

Report of the

Independent External Comprehensive Review

of the Department of National Defence
and the Canadian Armed Forces

The Honourable Louise Arbour, C.C., G.O.Q.

20 May 2022

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May 20, 2022

BY HAND

The Hon. Anita Anand, PC, MP
Minister of National Defence
Ottawa, ON K1A 0K2

Dear Minister Anand:

**RE: Independent External Comprehensive Review of the Department of National Defence
and the Canadian Armed Forces**

I have the honour to submit the attached report in both official languages pursuant to the Terms of Reference of the above-noted Review.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in dark ink, appearing to read 'Louise Arbour', with a stylized flourish at the end.

Louise Arbour

Encls.

- c. General Wayne Eyre, Chief of the Defence Staff
Bill Matthews, Deputy Minister
Heather Walsh, Acting Director, External Liaison

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Preface

Thousands of Canadians have served, and continue to serve, with honour in one of the country's most prestigious organizations: the Canadian Armed Forces (CAF). Many, however, were denied that chance. Members of the LGBTQ2+ community were purged. Members of Indigenous and black communities, and other visible minorities and equity-seeking groups, have been largely absent, clearly not welcome. For years, women were simply shut out.

When finally allowed to serve, women were made to feel they did not belong. They were denied opportunities to compete fairly and to thrive. They were harassed, humiliated, abused and assaulted, and, appallingly, many continue to be targeted today.

During my Review, the most poignant stories I heard were of broken dreams and disillusion. Many of these stories have been told before. Efforts have been made to reverse this shameful reality, but much remains to be done.

The CAF has a long history of recruiting among military families. I was quite struck to hear that many serving members of the CAF, including high-ranking officers, would not encourage their daughter(s) to enrol today. Indeed, the exposure of sexual misconduct in the CAF has caused as much damage as defeat in combat would have to demoralize the troops and shock Canadians.

In addition to an increased willingness to speak publicly about their personal stories, women have come together with actionable energy to seek redress. I have heard incredible stories of courage and resilience from women who are determined to fight for their rightful place in the CAF. This extraordinary mobilization of women – complainants, victims, survivors and allies – has been an irreversible impetus for profound, radical, change. The culture change that the CAF has embarked on cannot afford to fail. Above all, the CAF owes it to its own people, past, present and future, to live up to the values it claims to embrace and uphold at home and globally: Duty, Loyalty, Integrity, Courage.

As challenging as it is, this organization must demonstrate enough humility to accept external help and open itself to the outside world.

Meaningful change will rest on the political will and determination of the civilians who oversee the CAF. Still, it will not happen without the support of CAF leaders and, ultimately, the goodwill of all its members who are, every day, entrusted with the duty to protect our country, and who do so on our behalf.

I trust, hope, they will.

Louise Arbour

Table of Abbreviations

Abbreviation	Complete word or phrase
ADM	Assistant Deputy Minister
ADM(DIA)	Assistant Deputy Minister (Data, Innovation and Analytics)
ADM(HR-Civ)	Assistant Deputy Minister (Human Resources-Civilian)
ADM(IM)	Assistant Deputy Minister (Information Management)
ADM(PA)	Assistant Deputy Minister (Public Affairs)
ADM(RS)	Assistant Deputy Minister (Review Services)
ADPQ	<i>Association des directeurs de police du Québec</i>
ADR	alternative dispute resolution
AFC	Armed Forces Council
AFO	Air Force Order
AG	Auditor General of Canada
ALOY	Aboriginal Leadership Opportunities Year
ATIP	Access to Information and Privacy
Bastarache Report	<i>Broken Dreams Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP – Final Report on the Implementation of the Merlo Davidson Settlement Agreement by the Honourable Michel Bastarache, C.C. Q.C., Independent Assessor (11 November 2020)</i>
BCACP	British Columbia Association of Chiefs of Police
Bill C-25	<i>An Act to amend the National Defence Act and to make consequential amendments to other Acts, SC 1998, c 35</i>
Bill C-65	<i>An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, SC 2018, c 22</i>
Bill C-77	<i>An Act to amend the National Defence Act and to make related and consequential amendments to other Acts, SC 2019, c 15</i>
BLG	Borden Ladner Gervais LLP
BMOQ	Basic Military Officer Qualification
BMQ	Basic Military Qualification
CAF	Canadian Armed Forces

<u>Abbreviation</u>	<u>Complete word or phrase</u>
CAF Disclosure Process	Canadian Forces Disclosure Process
CANFORGEN	Canadian Forces General Message
CANSOFCOM	Canadian Special Operations Forces Command
CAO	Canadian Army Order
CASB	Canadian Army Succession Board
CCMS	Conflict & Complaint Management Services
CDA	Canadian Defence Academy
CDS	Chief of the Defence Staff
CFAT	Canadian Forces Aptitude Test
CFB	Canadian Forces Base
CFC	Canadian Forces College
CFGa	Canadian Forces Grievance Authority
CFHSG	Canadian Forces Health Services Group
CFLRS	Canadian Forces Leadership and Recruit School
CFMPG	Canadian Forces Military Police Group
CFMWS	Canadian Forces Morale and Welfare Services
CFNIS	Canadian Forces National Investigation Service
CFPAS	Canadian Forces Personnel Assessment System
CFPM	Canadian Forces Provost Marshal
CFRG	Canadian Forces Recruiting Group
CHRA	<i>Canadian Human Rights Act</i> , RSC 1985, c H-6
CHRC	Canadian Human Rights Commission
CHRT	Canadian Human Rights Tribunal
CJOC	Canadian Joint Operations Command
CMJ	Chief Military Judge
CMP	Chief of Military Personnel
CO	commanding officer
CPCC	Chief of Professional Conduct and Culture
CSRT-SM	CAF Strategic Response Team on Sexual Misconduct
CVBR	<i>Canadian Victims Bill of Rights</i> , SC 2015, c 13, s 2
DAC	Departmental Audit Committee
DAG	Defence Advisory Group

Abbreviation	Complete word or phrase
DAOD	Defence Administrative Orders and Directives
DDCS	Director of Defence Counsel Services
DEO	Direct Entry Officer
DGICCM	Director General of Integrated Conflict and Complaint Management
DGMC	Director General Military Careers
DGMPRA	Director General Military Personnel Research and Analysis
DM	Deputy Minister of National Defence
DMCA	Director of Military Careers Administration
DMCA 2	Director of Military Careers Administration 2
DMP	Director of Military Prosecutions
DND	Department of National Defence
DP	Developmental Period
DPMC-OpH	Directorate of Professional Military Conduct (Operation HONOUR)
DRDC	Defence Research and Development Canada
DSA	Director of Senior Appointments
DSEI	Directorate of Special Examinations and Inquiries
<i>Duty with Honour</i>	<i>Duty with Honour: The Profession of Arms in Canada 2009</i> (2009)
DVR	Declaration of Victims Rights
EAC	External Advisory Council to the SMRC
ECRIC	External Comprehensive Reviews Implementation Committee
FA	Final Authority
FEWO	Standing Committee on the Status of Women (House of Commons)
GBA+	Gender-based Analysis Plus
GIC	Governor in Council
GOFO	General Officer and Flag Officer
HA	Harassment Advisor
HISB	Harmful and Inappropriate Sexual Behaviour
IA	Initial Authority
ICCM	Integrated Conflict and Complaint Management
ICRTS	Integrated Complaint Registration and Tracking System
JAG	Judge Advocate General
JAIMS	Justice Administration and Information Management System
JCSP	Joint Command and Staff Programme

Abbreviation	Complete word or phrase
L1	Level 1
Lamer Report	<i>The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c.35 (DND, 3 September 2003)</i>
LeSage Report	<i>Report of the Second Independent Review Authority to The Honourable Peter G. MacKay Minister of National Defence, by the Honourable Patrick J. LeSage, C.M., O.Ont., Q.C. (DND, December 2011)</i>
LGBTQ2+	lesbian, gay, bisexual, transgender, queer, two-spirited
Mandate Letter	Minister of National Defence Mandate Letter, dated 16 December 2021
MAP	Management Action Plan
MCC	Military Career Counsellor
MGERC	Military Grievances External Review Committee
MILPERSCOM	Military Personnel Command
MILPERSGEN	Military Personnel Generation
MINDS	Mobilizing Insights in Defence and Security
Minister's Advisory Panel	Minister's Advisory Panel on Systemic Racism, Discrimination with a focus on anti-Indigenous and anti-Black racism, LGBTQ2+ Prejudice, Gender Bias and White Supremacy
MMC	Minister's Monitoring Committee on Change in the DND and the CAF
MND or Minister	Minister of National Defence
MP	Military Police
MPAP	Military Police Analytics Program
MPCC	Military Police Complaints Commission
NATO	North Atlantic Treaty Organization
NCM	non-commissioned member
NDA	<i>National Defence Act</i>
NDDN	Standing Committee on National Defence (House of Commons)
NDHQ	National Defence Headquarters
N/OCdts	Naval/Officer Cadets
NSPB	Navy Succession Planning Board
OACP	Ontario Association of Chiefs of Police
OAG	Office of the Auditor General of Canada
OJAG	Office of the Judge Advocate General

TABLE OF ABBREVIATIONS

Abbreviation	Complete word or phrase
Ombudsman	CAF/DND Ombudsman
OPHTAS	Operation HONOUR Tracking and Analysis System
Operating Agreement	<i>Operating Agreement between the Sexual Misconduct Response Centre and the Canadian Armed Forces Directorate Professional Military Conduct – Operation Honour Concerning Expert Advice and Support Services for CAF Response to Sexual Misconduct (30 July 2019)</i>
OPP	Ontario Provincial Police
OUTCAN	Outside of Canada
PaCE	Performance and Competency Evaluation
PAR	Performance Appraisal Report
<i>Path to Dignity</i>	<i>The Path to Dignity and Respect: The Canadian Armed Forces Strategy to Address Sexual Misconduct (28 October 2020)</i>
PCO	Privy Council Office
PER	Performance Evaluation Report
PERMIS	Personnel Electronic Records Management Information System
PMO	Prime Minister's Office
P Res	Primary Reserve
PSDPA	<i>Public Servants Disclosure Protection Act</i> , SC 2005, c 46
PSES	Public Service Employee Survey
QR&O	Queen's Regulations and Orders
RCAF	Royal Canadian Air Force
RCMP	Royal Canadian Mounted Police
RCN	Royal Canadian Navy
Reg F	Regular Force
Res F	Reserve Force
Review	Independent External Comprehensive Review of the DND and the CAF
RitCAF	Respect in the CAF
RMC Kingston	Royal Military College of Canada
RMC Saint-Jean	Royal Military College Saint-Jean (<i>Collège militaire royal de Saint-Jean</i>)
RMO	Recruit Medical Office
RO	Responsible Officer
ROTP	Regular Officer Training Plan
SARP	Sexual Assault Review Program
SIP	Strategic Intake Plan

Abbreviation	Complete word or phrase
SMITS	Sexual Misconduct Incident Tracking System
SMRC	Sexual Misconduct Response Centre
Somalia Commission	Commission of Inquiry into the Deployment of Canadian Forces to Somalia
SORT	Sexual Offence Response Team
SQ	<i>Sûreté du Québec</i>
SSAV	Special Staff Assistance Visit
SSCG	Survivor Support Consultation Group
SSMCAF	Survey on Sexual Misconduct in the Canadian Armed Forces
SSRRB	Social Science Research Review Board
TOS	Terms of Service
ULAR	Unit Level Administrative Review
UPR	unit personnel record
VCDS	Vice Chief of the Defence Staff
VIE	Variable Initial Engagement
2016 StatsCan Report	Statistics Canada, <i>Sexual Misconduct in the Canadian Armed Forces, 2016</i> (28 November 2016)
2017 OAG RMC Report	2017 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 6 – <i>Royal Military College of Canada – National Defence</i>
2017 SSAV Report	G.R. Maddison, et al., Special Staff Assistance Visit – Report on the Climate, Training Environment, Culture and ROTP Programme at the Royal Military College of Canada – Kingston (DND, 10 March 2017)
2018 OAG Report	2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 5 – <i>Inappropriate Sexual Behaviour – Canadian Armed Forces</i>

Introduction

Sexual misconduct is a serious issue that continues to exist in society at large.

In 2017, the formidable #MeToo movement unleashed a wave of sexual misconduct denunciations and revelations going back decades. This led to a widespread public recognition of the existence and severity of the phenomenon, and a sustained repudiation of the secrecy and tolerance that had allowed it to remain rampant.

The discriminatory and unconscionable damage caused by these practices has had an immeasurable impact not just on the women who were subjected to the harmful behaviour, but also the institutions in which they have occurred. These include the Canadian Armed Forces (CAF), the police,¹ churches,² public institutions and private corporations. Each one of these institutions has deep-rooted cultural understandings, expectations and practices that will not be easy to reverse, even assuming a modicum of political will to do so.

Reversing the sinister abuse of the private sphere of sexual conduct by occupying loudly the public space of denunciation, women have created an environment in which they are now ready to define the terms under which they will live and work. The class actions against the Royal Canadian Mounted Police (RCMP), and the Department of National Defence (DND)/CAF (Heyder and Beattie class actions) have proven to be a watershed moment, turning victims into successful litigants and demonstrably successful combatants.

In 2015, my former colleague, Justice Marie Deschamps documented the sexualized culture in the CAF, shocking many Canadians who, until then, might have been content to believe that previous media accounts of sexual abuse in the Armed Forces were merely anecdotal and marginal.³ The revelations of Justice Deschamps led to a flurry of activity by the CAF in an attempt to fix the problem. Unfortunately, those efforts have so far failed.

My mandate is to support the changes that this momentum has made possible. The CAF was not ready to fully embrace the paradigm shift required to produce these changes. They now need to adapt to a new reality – the women warriors are here to stay. And they will stay on their terms, seeking the substantive equality to which they are entitled. Women should no longer feel like guests in the CAF, as a former senior female officer told me many felt.

This Report will not focus so much on the already clear picture painted by the Deschamps Report, the Heyder and Beattie class actions, and the many surveys and media stories. Instead, I examine the institutional shortcomings and structural impediments that have allowed this state of affairs to remain uncorrected. In addition, there will be a focus on the avenues of reform that will be essential to effecting the culture change that is long overdue.

The term “culture” can mean different things to different people. For the purpose of this Report, I will use it to mean: a series of assumptions, understandings, expectations and practices, sometimes entrenched in rules and procedures, often unstated but deeply rooted.

Culture evolves, and cannot change by mere decree. Despite slow progress towards women moving into positions of influence, authority and power, and into fields of professional work historically not open to them, we continue to see resistance, particularly in historically male-dominated organizations with “boys’ club” mentalities, such as the CAF.

But thankfully, there is now a palpable change in the air. The question before us is not whether or when, but how. The CAF and the DND have an opportunity to take a major, decisive step in the creation of a safe, secure, equitable working environment, not only for women, but for the many others long left out of the profession of arms despite their desire and ability to serve. Firmly entrenched in its historical way of life, the military has failed to keep pace with the values and expectations of a pluralistic Canadian society, increasingly sophisticated about the imperatives of the rule of law. Operating as a totally self-regulated, self-administered organization, entirely reliant on deference to hierarchy, it has failed to align with the ever-changing, progressive society we live in. This disconnect is a liability for the CAF and for Canada.

The long-established way of doing business in the CAF is anchored in operational imperatives that are often nothing more than assumptions. One of the dangers of the model under which the CAF continues to operate is the high likelihood that some of its members are more at risk of harm, on a day to day basis, from their comrades than from the enemy.

This must change.

A flurry of activities

The appearance of activity is what is important in the CAF right now, not the actual activity
– former senior male officer

The CAF is repeating the same mistakes as in 2015. Following the same playbook. The term used is “add women and stir.” Rush to publish direction and guidance and do stuff. And none of it is well informed and considered.

– retired senior officer

What I have observed in the way the CAF operates is the perfect example of “if you hold a hammer, everything looks like a nail.”

Every problem must have a solution. The solution must be immediate and actionable. It matters little whether it actually fixes the problem, particularly if the problem is ill-defined and poorly understood, not unlike culture change. The response is a flurry of activities usually consisting of making lists, charts, inventories and PowerPoint presentations, as well as enacting new orders, policies and directives on top of an already complex structure. In a more ambitious move or, more likely as a result of public pressure, the leadership will respond with an operation, like Operation HONOUR, or a new high-level position, like the Chief Professional Conduct and Culture (CPCC), a Level 1 (L1) organization reporting directly to the Chief of Defence Staff (CDS).

When thinking about culture change in response to the sexual misconduct crisis, the CAF leadership seems to have been incapable of examining which aspects of its culture have been the most deficient. In none of the initiatives it has launched, is there a single reflection on whether its insular, hierarchical structures may have facilitated the abuse of power that characterizes most sexual misconduct. Rather, the focus has been on mapping steps, pathways and activities, and turning to periodic external reviewers (such as Justice Deschamps, Justice Morris Fish⁴, the Auditor General of Canada (AG) and me), whose recommendations are then the subject of lists, charts, inventories and PowerPoint presentations. This formulaic, perfunctory method of operating is ill-suited to the present problem.

The hyper-active response I describe above is not grounded in profound insight.

In the introduction to *The Path to Dignity and Respect: The Canadian Armed Forces Strategy to Address Sexual Misconduct* published in 2020, the leadership discloses how narrowly it approaches the failure of its initiatives:

The problem was first highlighted publicly in 1998 in a series of news articles citing allegations of sexual harassment, rape and racism in CAF ranks. At that time, the CAF responded by establishing the Standards for Harassment and Racism Program (SHARP), a sensitization and skills development program intended to change attitudes and behaviours. In addition to the program, the CAF established a hotline to encourage personnel to report incidents. Unfortunately, the program did not have the enduring impact expected. Subsequent analyses of the effort indicated that the institution

did not assign sufficient military personnel to this initiative, and the lack of a dedicated expert cadre may have resulted in focusing on the symptoms of the problem, rather than the underlying causes. [Emphasis added.]⁵

So when its first initiative failed, the response was to put more resources behind it. After that failure was publicly exposed in 2014, the CAF turned to external assistance. In response to Justice Deschamps' recommendations, the CAF said:

It was clear that the CAF's previous attempts to address sexual misconduct had not achieved the desired effect, and a more comprehensive and sustained approach to addressing sexual misconduct was required.⁶

The CAF subsequently launched Operation HONOUR as its highest priority. Four years later, the Office of the AG (OAG) found that:

...the CAF had not yet fully accomplished what it intended through its actions to respond to and support victims and to understand and prevent inappropriate sexual behaviour.⁷

This is when a focus on culture change was born:

...it was clear that Operation HONOUR had to evolve into a more comprehensive and sustained institutional approach focused on changing those aspects of CAF culture that were contributing to a permissive environment that allowed incidents of sexual misconduct to occur.⁸

To tackle what it described as “a wicked problem”⁹, CAF leadership decided to focus on culture, not on structure. It embarked on the conceptualization and operationalization of culture change, a field in which it had no expertise. This is how the *Path to Dignity* came to be:

The *Path to Dignity and Respect: Sexual Misconduct Response Strategy (The Path)* is a bespoke culture change strategy created by the CAF to align behaviours and attitudes of CAF members with the ethical principles and core values expected of all persons who practice the profession of arms in Canada. These foundational values and beliefs are set out in the Statement of Defence Ethics and Duty with Honour: The Profession of Arms in Canada.¹⁰

And this is where we begin to encounter the disconnect between rhetoric and reality. The rest of the *Path to Dignity* is abstract, highly aspirational and not easy to read.¹¹

Even though the problems faced by the CAF are difficult and complex, my referencing the expression “a wicked problem” should not be viewed as defeatist. These problems are not impossible to solve.

But solving them has not been made easier by the CAF's procedures which are unduly complex and opaque. One case in point is the CAF's handling of the concept of “sexual misconduct” and its definition, which I discuss below. The number of documents, rules, directives, policies and orders is numbing. Indeed, the spirit of the rule of law is eroded, rather than reinforced, by the existence of a multitude of rules but weak compliance with the fundamental ones.

Recommendations ignored or forgotten

You can't just be a good person who wants change, you have to create it. If they are not willing to be disruptive and stir the beehive, they aren't going to go anywhere.

– *female veteran*

The CAF has received hundreds of recommendations from external and internal reviewers in the past few years. It has now created a matrix of these recommendations and stood up a command to help navigate this landscape.

Subject to civilian control, but extraordinarily self-regulated, the CAF has been unwilling or unable to embrace the intent and vision that came from external sources, choosing the letter over the spirit, often the appearance of implementation over its substance, thereby entrenching their ways of operating. I believe this is a consequence of the insularity within which the CAF has traditionally operated, and its determination to perpetuate its old ways of doing business.

As I conducted this independent external comprehensive review (Review), it became apparent that if I were to support the impulse for culture change that the CAF and many of its members have committed to, my overarching recommendation to its leadership has to be clear – they need to change how they do many things – and profoundly so.

On the one hand, I was heartened by the willingness, including at high levels of the CAF, to entertain and put into action significant structural and transformative change. In a different context, the 6 conditions of system change have been expressed as: policies, practices, resource flows, relationships and connections, power dynamics and mental models.¹² Much of this should find echo here. For each recommendation I make, I heard echoes internally within the Defence Team, and also within constituencies deeply committed to the Canadian military. To be clear, I did not find unanimous support for everything I am putting forward, but I did discover some in the most surprising places.

Additionally, I was struck by the number of thoughtful initiatives I uncovered during my Review, such as the Defence Advisory Groups (DAGs). The CAF should tap into this local expertise, and at the same time open up to the outside world. It should consolidate the command and control needed to run its operations by focusing on what it does best, and letting go of what others can do better.

My mandate

While comprehensive, my mandate required me to examine two key issues: sexual misconduct and leadership. The two are demonstrably interrelated. The cultural shortcomings that have allowed widespread sexual misconduct in the CAF have been amply demonstrated. Events in the last few years have exposed the extent to which this culture was present in the CAF's senior ranks.

Unlike my predecessor, Justice Deschamps, I was required to examine the handling of sexual misconduct by the military justice system. Furthermore, in connection to issues related to the leadership, I was asked to scrutinize the recruitment, training, performance evaluation, posting and promotion systems in the CAF. This had not been done before.

While I attempted to do a deep dive on all issues, time and resources precluded me from doing so in some areas. I have indicated those which would benefit from further external input. However, where other external reviewers had already examined the issues, I relied on their work, where possible, to avoid a duplication of efforts when I was in agreement with their conclusions.

I wish to note that, while my mandate provided that I would examine these two issues as they related to both the CAF and the DND, the focus of this Report is clearly on the CAF. Some issues, such as leadership and military justice, have little connection to the DND. Indeed, what led to the present Review was allegations of incidents of inappropriate behaviour by senior CAF members – not DND employees – allegations of complicity of inaction throughout the chain of command, and concerns about the quality of leadership development in the CAF. I had no mandate, nor did I see any need, to examine issues related to the public service at large.

Furthermore, the overwhelming response I have received during my Review related to the situation at the CAF. Most of the stakeholders who communicated with me were current or former CAF members, and those who were from the DND made submissions relating to the conduct of the CAF. In addition, my communications with high-ranking officials of the Defence Team were primarily with members of the CAF (although I am grateful for the contribution of the DND members). The weighing of submissions toward the CAF is not surprising when one examines the data, particularly the claims that were filed in relation to the Heyder and Beattie class actions. The vast majority of these claims were from CAF members, although some came from the DND or Staff of the Non-Public Funds. This is not to obscure the vulnerability of civilians who interact with CAF members. I believe the recommendations I make in this report will also benefit them. In some instances, I have identified matters that are particular to DND civilian employees. For instance, it is not uncommon for DND civilians to be reporting to CAF members, sometimes resulting in human resources-related issues. While few such issues were brought directly to my attention, I believe that my recommendations will have a positive impact of the workplace, including for DND civilians who interact with the CAF hierarchy.

Sexual misconduct

Throughout this Report, it will become apparent that “sexual misconduct” is too broad a term, in that it captures everything from sexual assault and harassment, to the many micro-aggressions that are the weapons of choice for the expression of discriminatory views, harmful stereotypes and even unconscious biases. It is merely a convenient expression to refer to the whole range of issues when differentiation amongst them is not required.

The scope and extent of sexual misconduct in the CAF have been well documented, from the Deschamps Report, Statistics Canada surveys, the Heyder and Beattie class actions, and the reports of the AG.

Sexual misconduct has brought the CAF into disrepute, both internally and in the eyes of the general public. This reaction should not be viewed as reflecting a kind of moral panic in society at large, an unfair changing of the game to penalize those who have been successful under a different set of rules. Rather, it is a justified condemnation of an archaic and deeply damaging organizational culture. What the sexual misconduct crisis in the CAF reveals is complex and subtle. It combines abuse of power, antiquated practices unsuited to a more diversified workplace, the glorification of masculinity as the only acceptable operational standard for CAF members, and the continued unwillingness to let women in particular, as well as members of the LGBTQ2+ community, visible minorities and equity-seeking groups occupy their proper place in the military.

This is not a morality play. It is above all a matter of right. Corrective measures are urgently needed to create an even and safe playing field for women in the profession of arms, and these measures will benefit the other marginalized members of the CAF. This cannot be left to the hope that generational change will suffice to provide equality. When a critical mass of women at all levels and in all trades and occupations of the CAF, including combat arms, has been achieved, the CAF will transition to a modern organization, fully reflective of Canadian values and aspirations. However, this will not happen any time soon under the current state of affairs.

For a new culture to take root, the CAF must be prepared to undertake much more significant changes in its practices than is currently being envisaged. If it is willing to do so, I believe the leadership of the CAF will rebuild the trust it lacks today, without which it cannot operate at maximum efficiency.

This is why, under this first pillar of my mandate, I recommend that civilian authorities have exclusive jurisdiction over *Criminal Code*¹³ sexual offences alleged against CAF members.¹⁴ This is the natural next step from the interim recommendation I made in October 2021.

Further, I recommend that cases of sexual harassment be handled by the Canadian Human Rights Commission (CHRC).¹⁵ These two recommendations are based on the idea that civilian authorities should be the first “port of call” for the reporting and investigation of all serious forms of sexual misconduct. This does not leave the chain of command without

tools to address these issues; rather, “civilianizing” these processes ensures their independence from the chain of command – as well as the appearance of independence that the CAF so desperately requires to rebuild confidence in its ability to address misconduct and take care of its own. It also provides much needed ongoing civilian input into the conduct of CAF members and the application and content of its policies.

As became apparent during my Review, it is critical that victims be provided independent legal advice at the earliest opportunity, so that they can assess the panoply of options available to them, be able to navigate the complex systems, and make fully informed decisions.

Unfortunately, there remain many unresolved complexities in these systems, in large part due to uncertainty regarding the CAF’s implementation of *An Act to amend the National Defence Act and to make related and consequential amendments to other Acts*, or Bill C-77¹⁶, which will restructure the CAF’s disciplinary proceedings.

Leadership

The CAF is a complex and unique organization. Its most striking feature is the role of leadership. It is developed early and is omnipresent in a hierarchy that is broken down by numerous ranks, trades and postings under a chain of command designed to enforce the principle of “command and control.”

The particular importance of senior leadership is expressed in one of the foundational documents of the CAF, *Duty with Honour: The Profession of Arms in Canada 2009*:

Under the direction of the CDS, the senior leadership of the Canadian Forces, starting with members of the Armed Forces Council (AFC), and the CDS’s Command Council, is responsible for the overall health and stewardship of the profession, including the maintenance of a healthy military ethos. The ethos reconciles the functional and societal imperatives in ways that create trust and confidence in the minds of Canadians, and together with the mutual respect between military professionals and political authorities, this allows for a substantial degree of self-regulation.

[...] Leadership in this area also involves managing the evolution of the profession to meet future requirements. Therefore, beyond providing the resources for today’s needs, professional judgement is necessary to address the issues surrounding resources for emerging requirements. This includes reassessing the expertise required to execute changing roles and new tasks. Equally, such stewardship must anticipate, recognize and respond to changing social and cultural conditions while ensuring that fundamental values, both military and Canadian, are preserved.¹⁷

I believe that CAF leadership has fallen short of this ideal. That failure of leadership is responsible for the long-standing culture of sexual misconduct, itself a manifestation of discriminatory attitudes that remain present today. That responsibility cannot be laid at the feet of only a few individual leaders. Fundamentally, it is the collective failure of an organization that has preserved such a high degree of self-regulation and resistance to external influence and progress.

While the current leadership of the CAF has expressed a strong commitment to culture change, I believe it is unlikely to be effected without first a change in its culture of isolation and resistance.

The CAF's leadership has historically been inhospitable to external input, and yet major, significant changes in the organization have come from outside. This is true in the area of justice, where change has mostly been a response to court decisions, and in the rest of the CAF's operations, whether it is the government's decision in 1968 to unify the CAF, or the measures taken in response to the inquiry into the deployment of Canadian soldiers to Somalia.

The resistance to external influence exacerbates the shortcomings of leadership. Even as a part of the Defence Team, which includes the DND, the CAF remains insular, closed, self-confident, persuaded of the merit of its methodology, and rarely exposed to the broader civilian organizational culture, particularly outside government. The CAF's leadership, at all levels, relies on its own history, culture, articulated values and repeated practices, in its attempt to effect the kind of change that requires revisiting these very practices.

My terms of reference required me to address the process through which leadership is identified and consolidated; and to examine why, despite recent efforts, the necessary change of culture with respect to sexual misconduct has not been successful.

There have been many calls for the establishment of additional external oversight over the CAF. In my view, this approaches the issues too narrowly. Oversight suggests an "after the fact" approach, with a critical review of past events, actions or failures. To be truly effective, at least in the context of an unduly insular organization, I believe that external input should be a common thread throughout all CAF activities impacted by the issue of sexual misconduct. In particular, I believe the Minister of National Defence (Minister or MND) must be prepared to play an active role in holding Defence Team senior leadership accountable, and ensuring that the CAF remains ready and able to adapt and change.

External input will go a long way to assist in the much-needed cultural change that the CAF claims it is committed to. Opening up to outside input and assistance, not just occasional non-binding advice, could have far-reaching impact, ultimately enabling the CAF to keep pace with Canada's evolving society, and demonstrate an earnest effort to effect organizational change.

The current situation is partly the result of unyielding adherence to an impenetrable hierarchical structure that is determined to perpetuate itself, good and bad, and constant mobility as part of career progression, leading to chaotic management and a lack of accountability. It produces a leadership rooted in old ways, focused primarily on excellence in operational deliveries, but oblivious to the societal forces that have compelled changes elsewhere. The corporate world, universities, professional organizations, and much of civilian life throughout Canada has made significant inroads. Unfortunately, the very success of CAF operations, which I am not in a position to assess, reinforces its view that it is unique, and that CAF can do everything without the assistance of outsiders, as it always has.

This goes to the root of the traditional concept of an expeditionary force, which is designed to be completely self-reliant, including in respect of its response to sexual misconduct, where the CAF acts as investigator, advisor, prosecutor, defender and even judge. Adherence to this fundamental notion is at odds with an increasingly interconnected world, and the interdisciplinary approach that has benefited all other sectors in the workplace. The change of culture the CAF needs to implement is much more fundamental than what its current initiatives suggest. It requires a willingness to examine broader, more progressive options, and not simply a better version of the same old things.

In order for the CAF to keep pace with the expectations of Canadians, without compromising the operational excellence to which it is committed, it must embrace some change in its structure. As an example, the discipline requirements in a military environment may seem at odds with the much more permissive ways in which civilians live their lives. I do not suggest that this should in any way be compromised, as the imperative of discipline in military life is indisputable. Conversely, a flexibility to learn from advances in human resources management in other sectors would be beneficial and contribute greatly to the evolution of the CAF as a whole. My recommendations reflect this dual approach: a renewed leadership formed and informed by a better connection with external actors, and the principle of civilian oversight of the military operationalized throughout the relevant aspects of military culture.

My recommendations

In the same way as the issues of sexual misconduct and leadership are inter-related, so are most of my recommendations. Each one is based on the assumption that others will also be implemented. Some are precise and capable of implementation without further studies, working groups, committees or consultations. Others merely point to a direction, a different way of doing certain things. I know that those who live with these issues on a day-to-day basis are eminently capable of determining how best to proceed, if they accept the general direction and changes I am proposing. On the other hand, I am equally convinced that if they do not, no amount of detailed recommendations will produce the desired result.

To assist with this implementation, I recommend that the Minister immediately appoint a person mandated to oversee the implementation of the recommendations in this Report. That person should be external to the Defence Team, have access to, and be supported by, both the Deputy Minister (DM) and the CDS, produce monthly assessment reports for the Minister that are ultimately shared with the public.¹⁸

Terminology

When referring to victims of criminal or service offences, like Justices Deschamps and Fish, I use the term “victim” (rather than “survivor” or analogous expressions), as victim is the term used in the *Declaration of Victims Rights* (DVR) enacted by section 7 of Bill C-77, and in the *Canadian Victims Bill of Rights*.¹⁹ In the grievance and harassment context, I will sometimes use “grievor” and “complainant”. When discussing support to these two groups, I will use interchangeably victim or survivor.

In addition, in the French version of this Report, I have not included both the feminine and masculine version of words in all instances, as would be the norm, preferring instead to refer to the dominant gender in that position or rank. For example, I will refer to *plaignante et survivante* instead of *plaignant or survivant*, seeing as most complainants and survivors are women. But I will refer to *officier* instead of *officière* when referring to officers, seeing as most officers are men.

In accordance with my terms of reference, I have refrained from attributing any of the insights that were provided to me in the context of confidential meetings and written submissions. In addition, when referring to matters conveyed to me by members of the Defence Team in their official capacity, I have chosen to refer to the person’s position rather than name, unless several individuals held the position during my mandate and it proved helpful to know who was in charge.

Acknowledgments

My Review would not have been possible without the contributions of many stakeholders – survivors, victims, past and present CAF members, academics and others, who generously shared with me their knowledge, experiences and insights. I am very grateful to all of them.

I am also indebted to the members of the CAF and the DND who invested considerable time and effort in providing me with information, shared their views with me as well as arranged and hosted my base and college/school visits. A special thank you to Lieutenant-General Frances Allen (Vice Chief of the Defence Staff (VCDS)) and Lieutenant-General Jennie Carignan (CPCC), and Heather Walsh (DND employee, who acted as Liaison Officer for my team) and Melanie Armstrong (DND employee, who assisted Ms. Walsh).

My Report is written in the first person. I take full responsibility for its content, although the Report was the product of a team. I want to express my profound gratitude to: Nadia Effendi, senior legal counsel; Christine Muir, senior legal counsel; Carina De Pellegrin, legal counsel; Benedict Wray, legal counsel; Chanel Sterie, legal counsel; Casey Thomas, special advisor; Airianna Murdoch-Fyke, articling student; Nasra Moumin, articling student; Julie Peacock-Singh, law clerk; and Cheryl Curran, document specialist. They are all members of the law firm Borden Ladner Gervais LLP (BLG), except for Casey Thomas, Assistant Auditor General at the Office of the Auditor General, who was seconded

to me by that office. I am thankful to the AG for having provided me with the benefit of Casey Thomas' expertise. I am grateful for the work of H3Creative Inc. and Larrass Translations, who assisted with editing, translation and design. I also want to sincerely thank our administrative assistants Michelle Longchamps, Vincenza Carrera and Martina Udovicic, also all from BLG.

These are not perfunctory expressions of gratitude. I feel privileged to have worked with such a competent and dedicated team. I want to single out Nadia Effendi and Christine Muir, with whom I have had the most frequent interactions, for their professionalism and invaluable advice.

Mandate and Methodology

On 29 April 2021, the Minister announced the launch of my Review into current policies, procedures, programs, practices, and culture within the DND and the CAF²⁰, including:

- A. An assessment of the policies, procedures, programs, practices and culture within the DND and the CAF, of the causes for the continued presence of harassment and sexual misconduct despite efforts to eradicate it, identification of any barriers to reporting inappropriate behaviour, and the impact of recruitment, training, performance evaluation, posting and promotion systems in the CAF;
- B. An assessment of the causes and effects of barriers to reporting inappropriate behaviour in relation to harassment or sexual misconduct and the adequacy of the policies, procedures and practices to respond when reports are made;
- C. Recommendations to reduce or remove such barriers in relation to harassment or sexual misconduct;
- D. Recommendations on how to prevent and/or eradicate harassment and sexual misconduct within the DND and the CAF;
- E. Recommendations on any further changes to the performance evaluation system and the promotion system used in the CAF with a focus on how senior leaders are selected, while the DND and the CAF are proceeding with improvements;
- F. An assessment of DND and CAF progress made in addressing the recommendations contained in the Deschamps Report;
- G. An assessment of the Sexual Misconduct Response Centre's (SMRC) mandate and activities, including its independence and reporting structure and recommendations for improvement to these elements;
- H. An assessment and recommendations related to establishing external oversight and/or review mechanisms related to harassment and sexual misconduct;
- I. Any other assessments and recommendations that I wish to include to address areas of review mandated to me within these terms of reference that were not addressed in paragraphs A through H; and
- J. A description of the underlying methodology used to make the assessments and/or recommendations above.

My mandate explicitly precluded me from making any assessments or recommendations related to specific cases.²¹

As the first step in my outreach efforts to the Defence Team and the public after the Minister's announcement, I conducted several media interviews to explain my mandate.²²

Retainer and outreach

On 21 May 2021, after the execution of the contract with the Government of Canada, I began my work assisted by a team of lawyers and articling students from BLG and an auditor from the OAG. The DND assigned a liaison officer who facilitated access to the DND and the CAF and assisted in collecting documents and in coordinating meetings with members of the Defence Team.

On 17 June 2021, I provided the MND with a detailed work plan that identified my initial assessment of the work, and the anticipated preliminary steps, document and information requests, background research, interviews, consultations, and base visits.

In May and June 2021, I informed the public and the Defence Team of my Review, and invited them to share any information or opinions with me. This outreach included:

- The launch of a website in May 2021 in both official languages – blg.com/CAFReview and blg.com/ExamenFAC – and a contact email: CAFReview@blg.com;
- The distribution of a news release on 29 June 2021 in both official languages, inviting anyone wishing to share information or opinions or participate in the Review, to contact me. The news release was posted on BLG's website²³ and Canada NewsWire.²⁴ It was picked up by various English and French media;
- The posting of social media messages in English and French to promote the 29 June 2021 news release on BLG and CAF Twitter channels²⁵ and the DND and the CAF Facebook accounts²⁶;
- The inclusion of a feature about the 29 June 2021 news release in the Defence Team News' "all staff" email as well as on the Defence Team intranet²⁷;
- The distribution of a second news release on 23 July 2021, in both languages, inviting any person who wished to share information or opinions or participate in the Review, to contact me by 13 August 2021 to schedule a meeting, or by 31 August 2021 to deliver a written submission²⁸; and,
- The posting of social media messages about the 23 July 2021 news release on BLG and CAF's Twitter accounts and the DND and the CAF Facebook accounts. The Defence Team intranet was also updated with the deadlines.²⁹

This outreach generated significant interest. More than 350 people contacted me.

Preliminary steps

At the outset of the Review, the team and I embarked on preliminary research. This step included assessing and reviewing the general legal framework of the DND and the CAF and related organizations within the Minister's portfolio, and reviewing key documents such as the Deschamps Report, the Fish Report, the Operation HONOUR CDS Order³⁰, the reports of the AG, the *Path to Dignity*, and reports from various parliamentary committees.

Requests for documents and information

From June to October 2021, I delivered more than 30 requests for information and documents. These requests were broad in scope and reflected the terms of reference. The recipients included the DND and the CAF, including several organizations within the Minister's portfolio, CAF commands, and organizations both internal and external to the DND and the CAF, namely: the Canadian Defence Academy (CDA), the Royal Military College of Canada (RMC Kingston), Royal Military College Saint-Jean (RMC Saint-Jean) and the Canadian Forces College (CFC), the Judge Advocate General (JAG), the Chief Military Judge (CMJ), the Canadian Forces Provost Marshal (CFPM), the Military Grievances External Review Committee (MGERC), the SMRC, Veterans Affairs, the Military Police Complaints Commission (MPCC), the CAF/DND Ombudsman (Ombudsman), Statistics Canada, the Minister of Justice, the Prime Minister's Office (PMO), the Privy Council Office (PCO), provincial prosecutorial authorities, the Public Service Alliance of Canada, the Union of National Defence Employees, and the CHRC. A list of the formal requests for information and documents can be found at Schedule *.

In the subsequent months, I sought additional information and documents through the liaison officer and directly from stakeholders, leading to more than 85 additional requests for information.³¹ These requests continued until the delivery of my draft report on 21 March 2022. I also received statistical data from the DND and the CAF³², and I consulted hundreds of documents from open sources.

I received more than 4,000 documents.

Ally organizations

In accordance with the terms of reference, I reviewed the publicly-available policies and practices of allies³³ and the North Atlantic Treaty Organization (NATO), which informed my recommendations. I also met with a strategic advisor to the CAF Strategic Response Team on Sexual Misconduct (CSRT-SM), who described the consultations and meetings held with allies and provided me with relevant information arising out of those meetings.

On 9 July 2021 and 28 July 2021, I sought submissions from the DM, the CDS and the JAG on the 2021 Report of the U.S. Independent Review Commission on Sexual Assault in the Military³⁴, and the 2021 UK House of Commons, Defence Committee Report *Protecting*

*those who protect us: Women in the Armed Forces from Recruitment to Civilian Life.*³⁵ More specifically, I sought their views on whether some of the recommendations in these reports were adaptable to the Canadian context.

Submissions, interviews and consultations

Written submissions

I received more than 80 written submissions from stakeholders.

Confidential meetings with stakeholders

On 30 June 2021, the Review Team and I attended a training on trauma-informed interview techniques conducted by Dr. Lori Haskell, to assist in our meetings with survivors and stakeholders.

From July 2021 to February 2022, we conducted over 245 confidential interviews with stakeholders who reached out with information related to my terms of reference. These included current and former members of the DND and the CAF, consisting of:

- regular members and reservists;
- officers and non-commissioned members (NCMs);
- General and Flag Officers (GOFOs)³⁶;
- naval/officer cadets (N/OCdts); and,
- veterans.

My interviews included members of the LGBTQ2+ community, and members of visible minorities and equity-seeking groups. I met people from various organizations with the DND, and from the army, navy, air force, special force, and intelligence. I also met with academics.

Throughout my Report, I refer to the information provided to me by these stakeholders (e.g. where I say “I was told”, “I was advised”, etc.). To protect the confidentiality of these communications, I have refrained from including any footnote reference.

Meetings with representatives of the DND and members of the CAF

The team and I conducted over 115 interviews with members of the Defence Team and other government entities in their official capacity.³⁷

Given the ongoing COVID-19 pandemic, most of my interviews were conducted virtually. However, in August and December 2021, I had the opportunity to meet, in-person, members of the Defence Team in Ottawa.³⁸ During these in-person consultations, I met, among others, the CDS and members of his team, the VCDS, the DM, the CPCC, the Director General Military Careers (DGMCC) and members of his team, the Deputy

JAG Modernization, the Director General Integrated Conflict Complaint Management (DGICCM), the Chief of Military Personnel (CMP), the commanders of the various elements, the Chief of Reserves and Employer Support, the Executive Director of the SMRC and the Assistant Deputy Minister (Review Services) (ADM(RS)).

Throughout the course of my Review, I held several meetings with the VCDS and the CPCC. After the release of my interim report in October 2021, I also had meetings with the Minister and with the CFPM and the Director Military Prosecution (DMP).

During these meetings, I learned about the particular functions, roles and concerns of those officials and organizations. I also asked for their views on possible reforms and recommendations.

Base and college/school visits

Members of the team and I visited RMC Saint-Jean and the Canadian Forces Leadership and Recruit School (CFLRS) in person, and RMC Kingston virtually. These visits included:

At RMC Saint-Jean (I met with approximately 200 people):

- Meetings with the command team, professors, directors and wing officers commanding, and members of the Osside Institute;
- Three focus group sessions with, (i) military and civilian college staff, (ii) N/OCdts identifying as women, and (iii) all N/OCdts, about sexual misconduct, recruitment, training, and leadership; and
- A tour of the facilities.

At CFLRS (I met with approximately 155 people):

- Meetings with command team and instructors and staff;
- Four focus group sessions with, (i) candidates from the basic military qualification (BMQ), (ii) candidates identifying as women from the BMQ, (iii) candidates from the basic military officer qualification (BMOQ), and (iv) candidates identifying as women from the BMOQ; and
- A tour of the facilities.

At RMC Kingston (I met with approximately 130 people):

- Virtual meetings with the command team, Senior Academic Leadership, including the Principal, the Training Wing command team, the command team for the CDA, and representatives of the Athena Network, Agora and the Indigenous Knowledge and Learning Working Group; and
- Thirteen focus group sessions with, (i) the academic leadership, (ii) academic staff, (iii) college staff, (iv) athletic wing staff, (v) training wing members, and (vi) N/OCdts (eight groups), including meetings specifically for those identifying as women and graduate students.³⁹

Members of my Review Team also visited in person the CFC, and met with its Command Team and toured the facilities.

In September and October 2021, I also visited in person four CAF bases: Canadian Forces Base (CFB) Gagetown, CFB Halifax, CFB Shearwater and CFB Greenwood. Generally, during those visits, I held a town hall meeting, met with the base command teams and held focus group sessions with command teams, junior and senior officers and NCMs, Military Police (MP) and members of the Canadian Forces National Investigation Service (CFNIS), and CAF members and civilians identifying as women.⁴⁰ In CFB Gagetown, I also met with members of the Combat Training Centre and the Canadian Forces School of Military Engineering. I toured the facilities at each base and met with between 200 and 300 people at each one.

Ahead of visits, I informed the Defence Team of the focus groups I intended to conduct. I encouraged their command teams to ensure that participation was voluntary. I also asked people to reach out to me directly should they prefer to meet privately, off-site or virtually. Several people did. For every meeting, we took notes as these meetings were not recorded.

Members of my Review team attended succession board meetings in the army, navy and air force.⁴¹

Concurrently to my Review, the CPCC embarked on consultation visits across all bases in Canada. Members of my team attended the in-person visit to CFB Winnipeg⁴², and some of the sessions for the virtual visits to CFB Esquimalt⁴³, CFB Trenton⁴⁴ and CFB Shearwater⁴⁵, all in an observer capacity.

I would have liked to visit all the bases. Unfortunately, this was not possible given the pandemic and limited resources and time.

Subject-themed focus groups

In November 2021, having conducted hundreds of interviews, I embarked on the next review phase by conducting themed focus groups with experts and members external to the DND and the CAF. Through this exercise, I met approximately 55 people. I conducted 10 virtual bilingual focus groups on the following themes:

- A diagnostic of the situation (three groups);
- Accountability and oversight (one group);
- Human resources management (one group); and
- Military Justice (five focus groups were held considering the perspective of civilian defence counsel representing CAF members, civilian counsel representing survivors (two groups), provincial civilian crowns, civilian police services).

I sought a variety of fields of expertise and views. To ensure maximum participation, particularly given the virtual format, I limited the number of participants for each discussion to a maximum of ten, and the Chatham House Rule was followed.⁴⁶

I had representation from British Columbia, Ontario, New Brunswick and Nova Scotia for the provincial prosecutors' focus group. I also met separately with representatives of the Quebec Directeur des poursuites criminelles et pénales. For the civilian police services, I met with members of the Ontario Provincial Police (OPP), the RCMP and la Sûreté du Québec (SQ). I was unable to meet with every single provincial prosecution and police service, but I attempted to meet with those who had significant experience with CAF-related matters and who would be most likely impacted by my recommendations.

I also held two virtual focus group discussions with board members and partners of the Conference of Defence Associations Institute.

Final fact gathering

In January 2022, I informed the DM and the VCDS that I was completing my consultation process, and invited them to tell me of any additional people I should meet. Both of them confirmed that there were none.

Interim report

My terms of reference allowed me to deliver any interim assessments and recommendations in the form of letters to the Minister. I provided the Minister with an interim report on 20 October 2021, made public on 4 November 2021.⁴⁷

Final steps

On 21 March 2022, pursuant to the terms of reference and contract, I provided a draft Report to the MND. The MND, DM and CDS responded within 30 days. This is my final Report delivered in accordance with the terms of reference.

I am thankful to all involved in responding to my requests for information and documents, and who supported my site visits. I am also grateful to all those who reached out to me to share their experiences, opinions and suggestions. Even when they were critical of the CAF and of the way they were treated, they expressed faith in its mission and a desire to see the organization improve.

Structure of the DND and the CAF

The CAF is a complex and unique organization. I provide below for ease of reference a highly simplified version of the DND/CAF organizational chart.⁴⁸

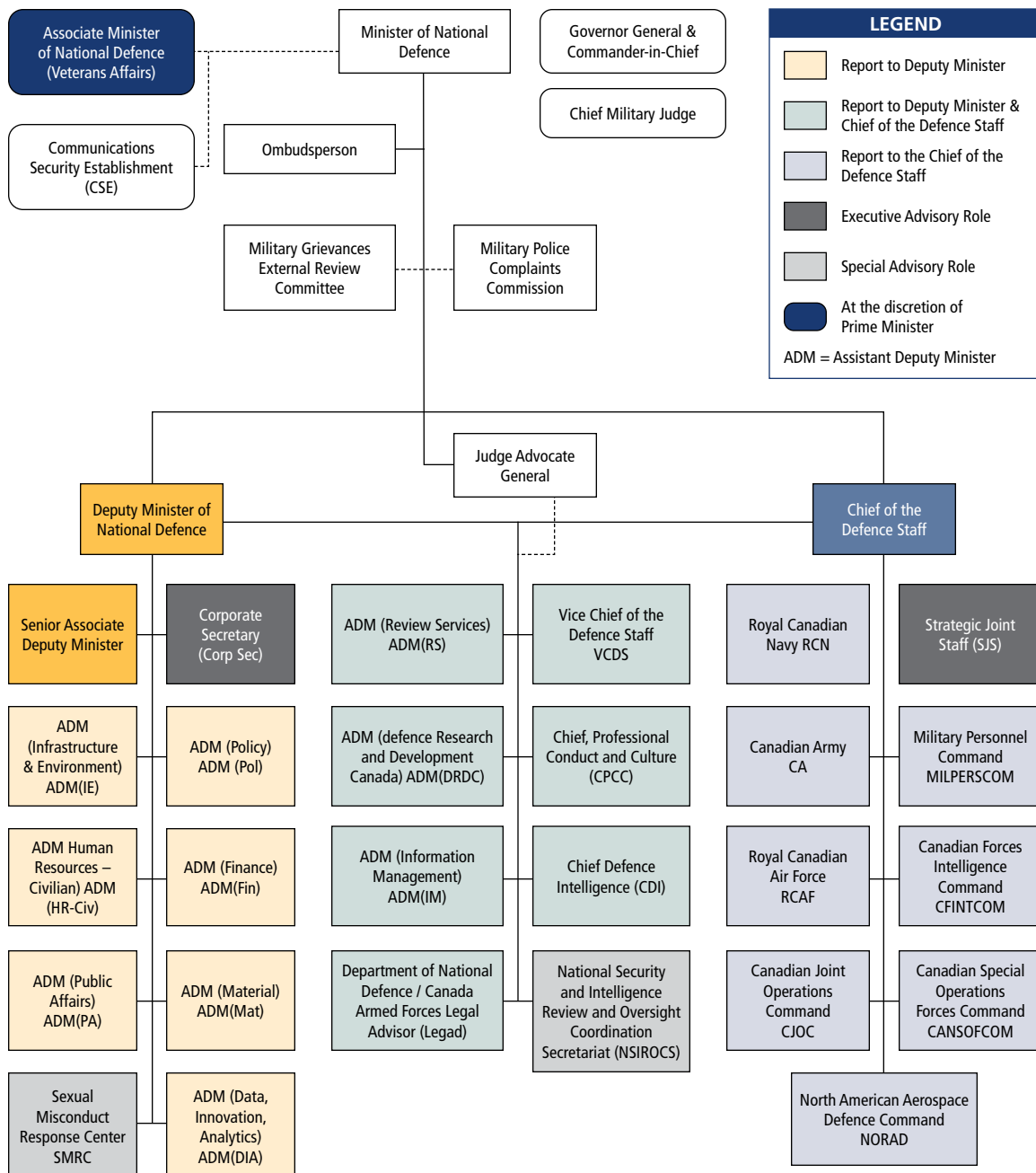


Figure 1. DND/CAF organizational chart.

Certain organizations relevant to my mandate are not included in the chart and are listed below:

- The VCDS includes the following organizations:
 - Canadian Forces Military Police Group (CFMPG)
 - Chief of Reserves and Employer Support
- The Military Personnel Command (MILPERSCOM) includes the following organizations:
 - Director General Military Personnel Research and Analysis (DGMPRA)
 - DGMCC, which includes the Director Military Careers Administration (DMCA)
 - Office of the Chaplain General
 - Canadian Forces Health Services Group (CFHSG)
 - CDA, which includes the RMC Kingston and the RMC Saint-Jean, the CFLRS, and the CFC
 - Canadian Forces Recruiting Group (CFRG)
- The CPCC includes the following organizations:
 - Director General (DG) Conflict Prevention and Resolution (formally Integrated Complaint and Conflict Management (ICCM))
 - DG Professional Conduct and Development (formally Directorate General Professional Military Conduct (Operation HONOUR) (DPMC-OpH))
 - DG Engagement, Research and Policy
 - DG Culture Change

PART I

Sexual misconduct

Introduction

The profession of arms is unique in many ways. No other self-regulated profession has the same monopoly over the conduct of its members. Lawyers, doctors, architects, all professionals are subject to two, often three, levels of accountability: the criminal courts, like all other citizens; the code of discipline of their professional body, which protects the public and oversees the profession at large; and possibly their employer, who is entitled, under certain rules, to protect its own interests and those of its employees. A lawyer may be dismissed by their employer, disbarred and sent to jail, all through separate independent, often parallel, processes.

In the military, all these processes are handled internally by way of criminal, disciplinary and employment standards. The fact that they are administered by a single entity should produce some efficiencies. Unfortunately, it has not. This is particularly evident in how the CAF addresses the issue of sexual misconduct in its ranks.

The CAF discharges these interrelated tasks through a maze of processes, the details of which are exposed throughout this Report. To paraphrase one stakeholder, the CAF has put the “activities cart” before the “conceptual horse.” They have collapsed crime and discipline, which in my view is an error when it comes to serious sexual misconduct; and yet they have kept separate disciplinary measures, said to be punitive, from administrative ones, said to be remedial, when the two are often indistinguishable, particularly given the intersection between punishment and rehabilitation.

The devil, here, is not in the details. Each stream, each silo, may function relatively well and is the subject of periodic attempts at improvement. The real problem rests on the overall structure, which produces unnecessary complexities, inefficiencies, and delays. All of this has led to mounting frustration and an erosion of trust among members, stakeholders and Canadians at large.

Important reforms can still take place under the present structure. I make recommendations to that effect. But the incremental changes of the past, and the ones that seem about to take place may not yield the optimal result that conceptual clarity from the outset would bring.

Deficient as it has been in dealing appropriately with offenders, the CAF has been even more neglectful in addressing the plight and needs of victims and survivors, who eventually had to turn to an external party, the courts, through a class action, to obtain some form of recognition and redress. Until recently, few efforts were made to address their legitimate concerns and claims.

The changes I propose in how the CAF addresses offenders will also serve to empower survivors, as they will be less at the mercy of a chain of command in which they have largely lost confidence.

History of women in the CAF and prevalence of sexual misconduct

Sexual misconduct is not new in the CAF, nor is it unique to the Canadian military; it exists within many defence forces around the world and in society at large. This is not an excuse for the sorry state of affairs in which the CAF finds itself, but it does call for an understanding of the specific circumstances in the CAF that make it a “wicked problem.”⁴⁹

Despite being an endemic problem in the CAF for decades, the issue of sexual misconduct, its root causes and its prevalence throughout the ranks, was largely undocumented until relatively recently.

Brief history of women in the CAF

Women have a long history in the Canadian military, with their first integration occurring in 1885, during the North-West Rebellion. During the First and Second World Wars, women once again lined up to serve. According to a 2019 Canadian Military journal article, over 2,800 women joined the Royal Canadian Medical Corps during the First World War and, during the war years, approximately 50,000 women enlisted to serve.⁵⁰ Women were prohibited from taking on a combat role, and most were employed in traditional fields where they received less pay, fewer benefits and, in some cases, operated within a separate system of rank and rules. After the war, women were dismissed from service, with the exception of nurses who continued to care for injured veterans.⁵¹

The Cold War and the Korean War reignited the demand for servicewomen, but the CAF imposed a ceiling on the number of women permitted into the Regular Force (Reg F) and restricted them to occupations with fewer than 16 weeks’ worth of training, and in a lower pay scale than traditionally male-dominated areas.⁵²

In 1967, amid calls for greater gender equality in Canadian society, the Royal Commission on the Status of Women in Canada was created. The Commission was mandated to “inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the Federal Government to ensure for women equal opportunities with men in all aspects of the Canadian society.”⁵³

The Commission tabled its report in 1970. Regarding military service, the Commission noted that women had fewer opportunities to enter the CAF than men and were generally required to be older and have higher levels of education. Married women were not allowed to enter the Forces, because they were considered less free to move to new postings. Women who married after joining were generally allowed to remain in the Forces, but not if they had

children. Unmarried mothers were released but may have been permitted to re-enlist.⁵⁴ To resolve these inequalities, the Commission recommended that:

- women be admitted to the military colleges;⁵⁵
- all trades in the CAF be open to women;⁵⁶
- the prohibition on married women in the CAF be eliminated;⁵⁷
- the length of the initial engagement for which personnel are required to enlist in the CAF be the same for women and men;⁵⁸ and
- release of a woman from the CAF because she has a child be prohibited.⁵⁹

The government adopted most of the Commission's recommendations but refused to open all military occupations to women in the belief that, for operational reasons, specific positions should only be filled by men.⁶⁰

In 1978, the *Canadian Human Rights Act* came into effect, which prohibited discrimination based on gender, unless for a bona fide occupational requirement.⁶¹ A year later, the government finally permitted women to attend military colleges, opening military education and increasing opportunities for women.⁶²

In 1978, the *Canadian Human Rights Act* came into effect, which prohibited discrimination based on gender, unless for a *bona fide* occupational requirement.

The 1980s saw more improvements to the integration of women in the CAF, and it appeared as though the CAF were making a real effort to be more inclusive through the launch of the Service Women in Non-traditional Environment and Roles trials. These trials were conducted over five years (1979-1984) and evaluated women's ability to function in "near combat" units.⁶³ By 1987, all Royal Canadian Air Force (RCAF) occupations opened to women, and the CAF promoted the first women to the rank of brigadier-general,⁶⁴ the fourth highest rank in the organization.⁶⁵

From 1987 to 1989, in response to the equality rights that came into effect pursuant to the *Canadian Charter of Rights and Freedoms*, the CAF ran the Combat Related Employment of Women trials, to evaluate the operational effectiveness of mixed gender units engaged in direct combat.⁶⁶

However, comprehensive integration remained elusive as the government continued to prohibit women from occupations and units preparing for direct involvement in combat.⁶⁷ This prohibition, however, was met with opposition from women in the Defence Team, including a complaint to the Canadian Human Rights Commission (CHRC) claiming discrimination on the basis of sex, which led to a 1989 CHRT ruling that required the CAF to:

- integrate women into all aspects of the Reg F and Reserve Forces (Res F), except submarines;
- remove all employment restrictions and implement new occupational personnel selection standards; and

- devise a plan to steadily, regularly, and consistently achieve complete integration within ten years.⁶⁸

In 1989, the CAF opened all military occupations to women except submarine service and improvements to female integration continued through much of the next decade.

In 1989, the CAF opened all military occupations to women except submarine service⁶⁹ and improvements to female integration continued through much of the next decade. The 1990s saw the first mixed-gender warship participate in NATO exercises, the first women to serve in combat arms, the first female major-general, and the first air force squadron commanded by a woman. Additionally, in 1990, the Minister created an Advisory Board on Women in the CAF to monitor the progress of gender integration and employment equity.⁷⁰

Number of women in the CAF

The CAF finally permitted women into all areas of the organization in 2001. Women have now reached more senior positions in the organization, with the first woman promoted to rear-admiral in 2011, and the first woman promoted to lieutenant-general in 2015.⁷¹ Since 1997, the CAF has endeavoured to have women represent 25% of members,⁷² a goal that has not been reached to date. In 1989, when the government finally permitted women to serve in all occupations except on submarines⁷³, women hovered at 10%, according to the DGMPRA.⁷⁴ Thirty years later, this has only increased marginally. As of October 2021, women represented 17.4% of intakes and 15.8% of releases, according to CAF data and made up 16.3% of the combined Reg F and Primary Reserve (P Res), as per the *2020-2021 CAF Employment Equity Report*.⁷⁵

I do not think that the low representation of women in the CAF is due to a lack of interest on their part in wearing the uniform and serving Canada. It is evident to me that, despite legislation mandating equality, life for women in the CAF is anything but equal. Many women experience harassment and discrimination on a daily basis with one stakeholder noting, “a man can be seen as stoic and forceful and a woman is a bitch. I was told early in my career that I had three choices: to be a slut, bitch or dyke.” This uneven treatment of women, coupled with other forms of systemic discrimination and widespread sexual misconduct, feeds into poor recruitment⁷⁶ and retention, as well as underrepresentation at all ranks.⁷⁷

Reporting on sexual misconduct in the CAF begins

In 1998, Canadians received their first real glimpse at what military life was like for women. In a series of three articles, *Maclean's* exposed the existence of military sexual misconduct through the experiences of 13 victims of sexual assault. While not an exhaustive review, the articles noted that these cases could represent a larger pattern of sexual harassment and assault in the Forces. Further, these interviews revealed a systemic mishandling of sexual assault cases by noting that the “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.”⁷⁸

The victims pointed to the toxic and sexist culture of the CAF as the root cause of sexual misconduct. A culture that promoted heavy drinking and the humiliation of women through degradation and violence created an environment in which women, who, at the time, accounted for 11% of members, were often little more than pawns for predators according to *Maclean's*.⁷⁹

In the spring of 2014, *L'actualité* and *Maclean's* published articles that revealed sexual assault in the CAF as rampant as it had been in 1998, and that the number of reported assaults only scratched the surface.⁸⁰ The authors estimated that incidents of sexual assault in the CAF could be as high as five per day.⁸¹ While this rate of sexual violence may have shocked civilians, women in the CAF had grown accustomed to being mistreated and abused. One stakeholder told me: “You wake up every day wondering if you are going to make it through the day, what name you will be called and if they will find something you cannot do.”

While this rate of sexual violence may have shocked civilians, women in the CAF had grown accustomed to being mistreated and abused.

On the basis of these articles it was clear that the barriers to reporting, first raised in 1998, remained in place, revealing that senior leadership had taken no serious steps to resolve them. Victims of sexual misconduct feared reprisal, lacked access to proper support services, and experienced poor investigative responses. Further, the culture of the CAF had not evolved significantly, even as more women signed up to serve; the culture of excessive drinking and toxic masculinity still promoted an environment in which female colleagues were sexually harassed and abused as part of bets, rituals and the assertion of power.

Responding to public pressure, the government appointed Justice Deschamps to conduct an external review into sexual misconduct in the CAF.⁸²

Justice Deschamps was mandated to consider and make recommendations concerning the definition of “sexual misconduct”; the adequacy of CAF policies, procedures, programs and training around sexual misconduct and harassment; resources dedicated to the implementation of said policies, procedures and programs; rates of reporting and reasons why reporting may not occur; and any other matter relevant to the prevention of sexual misconduct and harassment.⁸³ However, her mandate prohibited her from addressing any matter relating to the military or criminal justice system. This denied Justice Deschamps the ability to address two fundamental pillars of sexual misconduct: how it is investigated and how perpetrators are punished.

During her review, Justice Deschamps consulted with over 700 individuals at various military bases and heard numerous accounts of sexual misconduct in the CAF.⁸⁴ She also visited the military colleges, where participants reported sexual harassment as being a “*passage obligé*” and that sexual assault was an ever-present risk.⁸⁵

The Deschamps Report and initial steps taken by the CAF

On 27 March 2015, the Deschamps Report was published and confirmed many of the conclusions drawn in both the 1998 and 2014 media articles. In particular, Justice Deschamps found that there was a sexualized culture in the CAF, particularly among recruits and NCMs, “characterized by the frequent use of swear words and highly degrading expressions that reference women’s bodies, sexual jokes, innuendos, discriminatory comments about the abilities of women, and unwelcome sexual touching.”⁸⁶

Justice Deschamps also found that certain cultural behaviours and expectations within the CAF were directly related to the prevalence of inappropriate sexual conduct.⁸⁷ While the CAF as an organization has established codes of conduct, she found there was “a significant disjunction between the aspiration of the CAF to embody a professional military ethos which embraces the principle of respect for the dignity of all persons, and the reality experienced by many CAF members day-to-day.”⁸⁸ Although Justice Deschamps heard fewer reports of sexual assault, she noted, “it was clear that the occurrence of sexual harassment and sexual assault are integrally related, and that to some extent both are rooted in cultural norms that permit a degree of discriminatory and harassing conduct within the organization.”⁸⁹

She concluded that there was chronic underreporting of sexual misconduct and harassment, attributable to fears of reprisal, removal from one’s unit, concern about not being believed, stigmatization as being weak or a troublemaker, and a lack of confidentiality. Finally, she highlighted that the emphasis on low-level resolution stifled complaints, intimidated victims, or resulted in meaningless sanctions – the proverbial “slap on the wrist.”⁹⁰ None of this encouraged victims to come forward nor dissuaded perpetrators from predatory behaviour.

The Deschamps Report provided an authoritative assessment of sexual misconduct in the CAF. She provided 10 recommendations to address the problem.

From the outside, there was a perception that senior leadership was finally taking the problem of sexual misconduct seriously. However, within the ranks, many victims, past and present, were considerably more sceptical about the sincerity of the leadership on that issue.

In July 2015, General Vance was appointed as CDS. In his inaugural speech he stated: “Any harmful sexual behaviour undermines who we are, is a threat to morale, is a threat to operational readiness, and is a threat to this institution.”⁹¹ He launched Operation HONOUR with the mission to “eliminate harmful and inappropriate sexual behaviour within the CAF.”⁹²

From the outside, there was a perception that senior leadership was finally taking the problem of sexual misconduct seriously. However, within the ranks, many victims, past and present, were considerably more sceptical about the sincerity of the leadership on that issue. That scepticism was validated when Operation HONOUR quickly became referred to as “Hop on her.”

In April 2016, the CAF started to collect statistics on sexual misconduct reporting and responses. According to the CAF’s Second Progress Report, from April through July 2016,

148 incidents were investigated.⁹³ Ninety seven of these were still under investigation at the time of the report. Of the 51 investigated, 19 resulted in administrative action in the form of remedial measures, and seven led to laying of charges.⁹⁴

The 2016 Statistics Canada Report and next steps by the CAF

To gain a fuller understanding of the issue, in 2016, the CAF asked Statistics Canada to conduct a survey on sexual misconduct. The survey received over 43,000 responses from active members of the CAF.⁹⁵ The results of the survey indicated that 27.3% of women and 3.8% of men reported having been victims of sexual assault at least once since joining the CAF. Half of the female respondents identified the perpetrator as a superior. In contrast, for men, it was more likely to be a peer.⁹⁶ Further, the likelihood of sexual assault was highest among younger female CAF members who were five times more likely to be sexually assaulted than their male counterparts.⁹⁷

The results of the survey also revealed that 79% of CAF members saw, heard or were the victims of sexualized behaviour, including sexual jokes and discriminatory behaviour. Women were twice as likely as men to be the target, with 31% of women identified as the victim versus 15% of men.⁹⁸

Despite the startling prevalence of sexual misconduct, it was apparent from the survey results that CAF members still had significant trust in the system, with 81% of survey respondents believing that the organization, or at the very least their unit, would take complaints of inappropriate sexual behaviour seriously. Moreover, 36% of men and 51% of women thought that inappropriate sexual behaviour was a problem within the CAF.⁹⁹

Unsurprisingly, the survey revealed that women were less likely to report sexual assault to someone in authority for fear of negative consequences, 35% of women versus 14% of men who were victims, or due to concerns about the complaint process, 18% of women versus 7% of men.¹⁰⁰

Most CAF members reported being “very aware” or “somewhat aware” of Operation HONOUR. However, 30% of respondents believed that Operation HONOUR would be ineffective or only slightly effective. The most junior officers and NCMs, the largest victim groups, were the most pessimistic about its effectiveness.¹⁰¹

I understand that, shortly thereafter, new policies were released and subject matter training was developed. On the surface, victims were being encouraged to come forward, and bystanders were reminded of their obligation to do so. However, the day-to-day reality in the CAF differed significantly from the policies created in Ottawa. Stakeholders reported that after Operation HONOUR was launched, there was a significant change in attitude in their male counterparts, not to one of acceptance, awareness, or altruism but to one of fear, fury, and frustration. Stakeholders also reported that many men did not take Operation HONOUR seriously and would share their stories of being “Op Honoured.”

By April 2016, the CAF had implemented a monthly tracking system to track incidents of harmful and inappropriate sexual behaviour (HISB), and assist with analyzing the progress of Operation HONOUR.¹⁰² This included monthly reporting on HISB at the unit level. Between April 2016 and March 2017, 504 incidents of HISB were reported at the unit level, of which 47 were sexual assaults.¹⁰³ By far, the largest category, with 281 reports, was “inappropriate sexual behaviour,” covering frequent sexual language or jokes, displaying pornography, pressuring for sexual activity, taking photos during sex without consent, and “other.” Women filed 75.8% of the reports during this period, and 180 incidents resulted in administrative action being taken by the chain of command.

On the other hand, within the military justice system and during that same time period, 288 offences were reported, of which 235 were sexual assaults.¹⁰⁴ While 267 were ultimately declared “founded,” only 64 charges had been laid.¹⁰⁵

Class actions

In 2016 and 2017, seven former CAF members initiated class action lawsuits against the Government of Canada. The plaintiffs of these class action lawsuits alleged sexual harassment, sexual assault, or discrimination based on sex, gender, gender identity or sexual orientation in connection with their military service and/or employment with the DND and/or Staff of the Non-Public Funds.¹⁰⁶ The Government of Canada agreed to a \$900 million settlement for the Heyder and Beattie class actions.¹⁰⁷ I return to the Heyder and Beattie class actions below, in the section on Data.

The 2018 Statistics Canada reports

In May 2018, Statistics Canada published reports on both the Reg F and P Res of the CAF. The Reg F survey was a follow-up to the 2016 survey and found that there was no significant statistical change from the prevalence of sexual assault.¹⁰⁸ However, there was a change in demographics, with young NCMs making up a larger proportion of victims, while senior NCMs and white able-bodied women reported a decline in the prevalence of sexual assault.¹⁰⁹

On the perpetrator side, women reported fewer assaults committed by superiors than in 2016 with 38% of sexual assaults carried out by a superior or higher ranked individual.¹¹⁰ There could be a number of factors, other than an absolute reduction in assaults, to explain this decrease. The survey did not include members who had left the CAF for any reason, potentially not capturing victims who released because of the assault.¹¹¹ Further, women may not have reported an assault by a superior even on a survey for fear of reprisal. This, the survey noted, posed a significant barrier to reporting any type of sexual assault, with 37% of all women citing it as a reason to not report.¹¹²

When it came to sexualized and discriminatory behaviours, there was some evidence that Operation HONOUR was working. According to the survey, the number of CAF members who witnessed or experienced sexualized or discriminatory behaviours decreased, from 80% in 2016 to 70% in 2018.¹¹³ Reporting of sexualized and discriminatory behaviour increased slightly, from 26% in 2016 to 28% in 2018.¹¹⁴

In the P Res, the results were largely the same as in the Reg F. Overall, 2.2% of reservists were victims of sexual assault in 2018.¹¹⁵ Among the victims, one in six used CAF support services and one in 10 used civilian support services.¹¹⁶ When it came to sexualized and discriminatory behaviours, the P Res saw a decline from 82% in 2016 to 71% in 2018, which was almost identical to the Reg F, which went from 80% in 2016 to 70% in 2018.¹¹⁷ Women were more likely than men to witness or experience such behaviours,¹¹⁸ and found the behaviours offensive.¹¹⁹

The 2018 OAG Report

In September 2018, the OAG conducted an audit of the CAF on its implementation of Justice Deschamps' recommendations and its efforts to address sexual misconduct. It made the following findings, among others:

5.17 We found that Operation HONOUR increased awareness of inappropriate sexual behaviour within the Canadian Armed Forces. However, the Operation had a fragmented approach to victim support as well as unintended consequences that slowed its progress and left some members wondering if it would achieve the expectations set for it.

5.18 We found that, after the implementation of the Operation, the number of reported complaints increased from about 40 in 2015 to about 300 in 2017. The Forces believed that the increase was an indication that members trusted that the organization would effectively respond to inappropriate sexual behaviour.

5.19 However, we found that some members still did not feel safe and supported. For example, the duty to report all incidents of inappropriate sexual behaviour increased the number of cases reported by a third party, even if the victim was not ready to come forward at that time. Moreover, the Military Police had to conduct an initial investigation of all reports, regardless of a victim's preference to resolve the issue informally. This discouraged some victims from coming forward. Many victims also did not understand or have confidence in the complaint systems.

5.20 Information gathered by Statistics Canada during a 2016 survey indicated that there were many unreported incidents of inappropriate sexual behaviour in the Canadian Armed Forces. In mid-2018, the Forces acknowledged that inappropriate sexual behaviour remained a serious problem and that a significant focus on victim support and the use of external, independent advice were required.¹²⁰

Surveys of the military colleges

In 2019, Statistics Canada focused on the military colleges, replicating its earlier surveys on the Reg F and P Res.¹²¹ The primary point of comparison in the survey was the non-military civilian student population. It found that 28% of female students at a military college experienced some form of sexual assault as opposed to 15% of women in the general student population.¹²² One in seven women at a military college had been sexually assaulted in the past 12 months.¹²³ When it came to unwanted sexualized behaviour, the survey found that 68% of students witnessed or experienced such behaviour, which was in line with the proportion in the broader CAF in 2018.¹²⁴ Most unwanted behaviours occurred when others were present and were generally committed by fellow students.¹²⁵

Overall, most students were aware of the procedures for dealing with sexual assault and harassment (85% of men and 70% of women), but women students and those who experienced unwanted sexualized behaviours held more negative attitudes regarding school-related support and services.¹²⁶

Conclusion

The Deschamps Report as well as the work of Statistics Canada, exposed the prevalence of sexual misconduct in the CAF. What could have been dismissed as a series of isolated, anecdotal incidents is now recognized as a deeply-rooted organizational problem that requires a real culture change throughout the CAF. These studies have enabled academics and subject matter experts to provide input and improve collective knowledge on the subject, and it has provided a solid foundation for the Defence Team to take the steps necessary to recognize and acknowledge the magnitude of the problem.

History of Operation HONOUR

Before the Deschamps Report was released, the CAF stood up the CSRT-SM under the authority of the CDS.¹²⁷ The CSRT-SM “was tasked to serve as the focal point for the development and implementation of a comprehensive strategy and associated action plan to address the recommendations of [Justice Deschamps] in order to modify and improve behaviour throughout the [CAF].”¹²⁸

In August 2015, in response to the Deschamps Report, then CDS Vance officially launched Operation HONOUR with a mission to “eliminate harmful and inappropriate sexual behaviour” within the CAF. Operation HONOUR’s preliminary aims were: to understand harmful behaviour; respond to harmful behaviour through cultural change; support victims (including establishing the SMRC) and prevent HISB through a unified policy approach.¹²⁹

Initially, Operation HONOUR was divided into four phases:

- **Phase One, Initiation:** Complete a comprehensive strategy and action plan and set up the SMRC;
- **Phase Two, Preparation:** Roll out discipline, leadership doctrine, orders and policies throughout the chain of command; the CSRT-SM begins operations;
- **Phase Three, Deployment:** Deliver, train, and transition the SMRC to full operational capability; and
- **Phase Four, Maintain and Hold:** Reabsorb the CSRT-SM while commanders continue to “personally oversee the maintenance of values and the application of administrative and/or disciplinary measures.”¹³⁰

Preparatory steps and Phase One, Initiation

In June 2015, the CSRT-SM focused on setting up the new centre for accountability for sexual assault and harassment based on the recommendation made by Justice Deschamps.

As part of its approach to understanding the problem, during Phase One, the CSRT-SM conducted a series of domestic and international visits to learn from allied militaries and civilian organizations. In particular, it visited the relevant military authorities in the USA, Australia, France, the Netherlands, Denmark, and Sweden, and various Canadian police forces, crisis response centres, and victim support institutions.¹³¹

Building on the work of the CSRT-SM over the summer, the SMRC became operational on 15 September 2015.¹³² It was independent from the chain of command,¹³³ while supporting both victims and the chain of command. The intention was that victim support services would ramp up with each successive phase of Operation HONOUR, and the SMRC would reach its “final operational capability” in 2018.

Following the launch of the SMRC, the first phase of Operation HONOUR was declared officially complete as of 30 September 2015.¹³⁴

Phase Two, Preparation

In the second phase of Operation HONOUR, the CAF focused on increasing awareness and implementing Operation HONOUR activities among L1 organizations. This included encouraging participation in training and Operation HONOUR-related initiatives. All L1 commanders were required to provide periodic reports on all Operation HONOUR-related activities undertaken by their organizations and all incidents of HISB within their organizations. Further, certain L1 organizations were given additional responsibilities relating to the implementation of Operation HONOUR. For example, the VCDS was tasked with supporting and coordinating an integrated approach to developing the mandate, governance and operational model of the SMRC, providing resources to the CSRT-SM, and working with the JAG and the CFPM to develop victim reporting protocols. The CMP was ordered to assume responsibility for the CSRT-SM and tasked with identifying future resource requirements, training development, facilitating chaplain support, and developing common terminology and definitions. The JAG was asked to review the military justice system from an Operation HONOUR perspective, alongside the CFPM.¹³⁵

In the spring of 2016, the CAF claimed it had started collecting statistics on sexual misconduct reporting and responses.¹³⁶ Before Operation HONOUR, no dedicated central database to track incidents of sexual misconduct existed. However, in April 2016, the CDS ordered that all “Level 1 organizations report incidents of sexual misconduct to the [CSRT-SM].”¹³⁷ In addition, the CAF asked Statistics Canada to conduct a survey on sexual misconduct.¹³⁸ Aside from statistics, the CAF updated its harassment prevention policy, the Defence Administration Order and Directive (DAOD) 5012-0¹³⁹, and the JAG committed to ensuring that his comprehensive review of the court martial system would include Operation HONOUR.¹⁴⁰

Phase Three, Deployment

Phase Three commenced on 1 July 2016.¹⁴¹ According to the CAF, the SMRC’s operating hours had increased, and additional training had been provided to military health care professionals. The CFPM had introduced new training on data collection and victim interviewing techniques for the MP.¹⁴² The MP also added 18 positions to the CFNIS to create a “Sexual Offences Response Team” with three members in each regional office for additional support to complex files.¹⁴³

By August 2016, the CMP was charged with overseeing the coordination of Operation HONOUR, supported by the Director General of the CSRT-SM. However, the CDS remained responsible for the overall execution of Operation HONOUR, and accountable for its success.¹⁴⁴

The CAF determined that two entities were necessary to achieve institutional culture change: a strategic-level steering committee, mandated to provide direction and harmonize the overall response to sexual misconduct in the CAF, and an advisory council with external subject matter experts to develop victim support services, training, education, and policy.¹⁴⁵

To evaluate the success of Operation HONOUR's implementation, the CAF planned to conduct internal and external research and update its "Unit Climate Surveys."¹⁴⁶

Phase Three saw the continuation of many tasks started in Phase Two, but with a shift "from developing awareness and understanding the problem to implementing a comprehensive training, education and prevention approach across the CAF."¹⁴⁷ The dissemination of training and educational materials began shifting down the chain of command. Commanders were directed to ensure that instructors were appropriately trained and that all personnel in supervisory roles were provided information about available training.¹⁴⁸

In addition to other Operation HONOUR-related tasks, the VCDS was responsible for supporting the CFPM and the CSRT-SM in creating victim support mechanisms, and facilitating the alignment of the new ICCM program with the SMRC and the CSRT-SM initiatives.¹⁴⁹ Although the initiating directive for the ICCM was first issued in 2014,¹⁵⁰ full implementation of the ICCM was only scheduled for 2019.¹⁵¹ The CMP also gained additional responsibilities, including coordinating efforts between the CSRT-SM and the SMRC regarding a new national subject-matter expert group on sexual harassment within the SMRC, developing a Victim Assistance Program, and developing a national peer support program under the supervision of the Canadian Forces Morale and Welfare Services (CFMWS).¹⁵²

November 2016 saw the publication of the results of the first Statistics Canada survey.¹⁵³ The survey's results were alarming, with a majority having witnessed sexualized behaviour, and 27.3% of women and 3.8% of men reported being a victim of sexual assault since joining the CAF.¹⁵⁴

In April 2017, the Third Progress Report on Operation HONOUR was released. It again claimed a number of achievements during the reporting period. The CFHSG, the CFPM, the DMP, the CFMWS, and the Chaplain General had all instituted new victim support initiatives. The SMRC was poised to roll out 24/7 access to support services. Plans were in the works for a peer support network, a Victim Assistance Program to help victims better navigate the system. Also planned was the introduction of a "third option reporting" which would safeguard crucial evidence without pressuring a victim to first press charges.¹⁵⁵

However, I was not provided with any documents to show that this reporting option was ever implemented.

The report also noted that the JAG and Department of Justice were drafting regulations to implement the victims' rights provisions of Bill C-15.¹⁵⁶ Although certain provisions of Bill C-15 came into force in 2013, the victims' rights elements had still not been implemented four years later. In particular, Bill C-15 sought to “provide victims of service offences with specific procedural rights, such as their right to make victim impact statements.”¹⁵⁷

The SMRC introduced a modified case management system and the CAF implemented the HISB tracking and analysis system to track the occurrence of sexual misconduct. A variety of training programs were also rolled out during this period, including unit-level training on addressing sexual misconduct, bystander intervention training, and a “Respect in the CAF” (RitCAF) workshop. A RitCAF mobile app was in development and meant to roll out on 17 June 2017.¹⁵⁸

On 24 July 2017, the SMRC launched a “one-year pilot of 24/7 service delivery [...] to ensure that all CAF members would have access to support on a 24/7 basis, whether deployed internationally or domestically.”¹⁵⁹ According to the 2017-18 SMRC Annual Report, in the fall of 2017, the Your Say survey was sent out to 9,000 Reg F and P Res members; the SMRC also launched new web content that was audience-oriented.¹⁶⁰

In January 2018, the Operation HONOUR Tracking and Analysis System (OPHTAS) was “created for use by the chain of command as a dedicated means of recording, tracking and conducting trend analysis of incidents of sexual misconduct.”¹⁶¹ At the same time, the JAG also brought an end to the internal *Court Martial Comprehensive Review*, which was supposed to examine courts martial from an Operation HONOUR perspective, and downgraded the draft report to a discussion paper.¹⁶²

In 2018, the External Advisory Council (EAC) on sexual misconduct was established namely to “provide advice and recommendations to the DM and the CDS on Operation HONOUR activities,” including the implementation of Justice Deschamps' recommendations.¹⁶³

The institutionalization of Operation HONOUR

On 5 March 2018, Operation HONOUR was changed from a limited operation to a permanent institutional initiative and the previous four-phase approach was abandoned. The CSRT-SM was moved back to the VCDS and placed on a permanent footing that would eventually become the DPMC-OpH. The new objective was to establish an institutional framework across the CAF to effect culture change and measure performance.¹⁶⁴

In March 2018, the SMRC also “refined the training framework to specify the mandatory training that Counsellors and Senior Counsellors must complete to become and remain proficient.”¹⁶⁵

In the fall of 2018, the OAG released a report that focused on whether the CAF “adequately responded to inappropriate sexual behaviour through actions to respond to and support victims and to understand and prevent such behaviour.”¹⁶⁶ The OAG found that, despite Operation HONOUR being in its third year, several of the problems identified by the Deschamps Report remained. In particular, victim support services were patchy, difficult to access, and under-resourced; the duty to report presented a barrier to reporting; education and training around inappropriate sexual behavior failed to address the root causes of such behavior; and there was inadequate monitoring of the CAF’s efforts.¹⁶⁷

The OAG found that, despite Operation HONOUR being in its third year, several of the problems identified by the Deschamps Report remained.

In February 2019, a Fourth Progress Report was released. It was considerably more subdued than the previous progress reports. The report did, however, note various actions taken over the preceding 21 months. For example, the OPHTAS reached its initial operating capability on 1 October 2018. The CAF also claimed it had improved response to complaints through the ICCM, introduced a more victim-centred approach to investigations and prosecutions, improved research around sexual misconduct in the CAF, and benefited from external collaboration through the EAC.¹⁶⁸

However, the Fourth Progress Report acknowledged that a comprehensive strategy of culture change had yet to be developed. It considered the following to be areas in which the CAF’s response to sexual misconduct was “significantly less successful”:

- Delayed development and implementation of a unified updated policy on sexual misconduct;
- Failure to produce strategic direction and a campaign plan to guide the necessary culture shift;
- Absence of a plan against which to assess performance, creating an emphasis on statistics on performance measures;
- Establishment of an optimal governance structure between the SMRC and the CAF, which protects the independence of the SMRC while allowing enough integration to meet the institutional needs of the CAF;
- Implementation of a consolidated CAF-wide tracking capability to provide a comprehensive institutional picture of sexual misconduct in the CAF;
- Effective strategic communications with CAF members to avoid subject matter fatigue and ensure the continued relevance of Operation HONOUR;
- Sufficient interaction with external entities and stakeholders; and
- Capturing the experiences and lessons learned during the implementation of Operation HONOUR.¹⁶⁹

The terms of reference for the Operation HONOUR Steering Committee were issued on 28 June 2019, some two-and-a-half years after this part of the governance structure was first identified as a requirement.¹⁷⁰ They directed the Steering Committee to “provide a forum for the chain of command to inform, provide input, and discuss Operation HONOUR and the CSRT-SM’s efforts to meet the CDS’ intent from the immediate requirements through to the long term goals.”¹⁷¹ The Steering Committee met semi-annually to ensure “CAF-wide situational awareness, information sharing, and leadership, focused on the elimination of sexual misconduct from the CAF.”¹⁷² Members of the Steering Committee included L1 deputy commanders, select chief warrant officers/chief petty officers 1st class, the Executive Director of the SMRC, the Surgeon General, the DND/CF Legal Advisor, the CFPM, the Chaplain General, the DGICCM, the DGMPPRA, and the JAG. The Steering Committee was overseen by and accountable to the VCDS.¹⁷³

In May 2019, Statistics Canada released the results of its 2018 survey on sexual misconduct in the CAF.¹⁷⁴ Following this, the SMRC’s mandate was expanded beyond the provision of support to CAF members, to include provision of expert advice and guidance to the CAF, and monitoring of the CAF’s progress.¹⁷⁵ Further, it was noted that despite significant attention given to Operation HONOUR in Ottawa, “low awareness of the resources continues to be a problem. Finding strategies to simplify the content and improv[e] its intelligibility should be a priority. Working with different communities within the CAF through a [Gender-based Analysis Plus (GBA+)] lens would be helpful to identify the best information dissemination strategies for each of them.”¹⁷⁶

In July 2019, the CSRT-SM was renamed the DPMC-OpH. As noted below, this name change was in response to criticism that CSRT-SM was too similar in name to SMRC and was causing confusion. New mandates were issued for the DPMC-OpH and the SMRC. On 15 July 2019, the operating agreement between the SMRC and the DPMC-OpH was approved by the VCDS.¹⁷⁷

According to its mandate, the DPMC-OpH was “the strategic level planning and coordination staff leading the [CAF]’s institutional change efforts to address sexual misconduct and promote a focus on the dignity and respect of the individual.”¹⁷⁸ Its responsibilities included developing policy and direction, implementing expert guidance from the SMRC, including training, and monitoring the application of policy, administration and training regarding sexual misconduct.¹⁷⁹

At the same time as the DPMC-OpH’s new mandate was issued, the interim version of the *Operation HONOUR Manual* was released. This version was developed in cooperation with the SMRC in consultation with the EAC, and issued on the authority of the CDS. It provided an overview of Operation HONOUR, its governance and key training packages and initiatives. It also introduced readers to critical concepts and definitions of sexual misconduct, sexual harassment, and victim-blaming. It provided information about support services, tools and resources and an overview of prevention measures and guides for reporting and responding to incidents of sexual misconduct.¹⁸⁰

Further, on 25 July 2019, the CAF issued a direction that permitted commanding officers to “provide victims with information about the outcomes and conclusions of administrative reviews related to their complaint, as well as administrative actions imposed by the chain of command on the person who caused them harm.”¹⁸¹ This directive sought to close “a critical information gap identified by complainants in cases of sexual misconduct and victim advocates” while complying with the *Privacy Act*.¹⁸²

In August 2019, the CAF released its first report based on statistics collected from tracking tools such as the OPHTAS during Operation HONOUR. The CAF noted that “work is underway to fully integrate [the] OPHTAS with all other key personnel-related and sexual misconduct incident-related databases,” including select MP data, the Justice Administration and Information Management System (JAIMS) for military justice outcomes, and the Integrated Complaint Registration and Tracking System (ICRTS) for sexual harassment outcomes.¹⁸³ In September 2019, the CDS issued a directive to institutionalize and improve the OPHTAS.¹⁸⁴

At the same time that the CAF released its first Sexual Misconduct Incident Tracking Report, the Operation HONOUR Steering Committee met and discussed changing the Operation HONOUR communications strategy. It was noted that the media, in particular, had a hard time distinguishing between CAF programs and “there was [...] never any over-arching goal in the messaging.”¹⁸⁵ As a result, the Steering Committee produced a “strategic narrative” to provide essential information on sexual misconduct in the CAF.¹⁸⁶

In December 2019, the *Operation HONOUR Manual* was updated, and the CDS issued a final version in January 2020.¹⁸⁷ However, despite this advancement, many of the initial problems highlighted by Justice Deschamps still existed. For example, “despite the CAF claiming to have achieved progress on many of Deschamps’ recommendations, victims and survivors continue to report dissatisfaction with the process, and service members in general have been exhibiting signs of fatigue, even resistance, when it comes to Operation HONOUR.”¹⁸⁸

In 2020, the CAF released the *Path to Dignity*¹⁸⁹, intended to be the CAF’s long-term campaign and strategy to bring about cultural change and address sexual misconduct permanently. The strategy consisted of four elements:

- **Part 1:** Strategic Approach to Cultural Alignment, intended to identify the elements that constitute and influence CAF culture and provide a cultural alignment model that can be applied to a broad range of issues;
- **Part 2:** Strategic Framework to Address Sexual Misconduct in the CAF. It applies the model in Part 1 and sets out the objectives and desired outcomes of the strategy;
- **Part 3:** Operation HONOUR Strategic Campaign Plan 2025 sets out a five-year plan for implementation; and
- **Part 4:** Operation HONOUR Performance Measurement Framework is a system for monitoring the progress of Operation HONOUR over time.

With the creation of the DPMC-OpH and other governance structures, the intention of the strategy appeared to be to embed Operation HONOUR for the long term. Even the EAC noted the evolution of Operation HONOUR from an “incident based, transactional approach to longer-term holistic view towards changing the CAF culture. The key message for The Path is that Op[eration] HONOUR is never going away; it is a steady state, there is no end state.”¹⁹⁰

The end of Operation HONOUR

However, Operation HONOUR did not survive the new reporting on sexual misconduct that arose in 2021. As Justice Fish summarized:

The third period of the CAF’s struggle with sexual misconduct since 1998 began on February 2, 2021, when Global News reported allegations of inappropriate behaviour between a retired CDS and two female subordinates. Three weeks later, another CDS stepped aside after several news outlets had contacted the DND to confirm that he was the subject of a sexual misconduct investigation. And on March 31, 2021, the Chief of Military Personnel stepped aside as well, this time amid allegations of sexual assault on a subordinate female member.¹⁹¹

On 24 March 2021, then Lieutenant-General Eyre, Acting CDS, announced the end to Operation HONOUR. In his words:

Operation HONOUR has culminated, and thus we will close it out, harvest what has worked, learn from what hasn’t, and develop a deliberate plan to go forward. We will better align the organizations and processes focused on culture change to achieve better effect.¹⁹²

Lieutenant-General Eyre stated that he remained committed to learning from the exercise and improving the processes, and in his letter to CAF members, he pledged to:

- identify and take the steps necessary to create a workplace where individuals feel safe to come forward when they experience sexual misconduct;
- finalize and publish our Code of Professional Military Conduct, including a new focus on power dynamics in our system;
- add new rigour and science to leader selection, starting at the highest levels;
- implement the Restorative Engagement aspect of the Final Settlement Agreement of the Heyder and Beattie class actions; and
- improve mechanisms to listen and learn from the experiences of those who have been harmed.

Having heard from numerous stakeholders, the scepticism that marked Operation HONOUR is not surprising. The documentary record shows a top-down, Ottawa-led process marked by sporadic flurries of activity and long periods of apparent inaction. I heard numerous stories of cancelled, poorly attended, poorly implemented, or poorly taught

training. Many initiatives lacked resources. I heard accounts of Operation HONOUR fatigue and how “Operation HONOUR” quickly became “Hop on Her” and was not taken seriously by large parts of the organization.

Some of this is confirmed by the CAF’s internal documents, but mostly the flaws in Operation HONOUR were exposed by external reports such as the Statistics Canada surveys and the AG’s report. In particular, I am struck by the change in tone between the early progress reports and the Fourth Progress Report. This report followed the 2018 OAG Report, which criticized the CAF’s implementation of the Deschamps Report over the preceding three years. Until that point, there seems to have been an assumption by the CAF that Operation HONOUR was being effectively implemented only because Ottawa mandated it. The CAF’s internal audit processes do not appear to have been focused on this issue, or if they were, their reports went unread.

Rather than focus on the clear recommendations of the Deschamps Report, the CAF leadership developed a plan with no measurable key performance indicators – oblivious to its own limitations as it attempted to manage and transform issues on which it had no expertise.

Rather than focus on the clear recommendations of the Deschamps Report, the CAF leadership developed a plan with no measurable key performance indicators – oblivious to its own limitations as it attempted to manage and transform issues on which it had no expertise.

Chief Professional Conduct and Culture

At the end of March 2021, then Lieutenant-General Eyre, Acting CDS, announced that the CAF would welcome an external review of the institution and its culture. As set out above, he also announced the closeout of Operation HONOUR and indicated that a plan was underway to develop a “deliberate” approach to culture in the future.¹⁹³

The DND and the CAF subsequently released a directive on culture concluding that change could not be achieved by merely establishing a named operation, and announced instead the immediate stand up of the CPCC as part of National Defence Headquarters (NDHQ), to “develop a detailed plan to align Defence culture and professional conduct with the core values and ethical principles we aspire to uphold as a National Institution.”¹⁹⁴

The CPCC’s aim is to become the single functional authority on aligning defence culture with the standards expected of the profession of arms and the Defence Team.¹⁹⁵ It is to become the principal advisor to the DM and the CDS for all matters related to professional conduct and culture, including sexual misconduct and hateful conduct.

