a bargaining unit determined under section 238.14, the collective agreement and arbitral award may include terms or conditions of employment regarding harassment.

PROPOSED AMENDMENTS ON ARBITRATION FACTORS:

- **238.21 (1) Section 148 does not apply in respect of a bargaining unit determined under section 238.14.**

⁸ A comparable change would also need to be made with respect to s. 150 of the PSLRA and arbitral awards.

(2) In the conduct of its proceedings and in making an arbitral award in respect of a bargaining unit determined under section 238.14, the arbitration board must take into account the following factors, in addition to any other factors that it considers relevant:

(a) the necessity of attracting competent persons to, and retaining them in, the public service in order to meet the needs of Canadians;

(b) the necessity of offering compensation and other terms and conditions of employment in the public service that are comparable to those of employees in similar occupations in the private and public sectors, including any geographic, industrial or other variations that the arbitration board considers relevant;

(c) the need to maintain appropriate relationships with respect to compensation and other terms and conditions of employment as between different classification levels within an occupation;

(d) the need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;

(e) the state of the Canadian economy and the Government of Canada's fiscal circumstances; and

(f) the impact of the determination on the operational effectiveness of the Royal Canadian Mounted Police.

PROPOSED AMENDMENT ON GECA

- **MPPAC proposes that section 40 of Bill C-7 be deleted.**

PROPOSED AMENDMENT ON AFFILIATION:

- **238.13 (3) For greater certainty,**

(a) for the purposes of subsection (2), a bargaining agent will only be "affiliated" with a bargaining agent or other association where:

(i) the bargaining agent joins or becomes a member of a bargaining agent or other association;

(ii) the bargaining agent is bound together with or controlled by a bargaining agent or other association through constitutional obligations; or,

(iii) the bargaining agent engages in a relationship with another bargaining agent or other association where one of the parties exercises a substantial degree of control, direction, or restriction on the activity of the other.

- **MPPAC also proposes similar amendments to s. 238.17.**