



**MPPAC
ACPMP**

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

**Submission to the Senate National Security and Defence Committee
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 and civilian 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 and civilian 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, including the areas of staffing levels, equipment, and harassment amongst others; as well as the need for greater clarity around the issue of "affiliation".

1. Eliminate Some Restrictions on Scope of Bargaining

Pursuant to 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, along with a number of other problematic restrictions

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. It is clear that 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 this very critical area of staffing levels and equipment.

In contrast to what is being proposed for the RCMP in Bill C-7, 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.¹ Minimum staffing provisions have also been established for police forces in Niagara, Sudbury and Windsor. 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 types of measures are not an appropriate subject for bargaining.

Similarly, if certified as the bargaining agent for RCMP members, MPPAC proposes to be able to negotiate key protections for its members' safety with regard to equipment. This may include a dialogue on equipment standards, firearms, less-than-lethal weapons, or body armour. The current proposed sections 238.03 and 238.19(i) of Bill C-7, state that "equipment" cannot be a subject of bargaining. Again, this exclusion is without merit and would only serve to preclude the bargaining agent from having a valuable say in member safety.

¹ 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". Minimum police staffing levels were more recently upheld in *Durham Regional Police Association v. Regional Municipality of Durham Police Services Board*, 2007 CanLII 27333 (ON LA).

(b) Ending Harassment in the Workplace

At the present time, the RCMP is facing serious harassment issues; specifically how they are managed in the workplace.. As the bargaining agent for RCMP members, MPPAC proposes, collective bargaining would provide a significant contribution towards improving the current situation for all members.

Many collective agreements incorporate provisions that prohibit workplace harassment. Many police collective agreements also include “no harassment” provisions. For instance, article 1.5 of the Niagara Region Police Association Collective Agreement 2013-2015 provides that:

The parties agree that there will be no harassment or discrimination as defined by the Ontario Human Rights Code. Alleged incidents of harassment or discrimination will be addressed through the grievance procedure.

Similarly, the Winnipeg Police Association Collective Agreement contains a respectful workplace clause that prohibits discrimination, harassment, disruptive workplace conflict, and other related behaviour.

Bill C-7, sections 238.19(c)(vi) and 238.22(1)(d)(vi), specifically excludes any reference to harassment in the RCMP collective agreement stating that arbitral awards cannot include terms and conditions relating to harassment.

MPPAC submits this is without justification and forecloses the bargaining agent from facilitating a resolution to these current challenges facing the RCMP. Members need protection from workplace harassment, and an independent redress mechanism should be in place when situations of harassment occur.

(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, MPPAC has concerns about the adequacy and independence of the current process. Under sections 2(3), 41(2) and 43(1) of the *RCMP Act*, the current process assigns 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.

By comparison, in Ontario, for example, the Ontario Civilian Police Commission is significantly 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.

(d) Other Restrictions on the Scope of Bargaining

Beyond the specific restrictions which have been discussed above, Bill C-7 includes a number of other bargaining restrictions that have not been imposed in other jurisdictions. Under Bill C-7, further bargaining restrictions include transfers and appointments (section 238.19(c)(ii)), probationary periods (section 238.19(c)(v)), pensions (section 238.19(b)), and uniforms (section 238.19(c)(viii)).

Clauses governing appointments or transfers are a feature of several police collective agreements nation-wide. For instance, promotions are contemplated by the Winnipeg Police Association Collective Agreement in article XIII 1, and the Vancouver Police Union Collective Agreement in article 11.2. If certified, MPPAC would be ideally situated to review and enhance the RCMP promotional system through collective bargaining. This may involve careful consideration of operational requirements and the experiences of other provinces or municipalities.

With regards to RCMP members on probation, MPPAC could offer its perspective on probationary periods and prerequisites for continued employment. The terms and conditions of probationary periods have been negotiated in other jurisdictions, for example in article 11.4 of the Vancouver Police Union Collective Agreement. These provisions could be developed following internal consultations and considerations of best practices from outside jurisdictions.

The inability to bargain pension issues is another major restriction on bargaining. Members should have a say in superannuation matters, such as the definition of pensionable service and proper contribution levels. Across Canada, a number of police forces are permitted to negotiate in relation to pensions (e.g. Winnipeg Police Association Collective Agreement article XIII 4, Vancouver Police Union Collective Agreement article 13, Edmonton Police Association Collective Agreement article 7.08, and Toronto Police Association Collective Agreement article 8). RCMP members should have their interests advanced during active service and during their retirement. MPPAC submits that there is no reason to take pension issues off the table given the experiences of other jurisdictions.

Bargaining over uniforms might involve clothing quality, clothing standards and allowance amounts for both uniformed and plain clothes officers. While Bill C-7 prohibits negotiations on this issue, a number of police collective agreements contain uniform clauses including Winnipeg Police Association Collective Agreement article XII 9, Vancouver Police Union Collective Agreement article 6.1, Edmonton Police Association Collective article 7.05, and Toronto Police Association Collective Agreement article 4. Ideally, members could be engaged through a multi-party process or steering committee.

The restrictions on bargaining in Bill C-7 are clearly much more restrictive than those applicable to other police services in Canada. Accordingly, consistent with the right to collective bargaining protected by s. 2(d) of the Charter, MPPAC invites the Committee to also consider amending the scope of bargaining restrictions in these other areas to bring them in line with what is the norm for other police forces across Canada.

PROPOSED AMENDMENT ON SCOPE OF BARGAINING RESTRICTIONS:

MPPAC believes that the bargaining restrictions imposed by Bill C-7 should be viewed in light of the experiences of other jurisdictions, and that the legislation should be amended to ensure fewer restrictions.

Specifically, MPPAC proposes that s. 238.19 (c) of Bill C-7 be deleted and that any other necessary consequential amendments be made to allow for the issues identified above to be included in collective agreements.

2. 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.² Unfortunately, with the exception of the clarification that participation in the National Joint Council is not considered affiliation,³ 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 as the 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.

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

² See also s. 65 of the transitional provisions.

³ s. 238.13(3) and 238.17(2).

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.⁴ 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;

(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

⁴ 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).

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.