I learned of the existence of the CPCC on the same day as my appointment to conduct this Review was announced. I was not made aware until then that the CPCC – the new functional authority for culture change, including in relation to sexual misconduct – was in the process of being stood up. This is symptomatic of a broader issue. For example, while little was done to implement some relatively straightforward recommendations made in the Deschamps Report, big initiatives were launched that may have benefited from a more considered, comprehensive and unified approach. The parallel launch of the CPCC and this Review has likely created some duplication of effort, such as consultations on bases and wings and other inefficiencies.

This is not a comment on the CPCC’s mandate or staffing. The CPCC and the VCDS have been in communication with me and readily accessible throughout my Review. I have benefited from their insight and work and appreciate their efforts.

Generally, the CPCC has focused its effort on four main areas: supports for survivors, justice and accountability, culture change and consultation and communication.¹⁹⁶ The CPCC describes these four “pathways to progress” as its action plan to “capture and consolidate some of the key efforts planned or underway” to address harm to members of the Defence Team. I have received updates on these pathways over the course of my Review which are generally consistent with the “change progress tracker” that the CPCC has made available online to publish its current and future plans for change.¹⁹⁷

Each of the “pathways to progress” is addressed in the CPCC’s work, although the CPCC may not be the lead for each area. For instance, with respect to “supports for survivors,” the SMRC is expanding its services to DND employees and former CAF members and is working to increase the SMRC’s regional footprint; and the CPCC is supporting the SMRC in its launch of the Restorative Engagement Program required under the final settlement of the Heyder and Beattie class actions.¹⁹⁸

Further to “justice and accountability,” the CPCC has reviewed the complaints management process to better understand the existing complaints framework. With respect to “culture change,” the CPCC has taken on several initiatives, including the review of culture and professional conduct training delivered by the CFLRS.

The CPCC has also, further to its consultation mandate, been engaged in a multi-month consultation tour of the CAF, holding town hall presentations and focus group discussions. At each stop, in-person and virtual, the command team for the CPCC engaged in a discussion of organization’s culture problem, how to define success in addressing this problem, what could be done better, and the strategy to improve.¹⁹⁹

I understand that the CPCC comprises four Directorates: Policy, Engagement and Research; Culture Change; Professional Conduct and Development; and Conflict Prevention and Resolution. There are currently 425 approved positions, not all filled. The ICCM program has been moved under the CPCC, as has DPMC-OpH, which is winding up Operation HONOUR. Overall, the CPCC initiative appears well-resourced and supported and is taking on a wide range of mandates relevant to this Review.²⁰⁰

Data

My examination of that issue reveals, once again, a series of initiatives unconnected to the global needs of the organization, including the need to capture what it knows and maximize the usefulness of that knowledge in decision-making.

I turn to the way the CAF has collected and made use of data regarding sexual misconduct in its ranks. My examination of that issue reveals, once again, a series of initiatives unconnected to the global needs of the organization, including the need to capture what it knows and maximize the usefulness of that knowledge in decision-making. Fortunately, the CAF and the DND have recently begun to take steps to address these issues.

Data analysis will be a vital component in effecting meaningful, sustainable change in the CAF and the DND. Without data, organizations are ill-equipped to make informed policy decisions and measure the impact and effectiveness of those decisions. As well, data can be especially powerful in determining the root causes of particular events and identifying risks before they become serious issues.

Background

Many organizations within the DND and the CAF already gather a significant amount of information – related to complaints, charges and cases – for their own purpose. But the information is disjointed and misses links to other parts of the Defence Team.

Ideally, a more thoughtful approach would ensure that the sum of each organization's data represents the whole picture of sexual misconduct in the DND and the CAF. With the current silo model focused on achieving individual organizational mandates, this is simply not possible.

The following table provides examples of sexual misconduct incidents and related actions reported to, and recorded by, various organizations within the DND and the CAF.

Number of sexual misconduct incidents and related actions ²⁰¹				
Organization	Description of what is collected	2020-21	2019-20	2018-19
CPCC, DGPMC ²⁰²	Number of incidents reported to the chain of command and recorded in the OPHTAS, renamed the Sexual Misconduct Incident Tracking System (SMITS).	444 (Not published)	497 (Not published)	344 (Not published)
SMRC ²⁰³	Number of new cases opened by SMRC.	654	649	484
DMCA ²⁰⁴	Releases due to inappropriate sexual behaviour.	25	36	33
JAG ²⁰⁵	Court martials related to sexual misconduct.	Not yet tabled	25	20

Table 1. Number of sexual misconduct incidents and related actions.

Number of sexual misconduct incidents and related actions ²⁰⁶				
Organization	Description of what is collected	2020	2019	2018
CFPM ²⁰⁷	Number of sexual related incidents by calendar year.	234	334	358
DMCA ²⁰⁸	Victims released via Medical Employment Limitation due to inappropriate sexual behavior (number of MELs opened in the year/number of releases in the year).	36/13	34/1	14/0
ICCM ²⁰⁹	Number of sexual harassment complaints by year recorded in ICRTS. The 2018 data is as of July 2018.	8	13	3
Statistics Canada ²¹⁰ (External to the CAF and the DND)	Number of Reg F members who stated that they were victims of sexual assault in the military workplace or involving military members.	n/a	n/a	900

Table 2. Number of sexual misconduct incidents and related actions.

One question that bears asking is what is actually happening in a given year. For example, a member's release may not be for incidents perpetrated in that year, in the same way that reporting date and date of incident cannot be assumed to coincide. Without question, there is a missed opportunity here. If the CAF and the DND make a concerted effort to coordinate data findings among their various organizations, a detailed analysis could produce useful insights.

I am not the only one to have noticed these data weaknesses. Over the last seven years, a number of people have observed and expressed concern about these issues. They include:

- Justice Deschamps – 2015;
- the AG – 2018;
- the Senate Standing Committee on National Security and Defence – 2019;
- Executive Director of the SMRC – 2020;
- the ADM(RS) – 2021; and
- the Public Service Alliance – 2022.

Coordination

Clearly, CAF leadership is well aware of the issues.

In 2019, the DND and the CAF released the *DND/CAF Data Strategy*, a document that sets out a vision for the DND and the CAF where “data are leveraged in all aspects of Defence programs, enhancing our defence capabilities and decision-making, and providing an information advantage during military operations.”²¹¹ The Strategy does not specifically mention sexual misconduct data; however, it presents an opportunity to use data for sexual misconduct prevention efforts, and to focus resources, improve culture and minimize risk.

In addition, the Operation HONOUR Performance Measurement Framework outlined how progress towards cultural alignment would be measured over time. Using this framework, the CAF intended to “move beyond the short-term measurement of self-reported experience and behaviours and attempt to address the less tangible dimensions of culture that will influence and sustain desired patterns of behaviour over the longer term.”²¹²

In April 2021, the Initiating Directive for Professional Conduct and Culture stated that the “ability to understand the scope and seriousness of [the CAF and the DND’s] challenges is limited. Multiple databases collect and track misconduct-related information making analysis difficult.”²¹³ Its terms directed the Assistant Deputy Minister (Data, Innovation and Analytics) (ADM(DIA)) and the Assistant Deputy Minister (Information Management) (ADM(IM)) to co-lead an effort to “inventory and consolidate data assets and IT systems currently used across [the DND and the CAF] to capture and manage misconduct-related files in accordance with the *Access to Information and Privacy Act* and information security provisions.”²¹⁴

In late spring of 2021, ADM(DIA) and ADM(IM) “were mandated to identify existing data assets related to systemic misconduct.”²¹⁵ They found that there were “31 unique data assets” across the DND and the CAF that “enable service delivery, tracking and reporting on systemic misconduct across [the DND and the CAF].”²¹⁶ The report proposes options

to improve data governance, data integration and data analytics. Key findings of the data exploration efforts include:

- lack of mechanisms for integration or interoperability between data assets with unique mandates;
- low level of data quality;
- lack of overarching data governance for conduct-related data (including lack of standard definitions for types of conduct across CAF and DND approaches and policies); and
- limited automated reporting capabilities.²¹⁷

In August 2021, ADM(DIA) requested funding to build capacity and accelerate the collective efforts to improve conduct-related tracking, reporting and analytics. In his briefing note, he emphasized the data weaknesses:

“Complaints, reporting, and tracking systems related to misconduct are fragmented and complex. They are made to or through multiple organizations and the associated investigations are registered and tracked across multiple disparate systems. Many of these systems were not designed for analytics and reporting and the lack of interoperability makes aggregate analysis difficult. They also face significant data challenges including a lack of data governance, data standardization, and other data quality issues resulting in system and data redundancy issues. The A/CDS and DM have identified the lack of integration and centralization of data in IT systems, as well as limited data accessibility and reporting as key issues that must be addressed.”²¹⁸

Operation HONOUR Tracking and Analysis System

When I asked how the highest-ranking CAF officers are assured that the policy and process set out in DAOD 9005-1 are implemented, the commanders who responded pointed to their use of the OPHTAS.²¹⁹

For example, the OPHTAS is used not only to “ensure compliance to all reporting requirements but also ensures that [the environment] follows up on the application of [administrative]/disciplinary actions being taken.”²²⁰ Moreover, the OPHTAS is “the primary means by which the [environment] oversees sexual misconduct response and the application of DAOD 9005-1.”²²¹ According to a presentation on the OPHTAS, “[f]or the purposes of reporting, if incidents are not in OPHTAS, they don’t exist.”²²²

Prior to the introduction of Operation HONOUR in 2015, the CAF did not use a dedicated central database to record all cases of sexual misconduct.²²³ As of 1 April 2016, all L1s were directed to report sexual misconduct incidents to the CSRT-SM (changed to the DPMC-OpH).

In January 2018, the OPHTAS was launched for use by the chain of command as a dedicated means to record, track and conduct trend analysis of incidents of sexual misconduct.²²⁴ Once an incident is reported to the chain of command, the OPHTAS user has 48 hours to enter the case in OPHTAS.²²⁵

While the OPHTAS was implemented in 2018, a CDS directive to institutionalize and improve the system was issued in September 2019 because “not all L1s [were] fully aware of their responsibilities and not all CAF units [were] aware of the requirement to record and update sexual misconduct cases in OPHTAS.”²²⁶

On 24 March 2021, the Acting CDS announced the termination of Operation HONOUR. However, the CAF continues to record and track sexual misconduct incidents in the established database, now called the SMITS, and this data will continue to be published regularly.²²⁷ There was also an attempt to extend OPHTAS to DND employees, although this was never finalized.²²⁸ This was unfortunate, as it missed an opportunity to track sexual misconduct across the wider Defence Team.

Four Operation HONOUR annual reports have been produced to provide a summary of what the CAF has accomplished to date, including areas of success and areas where more work is required. Information reported includes number of incident reports, types of sexual misconduct, profile of who reported incidents, location/circumstance profile, disciplinary action, and administrative review. These annual reports were published prior to the launch of the OPHTAS.

The first report using the OPHTAS database was released in August 2019, in the *Sexual Misconduct Incident Tracking Report*. This report provides incident trends by date, sexual misconduct incident statistics, and actions taken for reported incidents. The report also claimed that “work [was] underway to fully integrate [the] OPHTAS with all other key personnel-related and sexual misconduct incident-related databases” such as “select information on Military Police investigations.” In addition, the report stated that the “OPHTAS will also be integrated with other systems, such as the Justice Administration and Information Management System (JAIMS) for military justice outcomes and the Integrated Complaint Registration and Tracking System (ICRTS) for sexual harassment outcomes.”²²⁹

In a March 2022 technical briefing on modernizing the military justice system, the Office of the Judge Advocate General (OJAG) stated that it has been “working in partnership with ADM(IM) to modernize how cases within in [*sic*] the military justice system are managed and related information is gathered and maintained.”²³⁰ The Justice Administration and Information Management Systems (JAIMS 2.0) is supposed to roll out in winter 2023. While already integrated with Guardian (the military HR system), the intent is that JAIMS 2.0 will also integrate with the DMP’s Case Management System. According to the OJAG, this integration is meant to reduce the number of times a victim will need to repeat their story.

In a January 2020 report, the SMRC pointed out that “the information contained within the [2019 Sexual Misconduct Incident Tracking Report] report demonstrates its potential as a critical tool for organizational awareness, program development, and centralized reporting.” However, it also noted that “its utility is limited by a number of factors, including compliance with and consistency in reporting.”²³¹ To exemplify this lack of consistency, we

reviewed the 13 Q2 2021 report cards that OPHTAS officials provide to L1s with a snapshot of the quality and completeness of data in the OPHTAS. On average, according to the report cards, 40% of all cases lacked critical information, with administrative and disciplinary actions representing the most incomplete data.

In addition, while the OPHTAS is intended to be a centralized database for all cases of sexual misconduct and includes comprehensive case-specific information, the system only records incidents reported by or to the chain of command.²³² As a result, “not all incidents of sexual misconduct are included, namely those that are reported to police or [the] ICCM, or disclosed to the... [SMRC] or [the CFHSG].”²³³

The 2020 *Sexual Misconduct Incident Tracking Report* was finalized but not released to the public. Typically, it would have been ready for publication in March 2021, but the impact of COVID-19 and an impending federal election delayed the preparation of the report.

Privacy concerns

I received data downloads from the OPHTAS system, but information was removed due to concerns about identifying individuals. Privacy proved to be a common concern and consequent deadlock during my Review. I appreciate the need to protect privacy; however, it is important to ease the tension between using data for analysis and decision-making, and privacy concerns.

In the same vein, in October 2021, the ADM(DIA) pointed out that the OPHTAS “clearly prohibits the use of its information ‘for any purpose other than sexual misconduct incident recording, tracking and updating.’”²³⁴ Such restricted use is unfortunate as the large amount of information captured in the system provides an opportunity to analyze trends and support evidence-based decision-making. This means that “it is possible for [the] OPHTAS to leverage other data sources but not for other systems to integrate OPHTAS data.”²³⁵ While the OPHTAS has “effectively connected to the Guardian military personnel administration system”²³⁶ to “automatically [populate] the service number when cases are built (...), it has not been possible for [the] SMRC to gain direct access to OPHTAS data for its own reporting for legal reasons, including the *Privacy Act*, the Privacy Impact Assessment for [the] OPHTAS, and need-to-know requirements for access.”²³⁷ The SMRC “has formally requested direct access to [the] OPHTAS on many occasions, without success.”²³⁸ As an alternative, the “SMRC is working with [the] CAF to receive reports to enable them to exercise their mandate to the extent possible, while continuing to pursue direct access.”²³⁹

The ADM(DIA) recognized the need to strike the right balance. It stated that “[i]mproving organizational situational awareness across the spectrum of conduct requires clearly defined roles and responsibilities that centre the sensitivity of the information but enable it to be harmonized effectively to support enterprise-level, strategic decision-making.” I encourage them to continue the exploration of how “making data related to professional conduct as open and accessible as possible, including to the Canadian public”²⁴⁰ and researchers.

We have heard that, in addition to entering data into the OPHTAS, at least one base tracks its own sexual misconduct cases, as they believe their system is more effective. We have also heard that much time is spent adding information into the OPHTAS because new fields are introduced and/or users need to change data that has already been inputted to reflect changes in the system. This has at least two impacts – the practical problem of double data entry, and the lack of trust in the system. It also begs the question of how many other secondary databases are being maintained.

Other weaknesses that I heard during my Review are worth mentioning. First, over 250 pieces of information per incident are potentially collected in the OPHTAS. Some of this information could be useful for data analysis; however, no effort on this front appears to have been made. One example brought to my attention of how this data could be useful is the field to input a member's obligatory service end date. This information could test the hypothesis that members are more likely to report an incident close to the time of their release.

Second, we were told that missing information in the database could be due to uncertainty/fear/resistance by members to provide the information.

Third, there is a risk that information in the database may not be reliable, as members may choose not share all information including, for example, the identity of some of the persons involved in the incident.

Fourth, it is not possible to include information about civilians, which means that repeat victims cannot be identified for risk mitigation. And offenders who leave the CAF, but enter DND employment as veterans, similarly cannot be tracked if they reoffend. The lack of a consolidated system for tracking incidents across the Defence Team is therefore problematic. In short, there are many shortcomings in the OPHTAS that must be addressed.

Overall, the work underway to collect sexual misconduct data is ambitious but by no means unachievable. There is a lot of information to be streamlined and integrated across organizations. The end reward for these efforts will be a data collection system that is invaluable to organizational knowledge and decision-making, and will represent ground-breaking change for understanding the issue of sexual misconduct in the CAF.

I can only repeat recommendations made in the past that data collection should aim at usefulness to support evidence-based decision-making and not simply as a ways of counting events or accounting for action.

Final Settlement Agreement – Heyder and Beattie class actions

The CAF and the DND have acknowledged “the harmful impact that sexual misconduct and discrimination has had on members of the Defence Team.”²⁴¹ In July 2019, the parties involved in the Heyder and Beattie class actions entered into a Final Settlement Agreement, approved by the Federal Court on 25 November 2019. As a result, the DND and the CAF will “compensate members of the Canadian military who experienced sexual misconduct.” In March 2020, class members began submitting claims to seek financial compensation.²⁴²

As the period for filing claims expired in November 2021, the class action administrator received 19,516 claims of sexual misconduct, according to data received from the DND/CF Legal Advisor. Class action claimants reported 4,709 incidents of sexual misconduct that occurred in the decade between 2000 and 2010.²⁴³ According to Canadian Military Prosecution Service data, 106 sexual misconduct cases were brought to court martial during that time.²⁴⁴ From 2010 to 2020, class action claimants reported 7,714 incidents of sexual misconduct²⁴⁵ and only 140 cases were brought to court martial.²⁴⁶

Breaking the total number of claims down by type, 14,123 claims were made by CAF members. While current or former DND employees and Staff of the Non-Public Funds were also eligible to make a claim and receive compensation, only 847 claims were made by DND employees, and only 142 claims were made by Staff of Non-Public Funds.²⁴⁷

Although several factors could explain this disparity, such as informal resolution or an incident not being severe enough to warrant a court martial, it is clear that the structure of the class action enabled victims of sexual misconduct to obtain a form of redress.²⁴⁸

As part of this process, a variety of information was collected. However, in structuring the Final Settlement Agreement, confidentiality concerns seem to have prevented any effort to ensure that information collected as part of the claims could be used for research purposes – without in any way compromising privacy and confidentiality imperatives. This is incredibly unfortunate.

Had this information been gleaned, we could have achieved deeper insight into the history of sexual misconduct in the CAF up to 2019. For instance, I requested data points such as ranks of claimants and alleged perpetrators, types of allegations, and whether incidents had been previously reported. Even though it is possible to present aggregated data without compromising the identity of individuals, I was unfortunately only provided with high-level claims statistics, and was told it would not be possible to go back into the claims database to extract anything else.

However, in structuring the Final Settlement Agreement, confidentiality concerns seem to have prevented any effort to ensure that information collected as part of the claims could be used for research purposes – without in any way compromising privacy and confidentiality imperatives. This is incredibly unfortunate.

Definitions of Sexual Misconduct and Sexual Harassment

Members of the CAF are subject to more rules and prohibitions regarding their sexual conduct than most Canadians. Sexual conduct (and misconduct) is currently regulated by the CAF in several different ways:

- Under the *National Defence Act* (NDA): All criminal sexual offences under the *Criminal Code* are incorporated by reference into the NDA²⁴⁹;
- Under the *Code of Service Discipline*: The *Code of Service Discipline* broadens the list of prohibited activities relating to sexual conduct for which CAF members may be sanctioned;
- Under the DAOD 9005-1, *Sexual Misconduct Response*: The DAOD 9005-1 defines and prohibits “sexual misconduct” in a broad way. The policy covers any sexual misconduct from *Criminal Code* offences to sexual harassment, viewing or displaying sexually explicit material in the workplace, jokes of a sexual nature, sexual remarks, advances of a sexual nature or verbal abuse of a sexual nature²⁵⁰;
- Under the DAOD 5012-0, *Harassment Prevention and Resolution*: Sexual harassment is also prohibited under the CAF’s general harassment policy²⁵¹; and
- Under the DAOD 5019-1, *Personal Relationships and Fraternization*: Fraternization (e.g., relationships with an enemy, or a civilian in some circumstances), and intra-CAF personal relationships are also regulated.²⁵²

Some of these documents define, while others prohibit. Some do both. They may be applied differently depending on the environment and circumstances, but with little question there is considerable overlap.

I believe there need to be corrective measures to bring coherence, clarity and accessibility, to the broad range of prohibited conduct in the CAF that currently fall under sexual misconduct. To achieve this, we must have a solid understanding of how the terminology is currently interpreted across the CAF.

***Criminal Code* sexual offences under the NDA**

All *Criminal Code* offences, including sexual offences, are incorporated into the military justice system through section 130 of the NDA, which provides:

130 (1) An act or omission

(a) that takes place in Canada and is punishable under [...] the *Criminal Code* or any other Act of Parliament, or

(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under [...] the *Criminal Code* or any other Act of Parliament,

is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).²⁵³

It is through this provision that *Criminal Code* offences committed by CAF members can be prosecuted under the NDA. They may, of course, continue to be charged in civilian criminal courts and a few offences can only be prosecuted there as they are excluded from the regime of military justice if committed in Canada. These include murder, manslaughter and various child abduction offences.²⁵⁴ Chief Justice Brian Dickson suggested that the rationale for this exclusion was “presumably because Parliament has determined that such offences have repercussions in society which transcend the interest of the CF in maintaining military discipline.”²⁵⁵

Historically, sexual assaults were also excluded from military jurisdiction if committed in Canada. As originally enacted, the NDA provided as follows:

	<i>Limitations with respect to Certain Offences</i>	<i>Restrictions relatives à certaines infractions</i>	
Offences not triable by service tribunal	<p>70. A service tribunal shall not try any person charged with any of the following offences committed in Canada:</p> <p>(a) murder;</p> <p>(b) manslaughter;</p> <p>(c) sexual assault;</p> <p>(d) sexual assault committed with a weapon or with threats to a third party or causing bodily harm;</p> <p>(e) aggravated sexual assault; or</p> <p>(f) an offence under sections 280 to 283 of the <i>Criminal Code</i>. R.S., c. N-4, s. 60; 1980-81-82-83, c. 125, s. 32.</p>	<p>70. Les tribunaux militaires n'ont pas compétence pour juger l'une des infractions suivantes commises au Canada :</p> <p>a) meurtre;</p> <p>b) homicide involontaire coupable;</p> <p>c) agression sexuelle;</p> <p>d) agression sexuelle à main armée ou assortie de menaces à tiers ou avec infraction de lésions corporelles;</p> <p>e) agression sexuelle grave;</p> <p>f) infractions visées aux articles 280 à 283 du <i>Code criminel</i>. S.R., ch. N-4, art. 60; 1980-81-82-83, ch. 125, art. 32; 1984, ch. 40, art. 79.</p>	Limitation de la compétence des tribunaux militaires

This changed in 1998, when the military was granted concurrent jurisdiction over sexual offences for the first time. In Bill C-25 *An Act to amend the National Defence Act and to make consequential amendments to other Acts* (Bill C-25),²⁵⁶ the new jurisdiction extended to both investigations and prosecutions. Before this, sexual offences were subject to the exclusive jurisdiction of the civilian criminal courts when the offence took place in Canada,²⁵⁷ as were murder, manslaughter, and various child abduction offences.²⁵⁸

The change happened in the wake of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Somalia Commission),²⁵⁹ the Dickson Report I,²⁶⁰ and contemporary media reporting in *Maclean's* about rape and sexual assault in the CAF.²⁶¹ Although none of the external reports conducted at the time specifically recommended granting the CAF jurisdiction over sexual offences, this step was thought necessary by the government.

According to the former Minister, Art Eggleton, the aim of the reforms was to improve morale, unit cohesion, and both the speed and toughness of response to sexual assaults, all in the name of improved military efficiency. As he told the Senate during the passage of the Bill:

We already deal with cases of sexual assault outside Canada, but we feel we should be dealing with them inside Canada as well. That kind of thing is very corrosive to the morale and cohesion of our military units. It can threaten the effectiveness of our operations, and that carries a great deal of risk. Our personnel risk life and limb, in many cases, in different theatres of operation. It is very important that we keep morale and cohesion high. We need to have a fair, but swift, military justice system.

When you have men and women working together, they need to trust each other. This is vital because, if their lives are on the line, one could be saving the other. We cannot afford to have sexual assault occur. In many respects, the penalties may well be tougher when we deal with it. It needs to be tougher for the cohesion of the unit.²⁶²

I was also provided with various discussion papers by the OJAG from this time period.²⁶³ These repeated the following concerns, although no factual basis was presented for these conclusions:

The inability to try sexual assaults represents a serious handicap to the CF's ability to do promptly justice and maintain discipline... This inability undermines the system's ability to ensure men and women are treated equally. Furthermore, sexual assault cases that the CF consider important are not always given the same priority in civil courts.²⁶⁴

It was also suggested that, since the CAF prosecuted sexual assault cases outside of Canada, that “jurisdictional symmetry requires concurrent jurisdiction both outside of Canada and inside Canada with no inflexible jurisdictional prohibition on *Criminal Code* offences.”²⁶⁵

This appears to be the entire rationale for granting the military justice system concurrent jurisdiction over *Criminal Code* sexual offences. As discussed below in the section dealing with military justice, I believe that concurrent jurisdiction has failed to bring about the desired objectives.

Service offences under the *Code of Service Discipline*

As mentioned above, sexual offences under the *Criminal Code* constitute both a crime in civilian Canadian law and a breach of the *Code of Service Discipline*. When handled by military justice, such conduct may be charged both under section 130 of the NDA, and as outlined below.

Forms of sexual misconduct described in the DAOD 9005-1 not amounting to a violation under the *Criminal Code*, such as viewing sexually-explicit materials in the workplace, may be prosecuted as a service offence under the *Code of Service Discipline*. However, the prohibited conduct must be characterized as a violation of one of several potential service offences contained in the NDA. According to the OJAG, depending on the specific nature of the alleged sexual misconduct, there are five principal service offences under the NDA that can apply, and are commonly used to base a charge. These are:

- section 92: Scandalous conduct by officers;
- section 93: Cruel or disgraceful conduct;
- section 95: Abuse of subordinates;
- section 97: Drunkenness; and
- section 129: Conduct to the prejudice of good order and discipline.²⁶⁶

For a charge to be brought under section 129, the underlying conduct must be prohibited, for example by regulation, directive or order. This is where the CAF's internal definitions around sexual conduct inform the laying of charges under the above provisions. Conduct amounting to a *Criminal Code* violation may also be prosecuted under one of these sections. Indeed, it is not uncommon to charge both under one of the sections listed above, and under section 130 of the NDA.

The military justice system is currently in flux, pending the full implementation of Bill C-77. I revisit this in the section dealing with the military justice system.

Sexual misconduct

The CAF's definition of sexual misconduct has evolved over time, most notably in the wake of the Deschamps Report. Before this, sexual misconduct was defined in the DAOD 5019-5, Sexual Misconduct and Sexual Disorders. The 2008 version of this policy provided the following definitions:

Sexual Disorder (trouble sexuel)

Sexual disorder means any mental disorder of a sexual nature described in the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

Sexual Misconduct (inconduite sexuelle)

Sexual misconduct consists of one or more acts that: are either sexual in nature or committed with the intent to commit an act or acts that are sexual in nature; and constitutes an offence under the Criminal Code or Code of Service Discipline (CSD).

Note – Sexual misconduct includes offences such as sexual assault, indecent exposure, voyeurism and acts involving child pornography.

This definition was then cross-referenced in other Defence Administrative Orders and Directives (DAOD) and CAF policies, such as the DAOD 5019-2, *Administrative Review*.²⁶⁷

Harassment, including sexual harassment, was defined at the time in a separate policy, the DAOD 5012-0, *Harassment Prevention and Resolution* as:

[A]ny improper conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm.²⁶⁸

Workplace was also defined at the time in the DAOD 5012-0 as:

Workplace means the physical work location or the greater work environment such as work-related functions and other activities where work relationships exist.²⁶⁹

Justice Deschamps' recommendations regarding definitions

Justice Deschamps was highly critical of these definitions of sexual misconduct and harassment:

...the definitions of both *sexual harassment* and of *sexual misconduct* in the DAOD policies are ineffective at clearly articulating a standard of behaviour that best protects the dignity and security of members. For example, participants commented that while extreme cases of sexual harassment or sexual misconduct are easy to recognize, it is often difficult to discern whether conduct that is less overt or egregious – but nevertheless offensive – would be covered by the relevant definitions. Interviewees also commented that the line between sexual harassment and misconduct is sometimes difficult to draw. [...] Members also reported that they found the policies complex and ineffective at addressing the systemic nature of sexual harassment.²⁷⁰

As a result, Justice Deschamps recommended that the CAF:

- Develop a simple, broad definition of sexual harassment that effectively captures all dimensions of the member's relationship with the CAF;
- Develop a definition of adverse personal relationship that specifically addresses relationships between members of different rank, and creates a presumption of an adverse personal relationship where the individuals involved are of different rank, unless the relationship is properly disclosed;
- Define sexual assault in the policy as intentional, non-consensual touching of a sexual nature; and
- Give guidance on the requirement for consent, including by addressing the impact on genuine consent of a number of factors, including intoxication, differences in rank, and the chain of command.²⁷¹

This was a relatively straightforward recommendation. Yet, despite a delay of more than five years between the Deschamps Report and the issuance of the DAOD 9005-1, key parts of that recommendation have not been sufficiently addressed, and some not addressed at all.

From Deschamps to the DAOD 9005-1

On 30 April 2015, shortly following the release of the Deschamps Report, the CSRT-SM released an action plan to address inappropriate sexual behaviour.²⁷² In this plan, the CSRT-SM accepted Justice Deschamps' recommendation in principle and stated that the CSRT-SM would "coordinate an in-depth review of definitions to simplify the associated language where possible and w[ould] seek clarity with respect to the complex issue of consent."

On 14 August 2015, then CDS Vance, provided a definition of HISB in the Order initiating Operation HONOUR:

... actions that perpetuate stereotypes and modes of thinking that devalue members on the basis of their sex, sexuality, or sexual orientation; unacceptable language or jokes; accessing, distributing or publishing in the workplace material of a sexual nature; offensive sexual remarks; exploitation of power relationships for the purposes of sexual activity; unwelcome requests of a sexual nature, or verbal abuse of a sexual nature; publication of an intimate image of a person without their consent, voyeurism, indecent acts, sexual interference, sexual exploitation, and sexual assault.²⁷³

Following the issue of this Order, the CAF released three successive progress reports on addressing inappropriate sexual behaviour, each addressing the issue of definitions:

- 1 February 2016, *First Progress Report on Addressing Inappropriate Sexual Behaviour*: This report highlighted that the lack of progress in developing a definition for sexual misconduct was a serious concern, given its foundational nature. Consequently, the CAF undertook to "complete a more fulsome review of definitions and terminology associated with harmful and inappropriate sexual behaviour" over the next quarter;²⁷⁴
- 30 August 2016, *Second Progress Report on Addressing Inappropriate Sexual Behaviour*: This report stated that the CAF had completed the development of a common terminology related to HISB, and that a CDS directive with common terminology, definitions and lexicon related to HISB would be disseminated in the following weeks;²⁷⁵
- 28 April 2017, *Third Progress Report on Addressing Inappropriate Sexual Behaviour*: This Report stated that Justice Deschamps' recommendation with respect to definitions was "being implemented."²⁷⁶

On 27 July 2018, the DAOD 5019-5, Sexual Misconduct and Sexual Disorders was modified.²⁷⁷ However, the definitions of sexual disorder and sexual misconduct remained the same as in the previous versions.

In the 2018 OAG Report, the AG found that little progress had been made in addressing the concerns raised by Justice Deschamps:

Operation HONOUR's definition of inappropriate sexual behaviour was very broad; it included everything from jokes to sexual assault. This meant that members felt responsible for reporting all types of incidents, which placed a heavy administrative burden on the chain of command to manage the complaints.

[...]

The Forces also failed to develop a single, unified policy to communicate clearly the definitions and rules for inappropriate sexual behaviour to members and what behaviours are expected of them.²⁷⁸

In March 2019, the CAF presented a draft Canadian Forces General Message (CANFORGEN) containing a definition of sexual misconduct to the EAC of the SMRC. Like the AG, however, the EAC had concerns about the clarity and consistency of the definition proposed that echoed the original problems identified in the Deschamps Report, and conveyed its reservations in detail.²⁷⁹

In April 2019, the CAF issued a CANFORGEN updating the definition of sexual misconduct.²⁸⁰ This was also codified in an update to the DAOD 5019-5 released a day earlier.²⁸¹ This definition was substantially the same as that eventually adopted in the DAOD 9005-1, as set out below.

In May 2019, the Senate Standing Committee on National Security and Defence recommended that the CAF review and amend the applicable DAOD “to clarify the definitions of certain terms, such as harassment, sexual misconduct and adverse personal relationships, as well as to address the concepts of consent, hostile work environment, military sexual trauma, and duty to report.”²⁸²

In July 2019, the CDS released an interim edition of the *Operation HONOUR Manual*. The manual was a guidance document, which does not carry the same force as a DAOD,

In general, it is counterproductive to have non-binding secondary documents that introduce new or different elements to the definition.

CANFORGEN, or other order or regulation. The manual repeated the definition of sexual misconduct from the updated DAOD 5019-5, but also added definitions of sexual harassment and sexual assault.²⁸³

In general, it is counterproductive to have non-binding secondary documents that introduce new or different elements to the definition. This only increases the confusion around sexual misconduct, with no certainty as to which document contains the binding or authoritative definition.

In October 2020, the CAF released the *Path to Dignity*.²⁸⁴ Without providing a specific definition, the *Path to Dignity* emphasized the CAF’s zero-tolerance approach to sexual misconduct, and repeated the need for clear definitions and a unified policy approach, as set out in the Deschamps Report.

On 18 November 2020, following consultations throughout 2019 and 2020, but without cancelling the *Operation HONOUR Manual* or its repetition of earlier definitions, the CAF replaced the DAOD 5019-5 with what is the current policy, the DAOD 9005-1, *Sexual Misconduct Response*.

DAOD 9005-1, Sexual Misconduct Response

The DAOD 9005-1, *Sexual Misconduct Response*, issued on 18 November 2020, is the CAF's response to Justice Deschamps' recommendation regarding definitions, which I address below. It broadly defines sexual misconduct as:

sexual misconduct (inconduite sexuelle)

Conduct of a sexual nature that causes or could cause harm to others, and that the person knew or ought reasonably to have known could cause harm, including:

- actions or words that devalue others on the basis of their sex, sexuality, sexual orientation, gender identity or expression;
- jokes of a sexual nature, sexual remarks, advances of a sexual nature or verbal abuse of a sexual nature in the workplace;
- harassment of a sexual nature, including initiation rites of a sexual nature;
- viewing, accessing, distributing or displaying sexually explicit material in the workplace; and
- any Criminal Code offence of a sexual nature, including:
 - section 162 (voyeurism, i.e. surreptitiously observing or recording a person in a place where the person exposes or could expose his or her genital organs or anal region or her breasts or could be engaged in explicit sexual activity, or distributing such a recording);
 - section 162.1 (publication, etc., of an intimate image without consent, i.e. publishing, distributing, transmitting, selling or making available an intimate image of another person without their consent, such as a visual recording in which the person depicted is nude, exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity); and
 - section 271 (sexual assault, i.e. engaging in any kind of sexual activity with another person without their consent) [...]

Note – Brief summaries of sections 162, 162.1 and 271 of the Criminal Code are provided above strictly for the convenience of readers. The actual sections in the Criminal Code should be consulted for all elements and other provisions of these offences.²⁸⁵

The DAOD 9005-1 also provides the following definition of “workplace”:

workplace (milieu de travail)

Any location where work-related functions and other activities take place and work relationships exist, such as:

- on travel status;
- at a conference where the attendance is sanctioned by the DND or the CAF;
- at DND or CAF sanctioned instruction or training activities, or information sessions; or
- at DND or CAF sanctioned events, including social events. (Defence Terminology Bank record number 43176)

Note – The workplace for CAF members can include ships, aircraft, vehicles, office spaces, classrooms, garrisons, hangars, messes, dining halls, quarters, gyms, on-base clubs, online forums and locations for sanctioned events such as holiday gatherings and course parties. CAF members do not simply serve in the CAF, but work, socialize and often live within institutional and social structures established by the CAF.²⁸⁶

These broad definitions capture what the CAF refers to as “the spectrum of sexual misconduct,” without distinguishing between what is a crime, a form of harassment, and other prohibited activities.

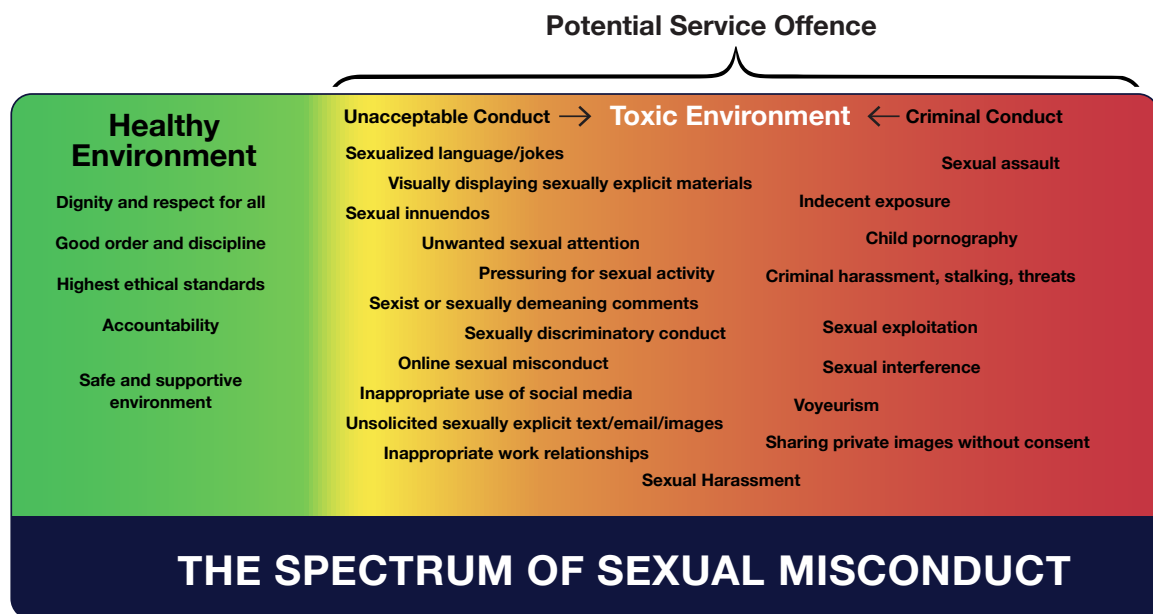


Figure 2. The Spectrum of Sexual Misconduct

Source: <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/sexual-misconduct/training-educational-materials/spectrum-sexual-misconduct.html>

Finally, the DAOD 9005-1 addresses in part “adverse personal relationships,” a related issue that falls more appropriately under DAOD 5019-1, and is discussed more fully below.

This brief history of the current DAOD 9005-1 shows a combination of long periods of inertia followed by initiatives that largely overlooked the near unanimous external guidance provided to the CAF in support of Justice Deschamps’ recommendation.

This brief history of the current DAOD 9005-1 shows a combination of long periods of inertia followed by initiatives that largely overlooked the near unanimous external guidance provided to the CAF in support of Justice Deschamps’ recommendation. Part of this guidance called for proper, distinct definitions and processes for dealing with sexual harassment, as well as fraternization and adverse personal relationships.

I agree with Justice Deschamps’ approach, as well as more recent criticisms of the definition of “sexual misconduct” as an umbrella term.²⁸⁷ The broad definition in the DAOD 9005-1 is unhelpful. While there is nothing inherently wrong with referring to sexual misconduct in conversation, as a defined term creating a discipline

offence and a basis for policy it lacks coherence and clarity. I propose that the CAF abolish the definition of “Sexual Misconduct” and instead focus on sexual assault, sexual harassment, and personal relationships and fraternization. This is what Justice Deschamps recommended, and for the reasons explored above and below, there is no reason to depart from it.

RECOMMENDATION #1

The formal definition of “sexual misconduct” in the DAOD 9005-1 and other policies should be abolished.

Sexual assault

In respect of sexual offences, the CAF should first bring its definitions in line with the wording of the *Criminal Code*, as interpreted by the Supreme Court of Canada.²⁸⁸ There is no value to including sexual assault as one part of “sexual misconduct,” an umbrella term that has only caused enduring confusion.

RECOMMENDATION #2

Sexual assault should be included as a standalone item in the definitions section of the relevant CAF policies, with the following definition:

sexual assault (agression sexuelle): Intentional, non-consensual touching of a sexual nature.

The policies should then refer to the *Criminal Code* as the applicable law regarding sexual assaults.

Sexual harassment

The current state of the law regarding sexual harassment in the CAF has a history similar to the one on sexual misconduct and suffers from similar deficiencies. It fails to reflect adequately the repeated external recommendations given over the years and should be brought in line with current federal law.

In addition to being referred to in the DAOD 9005-1, sexual harassment is also covered under the CAF’s policy on harassment. The process for harassment complaints is provided in the DAOD 5012-0, *Harassment Prevention and Resolution and the Harassment Prevention and Resolution Instructions*. The DAOD 5012-0 defines harassment as:

Improper conduct by an individual, that offends another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (i.e., based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered). Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual. Harassment that is not related to grounds set out in the *Canadian Human Rights Act* must be directed at an individual or at a group of which the individual is known by the harassing individual to be a member.²⁸⁹

Justice Deschamps dealt extensively with the issue of sexual harassment and gave clear directions as to the way forward. She noted that the six elements necessary for a finding of harassment “narrow the scope of prohibited conduct significantly, making the definition much less inclusive than the definitions of several provincial human rights and labour law statutes.”²⁹⁰ I heard similar complaints from stakeholders.

She added: “the CAF definition of sexual harassment is narrower and more complex than the definition articulated by the Supreme Court of Canada.”²⁹¹

In her view:

[It] fails to capture a range of inappropriate conduct, and has been ineffective at driving necessary organizational reform.... Likewise, the requirement that the conduct take place in the workplace is unduly restrictive. [...] The limitation of sexual harassment to incidents that occur in the workplace is artificial, given the unique nature of the CAF as a “total institution”. Unlike in the case of a civilian employer, members of the military do not simply work for the CAF, but work, socialize and often live within institutional and social structures established by the military.²⁹²

As such, she recommended:

[...] the ERA finds that the term sexual harassment should be clearly defined in the relevant policy, recognizing that it is separate and distinct from other forms of workplace harassment. [...] The CAF should remove from the definition the reference to *directed at* and *in the workplace*. The policy should define sexual conduct that is “unwelcome” as harassment, rather than sexual conduct that is improper or offensive. The focus of the definition should be on protecting individuals from negative work consequences and a hostile environment. The policy should further clarify that all means of communication, including on-line and via social media, are covered by the policy.²⁹³

In its May 2019 report, the Senate Standing Committee on National Security and Defence stated the following:

In addition, the suite of relevant DAODs (5012-0, 5019-1, 5019-5 and 9005-1) should be made consistent with the most recent federal legislation addressing harassment and violence that occurs in the course of employment [...] Policy documents and directives should also clearly state that complainants of harassment have the option to pursue their complaint outside of the military system should they so choose.

Specifically, DAOD 5012-0 should be redefined to cover the harassment that potentially could occur outside the workplace for CAF members, given the nature of military organizations as “total institutions” where members of the military live, work, train and socialize together. DAOD 5012-0 should also cover:

- sexual harassment through the use of various forms of social media; and
- examples of conduct that, while not exhaustive, will assist in understanding what constitutes prohibited sexual harassment, such as:
 - use of belittling language referring to body parts;
 - unwelcome sexual invitations or requests;
 - unnecessary touching or patting;
 - leering at a person’s body;

- unwelcome and repeated innuendo or taunting about a person's body, appearance or sexual orientation;
- suggestive remarks or other verbal abuse of a sexual nature; or
- visual displays of degrading or offensive sexual statements or images.²⁹⁴

Since the Deschamps Report, the DAOD 5012-0 has been amended twice, in 2017 and in 2020. It is important to note that prior to 1 January 2021, the DAOD 5012-0 applied to both CAF members and DND employees. As such, the definition of harassment needed to comply with the Treasury Board of Canada Secretariat Policy on the Prevention and Resolution of Harassment in the Workplace. Since 1 January 2021, however, the DND is subject to *Workplace Harassment and Violence Prevention Regulations*²⁹⁵ under Part II of the *Canada Labour Code*²⁹⁶ and has therefore adopted its definition of harassment and violence:

any action, conduct or comment, including of a sexual nature that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.²⁹⁷

Harassment may also be the subject of a human rights complaint to the CHRT, in which case an objective three-part test is applied to determine if the conduct complained of amounts to harassment:

(...) for a sexual harassment allegation to be substantiated, the following must be established:

- (1) The acts that form the basis of the complaint must be unwelcome, or ought to have been known by a reasonable person to be unwelcome;
- (2) The conduct must be sexual in nature;
- (3) Ordinarily, sexual harassment requires a degree of persistence or repetition, but in certain circumstances even a single incident may be severe enough to be detrimental to the work environment (...).²⁹⁸

As of today, CAF members remain subject to the definition of sexual harassment under the DAOD 5012-0 and the DAOD 9005-1. Read in their totality, both of the definitions stated in these policies fall short of Justice Deschamps' recommendation, which was echoed by the the Senate Standing Committee in its 2019 report. And neither is in line with the definitions of the *Canada Labour Code* or the CHRT case law.

Rather than repeat in detail the calls made by others, I recommend the CAF simply adopt the *Canada Labour Code*'s definition of harassment, which includes sexual harassment, in line with the DND and the rest of the federal public service.

I further elaborate on the interpretation of this definition in my section on Complaints.

RECOMMENDATION #3

The relevant CAF policies should adopt the *Canada Labour Code* definition of harassment.

Personal relationships and fraternization

This is the last area in which the CAF regulates conduct of a sexual nature. This is where there is a departure from what most non-military Canadians are subjected to, even at work. Additionally, there is considerable confusion both in the exact nature of the prohibitions, and in the application of what many in the CAF simply refer to as “frat”.

The DAOD 5019-1, *Personal Relationships and Fraternization*, originally issued in December 2004, and last modified in July 2014, provides the following definitions:

Fraternization: Any relationship between a CAF member and a person from an enemy or belligerent force, or a CAF member and a local inhabitant within a theatre of operations where CAF members are deployed.

Personal Relationship: An emotional, romantic, sexual or family relationship, including marriage or a common-law partnership or civil union, between two CAF members, or a CAF member and a DND employee or contractor, or member of an allied force.

Adverse Personal Relationship: If a personal relationship has a negative effect on the security, cohesion, discipline or morale of a unit, the personal relationship is considered adverse.²⁹⁹

Adverse personal relationships are also summarized in the DAOD 9005-1:

An “adverse personal relationship” refers to a personal relationship that has a negative effect on the security, cohesion, discipline or morale of a unit. In accordance with DAOD 5019-1, *Personal Relationships and Fraternization*, administrative action must be taken to separate CAF members who are involved in an adverse personal relationship. Restrictions may also be imposed on the duty or posting of CAF members involved in a personal relationship if the circumstances could result in an instructor/student relationship that would have an effect on the security, morale, cohesion and discipline of a unit, or a senior/subordinate or inter-rank personal relationship in the same direct chain of command if there is a difference in rank or authority.³⁰⁰

Unit or operational commanders have considerable discretion in applying these provisions.

In the case of fraternization (relations with a non-ally), this is not prohibited as such but may be restricted or prohibited by in-theatre provisions. The DAOD 5019-1 provides:

Fraternization can have detrimental effects on unit operation effectiveness due to potential threats to the security, morale, cohesion and discipline of a unit. Task force commanders must issue orders and guidance on fraternization appropriate to the situation in their area of operations.³⁰¹

No guidance is provided for situations in which the task force commander is the individual involved in the fraternization.

Similarly, personal relationships are not prohibited as such. In fact, many CAF members over the years have married or formed long-term relationships. Several have children or siblings serving concurrently with them in the CAF. CAF members in a personal relationship must, however, refrain from conduct that may be considered unprofessional in a military context. For example, a CAF member while wearing uniform in public with another person must not:

- hold hands;
- kiss, except in greeting and farewell; or
- caress or embrace in a romantic manner.³⁰²

Unfortunately, the guidance on what constitutes an “adverse” personal relationship is less clear. With respect to power imbalances, the DAOD 5019-1 states that in order to protect CAF members in vulnerable situations and to ensure fair treatment, restrictions may be imposed on the duty or posting of CAF members involved in a personal relationship if the circumstances could result in an instructor/student relationship or a relationship in the same direct chain of command involving a difference in rank or authority.³⁰³ But, again, it does not prohibit these types of relationships as such.

Nor does the DAOD 5019-1 provide an exhaustive list of what type of restrictions may be imposed. However, it provides that a CAF member in a personal relationship must not be involved, regardless of rank or authority, in the other person’s:

- performance appraisal or reporting, including training evaluations and audits;
- posting, transfer or attached posting;
- individual training or education;
- duties or scheduling for duties;
- documents or records;
- grievance process; or
- release proceedings.³⁰⁴

CAF members must notify their chain of command of any personal relationship that “could compromise the objectives of” the DAOD 5019-1, which are:

- The prevention of erosion of lawful authority;
- Maintenance of operational effectiveness;
- Protection of vulnerable CAF members and others;
- Maintenance of general standards of professional and ethical conduct; and
- Avoidance of detrimental effects on unit operational effectiveness.³⁰⁵

I find this problematic. Members engaged in a personal relationship may not be in any position to determine whether their relationship may have “a negative effect on the security, cohesion, discipline or morale of a unit,” or could otherwise “compromise” any or all of the objectives stated above. And although signaling that instructor/student and direct or indirect supervisory relationships may require particular attention is valuable, it still confronts the basic problem that the individuals involved in the relationship may not be in the best position to assess whether the relationship is adverse and warrants disclosure.

This problem is not only theoretical. CAF members have been prosecuted at both summary trials and courts martial for failing to disclose a relationship determined to be “adverse”. Perhaps the most high-profile example is the court martial of Commander Nord Mensah.³⁰⁶ Commander Mensah pleaded guilty to a charge under section 129 of the NDA (conduct to the prejudice of good order and discipline) for failing to report a relationship with a subordinate officer. At the time, Commander Mensah was the officer’s commanding officer (CO), was perceived by her as a mentor, and was responsible for writing her personal evaluation reports.

At the summary trial level, 35 such trials have taken place since 2015 that related to fraternization or adverse personal relationships, according to OJAG data. A range of penalties, including cautions, reprimands and fines were applied to those persons found guilty of failing to report an adverse personal relationship.³⁰⁷

In addition to prosecution for failing to report a relationship, when a CO considers a personal relationship “adverse”, the CAF members involved may face additional consequences. The DAOD 5019-1 states that “administrative action must be taken to separate CAF members who are involved in an adverse personal relationship.”³⁰⁸ It goes on to provide that “[i]f an adverse personal relationship cannot be changed within the applicable unit/sub-unit for the CAF members in a supervisor/subordinate relationship, the CAF members must be separated by attached posting, posting, change in work assignments or other action.”³⁰⁹ While this is not intended to punish or stigmatize,³¹⁰ there is obviously a risk that such measures may disproportionately impact the lower-ranked member, including affecting their career progression.

Despite Justice Deschamps’ clear recommendation to “[d]evelop a definition of adverse personal relationship that specifically addresses relationships between members of different rank, and creates a presumption of an adverse personal relationship where the individuals involved are of different rank, unless the relationship is properly disclosed,” no changes have been made to the DAOD 5019-1.

In her appearance before the Standing Committee on the Status of Women (FEWO) on 25 March 2021, Justice Deschamps addressed the enduring confusion around intimate relationships in the CAF:

My second point concerns the lack of clarity of the policies and procedures on intimate relationships. That, I understand, was mentioned by the current acting chief of the defence staff. On that issue, I refer to section 6.2 of my report, where I expressed the view that the policies needed to be clarified to address more explicitly the power imbalance, including by creating an administrative presumption that where the relationship is not properly disclosed, the relationship should be considered to be an adverse personal relationship.

To my knowledge, the policy on personal relationships – that’s DAOD 5019-1 – has not been changed.

The text of that policy is a source of confusion. The organizational structure of the Canadian Armed Forces is the reason behind an inherent risk of abuse of power. That is what my recommendation on the presumption of harmful relationships was intended to remedy. I can only note that there appeared to be a lack of will to change in 2015. I hope the message is now clear.³¹¹

In the SMRC's 2016-17 Annual Report, adverse personal relationships were included in the definition of inappropriate sexual behaviour. It was also clear from my discussions with stakeholders that the concepts of fraternization or "frat" and adverse personal relationships are still poorly understood. The current definitions of fraternization and adverse personal relationships therefore contribute to the confusion surrounding the concept of "sexual misconduct." Fraternization and adverse personal relationships are treated separately from sexual misconduct in CAF policy, but are included in the same spectrum elsewhere.³¹²

The inaction following the clear and cogent directives given by Justice Deschamps with respect to personal relationships between CAF members is appalling. The existing regulatory framework fails to capture the most problematic aspect of this area, which is the potential abuse of power that may arise when relationships in such a controlling hierarchy are not properly disclosed.

The inaction following the clear and cogent directives given by Justice Deschamps with respect to personal relationships between CAF members is appalling.

The current state of affairs also infringes the principle of legality which requires clarity and certainty in the articulation of prohibited conduct. The circumstances under which members of the CAF should notify their chain of command that they are in a personal relationship are often not within their grasp. Under the current definition, the "adverse" aspect of a relationship can only be determined after the fact, by a third party (a commander) deciding that it has "a negative effect on the security, cohesion, discipline or morale of a unit".³¹³

The inertia in bringing clarity to this relatively straightforward matter coincides with the interest of senior CAF members who have the most to lose by regulating this appropriately, and enforcing it accordingly.

Fraternization and adverse personal relationships in the CAF require a unique set of regulations. There are clearly good reasons to regulate intimate relations in a theatre of operations. And there are equally good reasons to regulate with clarity what is inevitable: CAF members will have romantic and sexual relationships with each other, and with DND civilians. This is unavoidable and not itself problematic. It needs to be properly managed, not only in the best interest of the CAF, but, most importantly, in the name of protecting its most vulnerable members.

Given the nature of the CAF as a highly hierarchical institution, the risk of fallout from personal relationships within the same unit or workplace is exacerbated compared to many other working environments. And given the power associated with differences in ranks, the proportionately smaller number of women, their concentration in more junior ranks, and the long history of discrimination and sexual misconduct in the CAF, further protection is clearly needed. A rebuttable presumption should be clearly articulated that, unless properly disclosed, a personal relationship involving members of different rank is not consensual, and any negative consequences from the non-disclosure should be primarily applied to the senior-ranked member.

This is what Justice Deschamps recommended. I cannot see that anything has been done to address it. If the CAF leadership disagrees, it should say so.

RECOMMENDATION #4

The current definition of personal relationship should remain:

A personal relationship is: An emotional, romantic, sexual or family relationship, including marriage or a common-law partnership or civil union, between two CAF members, or a CAF member and a DND employee or contractor, or member of an allied force.

The concept of “adverse personal relationship” should be abolished. All CAF members involved in a personal relationship with one another should inform their chain of command.

Commanders should be given appropriate guidance as to how to handle the situation presented to them. It could range from doing nothing, to accommodating the relationship through available measures, or, if need be, ensuring that the members have little professional interaction with each other. There are, of course, a whole range of intermediate measures that may be appropriate to address the best interests of the organization, the parties, and other stakeholders.

Should an undisclosed personal relationship come to light between members of different rank, or otherwise in a situation of power imbalance, there should be a rebuttable presumption that the relationship was not consensual. Any negative consequences should be primarily visited on the member senior in rank or otherwise in a position of power.

Consent

This brings me to the issue of consent.

Justice Deschamps recommended that the CAF provide “guidance on the requirement for consent, including by addressing the impact on genuine consent of a number of factors, including intoxication, differences in rank, and the chain of command.”³¹⁴

This part of her recommendation was addressed in the DAOD 9005-1, which provides the following interpretation of consent:

“[C]onsent” refers to the voluntary, ongoing and affirmative agreement to engage in the sexual activity in question. Submission or passivity does not constitute consent as a matter of law. For the purposes of the Criminal Code, no consent is obtained if:

- the accused induces the victim to engage in the activity by abusing a position of trust, power or authority;
- the victim is unconscious;
- the victim is incapable of consenting to the activity for any reason other than being unconscious, including due to intoxication;

- the victim submits or does not resist by reason of the application of force or threat of the application of force, or by reason of fraud;
- the victim expresses, by words or conduct, a lack of agreement to engage in the activity;
- the victim, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity; or
- the agreement is expressed by the words or conduct of a person other than the victim.

Note – The above summary of “consent” is provided strictly for the convenience of readers. The actual sections in the Criminal Code and applicable common law should be consulted if required.³¹⁵

I believe that this definition adequately addresses Deschamps’ recommendation, as well as the recommendations made by the EAC. I simply add that in the context of a personal relationship, this definition must be adapted, as in that case it must cover the whole relationship, more than just sexual activity.

Conclusion

It is not difficult to understand why there is still confusion with respect to CAF policies on sexual misconduct. The multiplicity of “new” definitions, scattered across numerous policy documents, has no doubt contributed to current muddled interpretations. Moreover, the CAF’s insistence on having an umbrella concept of “sexual misconduct,” rather than clear separate definitions as recommended by Justice Deschamps, only serves to further confuse matters (in addition to conflating all sexual misconduct, thereby placing conduct as serious as sexual assault on a level playing field with issues less severe such as sexualized jokes).

I heard from numerous stakeholders – including victims and those involved in administering investigations, complaints and grievances – that this leads to problems. It creates confusion as to how to navigate the system, particularly where conduct may fall into several categories, and prevents clear and predictable routes for redress. I discuss these issues further below, in the sections on Military Justice, Complaints, and Victim Support and the SMRC.

Military Justice

My terms of reference require that I review “the military justice system’s policies, procedures and practice to respond to harassment and sexual misconduct,” and that I make recommendations about “any barriers within the military justice system to reporting harassment or sexual misconduct or to dealing with such behaviour.”³¹⁶

On 18 March 2022, two days before my draft Report was due to the Minister, I was provided for the first time a copy of the results from the Declaration of Victims Rights Consultation, which surveyed CAF members’ recent experiences with the military justice system.³¹⁷ The findings of the report, dated January 2022, largely echo what I heard from numerous stakeholders over the course of my Review, which I set out below.

Criminal jurisdiction over sexual offences

As discussed above, the CAF was granted jurisdiction over sexual offences for the first time in 1998. Before that, sexual assaults, including aggravated sexual assault and sexual assault with a weapon, as well as certain child abduction offences, were subject to the exclusive jurisdiction of the civilian criminal courts when the offence took place in Canada. After Bill C-25, the military system obtained concurrent – not exclusive – jurisdiction over these offences. As mentioned before, this was driven by a desire to improve efficiency, discipline and morale in the CAF.³¹⁸

As we stand today, not only has this objective not been met, but if anything, the handling of sexual misconduct by military justice has eroded trust and morale among the organization. This systemic failure is the combination of many factors at play over time, and in different parts of the organization.

The changes to jurisdiction happened along with incremental reforms to improve the independence of the military justice system.³¹⁹ As Justice Fish noted in his recent review of the military justice system:

The military justice system began as “a command-centric disciplinary model that provided weak procedural safeguards”. Historically, the chain of command maintained an important role in the military justice system. But over time, the actors involved in the investigation and adjudication of serious service offences were afforded an increased measure of independence from the chain of command.³²⁰

Progress has not always been swift. In many cases, recommendations took many years to implement or were not implemented at all. For example, Justice Fish noted that Chief Justice Antonio Lamer had recommended the creation of a permanent military court in 2003. Although certain amendments were made, the core suggestion was still unaddressed by the time of the Fish Report, in 2021. In this respect, according to Justice Fish, “the words of Chief Justice Lamer are as true today as they were in 2003.” Similarly, Chief Justices Lamer and Patrick J. LeSage both recommended that section 129 of the NDA be amended to clarify the elements of the offences of “conduct to the prejudice of good order and discipline.”³²¹ Again, however, no attempt to implement these recommendations had been made. Other examples abound.³²²

Perhaps unsurprisingly, the Fish Report found that significant concerns with the independence of military justice actors remain. This includes the MP, the DMP, the Director of Defence Counsel Services (DDCS), and military judges.³²³

In the course of my Review, I have heard similar concerns. These address both the independence and competence of the military justice system when it comes to sexual offences. In October 2021, I submitted an interim recommendation to the Minister. I recommended that Justice Fish’s recommendation No. 68 be implemented immediately and that all sexual assaults and other criminal offences of a sexual nature under the *Criminal Code*, including historical sexual offences, alleged to have been perpetrated by a CAF member, past or present, be referred to civilian authorities.

For the reasons explored in detail below, I now expand upon my interim recommendation. I recommend that going forward, all *Criminal Code* sexual offences be exclusively investigated and prosecuted by civilian authorities, and that all charges be laid in civilian courts.

The investigations process

Unit disciplinary investigations

This first stage in investigating conduct is often an investigation by the unit. When a unit is made aware of allegations against one of its members, an investigation must be conducted to determine the appropriate action. COs are directed to consult with their unit legal advisor to determine the appropriate type of investigation.³²⁴ This may consist of a unit disciplinary investigation, an administrative investigation, or a harassment investigation. In theory, unit-based investigations generally wait until any ongoing police investigation is complete. However, circumstances may arise where a unit-level investigation begins and reveals conduct that requires police investigation.

According to the Charge Laying Aide Memoire:

A disciplinary investigation is an investigation conducted pursuant to ref A to determine whether or not a service offence was committed. A disciplinary investigation shall, as a minimum, collect all reasonably available evidence bearing on the guilt or innocence of the person who is the subject of the investigation, identify those responsible and identify the required elements of the specific offence in order to support a charge.³²⁵

The *Charge Laying Aide Memoire* sets out in general terms the approach for a CO or unit disciplinary investigator, from complaint up to laying of charges. It makes clear that there will be circumstances in which a disciplinary investigation by the unit will be the first step in determining whether a service offence has been committed and may not involve the MP at this stage.³²⁶

The *Charge Laying Aide Memoire* states, “If there is any question about whether an investigation should be referred to the military police, the unit legal adviser or the military police should be contacted for advice.”³²⁷ I was told that, generally, if there is any indication of sexual misconduct, the MP get involved. If the matter is serious, it is immediately referred to the CFNIS. Still, initiation at the unit level creates risks of contamination of evidence, failure to maintain clear chains of custody of evidence, and improper questioning of witnesses, serious concerns in any criminal investigation.

The Canadian Forces Provost Marshal

The CFPM is appointed by the CDS. In addition to his overall responsibilities, the CFPM is also the commander of the CFMPG and oversees all the MP in the CAF. This includes general MP units attached to the environmental and special operations forces commands, the CFNIS, and other specialized MP units, such as the Military Police Academy.

The CFPM candidate must be an officer and must have been a member of the MP for at least 10 years. The CFPM holds a rank not less than colonel, and the current CFPM is a brigadier-general, in line with the recommendation by Justice Fish that the CFPM should hold a General and Flag Officer (GOFO) rank.³²⁸ The CFPM’s responsibilities include:

- a. investigations conducted by any unit under his or her command (including CFNIS);
- b. the establishment of selection and training standards applicable to candidates for the MP and ensuring compliance with those standards;
- c. the establishment of training and professional standards applicable to the MP and compliance with those standards; and
- d. investigations in respect of conduct that is inconsistent with the professional standards applicable to the MP or the *Military Police Professional Code of Conduct*.³²⁹

The CFMPG “provides professional policing, security and detention services to the CAF and the DND globally, across the full spectrum of military operations.”³³⁰ In short, it fulfills four core functions for the CAF: policing, security, detention and “support to environmental commanders.”³³¹ Individual MP have the powers of a peace officer in respect of any person subject to the *Code of Service Discipline* and may arrest any such person, found or suspected of committing a service offence, without a warrant.³³² Non-MP CAF officers also have powers of arrest without a warrant for service offences.³³³

Outside certain specialized units, such as the CFNIS, MP are acknowledged to have a “dual role.” This means they sometimes fall under the authority of non-MP commanders when performing general military duties, and only under the MP chain of command when performing law enforcement functions.³³⁴ In particular:

MP deployed on an operation must obey all lawful orders issued by the Comd of the operation and comply with applicable Rules of Engagement (ROE) governing the Use of Force (UoF) for the purpose of achieving military objectives, like other CAF members. MP will only question orders issued to them if these raise concerns about their police independence.³³⁵

The CFPM reports to the VCDS, who is empowered to issue instructions and guidelines with respect to the CFPM’s responsibilities, or concerning a particular investigation.³³⁶

Justice Fish expressed concerns with these limitations on the independence of the CFPM. He recommended that the NDA be amended to provide that the CFPM be appointed by the Governor in Council (GIC), rather than by the CDS, and report to the Minister, rather than to the VCDS. He further recommended that neither the Minister nor the CDS/VCDS be authorized to direct the conduct of specific investigations.³³⁷

I agree that these changes are necessary to provide formal guarantees of independence to the CFPM from the chain of command, which falls under its investigative competence.

This is not a purely formal or theoretical concern. Recent allegations of sexual misconduct by senior CAF officers, which have been the subject of investigations by the military police, have highlighted the problems with the current state of affairs.

In addition to the legal issues affecting the independence of the CFPM, a problem also arises from the small size of the GOFO and senior officer pool. The CFPM, a brigadier-general, is one of some 140 GOFOs. Among this small group of senior officers, many know each other well. Several are alumni of military colleges. Some will have worked together. Others have been in positions of command or subordination vis-à-vis one another during their career. As such, many have formed strong bonds of loyalty and fraternity by the time they reach GOFO rank, yet all are still competing with each other for fewer opportunities for promotions.

Among NCMs, there is a view that officers will band together and may be inclined to support each other, rather than outsiders, even victims. For example, there is a perception that the officer corps – and GOFOs in particular – will protect their peers first and apply rules impartially second. During my Review, I heard numerous criticisms of this type from NCMs and officers alike.

Recent events have thrown this issue into stark relief. A former CDS is alleged to have said that he “owned” the CFNIS and was “untouchable.”³³⁸ Whether or not the remarks attributed to him

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were truly made, they reflected what many believe. There is some basis for this perception. The CDS appoints the CFPM and may give orders to the VCDS, who in turn is empowered to give orders to the CFPM, and so on down the MP chain of command. Section 18.5 of the NDA provides as follows:

General supervision

18.5 (1) The Provost Marshal acts under the general supervision of the Vice Chief of the Defence Staff in respect of the responsibilities described in paragraphs 18.4(a) to (d).

General instructions or guidelines

(2) The Vice Chief of the Defence Staff may issue general instructions or guidelines in writing in respect of the responsibilities described in paragraphs 18.4(a) to (d). The Provost Marshal shall ensure that they are available to the public.

Specific instructions or guidelines

(3) The Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation.

Justice Fish recommended that section 18.5(3) be repealed, and that the supervisory authority of the VCDS be replaced with that of the Minister. I agree with this recommendation.

I was assured by the CFPM and the VCDS that instructions with respect to specific investigations were never and would never be given. Despite having the statutory authority to do so, the VCDS expressed the opinion that should she attempt to influence or direct the CFPM in a specific instance, she could face charges of improper interference with police activities before the MPCC.³³⁹ Section 250.19 of the NDA provides that “improper interference with an investigation includes intimidation and abuse of authority.”³⁴⁰ I doubt that the exercise of the VCDS’s powers under section 18.5 of the NDA could amount to “improper interference” in an MP investigation. But the mere fact that the VCDS believes so gives credence to her position.

Yet, the CFPM seems to have more concerns about his relationship with his superiors. When asked to investigate a matter involving the then-VCDS, the CFPM responded as follows:

I have further considered your below request and discussed with CO CFNIS. I am concerned of the potential conflict of interest (real or perceived) in looking in the below matter for two principal reasons: my “general supervision” relationship with the VCDS and, more importantly, that the matter/circumstances would not amount to the level of service/criminal offence(s). For those reasons, and in order to preserve the independence of my office in relation to policing matters, I will not be investigating the matter and recommend that the facts you are seeking ... would be best determined by ADM(RS).³⁴¹

The first reason expressed by the CFPM for declining to investigate is at odds with his testimony before the FEWO where he assured members of Parliament that his command would investigate any officer “regardless of rank or status.”³⁴² Easy as it may be to assert that

in theory, when confronted with the reality of having to do so, I believe the CFPM correctly identified the conflict of interest in which he found himself.

Needless to say, similar, if not worse, problems would arise if the CFPM were required to investigate the CDS.³⁴³ The CDS appoints him and would have to approve his subsequent promotions. The CDS is, of course, the immediate superior of the VCDS, to whom the CFPM reports. This structure is problematic at the best of times. When sensitive matters, such as sexual misconduct arise, it is simply unworkable.

There are other problems with internal MP or CFNIS investigations of sexual misconduct, although these concerns were dismissed when I put them to MP and CFNIS members. One is the difficulty of MP investigating someone superior to them in rank. I was told that investigators may choose not to wear a uniform during an interview, so the rank doesn't pose a problem. Considering the extent of deference to rank in the military, I am not persuaded that this can be so easily dismissed.

The other, related, problem arises when victims are questioned by someone who may be superior to them in rank. This goes beyond the common problem of being interrogated by a man, who may or may not be sufficiently competent in the use of trauma-informed interview techniques. Here again, the rank difference may add to the level of intimidation and related reluctance that victims may experience in an already difficult process.

These problems tend to reinforce each other. The formal lack of independence supports the impression that CAF senior leadership controls the MP – and by extension any investigations into sexual misconduct. In addition to the ever-present hierarchy, the informal networks of loyalty and fraternity reinforce the potential, both perceived and real, for undue influence in the course of investigations. Although MP investigations are subject to the jurisdiction of the MPCC, which can review complaints of alleged improper interference, this type of undue influence is often subtle and undetectable.

This has led to expressed scepticism about the integrity of MP investigations, particularly of senior officers charged with various types of sexual misconduct.

CFNIS and MP investigations

In theory, the only unit within the CAF that has the authority to investigate sexual offences is the CFNIS.³⁴⁴ The CFNIS was created following the Dickson Report I, which recommended a new investigations branch that was independent from the immediate chain of command.³⁴⁵ The CFNIS is based in Ottawa and replaced the former special investigation unit. It is commanded by a lieutenant-colonel who reports directly to the CFPM.³⁴⁶ Unlike local MP, CFNIS investigators always remain under the command of the CO of the CFNIS, regardless of where they are posted.³⁴⁷

The CFNIS takes its investigators from the ranks of the larger CFMPG. The CFNIS conducts an interview and aptitude test, and those who are selected then do 12 to 24 months

of training to become qualified investigators.³⁴⁸ However, the CFNIS has no direct control over the hiring process; the MP hiring process is CAF-controlled. Since 2015, the CFNIS has instituted additional training and competency requirements for its investigators regarding sexual assault. Based on current training protocols, all CFNIS investigators receive sexual assault training, including trauma-informed approach training, as one of their core competencies. This has also been required for all MP to complete as part of ongoing training and is now embedded at the Military Police Academy.³⁴⁹

In addition, since 2016 the CFNIS has also has a specialized sub-unit, the Sexual Offence Response Team (SORT), which receives additional training and deals with complicated sexual assault files. It was intended “not... to absorb all sexual related investigations but to bolster the existing infrastructure and build a depth of experience in regards to sexually-based offences.”³⁵⁰ The SORT has been described as a “team within a team,” to provide specialized support to more complex files.³⁵¹

Although sexual offences are supposed to be the exclusive responsibility of the CFNIS, this does not mean that there is no role to play for the local MP. As Justice Fish noted in his report:

The specialized investigative arm of the military police, known as the Canadian Forces National Investigation Service (“CFNIS”), has a right of first refusal over the investigation of serious offences and sensitive offences, including criminal sexual offences. Except in the case of criminal sexual offences, the CFNIS may however defer its investigative responsibility to the local non-CFNIS military police (often referred to as the uniformed military police) when the commander of the CFNIS considers it appropriate to do so. Even where the investigative responsibility is not deferred, the uniformed military police may be requested to assist the CFNIS in investigations.³⁵²

According to data provided by the DMP, between 1999-00 and 2020-21, MP were involved in investigating 48 cases that led to court martial prosecutions related to sexual misconduct.³⁵³ In a number of cases, including after the Deschamps Report and after the launch of Operation HONOUR, MP were the only investigating unit listed.

I also heard from stakeholders, including serving MP and victims, that it is not uncommon for local MP to be actively involved in an investigation. Local MP are often the first point of contact with a complainant making a report.³⁵⁴ According to the CFPM and the CO of the CFNIS, it is common for the CFNIS to make use of local MP to take the initial evidence gathering steps, including taking a statement from the victim.³⁵⁵

All this puts a degree of discretion into the hands of uniformed MP in the early stages of an investigation. Where they are the first point of contact, it is up to them to decide if a complaint should go to the CFNIS, or whether the conduct can be characterized in some other way and investigated as a lesser service offence. This places a large burden on the shoulders of uniformed MP including interviewing a potentially traumatized complainant, and making assessments about whether an accusation is criminal.³⁵⁶

During the course of my Review, several stakeholders expressed their scepticism about the independence, and some about the competence, of the CFNIS and the MP in general. While one felt that her case had been handled appropriately, several women who met with me shared concerns about how their complaints were investigated. These ranged from multiple re-traumatizing interviews with different people, to constant changes to the investigator roster, leading to delays and failure to move the investigation forward.

Among the stakeholders I spoke with were provincial crown prosecutors and other lawyers in the civilian system – with experience in military sexual offence cases. Save for one, they were generally critical of the quality of investigations conducted by the CFNIS and the MP, in comparison to the files they received from civilian police forces. Among the deficiencies they highlighted were: a tendency to fall back on rape myths, including irrelevant material in their reports; often failing to follow up on relevant matters; general problems of evidence management; and inexplicable delays.

This is supported by the findings of the recent Declaration of Victim's Rights Consultation carried out by the CAF. This consultation found that, of those surveyed, victim-blaming and failing to treat victims with respect was a problem at all stages of the military justice system, including the investigation stage.³⁵⁷

Investigative delay was also raised as a concern in the Fish Report, for both the CFNIS and the uniformed MP.³⁵⁸ Justice Fish noted that a previous 30-day limit for investigations, which had been criticized by the AG, was revoked in 2018, and replaced with a general requirement that “investigations must be conducted as quickly and efficiently as possible.”³⁵⁹ In 2019, a Military Police Analytics Program (MPAP) was created to track compliance with investigative efficiency. Justice Fish accepted that the new measures were “still in their infancy” and the data was “insufficient to assess their likelihood of success in reducing investigative delay in the longer term.”³⁶⁰

I was provided with some data from the MPAP. This showed that for sexual assault investigations since 2016, that resulted in charges being recommended, the median length of investigation was between 140 and 207 days and the mean was between 202 and 265 days.³⁶¹ Investigations that had concluded without a charge being recommended were shorter, with a mean between 45 and 138 days and a median of two to 33 days.³⁶² To put it another way, for files where charges were recommended, in every year but one since 2016, investigations took, on average, more than 5 months. While I accept that there are particular complexities to investigating in an environment such as the CAF, this does not even approach the 30-day limit recommended by Chief Justice LeSage and previously in force.

In addition to survivors and lawyers, I heard from serving MP, senior officers including COs, and others within the CAF and the DND system. Finally, I consulted a range of independent observers, including civilian police forces and academics.

It emerged from these consultations that the perception of a lack of independence and concerns about competence on the part of the CFNIS in the investigations of sexual misconduct have been brought to the surface by recent events. As I explained in my Interim Report to the Minister:

While the secrecy that surrounds the early stages of a police investigation may be necessary, in the current climate it serves to increase suspicion about the CAF's ability to police itself. Further, the fact that CFNIS investigations are meant to be kept confidential, even from the CAF's leadership, inevitably invites suspicion and disbelief, and puts the CAF leadership in a difficult – if not impossible – position. This has been recently illustrated by the disclosure of promotions granted to GOFOs undergoing investigation, inviting speculation about the motivations and competence of CAF leadership. Such speculation would not happen if, as is normally the case, the investigations were demonstrably at arm's length, conducted by outside investigative authorities.³⁶³

This trust deficit is a liability for the CAF. Rather than improving “efficiency, discipline and morale,” jurisdiction over the investigation and prosecution of sexual offences has undermined confidence in the chain of command while doing little to eradicate the proscribed conduct.

While measures advocated by Justice Fish would improve the formal independence on the CFPM from the CAF chain of command, I believe that in the area of sexual offences this would not be enough to cure the trust deficit that currently exists, particularly when senior officers are the subject of investigations.

This trust deficit is a liability for the CAF. Rather than improving “efficiency, discipline and morale,” jurisdiction over the investigation and prosecution of sexual offences has undermined confidence in the chain of command while doing little to eradicate the proscribed conduct.

Review of file clearance codes

Another aspect of the investigations process that has come under scrutiny is the clearance of files (*i.e.*, the closure of the active investigation). When an incident is “cleared”, it may be cleared as “founded” or “unfounded”. An “unfounded” case proceeds no further. If “founded,” there are a number of different clearance codes used to indicate the circumstances in which it was cleared or not cleared. Issues were identified in the use of “unfounded” codes, both within and outside the MP. In 2017, the CFPM tasked the CFNIS with putting in place an external review team to review all sexual assault investigations coded as “unfounded”.³⁶⁴ This resulted in the launch of the Sexual Assault Review Program (SARP) in 2018 with a mandate to review sexual assault files coded “unfounded” by the investigator.³⁶⁵

The review noted that the “unfounded” clearance code was still being used improperly and emphasized the need for trauma-informed training across the entire MP corps. It also identified a need for training to address implicit and unconscious bias regarding sexual assault and other gender-related crimes, and improved training on credibility.³⁶⁶ Following the review, the CO of the CFNIS developed an action plan tracking all observations from the report and related initiatives.³⁶⁷ As one of the measures put in place following the review, all “unfounded” codes now require prior approval from the CO of the CFNIS.³⁶⁸ This is intended to avoid past misuses of the “unfounded” code.

Overall, the SARP was a useful exercise for the CAF to undertake, and its model could be adopted elsewhere to review how procedures meant to respond to sexual misconduct are being used. However, these measures are still in their infancy. It is impossible to assess what impact, if any, they could have on the integrity of sexual assault investigations; although the overall proportion of cases affected was small, the findings of the SARP confirm the concerns expressed elsewhere about the capability of the MP to handle investigations with a sexual element.

Perceptions versus reality

In his review of military justice in 1997, Chief Justice Dickson commented that, where a justice system is concerned, perception is as powerful as reality:

It is often said that perception is reality. Perhaps this is especially true in the administration of justice because any justice system, whether it be military or civilian, depends for its legitimacy on the respect of the individuals that are subjected to it. When a significant number of individuals who are governed by that system have lost respect for this institution, and feel that there is a double standard, then there is a serious problem that must be addressed or the system will collapse.³⁶⁹

I agree with these sentiments. The scale of sexual misconduct in the military exposed in the media, well-documented in the Deschamps Report, acknowledged in the Final Settlement Agreement of the Heyder and Beattie class actions, confirmed in surveys and highlighted in recent highly visible cases, affects both reality and perception. It has cast a long shadow over the role of military justice in efforts to eradicate this kind of conduct, often criminal in nature. Past a certain point, it is irrelevant whether CAF members and the general public perceive the military justice system to be unfit for the task – whether due to a lack of independence or otherwise – or whether it truly is unfit.

Murder, manslaughter and certain offences against children have always been outside the realm of military justice and reserved for civilian courts.³⁷⁰ It certainly suggests that they stand well above matters of military discipline. I believe the same is true of sexual offences.

In any event, the investigation and prosecution of *Criminal Code* sexual offences have proven to be a major challenge for the military justice system. I believe that challenge is now insurmountable for the CAF. Victims, perpetrators, other stakeholders and the institution itself will be better served if sexual crimes are investigated by civilian police and prosecuted in civilian criminal courts. Although the civilian process is far from perfect, at least there will be no suggestion that some special treatment, good for some, bad for others, is accorded to members of the military who are entitled, like every other person in Canada, to equality before the law.

In any event, the investigation and prosecution of *Criminal Code* sexual offences have proven to be a major challenge for the military justice system. I believe that challenge is now insurmountable for the CAF.

The court martial process

The military justice system is presently in a state of flux. On 21 June 2019, Bill C-77 was passed into law. Bill C-77 amends the military justice system in a number of ways. It introduces victims' rights aligned with those already provided for in the civilian criminal justice system by the CVBR. It changes the classification of offences, overhauls the summary trial process and lays down additional victim and witness protection.

However, most of these legislative provisions are not yet in force. Justice Fish noted in his report that he had not been given any “firm or even target date” for implementation of Bill C-77.³⁷¹ Similarly, I was not offered any clear timeline for implementation until after completion of my draft report, when I was informed that it would enter into force on 20 June 2022. Further, I was told that the language of Bill C-77 precluded piecemeal or incremental implementation and that considerations around the new summary hearings process are ongoing.³⁷²

Prosecution and defence of sexual offences

Justice Fish examined the independence and tenure of the DDCS and the DMP, as well as the defence counsel and prosecutors who work under their direction. He made a number of recommendations, including that legal officers posted to either directorate remain there for a minimum of five years.³⁷³ These are all welcome.

It is widely accepted that sexual assault and other serious sexual offences are among the most challenging crimes to prosecute. In 2018, a working group of the Federal-Provincial-Territorial (FPT) Meeting of Ministers Responsible for Justice and Public Safety reported that:

The law on sexual assault is complex and requires an understanding of discriminatory myths and stereotypes that have been applied to sexual assault victims. Accessing ongoing training on the law, including relevant law reform, can be challenging for police, prosecution services and victim services...³⁷⁴

Indeed, some provincial prosecutorial services have dedicated expertise in sexual and domestic violence.³⁷⁵

There are long-standing questions about the experience of counsel prosecuting and defending at courts martial compared to their civilian counterparts.³⁷⁶ Even today, there are differing views inside the JAG about this question.³⁷⁷ This can be a challenge in the context of sexual offences. The current system within the JAG is not particularly well-suited to meet this challenge. Although the JAG committed to keeping legal officers posted to defence counsel services or the Canadian Military Prosecution Service for a minimum of five years³⁷⁸ – which will, if Justice Fish's recommendation is implemented, be institutionalized – it is not a very strong basis for developing and retaining a cadre of specialist defence counsel or prosecutors experienced in handling complex sexual offence trials.

Moreover, the military has a low volume of courts martial for sexual assault. Between 2015 and 2018, there were 29 reported court martial cases involving a charge of sexual assault, according to a Dalhousie Law Journal article.³⁷⁹ In comparison, Statistics Canada data shows there were 4,651 cases in Ontario from 2015-16 to 2018-19, 1,958 in Quebec, 1,444 in British Columbia; 803 in Manitoba, and 370 in Nova Scotia.³⁸⁰ Even smaller jurisdictions such as Prince Edward Island and Yukon saw 53 and 97 sexual assault cases respectively.³⁸¹ Thus, in even the smallest of Canada's civilian jurisdictions, there is a much greater caseload and a corresponding opportunity for lawyers and judges to gain significant experience in the trial of sexual assaults and other criminal sexual offences.

Justice Fish accepted that military experience is relevant for prosecuting and defending in a military context.³⁸² I agree with this insofar as military justice actors, including counsel, are involved in the trial of specific military offences. I also agree that military experience may be helpful to understand the context in which sexual offences may have been committed, such as the proximity of living arrangements, the functioning of units and the importance of hierarchy in the appreciation of consent. But in my view, this is not inherently different from the many environments in which Canadians interact with each other and which have to be appreciated and understood by judges and juries every day in Canadian courtrooms.

Conviction rates and sentencing

In what is claimed to be the first empirical study of sexual assault in the Canadian military justice system, Professor Elaine Craig noted that between 2015 and 2018:

The conviction rate for the offence of sexual assault disposed of through court martial proceedings in Canada (either by plea bargain or trial) over this four-year period was approximately 14 per cent. If convictions for lesser included *Criminal Code* offences such as assault are included, the conviction rate during this period was approximately 28 per cent. These figures are markedly lower than the conviction rate in cases disposed of in Canada's civilian criminal court system. For example, the conviction rate for sexual assault and lesser included offences disposed of in Canada's civilian criminal courts during this same time period was between approximately 42 and 55 per cent.³⁸³

She went on to note:

Nearly all courts martial guilty findings for sexual *misconduct* involve plea bargains in which the accused pleads guilty to either the section 129 offence of 'conduct to the prejudice of good order and discipline' or the section 93 offence of 'disgraceful conduct' and in exchange the sexual assault charge is withdrawn or stayed.³⁸⁴

This practice seems well entrenched. For example, in the 2021 case of *R v. Bankasingh*, the accused admitted to having "fondled her breasts, buttocks and vagina" of a 17-year-old private who was incapacitated at the time.³⁸⁵ A plea bargain was struck by which no evidence was presented on the charge of sexual assault and the accused pled guilty to the lesser charge of disgraceful conduct under section 93 of the NDA and received a sentence of imprisonment for 60 days.

Professor Craig concluded that, based on data from 2015 to 2018, the “rate of conviction for sexual assault through courts martial proceedings is dramatically lower than in the civilian system.”³⁸⁶

The OJAG provided me with data on all courts martial relating to *Criminal Code* sexual offences from 1999-00 to 2020-21, that is, since the CAF first gained jurisdiction over those offences.³⁸⁷ According to that data, there were 134 courts martial for sexual assault between 1999-00 and 2020-21.³⁸⁸ Of these, 37 were found guilty of sexual assault, 17 were found guilty of the lesser included offences of assault and 47 were acquitted. In addition, 35 of the cases were withdrawn, terminated or stayed. This represents a base conviction rate of 27% for sexual assault, and 13% for lesser included offences.

Although this presents a slightly better picture over time than the more recent period examined by Professor Craig, with an average combined conviction rate of 40% for sexual assaults and lesser included offences, it is still below the conviction rate for sexual assaults and included offences in the civilian system reported by Statistics Canada (between 41% and 46% from 2005 to 2020, with the exception of 2018-19 when it was 39%).³⁸⁹

Professor Craig also noted that “One of the primary justifications offered in support of permitting the military to operate its own parallel legal system is the claim that the need for military discipline necessitates the ability to impose stricter punishments.” This was also emphasized by the then MND to justify the original grant of jurisdiction in 1998. He stressed that the penalties needed to be tougher because women and men in the CAF needed to trust each other to put their lives on the line.³⁹⁰

And yet, as Professor Craig’s research makes clear, even since the Deschamps Report and Operation HONOUR, sentencing for sexual assault has repeatedly resulted in light penalties such as fines, reduction in rank, and reprimands.³⁹¹ While it is sometimes difficult to directly compare statistics between the military and civilian systems,³⁹² I have considered the overall sentencing statistics for the military justice system. In the 22 years’ worth of court martial data provided to me, there were 247 prosecutions – if all courts martial for sexual misconduct are considered – including sexual assaults and lesser charges.³⁹³ Many of the charges were for lesser service offences, including cruel and disgraceful conduct (section 93 of the NDA) and conduct to the prejudice of good order and discipline (section 129 of the NDA). In the latter case, a conviction is considered disciplinary only and does not result in a criminal record if the sentence consisted of one or a combination of a reprimand, severe reprimand, fine of up to one month’s basic pay, or a “minor punishment.”³⁹⁴

Another concern with section 129 of the NDA in particular is its vagueness. Justice Fish noted that while enacted as a residual power it is hardly used as such. Rather, it is one of the two most commonly adjudicated service offences.³⁹⁵ In the context of sexual offences, this is problematic, since by its very vagueness almost any conduct – including acts that would otherwise constitute a *Criminal Code* sexual offence – can be used as the basis for a charge under this section. The data bears this out; it regularly is used to deal with sexual misconduct, including sexual assault.

Out of 187 guilty verdicts, 102 (55%) resulted in a reprimand only, with a further 20 offenders (11%) sentenced only to a reduction in rank. A mere 38 cases (20% or approximately 1.7 per year) resulted in immediate confinement, detention or imprisonment. The rate was higher for sexual assault cases only: 20 guilty verdicts (54%) led to a custodial sentence.³⁹⁶ However, this does not tell the whole story, as a number of courts martial for sexual assault resulted in guilty verdicts for the lesser included offence of assault. If these cases are included, the rate of custodial sentencing for sexual assaults drops to 41%. I also note that in the data I was given there are numerous cases of sexual assault which were dealt with by way of summary trial, although it is difficult to pin down exact numbers.

By comparison, Statistics Canada data shows that between 2015 and 2020 across Canada, custodial sentences for sexual assault ranged between 55% and 59%, while for other sexual offences, the rate was 67% to 70%.³⁹⁷ Combining the totals for sexual assault and other sexual offences according to Statistics Canada results in an overall custodial sentence rate of between 63% and 65%. Overall, the rate of custodial sentencing at courts martial is low compared to civilian courts.

Delay

Justice Fish identified delay in the court martial system as a particular problem. He noted that between 2013-14 and 2018-19, the average time from the laying of the charge until completion of the trial, as reported by the OJAG, was 384 days. He also cited analyses by the OAG and the authors of the *Court Martial Comprehensive Review* who pointed out that it took a total of 17.7 months and 434 days, respectively, to complete court martial cases. In particular, the OAG pointed out that nine cases out of the 20 studied took more than 18 months to complete.³⁹⁸

Delays such as these are particularly problematic for CAF members involved in a case of sexual assault or another criminal sexual offence. The stress related to facing criminal charges is well understood and is just as intense, in the context of a military career. CAF members charged with sexual assault are entitled to the same fairness and procedural safeguards as other Canadians, including a right to be tried within a reasonable time. Victims/survivors of sexual assault are often traumatized by the criminal justice process. This is often intensified in the military context. They often face ostracization and reprisals, which ultimately affects their careers. This includes deliberate reprisals and the more subtle, but no less pernicious, effects of stress and trauma associated with ongoing criminal proceedings in a relatively closed community. Where resolution of a case takes more than one year, and possibly multiple years factoring in the initial investigation, the victim's performance appraisal may be affected, with repercussions for the individual's career.

Victims' rights

Since 2015, victims of sexual offences in the civilian system have benefited from the CVBR.³⁹⁹ Although Bill C-77 provided for an equivalent set of protections in the military justice system, the DVR,⁴⁰⁰ this has yet to be implemented (in common with the other parts of Bill C-77).

Justice Fish noted that “in enacting Bill C-77 in the aftermath of the Deschamps Report, Parliament decided to afford victims the same rights in both military and civilian proceedings.”⁴⁰¹ In his view, as far as criminal sexual offences are concerned, the failure to implement the DVR was sufficiently serious as to merit temporarily removing the investigation and prosecution of sexual offences from the military justice system.⁴⁰²

Justice Fish’s Recommendation No. 68 states:

The Declaration of Victims Rights should be brought into force as soon as possible, ensuring that victims investigated or prosecuted under the National Defence Act will be entitled to substantially the same protections as the Canadian Victims Bill of Rights affords. Until the Declaration of Victims Rights comes into force, and unless the victim consents:

(a) sexual assaults should not be investigated or prosecuted under the National Defence Act and should instead be referred to civilian authorities; and

(b) there should also be a strong presumption against investigating and prosecuting under the National Defence Act other offences committed against a victim.

Moreover, the National Defence Act should be amended to expressly incorporate, in substance, the rights and protections afforded by the Criminal Code to victims and to persons accused of sexual offences.

I agree that the lack of implementation of the DVR is problematic for victims of sexual assault and other *Criminal Code* sexual offences.

Insofar as seeking the victim’s consent for a sexual assault case to remain in the military system, the matter is, in my view, equally problematic. In light of this recommendation, the CFPM developed a draft protocol for seeking the “informed consent” of victims to determine whether their case should be transferred to the civilian justice system.⁴⁰³ It provided as follows:

INFORMED CONSENT

12. Upon CFNIS receipt of a complaint of a possible criminal sexual offence, it is of the utmost importance that the CFNIS informs the victims about their rights and protections afforded to them by the CVBR and the Civilian Justice System (CJS) as well by the DVR and the MJS. As part of the provision of information, the CFNIS will provide the victim with a copy of the pamphlet on victim rights (ref G).

13. Victims need to be informed that until the DVR is in force, the protections afforded to them by the MJS are not established by law as it is in the CJS but by policy. While these mechanisms serve the same purposes and achieve substantially similar results, policy-based protections may not instil the same degree of confidence as rights anchored in legislation.

14. While MP must provide victims with substantial and accurate information about these rights, it should not be construed as legal advice. Victims have the right to seek legal or other advice if so needed which should be encouraged and facilitated whenever possible.

15. Furthermore, when providing information to establish informed consent, the CFNIS will exercise discretion in order to avoid biasing the victim towards one system or the other. It must be explained that the CFNIS cannot guarantee the victim a specific outcome in either system.

16. Once victims have an informed understanding of their rights and the differences between the MJS and CJS, the CFNIS shall confirm choice of the victims in relation to whether they wish to have their complaint investigated by the CFNIS or by a civilian police authority. The CFNIS will ensure that the informed consent of the victims is documented. Moreover, victims shall be advised that they may withdraw their informed consent at any time.

17. In the absence of receiving informed consent after information is provided and understood, or upon notification that the victims have withdrawn their informed consent, the victim's file will be referred to the appropriate civilian authority. In this event, the CFNIS will assist the victims in establishing contact with the appropriate civilian authority as necessary and transfer any information or evidence collected thus far upon request by the new investigative agency. The CFNIS will also create a shadow file to facilitate the follow up of the matter IAW applicable policy.

18. It is important to note that the provision of information about their rights as victims must be imparted in consideration of their state of mind and ability to comprehend the information.⁴⁰⁴

This document illustrates the minefield that victims, investigators and prosecutors will face trying to implement a victim's choice of forum in any meaningful way. Quite apart from the traumatized state in which a victim may be at the outset of an investigation, or even later, this exercise is totally unrealistic.

On what basis could the CFNIS ever be satisfied that a victim has “an informed understanding of (...) the differences between the [military and civilian justice systems]”? Many professionals, be they investigators or lawyers, would be hard-pressed to provide an accurate picture of the differences between both systems in a concise and comprehensive way, let alone to highlight the differences that are truly material to this “informed understanding”. The likely delays in each? The possibility, or not, of a jury trial in civilian courts? The likely composition of a court martial? Whether the accused will get free legal representation in one but possibly not in the other?

In my view, requiring the victim's consent before deciding whether to investigate or prosecute a crime in the military or civilian justice system merely puts an unrealistic burden on the victim. It puts victims in an untenable position, requiring them to make a decision about which system is likely to work better for them, with little understanding of the factors at play. They may regret their decision down the road if the trial results in an acquittal and may be left forever wondering, “what if I had chosen the other system.” In the end, I do not believe this serves any public interest.

In my view, requiring the victim's consent before deciding whether to investigate or prosecute a crime in the military or civilian justice system merely puts an unrealistic burden on the victim.

In my Interim Report, I recommended that all new cases be transferred to civilian authorities for investigation and prosecution. If this interim measure is to stay in place pending legislation to provide exclusive jurisdiction to civilian courts, all new cases should go to the civilian system regardless of any preference expressed by the victim. When charges have already been laid in military courts, they should continue to proceed in that forum. But no new charges should be brought there.

