

OPINION

MILITARY

Military sudden death investigations don't serve public, families interests



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OTTAWA—When a person dies suddenly or through suspicious circumstances, a coroner's inquest may be conducted to determine the cause of death. In Ontario, the stated purpose of a coroner's inquest is: "to serve the living through high-quality death investigations and inquests to ensure that no death will be overlooked, concealed or ignored." After the investigation is complete, the findings may then be used to generate recommendations to help improve public safety and prevent future tragedies.

Regrettably, however, when a member of the Canadian Armed Forces suffers from a sudden death (non-battle) on Canadian soil or abroad, their family is denied such an independent, external fact-finding investigation. Instead, they are made to rely on an in-camera Canadian Forces Board of Inquiry (BOI) which is specific to the military, for the military, and in the interests of the military. The table below illustrates some differences in treatment of a sudden death by a military person and his civilian counterpart.

The purpose of a military BOI into sudden death is taken from the convening order, issued by a senior defence official. It typically states the purpose to: "investigate the causes and contributing factor(s) that may have led to the death of [that member] and identify applicable preventative measures, if any." Customarily present on a military BOI panel is a president, several members including a lawyer and a public affairs officer; all members of the military. A BOI report is produced by the president, which must pass scrutiny through the chain of command and receive the CDS's approval.

The presence of a military public affairs officer on a BOI board raises some questions, specifically: in a process aimed at finding fact and seeking internal life-saving improvement, what need is there for an public affairs officer whose job it is to protect the Canadian Armed Forces "brand" from any perceived wrongdoing? Surely, if there was wrongdoing by the CAF, the military should want this exposed, if for no other reason than to ensure such an occurrence does not happen.

Systemic problems

Above and beyond the obvious and serious discrepancies between a coroner's inquest and a military BOI (see table), a grieving family of a departed soldier must also expect to encounter a unique-to-the-military incongruous inquiry process which clearly places the family's need to 'know' well back. Consider the following.

Firstly, as discussed, the composition of a BOI panel examining

the causes of suicide includes a CF public affairs officer. Does the mere presence of a public affairs officer then not contradict the purpose of a BOI? After all, what is at stake in a BOI is to draw lessons from such tragedies to prevent future occurrences. The issue is not to apportion blame, but to save lives!

Secondly, the timeliness of concluding these BOI investigations needs to be examined; we would normally say 'evaluated', but in this case, evaluation to any standard results in a failing grade. Currently, there is no, repeat no, statutory time limit for a BOI's investigative results to be released by the CDS. Put another way, currently, there is nothing compelling the CDS to ever act on a BOI investigative report, let alone release the report to anyone, let alone the family of a deceased soldier. This is causing problems and the result is that at least one BOI has remained on the desk of the CDS awaiting final approval, despite being convened April 13, 2007, nearly 2,500 days ago, or over six-and-a-half years! Through access to information disclosure, we have learned that this six-and-a-half year old case is reported as being "15th in the queue."

Thirdly, not only is the actual inquiry occurring behind closed doors, but the public does not get to see the final report. A grieving family wishing to know the outcome of this lengthy process must request a copy of the report through access to information. This means that DND will have an opportunity to redact any passages which can be exempted under the ATI legislation.

Fourthly, the family of a deceased member does not even have the right to attend the BOI hearings, let alone be granted "standing" and, in the process be able to act through counsel (see serial 7 in the table). Surely, in death grieving families should have a "right to know" not only what happened but also what can be done to prevent such tragedies in the future so as to possibly save the life of another young and valiant soldier.

Conclusion

As we learned through the Fynes public interest inquiry, the military has a propensity of blaming the family for the suicide of veterans. Indeed, through access to information, we have learned that pre-2008, it may have in fact been policy for a BOI to assign blame. We allege that this outcome is ultra vires the purpose of the BOI, which is to provide findings and recommendations, with the aim of preventing future like-occurrences.

Currently, we believe that military BOIs are not helping to uncover shortcomings in dealing with mental health issues. It may be enabling the CAF to turn a blind eye to problems plaguing their institution, with potentially deleterious effect. This needs to change because the military might be missing a critical opportunity to take timely advantage of

'lessons learned' by introducing changes that could save lives.