Incoherence regarding other offences

The CAF currently does not prosecute certain offences but sends them instead to civilian authorities for investigation and/or prosecution. According to the relevant order from the CFPM:

The following offence types, if committed in Canada, will normally proceed within the civil justice system after consult with the local CF legal advisor (Deputy Judge Advocate or Regional Military Prosecutor, as appropriate) and informing the accused member's CO:

- domestic violence;
- child assault; and
- impaired driving offences.⁴⁰⁵

It is not clear why these offences are prosecuted outside of the military justice system. However, it is instructive to consider the CAF's approach with respect to its reasons for wishing to retain jurisdiction over sexual offences.

Intimate partner violence

In the exercise of its concurrent jurisdiction over most *Criminal Code* offences, the CAF has developed some practices. Contrary to its choice to prosecute most sexual offences, except those committed off-base, the CAF does not investigate or prosecute cases involving intimate partner violence (also called domestic violence).

The only justification given is that “certain circumstances do exist, such as in the case of alleged domestic violence, or the prosecution of impaired driving offences, where the recourse to the provincial court system is considered more appropriate, on a policy basis.”⁴⁰⁶

The poorly documented decision to defer intimate partner violence prosecutions by or against a CAF member to civilian courts is difficult to reconcile with the determination of CAF authorities to retain quasi-exclusive competence over sexual offences. The only additional explanation I was given was that, like in impaired driving cases, civilian courts have specialized expertise in that area. True as this may be, many civilian courts today have specialized expertise in prosecuting sexual assaults and view the two as interrelated. For example, in Quebec, the recently launched specialized tribunals for sexual assaults will also deal with cases of intimate partner violence.⁴⁰⁷ And in Ontario, the *Crown Prosecution Manual* indicates that sexual abuse can fall under the umbrella of intimate partner violence from a prosecution perspective.⁴⁰⁸

Sexual assault and intimate partner violence are similar in many ways and often overlap. They are predominantly gender-based crimes against women.⁴⁰⁹ They are both power-based, and the psychology of both domestic and sexual violence perpetrators are closely related.⁴¹⁰ Various similarities have been demonstrated between the two offender groups, including similarities in early childhood development.⁴¹¹ Both sexual and non-sexual domestic abusers

were more likely than the normative group to have had less responsive fathers, experienced physical abuse as children, and parents who imposed less restrictive boundaries.⁴¹² This reality is recognized in the current *Military Police Group Order on Family Violence*, which notes that domestic and family violence are abuses of power, and includes sexual assault as a related offence.⁴¹³

In many jurisdictions, the specialized expertise developed in handling sexual and intimate partner violence jointly will benefit the treatment of both these issues in the same way, when they arise in a military context.

Driving under the influence

More surprisingly, the CAF does not currently investigate or prosecute impaired driving offences.⁴¹⁴ The justification I was given for this is that civilian authorities have specialized equipment and processes,⁴¹⁵ as well as “challenges associated with the administrative suspension of drivers’ licences resulting from arrest for impaired driving, which falls outside of the current authorities afforded to the MP.”⁴¹⁶ I was also told that this involves discreet, specialized legal issues best handled by high volume civilian courts.

Whether they occur on or off-base, it seems to me that these offences have a very close military nexus, in terms of discipline, use of equipment, and alcohol abuse. Even if original investigations of such offences off-base were in the hands of civilian police, who would have intercepted the alleged offender, I assume they could be prosecuted in the military system to bring visibility to these serious breaches of discipline. Should that be the case, it may free up civilian court resources to handle the slight increase in workload that would come from their taking over military sexual offences.

Barriers to the implementation of concurrent jurisdiction

In my Interim Report, I recommended “establish[ing] a process that will facilitate the handling of allegations of sexual offences in an independent and transparent way outside of the CAF.” In particular, I recommended:

1. Justice Fish’s recommendation No. 68 should be implemented immediately. All sexual assaults and other criminal offences of a sexual nature under the *Criminal Code*, including historical sexual offences, alleged to have been perpetrated by a CAF member, past or present (“sexual offences”) should be referred to civilian authorities. Consequently, starting immediately, the CFPM should transfer to civilian police forces all allegations of sexual offences, including allegations currently under investigation by the CFNIS, unless such investigation is near completion. In any event, in all cases charges should be laid in civilian court.

Correspondingly, civilian authorities should exercise investigative and prosecutorial jurisdiction over all sexual offences by CAF members. Should civilian authorities decline to proceed, the matter should be returned to the CAF to determine whether disciplinary action is desirable under the NDA. Administrative Review related to sexual misconduct in the CAF should continue to proceed, for the time being, in parallel to, in addition to or in the absence of the criminal charges.

2. In parallel to the immediate transfers described above, the Minister should confer with the relevant federal, provincial and territorial authorities, to facilitate the transfer process and the sharing of expertise, between civilian authorities and the CAF, and consider the resources that could be made available to facilitate this work.

I also recommended that I be informed on a monthly basis of the progress in the implementation of this recommendation.

On 3 November 2021, the Minister accepted my interim recommendation and informed me that the CFPM and the DMP were “working quickly to develop the mechanisms and processes that will be required to implement your interim recommendations.”⁴¹⁷ After that, I met regularly with the Minister and with the CFPM and the DMP to receive an update on implementation.

I had conversations with police and prosecution representatives from different parts of the country, although not all, which led me to believe that taking over this relatively small number of cases would not be a problem for them.

Statistics provided to me by the CFPM from 2016 to 2021⁴¹⁸, show that the overall volume of sexual assault investigations by province breaks down to the following:

Province / Territory	Cases per year*
Alberta	19
British Columbia	18
Manitoba	8
New Brunswick	11
Nova Scotia	17
Ontario	71
Quebec	22
Newfoundland & Labrador, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (combined)	5

Table 3. Sexual assault investigations by province.

* Based on overall case figures from 2016 – 2021, rounded to the nearest integer.

Thus, with the exception of Ontario, sexual assaults (generally the more complex and challenging investigations), amount to an increase of around 20 additional investigations per year, or less, for most provinces and territories. Other sexual offences accounted for far fewer investigations, for a total of around 47 cases per year across the whole of Canada.

When it comes to how many investigations resulted in a prosecution, during the six year period, from 2015 to 2020, there were 82 courts martial for sexual offences, or around 14 cases per year across the CAF.⁴¹⁹ For the same period, there were 122 summary trials or

around 20 cases per year.⁴²⁰ In other words, the increased caseload for civilian prosecutors arising from my interim recommendation would likely be around 34 files per year across the whole of Canada.

Yet, over the months that followed, it became clear to me that there was considerable resistance to implementing my recommendation. While some external police forces were open to receiving files almost immediately, others refused to accept any files involving CAF members.⁴²¹ At the provincial level, some associations of chiefs of police and the OPP commissioner also joined the list of refusals.⁴²² Of these, the most negative positions taken were those of the Association des directeurs de police du Québec (ADPQ) and the British Columbia Association of Chiefs of Police (BCACP). The ADPQ stated that Quebec police forces would be unable to accept any files involving the CAF without the approval of the Quebec Minister of Public Security.⁴²³ The BCACP recommended to all BC police forces that no files be accepted from the CAF “until the related legal and procedural issues have been reconciled.”⁴²⁴

On 19 January 2022, the BC Urban Mayors’ Caucus became involved, writing to the Prime Minister and MND. They noted that the “civilian justice system is currently stretched beyond capacity from being on the front lines of combating the COVID-19 pandemic” and that “[m]any of our local RCMP detachments and municipal police departments already have an unmanageable caseload per office.” Their proposed solution was the creation of a national independent investigative body, at arms-length from the CAF and the DND.⁴²⁵ Meanwhile, the Commander of the Air Force Military Police Group met with the Manitoba Ministry of Justice, Public Safety branch on 12 January 2022.⁴²⁶

On 18 January 2022, the Ontario Association of Chiefs of Police (OACP) wrote to the Solicitor General of Ontario.⁴²⁷ The letter set out a list of concerns about the proposed transfers. Concerns about resources, especially for smaller police forces, and potential floodgates of historical claims, featured prominently. In addition, the OACP identified a need for training investigators in the military context, jurisdictional concerns where people may be in different parts of the country, and issues around access to military documents. The letter recommended the creation of a multi-service task force, in addition to a memorandum of understanding.

On 27 January 2022, the Minister wrote to the provincial justice and public safety ministers to propose meetings to discuss the implementation of the interim recommendation. On 21 April 2022, the OACP wrote directly to the Minister, reiterating its list of concerns and called for the establishment of a national task force.⁴²⁸

Not all police jurisdictions refused to take on CAF cases. Notably, the RCMP began accepting transfers of new files from the CAF as of 31 January 2022.⁴²⁹ Several municipal and local forces also accepted transfers on an *ad hoc* basis, such as the Winnipeg and Thunder Bay police services and the Nottawasaga OPP. In mid-February, Quebec’s Ministry of Public

Security wrote to the Quebec police force advising them to accept new files and transfers based on their capacity and that a detailed protocol was in process.⁴³⁰ I understand the same discussions were also happening with the OPP. At the time of writing, it seems the matter is awaiting the conclusion of detailed memoranda of understanding, protocols, and federal-provincial agreements.⁴³¹

Under the law as it stands, civilian police forces and prosecution authorities already have full jurisdiction to investigate sexual offences involving CAF members including those occurring on defence property.

I wish to stress that under the law as it stands, civilian police forces and prosecution authorities already have full jurisdiction to investigate sexual offences involving CAF members including those occurring on defence property. In fact, I have not seen anyone rely on the position that they do not have jurisdiction. I note that the Acting JAG has recently confirmed that position to Parliament.⁴³² As mentioned above, civilian authorities already handle impaired driving and domestic violence cases coming from the military, as well as sexual assaults off-base. To my knowledge, none of that has been the basis of protracted negotiations and extensive memoranda of understanding. The number of cases, spread across the country, with slightly higher volume around CAF bases and wings, and virtually none elsewhere, hardly justifies this refusal to

enforce the law. The targeted need for additional resources, if any, can easily be identified and accommodated.

That said, the difficulties encountered in implementing my interim recommendation illustrate a key problem in maintaining concurrent jurisdiction between the CAF and civilian authorities. Prolonging concurrent jurisdiction will, it seems, only lead to interminable discussions about setting up detailed and complicated intergovernmental protocols, as well as similar machinery between the CAF and local and regional police forces. Since, in my view, the civilian system is the preferable one, the best way forward is to provide for the exclusive jurisdiction of civilian courts in all matters of sexual misconduct falling under the *Criminal Code*.

Approaches in other countries

Several allied militaries have recently had to grapple with issues similar to those facing the CAF. It is, therefore, worth considering how they approach military jurisdiction over sexual offences. I received a brief on the approaches of the other members of the Five Eyes (the United States, the United Kingdom, Australia, and New Zealand) as well as Israel.⁴³³ I also conducted independent research into the military and legislative context of these and other allied countries.

In the United Kingdom, the offence of rape followed a similar progression to the grant of jurisdiction over sexual assault in Canada. Before 2006, rape was within the exclusive jurisdiction of the civilian justice system, along with murder and manslaughter. Since then, the military service justice system in the United Kingdom (the Service Justice System) has had concurrent jurisdiction alongside civilian courts. Decisions as to where cases are heard

are on a case-by-case basis.⁴³⁴ However, review of the service justice system review carried out by His Honour Shaun Lyons CBE in 2018 and 2019 recommended that rape and sexual assault with penetration, if committed in the UK, should be removed from the service justice system, except with the consent of the United Kingdom Attorney General.⁴³⁵

His Honour concluded:

[...] the trying of these cases in the SJS cannot be said to be for the protection of the individual nor yet for operational effectiveness. Service personnel remain citizens and in these serious cases when the civil courts are available to them they should be tried in that forum. It is clear that the Select Committee had concerns over public confidence. These concerns are shared. Trying these high-profile matters under Service Law has not been helpful to the Services and has led to criticism of the SJS.⁴³⁶

These conclusions match, by and large, the Canadian experience. Granting the CAF concurrent jurisdiction over sexual offences has had the opposite effect to that intended; it has not increased discipline, efficiency or morale, and it has not generated the confidence it would need, particularly to handle high profile cases involving senior CAF members. Rather, it has contributed to an erosion of public and CAF member confidence.

Australia and New Zealand have concurrent jurisdiction with conditions. In Australia, the Director of Military Prosecutions must obtain the consent of the Director of Public Prosecutions before prosecuting aggravated sexual assault or murder committed in Australia. In New Zealand, a sexual violation committed in the country requires the consent of the Attorney-General before being tried at a court martial.⁴³⁷ This indicates that even in instances where the jurisdiction is concurrent, primacy remains in the civilian system.

Granting the CAF concurrent jurisdiction over sexual offences has had the opposite effect to that intended; it has not increased discipline, efficiency or morale, and it has not generated the confidence it would need, particularly to handle high profile cases involving senior CAF members. Rather, it has contributed to an erosion of public and CAF member confidence.

In the United States, military justice remains heavily dependent on the chain of command. It bears less resemblance to the Canadian and commonwealth systems. However, I note recent amendments to the law compelling commanders who receive sexual assault or harassment reports to disclose them to an independent investigator and make sexual harassment a service offence.⁴³⁸

I also found instructive the reference made by Justice Fish to United Nations guidance:

In 2006, the Special Rapporteur of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, supported by the Office of the High Commissioner for Human Rights and the International Commission of Jurists, issued *Draft Principles Governing the Administration of Justice through Military Tribunals* [...]. Principle No. 8 provides that “[t]he jurisdiction of military courts should be limited to offences of a strictly military nature committed by military personnel. Military courts may try persons treated as military personnel for infractions strictly related to their military status.” The intention of the Special Rapporteur was that civil offences committed by military personnel should be excluded from the jurisdiction of military courts. An analogous view

was reiterated by the Special Rapporteur on the Independence of Judges and Lawyers in a report submitted to the United Nations General Assembly in 2013: Report of the Special Rapporteur on the Independence of Judges and Lawyers [...]. In her report, the Special Rapporteur suggested that “[o]rdinary criminal offences committed by military personnel should be tried in ordinary courts unless regular courts are unable to exercise jurisdiction owing to the particular circumstances in which the crime was committed (i.e. exclusively in cases of crimes committed outside the territory of the state.”⁴³⁹

Justice Fish also noted, “[s]everal European and Scandinavian states, including important NATO allies of Canada, try all civil offences committed by their military personnel in peacetime in their civilian justice system, with or without particular rules or procedures to account for the accused’s military status.”⁴⁴⁰

Justice Fish ultimately concluded against removing military jurisdiction over all civil offences in Canada. I do not express any view on this conclusion. The focus of my Review is exclusively on sexual misconduct. In that respect, the discussion around the actions taken by Canada’s allies to address sexual offences shows that military jurisdiction over these offences is neither necessary nor demonstrably preferable.

The need for exclusive civilian jurisdiction

I cannot but echo the findings of Justice Deschamps. In regards to the promise that concurrent jurisdiction would bring swift, efficient discipline and justice, she concluded:

Unfortunately, victims of sexual assault have not reaped the benefits hoped for under the new jurisdiction. Victims criticize the lack of training of the MP, poor support by the chain of command, and inconsistency with which charges of sexual assault are ultimately sanctioned. While civilian law enforcement, prosecutorial authorities, and courts have also been criticized for their conduct of sexual assault cases, there is a strong perception among members of the CAF that the way in which the military handles such cases is the cause of *added* prejudice to the victim.⁴⁴¹

Seven years later, I see no meaningful improvement in the investigation and prosecution of sexual crimes by the military justice system. The 1998 grant of jurisdiction has not improved the CAF’s “ability to do prompt justice and maintain discipline.”⁴⁴² This view is supported by the Declaration of Victim’s Rights Consultation results, which found that:

Of the respondents who indicated that they had experienced a service offence, the vast majority experienced barriers to reporting and only a minority had a positive experience with the MJS (...) Views of the MJS were generally negative. Respondents indicated there were many areas that could improve protection for the victims, such as ensuring privacy, separating the accused and the victim, and providing the victims with timely resolutions.⁴⁴³

In addition, 55% to 65% of those surveyed disagreed that military justice actors took positive steps for the victim's benefit, as set out in Figure 3 below:

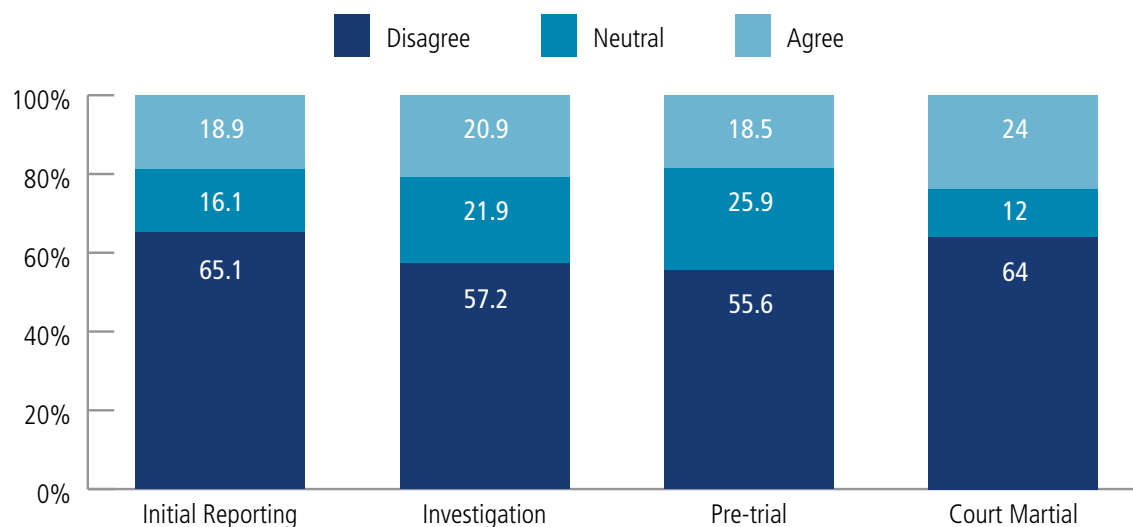


Figure 3. Agreement with positive steps taken throughout the MJS.

Source: Declaration of Victim's Rights Consultation – Results of the Internal and External Consultations, p. 13

Common themes in the response to the consultation included “fear of reprisal and retaliation, lack of support, shame and embarrassment, issues with the system, the accused being protected, and the individual responsible for handling complaints being the perpetrator.”⁴⁴⁴ There was also a widely held perception, both among those who identified as victims of a service offence and those who did not, that the military justice system fails to treat victims with dignity and respect:

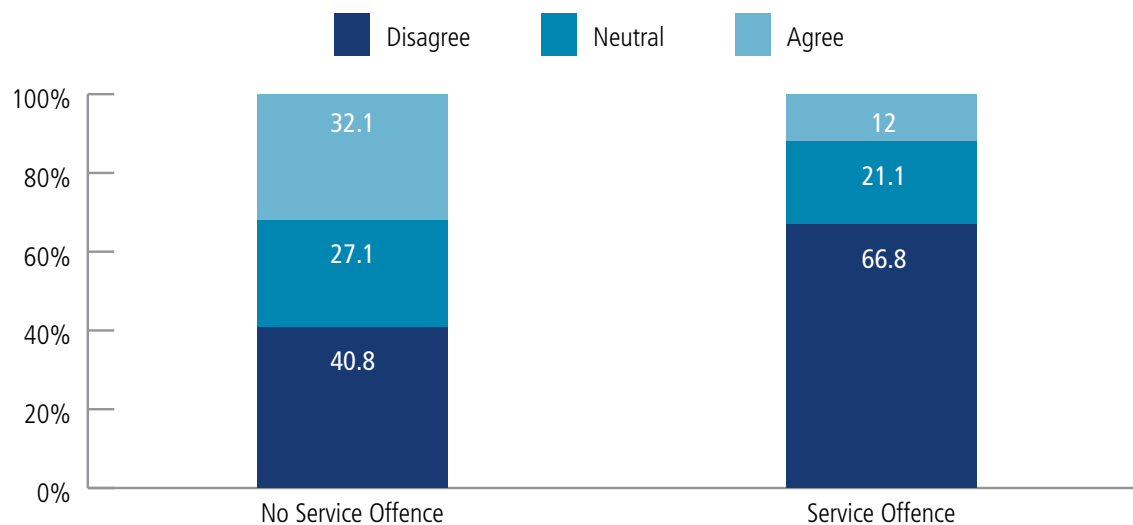


Figure 4. Rates of agreement that the MJS treats victims with dignity and respect.

Source: Declaration of Victim's Rights Consultation – Results of the Internal and External Consultations, p. 20.

The findings of the Declaration of Victims Rights Consultation serve as further confirmation of what I heard and observed during the course of my review; there is a widespread loss of confidence in all stages of the military justice system as regards sexual offences.

In light of the above analysis, I recommend that civilian authorities have exclusive jurisdiction over *Criminal Code* sexual offences alleged against CAF members. The concurrent jurisdiction that was conferred upon the military justice system in 1998 should be revoked.

I am not persuaded that the pre-1998 exception for offences committed abroad (Outside of Canada (OUTCAN) Programme⁴⁴⁵) should be maintained. From the data given to me, I was only able to identify 41 OUTCAN incidents involving sexual misconduct that were prosecuted through a court martial between 1999 and 2021 (or just under 2 cases per year on average).⁴⁴⁶ According to Justice Fish, not a single court martial has been held in a theatre of operations since 1998. And the last court martial held outside Canada was in 2012.⁴⁴⁷ Justice Fish also noted anecdotal evidence that some commanding officers were unwilling to hold courts martial in theatre. This reflects what I heard from stakeholders. There might have been summary trials held in theatre, but, since those are being abolished by Bill C-77, there is no need to consider this matter further.

Section 273 of the NDA already provides for the jurisdiction of the civil courts in such cases. This was recognized by the then-JAG in 1998.⁴⁴⁸ Although it may be convenient for the MP to conduct early parts of investigations abroad, they should seek assistance from civilian law enforcement, like the RCMP, who have more expertise in the matter, at the earliest opportunity. And since today there are virtually no courts martial held in theatre, the offences should be tried in Canada before civilian courts.

With respect to which specific offences should be excluded from the CAF's jurisdiction, I note that the criminal law regarding sexual offences has evolved since 1998. The *Criminal Code* includes a number of new offences, such as human trafficking and exploitation. The list of sexual offences against children has also expanded. I propose that the civilian authorities have exclusive jurisdiction over all these offences. This is not limited to those offences requiring registration as a sex offender. With respect to offences involving children, the CAF does not currently investigate or prosecute these types of offences; there is no reason for them to retain jurisdiction over child sex offences.⁴⁴⁹ Other offences, such as voyeurism or sexual exploitation, subject a victim – whether a CAF member or in a military environment – to the same issues discussed above.

Therefore, it would defeat the purpose of my recommendation to restrict it to only sexual assault. For these reasons, the list of sexual offences over which the civilian authorities will exercise exclusive jurisdiction must be expansive.

RECOMMENDATION #5

Criminal Code sexual offences should be removed from the jurisdiction of the CAF. They should be prosecuted exclusively in civilian criminal courts in all cases. Where the offence takes place in Canada, it should be investigated by civilian police forces at the earliest opportunity. Where the offence takes place outside of Canada, the MP may act in the first instance to safeguard evidence and commence an investigation, but should liaise with civilian law enforcement at the earliest possible opportunity. This should include:

- Sexual offences found in Part V of the *Criminal Code*;
- Sexual offences found in Part VII of the *Criminal Code*, including but not limited to sexual assaults; and
- Any “designated offence” as defined in subsections 490.011(1)(a), (c), (c.1), (d), (d.1) or (e) of the *Criminal Code*, to the extent not already captured above.

In making this recommendation, I reiterate that I do not envisage a type of permanent transfer process by which a victim would report a crime to the MP, who would then transfer the case to a civilian police service. The experience of the interim recommendation has shown that to be unworkable. I expect victims to be told to contact civilian authorities directly, and such contact to be facilitated by the MP and the CAF so far as possible.

I also recognize that removing concurrent jurisdiction will require amendments to the NDA. As previous experience with changes to the military justice system have shown, this will take several years to implement. In the meantime, I expect the CAF and civilian authorities to continue to abide by my interim recommendation. The CAF should cease to investigate and prosecute sexual offences over which it presently has concurrent jurisdiction. Civilian authorities should investigate and prosecute those cases in accordance with their existing concurrent jurisdiction. This includes any new reports of historic cases relating to alleged offences that took place between 1998 and the present.

It will also be important for CAF leadership to maintain visibility over criminal processes involving CAF members and interim measures, disposition or punishment that may follow. This may then feed into any disciplinary or administrative review process that may take place. COs are required by sections 19.57 to 19.62 of the Queen’s Regulations and Orders (QR&Os) to track criminal proceedings involving a CAF member under their command and forward any conviction and conduct sheet to NDHQ. I understand that in practice, the MP create a “shadow file” in such cases and act as the liaison between the civilian police agency and the CO.⁴⁵⁰ This practice should continue. I have no doubt that the CAF will continue to build strong relationships with local civilian police forces and prosecutors as circumstances evolve.

Rights of the accused

In his report, Justice Fish said he “fundamentally disagree[d]” with the idea that CAF members accused of a crime should lose their right to free legal counsel. As he put it:

130. Access to free legal counsel, regardless of income, is a benefit extended to the members of the CAF as a counterpart to the extraordinary duties that are imposed on them. Those extraordinary duties include the “unlimited liability” of CAF members, by which they may at any time be ordered into harm’s way, potentially risking their lives.

131. The fact that military defence counsel can do the utmost to defend their clients without being required to consider “fiscal responsibility” as part of their decisions is part and parcel of the special benefit which Canada decided to grant to members of the CAF. I would only very reluctantly interfere with this fundamental quid pro quo. No satisfactory basis for a recommendation of this sort has been provided to me.⁴⁵¹

Justice Fish’s comments were directed at proposed reforms to defence counsel services within the CAF. Insofar as they will continue to apply to any non-sexual criminal offences or disciplinary offences that are tried within the military justice system, I agree. However, I am conscious that such services would not be available to CAF members charged in civilian courts.

Currently, when they are prosecuted in the civilian system, they do not receive any special funding from the CAF for their defence and must pay for their own lawyer, or avail themselves of local legal aid funding. Most jurisdictions in Canada offer free or reduced-cost legal representation to residents accused of a crime. Having reviewed the basic eligibility requirements across Canada (as of 9 March 2022) and CAF salary scales, I believe that most CAF members, even in very junior ranks, would not be eligible for provincial legal aid in many provinces.

There are obviously existing inequities in the positions in which CAF members charged with criminal offences find themselves. For example, if charged with murder, they get no free CAF legal assistance. Nor if they are charged with impaired driving, domestic violence, or a sexual assault off-base and are prosecuted in a civilian criminal court.

And of course, until now, victims have received no financial support whatsoever from the CAF to obtain legal assistance in navigating the criminal process, whether military or civil. I have recommended elsewhere in this Report that victims be assisted in that regard. The CAF may want to examine whether it wishes to provide financial assistance for all its members facing charges outside the military system, not just those who will now be tried in civilian courts for sexual offences. In light of the rationale advanced by Justice Fish for the existence of free legal assistance internally, there are sound arguments for doing so. This could be done through arrangements with the provincial legal aid systems. For example, CAF members could be made automatically eligible for such assistance, with the CAF reimbursing the expenses incurred by the provincial systems. I make no recommendation to that effect, leaving this policy decision up to the relevant authorities.

Disciplinary jurisdiction over sexual misconduct

The question remains: how should sexual misconduct be handled by military authorities, regardless of whether or not civilian criminal courts have addressed the matter? As in other professions, disciplinary and administrative measures may be taken against a member who faces criminal charges, regardless of the outcome of the criminal process. And of course, some conduct is not criminal but still prohibited under professional rules. This is certainly the case in the profession of arms, and the chain of command has an interest in maintaining discipline and managing human resources through administrative measures. For example, if a CAF member were charged with murder, whether acquitted or convicted, the CAF would want to deal with the individual's conduct through its own process. The same is true with sexual offences tried in civilian courts or if civilian authorities decline to prosecute. Whether to proceed sequentially, or in parallel with the criminal justice system, would depend on the circumstances – including whether interim measures have been put in place by the civilian court. In some cases, disciplinary measures would be unnecessary and largely duplicative of the criminal process. The CAF would probably revert to administrative measures, such as those leading to release from the Forces.

The CAF's foundational doctrine refers to the "Profession of Arms."⁴⁵² It is a common feature of other regulated professions, such as law and medicine, that their members are subject to disciplinary proceedings by their governing bodies, in addition to general criminal and civil liability.⁴⁵³ These proceedings may sometimes run concurrently or subsequently criminal proceedings arising from the same facts or conduct. This is not inherently problematic if the process avoids undesirable outcomes, such as conflicting factual findings.

I see no reason to treat the CAF any differently in this respect. Sexual misconduct in the broad sense may lead to different processes. It may lead to a workplace investigation that results in remedial administrative action. It may also lead to criminal proceedings. And in-between, it may lead to disciplinary proceedings.

Adequate protection against double jeopardy is already provided in section 66 of the NDA:

66 (1) A person may not be tried or tried again in respect of an offence or any other substantially similar offence arising out of the facts that gave rise to the offence if, while subject to the Code of Service Discipline in respect of that offence, or if, while liable to be charged, dealt with and tried under the Code in respect of that offence, the person

(a) has been found not guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence; or

(b) has been found guilty by a service tribunal, civil court or court of a foreign state on a charge of having committed that offence and has been either punished in accordance with the sentence or discharged absolutely or on conditions.

In many cases, the offence tried in the civil system under the *Criminal Code* may not be "substantially similar." However, in other cases, it will be.

Summary trials under the current system

Currently, pending the implementation of Bill C-77, service offences may be dealt with at the unit level by way of summary trial. Justice Fish has addressed the issues with the current system in detail.

As it pertains to my mandate, I asked the CAF to provide me with data on the prosecution of sexual misconduct through the summary trials process. In response, I was provided with data on summary trials related to “sexual misconduct” by the OJAG from 1999 to 2021,⁴⁵⁴ as well as an explanation of the service offences under the NDA which are most commonly used to deal with sexual misconduct. As noted above, there are five principal offences that are used: scandalous conduct by officers; cruel or disgraceful conduct; abuse of subordinates; drunkenness; and conduct to the prejudice of good order and discipline.⁴⁵⁵

For the period 2015 to 2021, according to OJAG data, there were 127 summary trials of which 124 resulted in a finding of guilty on at least one charge. Breaking this down by the type of charge,⁴⁵⁶ approximately 121 summary trials resulted in a guilty finding for conduct to the prejudice of good order and discipline; 7 for abuse of subordinates; and 18 for drunkenness. Interestingly, a number of other charges were also used beyond the list given to me by the OJAG. These included disobedience of a lawful command, quarrels and disturbances, and insubordinate behavior.⁴⁵⁷

What is clear from these numbers is that many cases involving sexual misconduct are dealt with as disciplinary matters and disposed of at the summary trial level. Many cases in the dataset involve low-level conduct that does not amount to a *Criminal Code* offence, such as sexual comments or jokes, which may be appropriate to deal with in this way. However, some cases do involve more serious conduct, such as allegations of sexual touching and kissing without consent, both of which amount to sexual assault under the *Criminal Code*. And yet only 39 cases resulted in confinement to barracks or detention; most cases resulted in a reprimand, fine, reduction in rank or more minor penalty. One of Professor Craig’s criticisms in respect of courts martial seems to apply here⁴⁵⁸; serious conduct is at times dealt with through minor charges (especially conduct to the prejudice of good order and discipline under section 129 of the NDA), and less severe penalties.

However, given my recommendation above that *Criminal Code* sexual offences become the exclusive responsibility of the civilian criminal justice system, this more serious conduct which is a cause for concern should now cease to be the subject of summary trials. For the more low-level conduct, or in cases where the civilian prosecutors do not proceed, it will remain possible for the CAF to lay disciplinary charges under the current system if it considers it appropriate.

Bill C-77 and the new system of service infractions

As noted above, the military justice system is currently in flux due to Bill C-77. Throughout my review, I sought information about the status of Bill C-77’s implementation. But I was told repeatedly that no information could be provided as the matter was at the Cabinet level

and subject to Cabinet confidence. It was only after the submission of my draft report that some progress was finally made, which enabled some information to be released.

However, I note that Bill C-77 received royal assent on 21 June 2019. It will finally come into force on 20 June 2022, some three years later. One of Bill C-77's main purposes is the introduction of the DVR into the military justice system. By contrast, the corresponding legislation in the civilian justice system largely entered into force merely three months after receiving royal assent.⁴⁵⁹ The delay in implementing Bill C-77 is, regrettably, consistent with prior attempts at revising the NDA, including Bill C-15, discussed above. I was provided with a table by the OJAG showing various regulatory projects and the time between passage of the legislation and of the enabling regulations. With two notable exceptions, this took between one and two years for regulatory projects not involving the NDA.⁴⁶⁰ In my view, there needs to be a greater assertion of responsibility at the political level to insist upon the implementation of necessary reforms.

As it stands, the text of Bill C-77 replaces the current system of summary trials with “summary hearings”. The current list of service offences under the NDA will be re-classified into service “offences” (triable by courts martial and attracting more severe penalties) and service “infractions” (determined at a summary hearing and attracting minor penalties).

The OJAG provided me with the following summary of the differences between the old system and what is proposed under Bill C-77:⁴⁶¹

Summary Trial	Summary Hearing
Penal / Criminal Tribunal <ul style="list-style-type: none"> • Standard of proof : Beyond a reasonable doubt • Criminal process protections apply 	Administrative Hearing <ul style="list-style-type: none"> • Standard of proof : Balance of probabilities • Administrative principles and procedural fairness apply
Service Offences, including <i>Criminal Code</i> offences ⁴⁶²	Service Infractions to be created by regulations made by the Governor in Council ⁴⁶³
Punishments ⁴⁶⁴ <ul style="list-style-type: none"> • Detention • Reduction in rank • Reprimand • Fine • Confinement to ship or barracks • Extra work and drill • Stoppage of Leave 	Sanctions ⁴⁶⁵ <ul style="list-style-type: none"> • Reduction in rank • Severe reprimand • Reprimand • Deprivation of pay and allowances prescribed in regulations made by the Governor in Council • Minor sanctions to be prescribed in regulations made by the Governor in Council
Criminal record possible	No criminal record

Table 4. Differences between the current system of summary trials and the proposed system of summary hearings.

After the submission of my draft Report, an order-in-council was passed fixing 20 June 2022 as the date of Bill C-77's entry into force. I was also provided with the draft amendments to the QR&Os by the OJAG.

Based on these materials, the service offences currently listed in the NDA remain intact, and will become triable only by court martial. The right of election is repealed. Meanwhile, the draft regulations create three broad categories of service infractions: infractions relating to property and information; infractions in relation to military service; and infractions in relation to drugs and alcohol.⁴⁶⁶

No specific infractions relating to sexual harassment or misconduct are proposed. However, I note the following catch-all infraction to be added at section 120.03(i) of the QR&Os:

A person commits a service infraction who

(i) otherwise behaves in a manner that adversely affects the discipline, efficiency or morale of the Canadian Forces.⁴⁶⁷

I heard conflicting views from the OJAG about whether this provision could be used for sexual misconduct. In early March, I was told that the CAF was contemplating an infraction along these lines, and that it could capture “[l]ower levels of sexual misconduct.”⁴⁶⁸ This was repeated to me verbally in early April 2022.⁴⁶⁹ The same week, however, I was told that this provision could not be used to address sexual harassment or misconduct since the purpose of creating the service infraction regime was to address conduct that did not involve specific victims, such that the DVR would not need to apply.⁴⁷⁰

Needless to say, I am puzzled by this lack of clarity about the handling of sexual harassment and misconduct under the new system.

Moreover, I have several concerns about this new catch-all infraction. First, in common with section 129 of the NDA, its language is extremely vague. Like the definition of adverse personal relationship, it offends the principle of legality in that it lacks the requisite clarity and certainty in the articulation of prohibited conduct.

Second, whatever the original rationale for summary infractions, it seems likely that this provision will indeed be used to address sexual harassment and misconduct that falls short of a criminal offence. This in turn may lead to more serious sexual misconduct being characterized as minor and charged under this provision. As discussed above, this already happens in respect of section 129 of the NDA at both the court martial and summary trial levels. The problem with this use of residual or catch-all provisions is that it grants investigative and prosecutorial authorities a large amount of leeway which may result in the old issues being repeated. It will be important that the use of such powers is properly monitored and reported on following publication of this report, including in the next statutory review of military justice.

Third, if in fact the intent is to elevate all forms of sexual misconduct, as currently defined in the CAF, to the level of court martial proceedings, there will likely be an unfortunate loss of visibility at the unit level. I was told that the purpose of the summary hearing process is that it maintains a local, public, unit-level disciplinary process, which is important for

maintaining unit cohesion, morale and discipline. Three years after the coming into force of Bill C-77, it is more than unfortunate that the process for dealing with lower forms of sexual misconduct as a disciplinary matter remains so poorly designed.

In any event, and particularly if no form of sexual misconduct is addressed at the summary hearing unit level, the CAF should ensure the timely circulation of information regarding criminal and court martial proceedings, involving sexual misconduct so as to ensure that the effect of these proceedings on discipline, morale and education, is not lost entirely.

Under the new system, summary hearings will be non-penal and subject to the civil, not criminal, standard of proof. Findings will be determined on the balance of probabilities rather than beyond reasonable doubt. The only penalties that will be available are a reduction in rank, reprimands, stopping of pay for up to 18 days, and “minor sanction.”⁴⁷¹ Similarly, the DVR will not apply to a service infraction tried by summary hearing.⁴⁷²

What is less clear is how the new summary hearing process differs from an administrative review process, discussed in detail below. Administrative review, whether at the unit level or conducted by the DMCA, is also non-penal, subject to the civil standard of proof, and provides for a scale of remedial measures such as a recorded warning, counselling and probation, up to and including release from the CAF. I was told that the CMP is working on how the administrative review process will interact and work alongside the summary hearing process, but I received few specifics.

In principle, there is no conceptual problem with making CAF members subject to the civilian criminal jurisdiction, the military disciplinary jurisdiction, and CAF internal administrative review processes. The same is true for many professionals who are subject to criminal law, regulatory action by their governing body, and administrative actions in their place of work. But these processes must be clear and not needlessly duplicate one another.

Administrative Action

My terms of reference require me to assess the adequacy of the policies, procedures, programs, and practices in the DND and the CAF that respond to reports of sexual misconduct.

In addition to the disciplinary processes that can be engaged, as addressed earlier, the CAF may also respond to a report of sexual misconduct through administrative action. Administrative action is primarily remedial rather than punitive. It can include counselling, education or training. Such measures are meant to improve a member's conduct and performance.⁴⁷³ In circumstances where a member's misconduct militates against continued service, administrative action can also include release from the CAF.

I have repeatedly heard frustration with administrative action responding to sexual misconduct. I have heard from victims that administrative action takes too long, the process is too opaque, and that it is too much at the whim of a CO, often the one commanding the respondent. I have been told that it is often the complainant who is removed from the unit, posted out, or who loses out on career opportunities as a result of a CO's administrative action in response to a report of sexual misconduct.

I have also heard that COs wait to initiate administrative action in response to sexual misconduct until after a police investigation or even the end of a criminal trial. This lack of action causes victims to question the sincerity of a CO's desire to impose consequences for sexual misconduct. This erosion of confidence has led victims to release from the CAF, sometimes long before a respondent faces any consequence for his misconduct.

COs play a central role in the response to sexual misconduct. Some told me that they could use more assistance, particularly legal advice, to support them in their role. Many felt that the process for releasing a member from the forces is too centralized, and that their assessment of a member's conduct should be given more weight in this "Ottawa-centric" release process, which process I describe below.

A robust response to sexual misconduct at all levels of command is essential to the CAF achieving progress in addressing sexually inappropriate behaviour amongst its members. I address below the role that administrative measures play in this response and, ultimately, my concerns about the CAF's propensity toward unnecessarily duplicative processes.

Sexual misconduct is a conduct deficiency

CAF members are required to maintain professional standards of conduct and performance.⁴⁷⁴

Their standard of conduct is based on established military standards, ethics and values, as identified in regulations, codes of conduct, policies, orders, instructions and directives, including those expressed in *Duty with Honour*.⁴⁷⁵ A conduct deficiency occurs if a CAF member fails to meet an established military standard. Conduct deficiencies are incompatible with effective military service and military ethos.⁴⁷⁶

The standard of performance is based on established military standards applicable to the CAF member's current rank, occupation, experience and position. It establishes the level of performance expected of a CAF member.⁴⁷⁷ A performance deficiency occurs if a member fails to meet an established performance standard.⁴⁷⁸

I understand that instances of sexual harassment and sexual misconduct are treated as conduct rather than performance deficiencies.⁴⁷⁹

Administrative action in response to sexual misconduct

The chain of command must take appropriate and immediate action in the face of sexual misconduct whether or not the CAF member has been charged with an offence under the NDA or the *Criminal Code*.⁴⁸⁰

Upon receiving a report of sexual misconduct, a CO's first step is to ensure the safety and well-being of the victim⁴⁸¹ and then consult with the unit legal advisor on next steps.⁴⁸² Circumstances may warrant immediate action such as separating the member from the unit and ordering no contact with the victim.⁴⁸³ The CO may also need to take administrative steps before any investigation by the police or the unit, such as relieving the member from the performance of military duty.⁴⁸⁴ CAF policy requires that any response to an alleged incident of sexual misconduct should reflect the victim's preferences, including a decision to proceed with an administrative process.⁴⁸⁵

Interim measures

COs have a number of administrative tools at their disposal, stemming from their general responsibilities that a CO "is responsible for the whole of the organization and safety of the commanding officer's base, unit or element, but the detailed distribution of work between the commanding officer and subordinate is left substantially to the commanding officer's discretion."⁴⁸⁶

For example, a CO can remove a respondent from a supervisory position, temporarily modify their work location, or order no contact or any form of communication, directly or indirectly, with the victim or witnesses, if both are within the same unit and under the authority of the CO.⁴⁸⁷

COs may also remove a member from command in response to an allegation of sexual misconduct.⁴⁸⁸ The process is not governed by the NDA or QR&O.⁴⁸⁹ Typically, the commander with authority to appoint a CO has the same authority to remove that officer from command.⁴⁹⁰ Removal from command is based on a loss of confidence in a member's ability to effectively exercise command.⁴⁹¹ The applicable CDS guidelines state: "allegations of personal or professional misconduct...affect how a commander is perceived by subordinates and may necessitate a temporary removal from command, while an issue is being investigated."⁴⁹²

According to CAF guidelines, removals from command should, except in the most exceptional circumstances, be temporary, with a decision to continue with that removal made after all the information is known and procedural fairness has been accommodated.⁴⁹³ Decisions to remove from command can be subject to review; for GOFOs, the decision to remove will usually be made by their appointing authority and any review of that decision will be conducted by the Armed Forces Council (AFC), which advises the CDS.⁴⁹⁴

There are no rules to determine the latitude to give to a subordinate or how tolerant a superior should be.⁴⁹⁵ A CO must consider a number of factors prior to removing a member from command, including:

- the seriousness of the allegations;
- the "notoriety" of the issue and the CAF and public perception of it;
- the principles of Canadian Defence Ethics;
- the subject's ability to effectively carry out the functions of command, including leadership and disciplinary functions, while maintaining public trust and confidence;
- the subject's ability to exercise command given current and projected circumstances; and
- the best interests of the CAF.⁴⁹⁶

This list of factors – including "public perception" and the need to maintain "public trust" – reflects the difficulty of the decision. COs must receive robust legal advice about what "public interest" means, which takes into account the current cultural landscape. The cultural climate evolves, as does the Canadian public's perception of the CAF and what amounts to appropriate conduct. COs should be alive to this evolution as they consider public interest.

A CO may also relieve a member from the performance of military duty on an interim basis, where there are reasonable grounds to believe that the member has committed an offence under the NDA or the *Criminal Code*, has been charged or convicted of such an offence, and/or the CO considers it "necessary" to separate the member from their unit.⁴⁹⁷ In these circumstances, the member must have a reasonable opportunity to make representations prior to being relieved, and the CO must consider this response and provide reasons for the decision.⁴⁹⁸ Relief from performance of military duty is a "paid suspension."⁴⁹⁹

The following direction applies to the imposition of relief from performance of military duty:

Action to relieve a member should only be considered after concluding that other administrative means are inadequate in the circumstances. In determining whether to relieve a member, an authority must balance the public interest including the effect on operational effectiveness and morale, with the interests of the member. A commanding officer must monitor each case to ensure that appropriate action is taken if there are changes in the circumstances on which the decision to relieve a member was based.⁵⁰⁰

I note that the above direction to COs is that relief from military duty should “only be considered after concluding that other administrative means are inadequate.” Similar guidance is provided in respect of removal from command.⁵⁰¹ I disagree with this policy. Relief from performance of military duty, or removal from command, should be available, on par with other measures, as a means for COs to respond to sexual misconduct on an immediate and interim basis.

Relief from performance of military duty, or removal from command, should be available, on par with other measures, as a means for COs to respond to sexual misconduct on an immediate and interim basis.

Investigation and next steps

When a unit is made aware of allegations that a member has engaged in sexual misconduct, an investigation must be conducted to determine the appropriate action.

Based on the result of any investigation, COs must determine whether there is sufficient evidence to warrant administrative action. Administrative action may be initiated for sexual misconduct when there is clear and convincing evidence that establishes, on the balance of probabilities, that an incident or conduct deficiency has occurred.⁵⁰²

In cases where civilian authorities have conducted the investigation, the investigation file will not be available to the CO. However, if a CAF member is found not guilty, a review of the trial transcript, decision of the court or account of the proceedings can assist in determining whether there is sufficient evidence that sexual misconduct took place.⁵⁰³ Further, there is no bar to conducting a unit-based investigation to gather information, after a civilian police authority has completed its own.

According to CAF directives, a CO must determine the appropriate administrative action based on a number of factors, including the member’s rank, military occupation, experience and position, previous conduct deficiencies, if any, and leadership role.⁵⁰⁴ For an incident of sexual misconduct, the CO must also consider the degree to which the act was intrusive or violent, the sentence imposed, if any, whether the respondent ignored a request to stop or failed to confirm consent, the victim’s circumstances, including the impact on their health and well-being, and the respondent’s relationship to the victim, including any position of authority or trust, or difference in rank.⁵⁰⁵

Administrative action may include the imposition of remedial measures (such as a recorded warning, described below), occupational transfer, posting, reversion in rank, recommendation for release issued by an initiating authority such as a CO, or release from the Forces.⁵⁰⁶ In serious cases of sexual misconduct, including repeat offences or cumulative misconduct, a recommendation for release may be the only appropriate step to take by a CO.⁵⁰⁷

Administrative action in response to an incident of sexual misconduct must be initiated with the advice and guidance of the Director Military Careers Administration 2 (DMCA 2). A CO⁵⁰⁸ must contact the DMCA 2 – located at NDHQ – upon determining that there has been sexual misconduct and that an administrative action might be warranted.⁵⁰⁹ However, I understand that this advice is limited to whether an administrative action should be initiated and is not specific advice on the nature of that action. Administrative actions, including remedial measures and any decision to release a member from the Forces, are subject to the grievance process.⁵¹⁰

Remedial measures

Remedial measures available to a CO for any misconduct are, in increasing significance: initial counselling; a recorded warning and counselling and probation.

Remedial measures are meant to make the CAF member aware of their conduct or performance deficiency, assist them in overcoming the deficiency and provide them time to correct their conduct or improve their performance with the support of their chain of command.⁵¹¹ In contrast to disciplinary measures, administrative action puts at issue the suitability of a member's continued career in the CAF. The appropriate administrative action is the one that best reflects the degree of incompatibility between the CAF member's misconduct and their continued service.⁵¹²

It is the CO who selects, initiates and administers a remedial measure.⁵¹³ In determining whether such a measure should be implemented, they must consider:

- the potential consequences if a remedial measure is not initiated;
- whether another administrative action is more appropriate;
- whether the deficiency would be more appropriately dealt with through disciplinary action;
- the existence of any relevant medical employment limitation; and
- whether a disclosed disability was a factor in the conduct or performance deficiency.⁵¹⁴

Before issuing any remedial measure, a CO is expected to conduct a thorough review of the member's personnel file, including previous incidents of misconduct. As described below, DMCA policy recommends that a CO conduct a Unit Level Administrative Review (ULAR), particularly when the member's case is complex, prior to selecting the appropriate administrative action.⁵¹⁵

Remedial measures must be administered confidentially. For initial counselling and recorded warnings, notice may be provided verbally. For conditions and probation, I understand that a Notice of Intent to Initiate Counselling and Probation must be issued. For all remedial measures, the member has the opportunity to respond.⁵¹⁶ Only after a member's response has been considered can a remedial measure be put into place.⁵¹⁷

For every remedial measure, a monitoring period is set for the member to overcome the deficiency and for the supervisor to assess their progress.⁵¹⁸ For initial counselling or a recorded warning, the monitoring period is a minimum of three months and a maximum of six months. For conditions and probation, the monitoring period is a minimum of six months and a maximum of 12 months.⁵¹⁹ In the case of conditions and probation in place for sexual misconduct, the related forms and an account of every progress briefing session must be forwarded to the DGMC.⁵²⁰

Remedial measures are meant to be specific, measurable, attainable, realistic and timely.⁵²¹ COs are directed to hold progress briefing sessions and complete a written account of each session. These reports are retained in the member's personnel file, along with the remedial measure and the required closure letter. Units must track all remedial measures to ensure that progress sessions occur and that files are administratively closed at the end of the monitoring period.⁵²² I understand that there is no centralized tracking system for unit-level remedial measures and monitoring.

Remedial measures can have career consequences. If a CAF member is subject to conditions and probation, they cannot be promoted and may not be eligible for posting for the duration of the probation period.⁵²³ In addition, a reporting officer may comment on a deficiency in the member's performance evaluation, which could have consequences for that member's career.⁵²⁴

Where a CAF member reaches the end of the monitoring period and has overcome the deficiency, a written summary is placed on the member's personnel record; where the CAF member has not overcome the deficiency, further administrative action will be initiated.

Administrative reviews

In cases of a conduct deficiency, an administrative review is the process used to determine what administrative action, if any, is the most appropriate.⁵²⁵ An administrative review is not required prior to initiating such remedial measures as initial counselling, recorded warning, conditions and probation; however, DMCA policy encourages COs to conduct a ULAR in every case, particularly where conditions and probation are being considered.⁵²⁶

A ULAR aims to help organize and summarize the facts and allegations faced by the member, analyze the case in consultation with the applicable sources of support (such as the legal advisor), and provide recommendations for action. ULARs are similar to the administrative reviews conducted by the DMCA, though less formal and are meant to be conducted according to the principles of procedural fairness.⁵²⁷

When the CO has concluded that the appropriate administrative action is to issue a Notice of Intent to Recommend Release, the DMCA conducts an administrative review to determine whether a release is appropriate in the circumstances.⁵²⁸ Generally speaking, for sexual misconduct characterized by repeated or egregious behaviour, the decisions regarding the appropriate administrative action are made by this central administrative authority. Victims are not involved in the administrative review process, though they are provided general information about administrative action.

Administrative reviews conducted by the DMCA consist of the individual who performs the review analysis, and the approving authority who initiates the administrative action as a result of that analysis.⁵²⁹ The level of the analyst and approving authority is dependent on the rank of the member whose conduct is being assessed. For instance, only the CMP can act as the approving authority for administrative action involving a GOFO.⁵³⁰

CAF policy requires that administrative reviews be conducted in a procedurally fair manner. CAF members must receive notice and disclosure of the relevant documents and information upon which the approving authority will make its decision.⁵³¹ The CAF member has the opportunity to provide written representations to the approving authority, who must consider these representations in reaching its decision.⁵³² The CAF member is supported by an Assisting Officer, who liaises with the analyst. The outcome of the administrative review is provided to the CAF member in writing.⁵³³

From 2015 to August 2021, the DMCA conducted 290 administrative reviews related to sexual misconduct. None of these reviews related to the conduct of a senior officer in the rank of colonel or captain (Navy). None related to a GOFO. The majority of the administrative reviews conducted were for junior-ranking NCMs:

Number of administrative reviews by rank – 2015–16 to 31 August 2021 ⁵³⁴	
Rank of accused	# ARs
GOFO	0
Senior officer	7
Junior officer	47
Subordinate officer	8
Senior NCM	41
Junior NCM	186

Table 5. Number of administrative reviews by rank – 2015–16 to 31 August 2021.

Of these 290 administrative reviews conducted by the DMCA, 124 resulted in an administrative action *other* than release from the Forces.

Number of administrative actions – 2015–16 to 31 August 2021 ⁵³⁵			
Counselling and probation	Initial counselling	Recorded warning	Retain without career restrictions
44	1	27	52

Table 6. Number of administrative actions – 2015–16 to 31 August 2021.

As demonstrated in the table above, the DMCA may ultimately conclude – despite the CO having recommended release – that retaining the member without career restrictions (including in the form of remedial measures) is appropriate. I understand this may be due, in part, to the DMCA concluding that there is insufficient evidence to substantiate the recommendation for release, or perhaps that other actions (such as alternative dispute resolution (ADR)) are appropriate.⁵³⁶ I do not want to speculate why approximately 50 of the administrative reviews relating to sexual misconduct resulted in retaining the member without career restrictions. However, for the files for which a CO recommended release and for which the DMCA ultimately found that no administrative action was necessary, the CAF would benefit from an external review similar to the SARP initiated by the CFNIS.⁵³⁷ The intent of this recommendation is to provide for externally-lead quality assessment, providing external input into the administrative review process as it relates to sexual misconduct, to ensure best practices.

RECOMMENDATION #6

The DMCA should engage in an externally-led quality assurance assessment – similar to that conducted by the SARP initiated by the CFNIS – of the administrative reviews conducted from 2015 to date relating to sexual misconduct, which administrative reviews resulted in retaining the member without career restrictions.

In its 2018 Report, the OAG assessed whether the CAF resolved reported cases in a timely and consistent manner. The OAG found that in the majority of the 29 case files of the that it sampled, where members were released or retained without any remedial measures, the decisions were consistent when factors such as rank, incident, and severity were taken into account.⁵³⁸ However, the AG went on to note that, once the DMCA decides on a remedial measure, it is the respondent's CO that has the discretion to decide what type of activities they must do to satisfy the remedial measure: “[...] because of this discretion [...] the type of activities the commanding officers implemented, such as written essays and training sessions, varied widely.”⁵³⁹

According to the OAG, the CAF and the SMRC were developing a suggested list of activities to satisfy the remedial measures appropriate for responding to sexual misconduct. The OAG endorsed providing clear guidelines to help COs implement consistent remedial measures.⁵⁴⁰ By way of update on this point, I was informed that the DMCA does not provide direction on the specific action that the CO chooses to put into place during a remedial measure's monitoring period and that the CPCC and the SMRC did not have anything further to add.

There is merit in unit-level, discretionary action for minor matters. COs must have control over their subordinates and should be able to respond to minor issues of misconduct with flexibility.

While COs should have access to guidance on the appropriate steps to implement a remedial measure for sexual misconduct, this guidance should be focused on ensuring that COs are made aware of the latest considerations and measures that respond appropriately to sexual misconduct, such as restorative engagement or other new initiatives. I encourage the CPCC, working with the SMRC, to ensure that COs have access to up to date guidance in this respect.

Release from the CAF

In deciding the appropriate administrative action, a CO must choose between issuing a remedial measure or a Notice of Intent to Recommend Release. A CO cannot do both. Guidance on this issue states that if release is determined to be the most appropriate course of action, it is “contradictory and inadvisable” and “illogical” to issue the member with a remedial measure for the same incident.⁵⁴¹

As I understand it, issuing a Notice of Intent to Recommend Release is an administrative action in and of itself. A CAF member may object and respond to the CO.⁵⁴² A CO must consider any objections and representations in determining whether or not to proceed with the release recommendation.⁵⁴³ In the event the CO determines the release recommendation is no longer appropriate, they may initiate a remedial measure (following consultation with the DMCA 2 for instances of sexual misconduct).⁵⁴⁴ If a CO proceeds with the release recommendation, they must forward all relevant documentation, including investigation or medical information to the DMCA 2, including the recommended item under which the member should be released.⁵⁴⁵

I appreciate the DMCA's role in ensuring that consistent standards are applied throughout the organization. On balance, I encourage the DMCA to place considerable weight on the CO's position that their member should not continue in service.

The administrative review subsequently conducted by the DMCA in relation to the release recommendation follows the steps set out above.⁵⁴⁶ Possible outcomes include release, a remedial measure (the administration of which is a unit responsibility), and retention in the Forces without remedial measures. This last option may be accompanied by a recommendation for compulsory occupational transfer, or other action, depending on the situation.⁵⁴⁷

I have heard criticisms about the DMCA's dispositions of recommendations for release issued by COs. The perception is that the DMCA is too lenient and that this undermines the authority of those in the field who should be trusted to make the appropriate decision in light of their proximity to the facts, the people, and the impact on morale. On the other hand, I appreciate the DMCA's role in ensuring

that consistent standards are applied throughout the organization. On balance, I encourage the DMCA to place considerable weight on the CO's position that their member should not continue in service.

Release items

There are five categories of “release items” pursuant to which a member may be released from the CAF:

- Item 1, Misconduct;
- Item 2, Unsatisfactory Service;
- Item 3, Medical⁵⁴⁸;
- Item 4, Voluntary; and
- Item 5, Service Completed.⁵⁴⁹

COs can issue a Notice of Intent to Recommend Release relying on items 1, 2 or 5.⁵⁵⁰

Release Item	Category	Reasons for Release	Notation on Record of Service
Item 1	Misconduct	1(b) Service Misconduct	Released for Misconduct
Item 1	Misconduct	1(d) Fraudulent Statement on Enrolment	Released for Misconduct
Item 2	Unsatisfactory Service	2(a) Unsatisfactory Conduct	Service Terminated
Item 2	Unsatisfactory Service	2(b) Unsatisfactory performance	Service Terminated
Item 5	Service Completed	5(d) Not Advantageously Employable	Honourably Released
Item 5	Service Completed	5(f) Unsuitable for Further Service.	Honourably Released

Table 7. Categories of release items.

Depending on the release item, there can be consequences for future employment with the federal government.⁵⁵¹ Notably, assigning a release item must occur after the reason for release has been determined, to ensure the release item is not applied to attach a stigma to a member's release.⁵⁵²

Of the 290 administrative reviews conducted by the DMCA for sexual misconduct from 2015 to August 2021, a total of 166 resulted in release. Of the 166, about half were releases that carried with them a negative notation on the member's service record:

Of the 290 administrative reviews conducted by the DMCA for sexual misconduct from 2015 to August 2021, a total of 166 resulted in release. Of the 166, about half were releases that carried with them a negative notation on the member's service record.

Administrative reviews related to sexual misconduct No. of members released by type of release ⁵⁵³					
Misconduct (Sentenced to dismissal) 1(a)	Misconduct (Fraudulent Statement on Enrollment) 1(d)*	Unsatisfactory service (Unsatisfactory Conduct) 2(a)	Service Completed (Not Advantageously Employable 5(d)	Service Completed (Irregular Enrollment) 5(e)*	Service Completed (Unfit for Further Service) 5(f)
3	1	80	3	1	78
*The administrative reviews conducted by the DMCA under these release items may be related to sexual misconduct; however, they are not triggered by a CO's Notice of Intent to Recommend Release.					

Table 8. Administrative reviews related to sexual misconduct.

Release under item 2(a) tends to result from being convicted of a service offence (or several);⁵⁵⁴ while release under item 5(f) is normally assigned to release for a conduct deficiency⁵⁵⁵ and is meant to apply to members:

- guilty of unsatisfactory conduct, either socially or on duty, in a way that brings discredit to the CAF;
- guilty of a behaviour pattern that causes excessive administrative burden because of disciplinary problems (*e.g.*, numerous minor charges);
- who refuse to adhere to regulations but whose offences are not serious enough to warrant release under item 2 (which tends to require conviction of a service offence); and
- who are unwilling to improve performance but have the ability to do so.⁵⁵⁶

Release due to harmful and inappropriate sexual behaviour

Members unable to meet the standards of Universality of Service for medical reasons may release under release item 3, “Medical”, only after the DMCA conducts an administrative review evaluating their continued service.

The CDS is the sole authority for release for those members whose medical employment limitations are due to HISB and who have identified themselves to the DMCA as victims of HISB in relation to those employment limitations. The CDS’s approval and direction of the release are required to “ensure that all CAF members affected by HISB are given every opportunity to continue their service and that they are not disadvantaged by their illness or injury while they recover.”⁵⁵⁷ Before approving such a release, the CDS must consider a number of factors, including the member’s need for treatment, whether all investigations or proceedings are complete, and whether the member has been afforded sufficient time for comprehensive medical care and support.⁵⁵⁸

Concerns about administrative action for sexual misconduct

In the course of my Review, I have repeatedly heard frustration with administrative action for sexual misconduct. I have heard frustration with issues of transparency and timeliness, both contributing to a lack of trust in the process. These concerns are not new.

Transparency of administrative action

In the 2018 OAG Report, the OAG observed weaknesses in how the CAF shared information with victims:

[D]ue to the obligations of the Privacy Act, in many cases, the chain of command did not tell victims whether administrative actions had been taken and why. In these cases, members may believe that no action was taken. Officials recognized this as an issue and began exploring ways to address it, such as requesting that the perpetrator voluntarily apologize and disclose the result of the administrative review to the victim.⁵⁵⁹

The OAG generally recommended that the CAF introduce comprehensive victim case management services from the time the victim discloses an incident to the conclusion of the case, and ensure that members, service providers, and responsible officials have a clear understanding of what the complaint processes are, how they work, and what the possible outcomes are for both the victim and the alleged perpetrator.⁵⁶⁰

In its May 2019 Report, the Senate Standing Committee on National Security and Defence called for the government to “review the laws, regulations, and policies that result in little or no information being available to current and former CAF members affected by sexual misconduct regarding the outcomes of administrative review processes, following their report of an incident of sexual misconduct and the filing of a complaint.”⁵⁶¹

In July 2019, a direction was issued that victims of sexual misconduct be informed of administrative actions. This direction responded, at least in part, to the 2018 OAG Report, to ensure that COs could “provide victims with information about the outcomes and conclusions of administrative reviews related to their complaint, as well as administrative actions imposed by the chain of command on the person who caused them harm.”⁵⁶² This directive was meant to close the “information gap” highlighted in the 2018 OAG Report. The CAF described this approach as a solution to the competing privacy interests at play, as it “respects due process and fairness to all, and prevents the release of highly sensitive personal information, such as medical or psycho-social assessments or treatment.”⁵⁶³

The above direction has since been superseded by the mandates set out in the DAOD 9005-1, *Sexual Misconduct Response*, which state that the outcome of an administrative action responding to sexual misconduct can be shared with the victim, and the victim’s CO is responsible for informing the victim of their ability to request this information.⁵⁶⁴ Notably, COs are prohibited from disclosing actions that include highly sensitive personal information, such as medical or psycho-social assessment or treatment.⁵⁶⁵

Guideline documents that I have reviewed highlight maintaining “regular and open two-way lines of communication” with victims, including during delays and periods of inaction.⁵⁶⁶ COs are also encouraged to manage expectations, to be “clear and upfront [with victims] about what kinds of information they may and may not have access to throughout the process,” such as privacy limitations on sharing sensitive personal information.⁵⁶⁷

I take from the above that COs can inform a victim that an incident of sexual misconduct has been addressed by way of administrative action. However, COs are cautioned against disclosing sensitive personal information. I have no doubt this contributes to a conservative approach to communicating with a victim. It is inevitably easier to err on the side of caution and confidentiality.

I am not of the view that providing more information to the victim than what is prescribed is necessary for administrative processes. The CAF may wish to consider exploring whether it is feasible to impose additional obligations of disclosure on COs (*e.g.*, providing complainants status updates, such as when an investigation has started or is completed, or when an administrative review has been commenced); however, administrative action is a personnel issue and between the CAF and the member. My view here is subject to my comments below, on the dubious need for remedial measures at all, given the upcoming changes to the disciplinary process prompted by Bill C-77.

Timeliness of administrative action

In its 2018 OAG Report, the OAG highlighted that, for cases of inappropriate sexual behaviour, there was no policy requiring the DMCA to complete administrative reviews within a given time frame.⁵⁶⁸ According to the OAG, while some delay was out of the DMCA’s control – such as the time to obtain legal transcripts or medical files – it took the DMCA on average one year to reach a decision and take administrative action.⁵⁶⁹ The OAG emphasized that the delay contributed to the victim’s perception that the case was not being taken seriously.⁵⁷⁰

More recently, of the reviews conducted by the DMCA for sexual misconduct between 2015 and August 2021, it took an average of 328 days from the time that the DMCA opened the administrative review file to the time the decision was delivered to the member:

Time from opening the administrative review file to the decision ⁵⁷¹	
Timelines	# files
Up to 3 months	46
3 to 6 months	67
6 to 9 months	46
9 months to 1 year	37
Over 1 year	94

Table 9. Time from opening the administrative review file to the decision.

I understand that there are many reasons that contribute to a lengthy process. Indeed, internal documents acknowledge that administrative reviews “can be lengthy, depending on complexity, ongoing legal processes and the workload within DMCA.”⁵⁷² I understand that the DMCA’s review is often dependent on receiving information from third parties, which can add delay to the process. I am not in a position to assess the resources available to the DMCA, although I understand that the caseload within the organization is significant. However, almost a year is a long time to wait – for both the complainant and the respondent – to learn whether an administrative action, including release, will be initiated for sexual misconduct. This passage of time erodes trust in command and may make any administrative action taken largely ineffective. This is exacerbated in an environment where the individuals involved may be posted out of a unit before the conclusion of an administrative review, such that they may never learn of its resolution.

Issues of timeliness may be heightened when there is a charge of sexual misconduct under the NDA or the *Criminal Code*. I have heard from stakeholders, including COs, that commanders sometimes wait to initiate administrative action until after a police investigation or even a criminal trial is complete. This inertia – perhaps motivated by a cautious approach to understanding and investigating the facts – invariably lengthens the time that it takes to engage in administrative measures.

Yet, according to internal guideline documents, administrative action is meant to be *complementary* to disciplinary proceedings, and both processes are necessary to assure unit cohesion and discipline.⁵⁷³ Provided a CO (or DMCA analyst) is convinced that the member has engaged in sexual misconduct, administrative action can and should be taken without having to wait for the outcome of other proceedings.⁵⁷⁴ Even where a member is acquitted in court or the charges are dropped, administrative action can still be taken.⁵⁷⁵

This policy approach echoes Justice Deschamps’ support of the need for *parallel* measures: “even where a case of sexual assault is referred to civilian authorities, the CAF should carry out its own parallel assessment as to whether any administrative sanctions should be imposed (for example, suspension, demotion, release from the CAF).”⁵⁷⁶

It is fundamental that COs respond to sexual misconduct. It is a requirement of command. As such, subject to my comments below addressing my concern as to the overlap in function and unnecessary duplication in process that may result from the summary hearings to be implemented in response to Bill C-77, I encourage the use of administrative action – being the administrative review process conducted in respect of release – in parallel with disciplinary proceedings.

While I have heard concerns that proceeding with administrative action at the same time as a criminal or disciplinary proceeding puts the subject of both proceedings at risk of self incrimination – this concern has been addressed in the many professional environments in which administrative measures have to be activated without having to wait for the outcome of criminal proceedings.

I also encourage the use of administrative action, where appropriate, in parallel with investigations and proceedings by the CHRC and CHRT, respectively, which I address below in the section on Complaints. Here again, with proper legal representation, all concerns can be addressed before the relevant authorities on a case by case basis.

Overlap between summary hearings and administrative actions

The CAF has been revising its summary trial process to respond to the amendments to the NDA arising from Bill C-77. Summary hearings for service infractions will soon replace summary trials for service offences.⁵⁷⁷

These summary hearings will not be penal. They are meant to respond to minor disciplinary breaches resulting in no criminal record. The standard of proof will be the same as it is for administrative actions – the balance of probabilities.

With the implementation of Bill C-77, the CAF will be introducing a disciplinary process that is similar to the administrative review process. The same standard of proof applies to the conduct deficiency at issue, and both processes are non-criminal in nature and outcome.

With the implementation of Bill C-77, the CAF will be introducing a disciplinary process that is similar to the administrative review process. The same standard of proof applies to the conduct deficiency at issue, and both processes are non-criminal in nature and outcome. While both may be engaged for the same conduct, their objectives are said to be different: the disciplinary process is said to be punitive, and the administrative process remedial. And there are differences between the two: summary hearings are public, unlike administrative reviews, and are not subject to the grievance process. Their outcomes are also different, with the sanctions resulting from conviction of a summary infraction ranging from minor sanctions to a reduction in rank, and the administrative actions resulting from an administrative review ranging from initial counselling up to release from the Forces.

As I describe above in the section on Military Justice, I do not yet know what type of sexual misconduct if any, will be considered a summary infraction, making it subject to the new summary hearing process. I have heard different things from the CAF in this respect: that certain types of minor sexual misconduct could be charged as service infractions, subject to the summary hearing process; and the opposite, that the summary hearing process will not be used for sexual misconduct of any type.

Given the current lack of certainty on this issue, I am limited in my ability to vet a fully integrated and conceptually sound restructuring of how the CAF should deal with sexual misconduct.

However, it is clear that with the introduction of summary hearings in place of summary trials, one aspect of the disciplinary process inches closer to the administrative arena. It is difficult to understand the purpose of imposing on COs and their unit the dual obligation to conduct both a disciplinary proceeding and an administrative one that assess the same facts on the same evidentiary standard.

If some form of sexual misconduct was to be dealt with at the unit level by way of both a summary hearing and administrative action – a matter on which I was given contradictory information – I urge the CAF to consider reconciling summary hearings and administrative reviews into one, with the introduction of remedial and other administrative measures, similar to conditional discharges under the *Criminal Code*, as a potential outcome in the summary hearing process.

It is difficult to understand the purpose of imposing on COs and their unit the dual obligation to conduct both a disciplinary proceeding and an administrative one that assess the same facts on the same evidentiary standard.

Complaints

Complaints of sexual misconduct are, generally speaking, handled by the chain of command. However, victims mistrust the chain of command and so do not report. I have heard this mistrust time and time again in the course of my Review.

As a solution, multiple stakeholders internal and external to the Defence Team have recommended that complainants be given alternative reporting options – outside the chain of command. However, I have not received any guidance as to what the governance structure of such an external entity should look like. An external entity cannot exist in the ether.

Consistent with my recommendation that *Criminal Code* sexual offences be transferred to the civilian criminal justice system, I believe that the avenues for complaints within the CAF, particularly complaints of a serious nature, must be civilianized. As such, I recommend that should a complaint be brought against the CAF to the CHRC, the CAF should allow the CHRC to proceed with such complaint for sexual harassment, or for discrimination on the basis of sex, regardless of whether the complainant has exhausted internal complaint mechanisms. The CHRC is external to the CAF, and has the experience and expertise to assist victims of sexual harassment. Moreover, the CAF should align its harassment policy with Bill C-65 (see below), in a similar fashion as the DND.

My recommendation to remove complaints from the chain of command should not be construed as absolving the chain of command of its responsibilities with respect to sexual misconduct. The call for external reviews and entities must be balanced with the need for the CAF to take responsibility for the management of personnel conflict and human resources issues. Indeed, the chain of command must maintain its responsibility for ensuring a safe and healthy working environment for its members by using all the tools at their disposal, including disciplinary measures, to promptly and efficiently deal with sexual misconduct in the workplace. Nothing precludes the chain of command from taking any other measure deemed necessary to address the sexual misconduct, concurrently with any complaint filed with the CHRC.

Sexual misconduct is *sui generis*, and should not be conflated with other forms of misconduct. The scale and severity of sexual misconduct in the CAF, as well as the trauma and stigmatization of victims of sexual misconduct, are well documented.⁵⁷⁸ In time, the initiatives that result from my recommendations may be adapted and extended to other forms of misconduct. But for now, the focus should be on resolving the issues with respect to sexual misconduct, the most large-scale and prevalent form of discrimination in the CAF today.

The DAOD 5012-0, *Harassment Prevention and Resolution*

There are two main complaints processes addressing sexual misconduct in the CAF. In addition to reporting under the DAOD 9005-1, *Sexual Misconduct Response*, CAF members can also file sexual harassment complaints under the CAF's general harassment policy, set out in the DAOD 5012-0, *Harassment Prevention and Resolution*, and the *Harassment Prevention and Resolution Instructions*.⁵⁷⁹

Prior to the enactment of an *Act to amend the Canada Labour Code (harassment and violence)*, the *Parliamentary Employment and Staff Relations Act* and the *Budget Implementation Act*⁵⁸⁰ (Bill C-65), the DND and the CAF shared the same harassment policy, which flowed “directly from and [is] consistent with the Treasury Board of Canada Secretariat Policy on the Prevention and Resolution of Harassment in the Workplace.”⁵⁸¹

However, effective 1 January 2021, “[t]he DND/CAF implemented a two streamed approach.”⁵⁸² Workplace harassment incidents where both parties are DND employees, as well as incidents that involve a DND employee and a CAF member are now addressed under the *Workplace Harassment and Violence Prevention Interim Policy*⁵⁸³, adopted pursuant to Bill C-65. Incidents involving only CAF members continue to be addressed pursuant to the DAOD 5012-0 and the *Harassment Prevention and Resolution Instructions*.⁵⁸⁴

Complaints under the DAOD 5012-0 must be submitted to the Responsible Officer (RO) or to the unit Harassment Advisor (HA). Being an HA, which is a secondary duty, requires a five-day course. Complaints that go first to the HA must be forwarded in any event to the RO without delay. A complaint can also be submitted to the next person in the chain of command, if the RO is the subject of the complaint.⁵⁸⁵

The RO tends to be a CO or his or her designate.⁵⁸⁶ After receiving a complaint, the RO must conduct a situational assessment, based only on the information received from the complainant, to determine whether the complaint contains all the elements required to proceed, and whether the allegations as stated, and if founded, meet the definition of Harassment.⁵⁸⁷

If the harassment criteria are not met, the RO will inform the parties of its decision. If the harassment criteria are met, the RO will attempt to resolve the complaint using ADR. If ADR is not appropriate or unsuccessful, the RO will ensure that an administrative investigation is undertaken and a decision rendered.⁵⁸⁸

The Harassment Criteria are:

- improper conduct by an individual;
- individual knew or ought reasonably to have known that the conduct would cause offence or harm;

- if the harassment does not relate to a prohibited ground of discrimination under the *Canadian Human Rights Act*, the conduct must have been directed at the complainant
- the conduct must have been offensive to the complainant;
- the conduct may consist of a series of incidents, or one severe incident which had a lasting impact on that complainant; and
- the conduct must have occurred in the workplace.⁵⁸⁹

If there is a possibility that the complaint relates to a *Criminal Code* or a service offence under the *Code of Service Discipline*, the appropriate authority will be engaged.⁵⁹⁰

Harassment Investigations

If the RO is “completely satisfied that [it] has all the necessary and relevant facts and that the parties have, in accordance with the principles of procedural fairness, been adequately heard”, the RO may decide to make a determination without further investigation.⁵⁹¹

If further investigation is required, a harassment investigator will be appointed to conduct the investigation. The *Harassment Prevention and Resolution Instructions* provide that the investigator “must be capable of conducting an independent investigation in a thorough, impartial, unbiased, discreet and sensitive manner” and “should be trained in administrative/harassment investigation techniques”. In addition, “[w]here possible and practical, the [investigator] should be equal, or superior in rank or civilian classification, to both [parties]”. Finally, the *Harassment Prevention and Resolution Instructions* strongly encourage the appointment of an investigator that is “outside of one’s unit, if feasible.”⁵⁹² I understand that harassment investigations are sometimes conducted by a civilian third party, including investigators from the ICCM.

The investigator must prepare a draft report for submission to the RO, and to both parties for comments. The final report, which must contain a finding as to whether harassment occurred or not, is forwarded to the RO for decision.⁵⁹³

The Responsible Officer’s decision

The RO has the responsibility and authority to make a final determination on whether harassment has occurred. Once satisfied with the completeness of the final report the RO may, in whole or in part, accept, reject or vary the findings as to whether or not harassment has occurred. The RO will decide what action should be taken as a result.⁵⁹⁴

Aligning the harassment policies of the DND and the CAF

As I noted above, in response to Bill C-65, the DND implemented the *Workplace Harassment and Violence Prevention Interim Policy*.⁵⁹⁵ As the CAF is not subject to the *Canada Labour Code*⁵⁹⁶, the legislative changes enacted through Bill C-65 do not apply to the CAF.

However, in a message to the Defence Team from December 2020, the former DM and the former CDS stated that “the VCDS had been tasked with addressing the potential changes to CAF policies and programs” in order to “modernize and align where possible with the Canada Labour Code”.⁵⁹⁷ According to representatives of the Assistant Deputy Minister (Human Resources-Civilian) (ADM(HR-Civ)), there has been some back and forth as to whether a unified Defence Team approach with respect to the harassment policy is possible.⁵⁹⁸

I understand that the management of Bill C-65 now falls under the mandate of the CPCC, and that it is the ICCM – now under the CPCC – that is the “lead” on work to modernize and align the CAF’s harassment policies with the *Canada Labour Code*.⁵⁹⁹ According to the ICCM’s 2021 Annual Report:

Over the next year, further work will be led by ICCM and a CAF Working Group in order to; enhance the CAF prevention framework, to align, as much as possible, with the intent of the Canada Labour Code; align with other existing frameworks and programs (i.e., sexual misconduct, hateful conduct); enhance awareness and revamp role-based training; and provide an extensive toolkit to the chain of command to assist in the resolution of incidents.⁶⁰⁰

I requested an update from the CPCC on the status of aligning CAF policies with Bill C-65. I was informed that there was not much information to provide at this time.

The CAF must expedite its work to align the CAF harassment policy with Bill C-65. In line with my recommendations to civilianize these types of processes, I believe the CAF should be subject to the same, or similar, rules on harassment as the rest of the federal public service.

In the event that the CHRC does not accept a complaint, CAF members would then be able to turn to the process currently available to DND employees under Bill C-65, which process has a broader scope to prevent harassment.

The Integrated Conflict and Complaint Management

The ICCM has a role to play in harassment complaints by members of the CAF.

Generally, the mission of ICCM is to “[e]nable the Defence Team to effectively manage their conflicts and complaints early, locally and informally, and guide them through formal mechanisms when appropriate.”⁶⁰¹ Until recently, the ICCM reported to the VCDS. It now reports to the CPCC. It reached full operational capacity on 20 July 2018.⁶⁰²

The ICCM is headquartered in Ottawa. However, its Conflict & Complaint Management Services (CCMS) are located at 16 CCMS offices on bases and wings across Canada. These offices are staffed with military and civilian personnel. All CAF members, including COs, can consult a CCMS agent or agent supervisor for information about the harassment complaints process. Responding to such requests is a CCMS agents’ primary duty, for which they receive more training than HAs. CCMS agents are part of the Service Delivery

Directorate of ICCM. The service delivery team, in addition to offering expert advice, also delivers ICCM's ADR mechanism, offering conflict coaching, mediation, facilitation, workplace restoration, and training. This ADR is available to both DND Public Servants and CAF members.⁶⁰³

In addition to advice and ADR by way of its service delivery team, ICCM also retains stewardship of the CAF grievance system, including full oversight and administration of the CAF grievance process, as well as the communication of the CDS' intent with respect to grievance resolution.⁶⁰⁴

The ICCM also responds to instances of discrimination by offering human rights complaints analysis, mediation and resolution. It tracks cases outside CAF's systems, which I understand includes the CHRC and CHRT⁶⁰⁵. Finally, the ICCM provides advice to the chain of command regarding harassment and violence in the workplace, and is mandated with CAF harassment investigative capabilities in select instances of harassment complaints.⁶⁰⁶

ICCM's role vis-à-vis sexual harassment

According to the then Minister and CDS:

ICCM also helps address two recommendations made by former Supreme Court Justice Marie Deschamps in her March 2015 report: the need to simplify the harassment complaint process and the need to establish a better harassment complaint tracking system.⁶⁰⁷

As mentioned above, CCMS agents (and their supervisors), can assist all members of the CAF, including the chain of command, in understanding the policies and procedures relating to harassment, and advise them on the options available to them. However, CCMS offices are not reporting centres, and complaints are not filed with CCMS agents.

The ICCM does not have any authority in respect of the complaints resolution process. However, it can assist a CAF member to ensure that the complaint process is respected by facilitating communication with the chain of command. I was told that in a good majority of cases, this is effective.⁶⁰⁸

With respect to establishing a better harassment complaint tracking system, the ICCM did establish the ICRTS. However, only the complaints that are brought to the attention of a CCMS agent, or to a HA who has received training on how to use the ICRTS, are registered into the ICRTS. Between July 2018 and August 2021, only 29 cases of sexual harassment were registered in the ICRTS⁶⁰⁹, three in 2018 (July to December), 13 in 2019, eight in 2020 and five in 2021 (January to August).

Finally, there is a protocol between the ICCM and the SMRC according to which agents at the ICCM “will provide the SMRC contact information in cases where inappropriate sexual behavior is reported and the member is seeking further support and resources”⁶¹⁰, and counsellors at the SMRC will encourage CAF members who have experienced sexual misconduct to contact the ICCM to obtain assistance in initiating a complaint.⁶¹¹

Conflicting roles of the ICCM

Insofar as complaints relate to matters of sexual misconduct, the work of the ICCM seems duplicative of the mandate I recommend for the SMRC, which has the stronger expertise in assisting victims and survivors of sexual misconduct; however, the ICCM has a base/wing presence that the SMRC does not currently have, although it is actively working on establishing regional offices. Further, the ICCM is a CAF operation, which is arguably still too closely related to the chain of command to generate the trust of sexual misconduct complainants.

The ICCM provides services to the chain of command and to CAF members, both complainants and respondents. According to the ICCM's 2021 Annual Report, inquiries from the chain of command to CCMS offices represented "approximately 50% of all inquiries."⁶¹² There is a clear conflict of interest in the ICCM's multiple functions of advising both the complainant and the respondent, as well as supporting the chain of command. The ICCM cannot assume all roles in conflict management, including with respect to grievances and human rights complaints.

There is a clear conflict of interest in the ICCM's multiple functions of advising both the complainant and the respondent, as well as supporting the chain of command.

As explained below with respect to the SMRC, the support provided to victims must not blend with support provided to the chain of command and to respondents. This can only dissuade victims from getting help. Indeed, as highlighted above, in the case of ICCM, very few cases of sexual harassment are registered in the ICRTS.

Furthermore, all victim support should be available under the roof of the SMRC, which should be entirely dedicated to victims. The ICCM is not positioned to provide advice to victims of sexual misconduct. Duplicating the support services available to them only serves to confuse victims on where they should go for assistance.

Finally, many ADR solutions are offered by the ICCM. I agree with Justice Deschamps that ADR is "generally inappropriate in addressing sexual harassment complaints."⁶¹³ As such, ADR should only be used in appropriate cases, as it would be if done under the expertise of the CHRC, described below.

The Canadian Human Rights Commission and Tribunal

There already exists an external structure, independent of the DND and the CAF, which is available to receive, investigate and hear complaints of sexual harassment against the CAF and CAF members: the CHRC and the CHRT.

Application of the *Canadian Human Rights Act* to the CAF

The CAF is subject to the *Canadian Human Rights Act*.⁶¹⁴ Section 14(1) of the CHRA provides that it is a discriminatory practice to harass an individual on a prohibited ground of discrimination. Sexual harassment is deemed to be harassment on a prohibited ground.⁶¹⁵

The DAOD 5516 series addresses human rights in the CAF, and makes it clear that CAF members must comply with the CHRA, and in the event of a discriminatory practice, can file a complaint against the CAF.

The DAOD 5516-0, *Human Rights* provides:

2.4 The DND and the CAF must:

- a. promote the principles of the CHRA;
- b. inform DND employees and CAF members of their rights and obligations under the CHRA, and of behaviour that constitutes a discriminatory practice;
- c. provide leaders, managers and supervisors with guidance and support to enable them to carry out their responsibilities in preventing discriminatory practices and resolving conflicts;
- d. establish complaint resolution processes; and
- e. monitor the effectiveness of this DAOD and DAOD 5516-1, Human Rights Complaints.⁶¹⁶

The DAOD 5516-1, *Human Rights Complaints*, which addresses the complaints process, provides:

2.1 Any policy or practice in the DND or the CAF that is a discriminatory practice may result in a complaint under the Canadian Human Rights Act (CHRA).

(...)

2.3 DND employees and CAF members must not subject any person in the workplace to a discriminatory practice, or interfere or attempt to interfere in the human rights complaint process.

(...)

4.1 Under the CHRA any person may file a complaint against the DND or the CAF of an alleged discriminatory practice. Complaints are filed with the CHRC.

(...)

5.1 DND employees and CAF members must comply with this DAOD. Any DND employee or CAF member who subjects another person to a discriminatory practice in the workplace, or interferes or attempts to interfere in the human rights complaint process, may be liable to disciplinary or administrative action, or both. (...) ⁶¹⁷

In addition, the DAOD 5012-0's definition of harassment provides that "[i]t also includes harassment within the meaning of the *Canadian Human Rights Act*." The DAOD 5019-0, *Conduct and Performance Deficiencies*, provides that CAF members are expected to "respect the dignity and value of all persons by treating them with respect and fairness at all times and in all places in accordance with the *Canadian Human Rights Act*."⁶¹⁸

Complaints process under the CHRC and the CHRT

The CHRC complaints process is straightforward and can be summarized as follows:

1. Filing a complaint

To file a complaint, individuals must complete a complaint form that includes the specific ground of discrimination, a detailed description of what happened, and the negative effects it had on them.⁶¹⁹

Upon receipt, the CHRC reviews the complaint to determine whether the complaint is admissible, and whether they can accept the complaint or not.

2. Informing the respondent

If the complaint is accepted, the CHRC informs both the complainant and the respondent in writing. The respondent will be asked to fill out a response form, which must be sent to the complainant and the CHRC. The complainant will then have an opportunity to reply to this response.

3. Mediation

The CHRC will then determine if mediation should be offered, which it would facilitate.

If mediation is not possible, does not work, or is refused by one of the parties, the file will proceed to assessment.

4. Referral to Human Rights Commissioner

A Human Rights Officer will assess the complaint by considering whether there is sufficient evidence to support the claims made by the complainant. The Human Rights Officer can request information from either party to prepare their report. Both parties will be given a copy of this report, on which they can provide comments.

The report, as well as any comments made by both parties will be provided to a Commissioner, who will review the information and make one of the following decisions:

- dismiss the complaint;
- send the complaint to conciliation;
- defer their decision and request more information and further analysis; or
- refer the complaint to the CHRT.

The decision made by the Commissioner is final.⁶²⁰

5. The CHRT

If the complaint is referred to the CHRT, the tribunal will hear evidence and determine whether the complaint is established. If there is a finding of discrimination, the CHRT will determine an appropriate remedy. The order can include any of the following terms:

- cease the discriminatory practice and take measures to prevent the practice from occurring in the future (section 53(2)(a) of the CHRA);
- make available to the victim the rights, opportunities or privileges that were denied (section 53(2)(b) of the CHRA);
- compensate the victim for any lost wages as a result of the discrimination (see section 53(2)(c) of the CHRA);
- compensate the victim for the additional costs of obtaining alternative goods, services, facilities or accommodation as a result of the discrimination (section 53(2)(d) of the CHRA);
- compensate the victim up to \$20,000 for any pain and suffering that the victim experienced as a result of the discrimination (section 53(2)(e) of the CHRA);
- compensate the victim up to \$20,000 if the discrimination was wilful or reckless (section 53(3) of the CHRA); and
- award interest on an order to pay financial compensation (section 53(4) of the CHRA).⁶²¹

From the Deschamps Report to the present

The Deschamps Report states that the CHRC, along with the Ombudsman, provided “little support or assistance to victims of sexual assault.”⁶²² She explained:

A second external resource sometimes cited by the CAF is the Canadian Human Rights Commission. Members are told that they are free to go to the CHRC to seek redress in relation to complaints of sexual harassment. The difficulty with this channel is that the CHRC will only accept a complaint if the member has first exhausted all internal avenues within the CAF. In other words, the complainant will generally have to take the complaint up the chain of command and through the grievance process before the CHRC will accept his or her complaint. In fact, statistics provided to the ERA indicate that no harassment complaint – which would include a complaint of sexual harassment – was referred to the Canadian Human Rights Tribunal between January 1, 2009 and July 18, 2014.⁶²³

Justice Deschamps’ comments were based on section 41(1)(a) of the CHRA which provides:

41 (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that,

(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available.

I was told by the CHRC's Chief Commissioner that in her view, Justice Deschamps' characterization of the process was not completely accurate. She explained that matters typically do not proceed because the CAF objects, on the basis of section 41(1)(a), and insists that internal procedures first be exhausted.⁶²⁴

Following the release of the Deschamps Report, members of the CHRC met with the Commander of the CSRT-SM to dispel the perception that the CHRC was not a viable option for CAF members and “to offer to work collaboratively to ensure that sexual harassment complaints and other complaints from people in their workplace in vulnerable circumstances are dealt with efficiently and effectively.”⁶²⁵

In particular, the CHRC asked the CAF to stop raising objections on the basis of section 41(1)(a) of the CHRA, thereby allowing the CHRC to investigate the complaint and issue a report without CAF members having to exhaust internal complaint mechanisms before reporting to the CHRC. However, according to the CHRC, the CAF was not open to this request.⁶²⁶

I understand that the CAF has often taken a tough stance in litigation. This is consistent with what I have heard about the CAF being resistant to scrutiny. Unfortunately, this acts as an additional barrier to complainants who should not have to face such an adversarial stance.⁶²⁷

Since the release of the Deschamps Report, only 42 complaints against the CAF have been filed with the CHRC, claiming discrimination on the basis of sex:

Complaints against the Canadian Armed Forces by Ground of Discrimination – 2015 to 2021	
Grounds of Discrimination	Number of Complaints
Disability	106
Sex	42
Race	38
National/Ethnic Origin	38
Colour	26
Family Status	25
Age	23
Religion	19
Other Grounds (Marital Status, Sexual Orientation, Gender Identity, Pardoned Conviction)	24

Table 10. Complaints against the Canadian Armed Forces by Ground of Discrimination – 2015 to 2021.

Note: Due to complaints citing multiple grounds of discrimination, the total number of grounds will differ from the total number of complaints.

Source – Data provided by the CHRC

These complaints may not all be related to sexual misconduct. Therefore, we can infer that very few complaints have been made to the CHRC against the CAF for sexual harassment between 2015 and 2021. It is not possible to determine the number of complaints per discriminatory practice that might have contained elements of sexual misconduct.

Complaints against the Canadian Armed Forces by Discriminatory Practice – 2015 to 2021	
Discriminatory Practice	Number of Complaints
Denial of Service	10
Employment-related	176
Discriminatory Policy or Practice	74
Harassment	40

Table 11. Complaints against the Canadian Armed Forces by Discriminatory Practice – 2015 to 2021.

Note: Due to complaints citing multiple discriminatory practices, the total number of discriminatory practices will differ from the total number of complaints.

Source – Data provided by the CHRC

The CHRC told me that their biggest concern relates to the CAF members who do not go to them. They added that the fear of reprisal or retaliation is very real to victims who do file a complaint.⁶²⁸ However, I note that the CHRA protects complainants from retaliation by making it “a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.”⁶²⁹

The CHRC is also competent to deal with complaints that occurred outside Canada if the “victim of the practice was at the time of the act or omission a Canadian citizen or an individual lawfully admitted to Canada for permanent residence.”⁶³⁰ This would cover most CAF members.⁶³¹

The CHRC reiterated their interest in being part of the solution. They mentioned that the CPCC had reached out to them seeking input in the fall of 2021, but they had not heard from them since.⁶³²

The CHRC insisted that they are an option for CAF members who experience sexual harassment and discrimination on the basis of sex. In support of this assertion, they assured me that since the Deschamps Report they had simplified their complaints process. In addition, they explained that they had tools at their disposal to shorten delays. Currently, complaints made against the DND and the CAF are given priority. Files are also prioritized based on the vulnerability of the complainant.

The CHRC also assured me that, if they were provided with adequate resources, they could deal with an influx of cases from the CAF. They added that the CHRT would also require resources to ensure that all matters are dealt with expeditiously there as well.

In light of the above, and consistent with my recommendation to send all *Criminal Code* sexual offences to the civilian criminal justice system, I recommend that the CAF allow the CHRC to assess any complaint for sexual harassment, or for discrimination on the basis of sex, regardless of whether the complainant has exhausted internal complaint mechanisms.

In my section on Definitions of Sexual Misconduct and Sexual Harassment within the CAF, I recommend that the CAF adopt the *Canada Labour Code*'s definition of harassment. I understand that this definition is broader in scope than the definition of harassment adopted by the CHRC and the CHRT. However, I leave it to the CHRC to interpret these definitions contextually, to capture the unique features of sexual harassment in a military environment such as the CAF.

RECOMMENDATION #7

The CAF should not file any objections based on section 41(1)(a) of the CHRA, and should allow the CHRC to assess any complaint for sexual harassment, or for discrimination on the basis of sex, regardless of whether the complainant has exhausted internal complaint mechanisms.

The Minister should seek assistance from her colleagues to ensure that the CHRC and the CHRT are adequately resourced to assess complaints against the CAF and hear them in a timely manner.

Legal costs and damages

In addition to the procedural barrier identified above, I have identified two other significant barriers for complainants who wish to assert their rights under the CHRA:

- the CHRT's lack of authority to award legal costs; and
- the capping of damages at \$20,000 for general damages, and \$20,000 for willful or reckless conduct.

Currently, the CHRT does not have the authority to award legal costs. This question was settled by the Supreme Court of Canada in its 2011 *Mowat* decision.⁶³³ Therefore, even if a complaint is substantiated, the complainant is responsible for the entirety of legal costs. Such costs can represent thousands of dollars for complainants, depending on the complexity and the length of the file. By way of example, the complainant in *Mowat* indicated that her legal costs totalled more than \$196,000.⁶³⁴

In addition, the CHRA limits the award of general damages to \$20,000 “for any pain and suffering that the victim experienced as a result of the discriminatory practice.”⁶³⁵ An additional maximum of \$20,000 can be awarded by the CHRT where the respondent engaged in the discriminatory practice “wilfully or recklessly.”⁶³⁶ The cap on damages under the CHRA has not changed since 1998.

Moreover, other than Saskatchewan and Manitoba, Canada is the only jurisdiction that imposes a cap on general damages. In contrast with the meager amount of \$20,000 in general damages available to complainants before the CHRT, tribunals in some provincial jurisdictions have awarded general damages in amounts of over \$170,000, namely in cases of sexual misconduct.⁶³⁷

These create additional deterrence for complainants to seek legal representation, or even file a complaint with the CHRC. The cost of having a lawyer or the pressure of proceeding without counsel are both additional burdens a complainant may not wish to take on. In my view, the barriers described above are inconsistent with the objective of the human rights regime.

With this, I believe allowing the CHRT to award legal costs and removing the cap on damages would go a long way in increasing access to justice for complainants, including CAF members who do not have adequate alternatives.

RECOMMENDATION #8

The CHRA should be revised to permit the award of legal costs and to increase the amount in damages that can be awarded to successful complainants. To assist in the implementation of this recommendation, the DM should bring this matter to the attention of the appropriate authority on an immediate basis.

The ICCM's role regarding human rights complaints

I noted above that the ICCM plays a role in human rights complaints. Specifically, the ICCM Director, External Review is responsible for managing all files going to the CHRC; preparing responses to human rights complaints against the CAF; and providing advice to senior military and civilian personnel on human rights issues and complaints.⁶³⁸

In addition, the ICCM's Director, Service Delivery – responsible for the CCMS agents – provides information and advice to CAF members on harassment policies within the CAF. Both Directors report to the same Director General.

These opposing responsibilities create a real conflict of interest for the ICCM, especially in light of my recommendation that sexual harassment complaints be referred to the CHRC. The ICCM cannot on one hand provide advice to a complainant regarding a sexual harassment complaint, and also be tasked with responding on the CAF's behalf to a sexual harassment complaint filed with the CHRC against the CAF. Therefore, in my view, the responsibilities of the Director, External Review should be reassessed in this light.

Complaint process review by the CPCC and McKinsey

There are multiple complaints processes available to Defence Team members. They may report, disclose or otherwise file a complaint relating to sexual harassment and sexual misconduct, including reprisal conduct, to:

- The chain of command, under 9005-1, *Sexual Misconduct Response*;
- Police, either civilian or military, in cases of criminal sexual misconduct;
- For CAF members, a HA or RO, under the DAOD 5012-0, *Harassment Prevention and Resolution*;
- For DND employees and Staff of the Non-Public Funds, to their supervisor/manager or to the designated recipient, under the *Workplace Harassment and Violence Prevention Interim Policy*;
- For public sector union members (which include employees of DND and Staff of the Non-Public Funds), the appropriate union representative;
- For CAF members, the Initial Authority (IA) under the military grievance process may also address issues relating to sexual misconduct and harassment; and
- For members of the Defence Team, the Ombudsman and the ADM(RS) may also address issues relating to sexual misconduct and harassment, but not in a “first responder” way.

I understand that the CPCC has retained the third party consultant McKinsey & Company to complete a review of these multiple complaints processes for the DND and the CAF. As I understand it, McKinsey has proposed a possible new complaints mechanism to provide a unified approach to complaints. This new complaints mechanism includes a “single disclosure team” for receipt of disclosure and reports of misconduct. This point of disclosure is meant to apply to sexual misconduct, sexual harassment, hateful conduct and grievances.

To the extent that it applies to sexual misconduct, I have several concerns with respect to the process that I understand is being developed. First, and as I have expressed elsewhere, sexual misconduct is *sui generis*. It should not be conflated with or treated in the same manner as other forms of workplace related complaints.

Second, as per my recommendations, *Criminal Code* sexual offences must go to the civilian criminal justice system and victims of sexual harassment and of discrimination on the basis of sex should be given the option to go the CHRC. What is left of sexual misconduct must be addressed by the chain of command, which must maintain responsibility for ensuring discipline. In light of this, and the SMRC’s revised mandate, the system proposed by McKinsey is of little use with respect to sexual harassment and misconduct.

Third, as I understand it, the *single disclosure team*, for the purpose of receiving complaints, would be a hybrid between the SMRC and the ICCM. Again, this is a non-starter. Bringing the SMRC inside the CAF is out of the question.

Fourth, the system proposed by McKinsey would create the same conflict of interest that currently exists within the ICCM and the SMRC, resulting from their mandate of providing services to both the chain of command and CAF members.

Finally, there would be many similarities between the services offered by the *single disclosure team* and the SMRC. However, it is not apparent to me that thought has yet been given to what would happen with the SRMC when the *single disclosure team* is put in place. In my view, there would likely be too many similarities between the two outfits to justify the existence of both.

A summary review of the solutions proposed is sufficient for me to conclude that their focus is on structure over substance, that there will be important barriers to their implementation, and that they are not appropriate, as presently conceived, to deal with any matter related to sexual misconduct.

Military Grievance System

The military grievance system is one avenue available to CAF members to seek a remedy for failures of the CAF in regard to sexual harassment, sexual misconduct or discrimination on the basis of sex. Specifically, it provides an avenue for members to seek redress if they have been aggrieved by any decision, act or omission in the administration of the affairs of the CAF, that is, *if* no other process for redress is provided under the NDA.⁶³⁹ This right to grieve is subject to limited exceptions for decisions made under the *Code of Service Discipline* and relating to courts martial.

Grievances related to sexual misconduct, sexual harassment and discrimination on the basis of sex

Grievances can relate to sexual misconduct, sexual harassment and discrimination on the basis of sex in a number of ways.

For instance, CAF members can seek relief through the grievance system, because of career implications or other repercussions suffered due to disclosing or making a complaint related to sexual misconduct or sexual harassment. A member could contend that non-selection for certain postings, positions, or career courses is a reprisal for having submitted a complaint of sexual assault or harassment. A member could also seek redress for discriminatory treatment received from course staff while attending military training, particularly if the treatment appears to be related to the member identifying or complaining of sexual harassment or misconduct by a peer.⁶⁴⁰

If a member suffers harassment, including sexual harassment, they have the option to file a harassment complaint, which is dealt with in a process that is distinct from the military grievance system, as outlined above. However, members can grieve failures in that harassment complaint process, or the outcome of their harassment complaint. For example, if despite evidence of unacceptable behaviour, no investigation is conducted or no appropriate actions are taken to remedy the harassment, a member could grieve those decisions on the basis that leadership did not take suitable measures to deal with the harassment complaint.⁶⁴¹

Members accused of sexual misconduct may also seek redress from leadership decisions that have had career implications for them, as well as the appropriateness of any corrective measures imposed. For instance, a member could be subject to an administrative review related to their sexual misconduct, and the CAF could decide to release the member under item 2(a) “Unsatisfactory Conduct.” The member could then grieve the decision to release them, as well as the release item selected. In a situation where a member is charged criminally

due to an allegation of sexual misconduct, and the member is subject to an administrative review prior to or after the determination of guilt, the member could grieve a lack of procedural fairness in their treatment. A member could also grieve the appropriateness of remedial measures rendered for sexual misconduct, such as a recorded warning.⁶⁴²

Members can also grieve decisions or policies that are discriminatory based on gender, such as being denied a specific posting or a full-time Class “B” reserve service position because of their gender, or pregnancy.⁶⁴³

The grievance process

The NDA provides the statutory basis for the military grievance system and the role of the MGERC.⁶⁴⁴ Section 29(1) of the NDA provides CAF members the right to grieve. QR&O, Chapter 7 *Grievances*, frames the processes for submitting and adjudicating military grievances.

The Canadian Forces Grievance Authority (CFGa) is now part of the ICCM program.⁶⁴⁵ The ICCM, through the CFGa, has stewardship of the grievance system, including oversight and administration of the CAF grievance process, and communicating the CDS’ intent with respect to grievance resolution. The DAOD 2017-1, *Military Grievance Process* outlines in further detail the military grievance process, and the responsibilities of the CFGa.⁶⁴⁶

The CFGa is responsible for managing and periodically reviewing the grievance process, on behalf of the VCDS, including:⁶⁴⁷

- managing the National Grievance Registry, including registering, routing and tracking grievances, and generating associated reports;
- providing assistance to grievors and the chain of command; and
- managing training for grievance analysts and assisting members.

The DAOD 2017-1 also indicates that the Director General CFGa is responsible for considering and determining grievances as one of several Final Authority (FA) delegates of the CDS.⁶⁴⁸ In addition, the Director General CFGa is responsible for preparing grievance files for the CDS to consider and determine when the CDS is acting as the Initial Authority (IA).⁶⁴⁹ With respect to FA decisions, I understand that, in practice, CFGa analysts conduct the final analysis and produce draft decision letters for all FA decisions. Draft decision letters are reviewed by one of the FA grievance Team Leads and by a legal advisor as required, and are provided to the Director General CFGa for final approval and signature (for those grievances that fall within the Director General CFGa’s authority), or simply for approval prior to signature by another FA – being another delegate of the CDS or the CDS himself.⁶⁵⁰ As mentioned above, with respect to harassment complaints, I see a real conflict of interest within the ICCM, as it also provides information and guidance to the grievor.

Grievances are first considered and decided upon by the IA. The IA for many grievances is the CO of the grievor’s unit. A CO may act as the IA if they have the authority to grant the

redress sought. If the grievance relates to a decision, act or omission of the CO, or if the CO does not have the authority to grant the redress sought by the grievor, then the CO must refer the grievance to the next superior officer. In this event, the COs can seek guidance from the CFGA to identify the appropriate IA. There is a four-month time limit for the IA to provide a decision to the grievor.⁶⁵¹

If a grievance is not resolved in the grievor's favour at the IA level, the grievor can elect to send their grievance to the FA for further consideration.

At the FA level, some grievance files are mandatorily referred to the MGERC by operation of QR&O paragraph 7.21⁶⁵², and others may be referred to the MGERC at the discretion of the FA. The factors assessed by the FA when referring a grievance to the MGERC include the benefit of having the grievance reviewed externally, and the capacity of the MGERC to investigate independently and make findings.

In accordance with QR&O paragraph 7.21, grievances mandatorily referred to the MGERC include those related to pay and allowances, reversion to a lower rank, release, freedom of expression, harassment, medical or dental care, and decisions of the CDS. There is no express mention in QR&O Chapter 7 of whether grievances related to sexual misconduct or discrimination on the basis of sex should be referred to the MGERC. However, grievances related to sexual misconduct arguably fall under the umbrella of “harassment” and may be referred to the MGERC in practice. Grievances related to reprisals for reporting or otherwise disclosing sexual misconduct are also not clearly captured by the description of the types of grievances listed in QR&O paragraph 7.21, but are the type of grievance that would benefit from review by the MGERC.

At the FA level, the MGERC investigates and considers the appropriate information and produces its Findings and Recommendations to the CDS. The CDS or his delegate would then consider the matter and the MGERC's decision, before finally deciding the outcome of the grievance. If the FA disagrees with the MGERC's decision, it must provide reasons in the decision letter for not acting upon a finding or recommendation of the MGERC.⁶⁵³

These stages of investigation and consideration, all done in series, can take many months, if not years, in difficult cases.

Current delays in processing grievances

The Fish Report, at Chapter 4, provides a clear overview of the military grievance system and highlights many of its long-standing problems. I do not intend to revisit in detail the shortcomings of the grievance system, outlined in the Fish Report, but I note that these issues have also been raised by stakeholders during the course of this review. The military grievance system continues to suffer from inordinate delays, particularly for the more complex grievances.

Considerable efforts have been made recently by the CAF to reduce the backlog of grievances at the IA and FA levels, as well as by the MGERC to expedite the committee's review and production of their Findings and Recommendations. For instance, on 1 June 2014, Operation RESOLUTION was launched “to eliminate the backlog of grievances at the IA level and reminded IAs of their duty to resolve grievances within a four-month timeframe.”⁶⁵⁴ More recently, as highlighted in the Fish Report,⁶⁵⁵ the CDS issued a Directive on 3 March 2021, recognizing the unacceptable delays in the grievance process and proposing an action plan to remedy the problem. The CAF has made a sustained effort over the past 17 months to address long-standing deficiencies with the process, considerably reducing backlogs and legacy grievances, and implementing a shorter version of the reporting letter for some grievances. There were 232 “legacy files” at the FA level in February 2021. As of December 2021, the CFGA had 201 “legacy files” remaining. Of these, 187 files were older than two years and 14 files older than five years.⁶⁵⁶

In general, the timeline data for the resolution of grievances remains alarming, as evidenced by the following (being the average number of days from filing the grievance to its final resolution):⁶⁵⁷

- All grievances resolved at the IA level (*i.e.*, resolved in the grievor's favour or where the grievor did not forward their grievance to the FA):
 - 2021 (618 files) = 282 days
 - 2020 (561 files) = 276 days
 - 2019 (594 files) = 260 days
- All grievances resolved at the FA level without a Findings and Recommendations from the MGERC:
 - 2021 (52 files) = 761 days
 - 2020 (64 files) = 796 days
 - 2019 (50 files) = 869 days
- All grievances resolved at the FA level following a Findings and Recommendations from the MGERC:
 - 2021 (263 files) = 967 days (includes average of 332 days at MGERC // 635 at FA)
 - 2020 (175 files) = 945 days (includes average of 258 days at MGERC // 687 at FA)
 - 2019 (93 files) = 916 days (MGERC data for this timeframe was not tracked in ICRTS)

These delays and deficiencies are attributable, in part, to “file complexity, CAF antiquated policies, the significant increase in file intake, the critical staffing shortage faced across the CAF, and the requirement to modernize concurrent to grievance production with no increase in CFGA resourcing.”⁶⁵⁸

Exhausting remedies under the grievance system

As the system currently operates, the CHRC and the courts have the discretion to require that CAF members exhaust their remedies under the military grievance process before they can pursue a complaint to the CHRC or an application to the Federal Court. The Ombudsman is also a last resort entity, requiring prior access to the grievance system or another complaint process. This prohibition is intended to preclude a multiplicity of parallel proceedings and processes, and reflects an assumption that the CAF is in the best position to remedy its employment-related grievances.

This prohibition rests on administrative law principles developed by the courts.⁶⁵⁹ One of the discretionary grounds for refusing to undertake judicial review is that there is an adequate alternative remedy, which need not be identical to the remedy available on judicial review or the remedy preferred by the claimant.⁶⁶⁰ The Supreme Court of Canada has stated that “while courts have the discretion to hear an application for judicial review prior to the completion of the administrative process and the exhaustion of appeal mechanisms, they should exercise restraint before doing so.”⁶⁶¹ This has been interpreted by the Federal Court as requiring CAF members to exhaust the internal grievance process prior to seeking a remedy in the Federal Court.⁶⁶² The Federal Court of Appeal will be further addressing this issue in the spring of 2022 in the *Fortin v. Canada (Attorney General)* case.

Concerns with the military grievance system

Systemic problems

The Fish Report identifies some significant issues with the current military grievance system. Many of the same issues were raised in the Lamer Report in 2003, and again in the LeSage Report in 2011. The same major problems were raised yet again by many stakeholders during this Review. It is evident that these problems continue to negatively affect the morale of CAF members and cause distrust in the grievance system, as well as cynicism about the chain of command's ability to effectively provide redress to aggrieved members.

The current military grievance system is facing the following challenges:

- Undue delay to adjudicate many grievances. The time it takes for many grievances to be determined by the FA, namely the CDS or their delegate, is unacceptable in many cases. By the time a determination is eventually made, the grievor's career may have been irreparably harmed. This is particularly egregious as this process essentially blocks access to external authorities, such as the courts or the CHRC;
- The NDA does not provide the FA with adequate remedial powers. The FA is not provided with the power to grant financial relief as a remedy to a grievance. As a result, many grievances, though allowed, cannot be remedied, and grievors consequently obtain only a hollow victory. This problem was identified also by Chief Justice Lamer, Chief Justice LeSage and Justice Fish in their independent reviews.⁶⁶³ The CDS now

has some limited ability to award ex gratia payments to members, but cannot fully financially compensate a successful grievor⁶⁶⁴; and

- The independent body put in place to review military grievances, namely the MGERC,⁶⁶⁵ is not in fact independent or external to the CAF, because the final decision on grievances is made by the CDS or their delegate. The MGERC does not have any power to order a remedy. It only provides a document outlining its Findings and Recommendations to the FA who is free to accept or ignore the MGERC's recommendations.⁶⁶⁶

I concur with the conclusions of the Fish Report as they relate to the military grievance system, and I add my concern, expressed above, about the conflict of interest within the ICCM as it provides information and guidance to both the decision-making authorities and the grievor.

Grievances related to a complaint or situation of sexual misconduct, harassment or discrimination

Placing grievances related to sexual misconduct in the same category as other employment-related grievances is not reasonable. It belies the importance and continued urgency of responding appropriately to sexual misconduct.

In many cases, victims of sexual misconduct suffer additional harm from having to remain in *status quo* situations, including having to continue working for, or with, the offending member. Others may suffer the embarrassment and trouble of being “removed” from the situation, which in turn can negatively affect the victim's career progression. In addition, having to report sexual misconduct, or grieve decisions made by the CAF related to those incidents, directly to the chain of command is a barrier to reporting. I have also heard stakeholders highlight inconsistencies in how allegations of sexual misconduct are treated, depending on the unit that is involved.

I recommend that all grievances that fall under the jurisdiction of the CHRC be directed there, should the complainant so choose. In tandem with this recommendation, it is vital that the CAF not object to this jurisdiction on the basis that internal remedies have not been exhausted by the complainant.

Delegating to the CHRC matters related to sexual harassment, discrimination on the basis of sex, and related retaliation, not only provides an adequate forum of redress for complainants, but also frees up the CAF grievance process to better address its remaining workload.

Allowing CAF members to access a likely faster independent remedial process through the CHRC, especially in urgent or extreme cases, would also assist victims in feeling less powerless. Victims of sexual harassment and discrimination on the basis of sex, and those suffering retaliation for having come forward with such complaints, should not be treated the same way as members who have a grievance related to something such as an entitlement

to an allowance. Providing these victims access to a judicial process and remedy outside their chain of command may empower more victims to come forward.

Further, allowing access to an impartial tribunal outside the chain of command will also assist with the credibility of the response in the eyes of the complainant, in cases where complaints are deemed to be unfounded.

Allowing timely access to external specialized tribunals or the courts may ultimately increase the CAF's accountability for responding to allegations of sexual misconduct appropriately, and more in keeping with the expectations of Canadians.

RECOMMENDATION #9

Any complaint related to sexual harassment or discrimination on the basis of sex or involving an allegation of retaliation for reporting sexual harassment or discrimination on the basis of sex should be first directed to the CHRC, should the complainant so choose. The CAF should no longer object to the jurisdiction of the CHRC on the basis that internal remedies, including its grievance process, have not been exhausted.

I note that not all grievances relating to sexual misconduct fall under the jurisdiction of the CHRC. For example, grievances relating to reprisals or retaliation for reporting any *Criminal Code* offence (such as sexual assault) may not. Therefore, and with respect to grievances that would remain in the CAF internal system, a new procedure must be developed to increase accountability for ensuring their timely and consistent resolution. These grievances should be given priority, and treated more efficiently at both the IA and FA level, so as to prevent further harm to the grievor.

In the interim, or if the CAF is ultimately unwilling to provide the CHRC with primacy in these important matters, the new procedure should also apply to all grievances related to sexual misconduct. These types of grievances are unique, and addressing them promptly will go a long way to repairing or at least avoiding the harmful repercussions that flow from incidents of sexual misconduct.

As such, a new procedure for grievances related to sexual misconduct should be implemented, at least until the deficiencies identified in the Fish Report are remedied. As part of the VCDS' mandate to manage the military grievance process, the VCDS should have visibility into all grievances related to sexual misconduct, including those related to reprisals, from the time they are filed until the time that they are finally determined. Specifically, the VCDS should be responsible for ensuring the quality and timeliness of the process, ensuring that these types of grievance files are staffed swiftly and with appropriate expertise.

Further, such grievances should bypass the grievor's chain of command completely, due to the ongoing trust deficit related to these matters. As with other types of specialty grievances, CFGA should designate an appropriate, specialty IA, for all grievances related

to sexual misconduct (by virtue of QR&O Chapter 7, paragraph 7.14(b)⁶⁶⁷ or otherwise). If unresolved at the IA level, grievances relating to sexual misconduct must be referred to the MGERC, who is equipped to investigate, and who should be required to do so on an expedited, priority basis. The FA should then have no more than three months to issue a decision letter on such grievances.

The intent of my recommended approach to grievances related to sexual misconduct is driven by the following considerations: to ensure that such grievances are dealt with efficiently and effectively at both the IA and the FA levels; to ensure that such grievances are addressed by subject matter experts who are outside the grievor's direct chain of command in order to improve consistency and remove a possible barrier to filing such grievances; and to increase visibility into such grievances within the organization as a whole and particularly among senior leaders.

Finally, the CAF should consider whether the process described above and below for sexual misconduct-related grievances could be appropriately expanded to grievances related to other types of harmful conduct.

RECOMMENDATION #10

Grievances related to sexual misconduct should be identified, prioritized and fast-tracked through the grievance system at both the IA and FA levels.

The VCDS or their specific delegate should manage the process for all grievances related to sexual misconduct, sexual harassment or sexual discrimination or involving an allegation of reprisal for reporting, or otherwise disclosing sexual misconduct, sexual harassment or sexual discrimination. For such grievances, the CFGA should designate an IA with subject matter expertise, and who is outside the grievor's chain of command.

QR&O 7.21 should be amended to make it clear that grievances related to sexual misconduct, sexual harassment and sexual discrimination should be mandatorily referred to the MGERC.

The CDS should remain the FA and be required to dispose of the matter within three months.

Duty to Report and Barriers to Reporting

The duty of all CAF members to report sexual misconduct has been the subject of much discussion in independent reviews and academic works.⁶⁶⁸ The issue is important, and in my view, so is the way it reveals how the CAF approaches many issues—in a top-down, often rigid doctrinal way, somewhat oblivious to the consequences of what it sees as the obvious thing to do.

Duty to report in general

In accordance with the QR&O, all CAF members must “report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the *Code of Service Discipline*.”⁶⁶⁹ In the case of officers, this duty only applies when the officer cannot deal adequately with the matter.⁶⁷⁰ The duty to report is not specific to sexual misconduct and, according to the CAF, has existed in some form since the 1930s.⁶⁷¹

Duty to report as it relates to sexual misconduct

In August 2015, in response to concerns raised in the Deschamps Report about under-reporting by victims due to fear of reprisal and mistrust in investigations,⁶⁷² the CDS’s original Operation HONOUR order re-emphasized and reminded CAF members of their existing regulatory obligations to report.⁶⁷³

In the 2018 OAG Report on inappropriate sexual behaviour, the AG noted that the duty to report could cause further harm to victims and discourage reporting. The AG observed that the broad definition of inappropriate sexual behaviour meant that “members felt responsible for reporting all types of incidents, which placed a heavy administrative burden on the chain of command to manage the complaints.” He also noted that the duty to report “‘to the proper authority’ was not clearly defined.” Some members, including the chain of command, reported incidents, such as inappropriate jokes, to the MP rather than reporting into the chain of command, or resolving incidents at the lowest level. In light of this, the AG recommended that the CAF “establish clear guidance for members on the regulation to ‘report to the proper authority’, in the context of inappropriate sexual behaviour.” He further recommended that the “guidance should clarify who is considered the ‘proper authority’ under which circumstances” and that the “goal should be to balance the need to protect the organization’s safety with the need to support victims by allowing them to disclose and seek support without the obligation to trigger a formal report and complaint process.”⁶⁷⁴

Similarly, in its May 2019 report, the Standing Senate Committee on National Security and Defence pointed to the concern that “[f]iling an official complaint automatically triggers an investigation, regardless of whether the victim wants one” and stressed that definitions, such as the duty to report, should be clarified.⁶⁷⁵

In 2019, the CAF convened a working group to develop what became the DAOD 9005-1, *Sexual Misconduct Response*. A sub-group worked on the AG’s recommendation on the duty to report.⁶⁷⁶

Before issuing the DAOD 9005-1, the *Operation HONOUR Manual*, released in July 2019, attempted to provide guidance on the duty to report. It advised CAF members who were uncertain of whether an incident constituted sexual misconduct to contact a counsellor at the SMRC for confidential advice. A CAF member could also contact their unit workplace relations advisor or local CCMS office “for information on what [constituted] sexual harassment, guidance on available options, assistance interpreting harassment policies and how to proceed with a complaint.”⁶⁷⁷ The Manual also dealt with the responsibility of the chain of command to take appropriate action when a report was brought to their attention.

The work of the Duty to Report Working Group led to the language in section 5 of the DAOD 9005-1 (published on 18 November 2020), which states:

5.1 In accordance with QR&O article 4.02, *General Responsibilities of Officers*, and QR&O article 5.01, *General Responsibilities of Non-Commissioned Members*, all CAF members have a duty to report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline.

5.2 It is expected that all CAF members will report to the proper authority any sexual misconduct committed by any person in the workplace or on a defence establishment.

Reporting of Sexual Misconduct – Exceptions

5.3 DND employees and other civilians are not generally required to report sexual misconduct incidents. This includes civilians who work for DND, such as those at the SMRC, CCMS and CF Health Services.

Note – Some professionals have an obligation, in certain circumstances, to report in accordance with their professional code of conduct and certain provincial legislation, for example, if there is an imminent risk of harm or risk to children.

5.4 Officers who can deal adequately with a sexual misconduct incident are not required to report.⁶⁷⁸

The results achieved by the working group in addressing the difficulties with the duty to report, which by then were well documented, appear modest. The DAOD reiterates the existing regulatory obligations to report. That is, all CAF members are expected to report any sexual misconduct committed by any person in the workplace or in a defence establishment to the proper authority. In other words, this broad duty to report is imposed on all CAF members, whether they are the victim, the perpetrator, a bystander or even a person who at some point is made aware of the infringement of any rule – in this context, the rules on sexual misconduct. The only exception, as far as CAF members are concerned, is that officers

“who can deal adequately with a sexual misconduct incident”⁶⁷⁹ are not required to report it further. The DAOD gives guidance to officers on factors they should consider in making such a decision.

Further, “proper authority” includes the MP, CFNIS or civilian police; a CAF director general or higher at NDHQ; a CAF superior of a director general at NDHQ—in the case of a report of sexual misconduct involving a director general or superior of a director general; a commander of a command or formation; a CAF chief of staff or equivalent officer at a command or formation if designated by the applicable commander; a CO of a formation headquarters; any other CO; or any other officer who can deal adequately with the matter.⁶⁸⁰

In short, in an attempt to resolve the problem of under-reporting sexual misconduct in the CAF, the leadership decided to reinforce, by order, the duty to report. Yet, that duty was always there. Failing to report sexual misconduct did not come from any notion that reporting was optional – quite the opposite. The factors causing under-reporting were well-documented. Even worse, it rapidly became apparent that this new order not only did nothing to fix the problem of under-reporting, it instead created its own set of problems.

In short, in an attempt to resolve the problem of under-reporting sexual misconduct in the CAF, the leadership decided to reinforce, by order, the duty to report. Yet, that duty was always there. Failing to report sexual misconduct did not come from any notion that reporting was optional – quite the opposite.

Impact of the duty to report

Effectively no prosecution or discipline for failure to report

As the duty exists, failure to report is punishable as a service offence. That is undoubtedly a widespread assumption among CAF members. Yet, it is unclear how failure to report sexual misconduct would be charged as a service offence. Presumably, it would be charged under s. 129 of the NDA as “conduct to the prejudice of good order and discipline,”⁶⁸¹ which is a very common charging section; or possibly under section 92 (scandalous conduct by officers), section 93 (cruel or disgraceful conduct) or section 95 (abuse of subordinates). This is, however, speculative, as charging varies greatly depending on the circumstances of the offence.

However, there are virtually no precedents I could uncover for such charges. Indeed, it is remarkable that the duty to report could have become such a prominent issue considering that it is almost never enforced. This shows the confusion between orders and culture, law and reality, and rhetoric and practice, also observable elsewhere in the CAF.

This general duty to report should not be confused with specific obligations imposed on CAF members to inform their superiors about matters that involve them, such as being engaged in an “adverse personal relationship”⁶⁸² or that they have been arrested by civilian authorities and/or are subject to conditions imposed on them by civilian courts. Failure to comply with these obligations is punishable as a service offence.

When I asked the CAF to provide me with the number and details of disciplinary cases for failure to report sexual misconduct and sexual harassment from 1999 to the present, I was provided with 37 cases: four court martial and 33 summary trial cases.

Of the 37 “duty to report” cases provided, three court martial cases and 11 summary trial cases related to the non-disclosure of a personal relationship or a material change in circumstances in a personal relationship. These cases are not on point. The substantive offence charged is of “failing to report a relationship” (or failing to report a material change to the relationship that would result in a change in benefits), *not* failing to report an offence.

Of the 23 remaining cases, 19 appear to primarily relate to failure to report an arrest by civilian authorities which again is a specific disciplinary breach—“failing to report an arrest” is the offence, *not* “failing to report an offence.”

Charges seemingly related to failing to report sexual misconduct were laid in four summary trial cases (charged under section 129 of the NDA). In two of these four summary trial cases, the charge was an alternative charge against the alleged perpetrator of the underlying sexual misconduct. For the other two cases, it appears the members were charged with failing to take appropriate action after witnessing an assault. In three of the four cases, the members were found guilty of the charges.

I consider the low number of cases surprising considering that during the investigation of any offence, including historical sexual offences, investigators likely would discover that many people knew about the offence, but failed to report it to the appropriate authorities.

When laws are not enforced and regularly breached – as is obviously the case here since sexual misconduct is so severely underreported despite the legal duty to report – it undermines, rather than reinforces, the rule of law.

The CFPM told me that the lack of data on charges laid or on disciplinary measures enforced regarding the duty to report may be because some other related charge subsumes such conduct under the NDA, such as neglect of duty.⁶⁸³ Be that as it may, no one pointed me to any such charge, even anecdotally.

This is not insignificant. When laws are not enforced and regularly breached – as is obviously the case here since sexual misconduct is so severely underreported despite the legal duty to report – it undermines, rather than reinforces, the rule of law. Compliance is seen as optional and enforcement as discretionary. This is not the kind of message that a disciplinarian system should send; yet, serious enforcement has obviously never been seen as an option or it would have been used.

Barriers to reporting

In 2015, Justice Deschamps reported that up until then, the CAF had “failed to acknowledge the extent and pervasiveness of the problem of inappropriate sexual conduct,” and she cited “the very low number of complaints that are reported every year” as a possible reason for this failure of recognition. During her review, she heard that “cultural norms” as well as “concerns about negative consequences for the complainant’s career, loss of privacy and confidentiality,

fear of collateral charges, and a deep scepticism that the chain of command would respond sensitively and appropriately to the complaint” were some of the reasons for the “very serious problem of under-reporting.”⁶⁸⁴

The CAF’s response, re-emphasizing the duty to report sexual misconduct, seems predicated on the idea that the prevalence of the conduct is caused mainly by the authorities’ ignorance about the phenomenon, hence their impotence to deal with it appropriately. The remedy has been to put the burden on CAF members to alert the authorities so they could deal with the problem.

This misses the point entirely. It is abundantly clear that under-reporting cannot be cured by reiterating an existing coercive duty to report. The duty to report, as a tool to inform the chain of command, has been completely ineffective. The causes for under-reporting are mainly due to the anticipation of the many negative consequences of reporting. Making it a formal duty does not alleviate these negative consequences; it merely adds another one: the fear of punishment for not reporting.

In my view, the QR&O also miss the mark in addressing the fear of retaliation from reporting. Section 19.15 prohibits any member of the CAF from taking or threatening to take administrative or disciplinary action “against any person who has, in good faith, reported to a proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the *Code of Service Discipline*, made a disclosure of wrongdoing or cooperated in an investigation carried out in respect of such a report or disclosure.”⁶⁸⁵

If administrative or disciplinary action were launched against someone who reported an offence in good faith that action would most likely fail. The real consequences of reporting are retaliation by denial of opportunities, ostracization and various informal punishments inflicted by peers on the person perceived as a “snitch.”

Denouncing friends, colleagues, peers, or superiors in any environment is fraught with difficulties. In the CAF, the feared consequences are well documented and were repeated to me by many during this review. The following excerpt from a July 2021 Maclean’s article captures the harsh reality of the organization’s overall culture quite well:

About a decade ago, Colten Skibinsky was out on a training course with 50 or 60 soldiers. Their instructor had them sit in a circle and close their eyes, according to Skibinsky’s account. Then he told a story.

It was about a sniper cell in Afghanistan that hunted down al-Qaeda fighters with American troops. In 2002, one of the Canadians had broken an all-time combat record, killing a man from 2,430 metres away. But that glory was shattered by allegations that two snipers cut a finger off an enemy’s corpse. No charges were ultimately laid.

The instructor asked the troops to raise their hands if they thought the soldier who reported the alleged incident had done the right thing, Skibinsky says. When he opened his eyes, Skibinsky says he realized he was one of four or five people with their hands up. He alleges the instructor kicked him in the ribs from behind, then announced: “Take a good look around. These are the rats on your course, and they won’t be here after week five.”⁶⁸⁶

In other words, you will be ostracized and punished if you speak out against the culture of silence. Even more so if you are seen to betray a “brother,” to break the expected “solidarity at all costs”, or to fail to “have each other’s back.” Conversely, I am not aware of any medal, reward or other form of honour celebrating courage in reporting. This culture does not seem to be any different in higher ranks. A March 2021 *Globe & Mail* article reported on a senior member of the CAF who said he was berated for reporting a sexual misconduct complaint against another senior officer.⁶⁸⁷

This illustrates the striking contrast between the express duty to report and the perceived moral desirability of that provision; merely reiterating the formal duty to report is unlikely to increase reporting, if the culture against denouncing is more strongly enforced than the legal rule. Rather than reinforce discipline, it further erodes it.

In the end, while designed to help victims, it only adds to their hardship. In fact, I was told that the duty to report, “when dutifully followed, marks the *second time* a victim’s consent is denied.”⁶⁸⁸

Not surprisingly, many said they would not report sexual misconduct, especially of a less serious nature, against the victim’s wishes. All seemed confident that they could exercise their best judgment in ensuring that their disclosure did not end up causing more harm than good.

In my many conversations with CAF members, virtually all said that they would not report a matter regardless of the circumstances, despite their obligation to do so. Not surprisingly, many said they would not report sexual misconduct, especially of a less serious nature, against the victim’s wishes. All seemed confident that they could exercise their best judgment in ensuring that their disclosure did not end up causing more harm than good. In short, despite being aware of their legal obligation, they viewed the issue as essentially one of conscience. I recall only one saying that they would always report any matter, any time, as required.

The 2018 Statistics Canada Report on Sexual Misconduct in the CAF reported that 57% of Reg F members who were sexually assaulted in the workplace did not report it to anyone in authority. The report highlighted reasons for not reporting, such as “the behaviour was not serious enough (56% of men and 48% of women) or that they resolved it on their own (35% of men and 52% of women).” Moreover, members said that the “fear of negative consequences (27% [of women and 10% of men]), a belief that reporting would not make a difference (38% [of women and 15% of men]), or concerns about the formal complaint process (15% [of women and 6% of men])” were also reasons. The Report also notes that “one in ten (10%) women stated that they did not report the behaviour because they changed jobs, about five times the proportion of men who provided this reason (2%).”⁶⁸⁹

The participants in a 2020 SMRC roundtable convened to work on this issue “hypothesized that the survivor or potential complainant may not report because they fear disproportionate disciplinary consequences for the perpetrator, and the potential impacts on their own careers and workplace relationships from being perceived as ‘to-blame’ for the punishment the perpetrator received.”⁶⁹⁰

They also reported that CAF members, and survivors, in particular, do not receive all the information they need about what options for reporting are available to them following a sexual misconduct incident. According to one of the external experts engaged to contribute to the report, there are four categories of barriers to reporting, which are interconnected:

- Structural barriers refer to the “toxic masculinity”, in which dominance and the sexual conquest of women are valued, which continues to exist within the CAF;
- Social barriers include microaggressions that become accepted and build toxicity in the work environment, which can gradually increase to worse behaviour;
- Situational barriers are the factors that can influence reporting, such as whether victimization is an isolated incident, or if a victim is repeatedly targeted by the same offender, or whether there are witnesses. The reporting process itself can be a situational barrier, with concerns about the complaints process or that the CAF is too focused on the disciplinary process; and
- Individual barriers include lack of knowledge about services, such as the SMRC, suggesting that victims might not fully understand where they can go for information and support or appreciate the types of services available to them.⁶⁹¹

The report recognizes that “while some barriers clearly fall outside of the control of the CAF, it is important to recognize those barriers [that] the CAF can change.”⁶⁹²

The FEWO also studied sexual misconduct within the CAF with a view to eliminating it. It identified several factors that might influence a CAF member’s decision not to report sexual misconduct. In particular the “fear [of] reprisals ... [and] the fear that their career will suffer consequences from their reporting the incident” and the challenge that “the duty to report removes survivors’ ability to choose the option they are most comfortable with to address sexual misconduct incidents.”⁶⁹³ As a result, the FEWO amplified the observations made in the Fish Report, and reiterated his recommendation, as it relates to the duty to report, be implemented by the Government of Canada.⁶⁹⁴

During my interviews with naval/officer cadets, I heard a few different perspectives. Overall, they told me that they understood the importance of the duty to report but they felt that the process is very long and tedious and that even when the reporting goes well, it takes an emotional toll. In fact, some felt that the reporting process was more difficult than the incident itself. They indicated that it was easy to report as a bystander; however, impacting personal relationships when you know the people involved was a lot more difficult. As one put it, there is a difference between reporting someone who smokes a joint and reporting a sexual assault. However, reporting the latter is seen as important as it affects another cadet’s life – if the action hurts someone physically or mentally, then it should be reported. One took a less nuanced approach, stating that if you see something wrong, you should report it; you should not cover for a buddy if this goes against your moral compass.

I also heard that some cadets are hesitant to report out of fear of being “skewered” by the people they confide in or being perceived as a “snitch”. As a result, they do not feel comfortable coming forward and even when they do, they often do not know how to execute their duty to report, including how to write statements.

I was referred to an incident in which a victim was called out publicly for reporting, even though she was not the one who made the report. Another said she was accused of having made things up. None of the young women I spoke to expressed any confidence in reporting, whether they had direct experience with it or not.

Finally, academics recommend abolishing the duty altogether in favour of a truly victim-centered approach.⁶⁹⁵ One academic’s research on the effects of disclosing sexual violence “reveals that any automatic triggers following incidents or disclosures can have a chilling effect on victims and survivors’ willingness to report and can also deter individuals who might have otherwise come forward with a disclosure.” Consequently, “victims and survivors need to have ownership over whether and how they report, and the subsequent actions taken.”

This academic also remarks that “mechanisms such as duty to report, and a privileging of chain of command style reporting have led to victims and survivors feeling like they have few choices.” As has been expressed by others, she suggests that “providing alternatives, as well as information on how those alternative processes might play out, is key to restoring agency to victims and survivors of sexual violence.”⁶⁹⁶

My observations are consistent with other reports across allies who have investigated the issue around reporting.⁶⁹⁷

Uncertainty around who must report

Paradoxically, the increased pressure to comply with the duty to report sexual misconduct may have led to less reporting. Although they currently have a duty to report themselves, victims of sexual misconduct, who may not wish to do so, are uncertain about whom they can confide in without triggering that person’s duty to report.

Paradoxically, the increased pressure to comply with the duty to report sexual misconduct may have led to less reporting. Although they currently have a duty to report themselves, victims of sexual misconduct, who may not wish to do so, are uncertain about whom they can confide in without triggering that person’s duty to report. They may simply remain silent and decline to seek help.

This is aggravated by the widespread confusion about whether confidentiality is protected in disclosures to chaplains and health-care providers. For example, as pointed out in the August 2021 Review of the Royal Canadian Chaplain Service by the ADM(RS): “Although policies on confidentiality [versus] the duty to report are clear, especially as outlined in the [Chaplain General] Directive on Operation HONOUR, the different messages contained in various policies within the department can be inconsistent and cause confusion amongst chaplains.”⁶⁹⁸ As a result, “conflicts between confidentiality and duty

to report may result in the perception of the loss of a ‘safe place’ and misunderstandings of chaplain responsibilities.”⁶⁹⁹ The ADM(RS) recommended that the DND and the CAF “reconcile the apparent conflict between the need for chaplain confidentiality and the CAF duty to report.”⁷⁰⁰

The same confusion arises among health-care workers. There is no general exception relieving CAF health-care workers of their duty to report. There is a narrow one: “Actions or measures that include highly sensitive personal information such as medical or psycho-social assessments or treatment must not be disclosed.”⁷⁰¹

I heard from a health professional that some “offer medical treatment” in order not to have to report, although “other people don’t take the same path.” This illustrates both the desire for confidentiality and the confusion around guaranteeing it.

Given the confusion among chaplains and health-care providers, it is not surprising that victims are uncertain about whether they can seek confidential assistance. They may be even more hesitant to confide in friends and peers, knowing that these individuals must report the incident once they have been made aware of it, which means they cannot trust them to remain silent.

The Duty to Report Working Group is currently considering allowing exemptions to the duty to report, including for:

- provincially-regulated health-services professionals, in the context of the provision of care;
- chaplains, in the context of pastoral care;
- victims of interpersonal misconduct; and
- personnel in other assistance, care, or support programs that currently exist, or new future programs (likely a general category, to be elaborated in policy, rather than listing specific programs in the regulations).⁷⁰²

This approach does nothing to increase awareness by the chain of command of incidents of sexual misconduct, since most of the people likely to know about incidents are excluded from the obligation. It leaves the victim exposed to the forced and unwilling disclosure by a witness or colleague, which comes with all the adverse consequences the individual fears. The Duty to Report Working Group recognized this problem and is “analyzing the possibility of providing guidance on the exercise of discretion in [duty to report], particularly for Chains of Command, witnesses [and] confidants.”⁷⁰³

Numerous calls for change

Despite the guidance, directives and efforts deployed, there remains a broad consensus that the duty to report adversely affects victims of sexual offences who are not ready or willing to proceed. Considering the flaws associated with the duty to report, several recommendations have arisen over the years:

In the Winter 2019 Your Say Survey on the SMRC, respondents mentioned:

There should be zero duty to report by uniformed members who are bystanders or Third Party to disclose/report victim information to the Chain of Command when the victim expressly asks the person to hold the information so they can deal with the experience on their own terms. ... The trusted member should approach the padre, help lines, SMRC if needed in place of the CoC as required. Duty to report can further harm the victim who then feels betrayed. Not every victim has been treated well in the past by the CoC. This whole process should be victim-led and our members should be trained to assist in this way.⁷⁰⁴

In its brief to the FEWO, the Survivor Perspectives Consulting Group indicated that:

On the point of support to Survivors, we can confirm that there is currently an inconsistent application of Survivor-led support in the aftermath of sexual harassment and sexual assault incidents. Though it has not happened in every case, it has severely traumatized many Survivors when the persons they report to, or persons who learn about incidents, do not consider the Survivor's wants and needs as a priority. The Canadian Armed Forces have begun to explore this issue by revisiting the Duty to Report by considering a change to Duty to Respond, but we at SPCG feel that we must insist that every Survivor's wants and needs must be respected in every case regardless of what the chain of command and/or medical professionals may think is best. Only the Survivor knows what is best for them, and that must be respected; the needs of the Survivor must be prioritized above those of the Canadian Armed Forces.⁷⁰⁵

In his report Justice Fish stated: “The duty imposed on CAF members to report all incidents of sexual misconduct was identified as one of the critical areas for reform by most experts, public servants, victims and CAF members consulted during my review.”⁷⁰⁶ He therefore recommended that a provision should be made exempting “victims, their confidants and the health and support professionals consulted by them” from the duty to report incidents of sexual misconduct.⁷⁰⁷

He further recommended that the duty should be maintained “where a failure to report would pose a clear and serious risk to an overriding interest, which may include ongoing or imminent harm, harm to children and national security concerns.”⁷⁰⁸ The Fish Report also recommended establishing a working group to properly identify these exceptional cases: “The working group should include an independent authority and representatives of the [SMRC], military victims’ organizations and the military justice system.”⁷⁰⁹ As mentioned earlier, a working group was put in place to develop the DAOD 9005-1.

In June 2021, Liberal committee members of the Standing Committee on National Defence (NDDN) indicated that the Committee had reached an impasse and shared

24 recommendations to address sexual misconduct in the CAF with me. One of these recommendations was:

the elimination of the current 'Duty to Report' requirement. Instead, to create a survivor-centric reporting process that encourages survivor agency, the CAF should:

- Consider 'Duty to Respond' as a possible replacement for 'Duty to Report';
- Investigate the possibility of anonymous reporting of events/locations and perpetrators to identify problematic concentrations or trends.⁷¹⁰

In October 2021, the Survivor Support Consultation Group (SSCG), mandated by the Final Settlement Agreement of the Heyder and Beattie class actions, further amplified the previous external reports and found that the duty to report was a “recurring topic of concern.”⁷¹¹ Similar to the Fish Report, it made the following recommendation: “Establish an explicit exemption for victims/survivors, as well as designated health and support professionals who provide support to victims/survivors, from prosecution for failing to report sexual misconduct, with limitations for such cases as risk of imminent harm, harm to children, national security, etc.”⁷¹² Moreover, the SSCG recommends the need to “Enhance supports to survivors of sexual misconduct in Canada’s military justice system by providing access to alternative reporting options external to the chain of command.”⁷¹³ This is critical, according to the SSCG, due to the fact that “survivors of sexual misconduct have limited autonomy over how and to whom they can report, and which authority will oversee the conduct of the investigation.”⁷¹⁴

In its 2020-21 Annual Report, the SMRC announced that it “will begin work on the development of Responsive Legal Options for Victims/Survivors of Sexual Violence in the CAF and a regional expansion of the SMRC support services.”⁷¹⁵ This program will “examine alternative reporting options”⁷¹⁶ outside of the “Chain of Command or military justice system.”⁷¹⁷ The intent will be to allow CAF members to report sexual misconduct in a way that discharges the regulatory duty to report while ensuring an ability to receive support, without triggering an investigation that may cause further harm.⁷¹⁸

Despite all these calls for action, only one concrete initiative has so far been taken. The matter became very pressing when senior CAF members became engaged in the Restorative Engagement program, developed after the Final Settlement Agreement. Schedule K of the Final Settlement Agreement provided that the Restorative Engagement program would be confidential but within legal limitations. The duty to report was identified as one such limit.

I understand that class members expressed concerns that an unchecked application of the duty to report would undermine the integrity of the Restorative Engagement process and deny some participating class members its full benefits. Class members were concerned that sharing their experiences with these senior officers would trigger these officer’s duty to report further. As the QR&O contain no exemption to the duty to report, a temporary process, approved by the CDS in January 2022, was required to ensure a controlled application of the duty in the context of the Restorative Engagement process.

While this demonstrates the ability of the CAF to rectify a problem quickly, stakeholders have told me that the solutions put in place are not sufficient to deal with their concerns. I agree with them. Despite reducing the number of CAF officers to whom a matter will have to be reported, it is difficult to imagine how these selected GOFOs will be satisfied that they “can adequately deal” with the matter. Not only does it leave the participating class members exposed to the exercise of discretion by a GOFO, but it puts these GOFOs in a very difficult ethical position.

In my view, this is an application of the tunnel vision with which the CAF has addressed the problem so far. The duty to report is a problem. In the context of the Restorative Engagement program, it largely defeats the purpose of empowering survivors, who at this point may not wish any further action to be taken, in favour of enlightening the CAF leadership about what has happened under its watch.

The simple solution would have been to amend the QR&O to provide for an exemption to the duty to report. I recognize that this process requires some time and could not have been completed by January 2022 in time for the beginning of the Restorative Engagement program. However, had the CAF begun the QR&O amendment process in 2019 when the settlement was approved, it would have had sufficient time to provide for such an exemption. Better yet, the whole matter should be resolved once and for all.

Duty to report should be abolished

In Canadian civilian life, there is no general obligation to report a crime. People are encouraged to alert the authorities, and they usually comply if they feel they can do so safely, without having to suffer adverse consequences. Similarly, management in civilian workplaces have the same obligations as the CAF chain of command to maintain a healthy and safe work environment, and have found ways to meet these obligations without imposing a duty to report on their staff. Sexual assault survivors weigh their options. If they choose to remain silent, they do not have to fear further punishment or face unwelcome exposure if others inform on their predicament against their wishes.

Despite the acknowledged difficulty created by the existence of that provision in the area of sexual misconduct in the CAF, not much has been said to justify the existence of the duty to report. I have been told that it is critical to impose that duty on CAF members to ensure that serious misbehaviour is properly brought to the attention of the relevant authorities so that appropriate action may be taken. This duty is particularly relevant in the context of preventing harm to national security and to children, for example. I agree, of course, that the CAF leadership needs to be made aware of imminent threats of serious harm. Indeed, the CAF leadership should be fully cognizant of the extent of widespread misconduct in its rank— be it sexual misconduct, corruption or any other such matter. However, I have seen no evidence that the likelihood of these matters being brought to the attention of the chain of command is dependent on, or even enhanced by, the existence of a formal obligation to denounce.

It is beyond the scope of my mandate to deal with the duty to report at large, but I see no convincing argument to maintain it – at least in the area of sexual misconduct. The existence of that provision, even though it seems never to be enforced, creates considerable fear and anguish, and has obviously never achieved its intended purpose of ensuring an appropriate response to sexual misconduct by the chain of command.

As in the civilian system, reporting should be left to conscience and trust, as it largely is today. The uncertainty created by a legal duty that is not enforced is harmful. It invites speculation about the risk of non-compliance and sends an ambiguous message about the virtue of compliance.

Serious sexual misconduct amounting to crime should be handled in the civilian criminal system. As such, the same rules should apply in the military context when it comes to reporting and proceeding with charges and prosecutions. To the extent that sexual misconduct also amounts to a breach of the *Code of Service Discipline*, experience has shown that the duty to report has not achieved its intended purpose and, worse, has served only to terrorize and re-victimize those it was meant to protect. It should, therefore, be abolished.

The duty to report has not achieved its intended purpose and, worse, has served only to terrorize and re-victimize those it was meant to protect. It should, therefore, be abolished.

Over time, when sexual misconduct is dealt with more appropriately in the CAF, impediments to reporting will be reduced, and victims will be more willing to come forward. That will be the best way to ensure that the authorities, including the chain of command, are aware and equipped to deal with the issue going forward. As in the civilian life, military authorities will continue to be made aware of incidents from a variety of sources; from victims, by-standers, even the media. Needless to say, they will be expected to respond appropriately, respectful of the needs and wishes of the victims, and of course of the public interest. Today, victims and survivors who overwhelmingly seek confidentiality and support are left with a system and a culture that still makes it harder to speak up than to keep silent. This is what must change. It will take time. But it would be an illusion to assume that it can be changed by mere decree.

As the law currently stands, the duty to report appears to be an impediment rather than an incentive to report sexual misconduct in the CAF. On 23 March 2021, four months after the publication of the DAOD 9005-1, and weeks into becoming the Acting CDS, then Lieutenant-General Eyre unveiled a new concept called the “duty to respond” when he was a witness before the FEWO. During his testimony, he said:

One of the challenges, and I haven’t mentioned this before, is the duty to report. That is part of the law we must follow, but at times it may prove to be an impediment for somebody coming forward. We have to take a close look at how we could change that, from perhaps a duty to report to a duty to respond, fully taking the victim’s wishes into consideration. We haven’t cracked the nut on that one yet. We haven’t cracked the code, but I think we need to take a very close look at that one going forward.⁷¹⁹

This points to a shift in focus from the institution's needs to the victim and survivors' wishes. However, aside from mentioning the concept at this hearing, I have no additional information on whether and how the "duty to respond" will be formalized and implemented. This recent interest in the concept of a duty to respond should be pursued. Many victims believe that reporting is useless as nothing will be done about it. The more that is done – and done well – when victims choose to report, the more others will come forward. This is how culture changes, incrementally, and in the right direction.

RECOMMENDATION #11

Article 5 of the DAOD 9005-1 should be removed and QR&O 4.02 (for Officers) and 5.01 (for NCMs) should be amended to exempt sexual misconduct from its application. Consideration should be given to abolishing the duty to report for all infractions under the *Code of Service Discipline*.

Victim Support and the SMRC

My terms of reference require that I assess “the SMRC’s mandate and activities, including its independence and reporting structure,” and make recommendations for improvement. This will also address the DND and the CAF’s process in addressing one of Justice Deschamps’ central recommendations.⁷²⁰

History of the SMRC

The creation of the SMRC and the evolution of its mandate

The SMRC was established in 2015, in response to Justice Deschamps’ central recommendation that the CAF “[c]reate an independent center for accountability for sexual assault and harassment outside of the CAF with the responsibility for receiving reports of inappropriate sexual conduct, as well as prevention, coordination and monitoring of training, victim support, monitoring of accountability, and research, and to act as a central authority for the collection of data.”⁷²¹ The centre was to fulfill all seven functions.

The SMRC was set up rapidly following the publication of the Deschamps Report. However, its original mandate was very different from the mandate recommended in the Deschamps Report. In fact, in 2018, Justice Deschamps observed that,

The centre that has been created is not even a shadow of the centre I outlined in my report.⁷²²

Both the governance and the mandate of the SMRC have been subject to discussion and revision since its inception in 2015, as set out below.

1. Interim mandate of the SMRC – September 2015

The SMRC was established under the authority of the DM, outside of the chain of command. At its inception, the SMRC’s mandate was exclusively focused on victim support services. Counselling services were provided by phone to CAF members during business hours. Advice and guidance were also made available to the chain of command and bystanders on how to deal with sexual misconduct. There was, however, limited outreach to CAF members.⁷²³

2. Review of the SMRC by ADM(RS) – September 2017

In 2017, the ADM(RS) assessed whether effective governance structures and processes were in place to establish the SMRC, and considered the independence of the SMRC in relation

to its mandate. The review found that, of the seven activities identified in the Deschamps Report, the SMRC was, on an interim basis, mandated to focus solely on confidential victim support.⁷²⁴

The ADM(RS) observed that it was critical for the SMRC to be responsive to the needs of the CAF, but also essential that the SMRC be independent and seen to be so by victims and stakeholders. In its view, there was a risk that CAF members could perceive the collaboration between the SMRC and the CAF as limiting its independence. However, it did not make any recommendations on improving the independence of the SMRC; rather, it recommended that the SMRC finalize its foundational documents and the establishment of the EAC.⁷²⁵

3. The SMRC Charter – October 2017

On 20 October 2017, the SMRC Charter was signed by the DM. While the final approval of Charter remained under the authority of the DM, the CSRT-SM reviewed the Charter and “requested changes and additional content such as service agreement elements.”⁷²⁶

The SMRC’s mandate at the time was focused exclusively on victim support services; the services were expanded to include 24/7 access and the integration of a military liaison team into the service delivery model to facilitate reporting.⁷²⁷

4. The 2018 OAG Report

In its 2018 Report, the OAG made several recommendations to align the SMRC’s mandate with Justice Deschamps’ initial recommendation. The OAG observed:

- Rather than giving the SMRC all the responsibilities that Justice Deschamps recommended, the Forces gave it responsibility only to provide initial victim support by phone or email, and to give referrals. Most of the remaining responsibilities were given to the CSRT-SM⁷²⁸; and
- The Charter that replaced the SMRC’s interim mandate did not resolve members’ confusion about the SMRC and the CSRT-SM, despite its intention to clarify the roles and responsibilities of the SMRC.⁷²⁹

The OAG recommended that the CAF work with the DND “to review the balance, and clearly define the roles and responsibilities, of the [CSRT-SM] and the [SMRC] to improve efficiency and avoid duplication of effort.”⁷³⁰ The DND agreed and said the SMRC would “become the ‘authoritative voice’ on all aspects of victim support and advocacy from the time incidents take place until victim needs have been fully supported and addressed.”⁷³¹

The OAG also recommended that the CAF should “establish an integrated, national approach to victim support to ensure that it fully addresses the needs of any member who is affected by inappropriate sexual behaviour.”⁷³² The DND responded that the VCDS “[would] also lead the development and implementation of comprehensive and integrated victim case management services as a priority” and that the SMRC would “play a leading role in this

effort to ensure that the plan is informed by the [SMRC]’s case management experience and analysis of victim requirements.”⁷³³

The OAG also recommended that the CAF should make victim support a top priority by:

- introducing comprehensive and integrated victim case management services from the time the victim discloses an incident to the conclusion of the case; and
- ensuring that members, service providers, and responsible officials have a clear understanding of what the complaint processes are, how they work, and what the possible outcomes are for both the victim and the alleged perpetrator.⁷³⁴

The DND agreed and noted that the SMRC would play an active role in “the development of a comprehensive Operation HONOUR campaign plan that will designate victim support and the implementation of an integrated, national case management system as the main effort.”⁷³⁵

In addition, in response to a recommendation from the OAG that the CAF explore “victim-focused education and training options to ensure all members receive appropriate training that supports the goals of Operation HONOUR”, the DND stated that the “[SMRC]’s charter [would] be reviewed and amended to provide an explicit mandate to monitor Forces training and education. The charter will also recognize the “authoritative voice” of the [SMRC] in terms of training content.”⁷³⁶

Finally, the OAG found that the SMRC “was not given responsibility for receiving reports or collecting information. Therefore, the Forces had no source of independent, objective information to know how well Operation HONOUR was working.”⁷³⁷ The OAG recommended that the CAF “develop a performance measurement framework to measure, monitor, and report on Operation HONOUR.”⁷³⁸ The DND responded that it would develop such a framework and would be supported by the SMRC who would be “providing independent analysis and advice.”⁷³⁹

The OAG also recommended that the CAF “expand its use of external subject matter experts, in addition to using internal information sources and evidence, to ensure it has a wider variety of performance information, and to ensure it receives an independent assessment of its response to inappropriate sexual behaviour.”⁷⁴⁰ The DND responded that the SMRC’s charter would be “amended to recognize the [SMRC] as the authoritative external agency with a mandate to ensure that Operation HONOUR is continuously monitored by external subject matter experts,” that the “[EAC would] provide independent information and advice to the Executive Director of the [SMRC] to assist in the delivery of this mandate,” and that the “Executive Director [would] be given a broader mandate to advise [DND] and [CAF] senior leaders and provide independent analysis and advice on Operation HONOUR plans, performance, and related activities.”⁷⁴¹

As announced by the DND in its response to the AG’s recommendation, a new Mandate was drafted for the SMRC.

5. Recommendations from the EAC – March 2019

The EAC reviewed the draft SMRC Mandate, provided to them on 4 March 2019. The EAC was of the view that “some serious foundational issues ha[d] yet to be addressed.”⁷⁴² They recommended the following:

As a priority, clarify the respective authorities, responsibilities and accountabilities of the SMRC and CSRT-SM and develop their respective Charter/Terms of Reference accordingly, with input and direction from policy and legal subject matter experts and those with decision making authority.⁷⁴³

6. Standing Senate Committee – May 2019

The Standing Senate Committee on National Security and Defence made two recommendations regarding the SMRC’s mandate:

Recommendation 2 That the mandate and resources of the Sexual Misconduct Response Centre (SMRC) be reviewed to better respond to the needs of individuals seeking support and that an external review mechanism be established to measure the Centre’s effectiveness.

Recommendation 3 That the Sexual Misconduct Response Centre provide its clientele with as much information as possible about the various complaint mechanisms, as well as the possible advantages and disadvantages of the military justice system and the civil justice system. Complainants in either the military or civil justice system should be provided with legal and therapeutic support through qualified civilian service providers by the SMRC, or the CAF should provide adequate funds to complainants to retain their own legal and therapeutic support for at least one year, with the option of applying for an extension. In all cases, the CAF should provide adequate funding to cover travel and other costs that complainants and their witnesses may incur in relation to the resolution of their complaint.⁷⁴⁴

7. Revised mandates and Operating Agreement – July 2019

An Operating Agreement was entered into between the SMRC and the DPMC-OpH concerning “*Expert Advice and Support Services for CAF Response to Sexual Misconduct*,” effective 30 July 2019. The Operating Agreement formalized the working relationship between the SMRC and DPMC-OpH, and outlined the division of responsibilities between the SMRC and the DPMC-OpH. It remains operative, despite the recent expansion of the SMRC’s mandate.

A new mandate was also drawn up following the AG and EAC’s recommendations, summarized as follows:

- providing support to CAF members who are affected by sexual misconduct;
- providing expert guidance and advice to the CAF on all aspects of sexual misconduct; and
- monitoring the CAF’s progress on addressing sexual misconduct.⁷⁴⁵

Recent recommendations regarding the SMRC's mandate

There is continued criticism of the SMRC's mandate and structure, despite the efforts made by the DND/CAF, described above.

1. The Fish Report – June 2021

The Fish Report contained four main recommendations relating to the SMRC's mandate and its governance:

Recommendation #71. The relationship between the [SMRC], on one hand, and the [CAF] and [DND] on the other, should be reviewed to ensure that the [SMRC] is afforded an appropriate level of independence from both. The review should be conducted by an independent authority.

Recommendation #72. The [SMRC] should be tasked with implementing a program that provides free independent legal advice to victims of sexual misconduct, including advice on whether, how and where to report, and guidance throughout judicial processes. [...]

Recommendation #73. The [SMRC] should be given the mandate to monitor the adherence of the [CAF] to sexual misconduct policies and to investigate systemic issues that have a negative impact on victims of sexual misconduct, including the [CAF's] accountability. [...]

Recommendation #74. The [JAG] and the [SMRC] should cooperate to make a joint proposal to the Minister of National Defence in respect of amendments to the *National Defence Act* which would allow for restorative justice approaches in the military justice system. They should also collaborate to develop a formalized restorative justice model that is adapted to the needs of victims and perpetrators and suited to the reality of the [CAF] and its justice system.⁷⁴⁶

2. ADM(RS) Assessment of the Deschamps Report – November 2021

In a recent review of the status of the implementation of the Deschamps Report and the 2018 OAG Report, the ADM(RS) identified elements that remain to be addressed with respect to the SMRC, including “an opportunity to strengthen the monitoring and collection of data that is part of the recommendation through the centralized authority of the SMRC.”⁷⁴⁷

3. The FEWO – June 2021

The FEWO made recommendations with respect to the SMRC, including that the Government of Canada “fully implement all recommendations of Justice Deschamps’ 2015 report”⁷⁴⁸ and that they offer “support programs and services for survivors of sexual misconduct.”⁷⁴⁹

The SMRC's current activities and initiatives

Currently, the SMRC's mandate is to, (i) provide support to CAF members who are affected by sexual misconduct, (ii) provide expert guidance and advice to the CAF on all aspects of sexual misconduct, and (iii) monitor the CAF's progress on addressing sexual misconduct.⁷⁵⁰

Below is a summary of the services provided by the SMRC today, and the initiatives piloted by them. It is not meant to be an exhaustive list.

1. Support services

24/7 Response and Support Line. At the core of the SMRC support services is the 24/7 Response and Support Line. “All CAF members affected by sexual misconduct can reach an SMRC Counsellor toll-free 24 hours a day, 7 days a week, and receive bilingual and confidential support, information and referrals from public service counsellors experienced in supporting individuals affected by sexual misconduct.”⁷⁵¹

Response and Support Coordination Program. In August 2019, the SMRC officially launched its Response and Support Coordination Program. This program is available to currently serving CAF members. Participants “will have an assigned Response and Support Coordinator (RSC) to ensure continuity of contact and provide ongoing support, accompaniment, advocacy and personalized case management services to help affected persons navigate systems and processes, as needed.”⁷⁵² Accompaniment is provided for “various appointments/engagements (*e.g.*, CFNIS, medical, military police, legal), as well as court appearances (military and civilian) in order to provide the client with emotional support in cases where this has been identified as a need.”⁷⁵³

Military Liaison Team. Another service offered by the SMRC is the Military Liaison Team, which consists of Military Liaison Officers and a Military Police Liaison Officer from the CFNIS. The Military Liaison Team “[provides] strategic advice and [performs] direct military liaison between the SMRC and the CAF.” It also provides information to affected members on CAF policies, processes and procedures, and reporting, investigation and associated military and civilian justice processes.⁷⁵⁴

Restorative Engagement Program. The SMRC, in partnership with the ICCM has also developed the Restorative Engagement Program required by the Heyder and Beattie class actions.⁷⁵⁵

Contribution Program. In 2019, the SMRC launched the Transfer Payment Program (also known as the “Contribution Program” or the “Contributions in Support of Sexual Assault Centres in Canada”) to fund projects from civilian sexual assault centres located near nine of the largest CAF bases. According to the SMRC, “[t]he Program seeks to address gaps in support for the CAF community by enhancing access to survivor support services”⁷⁵⁶ and to “provide opportunities for increased collaboration between community-based civilian service providers and CAF linked service providers.”⁷⁵⁷ As of April 2021, nine contribution

agreements have been signed with centres across Canada.⁷⁵⁸ The SMRC plans to expand this program to broaden its organizational and geographic reach, and to better meet the needs of underserved communities. The intention is that funding will be provided in April 2022.⁷⁵⁹

2. Training and education

In 2019-2020, the SMRC created a new “Training and Education Team” as a result of its expanded mandate. “This team provides advice on education and training related to sexual misconduct in the CAF and develops content to target specific issues or audiences. They are also responsible for the ongoing delivery, maintenance and oversight of the [RitCAF] Workshop and mobile app.”⁷⁶⁰

The SMRC also collaborated with the RMC Kingston to pilot a prevention program for cadets: “Building our Future.”⁷⁶¹

3. Policy advice and research

As the centre of expertise on sexual misconduct, the SMRC provides expert policy advice to the CAF. Specifically, the SMRC advised the OJAG on the drafting of the regulations and policies and the training requirements related to the implementation of the DVR. The SMRC also conducted the Survivor Support Consultations and developed the SMRC Prevention Strategy, which will inform future research and product development.⁷⁶²

4. The expansion of the SMRC

Budget 2021 outlined a significant investment of \$59.7 million over five years to expand the SMRC’s support services by:

- Expanding access to the SMRC’s services to DND public service employees as of August 2021, and to former CAF members as of November 2021;
- Expanding the SMRC’s offices to Quebec and the Pacific by March 2022. An expansion to three additional regions will follow for a total of five regions in 2022-23;
- Establishing a joint Veterans Affairs Canada/DND peer support program for current and former CAF members that is targeted to launch in June 2022;
- Developing research capability on prevention of sexual misconduct; and
- Implementing a program to provide independent legal advice by April 2022 – as detailed in the section on Military Justice.⁷⁶³

Going forward – the SMRC’s name and mandate

Once again, the future of the SMRC needs to be examined. To define its future, we must examine what it has evolved into, rather than what it was conceived to be. We must also take into consideration how the SMRC fits into the Defence Team organizational structure, more specifically in relation to the CPCC.

In my view, the SMRC’s name and function should be reconsidered. The current name of Sexual Misconduct Response Centre is misleading. It has contributed to the widespread perception that it is a reporting centre for sexual misconduct.

In my view, the SMRC’s name and function should be reconsidered. The current name of Sexual Misconduct Response Centre is misleading. It has contributed to the widespread perception that it is a reporting centre for sexual misconduct.

Terminology matters. There is a difference between “reporting” and “disclosing”. Reporting a crime or a disciplinary offence triggers consequences. Reporting refers to an intent or desire to initiate a formal process or specific response. For example, when an individual reports a sexual assault to the police, there is an expectation that the assault will be formally investigated. Should a victim of sexual misconduct choose to report it, that report should be made to the authorities competent to respond to that report.

Disclosure, on the other hand, refers to sharing information about an incident without the expectation relating to reporting. Disclosure can be made to a friend, a colleague, a health-care professional, or a service provider such as the SMRC, without necessarily an intent to initiate any legal or disciplinary process.

Currently, the SMRC is not a reporting centre. The Operating Agreement between the SMRC and the DPMC-OpH refers specifically to disclosure, as it stands in contrast to reporting:

4.1 SMRC – receives disclosures of sexual misconduct directly from affected persons, independent of the chain of command, and facilitates reporting with the consent of the affected person.⁷⁶⁴

Furthermore, disclosing to the SMRC would not meet the duty to report requirements of the DAOD 9005-1, *Sexual Misconduct Response*. That duty is to report to the chain of command, which is precisely what the SMRC is not. I have dealt elsewhere with the problems with the duty to report, but even if victims were exempted from that duty, it remains that the SMRC is not, cannot, and should not become a “reporting” centre. The SMRC is and should be reinforced, as primarily a service delivery body and a resource centre.

Its primary function should be to provide a wide range of support to victims of sexual misconduct. That may include being the first instance of disclosure. It should become known as a trustworthy and competent centre for advice, support, resources, direction and follow-up for victims seeking legal, medical, social and administrative assistance. I believe it should, above all, empower victims by providing them with options so that they can choose which course of action best suits their needs.

The SMRC's name

The SMRC's name has been a source of confusion since its creation:

The [AG] noted in its 2018 report that there was confusion within the CAF between the SMRC and the then [CSRT-SM, now the DPMC-OpH]. While this confusion in name has been resolved, there still exists confusion in function and governance about SMRC and [DPMC-OpH], with the persistent belief that SMRC is a CAF entity. There is currently a belief that SMRC is or will become part of CPCC. [...] The current name does not describe what the [SMRC] actually does, and lends credence to the idea that the [SMRC] is “responding” to sexual misconduct in the CAF – as opposed to providing support or expertise in prevention. This perpetuates the mistaken belief that it is a CAF entity tasked with responding to sexual misconduct, which masks the need for the CAF itself to respond to it.⁷⁶⁵

The same is true of the French name, “*Centre d'intervention sur l'inconduite sexuelle*,” which also implies positive action to “intervene” in a situation of sexual misconduct.

The name should clearly state and evoke its purpose. The name Sexual Misconduct *Resource* Centre – as opposed to Response Centre – achieves this objective.

RECOMMENDATION #12

The SMRC's name should be changed to Sexual Misconduct Resource Centre.

The SMRC's beneficiaries

The SMRC should provide resources and support services only to victims of sexual misconduct.

1. The chain of command and alleged perpetrators

Currently, the SMRC provides services to the chain of command and those accused of sexual misconduct. For the fiscal year 2020-2021, 155 of the 654 new cases on the 24/7 telephone line, or 23.7%, were from the chain of command. A much smaller proportion of new cases, 12 in total (or 1.8%) were from alleged perpetrators for that same year.⁷⁶⁶

I have heard from members of the chain of command that having access to the SMRC for guidance on effective response and support to victims is useful. Indeed, with its expertise, the SMRC is well positioned to assist commanders in how to respond to a disclosure or report of sexual misconduct. In addition, the DAOD 9005-1 encourages the chain of command to “consider consulting with the SMRC for guidance on effective response and support to victims.”⁷⁶⁷

However, I have also heard that the SMRC's role in providing guidance to the chain of command increases the perception amongst victims that the SMRC serves the CAF – not victims.

On this question, the SMRC submitted:

... as a centre of expertise on sexual misconduct, we have advocated for the need for response, support and remediation/intervention services for those who have committed sexual misconduct as critical to effectively addressing this within CAF. Some stakeholders, particularly those with lived experiences, perceive this to be a conflict of interest or as diverting resources intended for survivors to respondents or perpetrators. They believe that the SMRC should be solely focused on survivors and that the chain of command and those accused of sexual misconduct should have a different source of advice or support. The SMRC has the expertise to assist all three groups, without a real conflict of interest, it is consistent with our mandate as a centre of expertise, and it allows for a comprehensive response, but this does remain a concern worth raising here.⁷⁶⁸

I believe there is a problem with the SMRC providing services to the chain of command, in the same way there is a problem with the ICCM supporting complainants, respondents and the CAF. The conflict of interest could materialize, should the chain of command solicit advice about a case in which the victim has consulted the SMRC. To prevent this, the current function of giving advice to the chain of command on the handling of complaints of sexual misconduct should be removed.

That advice should remain internal to the CAF, which should be entirely responsible for the performance of the chain of command in that respect. Commanders should be directed either to the CPCC, or to the OJAG who should increase, if necessary, its competencies in administrative law. To assist, the SMRC should share the expertise it has acquired on these matters with the CPCC and the OJAG, so they are equipped to take over this function.

With respect to providing services to alleged perpetrators, I do believe there is a perceived conflict of interest. In addition, the needs of alleged perpetrators are different from those of victims and survivors, and so is the professional expertise required to address their needs. Therefore, support to alleged perpetrators should not be provided by the SMRC, but rather by a CAF entity, either through the CPCC and/or the OJAG, which already offers legal advice and representation to perpetrators.

2. DND employees and former CAF members

I highlighted above that the SMRC recently extended access to its services to DND employees as well as former CAF members. These groups of individuals should have access to the same services offered to CAF members by the SMRC, where applicable.

3. Focus on sexual misconduct

With regard to expanding the SMRC's mandate to include additional forms of harm, the SMRC submitted that "[t]here is a need for support services for those who experience other types of harm. Further, making a distinction in responding to different forms of misconduct masks the reality of the intersectionality of many forms of misconduct, and the need to consider these intersections in response and support."⁷⁶⁹

In time, the SMRC's mandate could be broadened to include victims of other forms of harm but for now, I believe it is preferable to keep the focus on this issue so as not to dissipate its

visibility and expertise. However, the SMRC should be equipped to deal with issues arising from intersectionality so that, when necessary, it can assist victims and survivors accordingly.

RECOMMENDATION #13

The SMRC should be reinforced as primarily a resource centre, with adequate expertise and capacity, solely for complainants, victims and survivors of sexual misconduct.

The SMRC's function

In my consultations with members of the Defence Team, past and present, it became apparent that survivors of sexual misconduct need support beyond that currently provided by the SMRC. The uncertainty around what support is available and where to find it, and the complexity around what recourses are available and which one to choose, can have a chilling effect on victims.

In that light, the SMRC should become the “front door” for all victim support. In addition to the counselling and response support already provided, the SMRC should be adequately equipped to ensure that victims receive advice, support and services from a legal, medical and career perspective. The SMRC would act not necessarily as the direct service provider but as an intermediary to ensure that victims and survivors get access to the right services for their needs.

This is consistent with the Standing Senate Committee on National Security and Defence's Recommendation no. 3.

In addition to the counselling and response support already provided, the SMRC should be adequately equipped to ensure that victims receive advice, support and services from a legal, medical and career perspective.

Legal advice

The SMRC is already consulting with the Department of Justice to establish a mechanism to provide independent legal advice to victims of sexual misconduct. I understand that the SMRC has been evaluating different options relating to the scope of such a program, including evaluating the “areas of law on which victims may receive legal advice, the type of legal support to be provided, the eligibility criteria to access the program”.⁷⁷⁰ In addition, different options are being considered as to how the SMRC can source and provide payment to legal resources. As of October 2021, I understand these options included:

- Contracting directly with civilian lawyers and law firms, providing independence from the chain of command, and affording SMRC “full control over program administration and scalability”;
- Utilizing Res F legal officers;
- Creating an independent unit within the OJAG, similar to the DDOS or US Department of Defence Special Victims Counsel;

- Creating a transfer payment program to existing provincial/territorial independent legal advice programs funded by the Department of Justice;
- Creating a claim mechanism that allows victims to retain a lawyer of choice and receive reimbursement for expenses; and
- Contracting a national organization to administer the program.

According to the CPCC, the independent legal advice program for victims of sexual misconduct was set to be completed by April 2022.⁷⁷¹ I have not received further information on the status of this program.

It is critical that victims of sexual misconduct speak to a lawyer at the first opportunity, whether they have made a decision, or are uncertain, about wishing to proceed with charges, as they need to understand what to expect, whatever they decide. They should also be made aware of other options, such as civil actions in damages, and empowered to make informed choices. Ultimately, the provision of this legal advice will assist a victim to determine how to best proceed in the circumstances – a fundamentally individual choice – and how to best navigate the various processes that may be triggered as a result of a disclosure.

Access to free legal advice should be offered to victims immediately upon contacting the SMRC. The existence of this service should be widely publicized within the Defence Team.

While some victims of sexual misconduct may have access to independent legal advice provided by provincial authorities, the SMRC should ensure that it can offer access to legal assistance broadly and independently, across the country and on the full range of issues related to sexual misconduct, including not only *Criminal Code* offences, but also sexual harassment and discrimination on the basis of sex. Such legal advice should not be housed in the OJAG. Rather, the SMRC should compile a roster of civilian lawyers across the country able to provide such services and ensure that they are properly trained, in respect of the military landscape in particular, to do so. The SMRC should also prepare a schedule of fees for such services, and provide for direct payment to the lawyers so that victims not be out of pocket at the outset of the consultations. While there cannot be an expectation that civil lawsuits would be fully funded under this scheme, adequate legal representation for victims in the criminal justice system should be covered.

RECOMMENDATION #14

The SMRC should ensure that it can facilitate immediate access to legal assistance to victims of sexual misconduct. Such legal assistance must be available across the country and on the full range of issues related to sexual misconduct in the CAF, including in respect of the various processes triggered by disclosure. To do so, the SMRC should compile a roster of civilian lawyers able to provide such services and ensure that they are properly trained to do so. The SMRC should also prepare a schedule of fees for such services, and provide for direct payment to the lawyers.

Medical support

To fulfill its mandate, the SMRC has developed a substantial network within the CAF to refer members to the services available to them. They have the knowledge necessary to help CAF members access the right services and to help them understand the impact that accessing those services can have on their career progression, their ability to deploy, and the universality of service. This is essential. As much as the SMRC needs to be independent of the CAF and its chain of command, it is equally important that it be knowledgeable about the CAF's procedures to guide members appropriately. The expertise and relationships are there and would be virtually impossible to replicate in an organization completely outside the Defence Team.

Career support

The unique nature of the CAF as a total institution means that sexual misconduct, particularly when perpetrated by a CAF member on another, can significantly impact the victim's career, including posting.

A CAF member who has recently experienced sexual misconduct, or who is in the process of reporting an incident, may have specific needs relating to their career and/or posting. Members are often left on their own to navigate the system and determine who can assist them with these issues. This places additional pressure on victims and survivors, who are often already expending much energy on more urgent needs, such as medical and legal support.

I heard from many CAF members who struggled with these issues, and in some cases suffered real consequences.

As an example, one stakeholder stated that she had been sexually assaulted as an officer cadet. She reported the assault, and the case eventually went to trial – during her exams. She received no support to mitigate the consequences of the assault and prosecution process on her studies and career. The result was that she failed her semester.

I understand that the SMRC provides support and representation services to help victims and survivors navigate internal policies or processes, and mitigate any additional adverse consequences that they might be exposed to (by way of its Response and Support Coordination Program). I encourage the SMRC to continue providing and expanding on these victim supports and services.

Civilian associations

To increase and diversify the services available to victims and survivors, the SMRC should invest in developing a solid network of civilian associations, including rape crisis centres and other civilian support centres for victims of sexual violence and domestic violence. The SMRC has already taken steps in this direction by funding projects from civilian sexual assault centres located near CAF bases through the Contribution Program referenced above, which program I understand is to be expanded.

That said, I have heard some criticism from a victim support advocate about the Contribution Program and the usefulness of external civilian support services. She claimed that funded centres have little knowledge of the specific needs of individuals in uniform, have little interest in representing them, and are often unilingual. In addition, based on an informal survey conducted with members of a victim support group, she submitted that most victims would not go to external support groups, namely because of the lack of understanding and appreciation for the military culture and environment.

I have also heard that some victims do not feel safe or comfortable disclosing an incident of sexual misconduct to the SMRC because of the perception that it is not sufficiently independent of the chain of command, and that their disclosure would not be received in confidence. Strengthening the SMRC's ability to refer victims and survivors to helpful and suitable support services outside of the Defence Team will, over time, lead to more trust towards the centre.

In my view, establishing relationships with civilian associations will allow the SMRC to share its expertise and experience in the uniqueness of military culture and environment. Therefore, victims or survivors who seek support from civilian associations will be better served. In addition, victims and survivors who are not comfortable disclosing an incident to the SMRC or who prefer a service tailored to their specific needs may have access to more options than those currently offered by the SMRC and the CAF.

Developing a strong network of civilian associations will be critical if criminal offences of a sexual nature are transferred to the civilian criminal system, as per my recommendation. Indeed, in this case, it will be essential for the SMRC and civilian centres to cooperate closely and share their respective expertise and experience so that the SMRC can also learn about the civilian process. Collaboration between the SMRC and civilian centres will ensure that both are better equipped to support CAF members.

In addition, this type of collaboration can also enhance the SMRC's ability to support members of equity seeking communities, such as the LGBTQ2+ community, Indigenous people, and visible minorities. Further, this type of collaboration could assist the SMRC in providing referrals and assistance to victims of intimate partner violence. In this respect, the SMRC is encouraged to collaborate as well with Military Family Services regarding the support provided by this organization to military partners experiencing intimate partner violence.

A broad network will also increase the geographical reach of services recommended by the SMRC so that victims and survivors can have access to in-person services near them.

Finally and overall, this will turn the SMRC outward from the Defence Team, which should also help improve the perception of the SMRC as independent of the CAF.

Centre of expertise

The SMRC's mandate (2019) identifies the SMRC as “a recognized centre of expertise.”⁷⁷²

The SMRC provides guidance and recommendations to the CAF, primarily through the Directorate Professional Military Conduct – Operation HONOUR, that shape the development and implementation of policies and programs to eliminate sexual misconduct in the CAF.⁷⁷³

Pursuant to the Operating Agreement between the SMRC and the DPMC-OpH, the SMRC's responsibilities include:

4.3 SMRC – provides expert advice, guidance, research, and recommendations on Operation HONOUR as well as in relation to the strategic direction of the CAF response to sexual misconduct.

4.4 SMRC – promotes the development of coherent departmental policies and programs related to sexual misconduct, in conjunction with other stakeholders. This includes developing evidence-based approaches to prevention and the design of mutually reinforcing response and support programs.⁷⁷⁴

Since its inception in 2015, the SMRC has gathered valuable expertise on sexual misconduct in the CAF. It has also developed a relationship with stakeholders within the CAF, which provides them with a good understanding of the policies and programs that relate to sexual misconduct.

In its submissions, the SMRC highlighted the advantages of being the centre of expertise on sexual misconduct:

The centre of expertise plays a vital role to relay what the support service providers are hearing to CAF for action. The centre of expertise also provides way for the CAF to listen to a trusted internal voice and to consult with those with more expertise than they might have on an important issue. The centre of expertise has been able to significantly enhance CAF awareness in important ways: the need to engage survivors at the outset of initiatives rather than consult them perfunctorily after the fact; attention to trauma-informed language in all communications; the rights and needs of respondents.

However, the SMRC did question whether this role should be played by the SMRC or by the CPCC.⁷⁷⁵ I believe that the SMRC should remain the centre of expertise on sexual misconduct. However, in light of the existence of the CPCC, the scope of SMRC's mandate in this regard should be reviewed.

Training

The SMRC's mandate and the Operating Agreement transferred the responsibility for prevention training to the SMRC in 2019. This followed a recommendation made in the 2018 OAG Report. On this responsibility, the SMRC submitted:

Although we worked closely with CAF to clarify our respective roles related to prevention training, it has been an on-going challenge. It feels as though CAF absolved itself from responsibility for prevention of sexual misconduct through program delivery. As well, it has become apparent that we are in a conflict of interest in being responsible for developing, delivering, and monitoring the program. We believe that CAF should be responsible for program development, delivery, and

evaluation, and that SMRC should be responsible for providing expert advice on program content, delivery and evaluation and that we should monitor the integrity of program implementation through a mechanism that is already in place. We raised this early on in the establishment of CPCC and they were in agreement with this proposal, but senior leadership does not want to shift SMRC's mandate until the recommendations from the Independent External Review are completed.⁷⁷⁶

I agree with the SMRC that it cannot be responsible for developing, delivering and monitoring prevention programs. There is a clear conflict with both providing the service and monitoring the performance and effectiveness of the delivery. I also agree that the CAF and the CPCC should take ownership of prevention of sexual misconduct since the CPCC has been set up as “the centre of expertise and single, functional authority for aligning Defence culture to ensure professional conduct meets the standards expected of the profession of arms and the Defence Team.”⁷⁷⁷

However, in light of its expertise, the SMRC should be consulted on developing program content, delivery, and evaluation methods but should not be engaged in actual program delivery or its monitoring.

RECOMMENDATION #15

The ownership of training and prevention of sexual misconduct should be transferred to the CPCC. The CPCC should continue to consult the SMRC on the development of program content, delivery and methods of evaluation for sexual misconduct, but the SMRC should not be engaged in actual program delivery or monitoring.

Monitoring

Following the AG's finding that the CAF “did not adequately monitor the effectiveness of Operation HONOUR,”⁷⁷⁸ the DND responded that the SMRC's charter would be amended to “recognize the Centre as the authoritative external agency with a mandate to ensure that Operation HONOUR is continuously monitored by external subject matter experts.”⁷⁷⁹

The SMRC's charter was subsequently replaced by a new mandate and the Operating Agreement. The Operating Agreement captured this responsibility as follows:

4.7 SMRC – reports on the performance of and services provided by the SMRC.

4.8 SMRC – monitors and reports on the adherence of the CAF to sexual misconduct policies, training and education, CAF implementation of advice provided, and systemic issues and trends.⁷⁸⁰

Justice Deschamps recommended that monitoring be one of the functions of her envisioned centre of accountability. More recently, Justice Fish reiterated her recommendation:

The [SMRC] should be given the mandate to monitor the adherence of the CAF to sexual misconduct policies and to investigate systemic issues that have a negative impact on victims of sexual misconduct, including the [CAF's] accountability.⁷⁸¹

However, others have highlighted the challenges or contradiction of giving the SMRC the responsibility to monitor the CAF. For example, the 2020 MINDS report recommended clarifying how the SMRC can hold the CAF accountable:

The SMRC's monitoring responsibility vis-à-vis the CAF is not clear to an external observer and rife with challenges. There is also a potential moral hazard problem in the SMRC's increasing mandate when it comes to accountability... [T]he CAF might develop a culture of offloading the problem rather than staying committed to Operation HONOUR over the long term. When commissioning research or studies, attention should be paid to examining the governance, decision-making and accountability mechanisms of the SMRC, as well as the broader Operation HONOUR architecture.⁷⁸²

Of significance, the SMRC submitted that there is a contradiction between the function of providing support services and the function of monitoring, even with the SMRC being the centre of expertise on sexual misconduct.⁷⁸³

The Executive Director, SMRC explained that they have had many challenges with monitoring the CAF's progress on sexual misconduct. They do not have direct or independent access to data from the CAF; the SMRC cannot discreetly investigate issues they identify through their work with victims. If they receive a call from someone signaling that there were issues in a specific unit or command, the SMRC has no way of investigating without tipping their hand.⁷⁸⁴

Further, without the ability to compel changes and make independent public communications, the CAF can easily ignore monitoring. Moreover, holding the CAF accountable, or ordering the CAF to change, could be met with mistrust or resistance. This approach would likely undermine the SMRC's ability to collaborate with the CAF.⁷⁸⁵

I agree with the SMRC's submissions that there is a contradiction between the function of providing support services and monitoring, even with the SMRC being the centre of expertise on sexual misconduct. In line with my recommendation to make victim support the SMRC's main focus, I recommend that the SMRC's mandate exclude the function of monitoring CAF's effectiveness in responding to sexual misconduct.

Further, and with respect to the ADM(RS)'s administrative investigation capacity, I recommend that institutionalized close cooperation be put in place between the ADM(RS) and the SMRC, such that the SMRC can alert the ADM(RS) of systemic or specific case concerns that the ADM(RS) is suitably equipped to investigate. I further recommend that the Executive Director, SMRC be able to independently direct the ADM(RS) to conduct an administrative investigation into matters relevant to the SMRC's mandate.

RECOMMENDATION #16

The monitoring of the CAF's effectiveness in responding to sexual misconduct should be removed from the SMRC's mandate. Instead, the SMRC should be required to refer concerns in that regard to the ADM(RS). The SMRC should be empowered to direct the ADM(RS) to conduct an administrative investigation into matters relevant to its mandate.

Governance and independence of the SMRC

As explained earlier, the SMRC was established under the authority of the DM as an organization independent of the chain of command.

Despite this governance structure, there are still concerns that the SMRC is not sufficiently independent; concerns over the SMRC's independence have been raised periodically by Parliamentarians, stakeholders, and the media.⁷⁸⁶ According to the Executive Director, SMRC, the SMRC's independence has been the biggest source of confusion across the organization; there is a perception by some that the SMRC is CAF's support system, and this contributes to victims not calling them.⁷⁸⁷

The Executive Director, SMRC stated before the NDDN:

We have been set up structurally, in terms of my reporting relationship, consistent with what Madame Deschamps recommended, but we have not been given the entirety of the mandate that Madame Deschamps intended. Therefore, that has undermined our ability to perform some aspects of our mandate as independently as she envisioned.

There is absolutely room to review our governance, whether we continue to report within the department or outside the department. It's critical to look at mandate when you're looking at the particular structure or the form it's going to take. It may be the case that some of the functions SMRC is doing right now should reasonably be maintained within the department because of the need to work very collaboratively with people. However, it may well be that other aspects of our mandate, especially if it becomes more enhanced in the way Madame Deschamps envisioned, might better be performed by a more independent entity.⁷⁸⁸

The issue of independence cannot be resolved without first setting out what is meant by independence – independence from whom and for what purpose. Independence cannot be defined in a vacuum; it must take into consideration the mandate of the SMRC, the services it provides, and who its clients are.⁷⁸⁹

I agree that the SMRC must be entirely independent of, and outside, the chain of command. This will ensure that CAF members can have access to services confidentially, anonymously if they wish, from civilians who are not subject to the duty to report and who themselves don't report to anyone inside the CAF. It also increases the chances that CAF members will feel comfortable going to the SMRC for support, without the fear of interference by the chain of command. However, this must be reconciled with the fact that CAF members are the SMRC's primary clients.

Available Governance Options

In light of this, and of my recommendation with respect to the SMRC's mandate, I considered the following options to determine what the best governance structure for the SMRC might be.

Amalgamation with the CPCC and/or integration within the CPCC

The CPCC was set up to address all forms of misconduct across the Defence Team, including sexual misconduct. Amalgamating the SMRC with the CPCC would centralize the response to all forms of misconduct under one entity and “eliminate the inequities in response and support between those who have experienced sexual misconduct and those who have experienced other forms of harm.”⁷⁹⁰ Moreover, this option would “enable CPCC to leverage the considerable expertise and experience of SMRC towards the entirety of their mandate.”⁷⁹¹

A variation of this option would be to integrate the SMRC with the ICCM program, which is currently under the CPCC umbrella, and similarly to the SMRC is primarily a service provider. On this option, the SMRC submitted:

There is considerable overlap between these two organizations and they already work in close partnership, often sharing staff back and forth. Both are staffed by civilians in order to be able to provide services confidentially and anonymously, without the duty to report, all of which engenders trust. This would also be a step towards the Deschamps recommendation where SMRC (or the Centre she envisioned) should deal with sexual assault and harassment and also be a reporting centre. Finally, in considering the lines of effort under CPCC, the Conflict and Complaint Management line is the clear outlier compared to the other three in that it is a service delivery organization, as is SMRC.⁷⁹²

However, in the SMRC’s opinion, the CPCC “should not be a service delivery organization; they should be the functional authority to set, monitor and enforce national policies, programs, and standards related to conduct and culture.”⁷⁹³

I express no opinion on whether or not the CPCC should have a service delivery function. However, it is abundantly clear that the SMRC cannot be integrated into the CAF, in any form whatsoever, without losing all credibility and effectiveness. Therefore, this option must be rejected.

Move the SMRC, in whole or in part, to an external agency

Many stakeholders have advocated for the SMRC to be outside of the CAF and the DND. In their view, this is the only way the SMRC can be truly independent from the chain of command.

With respect to this option, the SMRC submitted that there would be many benefits from having an external “truly” independent agency:

If the SMRC were to shift to be an external agency, reporting to Parliament for example, survivors and those with lived experience may feel more comfortable reporting, in particular about senior leaders. There is the potential for more candour in reporting on how the Department and CAF are addressing misconduct in general, and sexual misconduct in particular. As well, survivors and those with lived experiences would likely see the SMRC more as an advocate than as a tool of the Department. This shift would affect all aspects of its communications, including social media, in the media, and at Parliament. As mentioned above, the inability of the SMRC to be publicly critical of the CAF in situations where a coherent departmental approach is required, such as at Parliamentary appearances or in the media in response to major news stories, is problematic at times. If the SMRC

is to be truly an advocate for survivors and those with lived experiences, it must be able to perform that critical function in public and drive the public conversation. A truly independent SMRC would be less likely to experience political interference in its operations and services.⁷⁹⁴

However, in the view of the Executive Director, SMRC, which I share, setting up the SMRC as an external agency would likely render it less, rather than more, effective.⁷⁹⁵

Even though it may address the issue of “true” independence, the SMRC would face other challenges. Namely, it would be more difficult for the SMRC to obtain access to information, including data, from the Defence Team. Moreover, without a direct report, it would likely be more challenging to get attention from Defence leadership on crucial matters. Currently, the Executive Director, SMRC can go directly to the DM if certain issues need to be addressed. An external agency would not so easily have access to leadership. Over time, an external agency would lose the intimate knowledge of the complex administrative management of human resources in the CAF and of its evolving culture.

Finally, an external agency must be attached to and report to an existing structure. I don’t believe it is desirable to sever the SMRC from the DND and have it report directly to Parliament. The issues that the SMRC deals with are highly personal and confidential and would not necessarily benefit from being reviewed in a partisan environment.

Moreover, it would be difficult to justify providing direct parliamentary oversight on sexual misconduct to one entity, the CAF or even the entire Defence Team, and not the RCMP, for example, or the entire federal public service.

Maintaining the SMRC within the DND

I have considered the various options available, and in my view, the current structure and governance of the SMRC is the best available option and, with a few changes, provides the best combination of independence and expertise necessary to fulfill its mandate.

I have considered the various options available, and in my view, the current structure and governance of the SMRC is the best available option and, with a few changes, provides the best combination of independence and expertise necessary to fulfill its mandate. There is no viable alternative to maintain the efficiency of the SMRC.

The best way for the SMRC to be effective as a service provider is for it to maintain a close enough connection to the CAF without being in any way subjected to the CAF’s direction or control.

This relationship is important in ensuring that the SMRC maintains its expertise in military practices and culture. However, I believe the reputation and perception of the SMRC’s independence would be enhanced if it were staffed exclusively by civilians. However, there

may be situation where members releasing from the CAF are interested in working for the SMRC, bringing with them valuable insight and experience. Applications from former CAF members, whether Reg F or P Res, should be closely vetted for suitability to work within the SMRC. In light of my other recommendations, I do not think that the SMRC needs the presence of CAF military justice or police advisors in its organization.

In providing advice and guidance to victims and survivors, the SMRC will often direct them to services provided by the CAF that may be suitable for them, including physical and mental health service, and services offered through the Military Family Resource Centres. The SMRC must be able to assess the quality and availability of these services to discharge its functions properly. This is best done through a close relationship with the CAF. As long as it feels confident that this will not compromise the perception of its independence, the SMRC, as a Defence Team entity, has opportunities for actions that a totally external actor would not have.

Therefore, I recommend that the SMRC remain within the DND, with measures taken to increase its independence, both actual and perceived, including by increasing its external connection.

RECOMMENDATION #17

The SMRC should remain within the DND and continue to report to the DM.

SMRC's independence

As stated above, many have commented on the SMRC's governance structure and its related independence. However, very few have offered suggestions on how to increase SMRC's independence, both its actual structural independence and its perceived independence.

In his report, Justice Fish recommended that “[t]he relationship between the SMRC, on one hand, and the CAF and DND on the other, should be reviewed to ensure that the SMRC is afforded an appropriate level of independence from both. The review should be conducted by an independent authority.”⁷⁹⁶ In support of this recommendation, he noted that the fact that the VCDS can influence the SMRC's resources means that the SMRC is not completely independent from the chain of command. SMRC's funding and budget approval process should be reviewed to ensure that the CAF has no say in this regard.