The time has come for the civil authorities to step in, insisting on the conduct of a coroner's inquest

each time one of our sons and daughters suffers a sudden death in Canada, whether connected to a military installation or not. Our civil society owes this much

to our valiant soldiers and their grieving families. As an aside, such a process would not prevent the military from having its own BOI to meet its own purposes. However, at least a grieving military family would be able, in the wake of the tragedy befalling them, to rely on an existing independent, impartial, efficient, open investigative process to assist them, to not only find answers, but to have a well-founded hope that their personal tragedy may help save future lives.

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MILITARY DEATH INVESTIGATIONS

Differences in treatment of a sudden death by a military person and his civilian counterpart

CHARACTERISTICS	CORONER'S INQUEST	MILITARY BOARD OF INQUIRY
1. What is the purpose of a sudden death inquiry?	To inquire into the circumstances of the death and to inform the public so to	To investigate and report to the minister or any such authority such as the Chief of the Defence Staff on the circumstances of the sudden death.
2. Does the presiding officer have specialized training?	Yes. Medical doctors with specialized training in the principles of death investigation presides the inquest.	No. The commissioned officer appointed to preside at a CF BOI has no medical or legal training, though a member of the board may have such skills.
3. Can a spouse, parent, child, brother, sister or personal representative of the deceased person request an inquest?	Yes.	No.
4. Can a relative of a deceased member have "standing" at the inquiry?	Yes. Any person having a substantial and direct interest in the inquest can ask to have "standing" and play an active role during the inquest.	No. The family of a deceased member plays no role in the CF BOI. However, spouses or parents of a deceased member may be "summoned" to appear and be compelled to answer any question relating to the matter before the board.
5. Are "interested persons" such as spouses or parents permitted to ask questions?	Yes.	No. Interested persons may not even be invited to attend the CF BOI unless the convening authority authorizes it. The CF BOI must exclude from its meetings all persons except a witness (and their counsel) who giving evidence.
6. Do relatives of the deceased with "standing" have rights?	Yes. A person designated as a person with "standing" at an inquest may: (a) be represented by legal counsel throughout the proceedings; (b) call and examine witnesses and present arguments and submissions; (c) conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.	No. The family of deceased member has no such rights.
7. Is a jury normally empanelled?	Yes. Normally a jury of five (5) persons is empanelled for a coroner's inquest. The jury is drawn from the public at large.	No. Instead of a jury, there are CF public affairs officers, CF legal affairs officers, CF medical doctors and other CF members are named as part of the CF BOI. The public plays no part in the inquiry process.
8. Why is a jury important?	The purpose of a jury is to guard against the exercise of arbitrary power; to make available the common-sense judgment of the community in preference to the professional or perhaps over conditioned or biased responses of members of the executive. The jury at an inquest is expected to make recommendations directed to the avoidance of death in similar circumstances in the future; even if these go against the existing policies, procedures and practices.	The CF BOI is structured in such a way so as to exclude the input of external-to-DND sources. Members of the CF BOI are named by the chain of command (convening authorities). These members do not have the required independence and impartiality to critically examine internal-to-DND processes which might have played a contributing role in the sudden death.
9. Are hearings open to the public?	Yes. One of the purposes of the inquest is to have the public fully informed of the circumstances of the death.	No.
10. Can witnesses (i.e. families) be represented by lawyers?	Yes.	No. The president of a CF BOI normally insists in dealing directly with the grieving spouse or parents of a deceased military member, even if they are represented by legal counsel. Counsel is only permitted to be present while their client gives evidence.
11. Is a report normally prepared and submitted to authorities?	Yes.	Yes. Through the chain of command.
12. Is the report public?	Yes.	No. Although a redacted copy of the approved report may be obtained through the access to information law.
13. Do the authorities have a mandatory duty to reply to observations/recommendations?	Yes.	No.
14. How long have authorities to reply to the report.	Weeks.	After a CF BOI investigation is complete, it requires at least two additional approvals. First, the CF BOI is sent for approval to the chain of command of the deceased—this may take several years. Secondly, the BOI is referred to the director of casualty support management (DCSM) for review on behalf of the CDS final approval—this may also take several years.