The Executive Director, SMRC has raised similar issues with me, including whether the SMRC should be elevated to an L1 organization and headed by an ADM. Without getting into the details of what that entails, including for financial and staffing considerations, I endorse Justice Fish's recommendation, above, and suggest that the administrative structure of the SMRC should be reviewed independently with the view to increasing its independence, its effectiveness and its proper place in the Defence Team.

I believe that the proposed mandate for the SMRC, as outlined above, will assist in increasing the SMRC's independence from the CAF. Going forward, the SMRC's mandate must be respected, and it should not be assigned new responsibilities that could compromise that.

In particular, the CAF, including through the newly-created CPCC, must remain responsible and accountable for the wellbeing of its members. The existence of the SMRC does not discharge this responsibility. Nor should the SMRC's independence be compromised by a blurring of functions.

By way of example, the SMRC submitted:

When the SMRC, through the Operating Agreement with the CAF, assumed responsibility for the support for survivors, the CAF also transferred responsibility for Initiative 19 in Strong, Secure, Engaged: Canada's Defence Policy (FR). This was not done through a formal process and was not in the Operating Agreement, but through an informal agreement where the implications of the situation were not explored. Initiative 19 is "Provide a full range of victim and survivor support services to Canadian Armed Forces members." However, the SMRC does not provide a "full range" of survivor support services; the CAF provides the majority of services to CAF survivors of sexual misconduct, including health, mental health, and Chaplaincy services, or other services offered through the Military Family Resource Centres. Nor does SMRC provide support for other forms of harm. Therefore, it makes little sense that this initiative is not the responsibility of the CAF. Further, this initiative was transferred from, first, Military Personnel Command to the Vice-Chief of the Defence Staff (VCDS) organizations when DGPMC transferred from the former to the latter. In order to increase accountability within the Defence Team for implementing the various Strong, Secure, Engaged initiatives, the Defence Team created Functional Authority Delivery Groups (FADGs) with Assistant Deputy Ministers or their military counterparts as the leads. Initiative 19, unfortunately, still remains as a FADG responsibility of the VCDS organization. This has created a situation where the SMRC is responsible to the VCDS/CAF for the implementation of the Initiative 19. Through this one initiative, the SMRC's independence is called into question. As well, if the CAF is perceived as not doing enough for survivors of sexual misconduct, then it is the SMRC who are potentially "at fault." Given how many CAF organizations provide services to survivors belong in the Military Personnel Command structure, this Initiative should return to the FADG of the Chief, Military Personnel.⁷⁹⁷

With the creation of the CPCC, I believe it will be less likely that these types of initiatives are given to the SMRC by default.

RECOMMENDATION #18

The administrative structure of the SMRC should be reviewed in order to increase its independence, effectiveness and proper place in the Defence Team.

The External Advisory Council

The EAC was established in 2018. Its role is to "provide empirically, clinically and experientially informed advice and recommendations to the [Executive Director, SMRC] on Operation HONOUR activities, including implementation of [Justice Deschamps'] recommendations."⁷⁹⁸ It is composed of eight external subject matter experts that are recommended by the Executive Director, SMRC and nominated by the DM for a period of two years, with the possibility of extension.⁷⁹⁹

Pursuant to its terms of reference:

Council members will serve in an advisory capacity only. The Council has no authority in its own right over the operations of DND or CAF. Council members will be asked to provide independent, impartial, third-party advice, collectively or individually, on issues pertaining to Operation HONOUR activities.⁸⁰⁰

Since its creation, the EAC has provided advice and information on topics such as: the Path to Dignity; DAOD 9005-1; the Operation HONOUR Performance Measurement Framework; Survivor Support Strategy; Bill C-77 implementation; and efforts by Military Family Services to address family violence, to name a few.

The EAC fulfills an important role of providing external expert advice and information on sexual misconduct. Its terms of reference need to be updated and should be focused primarily on supporting the work of the SMRC.

To increase the SMRC's independence, real and perceived, the EAC should be required to publish an annual report, alongside the SMRC's, through which it can convey an external perspective on the evolution of the SMRC's role and performance. Although not formally an oversight body, it can play a role as an external, independent voice on issues where the SMRC could feel more restrained.

Therefore, I recommend that the role of the EAC be reviewed. It should be composed of external experts and advocates for victims and survivors. There should be adequate representation of equity seeking groups and minority groups who are disproportionately affected by sexual misconduct.⁸⁰¹

RECOMMENDATION #19

The EAC's role, composition and governance should be reviewed. It should be composed of external experts and advocates for victims and survivors, with adequate representation of equity seeking and minority groups who are disproportionately affected by sexual misconduct. It should publish an annual report to provide an external perspective on the evolution of the SMRC's role and performance.

Local initiatives

Many have criticized the top-down approach employed by the CAF in responding to sexual misconduct, including in the implementation of Operation HONOUR. The main criticism described to me is a disconnect between the NDHQ and the bases/wings. For example, Ottawa policy directed that Operation HONOUR briefings were to be given by COs. However, in many cases, the COs treated the briefings as a “women’s issue” and delegated the task to a woman in their unit. In addition, many of the actions required under Operation HONOUR were reduced to a “check the box” exercise. Unfortunately, this set the tone for the level of seriousness given to the Operation.

As one stakeholder told me:

CAF can make all the policies in the world, [they] will not change the culture. I want to hear what the L2, L3 L4 have to say – they need to feel valued by the chain of command in their unit. If no one reads [the policy], it’s worth nothing.

In contrast, during my consultations, I heard from many Defence Team members who were determined to participate in culture change. They were also eager to share the initiatives they had developed or implemented in their communities. A few examples illustrate this dynamism:

- Following an incident at the CFLRS, the command team completed an evaluation and analysis to identify problems and key vulnerabilities, as well as key knowledge gaps, available tools and potential pitfalls relating to professional conduct and culture at CFLRS. The command team engaged in fireside chats with all members of their unit, staff and recruits, for an open dialogue on culture⁸⁰²;
- In June 2021, the Canadian Forces School of Military Engineering stood up a working group called the “CFSME Professional Conduct and Culture OPI Committee”, with a primary focus to develop and implement a sexual misconduct and hateful conduct prevention program within the school. I understand that they have received the support of approximately 20 volunteers of all ranks and genders. They have engaged the local employment equity committees and various external organizations such as the White Ribbon Foundation and Sexual Violence New Brunswick to build a professional development plan for [their] school staff;⁸⁰³

- The 2nd Canadian Division developed their own unique human resource specialist team. Unlike other units, this is mostly staffed by civilians reporting to the officer commanding the 2nd Division. This team created, in parallel to the OPTHAS, their own software to track sexual misconduct incidents, which, they have told us, is more user-friendly and useful than the OPHTAS. As an example, their software allows them to better track serial offenders. They also act as a key resource by providing support to units and commands within the division;
- In addition, several senior leaders have engaged in conversations with their units or commands, or with victim support groups, before and outside of the formal restorative engagement process developed as a result of the class action settlement; and
- Finally, several CAF members and victim support groups designed and proposed solutions and tools to help effect culture change within the CAF.

I also refer to important local initiatives such as Athena, Agora, and the new Success Centre in the section on Military Colleges.

The then Acting CDS himself captured the importance of local or “organic” initiatives in a statement on culture change, dated 12 July 2021:

As should be expected, many of you have not waited for direction. Grasping the importance and the context of our challenges, you have implemented local solutions. These may be the most important and long-lasting as they come from the grassroots level and are fed by the need for change there. Examples include: reinforcing or creating local advisor groups and advisors; the creation of culture officers on a number of our Royal Canadian Navy Ships; the trialing and introductions by the Canadian Army of the Sexual Misconduct Workshop Training, developed and delivered by a CAF member and survivor; as well as at the 4th Cdn Div Training Centre Meaford, the recent creation of a new local Defence Women’s Advisory Organization; a focused effort by the RCAF to leverage their quarterly Vector Check program; and Wing-level committees established by junior ranks to solicit grassroots proposals on local culture change initiatives. Additionally, many units and formations have engaged local expertise, including through the Honorary Colonel community, to inform initiatives. The list is longer and CPCC will capture those initiatives which meet with success as best practices, share them across the Defence Team, and provide institutional policy cover where necessary.⁸⁰⁴

These initiatives are good examples of the commitment of Defence Team members to addressing culture at a local level. They should be encouraged. There is unquestionable value in initiatives that originate on the ground, addressing concerns or issues that are specific to a unit or sub-culture. These initiatives also empower members to be part of the change and engage individuals who may otherwise not pay attention to or relate to “Ottawa” initiatives.

There is unquestionable value in initiatives that originate on the ground, addressing concerns or issues that are specific to a unit or sub-culture. These initiatives also empower members to be part of the change and engage individuals who may otherwise not pay attention to or relate to “Ottawa” initiatives.

However, these initiatives are typically launched without the awareness of any central authorities, experts or stakeholders. This creates a potential for ineffective or even harmful initiatives. Even if they resonate with some individuals,

[T]hey may end up costing the organization in terms of time or money with little to no appreciable impact. For example, a locally developed or contracted training program may be popular, but participants will not know what is missing in terms of key factors to promote both learning and, more importantly, behavioural change. They also have the potential to be harmful if not done well (e.g., a local initiative to have victims provide testimonials in group settings with no consideration of risks or need for support). In addition, if they are not consistent across the organization, they run the risk of cancelling each other out in aggregate data – an effective initiative may end up masked by ineffective ones.⁸⁰⁵

There is also a risk that the cumulative effect of local and CAF-wide initiatives will have a counter-productive effect by creating *fatigue* relating to culture discussion and training.

There should be some oversight of these initiatives. However, this oversight must be balanced with the need for Defence Team members to have agency over these initiatives and be encouraged and supported when they innovate.

The SMRC recommended:

CPCC should be the centralized authority or policy holder and establish mechanisms to ensure it has awareness of all local initiatives at the very least, to ensure organizational awareness and reporting. More importantly, CPCC needs to develop standards for content, components, delivery, and evaluation of all local initiatives to ensure consistency across messages, language, training goals, and to be able to measure impact. CPCC needs to assess and endorse all initiatives, and then be able to track, measure, and report on all culture change initiatives.⁸⁰⁶

According to the *Update to Pathways to Progress* provided by the CPCC, “[the] CPCC is tracking a number of key programs and grassroots initiatives related to culture change occurring across the Defence Team. This will lead to a better sense of ongoing activity, will create avenues to share best practices across the organization, and support the identification of gaps in programming.”⁸⁰⁷

I agree that the CPCC should give general direction and be aware of local initiatives. But I also encourage the CPCC to provide space and resources to the initiatives that are effective and leverage them across the organization, where appropriate.

While the CPCC should be the centralized authority on these initiatives, it should consult and collaborate with the SMRC for any initiatives relating to sexual misconduct – recognizing that the SMRC is the centre of expertise on the subject.

Defence Advisory Groups

In 1994, the DM and the CDS endorsed the creation of DAGs to “provide insight to the DND/CAF leadership on systemic barriers and issues that could have an impact on designated [employment equity] groups, and to provide advice on the development and implementation of programs and policies that could negatively impact their respective group.”⁸⁰⁸ In addition to the DAGs, there are informal groups representing distinct subsets of the Defence Team known as “Networks”.⁸⁰⁹

The CAF Employment Equity Plan 2021-2026 describes the DAGs as follows:

The DAG structure is the Defence Team’s approach to the consultation requirements of section 15(1) of the [Employment Equity Act] and represents an essential component of [employment equity] governance. Through a network of local advisory groups located across Canada, and their respective National DAG co-chairs, DAGs are led by volunteers who are currently employed in the Defence Team.

The DAGs provide advice and insight to DND and CAF leadership on issues relevant to their constituents, and support increased visibility of [employment equity] and related networks across the organization. DAGs make valuable contributions to all levels of decision making for both military and civilian teams, at national and local levels. DAGs also promote the integration of Designated Group Members (DGM).

Their work raises awareness of systemic barriers to employment equity within DND/CAF and, engages with the two functional authorities (CMP and ADM(HR-Civ)) on ways to resolve them. They also provide advice and recommendations on the development of policies, procedures and mechanisms which are human resources related, supported by evidence-based actions specific to the underrepresented communities in the areas of recruitment, retention, training and development. In recent years, there has been a marked increase in calls for engagement and consultation with the DAGs, which has led to the refreshing of the DAG Terms of Reference and a closer review of DAG structure to ensure all CAF/ DND members are being represented in a full and efficient manner.⁸¹⁰

There are six DAGs⁸¹¹:

- Defence Aboriginal Advisory Group;
- Defence Visible Minorities Advisory Group;
- Defence Women’s Advisory Organization;
- Defence Advisory Group for Persons with Disabilities;
- Defence Team Pride Advisory Organization⁸¹²; and
- Defence Team Black Employee Network.

In their final report, the Minister's Advisory Panel made an important statement about the DAGs:

The DAGs and Networks all had one thing in common: their recommendations for a more inclusive workplace were powerful, achievable and long overdue for action from the Defence Team leadership. The Advisory Panel concluded that it would not be fair to take these commendable ideas and offer them as its own, since that has been part of the problem in the past. The Advisory Panel has been stood up for one year. The DAGs and Networks are in it for the long run. They need to be heard.

[...]

Insights from the members of the DAGs can lead the way towards a new culture where all Defence Team members can thrive. But for any significant change in the Defence Team culture to happen, the DAGs and the Networks must be elevated. They are the best innovators and catalysts for change. They should be listened to, provided with the resources they need to prosper, and empowered to be guides towards a diverse and inclusive culture. They are experienced and expert voices that have a wealth of information, ideas, recommendations, action plans, and suggestions to identify and tackle the underlying drivers of inequality and systemic barriers in the DND/CAF. They have the lived experiences that must inform efforts to eliminate racism and discrimination and achieve the vision of an inclusive culture. As part of the Defence Team family, DAGs are force multipliers.⁸¹³

I believe the DAGs are essential agents of change; their presence on the ground and their regular engagement with their communities give them a unique perspective on issues affecting CAF members and DND employees.

I fully agree with these views expressed by the Panel. I believe the DAGs are essential agents of change; their presence on the ground and their regular engagement with their communities give them a unique perspective on issues affecting CAF members and DND employees.

The DAGs should be given the time and resources necessary to do their work. They should also be rewarded and recognized for their contributions to the Defence Team. This could be as simple as leadership scheduling meetings with the DAGs when visiting bases to hear their concerns and suggestions, as has been done during the CPCC consultations, thus sending a strong message to other members that these groups are important and valued.

PART II

Leadership

Introduction

The profession of arms in Canada can only be exercised in a collective way, under government control, within a single entity: the CAF. For most of its members, the Canadian military is a lifetime career. Compared to other professions, it has a young workforce. Members enroll at an early age and hold senior positions relatively young, after approximately 20 years of service.

Their professional development is one of the CAF's major investments. The military cannot recruit its leaders from the private sector, let alone from competitors. It is entirely dependent on itself to develop its future leaders in an environment that is at once hierarchical and competitive.

The development of leadership in the CAF is a vast enterprise that occupies a large part of its activities. It is an internally focused, detailed and sophisticated process that is heavily devoted to the management of its members' careers. That process is responsible for ensuring professional competence as members progress in the organization. Importantly, for the purpose of my Review, it is also responsible for ensuring that it selects the right leaders, those who truly deserve the trust given to them to lead people into harm's way.

Recruitment

Personnel generation and recruiting functions

The CAF recruitment system as it currently exists has ample room for improvement. To understand its challenges, it is helpful to know how it currently functions.

The CMP provides guidance and policies on all military human resources matters, monitors compliance within the system, and ensures personnel support is aligned and coordinated. The Military Personnel Generation (MILPERSGEN) Group has a more specific mission, which is to lead the CAF personnel generation to ensure a full complement of members in all the different environments and occupations of the CAF.

Meanwhile, the CFRG, which falls under MILPERSGEN, supports the operational capability of the CAF by attracting, processing, selecting and enrolling Canadian recruits into the Reg F, the Cadets Organizations Administration and Training Service, and Indigenous Summer Programs. The CFRG is also responsible for directing reserve applications to the appropriate reserve unit for processing.⁸¹⁴ In addition, the Assistant Deputy Minister (Public Affairs) (ADM(PA)), and more specifically the Director of Marketing and Advertising, are responsible for recruitment advertising.⁸¹⁵

In June 2017, the Government of Canada issued its Defence Policy – *Strong, Secure, Engaged*. This policy document laid out the CAF's general personnel goal of increasing its Reg F to 71,500 members and its Res F to 30,000 members.⁸¹⁶ This represented an increase of approximately 3,500 Reg F members and 1,500 Res F members, as well as 1,150 defence civilians, all over previously-approved levels.

The CAF's Horizon-One Strategic Intake Plan (SIP) supports the 2017 Defence Policy, and governs the yearly targets for personnel recruitment.⁸¹⁷ The SIP is issued by MILPERSCOM and is a product of annual military occupational reviews. It identifies the optimal number of people to be recruited into the CAF in the specified year,⁸¹⁸ to ensure the necessary acquisition and maintenance of the suitable staffing levels in each military occupation for both officers and NCMs.

Additionally, the SIP takes into account the growth and contraction of occupations, size of the basic training list, attrition numbers, and occupational training capacity. As well, the SIP identifies “priority” occupations, which are defined as less than 90% of preferred staffing levels, and “threshold” occupations staffed at 90-95% levels.

Recruiting for the reserves involves a separate process. The reserve units are largely responsible for their own recruiting and basic training, which takes place either at a local unit location or a CAF training centre.⁸¹⁹ The DAOD 5002-1, *Enrolment*, states that COs of primary reserve units are responsible for assessing their personnel requirements and enrolment vacancies, referring applicants to a recruiting centre to initiate the selection and enrolment process, conducting the prior learning assessment and recognition process, selecting eligible and suitable applicants, and conducting the enrolment ceremony and attestation of applicants.⁸²⁰ Currently, the Canadian Army Reserve⁸²¹ conducts all its own recruiting, including processing and medicals. The Naval Reserve also conducts its own recruitment, although the medical screening is facilitated by CFRG. The CFRG processes the applications for candidates interested in the RCAF Reserve.⁸²²

These various processes may seem well-established and smooth functioning on the surface, but in reality, they require an overhaul. I have been told that the CAF recruiting system is consistently not attracting the right people, for the right roles, at the right time. There are chronic shortages in the same occupations, and with respect to employment equity targets.⁸²³ Due to shortfalls, particularly with respect to certain occupations, there remains considerable pressure to recruit, train and retain recruits.

Recent recruiting shortfalls and the CAF Reconstitution

Fiscal year 2019-2020 was a fairly typical year, with the CAF recruiting 5,171 new members. In 2020-2021, during the pandemic, the SIP target was 5,400, but only 2,023 recruits were onboarded. I understand that, for 2021-2022, the Reg F intake target was 6,769, but factors, including the pandemic, put a ceiling on the number of recruits that could be trained.⁸²⁴ Meanwhile, according to a *Canadian Army Today* article, the total number of applicants grew significantly to 78,150 in 2020-2021 compared to 60,000 in 2019-2020. Total attrition was also lower than normal in 2020-2021.⁸²⁵ However, the CAF effectively decreased by 2,300 Reg F members in 2020-21, and currently has a “missing middle” of nearly 10,000 vacant CAF positions, many of which are at the junior officer and senior NCM and officer levels, according to CDS planning guidance.⁸²⁶

As stated by *Canadian Army Today*, making up for the recruiting shortfall of around 3,000 in 2020-2021 will take years. The CAF’s ability to deliver basic military training and early occupational training has an impact on its ability to onboard unusually high numbers of recruits compared to a normal year. This limits its capacity to adjust quickly when it might be possible or desirable to recruit larger numbers.

In view of the challenging personnel situation, the Acting CDS warned in July 2021 that the pandemic, attrition rates, international developments, and other changing demographics threaten to imperil the CAF’s ability to recruit, train, and retain talent. This threatens in turn the current readiness and long-term health of Canada’s military. As a result, the CDS initiated a “reconstitution” effort under which the CAF will build personnel capacity, readiness, and capabilities, to ensure its ability to protect Canadians and Canadian interests.⁸²⁷

The CAF Reconstitution Plan will form the foundation of the CAF's activities and priorities over the next several years. It will focus on three areas:

- Prioritizing effort and resources on people – to rebuild military strength (*i.e.*, number of personnel) while making much needed changes to aspects of CAF culture;
- Readiness – to ensure the CAF's ability to continue to deliver on operations; and
- Modernization – to develop the capabilities and adapt CAF's structure necessary to address the evolving character of conflict and operations.⁸²⁸

Key planning tasks for the CAF Reconstitution Plan were identified, including those directly related to the recruiting function.⁸²⁹ All CAF Commands were tasked to ensure that GBA+ informs planning activities to enhance diversity and identify new measures or policies to mitigate medium to longer-term risk or negative impact on operations and members' careers.

The MILPERSCOM was tasked to enhance recruiting capabilities, in order to fulfill both operational needs and diversity aspirations, and identify specific occupational gaps to inform prioritization of recruitment. The MILPERSCOM was also tasked to oversee streamlining component transfer, for example transferring from the Res F to the Reg F,⁸³⁰ and the reserve re-enrolment processes. In addition, the MILPERSCOM was tasked to lead the implementation and streamlining of decentralized basic military qualification training (this decentralization is an interim measure intended to last until basic training is recentralized within MILPERSCOM by 2022-23, with limited exceptions). The MILPERSCOM and the CPCC were jointly tasked with implementing the Women in Uniform Action Team and ensuring that all personnel generation efforts are shaped by meaningful culture change efforts.

The CAF recruitment process is cumbersome

The CAF recruits and trains candidates in their chosen occupation. Canadians can join the CAF as either officers or NCMs. Officers hold a “commission” and are responsible for planning, leading, and managing military operations and training activities in the CAF. They typically have university degrees, which are required for many officer occupations. Officers can join under the Regular Officer Training Plan (ROTP) and be selected to attend military college or a civilian university. They can also join through the Direct Entry Officer Plan (DEO)⁸³¹ if they already hold the appropriate university degree for their desired occupation. Officer occupations include, for example, pilot, aeronautical engineer, air combat systems officer, naval warfare officer, naval combat systems engineering officer, infantry/artillery/armoured officer, and logistics/legal/intelligence officer.

NCMs are subordinate in rank to officers and do not require a university education. NCM occupations can include marine technician, infantry soldier, sonar operator, cyber operator, aviation systems technician, and medical laboratory technologist, to name a few. NCMs who demonstrate the military experience and personal qualities required for service as officers can eventually be commissioned from the ranks and become officers under the Commissioning

from the Ranks Plan.⁸³² They may also become officers through the University Training Plan for NCMs⁸³³ and be offered subsidized undergraduate education.

Candidates interested in joining the CAF may apply online,⁸³⁴ or attend one of the CAF recruiting centres across Canada. Certain steps in the application process such as the Canadian Forces Aptitude Test (CFAT) and required medical examination are done in person.⁸³⁵ CFRG personnel also travel to increase this outreach, and to conduct the CFAT, interviews and medical testing. In addition, the CAF covers certain expenses for applicants who have to travel a long distance to get to a detachment/recruiting center.

The recruitment process involves the following steps:

- Applicants submit an application online;⁸³⁶
- Applicants submit required personal documentation;⁸³⁷
- Reliability screening:
 - Applicants fill out reliability screening forms.
 - The CAF conducts reliability screening.
 - This includes criminal record and background checks.
- The CFAT:⁸³⁸
 - Applicants complete a series of three aptitude tests. Applicants are tested on verbal and problem-solving skills, and spatial ability.
 - This test is conducted in person at a Canadian Forces Recruiting Centre.⁸³⁹
 - The CAF is working on implementing a virtual CFAT that can be administered remotely.
 - The CFAT is a pass/fail test that screens out the lower 10% of applicants. The CFAT score is used to determine if an applicant is suitable for their occupation of choice.⁸⁴⁰
- Adaptive Personality Test:
 - An Adaptive Personality Test is currently being developed and tested for use in future CAF selection procedures.⁸⁴¹
 - Applicants are asked to complete an online personality inventory, which provides information on personal characteristics and qualities.
- Medical examination:
 - The Recruit Medical Office (RMO), part of the Director General Health Services, is responsible for the medical screening of applicants.
 - CAF medical staff at a Canadian Forces Recruiting Centre will conduct a physical exam,⁸⁴² including measuring height and weight, evaluating vision and colour perception, and hearing. Applicants also complete a questionnaire on medical history, including specific information on medication.

- The medical file is then reviewed centrally by an RMO medical officer to determine the applicant's medical eligibility and identify any limitations that could affect their training and career.
 - In some cases, a follow-up with an outside specialist is required. This can take additional time.
- Interview:⁸⁴³
- An interview with a Military Career Counsellor (MCC) assesses the applicant's personal qualities and life experiences.
 - The interview is conducted either in person at a CFRG Detachment or virtually.
 - During the interview portion of personal circumstances, the MCC covers eligibility and suitability criteria including discrimination and harassment policies, and the use of non-prescribed drugs, cannabis and alcohol use. Statements of Understanding on these policies are reviewed and signed by the applicant.
- The CAF will assess its needs and prepare a competition/merit list based on the applications and the CAF Recruiting Plan.
- Selected applicants receive an offer for engagement with the CAF.
- Prior to enrollment, applicants sign a Variable Initial Engagement (VIE) agreement.

Figure 5 is a flowchart summarizing the military recruitment process, extracted from the 2019 Advisory of the Military Recruitment Process November Report.⁸⁴⁴

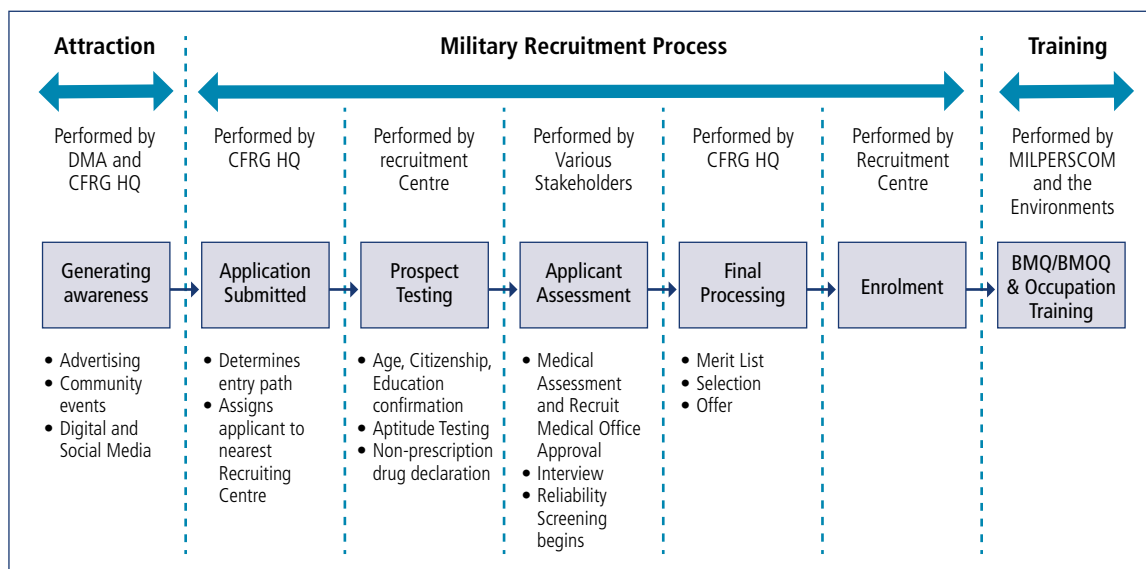


Figure 5. Military Recruitment process. This figure outlines the steps in the attraction and the military recruitment process and who is responsible for each part of the process.

*BMQ – Basic Military Qualification, BMOQ – Basic Military Officer Qualification

Applicants to the CAF must be “of good character.” This is determined in part by attaining an enhanced reliability status in accordance with the National Defence Security Policy. The DAOD 5002-1, *Enrolment*, also explicitly states that applicants must comply with CAF policies concerning sexual misconduct, alcohol-related misconduct, harassment, drugs and racism. In addition, applicants must not have outstanding obligations under the judicial system.⁸⁴⁵

After testing, medical exam and interview are complete, the CFRG prepares a competition/merit list based on the applications and the CAF Recruiting Plan. This list takes into account training availability, as the CAF cannot take on recruits who cannot be trained in a reasonable timeframe. Qualified applicants are selected for specific occupations and entry plans, and are then given an offer of employment within that occupation.

Enrolment, or onboarding, into the CAF involves three phases.⁸⁴⁶ They include a pre-enrolment interview (separate from the application interview), an enrolment documentation briefing, and then finally an enrolment ceremony.⁸⁴⁷

An MCC or Witnessing Officer will conduct the one-on-one interview on the scheduled enrolment date and complete the CF 92 Pre-enrolment/Transfer Statement of Understanding and Update. This step confirms the applicant’s personal circumstances and ensures they fully understand CAF policies surrounding their employment. The Statements of Understanding previously signed by the applicant, including the Statement of Understanding of the summary of CAF policies on discrimination and harassment, are verified during pre-enrolment, and are confirmed by an MCC or Witnessing Officer during the interview. The CF 92 is then signed by both the MCC/Witnessing Officer and applicant.⁸⁴⁸ While the CF 92 form does not include any agreement to abide by the CAF sexual misconduct policy, applicants expressly agree in their Statement of Understanding that they will comply fully with the CAF’s policy on discrimination, harassment and professional conduct. They also acknowledge that failure to do so may lead to disciplinary and/ or administrative action, including release.

Finally, the enrolment ceremony involves taking an oath or making a solemn affirmation. It is a traditional, formal event, where candidates are encouraged to invite family and friends as witnesses.

It is widely recognized, even by the Commander of the MILPERSGEN Group⁸⁴⁹, that the current recruitment process is cumbersome. Laden with steps and hoops to jump through, applicants experience significant delays throughout the process. The following observations make it clear that the system is flawed and unwieldy:

- Canada’s Defence Policy – *Strong, Secure, Engaged* highlights a recruiting system that is too slow to compete in Canada’s competitive labour market and does not effectively communicate the rewarding employment opportunities available;⁸⁵⁰

- Recruiting processes are suboptimal with delays at various points, in particular when conducting the CFAT, the medical exam and review, and the reliability status clearances.⁸⁵¹ The CFAT is normally completed before the applicant is scheduled for a medical or interview,⁸⁵² but some processes can take place concurrently if they are scheduled on the same day (for instance, for applicants who have travelled a far distance);⁸⁵³
- CFRG calculated that the average processing delay for enrolment in the CAF has increased in the last three years to well over 300 days from “ready for testing” to “enrolled”.⁸⁵⁴ The median processing days for the process from the completion of the CFAT to enrolment is 103 days;⁸⁵⁵ and
- The medical screening is a particular bottleneck. I was informed that, currently, there is a four-month backlog, which represents the biggest delay in the recruitment process, as the medical file is suspended until a medical officer reviews it. In a 2019 Advisory of the Military Recruitment Process report, the RMO’s medical screening and review accounted for approximately 33% of the total delay.⁸⁵⁶ I was also told by some recruits that security clearances took considerable time, especially for those who have lived or were born outside Canada.

The CFAT has not been recently validated, and given the modern expectations of a newer generation and potential changes in CAF requirements, this test may be out of date and require re-evaluation.⁸⁵⁷

The 2017 SSAV Report on RMC Kingston recommended that the CFAT be re-validated as soon as practicable and every five years thereafter.⁸⁵⁸ It is troubling that Indigenous applicants have been shown to score more poorly on the CFAT compared to non-Indigenous people, indicating potential test bias.⁸⁵⁹ Similarly, a concern was raised during my visit to the RMC Kingston that the CFAT may not be compliant with GBA+ and, specifically, that female varsity athletes enrol only to be screened out by the CFAT, despite having been assessed as academically suitable to attend the college by the Registrar’s office. Further, a 2020 DRDC study concluded the following:

- Male and female applicants demonstrated similar CFAT pass rates at the 10th percentile cut-off;
- There are larger differences in pass rates between male and female applicants at the higher percentile cut-off (*i.e.*, 30th percentile); and
- Male applicants had higher total CFAT scores on average, compared to female applicants, which appears to be driven primarily by the “problem-solving” sub-test results, which are not inconsistent with mainstream findings showing gender differences in mathematical problem solving.⁸⁶⁰

This 2020 study recommended that the CAF conduct a differential item functioning analysis to scientifically prove or disprove gender bias of the CFAT.

Notably, current CAF recruiting processes do not formally screen candidates for issues and attitudes related to cultural diversity and sexual harassment/misconduct, although these issues are discussed during the interview.

Efforts by the CAF to recruit women

In 2016, the CDS directed the CAF to increase its population of women by 1% annually, towards a goal of 25% by 2026.⁸⁶¹ However, according to the CAF Employment Equity Report for 2020-21, women currently represent 16% of the Reg F, 16.9% of the P Res, and 16.3% of the CAF together.⁸⁶² Enrolment of women over the last five years has hovered at approximately 17%, according to CAF data, with the exception of 2020-21 (which may be due to the pandemic).⁸⁶³ I understand that approximately 28% of applicants are women, but because 65% of women apply for the same support-related occupations, they cannot all be enrolled.⁸⁶⁴ The CAF is more successful in recruiting women for the military colleges and can meet the 25% goal for that demographic. It consistently attracts more women as officers, as a proportion of total officers, than as NCMs. For example, according to CAF data, in 2020-21, 25.9% of the officer intake were women. However, only 14.8% of the NCM intake were women. As a result, the total percentage intake in 2021-22 representing women was 17.4%.⁸⁶⁵

In 2017, in an effort to move toward CAF's overall 25% goal, a CFRG Tiger Team focus group produced a comprehensive list of issues and recommendations, including systemic and tactical, aimed at increasing the number of women enrolling in the CAF.⁸⁶⁶ For example:

- Redefine the “family unit” to ensure that CAF policies and allowances reflect contemporary realities and don't discourage women with family concerns from considering the CAF as a career; and
- Ensure advertising to the Canadian public includes showcasing the CAF in humanitarian assistance roles, the restorative side of missions, and safe living conditions during deployments.

I understand that this Tiger Team report has had some influence, but was not adopted by the CAF and its recommendations were not formally tracked or implemented.⁸⁶⁷

The Advisory of the Military Recruitment Process was subsequently set up as part of the ADM(RS) Risk-Based Audit Plan for fiscal years 2018-19 to 2020-21. The advisory extracted a representative sample of CAF application files for in-depth process tracking. It conducted interviews with key personnel to determine if attraction strategies and the recruitment process supported the CAF in achieving its targets. The advisory also examined whether enrolment processing times had been reduced. In its November 2019 report, confirming that the CAF is not meeting its priority occupation or gender diversity targets, the advisory made additional recommendations.⁸⁶⁸ Among others, the advisory recommended that the MILPERSCOM and the ADM(PA) develop a joint national attraction agreement to document roles and responsibilities between the two organizations, as well as potential for collaboration. It also recommended developing and collecting metrics on attraction activities,

to assist in more informed decision making. In addition, the advisory suggested that better tracking and understanding of applicant drop-off rates at key steps in the recruiting process would allow the CAF to better support gender diversity and broader inclusivity.

Most recently, Deloitte completed a comprehensive review of recruitment and how to implement necessary changes. It recommended the following:

- Shift to a proactive recruitment operating model focused on efficiency and candidate experience;
- Define the CAF's talent value proposition and employer brand strategy;
- Move recruitment marketing and attraction strategy from “screening out” to “screening in” through personalization;
- Leverage leading marketing and attraction practices to increase applicants, as well as diversity in applicants by reducing the barriers to applying;
- Improve the performance measurement framework to measure the efficiency and effectiveness of recruiting activities and move towards data-driven decision-making for its recruitment function;
- Streamline the medical screening process; and
- Trial a medical screening process to demonstrate the opportunities and impediments to operating a fully digital recruitment process.⁸⁶⁹

Additional concerns with recruitment

Talent identification and development is vital to successful culture change within an organization.⁸⁷⁰ Ultimately, the recruitment arm of the CAF will continue to falter if bottlenecks in its multi-layered processes persist. Securing the best talent should be a top priority, and to do this the CAF must address the problematic complexity of its recruitment strategy, otherwise choice candidates will seek opportunities elsewhere. With the ongoing depletion of CAF personnel, an additional dilemma presents itself. The CAF can only recruit as many people as it can train. It is a vicious circle. With fewer trainers at hand, the recruitment process is bogged down. As part of the reconstitution effort, the CAF is currently exploring options for scaling up capacity, including instructor supply at the CFLRS, decentralizing recruit training, and enlisting the reserves in support of recruitment and/or training.⁸⁷¹ However, if scarce personnel resources are redirected to the training function, this may also impact the availability of adequate personnel for domestic and international operations. It is a delicate balance, with decisions being made largely at the political level. Meanwhile, the future of female recruitment to the CAF is not encouraging. Both the CFRG and the Commander of MILPERSGEN have told me there is little to no chance that the CAF will reach 25% women representation by 2026.⁸⁷² In fact, none of my interlocutors have suggested this target can realistically be met.

Both the CFRG and the Commander of MILPERSGEN have told me there is little to no chance that the CAF will reach 25% women representation by 2026. In fact, none of my interlocutors have suggested this target can realistically be met.

Female applicants to the CAF are largely drawn to support role positions (logistics officer, material management technician, human resources administrator, medical/dental technician, medical officer, nursing officer, intelligence officer, financial services administrator, steward, cook, etc.) and a limited number of Air Force occupations (aerospace engineering and aerospace control officers).⁸⁷³ I understand that these positions account for only 33% of the total SIP.⁸⁷⁴

A large contributing factor to women being drawn to these types of roles is that these are occupations which traditionally feature women. This reflects the wider trend in universities and the marketplace where women tend to congregate in, or are led into, traditionally female-dominated occupations.

Because the number of available support positions is outweighed by the number of female applicants, women are ultimately turned away. This scenario would be much different if more women were applying for roles traditionally dominated by men. This may be a difficult trend to reverse.

The dearth of female recruits, particularly in the male-dominated occupations, is not a result of poor effort on the part of recruitment centres. Quite the contrary. The centres strive to redirect women applicants to the occupations where they are most needed. We were told by several women recruits that they were advised to choose infantry or armour, as it was a sure-fire way to get accepted. Unfortunately, one senior officer said that even if the CFRG could recruit 25% women for combat arms occupations, the resistance of the combat arms community to those women recruits would make it difficult for that many women to be included in its ranks.

Women were admitted into the combat arms as a result of the Combat Related Employment of Women trials in 1987 and a CHRT order in 1989, as I set out in the section on the History of Women in the CAF.⁸⁷⁵ Since that time, their struggles have been exposed in many testimonies, including *Out Standing in the Field: A Memoir by Canada's First Female Infantry Officer*, by Sandra Perron.

Not surprisingly, these entrenched barriers, combined with a history of sexual misconduct and a hostile, unwelcoming environment, can be a serious deterrent to women.

Antiquated stereotypes and sexist assumptions play a large part in the difficult integration of women into the combat arms community. Faced with scepticism about their physical capabilities or perceived difficulties with balancing work and family, many women may not even contemplate that type of work.

Not surprisingly, these entrenched barriers, combined with a history of sexual misconduct and a hostile, unwelcoming environment, can be a serious deterrent to women.

Several CAF members who reached out to me, including high-ranking officers, admitted they have doubts about staying with the CAF, and would advise their daughters not to join. Female Naval/Officer Cadets (N/OCdts) told us that they faced concern and opposition from friends and family about their intention to join an organization with such a toxic culture. On the other hand, many also said they wanted to join precisely in order to make a difference for other women – to play a small part in effecting change.

Onboarding and early training

The challenges of attracting more women to the CAF are not limited to recruitment alone. I have also learned that the way the CAF trains its new members, including BMQ and BMOQ as well as the initial occupation training, is not without its flaws. I have heard concerns about:

- the amount of pay and allowances received while on basic and other training;
- the length of time new members need to wait before, and in between, training courses;
- the fact that the CAF typically sends young recruits far away from where they were recruited without giving them adequate information, preparation or financial support (which is particularly problematic for young parents or young married persons); and
- the physical fitness standard required and whether it remains appropriate, particularly in the many occupations that do not require the same level of fitness as one would require and expect to maintain in a deployment.

These are all potential barriers to attracting otherwise good candidates to the CAF, especially women.

Recruiting the appropriate number of new members is only one dimension of the current reconstitution effort.⁸⁷⁶ The quality of recruits is arguably an even more important consideration today.⁸⁷⁷ In the CAF's current culture, and the culture to which it aspires, it is more important than ever to be able to attract, identify, and retain the right kind of people. This includes those with the potential to become good soldiers, aviators and sailors, but also those with the capacity to meet the moral and ethical expectations of the modern CAF. In order to properly capture these essential qualities, the recruiting and training experience needs to be reframed and adjusted, including through a screening strategy that weeds out those who do not meet expectations.⁸⁷⁸

There are opposing views with respect to early attrition. Some stakeholders believe the CAF should recruit the maximum number of recruits and then be ready to release recruits and junior members who do not meet the current ethical standards or display appropriate personality traits. Others believe that additional tools such as open source background verifications⁸⁷⁹ should be used prior to enrolment, as a way to ease the administrative burden of releasing a problem member later on.

Once new members sign the VIE during the recruitment process, they are bound to serve the CAF until lawfully released. The VIE contains a statement of the length of the initial engagement – usually three years – but can be longer for certain occupations and training plans. At the end of the VIE, members are usually offered a follow-on engagement, unless a formal administrative process is used to release the member.⁸⁸⁰ The current CAF policy, as set out in Canadian Forces Military Personnel Instructions, does not permit the CAF to release a member who has demonstrated conduct failures, including those subject to a criminal conviction, simply by failing to offer new follow-on Terms of Service (TOS) upon expiry of their current TOS. The policy also requires the DMCA to conduct an administrative review if a member is not offered a follow-on TOS, to determine the reason, take corrective action, and direct whether TOS are to be offered to the member.⁸⁸¹

The CAF should shorten its recruitment and onboarding processes

From the CAF reconstitution perspective, a holistic, system-wide effort is needed to increase the recruitment and long-term retention of properly-trained members with high morals, ethics, and potential. The CAF would benefit from re-adjusting its long-standing procedures in order to considerably shorten the onboarding process. This would create more leeway for observation and, if necessary, early release, through conditional offers of employment or a formal probation period.

A modernized recruitment process could establish a probationary period, which would permit the CAF to expedite the enrolment process, allow more in-depth evaluation during training, and also more flexibility to release members during or at the end of the probationary period.

This shift would require some structural adjustments. Presently, new recruits become full-fledged CAF members upon swearing-in, complete with full salary, benefits and computation towards pensionable public service. This includes the right to an administrative review and its promise of procedural fairness, prior to any final decision to release if a member's TOS are not renewed. The current system relies heavily on the pre-enrolment process to make appropriate selections. The length of this process has become a disincentive for many strong candidates to join, and it is ill-adapted to the evaluation of character that is critical to a healthy organizational culture.

On releasing members, the DAOD 5019-4, Remedial Measures, already recognizes that a member awaiting or undergoing basic officer or recruit training can be released “immediately in accordance with QR&O Chapter 15, Release, for a conduct deficiency,” presumably without the same administrative burden and requirement for a progression of remedial measures to which a long-term member of the CAF might be entitled.⁸⁸²

Considering the time it takes for the CAF to train its members, the end of the VIE could also be considered an appropriate point to determine whether to end a member's service, within appropriate parameters and with procedural fairness safeguards in place.

RECOMMENDATION #20

The CAF should restructure and simplify its recruitment, enrolment and basic training processes in order to significantly shorten the recruitment phase and create a probationary period in which a more fulsome assessment of the candidates can be performed, and early release effected, if necessary.

The CAF also needs to recognize they are in close competition with civilian employers who are vying for the same personnel. The time required to recruit candidates using the existing cumbersome system is seriously problematic and out of step with modern human resources practices. In addition, especially given the current and projected personnel shortages in the CAF, the recruitment function ties up hundreds of trained CAF members who are not experts in recruiting.⁸⁸³ As well, it can be argued that frontline CAF recruiters are not always the best role models to attract potential recruits. For example, some recruitment centres have no female recruitment staff or MCCs.⁸⁸⁴

The time required to recruit candidates using the existing cumbersome system is seriously problematic and out of step with modern human resources practices.

With this, consideration should be given to outsourcing administrative recruitment functions to civilians in the DND or external competencies. This would have two potential advantages. It would reduce the drain of CAF personnel into the recruiting function, freeing those personnel for operational duties and helping to fill the shortages that currently exist elsewhere. And it could increase the competence level of the recruiters. Recruiters with existing experience could be hired, and the civilianization of the recruiting function would enable those employed to stay in their positions for longer and gain long-term experience in the role. Meanwhile, efforts should be concentrated on presenting a more modern and competent face of the CAF to potential candidates, in line with its more polished advertising.

RECOMMENDATION #21

The CAF should outsource some recruitment functions so as to reduce the burden on CAF recruiters, while also increasing the professional competence of recruiters.

CAF members must understand obligations with respect to sexual misconduct early on

In the CF 92 Pre-enrolment form, recruits agree to be bound by the drug policy and the physical fitness standards of the CAF, and acknowledge they could be released for breaching the drug policy or for failing to meet physical fitness standards. Prior to enrolment, they also sign a Statement of Understanding certifying they have read and understood a summary of the CAF Policy on Discrimination, Harassment, and Professional Conduct, and understand that they could be subject to disciplinary and/or administrative action, including release, for breach of the policy.⁸⁸⁵ This Statement of Understanding summarizes prohibited conduct, including the following:

Racism, personal or sexual harassment, sexual misconduct, and abuse of authority. This includes actions, language or jokes which perpetuate stereotypes or modes of thinking that devalue persons based on personal characteristics including race, colour, ethnicity, religion, gender, sexual orientation, physical characteristic, or mannerisms.

Prohibited statements include those which express racism, sexism, misogyny, violence, xenophobia, homophobia, ableism and discriminatory views with respect to particular religions or faiths.

The CF 92 Pre-enrollment form should be amended to reflect the expectation that new members comply with the CAF policies on discrimination, harassment and professional conduct, as well as the *DND and CF Code of Values and Ethics*, and that failure to do so could result in immediate release. At the very least, it would signal that these issues are as important to the CAF as physical fitness standards. A process of expedited release should be put in place to address clear breaches of the policies during basic training or at the end of a probationary period, so as to reduce the CAF's investment in unsuitable members. Expressions, by words or actions, of a racist, homophobic or misogynistic attitude, should be addressed early on. Taking a cue from their competence with instilling discipline, the CAF should apply similar efforts to detecting these unacceptable attitudes and behaviours. It should also reflect on whether these can as easily be corrected as deficiencies in technical skills or discipline.

The CAF should reconsider the timing of the various recruitment screening tests

During the first two weeks of basic training, recruits undertake a practice and then the formal FORCE Evaluation fitness test that includes a sandbag lift, intermittent loaded shuttles, a sandbag drag and 20-metre rushes. Recruits must pass this test in order to continue with basic training. They may be offered an additional 90 days of fitness training to pass the FORCE Evaluation, which, if they fail, signals immediate release from the CAF.

I believe the same stringent approach should be applied when evaluating other important qualifications and behaviours. Given the recruiting shortfalls and the desire to recruit the best, the CAF should consider the advantages of pushing the CFAT, required medical testing, and medical follow-up and/or reliability screening to after the onboarding point.

Failing that, adding additional vetting mechanisms to the existing process might be available, but would likely increase the complexity of the already inefficient recruitment procedures. It is not entirely clear what more could be done to effectively screen out undesirable candidates, although the CPCC is actively investigating such tools. A recent external review of sexual harassment in the RCMP concluded that the RCMP must:⁸⁸⁶

- Conduct effective and detailed background checks on applicants' views on diversity and women;
- Eliminate those who are not able to function with women, Indigenous people, racialized minorities or LGBTQ2+ persons and are unwilling to accept the principles of equality and equal opportunity for all; and
- Screening must consider all incidents of harassment and domestic violence.

However, questions remain about ways to screen for inappropriate or dangerous beliefs, morals, and cultural views. In the absence of such tools, a probationary period offers a good alternative.

RECOMMENDATION #22

The CAF should put new processes in place to ensure that problematic attitudes on cultural and gender-based issues are both assessed and appropriately dealt with at an early stage, either pre- or post-recruitment.

Conclusion

These proposals are aimed at addressing the dual part of my mandate: sexual misconduct and leadership. I have focused here on attracting women and an effective and sustainable way to serve in the CAF. The solution to the problem of the inadequate recruitment of women is not simple. This is not something that mere re-branding can remedy. The problem is a systemic one that will require the concentrated efforts of the CAF as a whole. Until deep culture change takes place and the reputation of the CAF is repaired, recruiting women will continue to be a challenge.

Military Training and Professional Military Education

Current situation

The CAF training program is a substantive and well-developed system that delivers training to its members in all manner of trades and occupations. The CDA and the CAF training schools each have a role in developing and delivering this. The subjects of ethics, military ethos, harassment and sexual misconduct (including the Operation HONOUR-developed training) are now taught widely to existing and new members alike. These themes are regularly revisited as members continue training throughout their careers.

The CDA falls within MILPERSCOM.⁸⁸⁷ The CDA is the CAF training authority for common professional development training and education, such as leadership and ethical content. It is the organizational umbrella for the education group comprising the military colleges, the CFC and the Osside Institute.

The Canadian Forces Professional Development System program spans the careers of officers and NCMs in the CAF, and is a sequential development process of education, training and self-development.⁸⁸⁸ It provides a continuous learning environment to develop and enhance the capabilities and leadership of CAF members. This program of education is partially self-administered and based on materials produced by and for the CDA. There are five Developmental Periods (DP) in the careers of officers and NCMs alike, namely DP 1 – DP 5. For example, the BMOQ course for officers and the BMQ course for NCMs are both part of DP 1. Similarly, the syllabus for the Joint Command and Staff Programme (JCSP) given at the CFC in Toronto is drawn upon appropriate elements of the Officer Professional Military Education DP 3.

The Canadian Forces Leadership and Recruit School

The CFLRS is responsible for conducting basic military training for all Reg F officers and NCMs joining the CAF, as well as some Res F members. It is also responsible for some subsequent professional development programs for officers and NCMs. The CFLRS website indicates that it trains approximately 5,000 new members each year, and an additional 3,000 military members train with the CFLRS via distance learning.⁸⁸⁹ There is a ceiling to the school's ability to conduct basic training in terms of numbers. This lack of capacity to train recruits is in part responsible for some of the current shortcomings in recruitment and limits the CAF's ability to onboard a significantly greater number of new recruits in any given year.

The pandemic has had a temporary impact on the school's ability to conduct basic training, and the school trained only a portion of their typical numbers in 2020-21. As per its website, the CFLRS employs more than 600 military and civilian employees.

N/OCdts entering the CAF will all attend the BMOQ at the Saint-Jean Garrison, including ROTP and DEO N/OCdts.⁸⁹⁰ The course lasts seven to 14 weeks, depending on whether cadets go to Military College, are in the Commissioning from the Ranks Plan, or are DEOs. The BMQ, the parallel basic course for non-commissioned recruits, lasts 10 weeks.

This basic military training teaches Canadian military ethos, including the Canadian military values of duty, integrity, loyalty, courage and the Canadian values of respecting the dignity of all persons, diversity, obeying and supporting lawful authority.⁸⁹¹ The training also covers the CAF diversity strategy, as well as harassment prevention and resolution. Classes involve ethical scenarios, guided discussions, and the consequences of non-compliance with directives and policies, such as disciplinary measures and administrative measures, including the release from the CAF. Training also discusses CAF tools available to all members, such as the RitCAF mobile application, the Defence Ethics Program website,⁸⁹² the Member Assistance Program, and the availability of ethics and harassments counsellors.

With respect to sexual misconduct at the CFLRS, the then-CSRT-SM asked DGMPRA to administer the Survey on Sexual Misconduct in the Canadian Armed Forces (SSMCAF) to N/OCdts in BMOQ and recruits in BMQ, because they were not administered this survey by Statistics Canada. In 2018, DGMPRA analyzed the results of the BMQ survey, and in 2019 it analyzed the results of the BMOQ survey. DGMPRA concluded that approximately 1% of BMOQ respondents and 2.2% of BMQ respondents reported having experienced sexual assault. In total, 86.4% of N/OCdts at BMOQ and 91.2% of recruits at BMQ reported having witnessed or experienced sexualized behaviour. The most common type of behaviour reported by both groups was sexual jokes. While 37.8% of N/OCdts reported having experienced sexualized behaviour during BMOQ, 49% of BMQ recruits reported same. DGMPRA also concluded that both N/OCdts and recruits who had witnessed HISB did not always take action. The two most common reasons for not taking action included being unsure of whether the target of the behaviour was really at risk and being unsure of whether it was necessary to take action.⁸⁹³

In terms of continuing to capture this type of data at CFLRS and being able to assess progress in this area, I have been told that CFLRS currently distributes end of course questionnaires asking candidates about their overall experience. These questionnaires are called “training climate assessments” and are filled out anonymously. While there is room for complaints of any nature, they were not meant to specifically query reported or unreported sexual misconduct incidents. Given the high numbers in the SSMCAF survey, the CFLRS should be continuing to monitor for incidents of sexual misconduct, perhaps including the use of anonymous questionnaires.⁸⁹⁴

The Canadian Forces College

CFC continues the leadership training for the CAF's more senior officer cadre. CFC's mission is to prepare "selected senior Canadian Armed Forces officers, international military, and public service and private sector leaders, for joint command and staff appointments or future strategic responsibilities within a complex global security environment."⁸⁹⁵ The CFC offers a number of intensive residential and distance learning programs directed at senior officer ranks and senior members of governments. These programs provide additional formal leadership training and more in-depth training on defence ethics, gender and diversity issues, as well as Operation HONOUR content related to sexual misconduct.

The programs include:

- Joint Staff Operations Programme for captains, naval lieutenants, majors, and lieutenant-commanders who are, or will be, employed for the first time at operational or strategic-level headquarters⁸⁹⁶;
- JCSP designed to prepare selected senior officers of the Defence Team at the major and lieutenant-colonel rank levels and naval equivalents for command or staff appointments in the future operating environment. Students at JCSP may apply for the Master of Defence Studies program given by RMC Kingston⁸⁹⁷; and
- National Security Programme for colonels, navy captains, officers of similar rank from allied nations, and senior public servants and internationals, a 10-month residential program.⁸⁹⁸

In the JCSP, which is part of CAF's Officer DP 3,⁸⁹⁹ officers receive about 20 hours of formal training on leadership content related to the themes of ethics, military culture, and diversity.⁹⁰⁰ The CAF Ethos teachings include the Canadian Military values of duty, integrity, loyalty, courage (especially in the face of observing a wrongdoing), stewardship, excellence, serving Canada before self, and the Canadian values of respecting the dignity of all persons, diversity, obeying and supporting lawful authority.⁹⁰¹ Like the CFLRS, classes include discussion of ethical scenarios. In addition, the JCSP covers issues focused on aligning military culture with broader society, the linkages between different facets of diversity and military identity and culture, GBA+ perspectives, practical approaches for applying cultural awareness to ensure leadership effectiveness, and gender-based analysis in operational planning.

The Osside Institute

The Osside Institute is dedicated to the education of senior NCMs and runs a number of courses, which are currently given online, or via residential and/or distance learning (or a hybrid). Training programs such as the Intermediate Leadership Programme, Advanced Leadership Programme, Senior Leadership Programme, and Senior Appointment Programme,⁹⁰² are given depending on the member's rank. For example, the Intermediate Leadership Programme is for members who are prospective Chief Petty Officers 1st class and Chief Warrant Officers, and is intended to prepare them for leadership, management and supervisory roles associated with that rank.

Military ethos and ethics

Military ethos and ethics training is a recurring part of foundational and leadership training for all CAF members. The CAF builds upon this training as officers evolve in their careers through their DPs. *Duty with Honour* was the foundational text that described Canada's military ethos. The CAF is currently updating its military ethos and is finalizing a document titled *The Canadian Armed Forces Ethos: Trusted to Serve*.

The CAF recognizes that the military must be imbued with the Canadian values that animate a free, democratic and tolerant society. Military ethos comprises four essential Canadian military values namely duty, loyalty, integrity and courage.⁹⁰³ The newly updated military ethos, which I received in draft form, restates the vision as three ethical principles, six military values, and eight professional expectations. A matrix of acceptable and unacceptable behaviours will provide examples of behaviours related to each value, including the new values of inclusion and accountability.

These core military values are intended to guide CAF members at all times in their decisions. The value of integrity is arguably the military value that most aligns the ethical obligations of members, as set out in the *DND and CAF Code of Values and Ethics*,⁹⁰⁴ to the military ethos. It calls for honesty, the avoidance of deception, adherence to high ethical standards, and adherence to established codes of conduct and institutional values.⁹⁰⁵ Leaders and commanders, in particular, must demonstrate integrity because of the powerful effect personal example has on their peers and subordinates. The value of loyalty, especially to one's comrades and the institution, appears to frequently come into conflict with the value of integrity, as evidenced by the fact that blatant and longstanding problematic behaviours have gone unreported and unaddressed over multiple decades. These issues only became fully and publicly apparent through disclosures in the media, class action lawsuits and formal external audits and reviews.

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Sexual misconduct and related training

The Deschamps Report made the following findings regarding the CAF training related to sexual misconduct at that time:

Members of the CAF receive mandatory training at regular intervals, including on prohibited sexual conduct. As a practical matter, however, this training does not seem to have any significant impact. A large number of participants reported that the classes are not taken seriously: harassment training is laughed at, the course is too theoretical, and training on harassment gets lost among the other topics covered. Power-point training is dubbed "death by power-point", and training on-line is severely criticized. A number of interviewees also expressed scepticism about unit-led training: there is a common view that in many cases the trainers were themselves complicit in the prohibited conduct. Participants reported that COs are insufficiently trained and that they are unable to appropriately define, assess and address sexual harassment.

Overall, the ERA found that the training currently being provided is failing to inform members about appropriate conduct, or to inculcate an ethical culture in the CAF. Rather, current training lacks credibility and further perpetuates the view that the CAF does not take sexual harassment and assault seriously.⁹⁰⁶

The Deschamps Report made the following recommendations to address sexual misconducts:

Training on inappropriate sexual conduct should be a stand-alone topic and should be carried out by skilled professionals in small groups utilizing interactive techniques. Unit-led training should be limited, and on-line training should only be used for non-commissioned members when accompanied by interactive training. Leaders should also be required to undertake regular training on inappropriate sexual conduct and their responsibilities under the relevant policies. Training for military police should include a focus on victim support, interviewing techniques, and the concept of consent. Physicians, nurses, social workers and chaplains would also benefit from increased training on how to support victims of inappropriate sexual conduct.⁹⁰⁷

In response to the Deschamps Report, Operation HONOUR training, specifically content addressing the issue of sexual misconduct, was developed and communicated broadly across the CAF since the launch of Operation HONOUR in August 2015. As set out in the DAOD 9005-1, *Sexual Misconduct Response*, “COs or their delegates must provide Operation HONOUR training and education on an annual basis in accordance with their annual training plan.”⁹⁰⁸ The CAF announced on 24 March 2021, that Operation HONOUR “has culminated and is being gradually closed out”.⁹⁰⁹ This content is to be incorporated into the CAF’s training plans going forward.

I note that the DAOD 9005-1 requires that sexual misconduct policy and related resources must be made known to:

- a. all applicants on enrolment in the CAF;
- b. CAF members during recruit and basic officer training;
- c. CAF members on military occupation qualification training;
- d. CAF members on leadership courses; and
- e. CAF members prior to and after deployment.⁹¹⁰

Operation HONOUR, inclusion and diversity training is provided in the first three career DPs (DP1, DP2 and DP3) through the common professional development programs. Operation HONOUR training is included in the basic training courses at the CFLRS for NCM recruits and N/OCdts.⁹¹¹ The basic military training courses (BMQ and BMOQ) both cover harassment policies, case studies on harassment, and preventing HISB, as well as inclusion and diversity training. Recruits must also acknowledge in writing that they have read and will comply with CAF harassment policies. All candidates also receive a copy of the summary version of *Duty with Honour*.

This content is also given to N/OCdts at the military colleges in each academic year. In DP2, this content is again incorporated into the Primary Leadership Qualification⁹¹² for NCMs and the Canadian Armed Forces Junior Officer Development officer training.⁹¹³

The CAF's more recent adoption of the *Path to Dignity*⁹¹⁴ is a change strategy intended to shift the focus of Operation HONOUR from an immediate response primarily concentrated on addressing incidents, to a long-term institutional culture change strategy designed to prevent and address sexual misconduct. The *Path to Dignity* is designed to align the behaviours and attitudes of CAF members with the principles and values of the profession of arms in Canada. Strategic Objective 1.1 is to “Enhance education and awareness programs throughout a career span.” The CPCC plans to work with the CDA to implement the objectives set out in the *Path to Dignity*, and improve existing programs.⁹¹⁵

Issues with the CAF Training Programs

Disconnect between CAF ethos and ethics doctrine and reality

The current doctrine upon which CAF leadership training is based is outlined in a number of manuals, many of which I have reviewed.⁹¹⁶ Canadian military ethos, as well as CAF customs and practices, are described in *Duty with Honour*. The Defence Ethics Programme⁹¹⁷ is considered a comprehensive, values-based ethics program that provides ethical guidance to both DND and the CAF. The *DND and CF Code of Values and Ethics* outlines the ethical principles and expected behaviours that apply to DND employees and CAF members. Similarly, the *Canadian Armed Forces Ethos: Trusted to Serve* will continue to set out the ethos and ethical standards expected of CAF members.

The training given to CAF members starts with the ethical principle, which is “to respect the dignity of all persons.” The “expected behaviours” related to respecting the dignity of all persons is that at all times and in all places, DND employees and CAF members shall respect human dignity and value of every person by:

- 1.1 Treating every person with respect and fairness.
- 1.2 Valuing diversity and the benefit of combining the unique qualities and strengths inherent in a diverse workforce.
- 1.3 Helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination.
- 1.4 Working together in a spirit of openness, honesty and transparency that encourages engagement, collaboration and respectful communication.⁹¹⁸

The *DND and CF Code of Values and Ethics* also states that CF members who are also in leadership roles have a particular responsibility to exemplify military values of the Canadian Forces and the common values and obligations of the *Code of Values and Ethics*. CAF leaders are expected to “create a healthy ethical culture that is free from reprisal, to ensure that all subordinates are given every opportunity to meet their legal and ethical obligations to act, and to proactively inculcate the values of the *Code of Values and Ethics*.”⁹¹⁹

Despite the abundance of doctrinal and training materials, events have demonstrated that ethical education in the CAF continues to fall short of its objectives. There is an obvious disconnect between rhetoric and reality.

Despite the abundance of doctrinal and training materials, events have demonstrated that ethical education in the CAF continues to fall short of its objectives. There is an obvious disconnect between rhetoric and reality. This was termed by the CFLRS as a misalignment between official values/ethos and practice – between what is taught and what is modelled.⁹²⁰ Put simply, the “ethical teaching” is often not taken seriously. There are a number of factors that contribute to this disconnect. Instructors who appear sceptical about the content they have to communicate, staid instruction techniques (“Death By PowerPoint”), and the contrast between “real military skills” and “soft issues” are just a few of these factors. Public exposure of leaders who have long fallen short of living by these ethical principles, and the actual composition of the classes where young white men dominate, all contribute to an entrenched culture that is at odds with the values being taught. I have heard from trainees that the attitudes and behaviours of some training school staff directly undermine the value of the ethical and cultural related content taught. One example is particularly startling. Several

young women entering basic training were told that they should “get on the pill” or, worse, that they should get a prescription “for the pill that will stop their periods.” Not only is that an appalling suggestion, it also illustrates the extent to which commitment to diversity and inclusion is purely formal. Despite all the classroom training they receive about diversity, these new recruits, like most of their peers, will learn early on that what is truly expected, and rewarded, is conformity to a masculine “ethos” and elimination of the inconvenience of diversity. This is considerably at odds with Canadian values and expectations.

Training staff

In an organization like the CAF, where hierarchy and leadership are of the utmost importance, early indoctrination and cultural embrace are critical. It is not only the content of ethical training that will contribute to culture change in the CAF, but the method of delivery.

Above all, excellent teachers should provide the early phases of training, not just to the upper levels of continuing education programs. At the CFLRS, the average age of new recruits is 27. They are volunteers. They come to the CAF with preconceptions and expectations. Their first exposure to the organization is important, and there is no doubt they quickly understand the importance of discipline. At the CFLRS, they learn how to “live with their weapon,” which they carry around at all times. This is a striking example of effective messaging. In the development of what the CAF considers important, recruits should, at the outset of their training, be exposed to and taught by the very best, not by those who do not want to be there, do not believe in what they are asked to teach, and whose demeanour is completely at odds with the purported values of the organization.

Loyalty, integrity and courage are sometimes replaced by abuse of authority, pettiness, and lack of respect, conveyed to recruits by immediate superiors who are poor role models and mentors. Senior CAF members recognize that this is a serious problem. There are long-standing issues with the staffing of training schools and training positions within

operational units, and using incremental (non-permanent) staff to take on these training roles. I have been told that postings to training units, instead of command positions, are seen as barriers to career progression in the combat arms community in particular. While many may understand the importance of training the next generation and are dedicated to serving in that fashion, they hesitate to take on a teaching role for fear of being denied other opportunities elsewhere.

This current approach needs to be reversed. Teaching talent should be recognized and rewarded, including by leading to greater access to and opportunities for leadership positions on par with operational postings. Additional incentives including a new allowance or automatic consideration for future promotion should also be weighed. In parallel, members under administrative review, or who have been the subject of disciplinary measures, should not be eligible to teach.

Teaching talent should be recognized and rewarded, including by leading to greater access to and opportunities for leadership positions on par with operational postings.

RECOMMENDATION #23

The CAF should equip all training schools with the best possible people and instructors. Specifically, the CAF should:

- **prioritize postings to training units, especially training directed at new recruits and naval/officer cadets;**
- **incentivize and reward roles as CFLRS instructors, and other key instructor and training unit positions throughout the CAF, as well as the completion of instructor training, whether through pay incentives, accelerated promotions, agreement for future posting priority, or other effective means;**
- **address the current disincentives for these postings, such as penalties, whether real or perceived, for out-of-regiment postings during promotion and posting decisions; and**
- **ensure appropriate screening of qualified instructors, both for competence and character.**

A potentially even more effective solution to many of these systemic problems and shortcomings would be the creation of a new trainer/educator occupation within the CAF, or a specialty within one of the support-related occupations. This would generate a permanent cadre of skilled professional trainers, who are well-suited, qualified and keen to take on this type of career and role.

When you consider the extent of the training function already present within the CAF, including the large number of training schools, training units and training positions, it is quite likely that a critical mass already exists for this idea to be seriously explored.⁹²¹ I believe that this type of change could also serve to attract a more diverse element into the CAF of the future. I understand that introducing a new occupation of trainers/educators could be perceived as a net loss for the CAF, as those trainers would seemingly be unavailable or unsuitable for deployments and military operations. However, this is an untested assumption, and it reflects the dismissive opposition towards, and lack of appreciation for, such an important role.

If given the chance, I believe the creation of this proposed new occupation could represent a ground-breaking new direction for the CAF, and those tasked with teaching would, in all likelihood, apply their knowledge and skills beyond the classroom in operations postings.

RECOMMENDATION #24

The CAF should assess the advantages and disadvantages of forming a new trainer/educator/instructor occupation within the CAF, or a specialty within one of the human resources-related occupations, in order to create a permanent cadre of skilled and professional educators and trainers.

Training for soft skills

We are often reminded that the role of the military is to fight and defend Canadians and allies in times of strife, and to support our communities during times of disaster. In reality, it is also true that the majority of CAF members do not spend their careers in combat situations. For many occupations and trades, members will be in combat zones for only a few months, if any, during their entire careers. And while it is important to train for combat, and be in a state of effective readiness, I believe soft skills are equally important. Members need communication skills, interpersonal skills, problem-solving and conflict management skills, creativity, flexibility, work ethic, mutual respect and empathy. This includes learning to speak up and communicate effectively around difficult issues (like sexual assault and misconduct), to resolve conflicts respectfully, and to help team members understand how to treat others fairly.

To the extent that these skills are considered feminine, and at odds with the warrior culture that is germane to the profession of arms, I believe this is an antiquated conception of what makes an effective modern warrior. In fact, many of the foundational documents of the CAF speak to that issue.

Operational effectiveness is often described as the overriding concern in the CAF. Interestingly, *Leadership in the Canadian Forces: Leading People* defines collective effectiveness as seeking five major outcomes, namely: Mission Success; Internal Integration; Member Well-Being and Commitment; External Adaptability; and Military Ethos.

Member Well-Being and Commitment is further defined as:

(...) taking care of people. This outcome is critical to mission success, in the first instance, and contributes significantly to internal integration and external adaptability. It signifies a concern for followers, the quality of their life and conditions of service, and the provision of all necessary means of force protection on operations. Commitment is both up and down, as in the member's commitment to the CF and the CF's commitment to its members. The Canadian Forces is its people. Demonstrating care and consideration is both a practical obligation and a moral obligation for effective CF leaders.⁹²²

This speaks well about the necessity of further integrating interpersonal skills into the combatant culture.

Training methods

With respect to training materials, the CAF materials and outlines we have reviewed to date are largely traditional (PowerPoint slides, manuals, discussion topics, etc.). The CAF should consider new types of training on sexual misconduct, including interactive techniques. Additionally, they should look to leaders in the field with established best practices – particularly civilian institutions that are grappling with similar challenges. Finally, the CAF should consider integrating more real-world test scenarios for ethical breaches that are not flagged in advance to trainees.

I have also heard that related, specialized training is sometimes only available in English to members posted outside of Quebec. The lack of training in French could impact the effectiveness of the training and associated cultural attitudes.

Probationary period

It is the DND's and the CAF's ultimate responsibility as an employer to provide a safe and non-toxic work environment for its employees.⁹²³ I am aware of the ongoing strains on the CAF's ability to improve its training operations. Current and projected staffing shortages put pressure on the CAF and its training schools to mobilize the very best instructors. The same pressure may also lead to a willingness to retain trainees, even if they demonstrate toxic views and attitudes. Despite these challenges, when it comes to both trainees and instructors, the CAF needs to develop a better process for weeding out those individuals early.

This could be done by transforming basic training into a probationary period. I am conscious that this requires not only a change in the enlistment TOS arrangements, but a major change in leadership culture. The old “we break them and rebuild them” approach to military training still captures the confidence with which the CAF has traditionally approached its recruitment strategy. While this may serve narrow training skills objectives, it is not compatible with the more sophisticated education needed by modern members of the CAF, including at the point of entry. As such, and consistent with my recommendation above in respect of recruitment, the CAF should restructure its early training into a probationary period with provisions for early, expedited release in the event that trainees fail to show the desire or ability to meet the CAF's ethical and cultural requirements.

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RECOMMENDATION #25

The CAF should develop and implement a process for expedited, early release of probationary trainees at basic and early training schools, including the CFLRS and military colleges, who display a clear inability to meet the ethical and cultural expectations of the CAF.

External secondments

The CAF operates in an extremely self-reliant manner. While this is largely dictated by the nature of the organization, the result has implications, arguably both good and bad. In the areas of human resources management and cultural reform, the CAF, like some law enforcement agencies, is struggling to keep pace with the private sector and the civilian public service. This is evident from the time it took for the CAF to begin addressing its sexual misconduct and discrimination problem, and the relative ineffectiveness of the measures put in place so far. I believe this could be remedied, in part, by expanding opportunities for external secondments. The CAF does not have many such opportunities at the present time.

Of course, the CAF has a long history of establishing and managing military exchanges and cross postings with many international allies and other countries. I have heard from stakeholders that opportunities for such secondments are beneficial because they help members expand their first-hand knowledge and expertise. This is, however, still centered on military-related matters. The CAF should consider expanding this vision to include additional secondments to the private sector, and to other government departments, with a view to expanding leadership and management experience in fields other than strictly military.

For instance, the RCAF launched a secondment program, called the RCAF Fellowship Programme, in 2017 to develop RCAF leaders' analytical skills and equip them with better understanding of international security and civil military affairs. Attendees are seconded outside the CAF. I understand that the Fellowship in 2022 is with Communtech, a key Canadian innovation hub collocated with the University of Waterloo. This type of external secondment provides fresh perspectives and ideas, not born within the DND, to help solve current RCAF challenges. I note that some allies have also developed secondment programs external to their military.⁹²⁴

External secondments allow members to acquire skills and a deeper understanding of business or government, which are applied throughout the rest of their career, and which ultimately benefit the CAF. The member involved achieves a wider, more balanced perspective, gained from a new and different environment.⁹²⁵

The private corporate sector is worlds ahead of the CAF when it comes to the management of human resources, the career progression of women and minority groups, and dealing with the issue of sexual misconduct. For example, Catalyst is an international organization that deals with the promotion of women in the corporate world, and offers research and training tools and resources.⁹²⁶ Catalyst recognizes that male-dominated industries and occupations, defined as those with less than 25% women, are particularly vulnerable to reinforcing harmful stereotypes and creating unfavorable environments that make it even more difficult for women to succeed.⁹²⁷

More organizational openness and cross-pollination would enable the CAF to benefit from a broader range of research, data, tools, experiences, and evolving best practices. There would

be advantages for how the CAF manages its human resources, particularly as it continues to face challenges in managing diversity. More generally, exposure to start-up industries and the non-military use of technology should also be of great interest to many CAF members.

Finally, having a few senior members, particularly GOFOs, temporarily assigned outside the organization for flexible periods, would also allow the CAF some additional agility to pull them back if needed for operational requirements in times of crisis, without the cascading disruptions that normally ensue when senior CAF leaders are pulled out of operational command postings for emergency military requirements. This is consistent with my recommendations below in the Human Resources section.

RECOMMENDATION #26

The CAF should increase the number of opportunities for CAF members, particularly at the senior leadership and GOFO levels, to be seconded to the private sector, and to other government departments.

Conclusion

These recommendations are in line with my recommendations regarding recruitment. If the CAF adjusts its recruiting procedures to abridge the on-boarding process, thereby seriously reducing current delays, and establishes a probationary period in its enrollment process, I firmly believe there would be much more opportunity for true observation and character assessment during basic training and early trade training. Probationary trainees at basic and early training schools who display an inability to meet the ethical and cultural expectations of the CAF should be released early. The CAF's culture needs to shift to reflect the reality that trainees who display problematic traits are a danger to their peers and the future of the CAF. The training system, particularly the CFLRS, should have the mandate to assess recruits, with the understanding that increased attrition may follow in such a system.

Probationary trainees at basic and early training schools who display an inability to meet the ethical and cultural expectations of the CAF should be released early.

This approach requires a cadre of instructors capable of performing that function, and who, themselves, are properly trained, evaluated and rewarded for their ability to do so. The CAF needs to find effective ways to better equip all training schools with the best possible people, as they are responsible for molding the future of the CAF.

I have not had the opportunity to examine in detail the entire content of the CDA curriculum as it relates to the substance and method of leadership training and issues around sexual misconduct. I have looked more closely at the early stages of training than at the upper levels of continuing professional development. In my view, the early process does not appear

to have a lasting effect on many members once they leave the training schools. This was a common theme in my stakeholder interviews.

Few had anything good to say about the training they receive on a range of issues, including sexual misconduct, diversity and discrimination. This is not only a problem with “legacy” members, but an ongoing issue. The *Report on Roundtable Discussion and MINDS Reports on the 2016 and 2018 Statistics Canada Survey on Sexual Misconduct in the Canadian Armed Forces*⁹²⁸ included a comprehensive list of suggested topics that could improve the CAF’s training aimed at preventing sexual misconduct, particularly sexual violence. The key to such training, is to make it progressive, as well as repetitive, throughout a member’s career.⁹²⁹

With respect to training related to HISB and sexual misconduct, I note that many of the recommendations in the Deschamps Report were not implemented as intended. Relevant training that makes use of interactive techniques has largely not been provided by professionals skilled in the area of sexual misconduct, particularly not in small groups. The Deschamps Report further cautioned that unit-led training for these topics should be limited, and online training should only be used for NCMs when accompanied by interactive training.

Demonstrating the significance of soft skills, on par with the more technical teachings, at an early career point, would contribute to aligning doctrine with reality. These skills are critical when it comes to responding to incidents of sexual misconduct. As I stated earlier, training on these skills should be done by persons who have adequate knowledge and expertise in the field, rather than simply by persons in authority, in the chain of command, who are often seen as merely going through the motions. This approach aligns with objectives outlined in the *Path to Dignity*’s Strategic Objective 1.2, namely to “expand knowledge, engage with external partners and stakeholders.”⁹³⁰ In this light, I would advise the CAF to continually reconsider the effectiveness of the content and nature of its ongoing training related to sexual misconduct, and to develop a method of measuring long-term success. This is now part of the mandate of the CPCC.⁹³¹ I encourage the CAF to continue to improve its ability to assess the impact of any improvements, while understanding that the quality of instructors and other related changes are also fundamental.

RECOMMENDATION #27

The CAF should fully implement the recommendations as described in the Deschamps Report on training related to sexual offences and harassment.

Military Colleges

Current situation

In line with its long-standing policy and practice of managing its needs internally, the CAF is in the university education business. Through the CDA, it is engaged not only in training and continuing professional development of its members, but also in university-level education (undergraduate and postgraduate) at its two remaining military colleges – the RMC Saint-Jean and the RMC Kingston.

The regulatory objectives of the military colleges include preparing and motivating N/OCdts for effective service as commissioned officers, and improving the education of commissioned officers by:

- providing a university education in both official languages in appropriate disciplines designed on a broad base to meet the unique needs of the Canadian Forces (academics);
- developing qualities of leadership (military leadership);
- developing the ability to communicate in both official languages and to understand the principles of biculturalism (bilingualism); and
- developing a high standard of personal physical fitness (physical fitness).⁹³²

These are commonly referred to as the “four pillars”.

The RMC Kingston was founded in 1874, and was empowered to confer degrees in arts, science, and engineering in 1959.⁹³³ The RMC Kingston offers undergraduate and graduate degrees in both official languages, and supports continuing education programs for members of the CAF and the federal government. It currently offers 22 undergraduate arts, science, and engineering degree programs, and 13 graduate degree programs. The RMC Kingston also offers a number of specialized non-degree programs and conducts specialized military-related research to support Canada’s defence objectives. As of the 2017 OAG RMC Report, the RMC Kingston had 192 full-time professors (156 academic/civilian and 36 military).⁹³⁴

The RMC Saint-Jean, *Collège militaire royal de Saint-Jean*, opened in 1952. It was closed in 1995, along with Royal Roads Military College, when the colleges were consolidated. However, the RMC Saint-Jean re-opened in 2008. In its current iteration, the RMC Saint-Jean provides a transition from high school to university, particularly for students who complete secondary school in Quebec, by providing college-level courses in social sciences and science in French and English. The first two years of study at the RMC Saint-Jean are called “Preparatory Year” and “First Year”. After completing these, cadets who meet all the requirements of the Quebec Ministry of Education receive a diploma of college studies.⁹³⁵

The new program meets the diploma of college studies requirements of the Quebec Ministries of Education and Higher Education (*ministère de l'Éducation* and *ministère de l'Enseignement supérieur*) through a partnership with the *Cégep Saint-Jean-sur-Richelieu*,⁹³⁶ while also ensuring that cadets can continue towards their undergraduate degree programs at the RMC Kingston. Cadets generally then pursue their studies in second year at the RMC Kingston. Others continue in the undergraduate International Studies degree program offered at the RMC Saint-Jean.⁹³⁷

ROTP cadets make up most of the undergraduate cadet wing. For example, approximately 1,130 N/OCdts are enrolled in the ROTP at the RMC Kingston at any given time, which represents the majority of full-time students.⁹³⁸ Other students may come through other entry programs, such as the University Training Plan for NCMs⁹³⁹ or reserve entry plans.⁹⁴⁰ After graduation, ROTP N/OCdts who attended a military college must normally serve up to five years as commissioned officers in the CAF, and pilots have a longer required period of service.⁹⁴¹ If they want to release from the CAF prior to the end of this obligatory service, officers are required to refund all or a portion of the cost of their education incurred by the public.⁹⁴²

In order to graduate from military college and receive a commission, a cadet is expected to be successful in all of the “four pillars” noted above. The RMC Kingston’s mission statement, therefore, includes producing bilingual, fit, and ethical leaders for the CAF.⁹⁴³

The military colleges have a selective admission policy based on its entrance examinations and students’ past academic records. According to data provided to me, in 2021-22, the military colleges have managed to reach the CAF target of attracting approximately 25% women.⁹⁴⁴ At the RMC Kingston specifically, in the 2020/2021 academic year, women made up 22% of the undergraduate ROTP cadet wing population and in 2021/22 represented 23%. In December 2020, women also made up 18% of students undertaking graduate studies at the college in Kingston.⁹⁴⁵

According to CFRG, in 2021-22, 24.2% of military college cadets at the RMC Kingston, and 26.4% at the RMC St-Jean self-identified as visible minorities. This does not include those enrolled in the one-year Aboriginal Leadership Opportunity Year (ALOY) program.⁹⁴⁶ Identification as a member of a designated group is on a voluntary basis.⁹⁴⁷

ROTP Visible Minority Statistics ⁹⁴⁸				
FY	ROTP-RMC	ROTP-RMCSJ	ROTP-Civilian Universities	Total Percentage
2018-19	17.6%	18.1%	29%	20%
2019-20	21.4%	12%	0%*	17%
2020-21	27.6%	19%	31.25%	24%
21/22	24.2%	26.4%	19.6%	25%

Table 12. ROTP Visible Minority Statistics.

* Note – The Civilian Universities “0%” in 2019-20 is due to the fact that CFRG did not enroll any ROTP applicants for civilian university that year.

The RMC Kingston attracts a large number of its cadets from Ontario.⁹⁴⁹ The RMC Saint-Jean is currently designed to attract Quebec students, works with the CEGEP system in Quebec and is also a bridge to the undergraduate programs at the RMC Kingston.⁹⁵⁰ In short, the cadet wing population at both the RMC Kingston and the RMC Saint-Jean is predominantly composed of young white men from Ontario and Quebec.

The percentage of women at military colleges is far lower than in civilian universities. At most Canadian universities, the majority of students are women. The following table sets out the proportion of women in 2022 at a number of Canadian universities, large and small, based on data collected by *Maclean's*; the figures illustrate the significant gender gap between the military colleges and other universities.⁹⁵¹

The percentage of women at military colleges is far lower than in civilian universities.

University	Women Ratio
University of Ontario Institute of Technology ⁹⁵²	42%
University of Toronto ⁹⁵³	56%
Dalhousie University ⁹⁵⁴	55%
University of British Columbia ⁹⁵⁵	56%
University of Waterloo ⁹⁵⁶	47%
Algoma University ⁹⁵⁷	53%
Carleton University ⁹⁵⁸	52%
Saint Mary's University ⁹⁵⁹	51%
Mount Allison University ⁹⁶⁰	59%

Table 13. Proportion of women in 2022 at a number of Canadian universities.

Further, a 2019 Universities Canada survey found that while 22.3% of Canada's general population identifies as a visible minority, visible minorities account for about 40% of undergraduate students in Canadian universities.⁹⁶¹ This contrasts with representation of visible minorities accepted into the ROTP program for undergraduate studies, which ranged from 17% to 25% over the last four years, as set out above, according to CFRG.

Some ROTP candidates do not attend military college, but instead attend a civilian university to obtain a subsidized undergraduate degree.⁹⁶² This is in part because some occupations require a degree not offered at military college, for example in nursing, and presumably because accessing the larger diversity of programs offered at civilian universities is desirable. Other candidates are accepted into the ROTP program but are not offered a place at the military colleges.⁹⁶³ These civilian university cadets are paid an annual salary and do their military training mainly in the summer months, sometimes together with military colleges ROTP cadets.

In addition, the CAF's DEO program accepts officer candidates who typically already have an undergraduate degree, without the CAF having incurred the expense of paying for that

part of their education. The CAF provided data showing that 5,510 current officers had entered the CAF by way of the DEO Plan and that 4,698 were ROTP entries, although CFRG, the organization that prepared the information, recognized that there were known errors with this data.⁹⁶⁴

Structure of the military colleges

In terms of organization, although the RMC Kingston and the RMC Saint-Jean are educational institutions, they operate as military units. The officers appointed to command each military colleges are COs and each holds the appointment of “Commandant”. The Commandants are the commanding military officers and executive heads of the military colleges. The Commandant essentially exercises command over all officers and non-commissioned members at the military college. The Commandant and military staff operate within the CAF chain of command. The Principal at the RMC Kingston reports to the Commandant; however, the academic program is administered with a framework of committees, departments, and faculty appointments that fall outside of the chain of command for the purpose of ensuring academic excellence.⁹⁶⁵ The Principal leads the academic instruction, coordinates academic research, and provides the link between the college’s academic functions and military culture. At the RMC St-Jean, the head of the Academic Wing is called the Academic Director.⁹⁶⁶

Reviews and audits of the military colleges

The military colleges have a well-documented problem with sexual harassment, discrimination and misconduct. As reported by Justice Deschamps:⁹⁶⁷

In the colleges the ERA visited – the Collège militaire royal du Canada and the Royal Military College of Canada – participants reported that sexual harassment is considered a “passage obligé”, and sexual assault an ever-present risk. One officer cadet joked that they do not report sexual harassment because it happens all the time.

In August 2016, largely in response to growing concerns with the prevailing climate at the RMC Kingston, including three suicides, the CDS ordered a special assessment of the climate, training environment, culture, and structure of the ROTP program at the college. The Special Staff Assistance Visit (SSAV) team, a team internal to the CAF, released its report in March 2017. The 2017 SSAV Report included observations based on more than 400 interviews with stakeholders, including RMC Kingston and RMC Saint-Jean cadets and staff. The SSAV made 79 wide-ranging recommendations related to the areas of command and control, governance of the military colleges, the selection and responsibilities of college staff and support services, and the operation of the “Four Pillar” program. The report also addressed the many stressors and morale issues for cadets, indicating that they stemmed from, and were symptomatic of, the underlying systemic issues with the college structure, leadership failures, and the delivery and high expectations of its program. With respect to sexual misconduct in particular, addressed further below, the SSAV team found that the RMC Kingston had been “proactive in communicating and providing direction to address issues of sexual misconduct”, and was told of “a small number of allegations of harmful and inappropriate sexual behaviour”.⁹⁶⁸

The 2017 SSAV Report also described the governance structure at the RMC Kingston as characterized by conflict and confusion between academic and military visions⁹⁶⁹. The 2017 SSAV Report, at Annex F, details the many issues related to the complex governance of the military colleges. As military units, the colleges have the usual military chain of command as well as a parallel Cadet Wing chain of command operating in conjunction with the Training Wing, Academic Wing, and the academic governance bodies established by regulation.⁹⁷⁰ The 2017 SSAV Report also addressed the effects the command and control and policy environment of the CDA/MILPERSGEN headquarters had on the situation at the colleges. The Report raised concerns from the Academic Wing at RMC Kingston that the investments required in order to maintain a university accreditation are not well understood at the DND and the CAF strategic levels.⁹⁷¹

In 2017, the OAG reviewed the RMC Kingston and similarly found that the governance structure was ineffective, and that the RMC Kingston did not suitably integrate military and academic objectives.⁹⁷² This was said to be of concern because without an effective governance structure, the colleges cannot clearly understand their purpose and will not have the direction they need to function well.

In October 2020, Statistics Canada released a report that highlighted continuing problems at the military colleges involving unwanted sexualized and discriminatory conduct.⁹⁷³

Concerns about systemic issues

I believe there remain significant reasons for concern both with the operation of the military colleges as currently conceived, as well as with the environment in which young female cadets are expected to grow and excel.

The unifying principle pulling together the four pillars (academic, military, fitness, bilingualism) is the development of leadership. This is done, in part, through the old model of “head boys” prevalent in English private schools for boys, where upper-year students are invested with responsibilities towards their junior peers. This has been described by some stakeholders as “children leading children”, the “untrained leading the untrained” and by others, particularly N/OCdts chosen to lead in that fashion as “responsibility without power”. This model of early leadership development needs to be critically re-examined. Immaturity in the exercise of authority and power over others, real or perceived, is unlikely to contribute to the eradication of sexual misconduct that has taken root in the culture of these colleges. Even trained officers struggle to know what is right when it comes to recognizing and addressing sexual misconduct. How can we expect young, novice cadets to know better?

Co-ed boarding in colleges and universities raises its own set of challenges, particularly for students who are leaving home for the first time. This is particularly serious at the RMC Saint-Jean where some

Immaturity in the exercise of authority and power over others, real or perceived, is unlikely to contribute to the eradication of sexual misconduct that has taken root in the culture of these colleges.

N/OCdts are as young as 17 years old. In a military environment, these challenges are even more intense as cadets surrender a large part of their independence, have very little personal free time, and develop a high level of deference to authority; this, mixed with a culture of “don’t get caught”, is clearly at odds with the colleges’ motto of “Truth, Duty, Valour”. My interviews have revealed a system where cadets spend four years learning how to circumvent rules as a result of the immense pressure to succeed in all four pillars, together with the stringent expectations and rules imposed on them.

This is starkly demonstrated in the area of sexual misconduct. Needless to say, the tension between the duty to report and the need to fit in with peers is not easily resolved by young people who learn early what is in their best interest. Described by a stakeholder as a culture of “don’t blame your bud”, this fundamentally conflicts with the requirement to follow certain ethical guidelines and to step in when “your bud” is behaving inappropriately.

This also raises questions about whether the leadership skills instilled at this early stage are fully aligned with the lofty ideals expressed, for instance, in *Leadership in the Canadian Forces: Leading People*, a foundation document applicable throughout the CAF. In my view, this antiquated structure of the Cadet Wing command structure has outlived its usefulness and is now causing more harm than good. The time has come to put an end to it, and to instill modern leadership values in officer cadets through other means.

RECOMMENDATION #28

The Cadet Wing responsibility and authority command structure should be eliminated.

In addition, the four-pillar model shows some strains. The governance structure at the military colleges is one of ongoing conflict and confusion between academic and military missions and visions.⁹⁷⁴ Observations and recommendations have been made in past reviews about the weaknesses in the military training and the lack of balance between military training and academic programs.⁹⁷⁵ The 2017 OAG RMC Report, which echoed relevant SSAV observations, found that the military colleges did not sufficiently or effectively balance and integrate military training and academic education. As a result, military training was considered secondary to the culture and demands of the academic program.

I am in no position to evaluate the quality of the colleges’ Academic Wing, perceived by most as the dominant pillar in the lives of the cadets.⁹⁷⁶ The other three pillars, however, show signs of stress. I also cannot judge whether four years at the RMC Kingston or RMC St-Jean is producing functionally bilingual officers. However, my consultations were conducted overwhelmingly in English, despite my signaling that French was an equal option. It would be worth evaluating the improvement in bilingualism during the military college years, to determine the extent of any value added.

Athletic Wing interviews provided interesting insights into the issues of discrimination and sexual misconduct. In that environment, female cadets were often told by their male peers that they were never going to be as good as them, even when they were demonstrably so. Many resented having to train in groups, where they felt exposed, self-conscious, and demeaned at the slightest sign of difficulty or failure. The same is true for LGBTQ2+ cadets, as the environment is prone to attribute and devalue some traits, and celebrate the hyper-masculinity culture, which continues to cause major problems throughout the CAF. The staff of the Athletic Wing were aware of these issues, and expressed concern and frustration at their inability to do more to address these problems.

The Training Wing at RMC Kingston, the military pillar which, more than anything else, distinguishes military colleges from civilian universities, was understaffed and under considerable strain at the time of my virtual visit. More generally, it suffers from the same chronic problem as the CFLRS, showing that the training function in the CAF is undervalued. As recognized in the SSAV Report, the “overall climate at [the] RMC has been influenced by a decade of resource pressures and higher priorities at the strategic level, which has resulted in [the] RMC operating in an environment that has generally placed a lower degree of priority on the College.” Stakeholders indicated that postings to education and training units are not particularly sought after, nor are they always rewarded in terms of career progress and opportunities for promotion.⁹⁷⁷ Further, being posted to the RMC Saint-Jean is seen as posing additional difficulties for Anglophones who have children in school, for example. In addition, talented leadership role models and gifted educators are generally not posted in these training functions because their talents are often valued and required elsewhere. Worst still, I am told that some CAF members are posted to the colleges and recruit school, while under administrative review or career limitations, as a convenient way of “getting rid of them” or solving an administrative problem.

In addition, I have heard submissions indicating that the career progression of officers, particularly from combat arms regiments, is damaged by postings to the military colleges because such postings are not considered equivalent to leadership/command positions within the Army. While several occupations value time in Squadron or Division commander roles at the military colleges and do promote straight out of positions at the military colleges, these are usually Air Force or Army support occupations. I understand that this further dissuades strong officers and non-commissioned officers from the combat arms to get posted to the military colleges, particularly as they watch their peers from different occupations fill more of the junior positions and get promoted more quickly. This can act as a career and retention demotivator for CAF members who view postings to the military colleges as a waste, thereby further devaluing these types of postings.

This is all highly problematic. The entire *raison-d'être* of the military colleges has to rest on the assumption that it is the best way to form and educate tomorrow's military leaders. It is difficult to imagine that the academic side of their education is vastly superior to what they would obtain in Canada's civilian universities. The value-added must come from the

other three pillars, and from the leadership development skills acquired by observation and experience. And while this is argued in theory, it is not readily apparent.

In terms of the cost of training N/OCdts through the military college system, the 2017 OAG Report found that the cost of training ROTP officers at the RMC Kingston (and presumably also at the RMC Saint-Jean) is considerably higher than the cost of sending ROTP candidates to civilian universities to obtain their undergraduate degrees.⁹⁷⁸

The 2017 OAG RMC Report on the RMC further stated that a National Defence analysis had found that “there was no significant difference between the career progression of N/OCdts who graduated from [the] RMC and officers who entered the Canadian Armed Forces through other plans”. RMC graduates were not shown to be promoted faster. A 2014 CAF professional development system study further observed “no discernible difference” in officers produced from the various entry plans at the end of their occupational training. The 2017 OAG RMC Report indicated that DND analyzed retention rates for RMC graduates and found they were higher, compared with officers from other entry plans, but that the difference was less than 10%.⁹⁷⁹

There is no question that RMC graduates constitute an informal elite within the CAF. It is, therefore, particularly significant to examine who N/OCdts are, and what they learn, formally and culturally, through their education and experience at the RMC Kingston and the RMC Saint-Jean.

However, there does appear to be a strong connection between education in the military colleges and opportunities for senior leadership in the CAF. For instance, in 2017 the OAG reported that 62% of senior leaders were undergraduates from one of the military colleges.⁹⁸⁰ More recently, according to CAF data, 45.4% of current GOFOs received a degree from military college.⁹⁸¹ There is no question that RMC graduates constitute an informal elite within the CAF. It is, therefore, particularly significant to examine who N/OCdts are, and what they learn, formally and culturally, through their education and experience at the RMC Kingston and the RMC Saint-Jean.

Sexual misconduct at the military colleges

As with any other higher education institution, students learn as much from the formal instruction they receive, as from the general culture of the place, good and bad. That culture is rooted in history, symbols, reputation, traditions, and is strengthened by the degree of homogeneity of its student and faculty body. In terms of sexual misconduct specifically, the military colleges have well-documented issues that have not been appropriately addressed.

The SSAV Report raised many concerns about the prevailing culture at the RMC Kingston, but downplayed the culture of bullying and sexual misconduct. The SSAV Report indicated that:

The message the Team received from the many female N/OCdts that were interviewed was that they felt safe day and night at the College; they knew what acceptable behaviour was and were able to communicate confidently and clearly to those few male colleagues who perhaps began to cross the line.⁹⁸²

This conclusion was at odds with other external findings that have raised more serious concerns, and with the comments I heard in the course of my consultations. The SSAV Report cited stressors including leadership tensions, poor leadership role models, academic and time-related pressures, and cadets' inability to identify and seek assistance with stressors when required. The blame for harassment and sexual misconduct was shifted to the survivors, particularly weaker female cadets with "lower levels of self-esteem" who were "unsure how to cope with aggressive male colleagues" and who "struggle with this and do get subjected to varying degrees of inappropriate behaviour."⁹⁸³ In this respect, the 2017 SSAV Report has been criticized as lacking in objectivity, and a clear example of the CAF using internal data to contradict outside critics and shape the narrative in defence. The 2017 SSAV Report appears to normalize inappropriate behaviour, and put the onus on a small minority of young women to be able to cope with the toxic culture. Stakeholders have pointed out that sexual misconduct is partly a by-product of an organization's culture, and a result of the existing transactional and power nature of a primarily male, combat-oriented military culture, when gender bias is built in. The 2017 SSAV Report, while very thorough in other respects and probably well intentioned, seems to simply accept or endorse that culture.

The 2017 OAG RMC Report found that while the RMC took action when serious incidents were reported, the number of investigations and incidents of misconduct involving senior N/OCdts showed that it needed to improve military leadership training. The Report determined that National Defence and the RMC had policies and procedures in place to deal with serious incidents, such as mental distress and self-harm, sexual misconduct, harassment, and alcohol and drug misuse. These policies and procedures were designed to educate and deter, detect and report, investigate and discipline, and rehabilitate and support both the victim and the accused. The report also found that the RMC provided support when serious incidents were reported, including referrals to victim support services and mental health services. However, with respect to the SSAV Report, the 2017 OAG Report indicated that because more than half of the 79 recommendations called for further review rather than concrete actions, the ultimate effect of those recommendations on the RMC "is likely to be limited."⁹⁸⁴

The 2020 Statistics Canada Report indicated that of the 512 RMC Kingston and RMC Saint-Jean cadet survey respondents, 68% reported having experienced or witnessed unwanted sexualized behaviour in the previous 12 months. For female cadets, 79% reported they had witnessed or experienced these types of behaviours.⁹⁸⁵ This is a significant number of incidents. Some of the key issues highlighted in this recent report, as summarized in the response prepared by the RMC Kingston, are as follows:

- The results for military colleges more closely parallel those of civilian post-secondary institution students than those of CAF members;
- Those in the 18-24-year-old age range are the most at-risk group for sexual misconduct. Women in this age demographic are more at risk than men. Women at military college have a higher rate of incidence of "unwanted sexual behaviour" and discrimination than men;

- Women at military college have a much higher rate of incidence than women in civilian post-secondary institutions;
- Discrimination based on gender, gender identity and sexual orientation is a key factor that creates an environment conducive to, and supportive of, sexual misconduct. This type of discrimination, including the need to “act like a man should act” or “like a woman should act”, needs to be addressed if the CAF and the military colleges intend to create a culture in which discriminatory behaviour and sexual misconduct are understood to be unacceptable by all members;
- Almost all incidents of “unwanted sexual behaviour” occurred on campus;
- Almost all incidents of “unwanted sexual behaviour” were perpetrated by peers, and many incidents took place with other students present;
- Cadets were highly unlikely to intervene when they witnessed incidents of “unwanted sexual behaviour,” most often because they weren’t sure it was “serious enough”; and
- Cadets who had experienced “unwanted sexual behaviour” spoke to someone associated with their school only 7% of the time.⁹⁸⁶

Our interviews with female cadets were similarly worrisome as they confirmed that the college environment for female cadets remains unwelcoming and at times hostile, and that sexual misconduct and discriminatory attitudes persist. I was told that almost every female cadet has either experienced an incident or more of sexual misconduct “or worse”, as well as persisting discriminatory comments and attitudes. This includes misogynistic attitudes expressed towards female cadets in the sports and fitness area. The female cadets who participated in our focus groups also confirmed that they, and their female colleagues, do not report most sexist remarks, discriminatory attitudes, inappropriate sexual advances and other sexual misconduct perpetrated by their male colleagues for a number of reasons. They often do not want their male colleagues to get in trouble, and they do not want to suffer the many repercussions of reporting.

Reporting incidents of sexual misconduct also means that they will be drawn into a time-consuming, emotionally-draining and unpleasant administrative and/or disciplinary process, which they often choose to avoid except in the worst of cases. The consequences for the perpetrator were often considered inadequate or unlikely to change male behaviour. I was told by one female cadet that after one experience of reporting an incident of sexual misconduct, she chose not to report any subsequent incidents. A few female cadets reported that things have improved in recent years, but others considered it as bad as it has ever been.

None of this is new, and the slow progress, assuming there has been some, indicates that the roots of the problems are deep and entrenched. While the CAF has taken steps to address these cultural and systemic failures, the current situation is still highly problematic. I heard from many female cadets about the current culture and atmosphere. This is not old or outdated information. My interviews with cadets at both the RMC Kingston and the RMC Saint-Jean, starkly contrast with the views of the SSAV report. I also note that according to

CFPM, Kingston was one of the CAF districts with the highest rate sexually-related incidents at 6.9% in 2019-20.⁹⁸⁷ Presumably, this includes incidents from the College.

The military college programs already contain compulsory training for cadets designed to address the problem of sexual harassment and sexual misconduct at the colleges and in the CAF in general. The RMC Kingston prepared a response to the 2020 Statistics Canada Report, which discussed the report's findings and performed an analysis to identify "gaps" where it most needs to improve.⁹⁸⁸ I commend the effort to identify and rectify these long-standing "gaps" in a timely and serious way.

The response outlined current programming at the military colleges on sexual misconduct, as well as initiatives promoting and supporting equity and diversity. Mandatory training, including leadership and diversity training, is given to the RMC Kingston and RMC Saint-Jean cadets during their officer DP1, and forms part of the military pillar degree requirements of the military colleges.⁹⁸⁹ Cadets receive Operation HONOUR-related training in all four years at the RMC Kingston.⁹⁹⁰ However, my discussions with stakeholders at the military colleges show that this training, together with other training related to leadership values, equity and diversity, is failing to substantially change still prevalent sexist attitudes, or eliminate sexual misconduct.

Training on sexual misconduct and how to handle misconduct situations does not lend itself to virtual or online presentations. Hands-on, mock situational training is recommended for this topic, just as the CAF trains for military skills. Further, appropriately skilled individuals should be conducting this training, in accordance with today's standards and best practices. Military instructors without the appropriate background are sometimes viewed as unable to adequately address class discussions. Others are viewed as simply going through the motions or not taking the topic seriously, further discrediting the value of what was termed the "Hop on Her" training.

These formal initiatives clash with a strong culture, and day-to-day practices, resulting in contradictory messages. In my conversations with N/OCdts in Kingston and Saint-Jean, I was impressed with the strong bonds that young women were forming with each other, largely in an effort to belong and feel safe in an environment that provided neither inclusion nor safety. And I have every reason to believe that the same is true, if not more acutely so, for visible minorities, LGBTQ2+ and young aspiring CAF members from other marginalized groups.

The RMC Kingston has recently embraced certain grassroots initiatives to provide some support for women and other minority cadets. For example, the Athena Network aims to support female cadets throughout their academic years. Run by volunteers on their own time, with the full support of the Commandant, the Athena Network provides women in the military college system with opportunities to meet and share professional experiences through mentoring and networking activities. Participation is open to anyone irrespective of gender, including cadets, students, faculty, staff, as well as ex-cadets.⁹⁹¹

The CAF Sentinel Program, with chapters at the RMC Kingston and the RMC Saint-Jean, is a peer support network made up of trained and supervised volunteer members, designed to play a role in the detection, prevention, and support for military members in distress. Once a sentinel is qualified, they must take ongoing training to maintain knowledge and discover newly available resources.⁹⁹²

In January 2020, the Commandant of the RMC Kingston signed the constitution of AGORA's LGBTQ2+ Support Group, making it an officially sanctioned support group at the College. AGORA provides advocacy on behalf of its participants, opportunities for discussion groups and presentations by medical professionals and specialists from local external LGBTQ2+ groups, and a safe space for discussion on LGBTQ2+ concerns.⁹⁹³ AGORA is meant to help foster a positive environment for the RMC LGBTQ2+ community and to support the needs of students.

The Progressive Learning Program was developed by the SMRC in collaboration with the Training Wing and leadership at the RMC Kingston and delivers content tailored to the developmental stages of the students. The new RMC Kingston Success Centre was also established largely in response to a recommendation made in the SSAV Report that cited a need for a student services centre to enhance the quality of life on campus for students, faculty, and staff. The Success Centre, with a full-time position staffed since April 2020, is a one-stop shop where people can come for academic help, conflict services, financial planning assistance, healthy eating resources, and to access other programs and services.⁹⁹⁴

I encourage these initiatives, as they are not top-down but rather engage the constituency. However, they may have somewhat limited reach and may take a long time to bear fruit. While these grassroots and support initiatives represent a step in the right direction, they may engage mostly like-minded individuals and have a limited impact on the broader dominant culture.

The military colleges do not have the type of student support that is typically available at civilian universities. Considerably more support has long been available for minority and at-risk populations at civilian universities, particularly in the larger institutions with a high diversity ratio. The military college programs are in the early stages. Their impact on attitudes, behaviours and culture at the military colleges will need to be tracked and formally evaluated.

The military colleges appear as institutions from a different era, with an outdated and problematic leadership model. There are legitimate reasons to question the wisdom of maintaining the existence of these military colleges, as they currently exist.

Conclusion

The military colleges appear as institutions from a different era, with an outdated and problematic leadership model. There are legitimate reasons to question the wisdom of maintaining the existence of these military colleges, as they currently exist. The advantages of Canada's considerable investment in military colleges are unclear.⁹⁹⁵ There is a real risk that the perpetuation of a discriminatory culture at the colleges will slow the momentum for culture change the CAF has

embarked upon. There is enough evidence that military colleges are not delivering on their mandate that I believe alternatives must be explored with an open mind.

I recognized that the military colleges are viewed by many in the CAF as untouchable institutions. There is a strong “ex-cadet” component among CAF officers at all levels, particularly among GOFOs who value their experience at military college and are not open to changing how it operates. For example, the RMC Kingston is considered by many CAF members and ex-cadets with successful careers both in and outside the military, as a “national institution of considerable value to the country and its citizens” and whose graduates have “made profound contributions in a wide range of endeavours that permeate throughout Canada and international society to this day”.⁹⁹⁶ I do not dispute the fact that the military college system has produced many bright young Canadians, who have become excellent career officers and successful civilians after their release. However, the overwhelming majority of them were white men. Canadian society has changed. The persistent structural, cultural, and ethical issues inherent in the military college system require Canada to ask whether there is another, potentially much better, way to educate its future military leaders.

I understand that this could imply significant and difficult changes in the structure and role of the RMC Kingston and the RMC Saint-Jean. However, it is time for their future to be formally reassessed and reimagined. The many pressures of the military college environment impair the quality of academic success, as a lot is being shoehorned into a four-year college program. A sense of competitiveness, at odds with the team spirit so important to the CAF, is woven into every aspect of the program. Cadets live, work, go to school, and spend their very limited free time in what has become a breeding ground for peer pressure and toxic relationships.

To be clear, closing the colleges altogether would be a missed opportunity. The military training, leadership courses, fitness and sports training, and bilingualism aspects provided to cadets while attending the RMC Kingston and the RMC Saint-Jean likely could be further enhanced and delivered using a modified military college model. An externally-led review should formally consider whether it would be advantageous for ROTP officer cadets to first complete an undergraduate degree at a civilian university, and then attend a military college for a year of professional military education and related training. The feasibility of obtaining a master’s degree as a result of this training should also be assessed.

In my view, the continued hostile environment and mistreatment of many female cadets in itself justifies an in-depth examination of the future of military training through these colleges. Allies provide examples of different models that may be preferable and adaptable in the Canadian context. The United Kingdom and the United States operate very differently.⁹⁹⁷ The Canadian dual jurisdiction over the governance of these institutions provides additional complexities.

Meanwhile, the future of the RMC Kingston and the RMC Saint-Jean is closely linked to the development of healthy leadership in the CAF. The status quo constitutes a serious impediment to the kind of culture change to which the CAF has expressed its commitment.

The long-standing cultural concerns unique to the military college environment are not new. Misogynistic and discriminatory thinking, and the related treatment of female N/OCdts by their peers and others persist, despite several external and internal reviews and the efforts already made by the CAF to address these concerns.

Further, it remains difficult to measure the true incidences of sexual misconduct at the military colleges. The CAF needs to equip itself to change the experience of female cadets and measure progress by demonstrating a true reduction in sexual misconduct incidents, and not just by considering the number of hours of related training given to N/OCdts.

For instance, the RMC Kingston conducts a voluntary, anonymous Exit Survey of graduating cadets, where cadets are asked to evaluate their experience with the Academic, Training and Athletic Wings. However, cadets are not specifically asked about their experiences with sexual misconduct or discrimination. The colleges should immediately adapt their Exit Survey to capture this type of important data.

Part of the response from CAF leadership has been that the problem with sexual misconduct was somewhat comparable to problems at civilian universities.⁹⁹⁸ It is true that the university environment is in itself susceptible to many forms of misconduct, including sexual misbehaviour, and especially so when students, away from home for the first time, live in residence side by side with limited supervision. I expect that most Canadian universities are acutely aware of that challenge and continue to make efforts to address it. The unique environment of military colleges makes that challenge even greater, almost insurmountable, particularly when the view persists within the CAF that military colleges do not have a significant problem with harassment, bullying and sexual misconduct.

RECOMMENDATION #29

A combination of Defence Team members and external experts, led by an external education specialist, should conduct a detailed review of the benefits, disadvantages and costs, both for the CAF and more broadly, of continuing to educate ROTP cadets at the military colleges. The review should focus on the quality of education, socialization and military training in that environment. It should also consider and assess the different models for delivering university-level and military leadership training to naval/officer cadets, and determine whether the RMC Kingston and the RMC Saint-Jean should continue as undergraduate degree-granting institutions, or whether officer candidates should be required to attend civilian university undergraduate programs through the ROTP.

In the interim, the CPCC should engage with the RMC Kingston and the RMC St-Jean authorities to address the long-standing culture concerns unique to the military college environment, including the continuing misogynistic and discriminatory environment and the ongoing incidence of sexual misconduct. Progress should be measured by metrics other than the number of hours of training given to cadets. The Exit Survey of graduating cadets should be adapted to capture cadets' experiences with sexual misconduct or discrimination.

Human Resources

As part of this comprehensive Review, I was required to assess “performance evaluation and promotion systems in the [CAF], with a focus on how leaders are selected and trained.” I was also invited to make recommendations “on any further changes to the performance evaluation system and the promotion system used in the CAF with a focus on how senior leaders are selected, while the CAF and the [DND] are proceeding with improvements.”⁹⁹⁹

I have no reason to doubt the CAF’s competence at training and assessing its members’ technical operational capabilities. But as the breadth of complaints in the recent Heyder and Beattie class actions showed, the CAF has not historically been able to properly assess conduct deficiencies as part of career progression. If it is to improve confidence in its leadership, it must do so. How it manages the careers of its members, including promotions, postings and succession planning is key to understanding how the system can be improved.

The human resources function falls largely under the authority of the Chief Military Personnel (CMP) who reports directly to the CDS and commands MILPERSCOM. This includes military personnel management, recruitment personnel research, and health and support services.¹⁰⁰⁰ The Director General Military Careers reports to the CMP and is responsible for managing careers (promotions and postings), overseeing the CAF’s appraisal systems, conducting national selection boards for promotion and producing and reviewing career policy.¹⁰⁰¹ MILPERSCOM has been described as a “visitor” command, in the sense that it is staffed by CAF members originally from the environmental or other commands, and who typically return to those commands following their time in MILPERSCOM.

Succession planning, on the other hand, is mostly left in the hands of the various commands. Although there is some coordination and tracking by the DGMC, and the various career managers, the DGMC does not control much of the decision-making process, except at junior rank levels. For higher ranks, succession planning is instead governed by orders, policies and practices within each command, and sometimes sub-delegated to particular trades.

This entire process is designed to meet the CAF’s staffing requirements, which were described earlier. Having projected its needs in different environments and occupations, and at different ranks, the CAF has established the process described below for moving people up the leadership ladder.

As the breadth of complaints in the recent Heyder and Beattie class actions showed, the CAF has not historically been able to properly assess conduct deficiencies as part of career progression. If it is to improve confidence in its leadership, it must do so.

Performance appraisal and promotions

Promotions and appraisal generally

The legal authority for promotions – and by extension performance appraisal – comes from section 28 of the NDA and Chapter 11 of the QR&O. The NDA provides that officers and NCMs may be promoted “by the Minister or by such authorities of the Canadian Forces as are prescribed in regulations.”¹⁰⁰² The QR&O provide that promotion of NCMs and officers below the GOFO level shall take place “in accordance with orders and instructions issued by the Chief of the Defence Staff.”¹⁰⁰³ However, the QR&O do set some limitations on promotion. Subject to the CDS’s power to waive the requirements for promotion in an individual case:

11.02(1) [...] no officer or non-commissioned member shall be promoted to higher rank unless:

- a) there is an appropriate vacancy in the total establishment for the member’s component;
- b) the member is recommended by the appropriate authority; and
- c) the member meets such promotion standards and such other conditions as the Chief of the Defence Staff may prescribe.¹⁰⁰⁴

The general criteria for promotion and performance appraisal are set out in a series of documents. General policy is provided in DAOD 5059-0, *Performance Appraisal of Canadian Forces Members*, as well as in a handful of Canadian Forces Administrative Orders and CANFORGENs.¹⁰⁰⁵ Further direction is provided by the CMP and various organizations under their command including the DGMC, who in turn commands, among others, the Director Military Careers and the Director General Military Personnel Policy.

The CAF is in a transition between its old performance appraisal system, the Canadian Forces Personnel Appraisal System (CFPAS), and a new Performance and Competency Evaluation (PaCE) system. PaCE is currently in phase one of its implementation. Since April 2021, over 1,000 CAF members have been subject to PaCE, and it was set to become mandatory throughout the CAF in April 2022.¹⁰⁰⁶

Both the CFPAS and the new PaCE system share some commonalities. According to the current DGMC:

The legacy and new appraisal systems include job descriptions, member aspirations and feedback that culminates in an annual assessment. Both the legacy and new appraisal systems require at least two levels of review, and they each have informal as well as formal dispute resolution mechanisms.¹⁰⁰⁷

The legacy system, CFPAS, has been in use since 1997. One of its key functions is to record annual appraisals and feedback in individual Performance Evaluation Reports (PERs). The PER is a one-page form with seven sections for rating a CAF member's performance and potential, and some limited space for written comments.¹⁰⁰⁸ Sections 1, 2 and 7 are merely for identification, acknowledgment, and a few statistics about their service. Section 3 lists their current employment and any new qualifications and skills. But it is sections 4 through 6 that are the core of the performance appraisal. PERs have an accompanying “word picture book” that “provides criteria to assess each factor for each different rank.”¹⁰⁰⁹

Section 4, “Performance”, is filled out by the CAF member's supervisor. It rates their current performance across 17 areas. These include: Leading Change, Working with Others, Accountability, Reliability, Ethics and Values, and Conduct On/Off Duty. There is also a box with nine lines for written comments.

Section 5, “Potential”, is filled out by the reviewing officer. It rates the potential for promotion to the next rank over six areas. The first of these rated areas is “Leadership”, while the others deal mostly with more administrative and routine indicators, such as professional development and administration. There is also an overall “Promotion Recommendation” rating, and another nine-line box for written feedback.

Section 6 provides a small space for written comments under the heading “Additional Review.” It also has boxes for the identifying details and signature of the officer filling it out, in common with sections 4 and 5.

Promotion of NCMs, and junior and senior officers

For NCMs and officers up to the rank of colonel/captain (Navy), the PER system goes hand-in-hand with yearly “selection boards” which decide promotions. According to the DGMC, “[a]ppraisals contribute significantly to the selection-promotion process.”¹⁰¹⁰ The guidance and directions for annual selection boards under the CFPAS make this clear.

Before convening selection boards, CAF members' last three PERs are scored “mathematically” to produce a total score out of 300 points, with PERs from a previous rank counting for 50%. The career manager for the rank then “establishes a cut-off line based on two times the promotion forecast.”¹⁰¹¹ This produces the list of candidates for consideration by the selection board, containing those above the cut-off line.

Selection boards are convened under the authority of the DGMC and require a minimum of four members. Members must be employed within the National Capital Region. Certain people are excluded from sitting on selection boards, including anyone who has been a career manager, and anyone who has sat on the same board for two years running.¹⁰¹² There is an exception to this for legal officer selection boards, which are all presided over by the JAG. All selection board members must have a minimum “C” level in reading in their second official language.

For NCMs, the selection board must be presided by a major, and include a captain and two master warrant officers or one master warrant officer and a warrant officer of four years' experience or more. For officers, the board president must be at least three ranks senior to the candidates, and the other members at least two ranks senior.¹⁰¹³ For example, a selection board for majors must be chaired by a brigadier-general (or higher) while remaining members must be colonels or above.

If a selection board has two or fewer occupations among the candidates, it must also include a non-affiliated member. This non-affiliated member must come from a different trade to those being assessed, and be of equal or higher rank than the other board members.¹⁰¹⁴ Similarly, if a board is considering multiple occupations and the board members are not familiar with one of those occupations, then a rotating member is appointed to provide subject matter expertise.¹⁰¹⁵

Selection boards review each candidate's file, and score them out of 100. Sixty points are set aside to assess their performance, and 40 points to assess both their potential and second language ability. The proportion of these 40 points that applies to second language ability increases with rank. The boards are directed to make an "overall assessment, including the multi-year trend in behaviour," based on the member's previous PERs, as well as course reports and letters of commendation. Boards must assess at least the three most recent PERs and may consult all the PERs in the last five years.¹⁰¹⁶ They do not have access to a member's conduct sheet (addressed further below).¹⁰¹⁷

I have heard various criticisms of the legacy CFPAS system and use of PERs, both from individual stakeholders and from leadership. A recurring concern is that the officer signing the PER, for example under the "Additional Review" section, is given significant – even disproportionate – weight.

I also heard that units conduct their own internal rankings of members before formally scoring their PERs. The PER forms are then sent to an officer with orders to provide appropriate comments and/or scores justifying the rankings.¹⁰¹⁸ I was even provided with an example of a spreadsheet designed to turn the informal ranking process into a series of scores for individual PERs. The MGERC has concluded that such practices are contrary to CFPAS policy, and highlighted this as a systemic issue.¹⁰¹⁹ While the CAF-wide direction regarding PERs for 2019-2020 stated that this practice "has ceased,"¹⁰²⁰ stakeholders told me that it continues to be an issue. In other words, the process of appraising a CAF member's performance on an individual basis is being subverted and replaced with a process of assigning PER scores based on an informal ranking exercise.

Rather than rely on the apparent impartiality of a system on its face, the CAF would be well-advised to recognize this reality as it moves forward.

However objective the design of the CFPAS and PER system, it clearly can be circumvented. And indeed, it often is. This may in turn create an enabling environment that undermines the intent to promote based solely on merit. Whether deliberately, or by conscious or unconscious bias, those responsible for promotion may steer their favoured candidates up the ranks and hold back the careers of others.

This inference is supported by the CAF's own data. The following series of graphs illustrate the rank progression for various employment equity groups in the CAF, for both NCMs and officers. Although presented by the Minister's Advisory Panel¹⁰²¹, the underlying data is taken from the 2019 CAF Employment Equity Report.

The stark reality is that, while women make up 16.3% of the CAF,¹⁰²² their numbers are concentrated in the lower ranks. They are increasingly underrepresented at each higher rank. The equally dire situation of other minority groups confirms the inference of systemic bias.

NCMs make up the largest part of the CAF. And although at the rank of sergeant or below, 12-15% of NCMs are women, this decreases to under 10% by the top NCM rank of chief warrant officer.

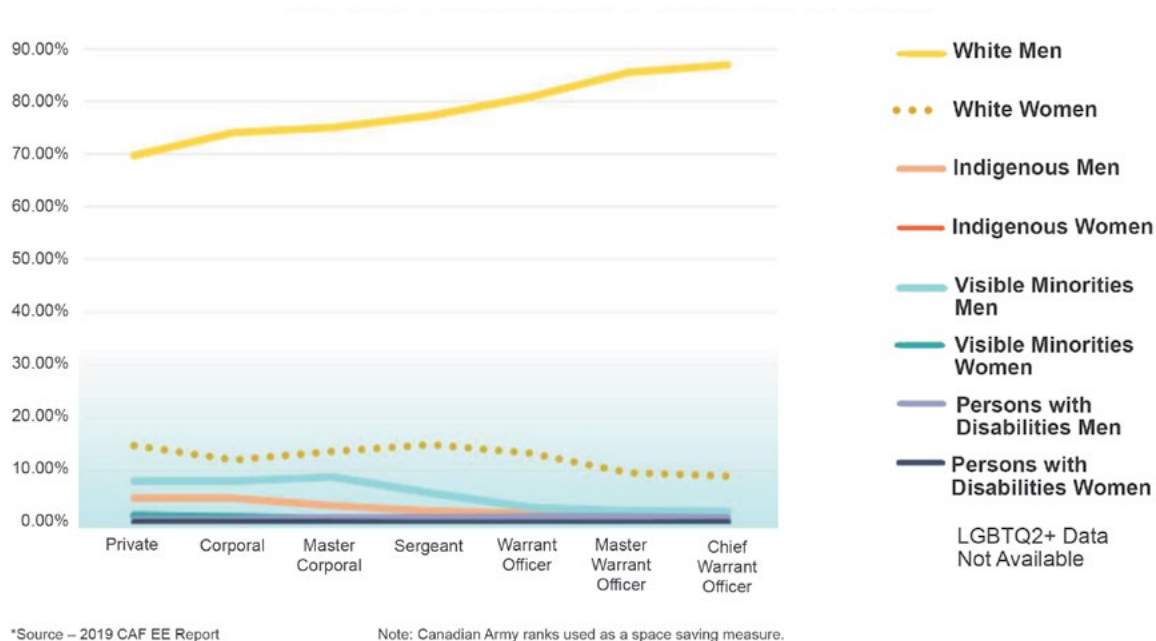
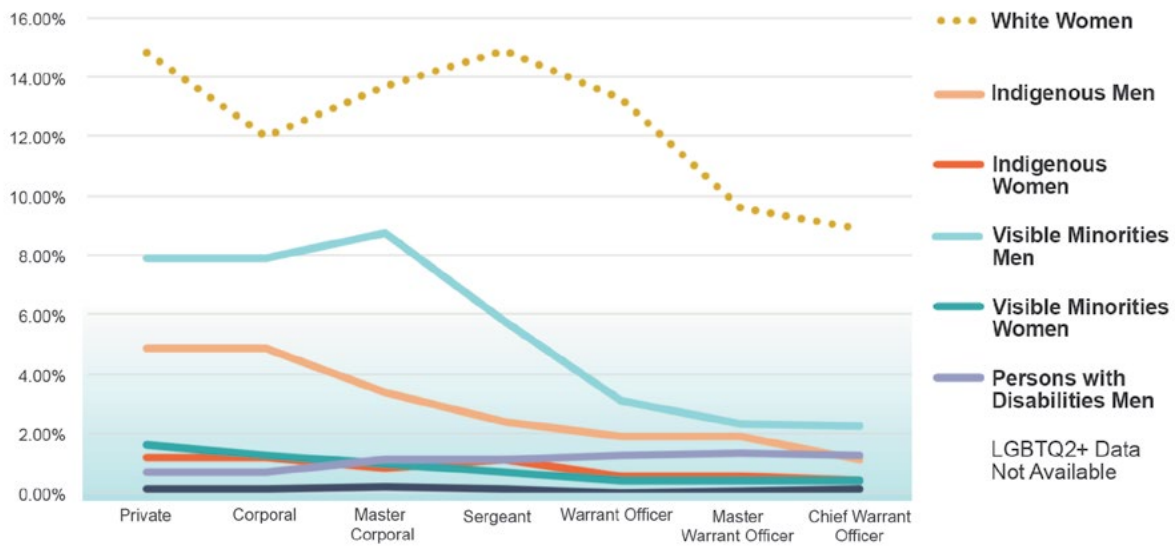


Figure 6. CAF Non-Commissioned Members by Rank

SOURCE: Anti-Racism Panel Final Report, p.17, Figure 3.

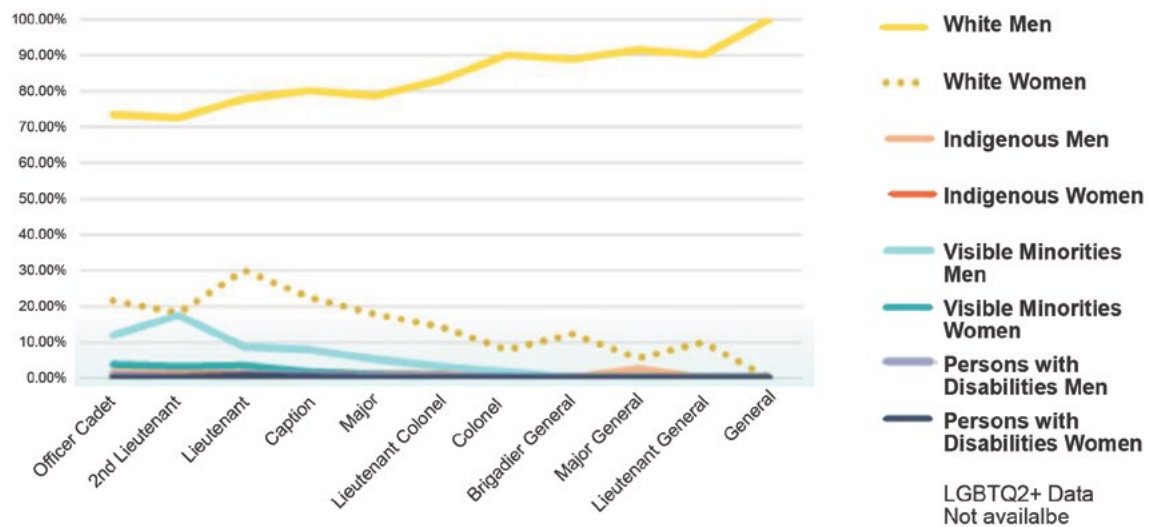


*Source – 2019 CAF EE Report

Figure 7. CAF Non-Commissioned Members by EE Group

SOURCE: Anti-Racism Panel Final Report, p.17, Figure 4.

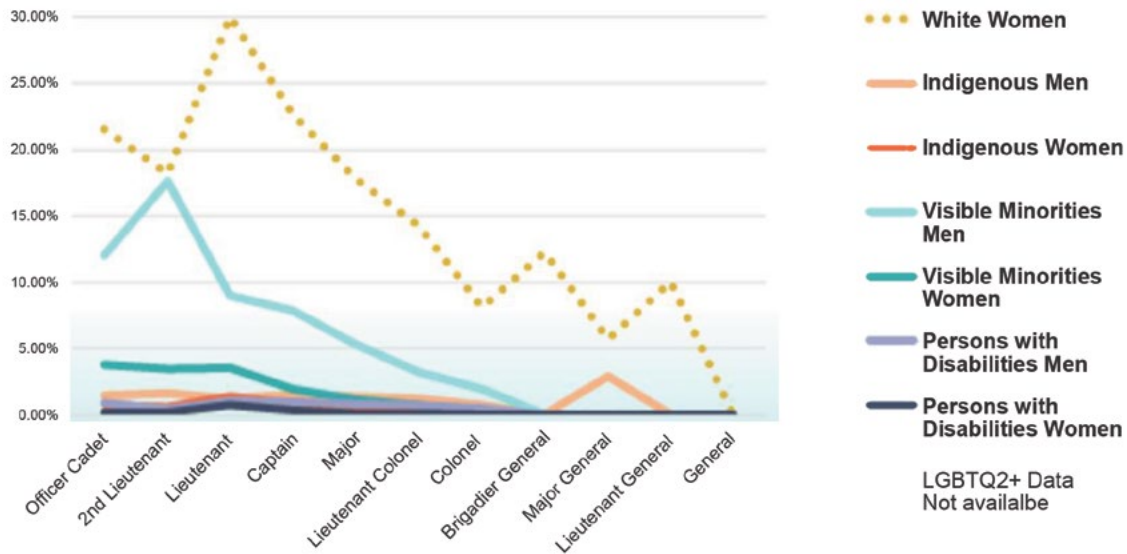
And the decline of these groups through the ranks, rather than progress, is equally stark among officers.



*Source – 2019 CAF EE Report

Figure 8. CAF Officers by Rank

SOURCE: Anti-Racism Panel Final Report, p.18, Figure 5.



*Source – 2019 CAF EE Report

Figure 9. CAF Officers by EE Group

SOURCE: Anti-Racism Panel Final Report, p.18, Figure 6.

The data provided to me by the DGMC regarding promotion and gender trends is also telling. The following table is from a spreadsheet prepared for me by the DGMC showing gender trends across the various CAF selection boards for the years 2015-2020.

Annual Selection Board Summary						
Performance Year	For Promotion in	Files Reviewed	Women	Men	% Women	% Men
2015/2016	2017	11535	1783	9752	15.46%	84.54%
2016/2017	2018	12505	2034	10471	16.27%	83.73%
2017/2018	2019	11973	2016	9957	16.84%	83.16%
2018/2019	2020	12490	2158	10332	17.28%	82.72%
2019/2020	2021	14259	2173	12086	15.24%	84.76%
Performance Year	For Promotion in	Pers Promoted	Women Promoted	Men Promoted	% Women	% Men
2015/2016	2017	3633	583	3050	16.05%	83.95%
2016/2017	2018	4273	708	3565	16.57%	83.43%
2017/2018	2019	4365	771	3594	17.66%	82.34%
2018/2019	2020	4273	776	3497	18.16%	81.84%
2019/2020	2021	4144	719	3425	17.35%	82.65%

Table 14 – Annual Selection Board Summary 2015 – 2020¹⁰²³

The top part of this table shows the total files put forward to and reviewed by selection boards for promotion for ranks up to lieutenant colonel / commander (*i.e.* those above the cut-off line described above) for promotion in the years 2017 to 2021, and the proportions of women and men in respect of these totals. The bottom part of the table shows how many of each gender were in fact promoted by selection boards, and the proportion of the total promoted.

What these data show is that, from 2015-16 to 2019-20 (for promotion from 2017-2021 respectively), only 16-18% of members promoted were women, according to CAF data. Although the raw numbers of women promoted increased between 2015-16 and 2019-20, the overall proportion of women promoted compared to men remained fairly static.

I was also provided with a table from the DGMPRA showing promotion rates for senior ranks calculated as the number of promotions divided by the number of members eligible for promotion based on years in rank.¹⁰²⁴ To illustrate this using a hypothetical example, if 20 men and 10 women were eligible for promotion to a given rank, and 10 men and 5 women were promoted, the promotion rate would be 50% for both men and for women.¹⁰²⁵ According to this information, promotion rates at these ranks were similar for women and men. However, the way this proportion is calculated depends on the underlying numbers of women and men *eligible* for promotion in a given year, which may or may not be proportionate to the overall proportions of women and men in the CAF (or wider society). In other words, this data does not assist in determining how many women are promoted versus the overall female population of the CAF and wider society.

Although both these datasets suggest that the selection board process may not be actively disadvantaging women's chances of promotion, other documents provided to me tended to show promotion rates that were either the same as current ratios of women to men in the CAF, or in which promotion of women was lower than expected for particular trades.¹⁰²⁶

That said, there is evidence that representation is increasing incrementally, particularly at certain rank levels. In a DRDC study of data from 2001-2021, there was a slow upwards trend in the representation rates of women in the Reg F. Overall, according to DGMPRA, the Reg F increased from 11.9% of women overall in 2001-02 to 16% of women in 2021-22. For officers, the upwards trend was a little more marked. In 2001-02, 13.8% of officers were women, rising to 20% in 2021. However, when combined with the representation of women in the P Res, these figures decreased due to a downward trend for Reserve NCMs up to 2011-12 with the overall representation of women remaining static.¹⁰²⁷ See Figure 10 for further details.

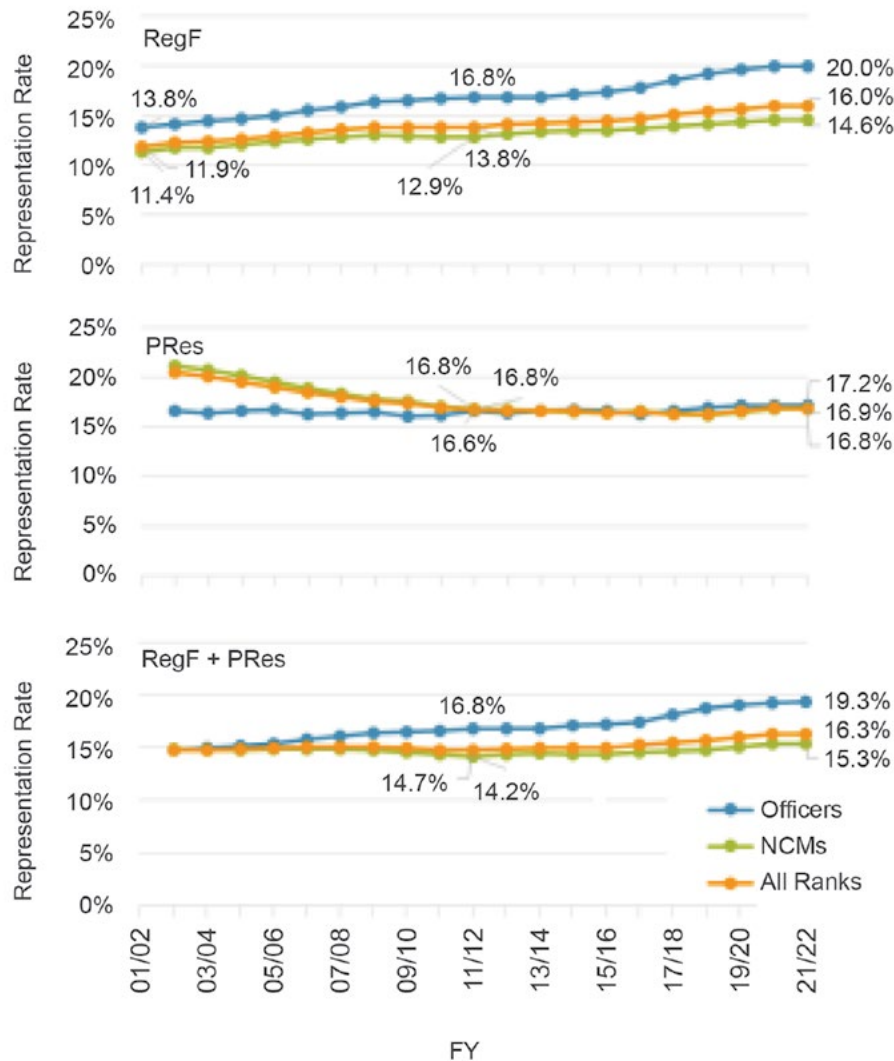


Figure 10. Representation rates of women by rank group; RegF, PRes, and combined.

For senior officers in the Reg F, trends were more marked, although the starting proportions were very low. CAF data shows female lieutenant-colonels/commanders in the Reg F went from 4.7% in 2001-02 to 17.6% in 2021-22. Female colonels/captains (Navy) went from 4.4% to 11%, and female GOFOs increased from 2.7% to 9.4%. By contrast, the overall trend for the P Res remained essentially static for lieutenant-colonels and GOFOs, and actually saw a decrease for colonels from just under 10% in 2001-02 to 6.5% in 2021-22.¹⁰²⁸

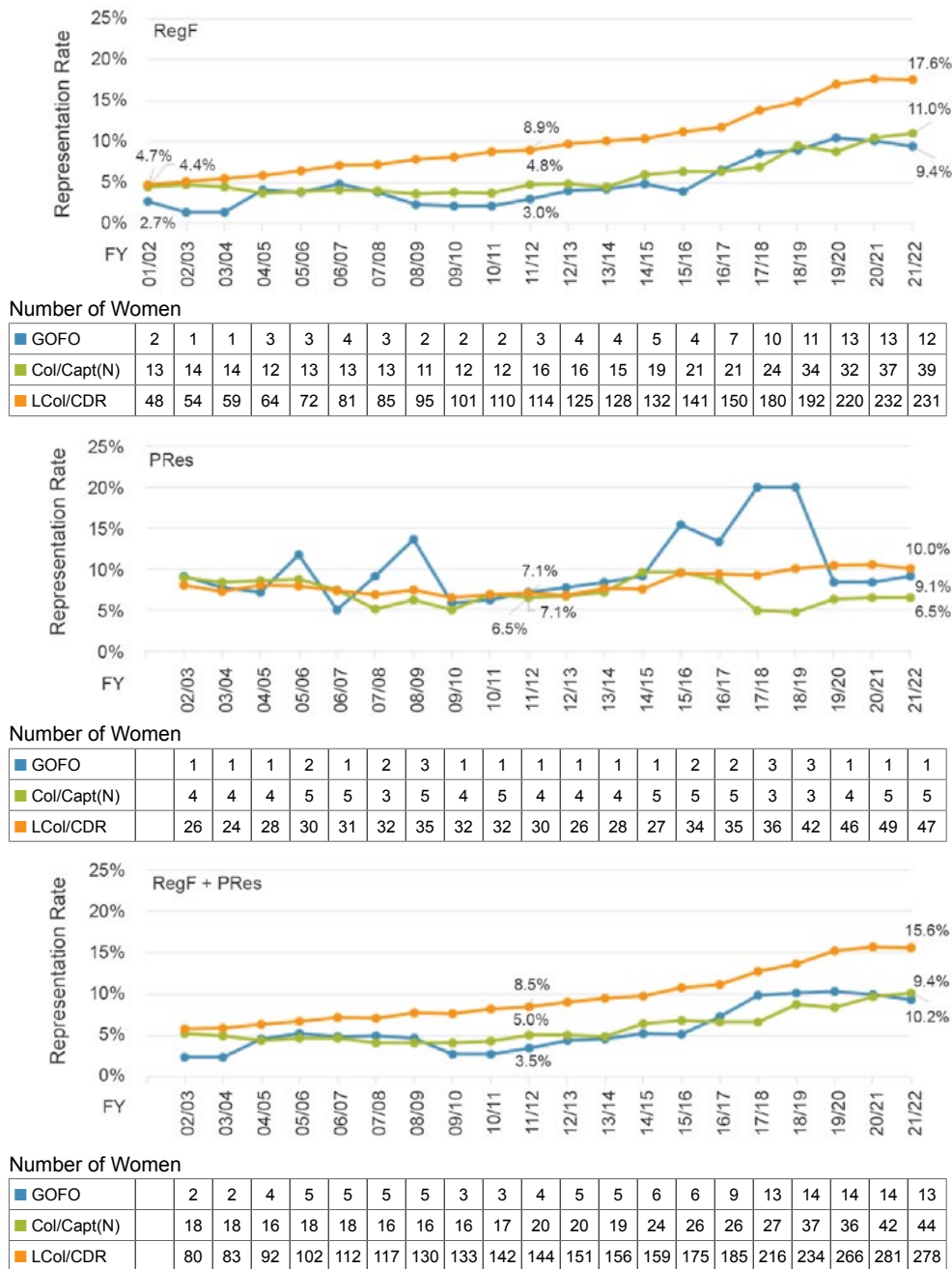


Figure 11. Representation rates of women at LCol/Cdr and above; RegF, PRes, and combined.

In my view, despite some gains in certain ranks, the CFPAS and PER system have failed to achieve a meaningful overall increase of female representation in senior ranks. Nor do they provide women with fair opportunities for promotion. Instead of progress, representation has either remained static or led to small increases that are not universal across all trades and rank levels. Further, there is evidence that “leadership has learned how to game the system to get their [chosen] subordinates ahead.”¹⁰²⁹ And as the data show, they have generally selected for promotion those who most resemble them, resulting in the exclusion of women and other employment equity groups. Efforts to improve the culture, such as Operation HONOUR, have had limited impact in improving the advancement of women within the CAF to date.

In my view, despite some gains in certain ranks, the CFPAS and PER system have failed to achieve a meaningful overall increase of female representation in senior ranks.

I acknowledge that there have been recent changes to how selection boards are formed and conduct business. In 2021-22, scoring criteria were subjected to GBA+. It is planned to continue this yearly to “assess how the scoring criteria may cause potential barriers and disadvantages to diverse groups of women, men, and gender-diverse members.”¹⁰³⁰ In addition, the selection boards for promotion are now required to have a minimum of one voting member from an employment equity group or the Defence Team Pride Network. And additional “bias awareness training” was provided to selection boards.¹⁰³¹

While these changes to the practices of selection boards are to be welcomed, it is difficult to predict whether they will have a real impact on the promotion of women and employment equity groups. However, the CAF should maintain these measures and continue to review its promotions processes and consider whether and how it is ensuring a sustainable, diverse and ethical leadership for the future.

Another problem with PERs (and the CFPAS that relies on them) is the limited possibility for recording past (mis)conduct issues. There is no specific area on the form for this purpose. As such, the only space for recording conduct issues is in the nine-line comment boxes. With respect to recording conduct issues, the CFPAS policy states:

[...] administrative, medical and/or disciplinary problems are to be commented on when they result in restricted employment and/or affect the individual’s performance, deportment, behaviour and/or bearing;

[...] convictions under the Criminal Code of Canada or the National Defence Act that occur during the reporting period must be detailed in a brief factual statement (including date of conviction) when the conviction results in restricted employment, has an adverse effect on performance, or results in a reduction in rank as a result of a sentence awarded by a service tribunal;

[...] charge laid against the individual in the reporting period but which has not been resolved [...] will only be mentioned in the PER, in the case of the Regular Force, with NDHQ/DMCSS 2’s written authorization and in the case of the Reserve Force, IAW the appropriate Environmental Command order or equivalent direction. Authority will only be granted on an individual basis [...] and normally only when the accused person has freely admitted to all of the particulars after being properly cautioned and afforded the opportunity to consult legal counsel¹⁰³²

There are several obvious problems with this approach. First, the space afforded to discuss conduct issues, which may be complex or nuanced, is very limited and must be shared with other comments about the member's overall performance.

Second, the policies above are highly restrictive. In the case of a conviction under the *Criminal Code* or the NDA, it is not immediately clear what types of convictions will result in "restricted employment." I was told that COs are granted a wide discretion in this regard, although typical situations include a custodial sentence, loss of a driver's licence (where driving is an expected duty), or the loss of a security clearance.¹⁰³³ Unless there is an ancillary order made regarding a convicted sex offender, sexual offences may not necessarily restrict a CAF member's employment in their occupation or trade, particularly if charged as a non-*Criminal Code* disciplinary offence. Nor is it clear how other types of convictions (*e.g.*, theft) will be assessed as having an adverse effect on a CAF member's performance if not directly related to an aspect of their job (*e.g.*, financial management). In the case of charges laid but not yet resolved, the recording of such matters is restricted to cases where the member has freely confessed to the crime. It introduces an additional bureaucratic hurdle by requiring high-level approval in writing and the appreciation of the voluntariness of a confession – a matter frequently disputed in courts.

Finally, in the case of "administrative, medical and/or disciplinary problems," these must again directly affect the member's occupation, performance or behaviour. It is not clear whether administrative or disciplinary action over sexual misconduct would be seen to have any such effects with respect to the perpetrator.

The fact that selection boards only consider the last three to five years of PERs also reduces the visibility of older conduct issues. *Criminal Code* and NDA convictions and charges may only be included if they occur during the reporting period of the PER. This means that they will not appear on subsequent PERs. Administrative and disciplinary problems may be commented on repeatedly, but there is a lack of guidance around how and whether this should take place. The likelihood is that even serious misconduct will not appear to any selection board more than five years later, and may not adversely affect the member's potential for promotion. While people change, more visibility on character flaws could prevent discredit to the organization, particularly when it comes to appointments at the most senior ranks.

The new PaCE System for performance appraisal

According to the DGMC:

PaCE is digital, built on over a decade of research, and is aligned with best practices in both industry and academia. Underpinned by the CAF [Competency Dictionary] [...], PaCE is a return to a focus on our values. PaCE is a significant improvement over CFPAS in that it includes bias awareness training, contains score inflation control measures integral to the program, and provides a more evidence-based method with which to assess potential.¹⁰³⁴

In April 2021, PaCE was rolled out for over 1,000 CAF members as part of phase one of its implementation. Unlike the CFPAS, which is largely paper-based, PaCE is fully digital. According to the PaCE webpage:

Performance is evaluated using competencies, which are global, broad, and comprehensive characteristics that include Knowledge, Skills, Ability, and Other Attributes (KSAOs), such as values and personality traits, which are linked to strategic organizational goals. Competencies, like diamonds, have many sides called facets to describe them. For example, the competency called Teamwork consists of the facets of Collaboration, Enabling Team Goals, Team Optimization, Team Morale, and Team Communication; the competency called Credibility and Influence consists of the facets of Confidence, Accountability, Reliability, Inspiration, Art of Influence, and Impact; etc. Each facet is described by a rank-specific Behavioral Indicator (BI), which is a simple statement that describes average and effective performance using observable behaviour. For example, the facet of Team Optimization for a Corporal is “Integrates self into the team quickly”, while for a Master-Corporal it is, “Integrates new members into the team quickly”. There are 19 different competencies. The number of competencies you are evaluated on depends on your rank.¹⁰³⁵

In addition, some members will be evaluated for potential across five domains: Social Capacities, Professional Ideology, Expertise, Change Capacities, and Cognitive Capacities.¹⁰³⁶ There is a detailed competency list for each rank from corporal/sailor 1st class up to brigadier-general/commodore.¹⁰³⁷ These are also set out in the CAF Competency Dictionary for ranks up to major-general/rear-admiral.¹⁰³⁸ Beyond these core CAF competencies, members will be evaluated based on functional competencies set by their trade or occupation and environment.¹⁰³⁹

The implementation of PaCE consists of four parts:¹⁰⁴⁰

- a. A job description, documenting a member’s current and former jobs within the CAF. A supervisor has the possibility of adding additional duties or information to the standard job description on a case-by-case basis.
- b. A “Member Aspiration Profile” that “[a]ssists the member in developing realistic expectations and setting goals.”
- c. Feedback notes, which will be viewable to members only after an in-person or telephone debriefing session.
- d. A Performance Appraisal Report (PAR), replacing the PERs in current use. The PAR includes boxes for rating each facet of the member’s competencies, using six ratings (ineffective, somewhat effective, effective, highly effective, extremely effective, and not observed).¹⁰⁴¹

PaCE mirrors, to an extent, current performance appraisal practices in the private sector. Competency assessment, goal-setting, and detailed real-time feedback are all common in contemporary performance appraisal systems. However, given its newness, it is impossible to assess whether PaCE will avoid the problems identified with the CFPAS and PERs. As I understand it, selection boards will continue to be run as before but with a new scoring system that aligns with PaCE. A key factor will be whether leadership is still able to game the system by assigning artificial scores based on an arbitrary ranking of members at the unit

level. Given that the new PAR uses a ranking system for each competency facet, it is possible that such practices may continue.

Another drawback to the PAR is that it too offers relatively little opportunity to record conduct issues than the PER. There is a three-line box in the performance appraisal section limited to 267 characters in English or 360 characters in French.¹⁰⁴² A similar box is available in the reviewing officer comments and higher-level review ranking sections.¹⁰⁴³ In addition, the PAR includes a reporting period misconduct assessment. The author must first select if the conduct is ‘acceptable’ or ‘unacceptable’. If conduct is unacceptable it opens a free-form text box of 104 characters (roughly a 1.2 line sentence) to concisely describe the issue. These provide extremely limited space to discuss any issues such as an administrative or disciplinary action, or criminal convictions. At first glance, PaCE appears to offer even less opportunity to take account of conduct issues (including sexual misconduct) than the CFPAS.

On the other hand, the competencies list includes various competencies and facets that allow for indirectly recording concerns. For example, the Ethical Reasoning competency includes facets such as “promoting ethical climate” and “moral decisions.”¹⁰⁴⁴ The Interpersonal Relations competency includes “culture of respect” and creating and maintaining a unit environment that promotes trust.¹⁰⁴⁵ This is an improvement on the old PER, in that conduct, ethical reasoning and moral leadership may now be assessed and given a score.

Furthermore, according to MILPERSCOM instructions on the performance appraisal process, all CAF members will be required to demonstrate inclusive behaviours.¹⁰⁴⁶ List of action items for the CAF executive cadre¹⁰⁴⁷ and general CAF members are provided, and performance in respect of these action items should be recorded through the “feedback notes” section of PaCE.¹⁰⁴⁸

Nonetheless, I am not convinced that such indirect ratings provide sufficient opportunity to take into account sexual misconduct and other forms of discriminatory attitudes in evaluating CAF members for promotion and leadership roles. The competencies and facets which relate to conduct or ethics form a relatively small part of the overall assessment. And there is no opportunity to provide a rationale for a particular rating beyond the single 270-character comments box (in the English version). In my view, this does not give sufficient room to capture a member’s past transgressions, particularly where such transgressions are serious and may affect their character, ability or moral standing to lead the CAF of the future. Like the old PERs, the new PAR places too great an emphasis on performance, and not enough on conduct. This is not to suggest that all forms of misconduct should be a disqualifier, in perpetuity, for advancement in the CAF. But visibility on these issues will ensure not only that their relevance is assessed in the context of each case, but also that the CAF will avoid the pitfalls of willful blindness.

In order to remedy this problem, each CAF member’s supervisor should certify – to their knowledge – whether the member is subject to an investigative or other process relating to sexual misconduct.

RECOMMENDATION #30

A section should be added to the PAR requiring the supervisor to certify that, to their knowledge, the CAF member being appraised is not currently subject to any investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to allegations of sexual misconduct.

If the supervisor is aware of such an investigation or proceeding, they should not reveal its existence if doing so would compromise its integrity.

Otherwise, the supervisor should provide all relevant details of the investigation or proceeding.

Further, I am concerned that the new PARs offer no more opportunity for consideration of past conduct issues than do the old PERs. A key feature of both the legacy CFPAS system and the new PaCE system is that selection boards review only the PER or PARs, and do not have access to a CAF member's complete personnel record. As I understand it, each CAF member has a central file held by the DMCA as well as a unit personnel record (UPR).¹⁰⁴⁹ Neither of these is provided to selection boards.

From what I gather, the only opportunity that selection boards currently have to consider conduct issues is through the review of the PER/PAR. This is problematic. In my view, the CAF should identify categories of serious misconduct, for example sexual harassment, relevant offences under the *Code of Service Discipline*, and *Criminal Code* sexual offences. A conduct record should be produced by an appropriate unit under the CMP, to be included with each candidate's file for review by the selection board.

The CAF should also prepare guidance to selection boards on how to take into account past misconduct, including factors such as seriousness of the conduct, the sentence or remedial measures imposed, and any actions by the member to address the issue. The policy should also make appropriate provision for removal of misconduct from the conduct sheet following a formal record suspension for a *Criminal Code* offence.

RECOMMENDATION #31

A past misconduct sheet should be prepared for each candidate considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, by an appropriate unit under the CMP. The past misconduct should include anything the CAF deems to be serious misconduct, but should include at a minimum, convictions for *Criminal Code* sexual offences and findings of sexual harassment. The CAF should also prepare appropriate guidance to selection boards on how to take past misconduct into account as part of their deliberations and decision-making. Finally, the CAF should make appropriate provision in its policy for rehabilitation, including the removal of criminal convictions for which a record suspension has been granted.

General & Flag Officer promotions

There are presently some 140 GOFOs in the CAF.¹⁰⁵⁰ There have been concerns that the GOFO cadre had grown too large in recent years, particularly in comparison to allies – as evidenced by a study done in fall 2021.¹⁰⁵¹ It is beyond the scope of this Review to comment on these types of issues. I will simply point out that the CAF has tremendous expertise in planning, including projections of its staffing needs. My focus is on the features of the GOFO cadre that influence the CAF culture responsible for sexual misconduct.

Of the 140 GOFOs, 15 are women, one is black and one is indigenous. Seventy-two come from the Army, of which five are women; 47 come from the RCAF, of which six are women; and 21 come from the Navy, of which four are women. Of the 15 women in the GOFO ranks, two are at the rank of lieutenant-general; four at the major-general/rear admiral rank; and nine are at the entry rank of brigadier-general/commodore. The CDS is, and has always been, a man. Both the Review Team and I met with a number of former and serving GOFOs during this Review, including all but three of the female members of the current GOFO cadre.

The appointing authority for promotion to the rank of brigadier-general is the Minister, on the recommendation of the CDS.¹⁰⁵² In practice, this is a three-stage process. Initially, there is a selection board process, which resembles those for NCMs and officers of colonel rank and below. This consists of National Selection Boards 1, 2 and 3 which are intended to “identify talent pools of officers that may be considered for promotion to, or within the GOFO cadre.”¹⁰⁵³

National Selection Board no. 3 establishes talent pools for promotion to commodore/brigadier-general. The Service Commanders nominate the candidates “in consultation with senior occupational advisers” and based on criteria from the VCDS. The candidate list is then vetted by the Director of Senior Appointments (DSA) and the VCDS before submission to the board. I was told this was “to ensure files meet the required criteria and that other competitive files were not excluded.”¹⁰⁵⁴ Boards are separated by component; Reg F members compete only against Reg F members and Res F members only against other reservists.

National Selection Board no. 2 considers all commodores/brigadier-generals nominated by their services for promotion. They must have at least one appraisal in rank and not be about to retire or have opted out. National Selection Board no. 1 considers all rear-admirals/major-generals other than those who opt out or are retiring. For both boards, the CDS approves the candidate lists. Of note, National Selection Board no. 2 will consider all eligible Res F files for the first time in 2022.

The VCDS chairs the three GOFO boards. The other members are the three environmental commanders (*i.e.*, the Army, Navy and Air Force), as well as the CMP. The DGMC sits as non-voting secretary on National Selection Boards no. 1 and no. 2, and the DSA on National Selection Board no. 3. In 2021-22, the CPCC and the ADM(HR-Civ) also joined the boards.¹⁰⁵⁵ This year was the first time a non-CAF member formed part of the boards. I

welcome this addition as a first step in the right direction. But the CAF would do well to add truly external actors to its career management processes.

For all three boards, each board member scores candidates out of 100. These scores are then aggregated to produce a total score out of 600 (*i.e.*, 100 times the number of voting board members).¹⁰⁵⁶ The candidates are then grouped into talent pools. Each GOFO selection board has three talent pools, A, B and C. Talent pool A consists of candidates assessed as ready for immediate promotion, and pool B are suitable for promotion but would benefit from further development in the current rank or as suitable for “acting while so employed” positions.¹⁰⁵⁷ Talent pool C applies only to National Selection Board no. 3, and are those individuals who would benefit from further development in the current rank.¹⁰⁵⁸

According to the DGMCC, “the talent pool approach was introduced to GOFO selection boards to permit promotion recommendations that balance merit with best-fit.”¹⁰⁵⁹ While this may make sense from a practical perspective, it risks further marginalizing gender-diverse candidates or candidates from other equity-seeking groups.

The second stage consists of deliberation “in an iterative manner” by the AFC Executive, consisting of the CDS and all serving vice-admirals and lieutenant-generals. These deliberations result in a promotions nomination package for those individuals the CDS will recommend to the Minister.¹⁰⁶⁰ Following the AFC Executive’s decision, further due diligence checks (including the new multi-rater 360-degree assessments discussed below) are carried out. The Service Commander prepares a narrative attesting to the candidate’s character, leadership and service, and the CDS then adds personal review and commentary.

The third stage consists of review by the Minister in consultation with the CDS. In order to ensure meaningful oversight by her office of GOFO promotions, I believe that the Minister should be assisted in that task by a senior civilian advisor, not currently a member of the Defence Team. In her consultation with the CDS, the Minister should examine what efforts are made to correct the over-representation of white men in GOFO ranks.

RECOMMENDATION #32

In fulfilling her responsibility in approving GOFO promotions, the Minister should be assisted by a senior civilian advisor, not currently a member of the Defence Team. In her consultation with the CDS, the Minister should examine what efforts are being made to correct the over-representation of white men in GOFO ranks.

GOFOs will have been in the CAF for decades by the time they obtain their first star, and have had a panoply of postings inside the organization, but virtually no external work experience. They will typically have been “talent spotted” and carefully career-managed from early on in their careers. In other words, the whole system of career management and succession planning is heavily invested in their development and promotion. They are locked into an exclusive club that is self-regulated, and into which no outsider will ever be

admitted. The only exception to this are Res F members promoted to GOFO rank. Those individuals often have work experience in industry, government or other sectors. They may have a broader perspective given their exposure to wider Canadian society. For this reason, I welcome the addition of Res F members to National Selection Board no. 2.

It is critically important for senior leaders to embody the values the CAF seeks to impart. This means demonstrating personal strength of character, as well as the highest levels of moral and ethical judgment in line with contemporary Canadian values. This point has been made time and again throughout the inquiries and external reviews of the military since the 1990s.

As such, when considering promotions to senior leadership levels, it is important to ensure that the processes adequately capture a candidate's integrity. This should include how they are viewed not only by those who supervise them, but also by those they are required to lead. The CAF has recently made some significant steps in this direction for GOFOs and anyone being put forward for promotion to GOFO rank. On 9 July 2021, the CDS issued a directive introducing psychometric testing and 360-degree review for prospective GOFO candidates. This followed research by the DGMPRA in 2020, and a pilot project conducted in the fall of that year.¹⁰⁶¹

The CDS directive was implemented in November 2021 through a methodology proposed by the DGMPRA.¹⁰⁶² This includes psychometric testing followed by a “confirmatory” multi-rater or 360-degree evaluation. In the current 2021-22 iteration, the psychometric testing part of this process uses three tools to assess prospective GOFOs:

- the Raven's Advanced Progressive Matrices, which test general cognitive ability and reasoning;
- the Trait Self-Descriptive – Personality Inventory, which assesses aspects of personality associated with success in organizations, including conscientiousness, integrity and agreeableness; and
- The Leadership Skills Profile – Revised, a personality-based assessment of leadership skills.¹⁰⁶³

The scoring from these three tools is aggregated and passed on to a team under the CMP which then converts the test results and combines them with the multi-rater evaluation results to produce a final synthesized score for use during the selection boards.¹⁰⁶⁴

The CAF has clearly taken some concrete steps to improve its selection of GOFOs. The inclusion of psychometric testing and 360-degree evaluation was much-needed, both to ensure the calibre of CAF leadership at a pivotal moment in its history, and to restore trust in the system to appoint future leaders.

However, it is important that these nascent processes are not seen as a panacea. No system offers perfect objectivity, and the most problematic ones are the ones that think they do, oblivious to the unconscious, and sometimes not-so unconscious, biases that inevitably creep in. As such, these new processes need to be subjected to on-going scrutiny and evaluation. Imposing more stringent measures of evaluation at the top was the right way to start. It will send important signals about the value the CAF places on the character of those who aspire to lead.

RECOMMENDATION #33

The new processes for psychometric evaluation and confirmatory 360-degree review used in the promotion of GOFOs should be carefully reviewed by an external expert on an annual basis, with a view to their progressive refinement. The results of this annual review should be reported to the Minister.

While laudable, these recent improvements to GOFO selection do not go far enough. I believe such processes should apply to anyone being considered for unit command or above. This is in line with the DGMC's plans:

Research and consultation are underway to develop an evidence-based framework for character-based assessments that can be expanded to other leadership ranks in the coming years. The intent is to expand the framework to Major/Lieutenant-Commander and Sergeant/Petty Officer 2nd Class and above levels.¹⁰⁶⁵

Although described as “ambitious and [...] resource intensive,”¹⁰⁶⁶ such an initiative is to be welcomed and should be expanded.

RECOMMENDATION #34

The new processes for GOFOs, including psychometric testing and 360-degree multi-rater assessment should, at a minimum, be expanded to candidates being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class.

Finally, to restore trust and foster the integrity of the senior officer corps, it is imperative that the requirement to flag any potential conduct issues in relation to sexual misconduct be reinforced at this level. I note that for GOFOs, all candidates for promotion to GOFO rank are required to disclose any administrative or disciplinary action, or any convictions for a civilian offence, in the GOFO Cadre Promotion Nomination Package. They must also attest that other than those matters disclosed, they have not been subject to any administrative or disciplinary action during their military service.¹⁰⁶⁷ In my view, this is a sensible step. I believe that such a measure would also increase the understanding of the seriousness of this type of conduct, and thus serve as an additional deterrent.

RECOMMENDATION #35

The PaCE system should be modified to include a self-certification requirement on the PAR for those being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, similar to that already in place for GOFO nominations. The candidate would need to certify that they are not subject to any current or prior investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to sexual misconduct; and, if they are, provide all relevant details.

Accelerated promotion and the Pink List

The Special Selection Measure for Women, nicknamed the “pink list”, is an employment equity initiative created in 1997 to support the promotion of female officers by increasing their participation in the Joint Command and Staff Programme (JCSP). It has been described as follows:

A female list is created, in addition to the primary and alternate candidate lists, in order to fill up to five additional seats with the five most deserving female candidates that would not otherwise be selected. The selection board derives this additional female list by ranking the top female candidates who meet the basic Staff College student profile and who are not on the primary lists.¹⁰⁶⁸

According to the DGMC, the special selection measure is used “when the percentage of female primary JCSP nominees falls below the percentage of females at the [major/lieutenant-commander] ranks in the CAF (~15%).”¹⁰⁶⁹ In other words, it is used as a corrective to maintain the proportion of women currently in the major and lieutenant-commander ranks.

The pink list has been met with considerable resistance since its inception. In a 2007 publication that focused on contemporary leadership experiences of women in the CAF, one author wrote:

One particular policy, commonly dubbed the pink list, has been universally condemned by officers who are in tight competition for positions at the CF Command and Staff Course (CSC) as unfair and allowing women to have an unfair advantage over their male counterparts. Female colleagues have indicated to me that they would be unwilling to go to the CF CSC in a pink seat as it would undermine their credibility and have refused it when offered.¹⁰⁷⁰

However, some have noted that in many cases the pink list itself was poorly understood.¹⁰⁷¹ The need for better messaging regarding the special selection measure has been noted multiple times.¹⁰⁷²

It is important to note that although the JCSP is a critical step in readiness for a CO appointment and promotion to the senior strategic levels of the CAF, it is not the only substantial leadership course required. There are numerous such courses, both for officers and senior non-commissioned officers, for example the National Studies Program for prospective GOFOs, or the Army Operations Course for army captains seeking promotion to major. The

CAF should consider whether similar special selection measures are needed to enhance or encourage the representation of women on these courses as well.

When I asked stakeholders about quotas, the pushback was very strong, including among many women who fear their qualifications would be questioned under any preferential system. Sadly, it is clear to me that women's qualifications are always questioned – pink list or no pink list. Many stakeholders referred to the constant need for women to prove themselves before being taken seriously, and with senior officers being passed over at meetings until a male subordinate vouched for them.

The reality is that women have fewer opportunities than men to be promoted, and when they are, the reaction often is: “Oh, it’s because she’s a woman.” Either way, they lose. If the current trends are not seriously corrected, not only will women not form 25% of the CAF by 2025 – which everyone concedes – but they will always be disproportionately underrepresented in the higher ranks.

The reality is that women have fewer opportunities than men to be promoted, and when they are, the reaction often is: “Oh, it’s because she’s a woman.” Either way, they lose.

The CAF approach to the promotion of women is focused on ensuring promotion is in line with the female CAF population, or current ratios of women to men in a given rank. But this ignores the importance of female role models in both attracting women to the CAF and improving morale among its female members. With little question, the presence of significant numbers of women in decision-making environments helps to counter the self-perpetuating perspective of men, even on issues that may seem gender-neutral on their face.

Women make up nearly half the labour force in Canada. There is no reason why the CAF, like any other modern organization, should not also aim for gender parity. This may seem overly ambitious in a field that is notoriously male-dominated, but there will be little progress if the promotion policies simply aim to maintain current ratios. It will continue to be a challenge as long as there is little representation in the GOFO ranks of members who come from the support trades – where women continue to congregate at the point of entry. This is important. Women will not reach the senior leadership ranks if their occupations, rather than their talents, preclude them.

Given this reality, the CAF should establish a system of targets to increase the number of women above population levels.

RECOMMENDATION #36

The CAF should establish a system of progressive targets for the promotion of women in order to increase the number of women in each rank, with a view to increasing the proportion of their representation in the GOFO ranks above their level of representation in the overall CAF workforce.

Career Management & Postings

Career management & postings generally

Every rank and trade in the CAF is assigned a career manager who operates under the authority of the DGMC. Within DGMC, they are split between the Directorate Military Careers (DMC) which manages NCMs up to the ranks of master warrant officer/chief petty officer 2nd class, and officers up to the rank of lieutenant-colonel/commander, and the DSA, which manages the ranks of colonel/captain (Navy) and chief warrant officer/chief petty officer 1st class. The DGMC acts as the career manager for GOFOs.¹⁰⁷³ Career managers work with the individual CAF member as well as various other stakeholders, including the chain of command, branch subject matter experts, and succession planners,¹⁰⁷⁴ to meet “short term staffing priorities.”¹⁰⁷⁵

Career managers are responsible for producing a postings plot for all the individuals they manage. According to the DGMC, in deciding postings, career managers must:

[T]ake into consideration a wide gamut of factors [...] to carefully balance the needs of the CAF and the needs of the members. These factors include but are not limited to: Service requirements such as VCDS staffing categories, specific qualifications, career progression, succession planning and attrition, and members’ concerns regarding location preference, spousal employment, dependent education, aging parents, marital status and geographical stability.¹⁰⁷⁶

In common with succession boards and other areas of personnel management in the CAF, career managers must strive to meet the CAF mantra of the “right person, in the right place, at the right time.”¹⁰⁷⁷ The DGMC noted that a particular challenge in management of postings is an increasing reticence by CAF members to move locations.¹⁰⁷⁸ I was also told that for married service couples, the usual rule is to attempt co-location, *i.e.*, posting both to the same geographic locale. Splitting up a service couple for a posting requires approval from the DMC.¹⁰⁷⁹

As part of creating the postings plot, career managers conduct interviews and a screening process to inform the proposed postings. The screening process involves coordinating with both the losing and gaining COs, and includes screening for a history of repeated misconduct, among other factors. In certain cases, postings may also be managed by the DMC for exceptional situations (*e.g.*, compassionate postings, posting to the CAF Transition Centre, and other exceptional moves).¹⁰⁸⁰

In addition, career managers manage promotions, career course selection and nominations, staff files and initiate administrative action, manage cost moves and annual interviews, and prepare files for selection boards.¹⁰⁸¹

In many of these areas of responsibility, career managers are supervised by the DMC, the DGMC, or by boards which determine CAF members’ suitability for promotions and postings. But they also retain a degree of discretion. In particular, career managers often succession plan the careers of more junior-ranked officers and NCMs, with little collective oversight. Similarly, the succession planning process does not include everybody. As discussed

below, only those individuals showing leadership potential and meeting other requirements, such as remaining years of service, are actively succession planned. CAF members can also opt-out of succession planning (for example because they wish to remain in a particular geographic area). CAF members who are not part of the short- or long-term succession plan are essentially managed by their career manager.

Career managers have been criticized for a lack of accountability, as well as a lack of training in human resources.¹⁰⁸² The DGMC acknowledges that a lack of trained personnel and issues with housing availability have increased the complexity of career management.¹⁰⁸³ A simple perusal of the DAODs relating to personnel and career management on the DND website shows that career managers must grapple with a complex policy framework, without even considering applicable Canadian Forces Administrative Orders, CANFORGENs or environment and trade-specific directives.¹⁰⁸⁴

I heard from stakeholders that another problem faced by the CAF is the short-term duration of its posting cycle and the constant mobility of its members. In certain cases, this leads to problems where the constant cycling through personnel for a position means nobody builds up the necessary experience to fulfil the functions of the role. Career managers themselves (and MILPERSCOM generally), offer an example of this.

In my view, the CAF should carefully revisit the trades and positions that would benefit from longer-term experiential knowledge. This may start with the human resources function. It should then re-evaluate whether those positions should become either long-term postings or be civilianized. Longer-term postings may allow individuals to build up the necessary experience to perform the functions of the role properly. In other cases, it may be necessary to consider civilianizing the role to permit long-term employment.

As a general observation, the CAF's addiction to mobility – resulting in multiple short-term postings over the career of a CAF member – is the root cause of many problems. Short stints undermine the full development of skills and expertise in a post; at mid -rank and more senior levels, it encourages the launch of half-baked initiatives, with little chance of accountability for failure. It reduces respect from subordinates who recognize limited skills and competence; at all levels, constant mobility impedes a member's ability to take ownership and learn from a mistake, at best, and at worst, allows them to ellude taking responsibility entirely. This feeds in to the sense that I have heard expressed by members of the Defence Team that there is a lack of accountability on the part of the chain of command: they leave their mess behind, and it does not follow them to their new posting.

Further, the persistent mobility demands a lot of CAF members and puts a great deal of stress on military families. CAF members, like anyone, need time to develop expertise, build teams, and situate themselves with purpose within the organization. They require the support of their family and community to do all of this successfully.

This is a significant endeavour, which should be undertaken with maximum input from all those directly affected by these practices.

Personnel records

As I understand it, each CAF member has a centralized personnel file held by the MILPERSCOM (the “Guardian” record), and a UPR. The Guardian record is stored electronically on the Personnel Electronic Records Management Information System (PERMIS). In addition, certain “information resources of business value” are recorded, which includes grievances, documentation regarding record suspensions, and various miscellaneous items.¹⁰⁸⁵ Every member also has a “conduct sheet” (which forms part of the UPR). The conduct sheet is prepared “only when an entry is necessary” and records both recognition for exemplary conduct, and criminal convictions. Only COs are empowered to make changes to a conduct sheet. The conduct sheet does not include actions resulting from administrative action, such as a recorded warning, or removals from duty or command.¹⁰⁸⁶

The UPR – including the conduct sheet – is transferred to a member’s unit upon posting. However, certain matters are not retained on the UPR after posting, component transfer (*i.e.*, from the regular to the reserve force or vice versa), or release. UPRs go through a file stripping process both before and after any transfer.¹⁰⁸⁷ In particular, the following records are removed when posting in or out:

- Redress of Grievance;
- Record of Disciplinary Proceedings;
- Military Police reports;
- Harassment complaint or investigation documentation;
- Pardons (Record Suspension), mention of and/or ref to the statement of offence, the conviction or the sentence in respect of which a pardon has been granted;
- Selection Assessment Report (DND 2790);
- Human rights complaint documentation;
- Summary Investigation (SI)/Board of Inquiry (BOI); and
- Self-Identification Census.

Other than the Record of Disciplinary Proceedings, which the originating unit is directed to retain, it is unclear what is supposed to happen to the records stripped from the UPR, or the extent to which information recorded in the UPR is collected and stored centrally in the PERMIS. Units are simply directed to “ensure that pertinent personal information records are contained elsewhere.”¹⁰⁸⁸

It is not clear to me, based on the information provided, how well this is done, or to what extent records in the UPR are duplicated in the Guardian record, or otherwise held centrally. Units process thousands of UPRs for file-stripping purposes every year, as members post in and out. I heard from stakeholders that information can and does get lost in the system.

This must be rectified. It is critical for the CAF to maintain visibility over a member's entire career, and this requires robust procedures to ensure that information about misconduct (including sexual misconduct) stays on record and is accessible to key decision-makers.

Universality of service

The principle of “universality of service” stipulates CAF members must at all times and under any circumstances perform any function that they may be required to perform.¹⁰⁸⁹ According to this principle, a CAF member is a “soldier first” and members are liable to perform general military, common defence, and security duties in addition to the duties of their military occupation. This includes, but is not limited to, the requirement to be physically fit, employable, and deployable for general operational duties.¹⁰⁹⁰ The authority for the principle of universality of service is found in section 33(1) of the NDA, which states:

The regular force, all units and other elements thereof and all officers and non-commissioned members thereof are at all times liable to perform any lawful duty.¹⁰⁹¹

Universality of service may be breached by medical employment limitations. Temporary medical limitations may be accommodated by the CAF for up to six months. This may lead to a permanent medical limitation which triggers an administrative review for medical employment limitations. As part of this review process, DMCA may make an offer of medical retention for up to three years, subject to approval from the unit CO.¹⁰⁹² At the end of this period the member will be released and may only be considered for employment in the Supplementary Reserve, Canadian Rangers or the Cadets Organizations Administration and Training Service.¹⁰⁹³

In a 2018 report, DRDC found that although fitness standards for men and women are equal:

[T]here remain misconceptions about the application of these standards, particularly with regard to women. It is frequently voiced that women receive special treatment and are allowed to pass in order to satisfy quota requirements. Research has found that women perform equal to men in military tasks, suggesting that there is no need for women to be treated in a different manner. Further, the literature suggests that doing so undermines the achievements of women and reinforces gender stereotypes. It is not always intentionally done and can occur when individuals are attempting to minimize gender differences. In a recent report, it was outlined that 22% of respondents in the 2011 Your Say Survey felt that gender influenced how individuals were assigned to occupations (Wang, 2013).¹⁰⁹⁴

Sexual misconduct, and in particular sexual harassment and sexual assault, presents a particular problem with respect to universality of service. Victims often suffer post-traumatic stress disorder and other trauma-related injuries that require therapy. Under current definitions of medical employment limitations and the universality of service requirements, this may result in medical release for those victims.

Furthermore, as the CAF recognized in its 2017 *Tiger Team Report: Recruitment of Women in the Canadian Armed Forces*, women are often over-represented in medical temporary and permanent categories due to a number of factors, which may lead to their being released for medical reasons in greater numbers than men. The Tiger Team recommended that, although medical fitness is a must to ensure the operational capacity of the military is not diminished, it may be possible to offer longer retention periods for women serving in occupations in which they can continue to contribute effectively while not meeting universality of service requirements.¹⁰⁹⁵

I understand the CAF is currently reviewing its universality of service rule. I welcome this development. However, what has been shown to me so far includes only modest changes to bring the DAOD that deal with fitness and universality of service in line with current practice. They do not update the fitness requirements themselves or respond to any of the findings regarding overrepresentation of women in medical limitation and release categories.

It is important that the CAF, in updating its universality of service policy, continue to apply GBA+ analysis and ensure that the changes it proposes go beyond formal equality to properly accommodate women and sexual misconduct victims. In my view, promoting a gender-blind embrace of diversity is likely to become a self-fulfilling prophecy of failure, as formal, rather than substantive equality always risks doing.

RECOMMENDATION #37

The CAF should review universality of service through a GBA+ lens and update it to ensure that women and sexual misconduct victims are treated fairly, taking into account their particular situation and risk factors.

Succession planning

Overview of succession planning

Succession planning is a subset of career management that is intended to establish a talent pool of future leaders with the potential to succeed. The DGMC calls it the “egg model” of career management, in which succession planning is the yolk, and wider career management the egg white.¹⁰⁹⁶ As part of developing its pools of talent, the CAF attempts to talent spot promising individuals early in their military career, and has developed a tiering system, discussed further below, to better assess their potential.

A number of succession plans – both long- and short-term – are developed at different levels in the CAF, although the format varies across the different commands. To be part of the succession plan, an individual must usually have been talent-spotted and assigned a tier. But succession planning is a two-step process. Not only does it involve the CAF looking at the available officers of a given rank and assigning the most promising as successors in key positions, it also involves the active career management and development of its talent spots or “streamers”. In other words, once named to the succession plan, the organization

makes special efforts to maximize the career potential of those individuals and give them opportunities that will enable them to achieve high-rank strategic leadership positions in due course.

Canadian Army

Army succession planning generally

The Canadian Army is the largest command in the CAF, with approximately 23,000 Reg F members and 19,000 reserves.¹⁰⁹⁷ Succession planning, and most appointments at the sub-GOFO level, fall under the authority of the Commander and Deputy Commander of the Army. It is estimated that the Deputy Commander spends as much as 50% of his time devoted to succession planning. The Army has also created the Directorate Army Talent Management, a civilian unit that reports to the Deputy Commander. According to the Director of Army Talent Management, this civilianization served two purposes. First, it enabled greater transparency and continuity in the succession planning process. Second, it allowed for a freer relationship with the chain of command, as well as greater access to personnel files among the team, both of which allow the Directorate to provide more fulsome advice about nominees to particular positions.

Career management and succession planning in the Army is largely decentralized until the lieutenant-colonel level. For lieutenant-colonels who have not yet held a unit command position or equivalent, majors and captains, succession planning is carried out by their corps or regiment, and the results are fed to the Directorate of Army Talent Management for final approval. Similarly, the Res F largely follows a decentralized process based on “home station managers” who oversee the careers and succession planning for their geographic regions.

This process is mirrored for senior NCM/non-commissioned member appointments, which are made outside the formal rank/promotions system and differ from officer appointments. While for officers, the emphasis is on filling positions that stretch them and give them visibility to reach the next rank (and ultimately senior CAF leadership), non-commissioned members may be appointed to particular leadership positions within their rank. Above a certain level, these appointments are handled by the centralized process overseen by the Directorate of Army Talent Management. Loosely speaking, this includes all chief warrant officer positions of Tier 3 and above, such as appointments at the unit, formation/division or Army command levels. For appointments below this level, such as regimental sergeant-major appointments, succession planning is again handled by the relevant corps, branch or regiment.

While there are central orders and policies for short- and long-term succession planning provided by the Commander of the Army, most notably Canadian Army Order (CAO) 11-79,¹⁰⁹⁸ these leave a degree of latitude to the directors of the various corps and regiments in terms of both process and substance. The key requirement which is standardized across the Army is the concept of tiering. This places those CAF members who are part of the succession plan into six distinct tiers, intended to reflect their potential for command and key strategic positions.

The tiers are organized as follows:

- Tier 1: senior strategic leadership appointment at the command¹⁰⁹⁹ and CAF level beyond the rank of chief warrant officer (for NCMs) and brigadier-general (for officers);
- Tier 2: strategic leadership appointments at the rank of chief warrant officer and brigadier-general;
- Tier 3: operational leadership or key staff appointments at the rank of chief warrant officer and colonel (such as command of a formation);
- Tier 4: tactical leadership appointments at the rank of chief warrant officer (*e.g.*, unit, school or divisional support regimental sergeant-major positions) and lieutenant-colonel (*e.g.*, unit, school or divisional support command);
- Tier 5: sub-unit command level, generally captains and majors (*e.g.*, Company/Squadron/Battery Command) or associated sergeant-major positions for NCOs; and
- Tier 6: sub-sub unit command (platoon/troop level),¹¹⁰⁰ generally captains.

Tiering corresponds loosely to rank, but it is also used as an indicator of high-performance and readiness for the next level. For example, most captains are un-tiered or Tier 6, but high-performing captains may be given a Tier 5 ranking, indicating that they are ready for sub-unit command. Likewise experienced, high-performing majors may be given a Tier 4 ranking, and so on. This is taken as an indication that the individual is ready for the next rank and level of command.

An additional component of tiering is the concept of “talent spotting.” This is not set out in the formal policy documents but is used in practice and tracked by the Directorate Army Talent Management in the long-term succession plan.¹¹⁰¹ It is also given points in the promotion board scoring criteria.¹¹⁰² Talent-spotted individuals, or “streamers” are seen as talented officers who need careful management, having that “little something extra” in comparison with their peers. The aim is that these individuals’ careers will be carefully managed to maximize their development opportunities and move them up ahead of their peers.

Apart from the use of the tiering model, there is a lot of variation in how the various corps, branches and regiments conduct their succession planning. The only requirement from central Army command is that the process must result in short-and long-term succession plans, to be approved by the Canadian Army Succession Board (CASB) and, ultimately, the Army Commander.

Centralized succession planning – senior ranks

Army succession planning is governed by CAO 11-79.¹¹⁰³ Above Tier 3, the appointing authority is the CDS and/or the Minister, and candidates are recommended by Army Command. For Tier 3 and 4, the appointing authority is the Commander, Canadian Army. Below Tier 4, the appointing authority is the corps/branch/regiment director.

For Tiers 3 and 4, the Army runs two CASBs, one in late November and the other in the spring. These deal with both officer and NCM appointments. Not all members at a given rank will necessarily be part of succession planning. For example, if they do not have enough remaining years of service left to progress beyond their current rank, if they have asked to be taken out of succession planning, or if their tiering has been otherwise downgraded.

For succession-planned individuals, however, the Army develops both a long- and short-term succession plan. The long-term succession plan plots out the expected progression of people based on remaining years of service, potential, and current constraints, looking ahead over the next decade or so. The short-term succession plan looks to the next one to two annual posting seasons and proposes a primary and alternate candidate for each appointment, for approval by the Command, Canadian Army.

The CASB is chaired by the Army Deputy Commander. Its 15 voting members consist of the divisional commanders and reserve home station commanders, all brigadier-generals, as well as an additional voting member at the brigadier-general level from outside the Army. Also in the room and able to participate (although non-voting) are the divisional regimental sergeant majors. The corps/regiment/branch directors (all colonels) are also present (except during the colonel succession planning). The November CASB is focused on senior rank appointments: colonels, school COs, post-unit command lieutenant-colonels, and chief warrant officer appointments at Tier 3 and above. The Spring CASB covers the remaining lieutenant colonels, majors and chief warrant officer appointments.

There is a tightly-defined voting process at CASBs. The brigadier-generals entitled to vote do so in advance of the board. Each voting member ranks the candidates in order of preference (*e.g.*, from 1 to 4 if there are four candidates, 1 to 5 if there are five candidates, and so on). The rankings are then aggregated to provide each candidate with a score. Where there is more than a 1-point difference for an appointment, the position is not re-voted at the board, although it is opened up to discussion. However, if the discussion throws up a significant issue, this may result in a re-vote. Where the voting results in a tie or one-point difference, scoring is “normalized” in any case where there are five or more candidates. The bottom candidates are removed and the remaining candidates are re-ranked taking into account the removals, with scores re-allocated in consequence. If this results in the same ranking of top candidates with more than a one point difference, no re-vote occurs subject to general discussion, as stated above. Otherwise, if the order changes, the position is re-voted.

Before any re-vote, the divisional commanders and corps/branch/regimental directors responsible for a particular candidate will describe them and try to convince their peers of the candidate’s value and potential.

Regimental, corps and branch controls of junior ranks

Regimental/corps/branch succession planning operates at a level below the CASB but feeds into the process. It generally covers pre-command lieutenant-colonels, majors, captains, and senior non-commissioned officer appointments at a lower level. Only Tier 4 majors and above are subject to further scrutiny at the spring CASB. As noted above, the corps/branch/regiments have appointing authority in respect of lower tiers.

I was provided with policy documents relating to succession planning from the various corps, branches and regiments of the Army.¹¹⁰⁴ From reviewing those policies and attending succession boards across the CAF, it became clear that succession planning at this level of the Army varies greatly. There is a general lack of consistent documentation. Certain corps/branch/regiment have developed detailed scoring matrices for career management and succession planning (*e.g.*, the Royal Canadian Corps of Signals and the Royal Canadian Electrical and Mechanical Engineers).¹¹⁰⁵ Others, however, use more rudimentary tools and rely on general discussion at meetings. Members of the Review Team also heard that career managers and corps/branch/regiment directors often do a certain amount of “reinventing the wheel” in preparing for and conducting succession planning.

There is also little consistency in terms of which ranks are actively succession planned. For example, the Royal Canadian Corps of Signals only considers Tier 5 and above, and does not succession plan individuals at Tier 6. It carries out succession boards only for majors and lieutenant-colonels. Other corps, such as the Royal Canadian Artillery, also consider Tier 6 individuals including captains at succession boards. The effect of such decisions is to either consolidate power at the regimental board level, or else hand it to individual career managers.

Other factors drawn to my attention in reviewing succession planning at this level were as follows:

- There is a lack of staff resources, and the corps/branch/regiment director appointment is usually a secondary duty, meaning relatively little attention overall can be given to succession planning;
- The corps/branch/regiment has a lot of power over careers, up to the early lieutenant-colonel level, and the process is personality-driven and has historically varied a lot depending on who the current director is;
- There is often a lack of corporate memory; and
- There is a lot of flexibility at the corps/branch/regiment levels to designate (or un-designate) a position or posting as “high-range” which impacts a person’s career advancement, both for promotion and succession planning (high-range jobs attract more points in scoring).

This all illustrates the level of discretion, if not arbitrariness, in the process of early career management. In turn, it presents the risk of self-perpetuation, and the corollary risk of marginalization to members who present differently from the historical norm.

Army Reserves

Succession planning for the Army Reserves is also governed by CAO 11-79 and is in the hands of the Reserve home station managers. The home station managers were set up specifically to handle career management of the Res F, because it had become messy and unwieldy. Their establishment and responsibilities in this regard are detailed in CAO 11-92.¹¹⁰⁶ Each home station is responsible for managing its Reserve colonels, lieutenant colonels, and chief warrant officers, as well as majors and master warrant officers who have commanded a minor unit – and submitting their respective succession plans to the CASBs.

As with succession planning at the corps/branch/regiment levels, the process varies between the different home stations. I received documentation from four out of the six home stations, namely the 2nd, 3rd, 4th and 5th Division Home Stations.¹¹⁰⁷ Again, some, such as 2 Div and 4 Div use detailed scoring matrices to succession plan, while others do not. Of course, as noted above for the performance appraisal process, scoring matrices are not in themselves guarantees of objectivity and impartiality. Some also use biographical sketches that include information usually omitted from Reg F profiles, such as marital status, children, and a “miscellaneous” category sometimes used to note family members who served.

Royal Canadian Navy

The Royal Canadian Navy (RCN) consists of 12,570 Reg F members and around 4,111 Reservists, according to its website.¹¹⁰⁸ The RCN centralizes its succession planning for lieutenant-commanders (equivalent to major) and up. The Navy produces a short- and long-term succession plan, consolidated in the Navy Succession Plan.¹¹⁰⁹

The Navy officer succession planning process is intended to produce:

an objective assessment of the longer term potential of Naval officers to perform in Command, and in the most senior appointments across the CF. Once identified, these officers can be deliberately mentored and managed through the labyrinth of Command and strategic leadership appointments, promotion and professional development opportunities, thus better preparing them for successful fulfillment of senior command, staff and key strategic-level appointments in the future.¹¹¹⁰

The Navy Succession Plan is deliberated at the Navy Succession Planning Board (NSPB). Following the NSPB, the results are briefed to the formation commanders who have an opportunity to review and give feedback. The results are then presented to the Chief of the Maritime Staff for endorsement.¹¹¹¹

The RCN approaches succession planning on a branch/trade basis. It has developed detailed scoring criteria for each rank and trade (*e.g.*, Naval Warfare Officer, Naval Engineer), and deliberation at the NSPB is largely by trade, subdivided by rank. Also, it is also notable that the RCN integrates Reg F and Res F succession planning into the single NSPB.¹¹¹²

A key difference in the deliberations at the NSPB, as opposed to other branches of the CAF, is the use of an “incident review list.” This is a spreadsheet of all candidates under consideration for the Navy Succession Plan, which is discussed in the initial stages of the

NSPB, before detailed consideration of particular ranks and candidates. It includes all conduct violations dating as far back as 2006. The RCN has also produced a framework for discussion of the incident review list, which is worth reproducing in full:

Incident Review List

In the past, NSPB reserved time to discuss those officers with challenging pasts through their actions and/or conduct while in a Command appointment or in their recent past. The process is now codified herein for future application:

a. Guiding Principles/Criteria:

- i. the seriousness of the incident;
- ii. was the issue a lapse or error in judgement, reflective of challenging ethics, or simply a mistake;
- iii. has there been ownership of the incident, of their action/role in it;
- iv. is it clear that a lesson been learned from the experience;
- v. was remorse demonstrated for their part in the incident and were steps taken to overcome the deficiency;
- vi. has the record of performance since the incident been at a high level; and
- vii. the Board need make an assessment of the risk to be accepted in the event of selection for re-appointment; and

b. Potential Outcomes of Review:

- i. the individual remains on the list to have their situation considered at future NSPB;
- ii. the individual is removed from the list and is available to re-compete for selection immediately; and
- iii. the individual is removed from the list will not be re-considered for further appointments and shall be informed of that decision in writing.

The instructions to the NSPB make clear, however, that cases “deliberated/decided previously will not be re-debated.”¹¹¹³

For senior NCMs, there is a similar process. Chief petty officers 1st and 2nd class are succession planned in accordance with Naval Order 5002-7. This calls for two separate boards: a Naval Succession Management Planning Board, which addresses long-term succession planning, and a Naval Succession Appointment Board, for short-term succession planning. As with officer succession planning, following the Naval Succession Appointment Board, formation commanders are briefed on the results and given an opportunity to identify any issues or concerns. The final listing is then approved by the RCN Commander.¹¹¹⁴

Compared to the other commands, the RCN has less-developed policy documents but a more detailed scoring process in practice. While scoring matrices are not in and of themselves a guarantee of impartiality, they can provide some consistency to the process from year to year and show overall trends. The RCN is also the only command to have developed a methodology for discussing conduct issues (including sexual misconduct) in the context

of succession planning. This is to be commended, and should be followed by the rest of the CAF.

Royal Canadian Air Force

The RCAF has approximately 12,000 Reg F members and 2,000 Reservists, according to its website.¹¹¹⁵ It has two main branches for succession planning or “personnel management” – one for officers and one for NCMs. Both operate pursuant to the applicable criteria for succession and appointments. Two Air Force Orders (AFOs) outline the RCAF personnel management policy for officers (Reg F and Res F), and NCMs, being *AFO 1000-7 Air Force Personnel Management – Officers*,¹¹¹⁶ and *AFO 1000-8 RCAF Succession Management Process – NCMs*, respectively.¹¹¹⁷

The purpose of the officer process is to ensure that individuals with the capability to achieve senior appointments are identified, monitored and provided with development opportunities very early in their careers. Two processes are engaged for this purpose:

- an appointment process (to address near-term requirements to assign individuals to key positions); and
- a succession management process (to address longer-term requirements to identify, monitor and mentor individuals with the demonstrated knowledge, skill, potential and motivation to achieve senior appointments).

Advisory groups, made up of senior officers across the RCAF, manage both officer processes throughout the course of the year. They may nominate individual lieutenant-colonels and below as possible “high potential officers.”

The RCAF succession planning process is intended to identify officers with the potential and motivation to achieve senior appointments (*i.e.*, director general level and GOFO positions) within the RCAF/CAF. The intention is to identify these individuals early in their careers and aggressively challenge, develop and mentor them. However, their career progression remains dependent on how they perform in their assignments and how well they compete with their competent and capable peers. Succession planning begins when individuals are identified and assessed at the major rank.

Individuals who are identified to be succession planned are placed on “O-Lists” (Observations Lists) or “P-Lists” (Potential Lists) to identify them as high performers whose careers require additional attention to ensure that such potential can be realized. The O-Lists are tiered 1 to 3 (*e.g.*, O1 List identifies colonels possessing the potential to reach the rank of lieutenant-general, while the O2 List identifies colonels possessing the potential to reach brigadier-general/major-general rank).

The appointment process designates officers to hold key appointments. This process is held from November to December, for the various ranks below GOFOs, and from January to March for the GOFOs.

The NCM process serves the same purpose as that of the officers. There are three main processes used to manage RCAF NCMs:

- Career management (to provide timely delivery of personnel with the right skills at the right place at the right time);
- Succession planning process (to address longer-term requirements to identify, monitor and mentor individuals with the demonstrated knowledge, skill, potential and motivation to achieve senior appointments); and
- Appointment process (to address near-term requirements to assign individuals to focal positions).

Similar to the officer level, there is a rating and ranking process at the NCM level. All NCMs on the N1 or N2 lists will be assigned one of the following rankings:

- Priority (“P”): A “P” rating indicates that this member is considered as a person within their trade to have shown outstanding abilities and the most potential to advance within the CAF and Air Force succession plans;
- Ready (“R”): An “R” rating indicates that an individual has shown the abilities required to accept the added challenges of a senior appointment immediately; and
- Developing (“D”): A “D” rating indicates that the individual requires some development to ensure his/her success in a senior appointment. Individuals given a “D” rating are informed of the additional competencies and experience they need to develop to move to an “R” rating.

Review and assessment of files from the potential list then takes place at the appointment board. An Air Force Personnel Management Board also convenes annually to review and produce potential NCM lists and propose progression plans for high-potential individuals.

Additionally, an Air Force Appointment Board gathers each year to identify personnel to be nominated for CAF and RCAF senior appointments and to fill key positions. They also produce a notional medium- to long-term succession plan.

The centralized succession planning presents some advantages over the more fragmented Army process, although I recognize that the RCAF is a smaller command and that similar centralization may be neither feasible nor desirable for the Army. However, while members of the Review Team heard that there is a desire to consider leadership potential and character traits, including conduct concerns, this remains somewhat ad hoc. In common with the Army, there is in general a lack of documentation around undesirable behaviour, leaving issues to be brought up through informal discussion.

Other Commands

Special Forces

The Canadian Special Operations Forces Command (CANSOFCOM) succession planning process loosely resembles that of the Army's, although simplified. The Deputy Commander oversees the process on behalf of the Commander CANSOFCOM. Following the CAF-wide promotion boards in September and October, there is a command-led discussion on candidates for CO and regimental sergeant-major positions, followed by informal discussions with those under consideration.

Following this, psychometric testing and 360-degree evaluation of candidates are carried out. The Deputy Commander then chairs a small succession board consisting of themselves, the Command Chief Warrant Officer, and an “honest broker” (a member from outside CANSOFCOM). The board produces a shortlist of final candidates, who are interviewed by the Commander and the Command Chief Warrant Officer, and the Commander makes the final selection following the interviews.¹¹¹⁸ There are detailed scoring matrices, and interview questions lists, for both CO and regimental sergeant major positions.

Below the CO level (*i.e.*, majors and captains), the unit COs are responsible for the tiering of captains and proposing candidates, who are then considered at a two-part SOF Succession Planning Conference. Part I takes place in October. There is then a rationalization between the proposals and the parallel CO and regimental sergeant-major succession planning process and a briefing to the commander. Part II of the SOF Succession Planning Conference takes place in December to finalize nominations.¹¹¹⁹

It is worth noting that the CANSOFCOM is very small compared to the environmental commands. It comprises approximately 2,550 people including civilians, military police and legal staff, according to its website. I also found the inclusion of an “honest broker” in CANSOFCOM succession boards to be a sensible addition. This practice should be generalized across the CAF, and the CAF should also invite honest brokers external to the Defence Team to take part in its succession planning processes.

Canadian Joint Operations Command

The Canadian Joint Operations Command (CJOC) is a small command, consisting of approximately 2,924 military and civilian employees, according to its website. The CJOC does not generate its own force. Rather, the RCN, Canadian Army and RCAF, known as force generators, are allocated positions to CJOC headquarters, units and task forces.

For senior command level and key positions, the CJOC periodically (annually or semi-annually), signals to the DSA, the DGMC, and/or environment command succession planners that a position is available. As these positions provide the opportunity for commands to employ their personnel in challenging, operational and strategic positions to increase breadth of knowledge and experience, they are often sought after.

This triggers a competitive process in which DSA builds personnel files on each candidate, including members' PERs, past experiences (Member Personnel Record Resume), and emotional intelligence assessments. These files are then weighed against the task that is to be performed by CJOC senior leadership, with the commander ultimately choosing the best match.

The CJOC has created specific positional attributes for key command positions within its organization. This is not to act as a terms of reference or job description but rather, identify the experience, personal attributes and character that would best fit the role.

In addition, CJOC Command has provided guidance to headquarters, Level 2 commanders and OUTCAN in respect of performance evaluation in an "Appraisal Directive."¹¹²⁰ This Directive sets out how to conduct the CJOC Level 1 ranking boards – which focus on members who are only at the most senior levels. The Directive also provides guidance on how to approach filling out the PERs for CJOC members.

Canadian Forces Intelligence Command

The Canadian Forces Intelligence Command provided two documents relating to intelligence personnel management.¹¹²¹ The first of these, the Chief of Defence Intelligence Directive on Intelligence Personnel Management establishes the Intelligence Personnel Management system through which the Chief of Defence Intelligence leads the talent management and succession planning of Defence Intelligence personnel in coordination with the environmental commands. The Directive applies to personnel of the Intelligence Occupations and Sub-Occupations.

The Intelligence Personnel Management process may be used to manage the employment (including command team and senior staff appointment opportunities) of personnel in other military occupations who have intelligence specialist training or employment experience in defence intelligence.

Concerns around succession planning

What is clear from my review of policies and the succession boards attended by the Review Team is that policies and practices vary widely across the CAF. While much of what we observed was good practice, in some cases the lack of clear and consistent guidance led to ad hoc processes that were potentially susceptible to personality-driven decisions or bias. This was particularly the case for lower ranks, where succession planning is the responsibility of smaller groups or a single career manager, and where the absence of a clear and objective framework risks personality-driven decision-making.

Some environments and branches kept a better history of succession planning than others. In some cases, it was striking how little documentation was retained. While it is important to maintain a space for candid confidential discussions, too little documentation can lead to successive boards occasionally double-guessing previous decisions. Although there may

not be a “one size fits all” approach that works for all branches of the CAF, there is value in boards having access to, at the very least, the result, if not the rationale for decisions of previous boards.

In all cases but the RCN, there was no framework in place to discuss sexual misconduct or other conduct issues having a bearing on a candidate’s integrity or suitability for senior leadership positions. Discussion of such issues tended to be ad hoc, and rely on individual recollection from those who worked personally with a candidate. In my view, this is problematic. Given the issues plaguing the CAF, it is imperative that future leaders are effectively screened for conduct issues as part of the succession planning process.

Given the issues plaguing the CAF, it is imperative that future leaders are effectively screened for conduct issues as part of the succession planning process.

RECOMMENDATION #38

All succession boards should adopt the approach and methodology of the RCN in its “incident review list” to ensure that concerns are properly captured and brought before boards on a consistent and continuing basis.

One particularly good practice that members of the Review Team observed was the presence of officers from other environments or commands being invited to sit on and vote at succession boards. This practice should be generalized. All succession boards, whether at the environment or corps/branch/regimental level should include a voting member from another command. This will encourage the dissemination of best practices across the CAF, and bring a fresh perspective.

In addition, the CAF would benefit from an outside perspective. As noted above, GOFO promotion processes now include a civilian member from ADM(HR-Civ). While this is a welcome first step, it does not in my view go far enough in bringing oxygen into the CAF’s internal system. In addition to any continued involvement of ADM(HR-Civ), succession boards should include a member from outside the Defence Team – meaning outside of the CAF, the DND and the Staff of the Non-Public Funds – who can provide this insight, similar to the concept of independent directors on governmental and corporate boards. This has the same purpose as the inclusion of cross-CAF board members – to encourage the cross-pollination of best practices for succession planning. It will help ensure that the CAF’s practices stay current and will provide opportunities for the evolving norms of wider society to permeate the selection of CAF leadership.

RECOMMENDATION #39

All succession boards for majors and above and master warrant officer/chief petty officer 2nd class appointment boards should include an independent civilian member from outside the Defence Team.

Finally, I have concerns about how succession planning and promotions are applied to women. For women to rise and be adequately represented in the GOFO ranks, they should be succession planned and career managed in a way that takes into consideration factors specific to them, such as maternity leave. In addition, as noted by DRDC, many women are employed in the support trades but they have historically been underrepresented at the GOFO level.¹¹²² The CAF should accordingly prepare a new policy in respect of succession planning that is based on GBA+ and properly takes into account particular factors that affect women. It should also take appropriate measures to avoid both directly discriminatory factors (*e.g.*, missing out on opportunities due to maternity leave), and indirectly discriminatory factors (*e.g.*, under-representation of support trades in the senior ranks).

RECOMMENDATION #40

The CAF should prepare a new policy on succession planning based on GBA+ that ensures women are not subject to directly and indirectly discriminatory practices in succession planning, and that provides appropriate guidance to career managers, succession boards and others involved in succession planning.

Conclusion

Performance appraisal, promotions and succession planning go hand in hand. They are critical for ensuring not only the operational excellence but also the credibility of the CAF in the future. The processes must be robust, in order to avoid a replay of the crises that have engulfed senior leadership over the past several years. In particular, ensuring leaders have a proper understanding of the significance of sexual misconduct, and an impeccable record in that respect, is key to bringing about meaningful cultural change. As the Deschamps Report and the Heyder and Beattie class actions showed, the CAF needs to do better in how it captures and takes into account sexual misconduct (including past misconduct). Equally important is ensuring that diversity is reflected in the senior ranks of the CAF, so that divergent views are heard internally.

Finally, the CAF must ensure that its stated commitment to diversity and inclusion is reflected in these processes. For that, it must realize two things. First, it is easier to overstate the impartiality of a process than to recognize the insidious effects of hidden biases that lead to self-perpetuation. Second, outcomes are more telling than processes. While there has been progress in the promotion of women in the CAF in the last 20 years, that progress has stalled in recent times. Not recognizing talent does not mean it is not there. It may mean that those entrusted to identify and support it are not up to the task, individually or collectively.

The CAF operates in an intensely top-down fashion. Supervisors evaluate their subordinates. Meaningful culture change will only take place if there is an openness towards a different way of developing leadership, including through input from subordinates, peers and even outsiders.

This form of input will not only help to fully capture an officer's suitability for higher levels of command, it will also enhance a sense of fairness and boost morale. The practice of including officers from other branches of the CAF on selection boards has been beneficial. This practice should be extended to bring in outsiders to the military, if not to opine on the suitability of a particular candidate, then at least to bring a fresh look at the integrity of the process. I believe both the DND and the CAF, on the one hand, and Canadian society on the other, stand to benefit from an opening up of these processes and the cross-pollination of best practices and new ideas.

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Input and Oversight

My terms of reference require that I assess and make recommendations “related to establishing external oversight and/or review mechanisms related to misconduct.” Several stakeholders have proposed that I recommend the creation of an independent body charged with the oversight of sexual harassment and misconduct in the DND and the CAF. Generally, the suggested form of this body has been an “inspector general” – similar to that recommended in the wake of the Somalia Commission – that would be tasked with investigating and overseeing professional culture and conduct in the CAF.

Assuming my recommendations are implemented, I do not see a need to stand up yet another entity, like an inspector general or otherwise, to oversee the fundamental shift in accountability required of leadership.

I see a dire need for outside input to truly transform the insular culture entrenched in the CAF. Alerted for years to the prevalence of sexual misconduct, the CAF has demonstrated an unwillingness or inability to change. Members of the CAF – including leaders – understand orders, regulations and directives; less so mere recommendations, particularly from outsiders. As a self-governed, highly specialized entity, they are impervious to outside advice and influence.

External reviews, like all forms of “after-the-fact” interventions, have become a way of doing business for the CAF. I illustrate in this Report how the handling of recommendations has become a mini-industry of chart-making, with little meaningful action within the organization.

Despite this resistance, external reviews, like all forms of “after-the-fact” interventions, have become a way of doing business for the CAF. I illustrate in this Report how the handling of recommendations has become a mini-industry of chart-making, with little meaningful action within the organization. This has become exacerbated by the piling-up of additional recommendations, many inconsistent with each other. Therefore, I believe that true change must come not only from external oversight but also from external input into the various mechanisms used by the CAF to tackle sexual misconduct in “real-time” as it occurs.

This is the approach I have taken in all aspects of my mandate, from turning to civilian authorities to investigate and prosecute criminal sexual offences to ensuring the active involvement of civilians in the talent management and promotion processes of the CAF. My observations and recommendations on the issue of oversight rely, in part, on these recommendations

being implemented. They also depend on the understanding that “oversight” refers to the assessment or examination of an entity, function or program to reveal its inner workings and improve them.

This is because the existing oversight landscape of the DND and the CAF consists of a multitude of actors – internal and external, formal and informal – who oversee the work environment and culture of the Defence Team. They range from the Prime Minister, the PCO, the Minister, and various parliamentary committees on the political side, to the ADM(RS), the Ombudsman, the AG, the courts, academics, media, and various interest groups on the civilian side. Each has its capacities and limitations. But, if they discharge their mandate in a robust and transparent fashion, this multitude of oversight stakeholders makes an inspector general unnecessary. Indeed, many are able, individually and because of their overlapping mandates, to effect what amounts to “real-time” input into CAF’s culture, which may be more effective than “after-the-fact” assessments and unimplemented recommendations.

Further, I am concerned that implementing an inspector general, in addition to adding a new entity to the oversight landscape, would require certain functions of existing mechanisms of oversight be eliminated or modified to avoid task duplication. In my view, this seems to be a wasteful exercise.

While some of these “oversight” stakeholders are external to the Defence Team, DND expertise is a good starting point. While the culture of the CAF heavily influences the expertise of DND, given how many of DND employees are former military, its contribution should nevertheless be maximized. It should not fall prey to what appears to be a prevailing view of the DND as the lesser partner to the CAF.

I stress here that my focus remains on my mandate, not on the types of oversight and input functions that may be suitable in procurement or operations. I do not believe that adding an inspector general to the Defence Team, with a specific mandate to address sexual harassment and misconduct, adds value at this time. Nor am I convinced that an inspector general is best suited to addressing sexual misconduct – the nature of which raises issues of vulnerability, confidentiality, and trust.

However, I do believe there is a need for the immediate setting up of an “external monitor” with the specific task of overseeing the implementation of those recommendations in my Report that the Minister accepts. The function of the external monitor, paired with that of the mechanisms for oversight and input described below, makes an inspector general unnecessary.

The Somalia Commission’s proposed inspector general

The Somalia Commission was launched in 1995, in the wake of the torture and killing of a Somali youth by members of the Canadian Airborne Regiment. The Somalia Commission described its mandate as follows:

We were asked to delve into questions involving both institutional failures and individual misconduct. This involved evaluating whether institutional or structural deficiencies existed in the planning and initial execution of the operation, and whether institutional responses to operational, disciplinary, and administrative problems encountered in the various phases of the Somalia operation were adequate.¹¹²³

The Somalia Commission described the inquiry process as an exercise in accountability. It observed that accountability – making those with power and discretionary authority answerable to its use¹¹²⁴ – requires “open processes” as “guarantors of responsibility in the exercise of official authority.”¹¹²⁵ A key finding of the Somalia Commission was that the “mechanisms for parliamentary oversight of the [DND] and military activities are ineffective.”¹¹²⁶

The Somalia Commission determined that an inspector general was necessary to promote greater accountability throughout the DND and the CAF, in part because Parliament and the Minister should not rely entirely on the expert advice of the DM and the CDS. The Somalia Commission concluded that a body was required “to review and report on an ongoing basis on defence affairs and the actions and decisions of leaders in the CF and DND,” and to ensure that members had a “protected channel of communication to the Minister’s office.”¹¹²⁷

This proposed inspector general would “form an essential part of the mechanism Canadians use to oversee and control the CF and the defence establishment” and:

...should be appointed by the Governor in Council and [made] accountable to Parliament. [He] should be a civilian and have broad authority to inspect, investigate, and report on all aspects of national defence and the armed forces. The Inspector General, moreover, should be provided with resources including auditors, investigators, inspectors and support personnel.”¹¹²⁸

The proposed inspector general would have the following four main functions:

- **Inspections** of systemic issues in the DND and the CAF, including systemic problems within the chain of command and the military justice system;
- **Investigations** of complaints about misconduct of individuals of any rank or position, about injustices to individuals within the CAF, and about misconduct related to the roles, missions, and operations of the DND and the CAF;
- **Overseeing** the military justice system by focusing on the application of the NDA and allegations of:
 - abuse of rank, authority, or position: for example, a failure to investigate, failure to take corrective actions, or unlawful command influence; and

- improper personnel actions: for example, unequal treatment of members of the CAF, harassment, racist conduct, failure to provide due process, reprisals;
- **Assistance** in mediating conflicts between individuals and the DND and the CAF, and to help redress injustices to individuals.¹¹²⁹

The proposed inspector general would remove the need “to report a complaint to a superior or reveal any conversation or correspondence between the member and any superior” and would allow for “[i]nspections, audits, investigations, or reports that arise from complaints made by members of [the DND or the CAF] [to] not identify the complainant in any way.”¹¹³⁰

In addition to the powers listed above, the proposed inspector general would, (a) require the head of personnel to report at least monthly at an executive meeting on the state of discipline throughout the CAF, both inside and outside the chain of command, and would personally oversee any necessary follow-ups¹¹³¹, and (b) conduct periodic reviews of appointments to key leadership positions in the CAF to ensure that the proper criteria are being applied, and that such appointments are as competitive as possible.¹¹³²

None of the Somalia Commission’s recommendations relating to the inspector general were implemented. Some stakeholders commented that this was due to the DND and the CAF convincing the government to instead create an office of the Ombudsman within the DND. With respect to the recommendations relating to the inspector general, the Minister testified in 1998 before the Standing Senate Committee on Legal and Constitutional Affairs:

While it is true that we do not agree with the specific recommendation concerning the inspector general, we do agree with, and strongly support, its underlying objective: the strengthening of the oversight of the Department of National Defence and the Canadian Forces, including oversight by civilians and by Parliament. To accomplish this objective, we have adopted a threefold strategy.¹¹³³

According to the Minister in 1998, this “strategy” to achieve external oversight included strengthening cooperation with the AG and the CHRC, and standing up the MPCC, MGERC and the Ombudsman.¹¹³⁴

I think there is considerable merit in elected officials speaking clearly about recommendations from external bodies that they do not intend to implement. This allows those who still wish to advocate for a position to understand where it stands, rather than being led to believe, as is more often the case, that the matter is being further studied, or slowly moving forward, while implementation is dying a slow death. I discuss this matter further below.

There is considerable merit in elected officials speaking clearly about recommendations from external bodies that they do not intend to implement.

Chief Justice Brian Dickson, testifying in 1998 before the Standing Committee on National Defence and Veterans Affairs in its study of Bill C-25, addressed the inspector general proposed by the Somalia Commission as follows: “(...) there’s enough external supervision of the Canadian Forces without adding another element and group of people who are there to look into, criticize, and make life sometimes difficult.”¹¹³⁵

Recent proposals for an inspector general

I understand that the inspector general concept has recently undergone some reconsideration inside the DND and the CAF.¹¹³⁶ In April 2021, as Acting CDS, then Lieutenant-General Eyre testified to the NDDN:

Right now, the overarching effect that we need is trust and confidence from the perspective of the victims in the system. You'll note that a quarter of a century ago, in the Somalia report, an independent inspector general was one of the recommendations, and we pushed back against that. Well, I think the time for pushing back is over, and the imperative of re-establishing that trust and confidence has to take primacy here.¹¹³⁷

An internal analysis conducted by the CDA, also in April 2021, concluded that any inspector general function “should be focused on the profession by strengthening professional functioning (in particular aligning culture with ethos); enhancing CAF leadership; ensuring professional accountability; and providing members with voice.”¹¹³⁸ This analysis recommended the creation of, (a) a professionally-focused inspector general for the CAF to conduct inspections of and investigations into errors in judgement that erode professional culture, unit climate and member wellbeing, and (b) a complainant-focused “Office for Harassment Resolution” reporting to the Clerk of the PCO, to investigate violations of statutes or formal codes of conduct related to harassment or discrimination.¹¹³⁹

The inspector general role proposed by the CDA would take the form of a tribunal (with the chair being a retired member of the CAF), report to the Minister, be “responsive” to the CDS, and perform the following functions:

- **Assistance:** leadership staff assistance; visits to strengthen leader effectiveness or to remedy those issues not involving major wrongdoing;
- **Inspections:** evaluate compliance with expected professional standards and assess command climate, which inspections would be limited to the activities of CAF members;
- **Investigation:** formal inquiry into adverse conditions that affect individuals and/or erode operational effectiveness, which investigations would be limited to CAF members;
- **Training, Education and Mentoring:** as a key component of strengthening leader effectiveness and optimizing unit performance, this can encompass the provision of (remedial) training, tailored learning events and learning resources, and support through mentoring; and
- **Research:** to enhance and inform inspector general evaluations, incorporate a mandate and build capacity for informed and proactive research to understand and anticipate evolving issues, particularly as part of continuous leadership of culture change.¹¹⁴⁰

More recently, in June 2021, the FEWO recommended that an inspector general be created. Unlike the inspector general contemplated by the CDA, this proposed version would be an officer of Parliament that reports annually to Parliament, receives complaints from

serving members of the CAF and veterans, and undertakes independent investigations as necessary.¹¹⁴¹

Some stakeholders who participated in my Review have encouraged me to recommend the creation of an external inspector general. The proposed forms vary, but are typically civilian, with reporting obligations to a combination of the Minister and/or Parliament, and with a mandate to address sexual misconduct in the CAF, grievances by members of the CAF, and even the superintendence of the military justice system.

In addition, I note that a number of countries employ an inspector general in an oversight function for their militaries.¹¹⁴² The mandates of these inspector generals are as diverse as the forces and countries that employ them. For instance, the inspector general of the Australian Defence Force reports to the Minister of Defence and focuses almost entirely on the military justice system.¹¹⁴³ The multiple inspectors general supporting the United States Armed Forces have mandates and reporting obligations specific to the element of the armed forces they “inspect,” with inspectors general for each of the United States army, navy and air force, as well as for the Department of Defence and other entities in the United States defence portfolio.¹¹⁴⁴ Notably, however, it is my understanding that none of them specialize in the inspection or investigation of sexual misconduct, or have a mandate that is specific to addressing such behavior.¹¹⁴⁵

No inspector general is necessary

I am not persuaded that an inspector general is necessary to address sexual harassment or misconduct. It would only add another entity to that space. Assuming my recommendations are implemented – that civilian authorities have exclusive jurisdiction over the investigation and prosecution of criminal sexual offences, and that the CHRC and CHRT perform a similar function for complaints of sexual harassment and discrimination by members of the Defence Team – the need for oversight in this area will be greatly reduced as the CAF will no longer perform this function. In addition, I am concerned that adding an inspector general function would require the elimination or streamlining of other oversight mechanisms already in place to avoid wasteful duplication of resources. I also do not see a need for an inspector general reporting to Parliament with a mandate specific to sexual misconduct in the CAF, but not in the RCMP or, indeed, the rest of the federal service.

Fundamentally, oversight, control, accountability and change in the CAF must come from all branches of government – Parliament, the courts, the executive and the civil service – properly playing their role. On the issues that I have addressed in this Report, important tasks will fall on the Minister to implement. She will need to muster the necessary resources and political support to move things forward expeditiously. Ultimately, she, and the government, are accountable to the Canadian public. I believe the external monitor that I propose

Fundamentally, oversight, control, accountability and change in the CAF must come from all branches of government – Parliament, the courts, the executive and the civil service – properly playing their role.

below will assist the Minister in meeting this core obligation in her role as lead of the Defence Team.

I now turn to the vast array of mechanisms that, in one way or another, currently play a role in holding the CAF accountable for its handling of sexual misconduct in its ranks.

Civilian courts and tribunals

Although not considered “oversight” bodies *per se*, the civilian court and tribunal system plays a critical role in subjecting the conduct of CAF members and the organization itself to the scrutiny of the Canadian public. Courts issue binding decisions, not recommendations. They are, by any measure, the most potent form of oversight. For instance, decisions of the CDS, as the final authority in the grievance process, are subject to judicial review in the Federal Court. Decisions of the military judges of courts martial are subject to appeal to the Court Martial Appeal Court of Canada, made up of civilian judges from the Federal Court, Federal Court of Appeal and provincial Superior Courts.¹¹⁴⁶

In the same way, and perhaps most notably for my purposes, is the example of the CHRT ordering the CAF to integrate women into all aspects of the Forces, including in the combat arms.

With the implementation of my recommendations, civilian criminal courts will have exclusive jurisdiction over criminal sexual offences allegedly perpetrated by members of the CAF. The CHRC will become a primary recipient of complaints of sexual harassment and discrimination for its investigation and hearing by the CHRT. This will ensure civilian oversight of sexual misconduct by members of the CAF, on par with what is available to all Canadians.

Civil courts are another avenue to exert civilian oversight over the conduct of members of the CAF. Lawsuits started by victims of sexual harassment and misconduct seeking compensation or other relief for injury are, from an oversight viewpoint, an opportunity for civilian judges to hold the CAF accountable for the conduct of its members and the safety of its workplace, as was amply demonstrated by the final settlement of the Heyder and Beattie class actions.¹¹⁴⁷

Individual civil lawsuits may also be brought but are expensive and time-consuming. They would be even more difficult to pursue for members of the CAF, as I have no doubt that the barriers to reporting to the chain of command also work to dissuade members from starting a lawsuit against the organization. There are conduct-related QR&O that – while not purporting to prevent a member from commencing a lawsuit – prohibit criticism that could bring a superior into contempt or that could “reflect discredit on the Canadian Forces.”¹¹⁴⁸ So, although theoretically available, individual civil lawsuits are unlikely to play a major role in exposing shortcomings in the CAF.

I now turn to posts and functions that, although not all traditionally perceived as oversight mechanisms, play various roles in identifying problems and avenues for redress, with different degrees of authority, transparency, and accountability.

The Minister of National Defence

The Minister is a critical actor in the oversight landscape for the Defence Team. Under the NDA, she is entrusted with the management and direction of the CAF, and all matters relating to national defence and is subject to Parliamentary oversight over defence programs and activities, appearing regularly before the NDDN to address the questions of committee members.¹¹⁴⁹

The Minister has a general power to make regulations (subject to certain limitations, that is, where the GIC and Treasury Board have already enacted regulations), for the organization, training, discipline, efficiency, administration and good government of the CAF, and generally for implementing the purposes and provisions of the NDA.¹¹⁵⁰ While the CDS controls and administers the CAF, he does so at her direction.¹¹⁵¹

In addition to her general power to make regulations, the Minister has many powers under the NDA that relate to leadership and accountability within the CAF, including the administration of the military justice system.

In addition, the MPCC and the MGERC, both independent oversight actors whose mandates I address above, report to the Minister annually. The Minister is responsible for tabling their respective reports before Parliament.¹¹⁵² The Minister also receives reports and recommendations of the MPCC relating to complaints about interference with military police investigations.¹¹⁵³

Notably, the Minister plays a key role in the selection and appointment of senior leadership within the CAF and provides input into the selection and appointment of defence-related GIC appointments, described below.¹¹⁵⁴

While the Minister is the legal authority under the NDA for promotions within the CAF, it is the CDS – pursuant to Chapter 11 of the QR&O – who directs the promotion of NCMs and officers below the rank of brigadier-general/commodore. The Minister participates in promotion to the GOFO level, providing her approval for promotion to these most senior ranks in the CAF.

Despite these GOFO ranks being the upper echelons of the CAF, I am not aware of any requirement, process or practice, set out in the NDA, the QR&O or otherwise, that address the steps the Minister must follow to approve promotion to these ranks. Rather, as I understand, it is a matter to be agreed upon between the Minister and the CDS, working cooperatively. It is critical not only that an outsider perspective be introduced into the promotion process, but also that a process exists to ensure that the Minister has the

information required to approve promotion to the GOFO ranks, hence my recommendation above regarding ministerial oversight over GOFO promotions.

In areas relating to my mandate, and as set out in the Minister of National Defence Mandate Letter, dated 16 December 2021 (Mandate Letter), the Prime Minister charged the current Minister with ensuring a respectful and safe work environment for the Defence Team and eradicating sexual harassment and sexual misconduct by its members.¹¹⁵⁵ The Mandate Letter sets out the expectation that the Minister will take action to transform the culture of the CAF. She is to accomplish this “in consultation with survivors” and is to “rebuild trust and build a healthy, safe and inclusive workplace, free from harassment, discrimination and violence.”¹¹⁵⁶

The Minister – with the expert advice of the DM and the CDS – plays the ultimate role of civilian input and oversight. She has a unique vantage point from which to assess the military, particularly given the input she receives from the MPCC and MGERC. She may also seek the advice of other independent, external actors such as the Minister’s Advisory Panel. She is empowered to create change that other oversight stakeholders may only recommend or comment on. And, of course, she is accountable to Parliament and the Canadian public.

The integrated defence team and the DND

The Minister is supported by her principal advisors: the DM and the CDS. They are responsible for ensuring the Minister is “fully informed and in a position to take and direct all action required in fulfilling the defence mandate.”¹¹⁵⁷

The DM is the senior public servant and the head of the DND. His authority encompasses every employee of the DND and member of the CAF who exercises financial, human resources, contracting or other authorities on behalf of the Minister. He, along with the CDS, provides day-to-day leadership and management of the DND and the CAF. He is responsible for formulating advice to the Minister on policy matters, among other things.¹¹⁵⁸

The DM reports to the Minister on a number of the investigative functions of the ADM(RS) and is responsible for establishing an independent Departmental Audit Committee (DAC), which also plays a role in providing external input into the functions of the Defence Team, described in more detail below. He is also responsible for complaints of interference made by the MP against senior officials in the DND – receiving reports from the MPCC relating to such alleged interference with military police investigations.¹¹⁵⁹

In terms of civilian oversight into the CAF, the DM has been described as “the primary fire alarm, alerting the [Minister] when the military is not acting as expected.”¹¹⁶⁰ The DM is also accountable to the Prime Minister, through the Clerk of the PCO, and like all deputy ministers, must consult and work with other government departments to ensure his work is aligned with the government-wide agenda.¹¹⁶¹

On the military side, the CDS is the senior member of the CAF and is charged with the control and administration of the CAF under the direction of the Minister. The CDS is the commander of the CAF and is responsible for its operations and readiness. He advises the Minister on these matters.¹¹⁶² The relationship between the DM and the CDS is coequal, and “neither can manage successfully without the support of the other.”¹¹⁶³

The integrated NDHQ supports the DM and the CDS. Its senior leadership has accountabilities for and provides support to the DM and the CDS, including advising on defence issues and effecting military tasks and defence activities. However, while the Defence Team is “integrated,” this does not mean that employees of the DND accountable to the CDS are in the military chain of command, or that members of the CAF accountable to the DM are somehow “civilianized.”¹¹⁶⁴ I highlight here the observation, shared with me by someone with long experience in the system, that the integrated NDHQ enhances civilian and political oversight of the CAF, particularly when the DM, the CDS, and the VCDS have good working relationships based on trust.

Ultimately, the DND supports the CAF. It is the largest federal government department. It works in a complementary role with the CAF to implement government decisions regarding Canada’s defence.¹¹⁶⁵ I am mindful of the comments that I have heard from multiple stakeholders that the DND and its culture are heavily influenced by the CAF, in large part because so many of its employees are former CAF members. As of December 2021, according to ADM(HR-Civ), approximately 23% of DND employees are former members of the CAF and approximately 40% of DND employees report directly to current members of the CAF, with another 15% reporting to former members.¹¹⁶⁶ I recognize that this sometimes creates an impediment to the DND bringing a truly fresh civilian viewpoint into the CAF’s management. Attention should be given to assigning former CAF members to posts in the DND that truly require their expertise and, conversely, refraining from doing so in functions – in the SMRC, for instance – where distance from the CAF is preferable.

The DND houses multiple specialties under its roof. I am particularly concerned with the limited extent to which the DND’s expertise is put to use in the management of human resources by the CAF. The introduction of civilian participation, such as the current ADM(HR-Civ), in the GOFO selection board process is a modest step in the right direction. Specialists within the DND with expertise in human resources can immediately lend their knowledge and outsider perspective to the CAF.

In contrast, CAF members who perform these tasks are often ill-prepared, rarely specialists, and will rapidly move on to other postings. They are not inclined to innovate and can be oblivious to the sophistication of human resources management elsewhere, both in the public and private sectors.

The Assistant Deputy Minister (Review Services)

Every Assistant Deputy Minister (ADM) within the DND has a role in providing input, if not oversight, into the CAF. Currently, the ADM(RS) plays an important role in this respect, given her mandate to provide the DM and the CDS with “independent, objective, and timely assurance services” in a number of areas.

Audits and evaluations

Housed at NDHQ, the ADM(RS) provides an oversight function through the audit, evaluation and review of programs within the DND and the CAF. She is the Chief Audit Executive for the DND. The ADM(RS) examines many programs within the DND and the CAF which include areas of interest to both branches of my mandate. For instance, within the last few years, the ADM(RS) has conducted an Evaluation of Diversity and Inclusion¹¹⁶⁷, an evaluation of Military Police Services¹¹⁶⁸, a review of the SMRC¹¹⁶⁹ and an evaluation of the governance of the CMP.¹¹⁷⁰ The ADM(RS) also conducted a targeted audit of the implementation of Canada’s Defence Policy – *Strong, Secure, Engaged*.¹¹⁷¹ In addition, the ADM(RS) has issued advisory reports on the military recruitment process and the civilian grievance process.¹¹⁷²

I understand from a review of the most recent Risk-Based Audit Plan for the DND that, as of 2020, the ADM(RS) plans to conduct a follow-up on the recommendations of previous reports regarding sexual harassment and misconduct (including an assessment of the governance of initiatives such as the *Path to Dignity*), and an assessment of Defence Team culture as it relates to diversity and inclusion.¹¹⁷³ In addition, the five-year Departmental Evaluation Plan of the ADM(RS) proposes for defence, evaluations of a number of programs related to my mandate from recruitment to CPCC and the SMRC.¹¹⁷⁴

In response to recommendations made by the ADM(RS) after it has conducted an audit, evaluation or other engagement, the respective functional authorities develop a Management Action Plan (MAP). The ADM(RS) tracks and assesses the implementation of these actions plans and publishes the follow-up reports online – providing some transparency into the steps taken by the DND and the CAF to respond to its internal auditor’s recommendations.

The DM is required to brief the Minister on “matters arising from the work of internal audit which merit [her] attention.”¹¹⁷⁵ Both he and the CDS are responsible for ensuring that appropriate actions are taken in response to an internal audit.¹¹⁷⁶

To assist this work, the DM relies on the DAC. This independent advisory body to the DM and the CDS is composed of external members selected from outside the federal public administration and appointed by the Treasury Board on an “at pleasure” basis.¹¹⁷⁷ The current DAC consists of a former GOFO, a former senior public servant, and individuals with financial expertise. It is responsible for providing objective advice and recommendations on the sufficiency, quality and results of internal audit engagements including the multi-year

audit plan of the ADM(RS).¹¹⁷⁸ The DAC also reviews and recommends for approval audit and evaluation reports of the ADM(RS), which are approved in turn by the DM or the CDS prior to their publication.

Again, the contribution of outsiders to this audit and evaluation process enhances its credibility and trustworthiness.

As noted above, the ADM(RS) had audited and evaluated several programs of interest to my mandate, and future audit and evaluation plans indicate its intention to continue to do so. I encourage the active use of this internal audit and evaluation function for the culture and leadership changes that the DND and the CAF are implementing.

The ADM(RS) also supports the work of the OAG and monitors the responses to its reports and may also monitor the implementation of external recommendations.¹¹⁷⁹ In fact, its multi-year audit plan includes ongoing “MAP monitoring,” including in respect of independent reviews such as mine.¹¹⁸⁰

Turning specifically to the ADM(RS)’s assessment of recent external reports addressing sexual misconduct in the CAF, the ADM(RS) concluded that, “while the Defence Team has made some progress in addressing the recommendations stemming from the Deschamps 2015 external review and the 2018 OAG report, further work is required to achieve full implementation across all action.”¹¹⁸¹

However one characterizes the state of implementation of these external recommendations, the ADM(RS) pointed out that much remained to be done. This underscores the need for the external monitor I propose below.

In addition to its audit and evaluation function, the ADM(RS) plays another important role relevant to my mandate: conducting administrative investigations.

Administrative investigations

The Directorate of Special Examinations and Inquiries (DSEI), within the office of the ADM(RS), conducts investigations related to sexual misconduct. First, under the DAOD 7026-1, *Management of Administrative Investigations*, the Directorate conducts “administrative investigations into allegations or instances of administrative irregularities, impropriety, mismanagement and other irregularities in the DND and the CAF”.¹¹⁸² These investigations are independent of the chain of command.¹¹⁸³

Second, the DSEI may also receive a request for an investigation by way of the disclosure of wrongdoing process under the *Public Servants Disclosure Protection Act* (PSDPA) or the Canadian Forces Disclosure Process (CAF Disclosure Process). This disclosure of wrongdoing process is described below.

For investigations under DAOD 7026-1, the DSEI can be directed to conduct such an investigation by the DM, the CDS or by the ADM(RS) on its own initiative or as a result of requests from the L1 organizations.¹¹⁸⁴ The purpose of an investigation is to ensure that administrative irregularities are identified. The DSEI, after an “in-depth investigation of the relevant circumstances,” can then make recommendations to responsible managers and commanders for corrective action.¹¹⁸⁵ Investigators must be provided full access to all records, facilities and persons required to conduct their investigation. DND employees and CAF members must cooperate with and facilitate the work of the DSEI.¹¹⁸⁶

These investigations conducted by the DSEI “must not be used to gather evidence of criminal breaches” and may be undertaken in addition to any police or summary investigation. An investigation may also be conducted in parallel to a police investigation after consultation with the CFPM.¹¹⁸⁷ I understand that the DSEI aims to provide a report within six to 12 months of commencing an investigation. After an investigation, the DSEI forwards the investigation report for consideration to the ADM(RS), who provides the investigation report to the DM and/or the CDS, as appropriate. Any concerns arising out of an investigation, regardless of whether there has been a finding of impropriety, are brought to the attention of the applicable L1 organization. The DSEI can request an action plan from the L1 to address the concern.¹¹⁸⁸

There is no requirement to make the investigation reports or corresponding recommendations public.¹¹⁸⁹ In fact, DSEI reports are not published due to privacy concerns, aside from the information published after a finding of wrongdoing, as described below.¹¹⁹⁰

With this administrative investigation function, the ADM(RS) has a broader – if non-public – mandate than that proposed by the Somalia Commission for the inspector general (as it relates to the inspection of systemic issues), as the ADM(RS) can inspect systemic and conduct-related problems in more than just the military justice system.

The ADM(RS) informed me that, outside of the disclosure of wrongdoing process described below, 57 investigations were commenced by the DSEI under the DAOD 7026-1. Since 2015-16, none of those related directly to issues pertaining to sexual misconduct or harassment within the DND or the CAF. However, I am told that the DSEI “does conduct investigations when there is an alleged conflict of interest or abuse of authority with respect to the administration of other recourse processes” and that the DSEI also investigates situations related to the administration or handling of sexual harassment, misconduct or harassment cases.¹¹⁹¹

Based on materials provided to me by the ADM(RS), I have reviewed an instance in which the ADM(RS) tasked the DSEI to conduct an administrative investigation into a process of the CAF that relates to my mandate. While I am precluded from commenting on specific cases, I can conclude from my review of the investigation report that the DSEI correctly identified deficiencies in the interpretation and application of internal policies and made a pointed recommendation to the CAF to address those.

Implementing this particular recommendation from the DSEI would bolster the ability of the CAF to hold its members, particularly its senior leadership, accountable for sexual misconduct. It is a positive example of the usefulness of civilian input into the CAF's policies and practices. The only shortcoming here is the absence of publicity about the ADM(RS)'s processes and outcomes in the context of administrative investigations. However, while transparency is a great contributor to public scrutiny and accountability, there is also a need for internal mechanisms that facilitate candour and reduce the risks of self-censure by protecting confidentiality.

Therefore, in the case of administrative investigations conducted by the ADM(RS) under the DAOD 7026-1, I will not go so far as to say that any report or its contents must be made public; however, I do believe that accountability would be increased if the Minister were to be briefed by the ADM(RS) directly on all investigations related to sexual harassment, sexual misconduct and leadership culture in the Defence Team, to support the Minister's function in overseeing on-going systemic deficiencies and efforts to correct them.

RECOMMENDATION #41

The Minister should be briefed by the ADM(RS) directly on all investigations related to sexual harassment, sexual misconduct and leadership culture in the Defence Team.

RECOMMENDATION #42

The ADM(RS) should report annually to the Minister on statistics and activities related to investigations under the DAOD 7026-1, in line with what is required under the PSDPA.

An institutionalized close cooperation should be put in place between the ADM(RS) and the SMRC so that the SMRC can alert the ADM(RS) of systemic or specific case concerns that the ADM(RS) is suitably equipped to investigate. To that end, the Executive Director, SMRC should be able to independently direct the ADM(RS) to conduct an administrative investigation into matters relevant to the SMRC's mandate.

RECOMMENDATION #43

The Executive Director, SMRC should be able to independently direct the ADM(RS) to conduct an administrative investigation into matters relevant to the SMRC's mandate.

Disclosure of wrongdoing

The DSEI also conducts investigations into disclosures of wrongdoing, governed either by the PSDPA for DND employees, or the CAF Disclosure Process for CAF members. In this regard, and relevant to my mandate, the DSEI can conduct “reprisal” investigations for CAF members only, “including in cases where the alleged reprisal occurred as a result of reporting sexual misconduct,” and has received informal complaints of this nature.¹¹⁹² However, I understand this process is not typically engaged as it relates to circumstances of sexual misconduct; in fact, of the 105 investigations commenced under the disclosure of wrongdoing process from 2015-16, none of the investigations conducted by the DSEI *directly* examined allegations of sexual misconduct or harassment, according to the ADM(RS).¹¹⁹³

The PSDPA and CAF Disclosure Process allow DND employees and CAF members to come forward if they believe that a “wrongdoing” has been committed, including a serious breach of a code of conduct such as the *DND and CF Code of Values and Ethics*.¹¹⁹⁴ Reprisal for good faith disclosures is prohibited.¹¹⁹⁵ The ADM(RS) receives these disclosures and investigates where appropriate. The DM, and the CDS in cases involving the CAF, has an obligation to review investigation reports and recommendations and can direct that corrective action be taken. Founded wrongdoings are published online, along with related recommendation and corrective action (or the reason no corrective action was taken).¹¹⁹⁶

In addition, the DSEI prepares an annual report to the Treasury Board on statistics and activities related to the PSDPA and the CAF Disclosure Process. I note here that the Treasury Board is another government entity external to the Defence Team that provides civilian input to the DND and the CAF, including around people management, conflict of interest, and employment equity requirements.¹¹⁹⁷

Overall, the ADM(RS) has functions – albeit internal – like those of the inspector general called for by some stakeholders. In fact, like an inspector general, aspects of its function are public, given its reporting and publication obligations. However, stakeholders I spoke to have cautioned against relying on the ADM(RS) to take the place of an independent and external inspector general, in part due to its subordinate role to the DM and CDS. Further, as I note above, if an inspector general were stood up, the investigative role of the ADM(RS) would probably need to be curtailed or otherwise removed to eliminate duplication in function.

The Prime Minister and the Privy Council Office

Defence-related Governor in Council appointees

The Prime Minister is answerable to the Canadian public for the government's performance as a whole. In matters relevant to my mandate, the Prime Minister plays a key role in the oversight of the DND and the CAF, particularly in the appointment of senior leadership.

In addition to appointing his Cabinet, and specifically the Minister, the Prime Minister provides the recommendation to the GIC regarding the appointment of key members of the defence portfolio:

- the CDS;
- the DM and Associate Deputy Ministers;
- the DM and ADM of Veterans Affairs; and
- the Ambassador for Women, Peace, and Security, who is appointed as a Special Advisor to the Minister under the *Public Service Employment Act*.¹¹⁹⁸

All other relevant defence-related GIC appointments fall within the portfolios of the Minister or the Minister of Veterans Affairs.¹¹⁹⁹ For instance, the Minister recommends:

- the JAG;
- the Ombudsperson, who is appointed as a Special Advisor to the Minister under the *Public Service Employment Act*;
- the Principal of the RMC Kingston, also appointed as a Special Advisor to the Minister under the *Public Service Employment Act*;
- all members of the MGERC; and
- all members of the MPCC.¹²⁰⁰

The CDS, DM, JAG and Principal of the RMC Kingston hold office “during pleasure,” meaning that they may be removed from office at the discretion of the GIC. The Ombudsman, members of the MGERC, and members of the MPCC, hold office “during good behaviour,” meaning that they may be removed from office only for cause (as defined in any applicable legislation or terms of appointment).¹²⁰¹

The process for selecting all of the GIC appointments listed above is administered by the Senior Personnel Secretariat of the PCO.¹²⁰² The PCO, therefore, plays a crucial role in the selection of key appointees in the defence portfolio.

The selection process for the CDS involves several steps. At the outset, a selection committee is struck, which generally includes the Minister, the Clerk of the PCO, the DM, the Deputy Secretary of the PCO, and another senior representative of the “security community.” All three-star Generals are invited to participate in the process and asked to provide letters of interest.¹²⁰³

A subcommittee screens applications against the selection criteria developed by the PCO in consultation with the DND and the PMO. Selection criteria consist of, among other things, eligibility (education, experience etc.), language requirements, and personal attributes. The selection committee then conducts interviews and creates a shortlist. I understand that, since 2018, the candidates are asked the following questions:

- Do you have, or think you might have, any actual, potential or perceived conflicts of interest with respect to serving in this position?
- Is there anything in your personal or professional background, past or present, that could, if it were to become known, bring disrepute to the Government of Canada?
- Are there any activities you are currently undertaking that are registered under the *Lobbying Act*?
- Have you ever had to deal with a harassment complaint or a formal grievance made against you? If yes, describe the situation and how it was resolved.¹²⁰⁴

Additional due diligence on the shortlisted candidates is also conducted, including: reference checks, a psychometric assessment, background and security checks, and polygraphic analysis.¹²⁰⁵ With respect to the reference checks conducted for leadership positions such as the CDS, I understand that the PCO relies primarily on references provided by the candidate.¹²⁰⁶ I also understand that no access is requested or otherwise provided, as part of the due diligence process, to the CAF's internal databases that maintain records regarding complaints of sexual harassment or misconduct.¹²⁰⁷

As a final step, the selection committee recommends candidates to the Prime Minister, who may meet with the recommended candidates prior to the Cabinet's determining who to appoint, and the GIC's issue of the applicable Order in Council. With respect to the appointment of the CDS, the Prime Minister also consults with the Governor General, as the Commander-in-Chief for the CAF.¹²⁰⁸

RECOMMENDATION #44

In the case of GIC appointees, such as the CDS and the JAG (who must be members of the CAF at the time of their appointment), consideration should be given to removing any legal impediments – such as privacy concerns – that preclude access by the PCO to personnel files in the CAF, including conduct sheets.

Governor in Council appointees' performance evaluation

The PCO also administers performance evaluations for certain GIC appointees in the defence portfolio, including the CDS, by coordinating the Performance Management Program.¹²⁰⁹ This program assesses performance on an annual basis. It sets compensation for certain GIC appointments, including the CDS who is eligible to earn "at-risk" pay, meaning that part of his compensation is contingent on his performance.¹²¹⁰

As part of the Performance Management Program for the CDS, and similar to the process for the DM, the CDS is required to evaluate his own performance in a number of areas, including the policy and program results that he has achieved in support of the government's agenda, management results (measured against the Management Accountability Framework established by the Treasury Board), and leadership results.¹²¹¹

The PCO in turn conducts due diligence to supplement the CDS's self-evaluation. For instance, the PCO seeks input from the Minister, senior DMs within the defence portfolio (such as Global Affairs Canada), and central agencies including the Treasury Board of Canada Secretariat and the Office of the Chief Human Resources Officer.¹²¹²

From the information I have reviewed, it does not appear that, in coordinating the performance evaluation of the CDS, the PCO is required to seek input from his subordinates (in the form of a 360 degree evaluation or otherwise), or that the CDS is mandated to evaluate specifically his performance in addressing sexual harassment and misconduct within the CAF.

Investigation into alleged misconduct by Governor in Council appointees

In addition to its role in appointing and evaluating GIC appointees within the defence portfolio, the PCO plays a key role in managing the investigation of allegations of misconduct against these individuals, and in assisting the GIC in determining whether it still has confidence in the appointee.¹²¹³

I understand from the PMO that, while the PCO keeps the Prime Minister informed of the investigations, the PCO and the public service manage these investigations at their discretion.¹²¹⁴

According to the PCO, it is not an investigative body. Its role regarding complaints of misconduct against a GIC appointee entails providing “advice to the government in order to determine the best course of action depending on the nature of a complaint.”¹²¹⁵ Its advice takes into account the specific circumstances of the complaint, and it aims to ensure that procedural fairness for those involved is respected, and that any investigation is independent and fair.¹²¹⁶

The standard of information required for the PCO to begin an investigation into alleged misconduct is unclear to me. I understand that, depending on the nature of the information brought forward, a recommended course of action may include anything from administrative review, referral to an independent third party for investigation—which I am told is typical, or referral to the police. The PCO may ultimately recommend that the GIC remove an appointee from their “at pleasure” position.¹²¹⁷ For the CDS in particular, consideration is given to whether the GIC continues to have confidence in his policy decisions in the circumstances.¹²¹⁸

I am not privy to any investigation into allegations of misconduct against defence-related GIC appointees. My terms of reference preclude me from “expressing any conclusions or recommendations regarding liability or wrongdoing of any person or organization,” and I am not to “include any reference to, or provide any assessments or recommendations related to, any specific cases of harassment or sexual misconduct.”¹²¹⁹

From my general inquiries into the process, I can only conclude that there is considerable discretion in the PCO as to how to proceed when informed of serious allegations made against a GIC appointee. The process, particularly its length, may lead to unwarranted speculation; however, fairness to the subject of the complaint, as well as concerns about protecting the confidentiality of complainants in sexual misconduct cases, or of whistle-blowers, for instance, often complicate matters.

Overall, the PCO administers several processes for defence GIC appointees, which provides a unique opportunity to ensure meaningful civilian input into the selection, evaluation and investigation of senior leadership in the defence portfolio.

In addition, the PCO plays a critical role in the implementation of regulations, including those relevant to the defence landscape (by way of its support to the Treasury Board and to Cabinet relating to the drafting of orders-in-council). It is imperative that the PCO and other relevant entities such as the Treasury Board pay particular attention to the debilitating pace at which regulatory matters move through this process. As set out above, I have found discouraging the pace at which Bill C-77 has been implemented. Waiting years from the passage of legislation to the implementation of the enabling regulations is – particularly when the regulations at issue target sexual misconduct – unacceptable. In my view, there needs to be a greater assertion of responsibility at the political level to speed the implementation of these necessary reforms.

The Ombudsman

As mentioned above, the Ombudsman was set up in the wake of the Somalia Commission as an alternative to the proposed inspector general. The Ombudsman is independent from the management and chain of command of the DND and the CAF and reports directly to and is accountable to the Minister.¹²²⁰ This office provides a method of external oversight and input into the DND and the CAF. The Ombudsman describes its function as follows:

Our Office is a direct source of information, referral, and education for the members and employees of the Department of National Defence and the Canadian Forces. We help individuals access existing channels of assistance or redress when they have a complaint or concern. We may also investigate and report publicly on matters affecting the welfare of members and employees of the Department or the Canadian Forces and others falling within our jurisdiction. Ultimately, we want to contribute to substantial and long-lasting improvements to the Defence community.¹²²¹

The Ombudsman is intended to be a neutral and independent investigator of issues brought by members of the Defence community, who have exhausted existing avenues of

redress within the system.¹²²² Notably, and for investigations relating to systemic issues, the Ombudsman makes its reports and findings available online.

Although he can play a role in monitoring sexual misconduct, the numbers of sexual misconduct-related complaints received by his office are low. For instance, according to the semi-annual statistics the Ombudsman provides to the MND, in 2018, his office received 21 complaints relating to sexual misconduct. In 2019, there were 16, and in 2020, the complaints totalled 10.¹²²³

The Ombudsman has not investigated systemic issues relating to sexual harassment and misconduct. However, I understand his office plans to look into diversity as an area for investigation in the future.¹²²⁴

In April 2021, in a letter addressed to both the parliamentary standing committees examining sexual misconduct in the CAF (referenced below), the former Ombudsman took the position that he could not be a part of the deliberations within the Defence Team regarding the processes necessary for culture change, as this would place his office in a conflict, and went on to observe that his office was well-placed to perform an independent oversight function as part of the solution to sexual misconduct and other forms of discrimination.¹²²⁵

Justice Fish has already dealt with issues in that office, and I echo Justice Fish’s recommendation that there should be an independent review of “whether additional measures are needed to reinforce [the Ombudsman’s] independence and effectiveness.”

Parliament and parliamentary committees

The authority for the NDA vests with Parliament under the Constitution, which provides that Parliament has legislative authority over “militia, military and naval service, and defence.”¹²²⁶ However, as well described by Philippe Lagassé and Stephen Saideman, defence policy making and military control belongs to the executive, such that parliamentary oversight of the military is focused on holding ministers to account for their control of the armed forces.¹²²⁷

Professor Lagassé further asserts that parliamentarians maintain this accountability by debating, voting on and amending national defence legislation, such as the NDA. They may also debate defence questions and pass nonbinding motions regarding military issues, in an effort to influence the government’s defence decisions. This system of governance relies especially on opposition MPs to identify faults in the government’s defence policies, warn the public of any errors or shortfalls, and offer alternative solutions.¹²²⁸

One method of parliamentary oversight is the use of defence committees that oversee and report on the government’s defence estimates, policies, programs and legislation. These committees can “request information and documents, as well as call witnesses to testify,

including ministers, civil servants, and members of the armed forces.”¹²²⁹ They are able to examine – in the public eye – the policies and practices of the government. They are critical sources of civilian oversight and input into the conduct of the Defence Team.

However, defence committees are constrained by their reliance on unclassified information. They must rely on “open source information, leaks, media reports, and witness testimony to hold the government to account.”¹²³⁰ In addition, while they can request any information from the government, custom discourages their members from requesting the production of documents where public policy considerations such as national security and foreign relations are affected.¹²³¹

In the past year, in response to the crisis in senior leadership suffered by the CAF in relation to allegations of sexual misconduct, two parliamentary standing committees have examined the matter.

The Standing Committee on National Defence

In February 2021, the NDDN began a study of sexual misconduct issues in the CAF, including allegations against the former CDS. It held approximately 26 hearings, from February to May 2021, in the course of which it heard from multiple witnesses, among them senior leaders of the DND and the CAF, and subject matter experts.

The NDDN did not issue a report. I note from the transcripts that there was a motion to schedule the next steps toward a draft report and recommendations in the 12 April 2021 meeting and an acknowledgment at the 14 May 2021 meeting that the NDDN had “commenced consideration of a draft report.”¹²³² However, in June 2021, the Liberal members of the NDDN released 24 recommendations regarding sexual misconduct in the CAF to the Minister and to my attention. These members explained the release of their recommendations “given the impasse that the Committee has faced.”¹²³³

This highlights both the contributions and the limitations of this kind of process. On the positive side, parliamentary committees attract high-level participants and visibility on issues that may not otherwise attract much public attention. On the other hand, in some cases, no consensus is possible, and alignment along party lines detracts from the credibility of the process.

The Standing Committee on the Status of Women

The FEWO also took steps to study sexual misconduct within the CAF.¹²³⁴ It has published two reports related to these issues, in 2019 and 2021.¹²³⁵

The FEWO heard evidence over the course of many days, from March to May 2021. It also heard evidence from various organizations and individuals, including senior leaders within the DND and the CAF, expert witnesses and a survivor-lead organization.

It made recommendations to “foster cultural change and to support survivors of sexual misconduct in the CAF” and “provide guidance to the Government of Canada on measures that would be implemented to help eliminate sexual misconduct in the CAF and increase accountability.”¹²³⁶

The FEWO made 21 recommendations, ranging from the role of senior leadership in creating culture change to services for survivors of sexual misconduct. Notably, one of the recommendations was for the Government of Canada to “fully implement all recommendations” from the Deschamps Report.¹²³⁷

The very first of these was to establish a fully independent Office of the Inspector General within the DND and the CAF, which would report annually to Parliament. FEWO particularized the duties of this parliamentary officer as:

- to ensure future complaints and allegations are made to an external, independent body;
- to receive complaints from serving members and veterans with no requirement for the member or the veteran to exhaust the internal redress and grievance procedures before filing the complaint;
- to independently undertake studies and investigations deemed necessary; and
- refer matters to the National Security and Intelligence Advisor to the Prime Minister for investigation when warranted.¹²³⁸

The June 2021 Report included a “Request for Government Response” pursuant to Standing Order 109 of the House of Commons, which requires a response from the government within 120 days. Parliament was dissolved in August 2021, in advance of the fall general election. Documents internal to the Defence Team indicate that a government response is being prepared.¹²³⁹

I am unaware of any steps taken by the DND or the CAF to implement the recommendations made by the FEWO; however, I note reference to these recommendations in the *Initiating Directive for the Recommendations of the [Fish Report] and other Related External Comprehensive Reviews*, dated 25 October 2021, which I review in more detail below.

The Senate Standing Committee on National Security and Defence

The Senate of Canada also plays a role in civilian oversight of the Defence Team, including by way of its Standing Senate Committee on National Security and Defence, whose mandate is “to examine legislation and study issues related to national defence, security and veterans’ affairs.”¹²⁴⁰ Professor Lagassé contrasts Senate defence committees to those in Parliament as benefiting from a less partisan and hurried working environment.¹²⁴¹

From May to October 2018, this Senate Committee studied harmful and inappropriate sexual behaviour in the CAF, and the impact of changes made since Operation HONOUR was launched in 2015. The Senate Committee heard evidence from the leadership of the Defence Team and experts. At the conclusion of its study, it tabled its report, which relied, in part, on the 2016 StatsCan Report.¹²⁴² It set out eight recommendations, many of which are similar to those I have set out. To date, I am unaware of any steps taken by the DND and the CAF to assess or implement these recommendations.

With respect to the recommendations set out in the Deschamps Report, the report also concluded that they have not been “fully implemented.”¹²⁴³

The Auditor General of Canada

The AG is a crucial external player in the civilian oversight landscape for the Defence Team. The AG is an Officer of Parliament, and provides Parliament with objective, fact-based information and expert advice on government programs and activities, gathered through audits. The AG has a great deal of discretion in determining what areas of the government to audit and plans its audits years in advance. Parliamentarians use the reports of the AG to oversee government activities and hold the federal government to account for its handling of public funds.¹²⁴⁴

The OAG is the independent external auditor for the DND and the CAF. It has conducted numerous financial and performance audits related to my mandate. In brief, they include:

- In 2016, *Report 5 – Canadian Armed Forces Recruitment and Retention – National Defence*. This audit focused on whether the CAF had implemented appropriate systems and practices to recruit, train, and retain the Reg F members required to achieve its objectives. Among other things, the AG found that despite establishing recruitment goals – such as 25% women – these targets did not account for specific targets by occupation, leaving certain occupations significantly below the required number of personnel.¹²⁴⁵
- In 2017, *Report 6 – Royal Military College of Canada – National Defence*.¹²⁴⁶ The focus of this audit was whether the RMC produced the quality of officers that the CAF needed at a reasonable cost. It also assessed whether DND and CAF policies and education could ensure the proper conduct of officer cadets and staff at the RMC. It found that the RMC’s military training program had weaknesses. Notably, it lacked any clear, measurable standards for leadership qualities and ethical military behaviour for graduates to reach before receiving their commissions.¹²⁴⁷
- In 2018, *Report 3 – Administration of Justice in the Canadian Armed Forces*.¹²⁴⁸ This audit focused on whether the CAF’s administration of the military justice system was efficient and effective in processing cases in a timely manner. It found that the CAF took too long to resolve many of its military justice cases, with significant consequences in some cases.¹²⁴⁹

- In 2018, *Report 5 – Inappropriate Sexual Behavior – Canadian Armed Forces*.¹²⁵⁰ The focus of this audit was on whether the CAF adequately responded to inappropriate sexual behaviour through actions to respond to and support victims and to understand and prevent such behaviour. It found that while Operation HONOUR increased awareness of inappropriate sexual behaviour within the CAF, its fragmented approach to victim support and unintended consequences slowed its progress. Policies such as the duty to report discouraged some victims from coming forward for fear that their cases would be investigated despite not being ready to proceed formally.¹²⁵¹

The OAG's audits of Defence Team performance are public. They are available to the media and tabled in Parliament. As set out above, they are relied on by parliamentary and senate standing committees in their respective studies of defence-related issues. In addition, the parliamentary Standing Committee on Public Accounts may request updates from the AG and department officials as to the status of the implementation of its recommendations, thereby keeping a matter in the public eye and subject to parliamentary scrutiny for a longer period of time.

In light of my Review, the AG determined in July 2021 that she would postpone her planned update work on inappropriate sexual behaviour in the CAF. I expect that, with the conclusion of my work, her office will resume its reporting and I welcome her follow-up in respect to sexual harassment and misconduct in the CAF.

Statistics Canada

Statistics Canada is a critical external stakeholder in the oversight landscape, given its legislative power and expertise in collecting information. In 2016, and as part of Operation HONOUR, Statistics Canada was contracted to design and implement a voluntary survey of all active members of the CAF regarding their experiences of sexual harassment and misconduct.¹²⁵²

Over two months, active Reg F and P Res members were invited to complete an electronic questionnaire, asking about their experiences and perceptions of inappropriate sexualized behaviour, discrimination based on sex, sexual orientation or gender identity, and sexual assault within the CAF. Responses were received from over 43,000 members. In November 2016, Statistics Canada released its report, which focused on findings for the Reg F.¹²⁵³

It conducted a second survey in 2018, and released two reports in May 2019.¹²⁵⁴

In both instances, the survey results led to media attention highlighting the prevalence of sexual misconduct in the military, and that only slight progress had been made over the past two years.

Between 2018 and 2019, Statistics Canada conducted a survey “aimed to measure the nature and prevalence of unwanted sexualized and discriminatory behaviours and sexual assault among students in Canadian post-secondary institutions.” It included the officer cadets and naval cadets at the RMC and the RMC Saint-Jean. Again, the media highlighted the results of the survey, published in 2020, particularly that nearly 70% of military college students reported experiencing or witnessing unwanted sexual behaviours.¹²⁵⁵

These surveys – designed and implemented by experts at Statistics Canada – serve multiple oversight and input functions. They provide a meaningful source of information for understanding the prevalence, among other things, of sexual harassment and misconduct in various environments in the CAF. They provide a basis for evidence-based policy-making within the Defence Team. Their publications ensure the scrutiny of the Canadian public and politicians. They also serve a broad community of research stakeholders.

I have heard from stakeholders in the academic world that these surveys (at least those of the Reg F and the Res F) should be conducted annually rather than every two to three years, to better inform policy development and enforcement on an ongoing basis. I note that the employees of the DND participate in the Public Service Employee Survey (PSES), a voluntary survey conducted every year. The PSES is public-sector-wide and is not specific to the DND. It collects information about workplace harassment, safety and culture.¹²⁵⁶ I do not have any information regarding plans by the Defence Team to use the results of PSES in its policy development and enforcement. I certainly encourage it to do so.

I understand from my stakeholder interviews that the integration of external expertise into these large-scale data collection enterprises could be improved.

The media and external academics

The Canadian media and researchers external to the government also have an essential role to play and have made important contributions in highlighting issues and advocating for change.

Media

Investigative journalism has proven a crucial component of the external oversight landscape, particularly as it relates to the struggles of the CAF with sexual misconduct.

The investigative reports of Canadian media outlets have played a critical part in bringing to light the extent and severity of sexual misconduct in the military and the shortcomings in the CAF’s handling of these cases. I believe that the setting up of three external reviews addressing sexual misconduct in the CAF in the last six years, the Deschamps Report, the Fish Report, and my own, has largely been attributable to the public concern generated by the work of the press.¹²⁵⁷

Despite the CAF's preoccupation with strictly regulating the disclosure of any information related to its inner workings, much of the material related to sexual misconduct is not classified; however, it is not readily accessible to the public. Investigative journalists are uniquely skilled in navigating Access to Information and Privacy (ATIP) requests, analyzing these materials, and reporting on them. Parliamentary committees have also relied on the documents secured by various news outlets to inform their recent studies into sexual misconduct in the CAF.¹²⁵⁸ The NDDN made reference to ATIP requests when discussing the documentation and witnesses that would be key to its work.¹²⁵⁹

For decades, the Canadian press has played a pivotal role in holding senior military leadership accountable for sexual misconduct. Its coverage of the ongoing crisis continues to play this role and bolsters the political and civilian oversight mechanisms already in place.

Academics and external researchers

The research work of academics and external researchers provides key outsider input to the Defence Team. This benefit is set out in Canada's Defence Policy – Strong, Secure, Engaged: “Collaboration with academia and other experts not only strengthens the foundation of evidence-based defence policy-making, but it will also help drive innovation and develop future thought leaders.”¹²⁶⁰ The Policy highlights a plan to revitalize partnerships with external experts to capitalize on their expertise and sets out several initiatives to allow the CAF to “derive greater benefit from Canada's rich academic and analytic community.”¹²⁶¹ Among them was the launch of the Mobilizing Insights in Defence and Security (MINDS) program.¹²⁶²

This program funded “Collaborative Networks” – networks of multi-disciplinary experts working on defence policy challenges. I understand from my stakeholder interviews that many of the experts involved in these networks have been at the centre of the discussions and debates on sexual misconduct in the CAF and the broader objective of culture change.

In 2019, the MINDS program and the SMRC coordinated the review by three external researchers of the 2016 and 2018 Statistics Canada surveys. This collaborative effort formed the basis for an SMRC report that expressly refers to the experts' suggestions on how to address sexual misconduct in the CAF.¹²⁶³

This is a positive example of members of the Defence Team, specifically the SMRC, opening up to the informed assessment of external experts and benefiting from doing so. This type of collaboration should be encouraged. Scientists and subject matter experts working inside the Defence Team – DRDC, the DGMPPRA, the CDA and others – should increase their collaboration with external experts.

In line with the policy objectives set out in Canada's Defence Policy – Strong, Secure, Engaged, I endorse the submission of a stakeholder that each of the Network Directors for the MINDS program be paired with a senior leader within the DND and the CAF.

With respect to the DGMPRA, I note that its research and work provide an in-depth source of information for the leadership in the Defence Team and is a form of internal input into policy decision-making. In my view, DGMPRA and other internal research should be made available online, subject to appropriate security controls. Making this work available online has the added benefit of ensuring that external researchers do not duplicate research already done by researchers internal to the DND and the CAF.

RECOMMENDATION #45

The CPCC should host a public online database for all internal Defence Team research and policies relating to sexual harassment and misconduct, gender, sexual orientation, race, diversity and inclusion, and culture change. If a document cannot be made public for security reasons or otherwise, it should still be listed in the database to facilitate access by persons with the requisite clearance or approval.

From my stakeholder interviews, I understand that enforcement of the DAOD 5062-1, *Conduct of Social Science Research*, and the related QR&O has the potential effect of “muzzling” members of the CAF that participate in social science research and so acts to stifle academic research.

For example, I note that while QR&O 19.14, *Improper Remarks*¹²⁶⁴ prohibits the making of remarks that tend to bring a superior into contempt, it contains an exemption to this prohibition for the purpose of the proper presentation of a grievance. It may be that a similar exemption could be introduced into the governing framework for the CAF to facilitate candid communication between members of the CAF and external researchers.

I also understand that proposed social science research about the DND and the CAF must first be approved by way of a rigorous multi-step process.¹²⁶⁵ This process is managed by the DGMPRA, by way of the Social Science Research Review Board (SSRRB). As part of the vetting process, the SSRRB is tasked with conducting an ethical and technical review of the proposed research, regardless of whether it is from an internal or external source.¹²⁶⁶

The respective L1 organizations also play a role, as their sponsorship and approval is required for such proposals to go forward and the resulting work cannot be published without the L1 sponsor’s prior approval.¹²⁶⁷

I understand from my stakeholder interviews that these gatekeeping functions can act as an impediment to external researchers having their research proposals approved, and to accessing the DND and the CAF to conduct their research. The process by which an external research proposal is approved should be streamlined to facilitate approval and access for external researchers. As an example, the CAF should consider waiving the SSRRB ethics review of an external proposal that has already undergone external ethics approval.¹²⁶⁸

RECOMMENDATION #46

With input from the academic community, the QR&O listed at article 5.2 of the DAOD 5062-1 should be reviewed and revised as necessary to facilitate research. In addition, the CAF should consider waiving the SSRRB ethics review of an external proposal that has already been approved by the Research Ethics Board of an academic institution.

An external monitor is necessary

My recent revisit of the Somalia Commission's work has been sobering. We have been here before. Little seems to change. Recommendations from its report that were not implemented remain in the discourse today and are seemingly under consideration by the CAF (such as the inspector general). The same can be said of the most recent recommendations made by Justice Deschamps.

One of the many problems with lack of implementation is that external recommendations eventually become, in part or in full, incompatible with each other. Procrastination, ill-advised initiatives that purport to but fail to address the issues, and repetition of recourse to outside advisors have all led to an unmanageable quantity of unimplemented recommendations.

The CAF is aware of this minefield. An October 2021 Directive, issued by the DM and the CDS, calls for the establishment of the the governance required to support interdepartmental efforts to implement the Deschamps and Fish recommendations, as well as my forthcoming ones, and those arising from the Final Settlement Agreement of the Heyder and Beattie class actions.¹²⁶⁹

Procrastination, ill-advised initiatives that purport to but fail to address the issues, and repetition of recourse to outside advisors have all led to an unmanageable quantity of unimplemented recommendations.

The Directive goes on to highlight the quagmire they find themselves in:

The challenges of implementing Justice Fish's recommendations, and those expected from the IECR [this Report], cannot be overemphasized. They will require prioritization and a significant amount of time and resources. There are numerous interdependencies within DND/CAF, with other government departments (OGDs), and with other stakeholders and independent actors.

...

There are myriad interdependencies, which include, but are not limited to: CPCC initiatives, recommendations stemming from Parliamentary Committees (ex. FEWO), implementation activities surrounding An Act to amend the National Defence Act and to make related and consequential amendments to other Acts (SC 2019, c 15), formerly known as Bill C-77, class action final settlement agreements, and the ongoing [review] by Justice Arbour. It is anticipated these [External Comprehensive Reviews] and related initiatives will result in substantial recommendations, a number of which relating to the [Military Justice System]. The coordination of the numerous initiatives underway and being contemplated is critical to avoid unintended second and third order effects.¹²⁷⁰

I also highlight the following:

The [Government of Canada] has committed to providing Parliament with an implementation plan for the recommendations and providing regular updates. There will be an unprecedented level of transparency and accountability required as this work progresses alongside other related strategic initiatives. This will necessitate a common operating picture that must highlight the interdependencies, priorities, and sequencing to facilitate the execution of the implementation campaign plan and provide both internal and external audiences visibility on progress.¹²⁷¹
[Emphasis added.]

To achieve the ends of the Directive, the DND and the CAF have stood up an External Comprehensive Reviews Implementation Committee (ECRIC). The ECRIC is responsible for developing and overseeing an Implementation Campaign Plan “to implement all remaining [Fish Report] recommendations and those applicable from other [external comprehensive reviews].”¹²⁷²

The VCDS and the JAG are to provide strategic oversight for the implementation of recommendations, with the VCDS reporting up to the DM and the CDS.¹²⁷³ The ECRIC membership will include a wide variety of stakeholders from the Defence Team.

The implementation stage – a “protracted period” as contemplated by the Directive – includes reporting on progress to Parliament and the public. The ECRIC will have served its purpose when the recommendations of external comprehensive reviews such as my own are “fully considered and implemented, or are on track towards implementation in a deliberate, synchronized, coherent, and phased manner.” Notably, ADM(RS) is both a member of the ECRIC, and tasked under the Directive with monitoring “progress of the implementation of the [Fish report] recommendations on a semi-annual basis” with results to be shared “at the Departmental Audit Committee every June and December as part of ADM(RS) regular validation of Management Action Plans (MAPs).”¹²⁷⁴

I welcome this express commitment to accountability and to specific reporting responsibility set out in the Directive, with the ECRIC having to report to the Minister, DM and CDS “on a monthly basis”¹²⁷⁵, and on a semi-annual basis to the parliamentary Standing Committee by way of progress reports. The first of those was to be made in the fall of 2021. I have not been provided with any update on its status.¹²⁷⁶

In addition to standing up the ECRIC, the CAF has also created an electronic “matrix” dashboard to help themselves navigate the external recommendation landscape. As I understand it, this matrix contains 500+ “culture-related” recommendations and tasks, from 18 different sources (not all of which are recommendations specific to or aimed at the CAF, *e.g.*, the matrix includes reviews from the United States Department of Defence).¹²⁷⁷ They have already created the boxes within which to incorporate my recommendations.

To date, this work, housed within the CPCC, has centralized these recommendations and analyzed their content to identify trends. As I understand, this is the first time that external recommendations relating to culture change – from sources ranging from the Deschamps Report to the 2021 Report of the FEWO – have been “centrally housed” within the DND and the CAF. I understand that even the task of collecting the various external recommendations made to date was a challenge. The next steps are to include developing a framework to prioritize them and their implementation.¹²⁷⁸

At the outset, the work would become considerably more manageable if the CAF leadership, up to the Minister’s level, clearly indicated what recommendations they believe have become obsolete, superseded by others, or not aligned with the government’s agenda and will not be pursued. There is a limit to how many additional internal studies are required to make a decision on a matter of principle, or general policy direction.

I stress that these are recommendations. They are obviously not binding. If the Minister wishes not to implement some of them, or to delay implementation, she should say so.

They should then indicate the time frame within which they intend to implement the remaining recommendations. Priority should be given to matters that require legislative amendments. These benefit from democratic debate as to their merits and are time consuming. Bill C-77 came into force in 2019 and it is still not fully implemented. And this is a law, not a mere recommendation.

In parallel, simple initiatives with great impact should be immediately put in place, such as my recommendation that the CAF defer to the CHRC in the handling of sexual harassment complaints.

The proposed external monitor

The Mandate Letter states that the Minister is to work to end sexual misconduct in the Defence Team by, among other things, implementing the recommendations from my Review. I am encouraged to see this commitment.

The next step is the implementation, immediate or progressive, of outstanding external recommendations. This is where past events have demonstrated that the CAF must be held accountable. While not explicitly rejected, recommendations made by parliamentary standing committees, the OAG, and other external reviewers remain in limbo.

All external forms of oversight, except court orders and Acts of Parliament, are ultimately non-binding. The implementation of external recommendations depends on a combination of political will, capacity and accountability.

This is why I believe that if the Minister is determined to move forward with anything in this Report, she will need the help of an appropriately resourced external monitor, tasked with overseeing the implementation of this report and other external recommendations that she accepts. The external monitor should provide monthly updates to the minister and bi-annual public reports.

I see the external monitor playing a key role in holding the relevant stakeholders to account, including senior Defence Team leadership.

The external monitor could also play a key role in holding political actors to account, particularly with respect to the time it takes to implement the legislative amendments required by my recommendations.

I see the external monitor playing a key role in holding the relevant stakeholders to account, including senior Defence Team leadership. For instance, the external monitor should pay particular attention to the civilianization of the investigation and prosecution of sexual harassment and misconduct – specifically monitoring and reporting on compliance with the recommendations to move criminal sexual offences to civilian police and prosecution authorities, and harassment and discrimination to the CHRC and CHRT. The external monitor could also play a key role in holding political actors to account, particularly with respect to the time it takes to implement the legislative amendments required by my recommendations.

The external monitor could, eventually, take on a permanent role, like that of an inspector general. However, for the time being, to avoid history repeating itself and new external reviewers being appointed, the DND and the CAF should be made accountable for implementing what they claim to agree with, and should be supervised closely in that regard.

This would ensure ongoing accountability for DND and CAF leadership and challenge the insularity with which senior leadership has, to date, reacted when faced with the recommendations from outsiders.

I note that the role of an external monitor is not new. An example is the Minister's Monitoring Committee on Change in the DND and the CAF (MMC), set up in October 1997 as an independent oversight body to monitor the implementation and efficacy of change initiatives arising out of the Somalia Commission, as well as the following five reports: the MND Report, Dickson Report I, Dickson Report II, SCRR Report, and Belzile Report.¹²⁷⁹

The MMC's mandate extended to the hundreds of recommendations arising from these six reports.¹²⁸⁰ Its terms of reference entitled it to:

- receive updates on the implementation of the recommendations contained in the aforementioned reports;
- have access to all documentation the MMC considers relevant to its mandate;
- visit any site of the CAF that the MMC considers relevant to its mandate; and
- observe and document the rate of progress, experiences, and conditions under which change is being implemented at the DND and the CAF.¹²⁸¹

The MMC was required to report its findings and observations at regular intervals to the Minister and present semi-annual written reports with recommendations. It released three interim reports, in March 1998, November 1998 and July 1999, and a final report in December 1999.¹²⁸²

Strikingly, in my view, the MMC observed what it saw as “putting the activity ‘cart’ before the conceptual ‘horse.’”¹²⁸³ Essentially, it described the response of the DND and the CAF as being a “checkbox” exercise.

Interestingly, and again – history repeats itself – in its final report, the MMC highlighted the changes made by the DND and the CAF at a time of serious difficulties for the Defence Team, “arising from a heightened pace and range of operational activities and the strains and stresses of financial and personnel shortages.”¹²⁸⁴ Regrettably, this is true again today. It may always be the case. But it must stop being an impediment to critical reform or, worse, an excuse for inertia.

RECOMMENDATION #47

As a first step, the Minister should inform Parliament by the end of the year of the recommendations in this Report that she does not intend to implement.

RECOMMENDATION #48

The Minister should immediately appoint an external monitor, mandated to oversee the implementation of the recommendations in this Report and other external recommendations that she accepts.

The external monitor should be assisted by a small team of their choosing that is external to the Defence Team. They should have access to all documents, information, individuals and entities they deem relevant, including ECRIC.

The external monitor should produce a monthly “monitoring assessment and advice” report directly to the Minister and publish bi-annual public reports.

Conclusion

There are many mechanisms in place, both internally and externally, designed to improve performance and ensure accountability in the CAF. Some are independent, others internal. Taken together, they cover much of the functions of an inspector general. Adding another mechanism is not the answer. Making the existing mechanisms work better is.

There is a point of diminishing returns that is reached by simply adding actors to an already crowded field. Standing up an inspector general to tackle the issue of sexual misconduct in the CAF would require many of the existing mechanisms and roles, such as the ADM(RS) or the Ombudsman, to be modified or eliminated to avoid duplication in function and resources.

The current challenge for the CAF is to reap the benefits of the independent external support it has received over the years and is continuing to solicit. It is this type of independent oversight that is most critically needed.

PART III

Conclusion and List of Recommendations

Conclusion

The exposure of sexual misconduct in the CAF has shed light on a deeply deficient culture fostered by a rigid and outdated structure that did little to modernize it. For all the hardship it has caused over decades, the attention that this issue has recently attracted presents opportunities for change that might have been unimaginable without such a shock to the system.

In my view, two things could derail the path to significant change. The first would be to assume that this is only attributable to a culture of misogyny, and that change will come naturally with time and more enlightened attitudes. The second would be for the CAF to think that it can fix its broken system alone.

List of Recommendations

Recommendation #1: The formal definition of “sexual misconduct” in the DAOD 9005-1 and other policies should be abolished.

Recommendation #2: Sexual assault should be included as a standalone item in the definitions section of the relevant CAF policies, with the following definition:

sexual assault (agression sexuelle): Intentional, non-consensual touching of a sexual nature.

The policies should then refer to the *Criminal Code* as the applicable law regarding sexual assaults.

Recommendation #3: The relevant CAF policies should adopt the *Canada Labour Code* definition of harassment.

Recommendation #4: The current definition of personal relationship should remain:

A personal relationship is: An emotional, romantic, sexual or family relationship, including marriage or a common-law partnership or civil union, between two CAF members, or a CAF member and a DND employee or contractor, or member of an allied force.

The concept of “adverse personal relationship” should be abolished. All CAF members involved in a personal relationship with one another should inform their chain of command.

Commanders should be given appropriate guidance as to how to handle the situation presented to them. It could range from doing nothing, to accommodating the relationship through available measures, or, if need be, ensuring that the members have little professional interaction with each other. There are, of course, a whole range of intermediate measures that may be appropriate to address the best interests of the organization, the parties, and other stakeholders.

Should an undisclosed personal relationship come to light between members of different rank, or otherwise in a situation of power imbalance, there should be a rebuttable presumption that the relationship was not consensual. Any negative consequences should be primarily visited on the member senior in rank or otherwise in a position of power.

Recommendation #5: *Criminal Code* sexual offences should be removed from the jurisdiction of the CAF. They should be prosecuted exclusively in civilian criminal courts in all cases. Where the offence takes place in Canada, it should be investigated by civilian police forces at the earliest opportunity. Where the offence takes place outside of Canada, the MP may act in the first instance to safeguard evidence and commence an investigation, but should liaise with civilian law enforcement at the earliest possible opportunity. This should include:

- Sexual offences found in Part V of the *Criminal Code*;
- Sexual offences found in Part VII of the *Criminal Code*, including but not limited to sexual assaults; and
- Any “designated offence” as defined in subsections 490.011(1)(a), (c), (c.1), (d), (d.1) or (e) of the *Criminal Code*, to the extent not already captured above.

Recommendation #6: The DMCA should engage in an externally-led quality assurance assessment – similar to that conducted by the SARP initiated by the CFNIS – of the administrative reviews conducted from 2015 to date relating to sexual misconduct, which administrative reviews resulted in retaining the member without career restrictions.

Recommendation #7: The CAF should not file any objections based on section 41(1)(a) of the CHRA, and should allow the CHRC to assess any complaint for sexual harassment, or for discrimination on the basis of sex, regardless of whether the complainant has exhausted internal complaint mechanisms.

The Minister should seek assistance from her colleagues to ensure that the CHRC and the CHRT are adequately resourced to assess complaints against the CAF and hear them in a timely manner.

Recommendation #8: The CHRA should be revised to permit the award of legal costs and to increase the amount in damages that can be awarded to successful complainants. To assist in the implementation of this recommendation, the DM should bring this matter to the attention of the appropriate authority on an immediate basis.

Recommendation #9: Any complaint related to sexual harassment or discrimination on the basis of sex or involving an allegation of retaliation for reporting sexual harassment or discrimination on the basis of sex should be first directed to the CHRC, should the complainant so choose. The CAF should no longer object to the jurisdiction of the CHRC on the basis that internal remedies, including its grievance process, have not been exhausted.

Recommendation #10: Grievances related to sexual misconduct should be identified, prioritized and fast-tracked through the grievance system at both the IA and FA levels.

The VCDS or their specific delegate should manage the process for all grievances related to sexual misconduct, sexual harassment or sexual discrimination or involving an allegation of reprisal for reporting, or otherwise disclosing sexual misconduct, sexual harassment or sexual discrimination. For such grievances, the CFGA should designate an IA with subject matter expertise, and who is outside the grievor's chain of command.

QR&O 7.21 should be amended to make it clear that grievances related to sexual misconduct, sexual harassment and sexual discrimination should be mandatorily referred to the MGERC.

The CDS should remain the FA and be required to dispose of the matter within three months.

Recommendation #11: Article 5 of the DAOD 9005-1 should be removed and QR&O 4.02 (for Officers) and 5.01 (for NCMs) should be amended to exempt sexual misconduct from its application. Consideration should be given to abolishing the duty to report for all infractions under the *Code of Service Discipline*.

Recommendation #12: The SMRC's name should be changed to Sexual Misconduct Resource Centre.

Recommendation #13: The SMRC should be reinforced as primarily a resource centre, with adequate expertise and capacity, solely for complainants, victims and survivors of sexual misconduct.

Recommendation #14: The SMRC should ensure that it can facilitate immediate access to legal assistance to victims of sexual misconduct. Such legal assistance must be available across the country and on the full range of issues related to sexual misconduct in the CAF, including in respect of the various processes triggered by disclosure. To do so, the SMRC should compile a roster of civilian lawyers able to provide such services and ensure that they are properly trained to do so. The SMRC should also prepare a schedule of fees for such services, and provide for direct payment to the lawyers.

Recommendation #15: The ownership of training and prevention of sexual misconduct should be transferred to the CPCC. The CPCC should continue to consult the SMRC on the development of program content, delivery and methods of evaluation for sexual misconduct, but the SMRC should not be engaged in actual program delivery or monitoring.

Recommendation #16: The monitoring of the CAF's effectiveness in responding to sexual misconduct should be removed from the SMRC's mandate. Instead, the SMRC should be required to refer concerns in that regard to the ADM(RS). The SMRC should be empowered to direct the ADM(RS) to conduct an administrative investigation into matters relevant to its mandate.

Recommendation #17: The SMRC should remain within the DND and continue to report to the DM.

Recommendation #18: The administrative structure of the SMRC should be reviewed in order to increase its independence, effectiveness and proper place in the Defence Team.

Recommendation #19: The EAC's role, composition and governance should be reviewed. It should be composed of external experts and advocates for victims and survivors, with adequate representation of equity seeking and minority groups who are disproportionately affected by sexual misconduct. It should publish an annual report to provide an external perspective on the evolution of the SMRC's role and performance.

Recommendation #20: The CAF should restructure and simplify its recruitment, enrolment and basic training processes in order to significantly shorten the recruitment phase and create a probationary period in which a more fulsome assessment of the candidates can be performed, and early release effected, if necessary.

Recommendation #21: The CAF should outsource some recruitment functions so as to reduce the burden on CAF recruiters, while also increasing the professional competence of recruiters.

Recommendation #22: The CAF should put new processes in place to ensure that problematic attitudes on cultural and gender-based issues are both assessed and appropriately dealt with at an early stage, either pre- or post-recruitment.

Recommendation #23: The CAF should equip all training schools with the best possible people and instructors. Specifically, the CAF should:

- prioritize postings to training units, especially training directed at new recruits and naval/officer cadets;
- incentivize and reward roles as CFLRS instructors, and other key instructor and training unit positions throughout the CAF, as well as the completion of instructor training, whether through pay incentives, accelerated promotions, agreement for future posting priority, or other effective means;

- address the current disincentives for these postings, such as penalties, whether real or perceived, for out-of-regiment postings during promotion and posting decisions; and
- ensure appropriate screening of qualified instructors, both for competence and character.

Recommendation #24: The CAF should assess the advantages and disadvantages of forming a new trainer/educator/instructor occupation within the CAF, or a specialty within one of the human resources-related occupations, in order to create a permanent cadre of skilled and professional educators and trainers.

Recommendation #25: The CAF should develop and implement a process for expedited, early release of probationary trainees at basic and early training schools, including the CFLRS and military colleges, who display a clear inability to meet the ethical and cultural expectations of the CAF.

Recommendation #26: The CAF should increase the number of opportunities for CAF members, particularly at the senior leadership and GOFO levels, to be seconded to the private sector, and to other government departments.

Recommendation #27: The CAF should fully implement the recommendations as described in the Deschamps Report on training related to sexual offences and harassment.

Recommendation #28: The Cadet Wing responsibility and authority command structure should be eliminated.

Recommendation #29: A combination of Defence Team members and external experts, led by an external education specialist, should conduct a detailed review of the benefits, disadvantages and costs, both for the CAF and more broadly, of continuing to educate ROTP cadets at the military colleges. The review should focus on the quality of education, socialization and military training in that environment. It should also consider and assess the different models for delivering university-level and military leadership training to naval/officer cadets, and determine whether the RMC Kingston and the RMC Saint-Jean should continue as undergraduate degree-granting institutions, or whether officer candidates should be required to attend civilian university undergraduate programs through the ROTP.

In the interim, the CPCC should engage with the RMC Kingston and the RMC St-Jean authorities to address the long-standing culture concerns unique to the military college environment, including the continuing misogynistic and discriminatory environment and the ongoing incidence of sexual misconduct. Progress should be measured by metrics other than the number of hours of training given to cadets. The Exit Survey of graduating cadets should be adapted to capture cadets' experiences with sexual misconduct or discrimination.

Recommendation #30: A section should be added to the PAR requiring the supervisor to certify that, to their knowledge, the CAF member being appraised is not currently subject to any investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to allegations of sexual misconduct.

If the supervisor is aware of such an investigation or proceeding, they should not reveal its existence if doing so would compromise its integrity.

Otherwise, the supervisor should provide all relevant details of the investigation or proceeding.

Recommendation #31: A past misconduct sheet should be prepared for each candidate considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, by an appropriate unit under the CMP. The past misconduct should include anything the CAF deems to be serious misconduct, but should include at a minimum, convictions for *Criminal Code* sexual offences and findings of sexual harassment. The CAF should also prepare appropriate guidance to selection boards on how to take past misconduct into account as part of their deliberations and decision-making. Finally, the CAF should make appropriate provision in its policy for rehabilitation, including the removal of criminal convictions for which a record suspension has been granted.

Recommendation #32: In fulfilling her responsibility in approving GOFO promotions, the Minister should be assisted by a senior civilian advisor, not currently a member of the Defence Team. In her consultation with the CDS, the Minister should examine what efforts are being made to correct the over-representation of white men in GOFO ranks.

Recommendation #33: The new processes for psychometric evaluation and confirmatory 360-degree review used in the promotion of GOFOs should be carefully reviewed by an external expert on an annual basis, with a view to their progressive refinement. The results of this annual review should be reported to the Minister.

Recommendation #34: The new processes for GOFOs, including psychometric testing and 360-degree multi-rater assessment should, at a minimum, be expanded to candidates being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class.

Recommendation #35: The PaCE system should be modified to include a self-certification requirement on the PAR for those being considered for promotion to the rank of lieutenant-colonel/commander or above, or to the rank of chief warrant officer/chief petty officer 1st class, similar to that already in place for GOFO nominations. The candidate would need to certify that they are not subject to any current or prior investigation or proceeding, whether criminal, disciplinary, administrative or otherwise, related to sexual misconduct; and, if they are, provide all relevant details.

Recommendation #36: The CAF should establish a system of progressive targets for the promotion of women in order to increase the number of women in each rank, with a view to increasing the proportion of their representation in the GOFO ranks above their level of representation in the overall CAF workforce.

Recommendation #37: The CAF should review universality of service through a GBA+ lens and update it to ensure that women and sexual misconduct victims are treated fairly, taking into account their particular situation and risk factors.

Recommendation #38: All succession boards should adopt the approach and methodology of the RCN in its “incident review list” to ensure that concerns are properly captured and brought before boards on a consistent and continuing basis.

Recommendation #39: All succession boards for majors and above and master warrant officer / chief petty officer 2nd class appointment boards should include an independent civilian member from outside the Defence Team.

Recommendation #40: The CAF should prepare a new policy on succession planning based on GBA+ that ensures women are not subject to directly and indirectly discriminatory practices in succession planning, and that provides appropriate guidance to career managers, succession boards and others involved in succession planning.

Recommendation #41: The Minister should be briefed by the ADM(RS) directly on all investigations related to sexual harassment, sexual misconduct and leadership culture in the Defence Team.

Recommendation #42: The ADM(RS) should report annually to the Minister on statistics and activities related to investigations under the DAOD 7026-1, in line with what is required under the PSDPA.

Recommendation #43: The Executive Director, SMRC should be able to independently direct the ADM(RS) to conduct an administrative investigation into matters relevant to the SMRC’s mandate.

Recommendation #44: In the case of GIC appointees, such as the CDS and the JAG (who must be members of the CAF at the time of their appointment), consideration should be given to removing any legal impediments – such as privacy concerns – that preclude access by the PCO to personnel files in the CAF, including conduct sheets.

Recommendation #45: The CPCC should host a public online database for all internal Defence Team research and policies relating to sexual harassment and misconduct, gender, sexual orientation, race, diversity and inclusion, and culture change. If a document cannot be made public for security reasons or otherwise, it should still be listed in the database to facilitate access by persons with the requisite clearance or approval.

Recommendation #46: With input from the academic community, the QR&O listed at article 5.2 of the DAOD 5062-1 should be reviewed and revised as necessary to facilitate research. In addition, the CAF should consider waiving the SSRRB ethics review of an external proposal that has already been approved by the Research Ethics Board of an academic institution.

Recommendation #47: As a first step, the Minister should inform Parliament by the end of the year of the recommendations in this Report that she does not intend to implement.

Recommendation #48: The Minister should immediately appoint an external monitor, mandated to oversee the implementation of the recommendations in this Report and other external recommendations that she accepts.

The external monitor should be assisted by a small team of their choosing that is external to the Defence Team. They should have access to all documents, information, individuals and entities they deem relevant, including ECRIC.

The external monitor should produce a monthly “monitoring assessment and advice” report directly to the Minister and publish bi-annual public reports.

Schedules

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Schedule A – Terms of Reference

Purpose

Allegations of incidents of inappropriate behaviour by senior Canadian Armed Forces (CAF) members are now the subject of investigations by the Canadian Forces National Investigation Service. The allegations raise concerns regarding Department of National Defence (DND) and CAF policies, procedures, programs, practices, and culture, and may lead to a sense of betrayal by members of the Defence Team.ⁱ The allegations also raise questions of complicity of inaction throughout the chain of command that must be explored. Every member of the Defence Team should feel safe and respected in their workplace environment. Eliminating harassment and sexual misconduct and creating a safe work environment for every Defence Team member is a priority.

An independent external comprehensive review of current policies, procedures, programs, practices and culture within the CAF and the DND will be initiated to shed light on the causes for the continued presence of harassment and sexual misconduct despite efforts to eradicate it, identify barriers to reporting inappropriate behaviour and to assess the adequacy of the response when reports are made, and to make recommendations on preventing and eradicating harassment and sexual misconduct. To that end, a review of the recruitment, training, performance evaluation, posting and promotion systems in the CAF, as well as the military justice system's policies, procedures and practice to respond to such allegations will also be conducted. The review will also assess progress made in addressing the recommendations contained in the *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces* by Marie Deschamps, C.C. Ad.E (Deschamps Report). The Sexual Misconduct Response Centre's (SMRC) mandate, independence, and reporting structure, will also be reviewed.

The neutral and independent third-party review (the Independent External Comprehensive Reviewer, or Contractor) will consider all relevant independent reviews concerning the DND or the CAF, such as the Deschamps Report and the report of the Independent Review conducted pursuant to section 273.601 of the *National Defence Act*, as well as reports by the Office of the Auditor General and internal audits along with their findings and recommendations.

The Contractor will deliver its Draft Review Report to the Minister of National Defence (MDN) and, subsequently, to the Deputy Minister of National Defence and the Chief of the Defence Staff. The Final Review Report will be made public by the Minister within 10 calendar days of receipt from the Contractor and will be forwarded to the Prime Minister.

ⁱ The term "Defence Team" is to be understood as including DND employees, CAF members, Staff of the Non-Public Funds, and Canadian Forces (SNPF) employees.

Context and ongoing reviews

The *DND and CF Code of Values and Ethics* requires all DND employees and CAF members to respect human dignity and the value of every person, by treating every person with respect and fairness, helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination, and working together in a spirit of openness, honesty and transparency that encourages engagement, collaboration and respectful communication.

DND and CAF policies make clear that harassment and sexual misconduct are not tolerated. This behaviour goes against the CAF military values and undermines operational effectiveness, such that sexual misconduct must never be minimized, ignored or excused, and those who submit complaints should be supported without fear of reprisal.

On 5 November 2020, the Minister of National Defence initiated an Independent Review pursuant to section 273.601 of the *National Defence Act*, to review the specific provisions enumerated in subsection 273.601(1) of the *National Defence Act*, and appointed the Honourable Morris J. Fish as the Independent Review Authority. The Report of the Independent Review (Fish Review) will be tabled in Parliament in June 2021.

On 17 December 2020, the Minister of National Defence announced the creation of an Advisory Panel on Systemic Racism, Discrimination with a focus on anti-Indigenous and anti-Black racism, LGBTQ2 Prejudice, Gender Bias and White Supremacy.

Objective and scope

The Contractor will conduct a review of the current policies, procedures, programs, practices and culture within the CAF and the DND, identify the causes for continued presence of harassmentⁱⁱ and sexual misconductⁱⁱⁱ despite efforts to eradicate it, identify barriers to its reporting, and assess the adequacy of the policies, procedures and practice to respond when reports are made. The Contractor will also make recommendations to eradicate sexual harassment and sexual misconduct, drive change, improve prevention measures, and reduce or remove barriers to its reporting. Specific consideration is to be given to the role that reprisal, or the fear of reprisal, or the existence of any culture of silence or complicity may play as a barrier to reporting, as well as any indication – based on the experiences of DND employees and CAF members – of inconsistencies or challenges in the application of policies.

ⁱⁱ The term “harassment” is to be understood – in relation to a complaint by a CAF member about a CAF member respondent – as it is defined in Defence Administrative Orders and Directives (DAOD) 5012-0, *Harassment Prevention and Resolution* and – in relation to a complaint by a DND employee – consistent with the definition of “harassment and violence” as defined in the *Canada Labour Code*.

ⁱⁱⁱ The term “sexual misconduct” is to be understood in relation to CAF members as it is defined in DAOD 9005-1, *Sexual Misconduct Response*.

The review will also assess progress made in addressing the recommendations contained in the Deschamps Report. It will also review the recruitment, training, performance evaluation and promotion system in the CAF, with a focus on how leaders are selected and trained.

The review will include assessments of the Sexual Misconduct Resource Centre's (SMRC) mandate and activities, including its independence and reporting structure and recommendations for improvement to these elements.

The Contractor will coordinate with former Justice Fish to avoid overlap with the Fish Review, while allowing for a complete and independent examination by the Contractor. For clarity, the Contractor may consider and include assessments and recommendations about any barriers within the military justice system to reporting harassment or sexual misconduct or to dealing with such behaviour.

The Contractor will also include assessments and recommendations related to establishing external oversight and/or review mechanisms related to misconduct.

The recommendations must take into account the separate but related legal and policy frameworks applicable to the Defence Team.

- For CAF members – Defence Administrative Orders and Directives 9005-1, Sexual Misconduct, and 5012-0, Harassment Prevention and Resolution; and,
- For DND employees and their supervisors – the Work Place Harassment and Violence Prevention Regulations enacted pursuant to Part II of the Canada Labour Code.

The review will include assessments and recommendations for the Minister. The assessments and recommendations will be used to address general and specific Defence Team workplace concerns in relation to harassment and sexual misconduct.

The Contractor will also coordinate with the Advisory Panel on Systemic Racism, Discrimination with a focus on anti-Indigenous and anti-Black racism, LGBTQ2 Prejudice, Gender Bias and White Supremacy to minimize any unnecessary or unintended duplication of effort, while allowing for a complete and independent examination by the Contractor.

Methodology and approach

The review will be led by the Contractor, who will deliver the Draft Review Report and Final Review Report to the Minister. The Final Review Report will be made public by the Minister within 10 calendar days of receipt from the Contractor and will be forwarded to the Prime Minister.

The Contractor must provide the Minister with any interim assessments and recommendations, in the form of letters, which will be made public, addressing issues for immediate action that may become apparent during the conduct of the review.

The review must include the views and Defence workplace experiences of current and former DND employees, CAF members, Staff of the Non-Public Funds, Canadian Forces (SNPF) employees, and contractors. It must also include the perspectives of those employees, members and contractors who identify as part of historically disadvantaged groups, with specific focus on women, and the Lesbian, Gay, Bisexual, Transgender, Queer, Two-Spirit (LGBTQ2) community, to assist the DND and the CAF in furthering understanding of the perspective of these groups.

Interested current and former DND employees, CAF members, SNPF employees, and contractors will be invited to meet with or provide input through other means to the Contractor in confidence, to provide their views and experiences in relation to: the policies, procedures, programs, practices and culture of the DND and the CAF, to identify any barriers to reporting harassment or sexual misconduct, to help in assessing the adequacy of policies, procedure and practice in guiding an appropriate response when reports are made, and to inform the assessments and recommendations related to the review of the SMRC. Targeted invitations may also be used.

The Contractor will use detailed questions that allow the interviewees to be heard and provide a framework for gathering and analyzing the information. The Contractor is to gather and synthesize comments and input of interviewees in order to assess DND and CAF culture, identify perceived or actual barriers to reporting inappropriate behaviour, and assess the adequacy of the response when reports are made.

The Contractor may meet – once familiarized with any law or policies regarding harassment and sexual misconduct within the DND and the CAF – with any person, internal or external, who is or was responsible for the development and application of policies and direction regarding harassment or sexual misconduct, or who has or had a role in their development or application. The External Contractor may also review the policies of likeminded allies to collect information and best practices that may inform their recommendations.

The Contractor may also meet with other organizations within the Minister's portfolio, external to the DND and the CAF, which are responsible for dealing with complaints or grievances from Defence Team members, and with external experts in governance, culture, gender, diversity, harassment and sexual misconduct, or other areas, as appropriate.

Responsibilities of the Contractor

To the extent possible, the Contractor must conduct the review, including the gathering of statements, in a manner that is trauma-informed.

The Contractor must conduct the review pursuant to these terms of reference and in accordance with the *Privacy Act*, *Official Languages Act* and other applicable legislation and regulations.

The Contractor must perform its duties without expressing any conclusions or recommendations regarding liability or wrongdoing of any person or organization and must not include any reference to, or provide any assessments or recommendations related to, any specific cases of harassment or sexual misconduct.

The Contractor must perform its duties in such a way so as to ensure that the conduct of the review does not jeopardize any possible *Criminal Code*, *Code of Service Discipline* or similar investigation.

If, in the course of interviews, the Contractor is presented with information relating to specific cases of potential misconduct, the Contractor is to suspend that interview, and prior to reconvening, is to inform the interviewee:

1. That there will be no findings made in relation to any specific case;
2. That such information may be considered when formulating recommendations;
3. That the information will be recorded but anonymized; and,
4. Provide information (furnished by Liaison Officer) to the interviewee about options for making a report to the appropriate authority and any support mechanisms available to those wishing to make reports.

The Contractor must ensure that the review is conducted in a manner that does not impede ongoing efforts to isolate and contain COVID-19. The Contractor's work plan may need to be amended to respond, among other things, to COVID-19 related constraints.

The review must respect all public health measures in effect at the relevant time. As such the Contractor must make use of electronic means where appropriate, including receiving and providing documents in electronic form, and conducting, where possible and appropriate, briefings and interviews virtually.

Reporting requirements

Subject to these Terms of Reference, the Contractor must manage the review and produce the Draft Review Report and Final Review Report in full independence, including from the DND and the CAF.

The Draft and Final Review Report must be provided directly to the Minister, and subsequently to the Deputy Minister and Chief of the Defence Staff, and must include:

- A. An assessment of the policies, procedures, programs, practices and culture within the CAF and the DND, of the causes for the continued presence of harassment and sexual misconduct despite efforts to eradicate it, identification of any barriers to reporting inappropriate behaviour, and the impact of the recruitment, training, performance evaluation, posting and promotion systems in the CAF;

- B. An assessment of the causes and effects of barriers to reporting inappropriate behaviour in relation to harassment or sexual misconduct and the adequacy of the policies, procedures and practice to respond when reports are made;
- C. Recommendations to reduce or remove such barriers in relation to harassment or sexual misconduct;
- D. Recommendations on how to prevent and/or eradicate harassment and sexual misconduct within the CAF or the DND;
- E. Recommendations on any further changes to the performance evaluation system and the promotion system used in the CAF with a focus on how senior leaders are selected, while CAF/DND are proceeding with improvements;
- F. An assessment of DND and CAF progress made in addressing the recommendations contained in the Deschamps Report;
- G. An assessment of the SMRC's mandate and activities, including its independence and reporting structure and recommendations for improvement to these elements;
- H. An assessment and recommendations related to establishing external oversight and/or review mechanisms related to harassment and sexual misconduct;
- I. Any other assessments and recommendations that the Contractor wishes to include to address areas of review mandated to the Contractor within these Terms of Reference that were not addressed in paragraphs A through H; and
- J. A description of the underlying methodology used to make the assessments and/or recommendations above.

Deliverables and associated schedule

The Contractor must produce the following deliverables:

- Work plan within 30 calendar days of the effective date of appointing the Contractor;
- Monthly progress reports to be provided to the Minister;
- Any interim assessments and recommendations, in the form of a letter, addressing issues for immediate action that may become apparent during the conduct of the review;
- Draft Review Report provided to the Minister
- Final Review Report provided to the Minister; and
- Senior leadership briefing following delivery of the Draft and Final Review Reports.

The Contractor must provide a Draft Review Report and Final Review Report in accordance with these terms.

The Contractor must provide a verbal detailed briefing to the Minister, and subsequently to the Deputy Minister of National Defence and the Chief of the Defence Staff, on the results of the Review to coincide with the provision of the Draft and Final Review Reports.

The Minister, Deputy Minister and Chief of Defence Staff must provide their response, if any, to the Contractor within 30 calendar days of having received the Draft Review Report.

The Contractor must provide the Final Review Report to the Minister of National Defence, and subsequently to the Deputy Minister of National Defence and the Chief of the Defence Staff, not later than 30 calendar days after the receipt of comments on the Draft Review Report forwarded on behalf of the Minister of National Defence.

The Contractor must produce and submit a final report of their review to the MND, suitable for release to the public, that does not disclose information properly subject to national defence, national security or privacy, confidentiality, or solicitor –client privilege.

The Final Review Report will be made public by the Minister within 10 calendar days of receipt from the Contractor and will be forwarded to the Prime Minister. The names of those who participated in the review will remain anonymous and there will be no findings made in relation to any specific case.

All letters containing interim assessments and recommendations and the Final Review Report must be delivered simultaneously in both official languages, and with the contents and format of the letters or report being suitable for publication.

Language requirements

The Contractor must conduct all meetings and interviews in English or French as required by the person being interviewed.

Document translation, including of any deliverables, must be done by the Contractor.

Timing

The review must start upon the effective date of the contract appointing the Contractor, conducted so as to provide the Final Review Report within 12 months of the contract.

The timelines may be adjusted by the Minister, if requested by the Contractor as a result of unforeseeable delays, including in relation to COVID-19-related constraints, and may include an extension of up to 3 additional months, for a total of 15 months.

Confidentiality and disclosure

The information gleaned throughout the interview and report-writing process, as well as contents of the Draft Review Report and Final Review Report are to be kept confidential by the Contractor until the Final Review Report is made public, at which time the content of the Final Review Report only shall be disclosed (the other items above remaining confidential). In addition, the Contractor must

1. conduct the review with the utmost discretion and confidentiality;
2. inform participants of their responsibilities to respect the confidentiality of the review process;
3. inform participants that the contents of the Final Review Report will be released publicly, and that information will be handled in accordance with the requirements of the *Access to Information Act* and the *Privacy Act*;
4. ensure the anonymity of those who participated in the Review; and,
5. ensure that there is no personal information included in any letter or Draft or Final Review Report.

DND and CAF support to the Contractor

The Department of National Defence will identify a Liaison Officer who will facilitate timely access to DND and CAF documents, organizations, and to DND employees, SNPF employees, and CAF members. The Liaison Officer will also coordinate any briefings to be provided by the Defence Team to the Contractor, and facilitate access to the laws and policies referred to herein, or other relevant source material.

The Contractor will be provided with access to relevant records under the control of the DND, the SNPF, or the CAF, through the Liaison Officer. All access to relevant records will be provided subject to applicable exemptions or those ordinarily applied under the *Access to Information Act* and *Privacy Act*, with the Liaison Officer consulting with the Director of Access to Information and Privacy if required. Where the Contractor requests records that contain personal information, they will be provided in anonymized form if possible. No access will be provided to records that are litigation privileged or solicitor-client privileged or, in civil law, subject to immunity from disclosure or professional secrecy of advocates and notaries, or that constitutes a Cabinet Confidence.

The DND and the CAF will provide the Contractor with information about supports that are available to Defence Team members, so that those members who participate in the review may be supported as needed.

Travel may be required.

Schedule B – List of Formal Requests for Information

Canadian Defence Academy
Canadian Forces College
The Canadian Forces Military Police Group
The Canadian Human Rights Commission
The Canadian Military Trauma Community of Practice
The Office of the Chief Military Judge
The Conference of Defence Associations & CDA Institute
Corporate Secretary
Department of Justice Canada
Department of National Defence and Canadian Armed Forces (5 requests)
Federal Provincial Territorial Heads of Prosecution Committee
Global Affairs Canada (The Honourable Jacqueline O'Neill, Ambassador for Women, Peace and Security)
The Office of the Judge Advocate General
The Military Grievances External Review Committee
The Military Police Complaints Commission
The Office of the National Defence and Canadian Armed Forces Ombudsman
Commissioner of the Ontario Provincial Police
Office of the Prime Minister of Canada
Integrated Conflict and Complaint Management Program
Interim Clerk of the Privy Council and Secretary to the Cabinet
Public Service Alliance of Canada and Union of National Defence Employees
Commissioner of the Royal Canadian Mounted Police
Royal Military College of Canada
Royal Military College of Canada Saint-Jean
Sexual Misconduct Resource Centre
Statistics Canada and The Canadian Centre for Justice and Community Safety Statistics
Sûreté du Québec
Veterans Affairs Canada

Schedule C – List of Meetings with Canadian Armed Forces, Department of National Defence and Government Representatives**

Department of National Defence

The Honourable Anita Anand, Minister of National Defence

François Bariteau, Director Total Health Management, ADM(HR-Civ)

Jennifer Bordeleau, Director General Workplace Management, ADM(HR-Civ)

Julie Charron*, Assistant Deputy Minister (Review Services)

Isabelle Desmartis, Assistant Deputy Minister (Human Resources – Civilian)

Marie Doyle, Associate Assistant Deputy Minister, Chief Professional Conduct and Culture

Angela Febbraro, PhD, Defence Scientist, Intelligence, Influence and Collaboration Section, Toronto Research Centre, DGRDSE, DRDC

Stacey Ferguson, Deputy Director General Digital Enterprise Modernization, ADM(DIA)

Alain Gauthier*, Director General Integrated Conflict Complaint Management

Micca Heart, Assistant Director Corporate Labour Relations, ADM(HR-Civ)

Peter Hooey, Director General, Human Resources, ADM(HR-Civ)

Christine Kennedy*, Former Chief of Staff to the Deputy Minister

Monica Kolstein, Director General Workforce Development, ADM(HR-Civ)

Dominique Laferrière, DRDC

Bill Matthews, Deputy Minister of National Defence

The Honourable Harjit Singh Sajjan, Former Minister of National Defence

Jody Thomas*, Former Deputy Minister of National Defence

Commodore Steven Thornton, Director General Digital Enterprise Modernization, ADM(DIA)

John Walsh, Director General Data Analytics Strategy and Innovation, Chief Data Officer, ADM(DIA)

Marta Wodejko, Director Civilian Executive Services, ADM(HR-Civ)

*In-person meeting.

**Alphabetical by last name by organization; non-exhaustive; non-confidential interviews.

Canadian Armed Forces

Colonel J.T. Adair*, Director of Programmes, CFC

Major-General Craig Aitchison, Commander, CDA

Chief Warrant Officer Lucie Alain, Chief Warrant Officer, Royal Military College of Canada

Lieutenant-General Frances Allen*, Vice-Chief of Defence Staff

Chief Warrant Officer Jeffrey Aman, Division Sergeant-Major, 1st Canadian Division
Headquarters, Canadian Joint Operations Command

Vice-Admiral Bob Auchterlonie*, Commander Canadian Joint Operations Command

Vice-Admiral Craig Baines, Commander Royal Canadian Navy

Colonel Gaétan Bédard*, Commandant, Royal Military College Saint-Jean

Captain (N) Pascal Belhumeur, Commander Canadian Forces Recruiting Group

Lieutenant-Colonel Nathalie Birgentzlen*, Special Advisor, Canadian Forces Provost
Marshal / Commander Canadian Forces Military Police Group

Lieutenant-Commander April Blackwood*, HMCS Montréal

Colonel Cathy Blue, Special Advisor to the Chief Professional Conduct and Culture

Major-General Steve Boivin*, Commander Canadian Special Operations Forces Command

Major-General Lise Bourgon, Acting Commander Military Personnel Command

Brigadier-General Krista Brodie, Commander Military Personnel Generation Group

Lieutenant-Colonel Jean-Michel Cambron*, Director, Canadian Forces Provost Marshal –
Legal Services

Lieutenant-General Jennie Carignan*, Chief Professional Conduct and Culture

Brigadier-General Gervais Carpentier, Commander, OUTCAN Programme

Neil Carson, Deputy Director General/Chief of Operations, DGMPRA

Lieutenant-Commander (Ret'd), Karen Davis, PhD, Strategic Advisor to the Chief
Professional Conduct and Culture

Commander Chris M. Devita*, HMCS Montréal

Chief Petty Officer 1st Class Mike Dionne, Formation Chief Warrant Officer, CDA

Dr. Sanela Dursun, Chief Scientist, DGMPRA

Colonel D.S. Elder*, Deputy Commander, CFC

General Wayne D. Eyre*, Chief of the Defence Staff

Dr. B. Falk*, Director of Academics, CFC

Major (Ret'd) Sue Forgues

*In-person meeting.

Brigadier-General Kirk Gallinger*, Director General Military Careers

Lieutenant-Colonel Nicolas Gauthier*, Deputy Commander, Combat Training Centre

Irina Goldenberg, PhD, Director Research Operational and Organizational Dynamics, DGMPPRA

Colonel T.J. Goldie*, Base Commander, CFB Greenwood

Chief Petty Officer 1st Class Gilles Grégoire, Canadian Armed Forces Chief Warrant Officer

Chief Warrant Officer Mario Grondin*, Chief Warrant Officer, Combat Training Centre

Brigadier-General Carla Harding, Assistant Chief of Staff J4, Supreme Headquarters Allied Powers Europe

Chief Warrant Officer Michael Hawthorn*, Chief Warrant Officer, CFB Gagetown

Colonel Brian Healey, Chief of Staff, CDA HQ

Brigadier-General Corinna Heilman, Director General Support, Strategic J4, Strategic Joint Staff

Chief Petty Officer 1st Class Todd Hodder*, HMCS Montréal

Colonel Christopher Horner*, Special Advisor to the Commander, Canadian Joint Operations Command

Eugenica Kalantzis, Director General, DGMPPRA

Commodore (Ret'd) Margaret F. Kavanagh

Commodore Josée Kurtz, Commandant, Royal Military College of Canada

Lieutenant-Colonel Julie Labrecque, Directorate Professional Military Conduct

Chief Petty Officer 1st Class Laura Lafleur*, Acting Base Chief Petty Officer, CFB Halifax

Chief Warrant Officer Frédérick Lavoie*, Chief Warrant Officer, Canadian Forces Leadership and Recruit School

Major Stuart Lawson, Military Police Analytics Program Manager

Lieutenant-Colonel Eric Leblanc*, Commanding Officer, Canadian Forces National Investigation Service

Colonel Michel Lefebvre, Chief of Staff, Military Personnel Generation Group

Commander M.W. Low*, Chief of Staff and Headquarters Commanding Officer, CFC

Major-General Roy MacKenzie*, Chief of Reserves and Employer Support

Colonel Patrick MacNamara*, Base Commander, CFB Shearwater

Lieutenant-Colonel (Ret'd) Deanna Manson

Major-General Mark Misener, Commander, 1st Canadian Division Headquarters

Lieutenant-General Alexander D. Meinzingher*, Commander Royal Canadian Air Force

*In-person meeting.

Colonel Shane R. Murphy*, Commander, Combat Training Centre

Commodore Jacques Olivier*, Director General Professional Military Conduct

Colonel Dwayne R. Parsons*, Base Commander, CFB Gagetown

Rear-Admiral Rebecca Patterson, Chief of Staff Professional Conduct and Culture, Defence Champion for Women

Chief Warrant Officer Rick Plante*, Chief Warrant Officer, Royal Military College Saint-Jean

Chief Warrant Officer Bruno Poirier*, Base Chief Petty Officer, CFB Shearwater

Chief Warrant Officer Eric Poissant*, Canadian Joint Operations Command Chief Warrant Officer

Major-General Paul Prévost*, Director of Staff, Strategic Joint Staff

Chief Warrant Officer Jonathan Proulx*, Base Chief Petty Officer, CFB Greenwood

Lieutenant-Colonel Melissa Ramessar*, Commandant, Canadian Forces Leadership and Recruit School

Major (Ret'd) Anne Reiffenstein, PhD

Rear-Admiral B.W.N. Santarpia, Commander, Maritime Forces Atlantic / Joint Task Force Atlantic

Brigadier-General Jamie Speiser-Blanchet, Commander Cadets and Junior Canadian Rangers

Major-General Michel-Henri St-Louis*, Acting Commander Canadian Army

Rear-Admiral Angus Tophshee, Commander Maritime Forces Pacific / Joint Task Force (Pacific) Royal Canadian Navy

Major-General Nancy Tremblay, Chief Materiel Program

Colonel Sean Trenholm, Assistant Chief of Staff Support, Canadian Forces Intelligence Command Headquarters

Brigadier-General Simon Trudeau*, Canadian Forces Provost Marshal / Commander Canadian Forces Military Police Group

Lieutenant-General Steven Whelan*, Commander Military Personnel Command/ Chief Military Personnel

Captain (N) A.S. Williams*, Base Commander, CFB Halifax

Major-General Michael Wright*, Commander, Canadian Forces Intelligence Command and Chief of Defence Intelligence

*In-person meeting.

Office of the Judge Advocate General

Major Ian Argue, Legal Officer – Directorate of Law/Military Justice – Military Justice Policy

Colonel Jean-Bruno Cloutier, Director of Defence Counsel Services

Lieutenant-Commander Ashley Dunn, Legal Officer – Directorate of Law/Military Justice – Military Justice Policy

Colonel Rob Holman, Acting Judge Advocate General

Lieutenant-Colonel Dylan Kerr, Director Military Prosecutions

Commander Mark Létourneau, Assistant Director, Defence Counsel Services

Lieutenant-Colonel Geneviève Lortie, Director of Law – Military Justice Review Support

Lieutenant-Colonel Dominic Martin, Deputy Director of Military Prosecutions – Operations

Colonel Valerie Saunders, Director – Directorate of Military Personnel Law

Colonel Stephen Strickey*, Deputy Judge Advocate General – Military Justice Modernization

Lieutenant-Colonel Marie-Eve Tremblay, Director, Directorate of Law/Military Justice – Military Justice Policy

Major Laura d'Urbano, Director – Directorate of Law/Military Justice – Military Justice Operations

Commander Marc-André Vary, Director – Directorate of Law/Military Justice – Military Justice Operations

Commander Brent Walden, Director, Directorate of Law Compensation, Benefits, Pensions & Estates

Colonel Jill Wry, Deputy JAG/ Military Justice

Office of the Chief Military Judge

Lieutenant-Colonel Louis-Vincent d'Auteuil, Deputy and Acting Chief Military Judge

Simone Morrissey, Court Martial Administrator

André Dufour, Legal Counsel

*In-person meeting.

Military Police Complaints Commission of Canada

Elsy Chakkalakal, General Counsel and Senior Director of Operations

Julianne C. Dunbar, Senior General Counsel and Director General

David Goetz, Senior Counsel

Bonita Thornton, Interim Chairperson

Minister of National Defence Advisory Panel on Systemic Racism and Discrimination and Anti-Racism Secretariat

Major-General (Ret'd) E.S. (Ed) Fitch, Minister of National Defence Advisory Panel on Systemic Racism and Discrimination

Chief Warrant Officer Sherri Forward, Senior Military Advisor, Anti-Racism Secretariat

Lieutenant-Commander (Ret'd) Jeff Gauger, Analyst, Anti-Racism Secretariat

Captain (Ret'd) Door Gibson, Minister of National Defence Advisory Panel on Systemic Racism and Discrimination

Ixchel Medina Hernandez, Administrative Assistant, Anti-Racism Secretariat

Seyi Okuribido-Malcolm, Director, Anti-Racism Secretariat

Denise A. Moore, Senior Civilian Advisor, Anti-Racism Secretariat

Major (Ret'd) Sandra Perron, Minister of National Defence Advisory Panel on Systemic Racism and Discrimination

Marie-Josée Rinfret, Senior Communications Advisor, Anti-Racism Secretariat

Seema Chowdhury, Civilian Advisor, Anti-Racism Implementation Secretariat

Ombudsman for the Department of National Defence and the Canadian Armed Forces

Dania Hadi, Senior Advisor to the Ombudsman

Robyn Hynes, Director General, Operations

Carole Lajoie, Director Education and Research

Gregory Lick, Ombudsman for the Department of National Defence and the Canadian Armed Forces

Erin McDonald, Director, Intake and Complaint Analysis

*In-person meeting.

Department of Justice

Robert Abramowitz, Senior Counsel, Office of the Department of National Defence and Canadian Forces Legal Advisor

Nathalie Drouin, Deputy Minister of Justice

Christine Mohr, Senior General Counsel

Marta Mulkins, Executive Director, Departmental Litigation Oversight

Michael Sousa, Senior General Counsel and Legal Advisor to the Department of National Defence and Canadian Armed Forces

Office of the Prime Minister and Privy Council Office

Janice Charette, Interim Clerk of the Privy Council and Secretary to the Cabinet

Kathleen Davis, Senior Foreign Policy Advisor

Jennifer Goosen, Director of Operations

Donnalyn McClymont, Assistant Secretary to the Cabinet

David Morrison, Foreign and Defence Policy Advisor

Janine Sherman, Deputy Secretary to the Cabinet, Senior Personnel and Public Service Renewal

Sexual Misconduct Response Centre

Charlotte Clark, Policy Analyst

Sara Grichen*, Chief of Staff

Britton MacDonald, Team Lead for Strategic Policy and Planning

Dr. Denise Preston*, Executive Director

Shoba Ranganathan, Acting Deputy Executive Director

Rachel Sciampacone, Project Coordinator

Amanda Scott, Team Lead for Partnerships and Engagements

*In-person meeting.

External Advisory Council to Sexual Misconduct Response Centre

Humberto Carolo, SMRC External Advisory Council Member

Kathy Darte, SMRC External Advisory Council Member

Lawrence Ellerby, SMRC External Advisory Council Member

Greg Maddison, SMRC External Advisory Council Member

Dr. Ben Roebuck, SMRC External Advisory Council Member

Colten Skibinsky, SMRC External Advisory Council Member

Christine Wood, SMRC External Advisory Council Member

Canadian Forces Morale and Welfare Services

Sandra Campbell, Military Family Services Operations

Laurie Ogilvie, Vice President, Military Family Services

Veterans Affairs of Canada

Dr. Cyd Courchesne, VAC Chief Medical Officer

Trudie MacKinnon, Acting Director General, Centralized Operations

Dennis Manning, Acting Director General Policy & Research

Kim Peters, Liaison Officer to SMRC

Nathalie Pham, Acting Senior Director Operational and Strategic Affairs

Maryse Savoie, Director General, Field Operations

Canadian Human Rights Commission

Holly Holtman, Senior General Counsel

Marie-Claude Landry, Chief Commissioner of the Canadian Human Rights Commission

Melanie Mohammed, Chief of Staff

Valerie Philips, General Counsel & Director of Legal Services

Ambassador for Women, Peace and Security

The Honourable Jacqueline O'Neill, Ambassador for Women, Peace and Security

*In-person meeting.

The Honourable Louise Arbour C.C., G.O.Q.
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October 20, 2021

BY EMAIL

The Hon. Harjit S. Sajjan, PC, OMM, MSM, CD, MP
Minister of National Defence
Ottawa, ON K1A 0K2

Dear Minister Sajjan:

RE: Independent External Comprehensive Review of the Department of National Defence (DND) and the Canadian Armed Forces (CAF)

In accordance with my Terms of Reference, I have the ability to provide interim assessments and recommendations, addressing issues for immediate action that may become apparent during the conduct of the Review. Below is such an interim assessment and related recommendations.

Introduction

Sexual misconduct is not the exclusive preserve of the CAF. Indeed its prevalence in all parts of Canadian society, and abroad, has become painfully apparent in recent years. So has the public mobilisation to denounce it. From the media's interest in and exposure of the issue, to the damning Report of the Honourable Marie Deschamps and the Final Settlement of the Heyder-Beattie class actions, the issue of sexual harassment and misconduct in the CAF has opened the institution to unprecedented scrutiny and an equally unprecedented opportunity for change. Closer attention to the issue, including the recent Report by the Honourable Morris J. Fish on the military justice system, invites a broad, comprehensive approach to the causes of this important failure, and to the measures that will be necessary for the CAF to live up to its stated values and the expectations of Canadians. My Review will serve, among other things, to identify the causes of the continued presence of sexual harassment and misconduct in the CAF, and the means to prevent and/or eradicate it.

In the months leading up to my appointment as Reviewer, several allegations of historical sexual misconduct were made against high-ranking CAF members, namely General Officers and Flag Officers (GOFOs), including the Chief of the Defence Staff at the time. Since my appointment, it has been made public that survivors have continued to come forward and have raised allegations against several GOFOs, who were in important command positions and were subsequently put on leave.

These recurrent allegations of historical sexual misconduct against senior CAF leaders and the related Canadian Forces National Investigation Service (CFNIS) investigations, have led me to conclude that immediate remedial actions are necessary to start restoring trust in the CAF.

In his Report, tabled on June 1, 2021, the Honourable Morris J. Fish recommends, at recommendation No. 68, that sexual assaults should not be investigated or prosecuted under the *National Defence Act* and should instead be referred to civilian authorities, on a temporary basis.

I have heard criticisms in response to this recommendation, including that civilian authorities do not have the appropriate level of understanding and knowledge of the military, that it may lead to a patchwork of investigative and prosecutorial approaches between provincial authorities, that longer delays and less severe sentences may ensue, and that it creates a missed opportunity for discipline and dissuasion among the CAF's members.

On the other hand, I have heard, in the course of my Review, significant skepticism on the part of stakeholders and most importantly survivors, with respect to the independence and competence of the CFNIS (and Military Police). This perception is pervasive in the CAF and the DND and, I believe, a large segment of public opinion. It has created serious mistrust in the military justice system and, in particular, in the investigative phase.

While the secrecy that surrounds the early stages of a police investigation may be necessary, in the current climate it serves to increase suspicion about the CAF's ability to police itself. Further, the fact that CFNIS investigations are meant to be kept confidential, even from the CAF's leadership, inevitably invites suspicion and disbelief, and puts the CAF leadership in a difficult if not impossible position. This has been recently illustrated by the disclosure of promotions granted to GOFOs undergoing investigation, inviting speculation about the motivations and competence of CAF leadership. Such speculation would not happen if, as is normally the case, the investigations were demonstrably at arm's length, conducted by outside investigative authorities.

Interim Recommendations

In light of the above, I believe that it is necessary to establish a process that will facilitate the handling of allegations of sexual offences in an independent and transparent way outside of the CAF.

Without prejudice to my Final Report and additional findings and recommendations, I recommend, on an interim basis, the following:

1. The Honourable Morris J. Fish's recommendation No. 68 should be implemented immediately. All sexual assaults and other criminal offences of a sexual nature under the *Criminal Code*, including historical sexual offences, alleged to have been perpetrated by a CAF member, past or present ("sexual offences") should be referred to civilian authorities. Consequently, starting immediately, the Canadian Forces Provost Marshal (CFPM) should transfer to civilian police forces all allegations of sexual offences, including allegations currently under investigation by the CFNIS, unless such investigation is near completion. In any event, in all cases charges should be laid in civilian court.

Correspondingly, civilian authorities should exercise investigative and prosecutorial jurisdiction over all sexual offences by CAF members. Should civilian authorities decline to proceed, the matter should be returned to the CAF to determine whether disciplinary action is desirable under the *National Defence Act*. Administrative Review related to sexual

misconduct in the CAF should continue to proceed, for the time being, in parallel to, in addition to or in the absence of the criminal charges.

2. In parallel to the immediate transfers described above, the Minister of Defence should confer with the relevant federal, provincial and territorial authorities, to facilitate the transfer process and the sharing of expertise, between civilian authorities and the CAF, and consider the resources that could be made available to facilitate this work.
3. Throughout this process, the provision of assistance by the CAF to the civilian authorities in respect of investigations and prosecutions should be solely on an advisory basis.
4. Particular consideration should be given to, among other things:
 - a. when and how civilian authorities – in the course of an investigation – should convey relevant information about the investigation to the CAF leadership; and,
 - b. effective communication with and support to complainants regarding the transfer and progress of investigations.

I also recommend that I be informed of all steps taken to implement this interim report as they occur, and on no less than a monthly basis.

These recommendations should be implemented immediately. They are without prejudice to any recommendation I may make in my Final Report.

I welcome an opportunity to discuss these interim recommendations further.

As per my Terms of Reference, I expect that the present letter, constituting an interim report, will be made public.

Yours truly,

BORDEN LADNER GERVAIS LLP



Louise Arbour

- c. Jody Thomas, Deputy Minister
 General Wayne Eyre, Acting Chief of the Defence Staff
 Lieutenant-General Frances Allen, Vice Chief of the Defence Staff
 Heather Walsh, External Liaison Officer
 Joanne Lostracco, Corporate Secretary, Department of National Defence

Schedule E – Minister’s Response, dated 3 November 2021

Minister
of National Defence



Ministre
de la Défense nationale

Ottawa, Canada K1A 0K2

November 3, 2021

The Honourable Louise Arbour C.C., G.O.Q.
Borden Ladner Gervais S.E.N.C.R.L., S.R.L.
1000, rue De La Gauchetière Ouest
Bureau 900
Montréal, QC H3B 5H4
Canada

Madame Arbour,

I was pleased to receive your interim report and recommendations in the context of your role as the Reviewer in the Independent External Comprehensive Review of the Department of National Defence (DND) and the Canadian Armed Forces (CAF). I share your concerns and agree that it is necessary to establish a process that will facilitate the handling of allegations of sexual offences in an independent and transparent way outside of the CAF and the military justice system.

I am grateful to you for your efforts to build on the excellent work of the Honourable Marie Deschamps and the Honourable Morris J. Fish. I very much believe that a comprehensive approach to addressing sexual harassment and misconduct in the CAF is necessary for the CAF to live up to its stated values and the expectations of Canadians. I am pleased, therefore to accept your interim recommendations and to inform you that the Defence Team will begin work immediately to implement them. This process will include the implementation of the Honourable Morris J. Fish’s recommendation No. 68. In particular, all sexual assaults and other criminal offences of a sexual nature under the *Criminal Code*, including historical sexual offences, alleged to have been perpetrated by a CAF member past or present, will be referred to civilian authorities.

I am pleased to inform you that the Canadian Forces Provost Marshal (CFPM) and the Director of Military Prosecutions (DMP) are working quickly to develop the mechanisms and processes that will be required to implement your interim recommendations. I understand that they intend to engage with your team in order to ensure that their work on implementation remains consistent with your recommendations. In addition, the CFPM and DMP have begun to engage federal, provincial and territorial (FPT) counterparts on implementation of these interim recommendations and my officials are collaborating with the Department of Justice who have confirmed their willingness to facilitate or support these FPT discussions.

As Minister, I will ensure that you are kept informed on a monthly basis of the steps taken to implement your interim recommendations and would be grateful for any advice on the

implementation process moving forward. The unprecedented scrutiny that the institution is undergoing represents an equally unprecedented opportunity for meaningful change to build confidence in the CAF and the military justice system, and I am looking forward to your final recommendations to help drive that change.

Thank you again for your letter and for your continuing hard work on your review. I was pleased to discuss these interim recommendations with you and look forward to our further discussions in connection with your ongoing work to prepare your final report.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Anita Anand', written in a cursive style.

The Honourable Anita Anand, PC, MP
Minister of National Defence

Endnotes

- ¹ The Honourable Michel Bastarache, C.C. Q.C, Independent Assessor, *Broken Dreams Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP – Final Report on the Implementation of the Merlo Davidson Settlement Agreement* (11 November 2020) (**Bastarache Report**) online: <https://www.rcmp-grc.gc.ca/wam/media/4773/original/8032a32ad5dd014db5b135ce3753934d.pdf> The Bastarache Report described in details a toxic work environment for women in the RCMP, referring to a culture that tolerates misogynistic and homophobic attitudes among its leaders and members. Far from being the case of a few “bad apples”, Justice Bastarache described a devastating, long standing set of affairs that stained the reputation of an iconic Canadian institution.
- ² The Honourable Pepita G. Capriolo, *Report on the investigation regarding Brian Boucher’s career in the Catholic Church* (2 September 2020) online: <https://diocesemontreal.org/sites/default/files/ressources/actualites/communiqués/2020/11/independent-report-complaints-against-former-priest-brian-boucher.pdf> This report exposed the institutional culture of willful blindness, secrecy, denial, and obsession with the danger of reputational damage, which had long allowed sexual predators to thrive in the ranks of the Catholic Church.
- ³ The Honourable Marie Deschamps, C.C., Ad. E., External Review Authority, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces* (27 March 2015) (**Deschamps Report**) online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf
- ⁴ The Honourable Morris J. Fish C.C. Q.C., Independent Review Authority, *Report of the Third Independent Review Authority to the Minister of National Defence* (30 April 2021) (**Fish Report**) online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf>
- ⁵ *The Path to Dignity and Respect: The Canadian Armed Forces Sexual Misconduct Response Strategy* (DND, 28 October 2020) (**Path to Dignity**) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2021/05-26-path-dignity-respect-en.pdf> at 6.
- ⁶ *Path to Dignity*, online: <https://publications.gc.ca/site/eng/9.888518/publication.html> at 6.
- ⁷ 2018 Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 5 – *Inappropriate Sexual Behaviour – Canadian Armed Forces* (2018 OAG Report) online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html; *Path to Dignity*, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2021/05-26-path-dignity-respect-en.pdf> at 7.
- ⁸ *Path to Dignity*, online: <https://publications.gc.ca/site/eng/9.888518/publication.html> at 6.
- ⁹ *Path to Dignity*, online: <https://publications.gc.ca/site/eng/9.888518/publication.html> at 7.
- ¹⁰ *Path to Dignity*, online: <https://publications.gc.ca/site/eng/9.888518/publication.html> at 9.
- ¹¹ See e.g. *Path to Dignity*, online: <https://publications.gc.ca/site/eng/9.888518/publication.html> at 14, Figure 2.
- ¹² John Kania, Mark Kramer & Peter Senge, *The Water of Systems Change* (FSG Reimagining Social Change, June 2018).
- ¹³ *Criminal Code*, RSC 1985, c C-46, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.
- ¹⁴ See the section on Military Justice.
- ¹⁵ See the section on Complaints.
- ¹⁶ SC 2019, c 15 (**Bill C-77**), online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html?resultIndex=1>.

- ¹⁷ *Duty with Honour: The Profession of Arms in Canada 2009* (DND, 2009) (*Duty with Honour*) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/duty-with-honour-en.pdf> at 50-51. I understand that the CAF will be publishing a revised ethos called Trusted to Serve, which was referenced by the CDS during his appearance before the House of Commons Standing Committee on National Defence on 9 February 2022.
- ¹⁸ See the section on Input and Oversight.
- ¹⁹ SC 2015, c 13, s 2 (CVBR), online: <https://www.canlii.org/en/ca/laws/astat/sc-2015-c-13/latest/sc-2015-c-13.html>; Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 135.
- ²⁰ *Launch of an Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces – Backgrounder* (29 April 2021) online: <https://www.canada.ca/en/department-national-defence/news/2021/04/launch-of-an-independent-external-comprehensive-review-of-the-department-of-national-defence-and-the-canadian-armed-forces.html>.
- ²¹ The terms of reference for my Review are found at Schedule A.
- ²² See e.g. Peter Zimonjic & Vassy Kapelos, *Getting military to buy into system to eliminate sexual misconduct will be ‘challenging,’ Arbour says* (29 April 2021) online: *CBC News* <https://www.cbc.ca/news/politics/louise-arbour-sexual-misconduct-review-kapelos-1.6008318>; Michel C. Auger, *Examen indépendant des inconduites sexuelles dans l’armée, avec Louise Arbour* (30 April 2021) online: *Radio-Canada Ohdio* <https://ici.radio-canada.ca/ohdio/premiere/emissions/midi-info/segments/entrevue/353551/examen-independant-armee-louise-arbour>.
- ²³ *Independent External Comprehensive Review into harassment and sexual misconduct in the Department of National Defence and the Canadian Armed Forces* (29 June 2021) online: *Borden Ladner Gervais LLP* <https://www.blg.com/en/about-us/news/2021/06/independent-external-comprehensive-review-into-harassment-and-sexual-misconduct>.
- ²⁴ *Independent External Comprehensive Review into harassment and sexual misconduct in the Department of National Defence and the Canadian Armed Forces* (29 June 2021) online: *Canada Newswire* <https://www.newswire.ca/news-releases/independent-external-comprehensive-review-into-harassment-and-sexual-misconduct-in-the-department-of-national-defence-and-the-canadian-armed-forces-853257606.html>.
- ²⁵ BLG, *Anyone with information regarding the Hon. Louise Arbour’s independent external review into sexual harassment and misconduct in the Canadian Armed Forces may contact her at CAFReview@blg.com.* (29 June 2021 at 12:40) online: *Twitter* <https://twitter.com/BLGLaw/status/1409914595838398476?ctx=HHwWmMCwidv2gpEnAAAA>; CAF, *Anyone with information regarding the Hon. Louise Arbour’s independent external review into sexual harassment and misconduct in the DND and CAF may contact her at CAFReview@blg.com.* (29 June 2021 at 13:01) online: *Twitter* <https://twitter.com/canadianforces/status/1409919924412325888?s=21>; Forces armées canadiennes, *Toute personne possédant de l’information concernant l’examen externe complet et indépendant sur le harcèlement et l’inconduite sexuelle au sein du MDN et des FAC de l’hon. Louise Arbour est invitée à lui écrire à ExamenFAC@blg.com.* (29 June 2021 at 13:01) online: *Twitter* <https://twitter.com/forcescanada/status/1409920285034299399?s=21>.
- ²⁶ CAF, *Anyone with information regarding the Hon. Louise Arbour’s independent external review into sexual harassment and misconduct in the DND and CAF may contact her at CAFReview@blg.com* (29 June 2021) posted on Canadian Armed Forces, online: *Facebook* https://www.facebook.com/permalink.php?story_fbid=3238007276426452&id=1522633664630497; Forces armées canadiennes, *Toute personne possédant de l’information concernant l’examen externe complet et indépendant sur le harcèlement et l’inconduite sexuelle au sein du MDN et des FAC de l’hon. Louise Arbour est invitée à lui écrire à ExamenFAC@blg.com.* (29 June 2021) posted on Canadian Armed Forces, online: *Facebook* https://www.facebook.com/permalink.php?story_fbid=3963798503732706&id=686814348097821; DND, *Anyone with information regarding the Hon. Louise Arbour’s independent external review into sexual harassment and misconduct in the DND and CAF may contact her at CAFReview@blg.com.* (29 June 2021) posted on Department of National Defence, online: *Facebook* https://www.facebook.com/permalink.php?story_fbid=873896046568878&id=123985711559919; Ministère de la Défense nationale, *Toute personne possédant de l’information concernant l’examen externe complet et indépendant sur le harcèlement et l’inconduite sexuelle au sein du MDN et des FAC de l’hon. Louise Arbour est invitée à lui écrire à ExamenFAC@blg.com.* (29 June 2021) posted on Ministère de la Défense nationale, online: *Facebook* https://www.facebook.com/permalink.php?story_fbid=2303470959786114&id=1115894031877152.

- ²⁷ *Invitation to participate in the Hon. Louise Arbour's independent external review into sexual harassment and misconduct in the DND and CAF* (formerly online).
- ²⁸ *Independent External Comprehensive Review into harassment and sexual misconduct in the Department of National Defence and the Canadian Armed Forces* (23 July 2021) online: Borden Ladner Gervais LLP https://www.blg.com/en/about-us/news/2021/07/Independent-External-Comprehensive-Review?utm_medium=social&utm_source=twitter&utm_campaign=news&utm_term=organic&utm_content=independent-external-comprehensive-review-into-harassment-and-sexual-misconduct.
- ²⁹ BLG, *The response to the Hon. Louise Arbour's independent external review into sexual harassment & misconduct in the CAF has been very positive. Anyone wishing to arrange a meeting with her Review Team must do so by August 13, 2021.* (23 July 2021 at 17:28) online: Twitter <https://twitter.com/BLGLaw/status/1418684542341337088>; CAF, *The response to the Hon. Louise Arbour's independent external review into sexual harassment & misconduct in the CAF has been very positive. Anyone wishing to arrange a meeting with her Review Team must do so by August 13, 2021.* (27 July 2021) posted on Canadian Armed Forces, online: Facebook https://www.facebook.com/permalink.php?story_fbid=3260128347547678&id=1522633664630497; Forces armées canadiennes, *L'annonce de l'examen externe indépendant sur le harcèlement et l'inconduite sexuelle au sein des FAC de l'hon. Louise Arbour a suscité des réactions très positives. Quiconque souhaite s'entretenir avec son équipe doit le faire d'ici le 13 août 2021.* (27 July 2021) posted on Forces armées canadiennes, online: Facebook https://www.facebook.com/permalink.php?story_fbid=4042403445872211&id=686814348097821; DND, *The response to the Hon. Louise Arbour's independent external review into sexual harassment & misconduct in the CAF has been very positive. Anyone wishing to arrange a meeting with her Review Team must do so by August 13, 2021.* (27 July 2021) posted on Department of National Defence, online: Facebook https://www.facebook.com/permalink.php?story_fbid=890181798273636&id=123985711559919; Ministère de la Défense nationale, *L'annonce de l'examen externe indépendant sur le harcèlement et l'inconduite sexuelle au sein des FAC de l'hon. Louise Arbour a suscité des réactions très positives. Quiconque souhaite s'entretenir avec son équipe doit le faire d'ici le 13 août 2021.* (27 July 2021) posted on Ministère de la Défense nationale, online: Facebook https://www.facebook.com/permalink.php?story_fbid=2326630817470128&id=1115894031877152; Deadline to participate in the Hon. Louise Arbour's independent external review into sexual harassment and misconduct in the DND and CAF online: *Department of National Defence*.
- ³⁰ *CDS OP ORDER – OP HONOUR* (DND, 14 August 2015) online: https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/cds-op-order-op-honour.pdf.
- ³¹ I note that all the references in this section around numbers of documents are as of 11 March 2022.
- ³² While we examined the data provided, we did not test the controls of the various data systems. Due to data limitations, all numbers reported represent approximations.
- ³³ These included Australia, New Zealand, UK, USA, Denmark, France, Germany, Netherlands, Norway, Sweden and Israel.
- ³⁴ Independent Review Commission on Sexual Assault in the Military, *Independent Review Commission on Sexual Assault in the Military, Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military* (2 July 2021) online: <https://media.defense.gov/2021/Jul/02/20027554371-1/-1/0/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF>.
- ³⁵ House of Commons of the UK Parliament, Defence Committee, *Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life* (Second Report of Session 2021-22) (25 July 2021) online: <https://committees.parliament.uk/publications/6959/documents/72771/default/>.
- ³⁶ I met during my Review with many of the women GOFOs.
- ³⁷ A list of these officials and organizations is found at Schedule C.
- ³⁸ See Schedule C.
- ³⁹ Given the virtual nature of the visit, I was not able to tour the facilities.
- ⁴⁰ I held 4 focus group sessions at CFB Gagetown, 3 at CFB Halifax, 3 at CFB Shearwater and 3 at CBF Greenwood.

- ⁴¹ The Personnel Appointment Board #2 (pan-CAF chief warrant officer positions), the Royal Regiment of Canadian Artillery, the Navy (logistics officers), the Air Force (air personnel management board officers), and the Army (post-command LCol, Col and Tier 1-3 NCOs).
- ⁴² A member of the Review Team attended (in person) the town hall and the sessions with reserve officers, command teams, senior non-commissioned officers, junior non-commissioned members and DND public servants.
- ⁴³ A member of the Review Team attended the town hall and the sessions with command teams, defence advisory groups, junior officers and Lt(N) captains, junior and senior non-commissioned members, conflict and complaint management services and DND public servants.
- ⁴⁴ A member of the Review Team attended the town hall.
- ⁴⁵ A member of the Review Team attended the town hall.
- ⁴⁶ *Chatham House Rule* (2022) online: *Chatham House* <https://www.chathamhouse.org/about-us/chatham-house-rule>.
- ⁴⁷ My Interim Report and the Minister's response are found at Schedules D and E.
- ⁴⁸ *DND/CAF Organizational Chart* (23 February 2022) online: <https://www.canada.ca/en/departement-national-defence/corporate/reports-publications/transition-materials/mnd-transition-material-2021-dnd/tab6-dnd-caf-org-chart.html>.
- ⁴⁹ *Path to Dignity*, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2021/05-26-path-dignity-respect-en.pdf> at 7.
- ⁵⁰ Barbara Waruszynski et al, *Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness* (2019) 19:2 CMJ, online: [CMJ192Ep24.pdf \(forces.gc.ca\)](#) at 27; James Pierotti, *Barriers to Women in the Canadian Armed Forces* (2020) 20:4, CMJ, online: [CMJ204Ep20.pdf \(forces.gc.ca\)](#) at 25.
- ⁵¹ Barbara Waruszynski et al, *Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness* (2019) 19:2 CMJ, online: [CMJ192Ep24.pdf \(forces.gc.ca\)](#) at 25-27.
- ⁵² Barbara Waruszynski et al, *Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness* (2019) 19:2 CMJ, online: [CMJ192Ep24.pdf \(forces.gc.ca\)](#) at 27.
- ⁵³ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part1-eng.pdf> at vii.
- ⁵⁴ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part1-eng.pdf> at 136 and 137.
- ⁵⁵ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part3-eng.pdf> at 404.
- ⁵⁶ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part1-eng.pdf> at 136.
- ⁵⁷ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part1-eng.pdf> at 136.
- ⁵⁸ Royal Commission on the Status of Women in Canada, *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: September 1970) online: <https://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/bird1970-eng/bird1970-part1-eng.pdf> at 137.
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- ⁶⁰ Barbara Waruszynski et al, *Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness* (2019) 19:2 CMJ, online: [CMJ192Ep24.pdf \(forces.gc.ca\)](#) at 27.
- ⁶¹ *Canadian Human Rights Act*, 1976-77, c. 33, s. 1.
- ⁶² Mishall Rehman, *Canadian Armed Forces and Women over the years* (6 March 2020) online: *Canadian Military Family Magazine* <https://www.cmfmag.ca/history/canadian-armed-forces-and-women-over-the-years/>.
- ⁶³ Barbara Waruszynski et al, *Women Serving in the Canadian Armed Forces: Strengthening Military Capabilities and Operational Effectiveness* (2019) 19:2 CMJ, online: [CMJ192Ep24.pdf \(forces.gc.ca\)](#) at 27.
- ⁶⁴ Mishall Rehman, *Canadian Armed Forces and Women over the years* (6 March 2020) online: *Canadian Military Family Magazine* <https://www.cmfmag.ca/history/canadian-armed-forces-and-women-over-the-years/>.
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- ⁶⁷ *Government of Canada – Women in the Canadian Armed Forces*, online: <https://forces.ca/en/women-in-the-caf/>.
- ⁶⁸ *Brown v. Canadian Armed Forces*, 1989 CanLII 153 (CHRT), online: <https://www.canlii.org/en/ca/chrt/doc/1989/1989canlii153/1989canlii153.html>.
- ⁶⁹ *Government of Canada – Women in the Canadian Armed Forces*, online: <https://forces.ca/en/women-in-the-caf/>.
- ⁷⁰ Mishall Rehman, *Canadian Armed Forces and Women over the years* (6 March 2020) online: *Canadian Military Family Magazine* <https://www.cmfmag.ca/history/canadian-armed-forces-and-women-over-the-years/>.
- ⁷¹ Mishall Rehman, *Canadian Armed Forces and Women over the years* (6 March 2020) online: *Canadian Military Family Magazine* <https://www.cmfmag.ca/history/canadian-armed-forces-and-women-over-the-years/>.
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- ⁷⁴ *Deep Dive into Women in the CAF: Synthesis of Analytic Research Insights Slides*, Director Research Workforce Analytics (September 2021) at slide 12, being Annex A to *Deep Dive into Women in the CAF*, Defence Research and Development Canada (DRDC) (November 2021).
- ⁷⁵ Response to request for information re demographic information, DND (26 November 2021); *Deep Dive into Women in the CAF: Synthesis of Analytic Research Insights Slides*, Director Research Workforce Analytics (September 2021) being Annex A to *Deep Dive into Women in the CAF*, DRDC (November 2021); DND, *Canadian Armed Forces Employment Equity Report 2020-2021* at 7.
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- ⁷⁷ James Pierotti, *Barriers to Women in the Canadian Armed Forces* (2020) 20:4, CMJ, online: [CMJ204Ep20.pdf \(forces.gc.ca\)](#) at 27 and 28.
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- ⁸⁷ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 10.
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- ⁹⁷ 2016 StatsCan Report, online: https://www150.statcan.gc.ca/n1/en/pub/85-603-x/85-603-x2016001-eng.pdf?st=uY_Qv-J1 at 13.
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- ³²¹ See Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 73; see also the Right Honourable Antonio Lamer, P.C., C.C., C.D., *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c.35* (DND, 3 September 2003) (**Lamer Report**) online: <https://www.canada.ca/content/dam/canada/military-grievances-external-review/migration/documents/lamer-eng.pdf> and The Honourable Patrick J. LeSage, C.M., O.Ont, Q.C., *Report of the Second Independent Review Authority to The Honourable Peter G. MacKay Minister of National Defence* (DND, December 2011) (**LeSage Report**), online: [07_LeSage_Report1.pdf](https://military-justice.ca/wp-content/uploads/2021/06/LeSage_Report1.pdf) (military-justice.ca).
- ³²² Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 12, 21, 24 and 73; see also, e.g.: Fish Report, at 80-81, concerning reprimands; at 103 - 104, concerning confidentiality; at 105 - 107, concerning training of assisting officers; at 164, concerning time limits in proceedings before the MPCC; at 165, concerning reviews initiated by the MPCC; at 171 - 174, concerning grievances.
- ³²³ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 12-20 and 29-49.
- ³²⁴ See, e.g. *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF.
- ³²⁵ JAG, *Guide for Disciplinary Investigations and Charge Laying at the Unit Level* (undated) a.k.a. *The Charge Laying Aide Memoire* at 9, para. 26.
- ³²⁶ *Charge Laying Aide Memoire* at 9- 10, paras. 26 - 31.
- ³²⁷ *Charge Laying Aide Memoire* at 10, para. 31.
- ³²⁸ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 46.
- ³²⁹ NDA, s 18.4, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ³³⁰ CFMPG, Mission Statement, quoted in *Military Police – Overview Document, Prepared for External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021) at 3.
- ³³¹ *Military Police Information Brief – For External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021) at 6.
- ³³² NDA, s 156, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>; *Criminal Code*, s 2(g), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.
- ³³³ NDA, ss 154 and 155, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ³³⁴ *Military Police – Overview Document, Prepared for External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021) at 4.
- ³³⁵ *Military Police – Overview Document, Prepared for External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021) at 5.

- ³³⁶ NDA, s 18.5, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ³³⁷ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 48.
- ³³⁸ House of Commons of Canada, Standing Committee on the Status of Women, *Evidence*, 43-2, No. 28 (22 April 2021) online: <https://www.ourcommons.ca/Content/Committee/432/FEWO/Evidence/EV11268363/FEWOEV28-E.PDF> at 11 (Maj. Kellie Brennan).
- ³³⁹ Interview with the VCDS (10 August 2021).
- ³⁴⁰ I note that the MPCC is empowered to investigate complaints as to the conduct of a military police investigator, as well as allegations of interference in a military police investigation: NDA, ss 250.18 and 250.19. The Fish Report examined its mandate and powers in detail and made a number of recommendations for improvement: Fish Report, at Chapter 3. However, in light of my recommendations, I do not consider it necessary to comment further on the MPCC's oversight function. While it can examine wrongdoing in the context of a military investigation, it does not exist to assess the overall quality of police investigations.
- ³⁴¹ Email from the CFPM to the CDS (14 June 2021) (ATIP A-2021-00628).
- ³⁴² House of Commons of Canada, Standing Committee on the Status of Women, *Evidence*, 43-2, No. 25 (13 April 2021) online: <https://www.ourcommons.ca/Content/Committee/432/FEWO/Evidence/EV11234142/FEWOEV25-E.PDF> at 2 (BGen. Simon Trudeau); House of Commons of Canada, Standing Committee on the Status of Women, *Evidence*, 43-2, No. 34 (11 May 2021) online: <https://www.ourcommons.ca/Content/Committee/432/FEWO/Evidence/EV11327790/FEWOEV34-E.PDF> at 11 (BGen. Simon Trudeau).
- ³⁴³ House of Commons of Canada, Standing Committee on the Status of Women, *Evidence*, 43-2, No. 28 (22 April 2021) online: <https://www.ourcommons.ca/Content/Committee/432/FEWO/Evidence/EV11268363/FEWOEV28-E.PDF> at 11 (Maj. Kellie Brennan).
- ³⁴⁴ CF MP Gp HQ – DPM Policy, Police Policy Advisory 11/2015, *Investigation of Criminal Sexual Offences* (20 July 2015) (MP Policy Advisory 11/2015) at para. 3.
- ³⁴⁵ *Canadian Forces Provost Marshal Annual Report 2000* (DND, 2001) online: <https://publications.gc.ca/collections/Collection/D3-13-2000E.pdf> at 5.
- ³⁴⁶ CDS, CF Organization Order 3692 – *Canadian Forces National Investigation Service* (24 October 2007) at paras. 5-6.
- ³⁴⁷ *Military Police – Overview Document, Prepared for External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021) at 4.
- ³⁴⁸ Interview with CFPM staff (5 August 2021).
- ³⁴⁹ CFNIS Training Plan FY 21/22 (CFPM).
- ³⁵⁰ *Sexual Offences Response Team Concept of Operations*, CFNIS (6 April 2016) at 3.
- ³⁵¹ Interview with CFPM staff (5 August 2021).
- ³⁵² Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 81-82.
- ³⁵³ Response to request for information re data on courts martial, CMPS (13 August 2021). This number does not include cases that were dealt with summarily, or for which the investigation did not result in charges being laid. Equally, it does not include cases within the dataset for which the investigative unit was unknown or incomplete.
- ³⁵⁴ This is expressly recognized in MP Policy Advisory 11/2015 at para. 3(f): “local MP units shall continue to be responsible for the reception of initial complaints of criminal sexual offences”.
- ³⁵⁵ Interview with CFPM and CO CFNIS (8 September 2021).
- ³⁵⁶ MP Policy Advisory 11/2015, which governs the investigation of criminal sexual offences, expressly excludes (at para. 4) sexual harassment, fraternization, voyeuristic recording and child pornography from the list of “criminal sexual offences”, meaning that uniformed MPs may investigate such complaints, which could result in charges being laid for a (lesser) service offence under the NDA.

- ³⁵⁷ DRDC, *Declaration of Victim's Rights Consultation – Results of the Internal and External Consultations* (DND, January 2022) at 13.
- ³⁵⁸ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 83.
- ³⁵⁹ CF MP Gp Order 2-500, *Investigation Management* at para. 25.
- ³⁶⁰ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 83.
- ³⁶¹ “Median” being the middle value of a dataset ordered from lowest to highest number, and “mean” being the average sum of a set of numbers.
- ³⁶² *Review of Investigative Timelines for Sexual Offences Reported Between 2015 and 2020 prepared for Mme Arbour*, MPAP Manager (4 March 2022) at 9, Table 2.
- ³⁶³ See Schedule D.
- ³⁶⁴ The external review team included representatives from a number of external organizations, including CAF Health Services, the SMRC, Crown Counsel, a victims advocate from the Ottawa Rape Crisis Centre, the Children's Aid Society (Ottawa), and the RCMP: CFPM, *Sexual Assault Review Program (SARP), External Review 2010-2018* (21 October 2019) at 2, para. 3.
- ³⁶⁵ *Canadian Forces Provost Marshal Annual Report 2019-2020* (DND, 30 November 2020) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/canadian-forces-provost-marshal-report-fiscal-year-2019-2020.pdf> at 13.
- ³⁶⁶ CFPM, *Sexual Assault Review Program (SARP), External Review 2010-2018* (21 October 2019) at 5, para. 10.
- ³⁶⁷ *Message from the Canadian Forces Provost Marshal and Commander of the Canadian Forces Military Police Group*, in *Canadian Forces Provost Marshal Annual Report 2019-2020* (DND, 30 November 2020) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/canadian-forces-provost-marshal-report-fiscal-year-2019-2020.pdf> at 1-2.
- ³⁶⁸ Interview with CFPM staff (5 August 2021).
- ³⁶⁹ Dickson Report I, at 14-15.
- ³⁷⁰ When committed outside Canada: NDA, s 70, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ³⁷¹ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 100, in respect of the restructuring of summary trials.
- ³⁷² Interview with the Deputy JAG, Modernization, and OJAG officers (29 September 2021).
- ³⁷³ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 41, Recommendation #11.
- ³⁷⁴ Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice and Public Safety (831-221), *Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims: Report of the Coordinating Committee of Senior Officials Working Group on Access to Justice for Adult Victims of Sexual Assault* (15 November 2018) online: <https://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/#a310>.
- ³⁷⁵ See e.g., in Quebec: *Directeur des poursuites criminelles et pénales, AGR-1, Agression sexuelle et autres infractions à caractère sexuel envers les adultes*, 16 November 2018 (revised 15 December 2021) online : <http://www.dpcp.gouv.qc.ca/ressources/pdf/envoi/AGR-1.pdf>, at para. 4.
- ³⁷⁶ Andrejs Berzins, Q.C. and Malcolm Lindsay, Q.C., *External Review of the Canadian Military Prosecution Service, Final Report* (31 March 2008) online: <https://military-justice.ca/wp-content/uploads/2018/11/Bronson-Reports.pdf> at 1.
- ³⁷⁷ Draft Interim Report – Court Martial Comprehensive Review (21 July 2017) online: https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/jag/court-martial-comprehensive-review-interim-report-21july2017.pdf at 116.

- ³⁷⁸ JAG, Letter to the Chief of Staff re Five (5) Year Posting Rule (25 March 2019).
- ³⁷⁹ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 75.
- ³⁸⁰ Statistics Canada, *Adult criminal courts, number of cases and charges by type of decision, Table 35-10-0027-01* (28 September 2021) online: <https://doi.org/10.25318/3510002701-eng>.
- ³⁸¹ Statistics Canada, *Adult criminal courts, number of cases and charges by type of decision, Table 35-10-0027-01* (28 September 2021) online: <https://doi.org/10.25318/3510002701-eng>.
- ³⁸² Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 16-17, and 42.
- ³⁸³ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 74-75.
- ³⁸⁴ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 79.
- ³⁸⁵ Bankasingh T. O. (Acting Sub-Lieutenant), R. v., 2021 CM 5009, online: <https://www.canlii.org/en/ca/cm/doc/2021/2021cm5009/2021cm5009.html> at para. 2.
- ³⁸⁶ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 100.
- ³⁸⁷ Response to request for information re data on courts martial, CMPS (13 August 2021).
- ³⁸⁸ Note: In some court martial cases, the accused was charged and found guilty of multiple offences, so the number of charges do not exactly match the number of cases.
- ³⁸⁹ Statistics Canada, *Adult criminal courts, number of cases and charges by type of decision, Table 35-10-0027-01* (28 September 2021) online: <https://doi.org/10.25318/3510002701-eng>.
- ³⁹⁰ Senate of Canada, Senate Standing Committee on Legal and Constitutional Affairs, *Evidence (Bill C-25)*, 36-1 (6 October 1998) online: <https://sencanada.ca/en/Content/SEN/Committee/361/lega/34evb-e> at 15:30 (Hon Arthur Eggleton).
- ³⁹¹ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 85 – 86, and 100.
- ³⁹² For example, the classification of “sexual assault” and “other sexual offences” may or may not include the same list of offences.
- ³⁹³ Response to request for information re data on courts martial, CMPS (13 August 2021).
- ³⁹⁴ The full list of disciplinary offences to which this applies (*i.e.* those which do not attract a criminal record if the sentence is one of those set out above), is found in s 249.27(1)(a) of the NDA, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html>.
- ³⁹⁵ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 73.
- ³⁹⁶ Response to request for information re data on courts martial, CMPS (13 August 2021). Note that I include “confinement to barracks” in those cases for which a period of detention was imposed, although I exclude suspended sentences. I also note that data was incomplete for two cases included in the dataset.
- ³⁹⁷ Statistics Canada, *Adult criminal courts, number of cases and charges by type of decision, Table 35-10-0027-01* (28 September 2021) online: <https://doi.org/10.25318/3510002701-eng>.
- ³⁹⁸ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 116 – 117; see also 2018 Spring Reports of the Auditor General of Canada to the Parliament of Canada to the Parliament of Canada, *Report 3 – Administration of Justice in the Canadian Armed Forces* (May 2018) online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201805_03_e_43035.html.
- ³⁹⁹ CVBR, SC 2015, c 13, s 2, online: <https://www.canlii.org/en/ca/laws/stat/sc-2015-c-13-s-2/latest/sc-2015-c-13-s-2.html>.
- ⁴⁰⁰ Bill C-77, s 7, online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html>.

- ⁴⁰¹ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 143.
- ⁴⁰² Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 144, Recommendation #68.
- ⁴⁰³ Draft CF MP Gp – MP Policy Advisory 06/2021 (October 2021).
- ⁴⁰⁴ Draft CF MP Gp – MP Policy Advisory 06/2021 (October 2021).
- ⁴⁰⁵ CF MP Gp Order 2-300, *Law Enforcement Operations – General* at para. 14; see also CF MP Gp Order 2-346, *Family Violence* at para. 7.
- ⁴⁰⁶ CF MP Gp Order 2-300, *Law Enforcement Operations – General* at para. 11.
- ⁴⁰⁷ *An Act to create a court specialized in sexual violence and domestic violence*, SQ 2021, c 32, online: <https://www.canlii.org/en/qc/laws/astat/sq-2021-c-32/latest/sq-2021-c-32.html>.
- ⁴⁰⁸ Attorney General of Ontario, *Crown Prosecution Manual – D.23: Intimate Partner Violence* (14 November 2017) online: https://www.ontario.ca/document/crown-prosecution-manual/d-23-intimate-partner-violence?fbclid=IwAR3CIDBQLDgOkSoY6QBmx09TmiE53vg_ueFluCSUep5pDPKQ6TCNei6ybSo.
- ⁴⁰⁹ Gender-based Violence Knowledge Centre, *What Is Gender-based Violence?* (20 December 2021) online: <http://women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/about-gender-based-violence.html>.
- ⁴¹⁰ Jakupcak, Matthew, David Lisak & Lizabeth Roemer, *The Role of Masculine Ideology and Masculine Gender Role Stress in Men's Perpetration of Relationship Violence* (2002) 3:2 *Psychology of Men & Masculinity* 97.
- ⁴¹¹ Julie McCormack, et al., *Sexual Offenders' Perceptions of Their Early Interpersonal Relationships: An Attachment Perspective* (2002) 39(2) *Journal of Sex Research* 85 at 91.
- ⁴¹² See Aaron Horth, *Toward a Comprehensive Gender-Based Violence Court System* (2015) 24:2 *Boston University Public Interest Law Journal* 221 at 233.
- ⁴¹³ CF MP Gp Order 2-346, *Family Violence* at paras. 2 and 6.
- ⁴¹⁴ *Criminal Code*, ss 320.13 and 320.14, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.
- ⁴¹⁵ Interview with the CFPM and DMP (2 December 2021).
- ⁴¹⁶ *Military Police – Overview Document, Prepared for External Comprehensive Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, CFPM (25 June 2021).
- ⁴¹⁷ Letter from the Minister (3 November 2021), see Schedule E.
- ⁴¹⁸ CFPM, Presentation to the CACP, *Sexual Assaults in the Military Context: a Transition Towards Civilian Primary Jurisdiction Implications for Civilian and Military Police* (24 November 2021).
- ⁴¹⁹ Response to request for information re data on courts martial, CMPS (13 August 2021).
- ⁴²⁰ Response to request for information re data on summary trials, CMPS (18 October 2021).
- ⁴²¹ See, e.g.: Letter from the Chief Constable of the Victoria Police Department (20 December 2021).
- ⁴²² Email correspondence from the *Association des directeurs de Police du Québec* (16 December 2021); Letter from the Nova Scotia Chiefs of Police Association (16 December 2021); Letter from the OPP Commissioner (24 December 2021); Letter from the BC Association of Chiefs of Police (4 January 2022); Letter from the Ontario Association of Chiefs of Police to the Solicitor General for Ontario (18 January 2022).
- ⁴²³ Email from the Director General of the ADPQ to the CFPM (16 December 2021).
- ⁴²⁴ Letter from the BC Association of Chiefs of Police (4 January 2022).
- ⁴²⁵ Letter from the BC Urban Mayors Caucus to the Prime Minister and Minister for National Defence (19 January 2022).
- ⁴²⁶ Email from the Commander, Air Force Military Police Group (12 January 2022).

- ⁴²⁷ Letter from the Ontario Association of Chiefs of Police to the Solicitor General for Ontario (18 January 2022).
- ⁴²⁸ Letter from the Ontario Association of Chiefs of Police to the Minister of National Defence (21 April 2022).
- ⁴²⁹ Email from the CFPM (24 January 2022).
- ⁴³⁰ Ministère de la Sécurité publique, Direction générale adjointe principale des affaires policières, Communiqué 2022-04, *Mesure transitoire – Dossiers d’agression sexuelle de victimes/agresseurs ayant des liens avec les Forces armées canadiennes et transfert de dossiers du système de Justice militaire vers les corps de police du Québec*.
- ⁴³¹ *Message from the Canadian Forces Provost Marshal regarding the transfer of jurisdiction for sexual assault and other criminal offences of a sexual nature* (24 March 2022) online: <https://www.canada.ca/en/departement-national-defence/maple-leaf/defence/2022/03/message-provost-marshal-transfer-jurisdiction.html>.
- ⁴³² Senate of Canada, Standing Senate Committee on National Security and Defence, *Evidence*, 44-1, *Interim* (4 April 2022) online: <https://sencanada.ca/en/Content/Sen/Committee/441/SECD/55452-E> (Col. Robin Holman).
- ⁴³³ *Comparative Primer on Military Justice Systems in US, UK, AUS, NZ, and ISR – Brief to the Independent External Comprehensive Review Authority*, OJAG (24 September 2021).
- ⁴³⁴ House of Commons of the UK Parliament, Defence Committee, *Protecting those who protect us: Women in the Armed Forces from Recruitment to Civilian Life (Second Report of Session 2021-22)* (25 July 2021) online: <https://committees.parliament.uk/publications/6959/documents/72771/default/> at 57.
- ⁴³⁵ UK, Ministry of Defence, His Honour Shaun Lyons, *Service Justice System Review (Part 1)* (March 2018) online: <https://www.gov.uk/government/publications/service-justice-system-review> at 43, para. 7.6.
- ⁴³⁶ UK, Ministry of Defence, His Honour Shaun Lyons, *Service Justice System Review (Part 1)* (March 2018) online: <https://www.gov.uk/government/publications/service-justice-system-review> at 41.
- ⁴³⁷ *Comparative Primer on Military Justice Systems in US, UK, AUS, NZ, and ISR – Brief to the Independent External Comprehensive Review Authority*, OJAG (24 September 2021) at 25.
- ⁴³⁸ US, Bill HR 4350, *National Defense Authorization Act for Fiscal Year 2022*, 117th Cong, 2021 (enacted); *Statement by the President on S. 1605, the National Defense Authorization Act for Fiscal Year 2022* (27 December 2021) online: *The White House* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/27/statement-by-the-president-on-s-1605-the-national-defense-authorization-act-for-fiscal-year-2022/>.
- ⁴³⁹ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 53, footnote 211.
- ⁴⁴⁰ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 53.
- ⁴⁴¹ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 69.
- ⁴⁴² As it was intended to do. See: JAG, *Military Justice: A Progress Report on Current Concerns and Directions for Reform – Presented to the Special Advisory Group on Military Justice and Military Police Investigation Services on 16 Jan 1997* (24 January 1997) at 36.
- ⁴⁴³ DRDC, *Declaration of Victim’s Rights Consultation – Results of the Internal and External Consultations* (DND, January 2022) at i.
- ⁴⁴⁴ DRDC, *Declaration of Victim’s Rights Consultation – Results of the Internal and External Consultations* (DND, January 2022) at 11.
- ⁴⁴⁵ The Outside of Canada (OUTCAN) Programme covers postings, assignments, and employment in foreign countries. Ombudsman, *Postings, assignments, and employment outside of Canada*, online: <https://www.canada.ca/en/ombudsman-national-defence-forces/education-information/caf-members/career/postings/outcan.html>.
- ⁴⁴⁶ Response to request for information re data on courts martial, CMPS (13 August 2021).
- ⁴⁴⁷ *Barber M.A. (Captain), R. v.*, 2012 CM 1008 (CanLII), online: <https://www.canlii.org/en/ca/cm/doc/2012/2012cm1008/2012cm1008.html>.

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- ⁴⁴⁹ NDA, s 70(c), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
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- ⁴⁵² *Duty with Honour*, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/duty-with-honour-en.pdf> at 7.
- ⁴⁵³ See, e.g.: *Rosenbaum v. Law Society (Manitoba)* (1983), 150 D.L.R. (3d) 352 at 354-355 (Man. Q.B.), affirmed (1983), 7 Admin. L.R. 77 (Man. C.A.).
- ⁴⁵⁴ Response to request for information re data on summary trials, OJAG (18 October 2021).
- ⁴⁵⁵ NDA, ss 92, 93, 95, 97 and 129, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ⁴⁵⁶ Note: In many summary trials, the accused was charged and found guilty of multiple offences, so the numbers of charges do not exactly match the number of trials.
- ⁴⁵⁷ NDA, ss 83, 85 and 86, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ⁴⁵⁸ Elaine Craig, *An Examination of How the Canadian Military's Legal System Responds to Sexual Assault* (2020) 43:1 Dal L J 63 at 86.
- ⁴⁵⁹ Bill C-32 *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* (online: <https://www.canlii.org/en/ca/laws/astat/sc-2015-c-13/latest/sc-2015-c-13.html>) received royal assent on 23 April 2015. The majority of provisions came into force 23 July 2015, although parts of the Act that amended the *Corrections and Conditional Release Act* only came into force a year later on 1 June 2016.
- ⁴⁶⁰ *Office of the Judge Advocate General Process Paper Submission for the Third Independent Review Authority Regulatory Process – Queen's Regulations And Orders For The Canadian Forces*, OJAG (undated) at 9 – 12.
- ⁴⁶¹ Response to request for information re implementation of Bill C-77, OJAG (15 December 2021).
- ⁴⁶² The service offences are provided in Part III, Division 2 of the NDA. The service offences that may be tried by summary trial under the old system are those provided at QR&O 108.07 (Jurisdiction – Offences) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-2-disciplinary/ch-108-summary-proceedings.html> at paras. 108.7(2)-108.07(3).
- ⁴⁶³ Bill C-77, s 2, online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html>.
- ⁴⁶⁴ Powers of punishment are provided at sections QR&O 108.24 (Powers of Punishment of a Commanding Officer), QR&O 108.25 (Powers and Punishment of a Delegated Officer) and QR&O 108.26 (Powers and Punishment of a Superior Commander) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-2-disciplinary/ch-108-summary-proceedings.html>.
- ⁴⁶⁵ Bill C-77, s 25, online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html>.
- ⁴⁶⁶ Governor in Council, *Draft Regulations Amending the Queen's Regulations and Orders for the Canadian Forces*, s 105.
- ⁴⁶⁷ Governor in Council, *Draft Regulations Amending the Queen's Regulations and Orders for the Canadian Forces*, s 105.
- ⁴⁶⁸ Response to request for information re Bill C-77, DND (11 March 2022).
- ⁴⁶⁹ Interview with OJAG (4 April 2022).
- ⁴⁷⁰ Interview with OJAG and DGMC (7 April 2022).

- ⁴⁷¹ Bill C-77, s 25, amending s 162.7 of the NDA, online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html>.
- ⁴⁷² Bill C-77, s 7, adding s 71.03 of the NDA, which entitles a victim to information about service offences only, online: <https://www.canlii.org/en/ca/laws/astat/sc-2019-c-15/latest/sc-2019-c-15.html>.
- ⁴⁷³ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> arts 4.16-4.18.
- ⁴⁷⁴ DAOD 5019-0, *Conduct and Performance Deficiencies* (last modified 10 July 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-0-conduct-and-performance-deficiencies.html> at art 3.1; QR&O 4.02 (General Responsibilities of Officers) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-4-duties-responsibilities-officers.html>; QR&O 5.01 (General Responsibilities of Non-Commissioned Members) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-5-duties-responsibilities-non-commissioned-members/table-contents.html>; see also CANFORGEN 016/18, *CDS Direction on Professional Military Conduct* (February 2018).
- ⁴⁷⁵ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 4.4.
- ⁴⁷⁶ DAOD 5019-0, *Conduct and Performance Deficiencies* (last modified 10 July 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-0-conduct-and-performance-deficiencies.html> at art 3.3.
- ⁴⁷⁷ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 4.5.
- ⁴⁷⁸ DAOD 5019-0, *Conduct and Performance Deficiencies* (last modified 10 July 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-0-conduct-and-performance-deficiencies.html> at art 3.4.
- ⁴⁷⁹ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> art 4.6, note 2.
- ⁴⁸⁰ DAOD 5019-0, *Conduct and Performance Deficiencies* (last modified 10 July 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-0-conduct-and-performance-deficiencies.html> at arts 3.6 and 3.7.
- ⁴⁸¹ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.2.
- ⁴⁸² *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item 1.
- ⁴⁸³ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item 1; DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.2.
- ⁴⁸⁴ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item 2.
- ⁴⁸⁵ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item B.

- ⁴⁸⁶ QR&O 4.20 (General Responsibilities of a Commanding Officer) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-4-duties-responsibilities-officers.html>; see *Briefing Note for the Independent External Comprehensive Review (IECR)*, DMCA (3 February 2022) at paras. 24 and 25.
- ⁴⁸⁷ *Briefing Note for the Independent External Comprehensive Review (IECR)*, DMCA (3 February 2022) at paras. 24 and 25.
- ⁴⁸⁸ *CDS Guidelines on Removal from Command* (DND, 12 December 2001).
- ⁴⁸⁹ However, the Canadian Army has issued its own order regarding removal from command: Canadian Army Order (CAO) 11-94, *Removal or Relinquishment from Command or Senior/Key Positions within the Canadian Army* (March 2015), which order relies on and references the *CDS Guidelines on Removal from Command*.
- ⁴⁹⁰ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 3.
- ⁴⁹¹ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 4.
- ⁴⁹² *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 4.
- ⁴⁹³ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 6.
- ⁴⁹⁴ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at paras. 9-11.
- ⁴⁹⁵ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 5.
- ⁴⁹⁶ *CDS Guidelines on Removal from Command* (DND, 12 December 2001) at para. 8.
- ⁴⁹⁷ QR&O 101.09 (Relief from Performance of Military Duty – Pre and Post Trial) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-2-disciplinary/ch-101-general-provisions-respecting-code-service-discipline.html> at para. 101.09(3); QR&O 19.75 (Relief from Performance of Military Duty) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-19-conduct-discipline/table-contents.html> at para. 19.75(4).
- ⁴⁹⁸ QR&O 101.09 (Relief from Performance of Military Duty – Pre and Post Trial) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-2-disciplinary/ch-101-general-provisions-respecting-code-service-discipline.html> at paras. 101.09(5) and (6); QR&O 19.75 (Relief from Performance of Military Duty) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-19-conduct-discipline/table-contents.html> at paras. 19.75(6) and (7).
- ⁴⁹⁹ QR&O 208.31 (Forfeitures, Deductions and Cancellations – When No Service Rendered) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-3-financial.html> at para. 208.31(4).
- ⁵⁰⁰ QR&O 101.09 (Relief from Performance of Military Duty – Pre and Post Trial) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-2-disciplinary/ch-101-general-provisions-respecting-code-service-discipline.html> at Notes; QR&O 19.75 (Relief from Performance of Military Duty) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-19-conduct-discipline/table-contents.html> at Notes.
- ⁵⁰¹ CAO 11-94, *Removal or Relinquishment from Command or Senior/Key Positions within the Canadian Army* (March 2015) at para. 13.
- ⁵⁰² DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at arts 4.1 and 5.4; DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 5.
- ⁵⁰³ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item 2.
- ⁵⁰⁴ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 5.5.

- ⁵⁰⁵ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.4.
- ⁵⁰⁶ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 5.9.
- ⁵⁰⁷ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at items 8 and 9.
- ⁵⁰⁸ I refer to a “CO” throughout this section; however, it is not always a CO that initiates an administrative action, e.g. it may also be a CO’s designate or other “initiating authority”, including the DMCA, depending on the circumstances.
- ⁵⁰⁹ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.7; DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021), online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 4.12.
- ⁵¹⁰ See the section on the Military Grievance System.
- ⁵¹¹ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 2.
- ⁵¹² DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 5.8.
- ⁵¹³ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> art 4.9.
- ⁵¹⁴ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> art 5.4; A disability does not automatically excuse a CAF member from the requirement to meet the established standards of conduct and performance set out in regulations, codes of conduct, policies, orders, instructions and directives applicable to the CAF member.
- ⁵¹⁵ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 6.
- ⁵¹⁶ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex C C-5/6.
- ⁵¹⁷ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> arts 6.4 and 6.5.
- ⁵¹⁸ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> art 6.15.
- ⁵¹⁹ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> art 6.16; for drug misconduct, the monitoring period must be a period of 12 months.
- ⁵²⁰ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 8.5.
- ⁵²¹ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex C C-4/6.
- ⁵²² DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex C C-6/6.

- ⁵²³ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 7.1.
- ⁵²⁴ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> at art 7.3.
- ⁵²⁵ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 5.9.
- ⁵²⁶ DAOD 5019-4, *Remedial Measures* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-4-remedial-measures.html> arts 4.7 and 4.8; DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.2.
- ⁵²⁷ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex B B-1/7.
- ⁵²⁸ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 3.
- ⁵²⁹ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.5.
- ⁵³⁰ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.6.
- ⁵³¹ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.7.
- ⁵³² DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.7.
- ⁵³³ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.7.
- ⁵³⁴ Response to request for information re administrative review data, DMCA (31 August 2021).
- ⁵³⁵ Response to request for information re administrative review data, DMCA (31 August 2021).
- ⁵³⁶ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 10.
- ⁵³⁷ See the section on Military Justice.
- ⁵³⁸ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.56.
- ⁵³⁹ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.57.
- ⁵⁴⁰ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.57.
- ⁵⁴¹ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 6.

- ⁵⁴² DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 7; see also QR&O 15.21 (Notice of Intent to Recommend Release Commissioned Officer) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-15-release.html>.
- ⁵⁴³ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 7.
- ⁵⁴⁴ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 7.
- ⁵⁴⁵ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 8.
- ⁵⁴⁶ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 9.
- ⁵⁴⁷ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 10.
- ⁵⁴⁸ DMCA conducts an administrative review, which may lead to release under item #3, if the Director Medical Policy assigns a medical employment limitation and DMCA makes the determination that the limitation breaches Universality of Service (see DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 4.6, note 5).
- ⁵⁴⁹ QR&O 15.01 (Release of Officers and Non-Commissioned Members) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-15-release.html>.
- ⁵⁵⁰ DAOD 5019-2, *Administrative Review* (last modified 28 May 2021) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-2-administrative-review.html> at art 5.10; QR&O 15.01 (Release of Officers and Non-Commissioned Members) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-15-release.html>. at para. 15.01(4) and Table to 15.01
- ⁵⁵¹ *Administrative Review*, DMCA (DND, August 2021) at slide 7.
- ⁵⁵² CFAO 15-2, *Release – Regular Force* at Annex A, para. 4.
- ⁵⁵³ Response to request for information re administrative review data, DMCA (31 August 2021).
- ⁵⁵⁴ QR&O 15.01 (Release of Officers and Non-Commissioned Members) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-15-release.html> at para. 15.01(4) and Table to 15.01.
- ⁵⁵⁵ *Briefing Note for the Independent External Comprehensive Review (IECR)*, DMCA (3 February 2022) at para. 18.
- ⁵⁵⁶ CFAO 15-2, *Release – Regular Force* at Annex A, para. 28.
- ⁵⁵⁷ *CDS Directive – Retention of CAF Members Affected by Harmful and Inappropriate Sexual Behaviour* (15 June 2018) online: <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/sexual-misconduct/orders-policies-directives/cds-initiating-directive-february-2015.html> at para. 7.
- ⁵⁵⁸ *CDS Directive – Retention of CAF Members Affected by Harmful and Inappropriate Sexual Behaviour* (15 June 2018) online: <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/sexual-misconduct/orders-policies-directives/cds-initiating-directive-february-2015.html> at para. 6; CANFORGEN 216/17, *CDS Designated Release Authorities Amendments* (2017).
- ⁵⁵⁹ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.58.
- ⁵⁶⁰ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.63.
- ⁵⁶¹ Standing Senate Committee on National Security and Defence, *Sexual Harassment and Violence in the Canadian Armed Forces* (Ottawa: May 2019) online: https://sencanada.ca/content/sen/committee/421/SECD/Reports/SECD_Report_harassment_May_19_e.pdf at 9.

- ⁵⁶² *Canadian Armed Forces to Release Outcomes of Administrative Action to Victims of Sexual Misconduct* (29 July 2019) online: <https://www.canada.ca/en/department-national-defence/news/2019/07/canadian-armed-forces-to-release-outcomes-of-administrative-action-to-victims-of-sexual-misconduct.html>.
- ⁵⁶³ *Canadian Armed Forces to Release Outcomes of Administrative Action to Victims of Sexual Misconduct* (29 July 2019) online: <https://www.canada.ca/en/department-national-defence/news/2019/07/canadian-armed-forces-to-release-outcomes-of-administrative-action-to-victims-of-sexual-misconduct.html>.
- ⁵⁶⁴ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.6.
- ⁵⁶⁵ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 6.6.
- ⁵⁶⁶ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item A.
- ⁵⁶⁷ *Sexual Misconduct Incident Management Decision Tree*, online: https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2020/DGM-91120-HPJ_Op%20HONOUR%20Decision%20Tree_EN.PDF at item A.
- ⁵⁶⁸ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.54.
- ⁵⁶⁹ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.54.
- ⁵⁷⁰ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at para. 5.54.
- ⁵⁷¹ Response to request for information re administrative review data, DMCA (10 March 2022).
- ⁵⁷² DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 9.
- ⁵⁷³ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at 2 and 5.
- ⁵⁷⁴ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex C C-4/6.
- ⁵⁷⁵ DMCA 2, *DMCA 2 Aide-Memoire – Administrative Actions for Misconduct* (last modified 1 May 2021) at Annex C C-4/6.
- ⁵⁷⁶ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 74.
- ⁵⁷⁷ See the section on Military Justice.
- ⁵⁷⁸ See the section on the History of Women in the CAF and Prevalence of Sexual Misconduct.
- ⁵⁷⁹ DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html>; DAOD 5012-0, *Harassment Prevention and Resolution* (last modified 24 March 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5012/5012-0-harassment-prevention-and-resolution.html>; *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021).
- ⁵⁸⁰ *Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1* SC 2018, c 22 (**Bill C-65**), online: <https://www.canlii.org/en/ca/laws/astat/sc-2018-c-22/latest/sc-2018-c-22.html>.
- ⁵⁸¹ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 6.
- ⁵⁸² *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 10.
- ⁵⁸³ *Workplace Harassment and Violence Prevention Interim Policy* (DND, 8 December 2020).
- ⁵⁸⁴ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 10.

- ⁵⁸⁵ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at Annex A, 23-24.
- ⁵⁸⁶ DAOD 5012-0, *Harassment Prevention and Resolution* (last modified 24 March 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5012/5012-0-harassment-prevention-and-resolution.html> at art 2.
- ⁵⁸⁷ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 25.
- ⁵⁸⁸ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 27.
- ⁵⁸⁹ DAOD 5012-0, *Harassment Prevention and Resolution* (last modified 24 March 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5012/5012-0-harassment-prevention-and-resolution.html> at art 3.6.
- ⁵⁹⁰ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 25.
- ⁵⁹¹ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 36.
- ⁵⁹² *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 36 and 37.
- ⁵⁹³ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 38 and 39.
- ⁵⁹⁴ *Harassment Prevention and Resolution Instructions* (DND, 27 January 2021) at 39.
- ⁵⁹⁵ *Canada Labour Code*, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-l-2/latest/rsc-1985-c-l-2.html>.
- ⁵⁹⁶ *Canada Labour Code*, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-l-2/latest/rsc-1985-c-l-2.html>.
- ⁵⁹⁷ *Bill C-65 – New Regulations on Prevention of Harassment and Violence in the Workplace* (10 December 2020), online: <https://www.canada.ca/en/department-national-defence/maple-leaf/defence/2020/12/bill-c-65-new-regulations-on-prevention-of-harassment-and-violence-in-the-workplace.html>.
- ⁵⁹⁸ Interview with ADM(HR-Civ) (1 September 2021).
- ⁵⁹⁹ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 10.
- ⁶⁰⁰ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 10.
- ⁶⁰¹ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 4.
- ⁶⁰² *Response from MND: Integrated Complaint/Conflict Management (IC2M) program* (30 November 2018) online: <http://ombudsman.forces.gc.ca/en/ombudsman-news-events-media-letters/response-from-mnd-ic2m-30nov2018.page>.
- ⁶⁰³ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 4.
- ⁶⁰⁴ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 5.
- ⁶⁰⁵ *Director General Integrated Conflict and Complaint Management Service Delivery Guide* (DND, October 2019) at 9.
- ⁶⁰⁶ *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 4-5.
- ⁶⁰⁷ *Response from MND: Integrated Complaint/Conflict Management (IC2M) program* (30 November 2018) online: <http://ombudsman.forces.gc.ca/en/ombudsman-news-events-media-letters/response-from-mnd-ic2m-30nov2018.page>; *Director General Integrated Conflict and Complaint Management Annual Report 2019* (DND, 2019) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/DGICCM-annual-report-aug-en.pdf> at 4.
- ⁶⁰⁸ Interview with DGICCM (10 August 2021).
- ⁶⁰⁹ Response to request for information re sexual harassment complaints, ICCM (as of 11 August 2021).
- ⁶¹⁰ *Protocol IC2M & SMRC* (DND, 24 August 2021).
- ⁶¹¹ *Protocol IC2M & SMRC* (DND, 24 August 2021).
- ⁶¹² *Director General Integrated Conflict and Complaint Management Annual Report 2021* (DND, 2021) at 8.
- ⁶¹³ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 62.

- ⁶¹⁴ *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶¹⁵ CHRA, s 14(2), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶¹⁶ DAOD 5516-0, *Human Rights* (last modified 30 July 2018), online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5516/5516-0-human-rights.html> at art 2.4
- ⁶¹⁷ DAOD 5516-1, *Human Rights Complaints* (last modified 23 November 2017) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5516/5516-1-human-rights-complaints.html>.
- ⁶¹⁸ DAOD 5019-0, *Conduct and Performance Deficiencies* (last modified 10 July 2020) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5019/5019-0-conduct-and-performance-deficiencies.html> at art 3.2c.
- ⁶¹⁹ *Make a Complaint* (accessed 7 April 2022) online: *Canadian Human Rights Commission* <https://www.chrc-ccdp.gc.ca/en/complaints/make-a-complaint>.
- ⁶²⁰ *About the Process* (accessed 9 April 2022) online: *Canadian Human Rights Commission* <https://www.chrc-ccdp.gc.ca/en/complaints/about-the-process>.
- ⁶²¹ *A Guide to Understanding the Canadian Human Rights Tribunal* (accessed 6 March 2022) online: *Canadian Human Rights Tribunal* <https://www.chrt-tcdp.gc.ca/resources/guide-to-understanding-the-chrt-en.html>.
- ⁶²² Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 78.
- ⁶²³ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 79.
- ⁶²⁴ Interview with CHRC (11 February 2022).
- ⁶²⁵ Letter from the Chief Commissioner of the CHRC to the Honourable Louise Arbour (16 July 2021).
- ⁶²⁶ Interview with CHRC (11 February 2022).
- ⁶²⁷ Interview with CHRC (11 February 2022).
- ⁶²⁸ Interview with CHRC (11 February 2022).
- ⁶²⁹ CHRA, s 14.1, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶³⁰ CHRA, s 40(5)(c), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶³¹ QR&O 6.01 (Qualifications for Enrollment) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-6-enrolment-reengagement.html> at para. 6.01(1)(a).
- ⁶³² Interview with CHRC (11 February 2022).
- ⁶³³ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII), online: <https://www.canlii.org/en/ca/scc/doc/2011/2011scc53/2011scc53.html>.
- ⁶³⁴ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII), online: <https://www.canlii.org/en/ca/scc/doc/2011/2011scc53/2011scc53.html> at para. 9.
- ⁶³⁵ CHRA, ss 53(2)(e) and 53(3), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶³⁶ CHRA, s 53(3), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html>.
- ⁶³⁷ See e.g.: *NK v. Botuik*, 2020 HRT0 345 (sexual solicitation) – \$170,000, online: <https://www.canlii.org/en/on/onhrt/doc/2020/2020hrto345/2020hrto345.html>; *Joe Singer Shoes Limited v. A.B.*, 2019 ONSC 5628 (judicial review refused) (discriminatory behaviour, sexual harassment, and a long series of sexual assaults) – \$200,000, online: <https://www.canlii.org/en/on/onscdc/doc/2019/2019onsc5628/2019onsc5628.html>; *Francis v. BC Ministry of Justice (No. 5)*, 2021 BCHRT 16 (CanLII) (harassment and discrimination (race)) – \$176,000, online: <https://www.canlii.org/en/bc/bchrt/doc/2021/2021bchrt16/2021bchrt16.html>.

- ⁶³⁸ *Director General Integrated Conflict and Complaint Management Service Delivery Guide* (DND, October 2019) at 9.
- ⁶³⁹ DAOD 2017-0, *Military Grievances* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-0-military-grievances.html> at art 2.1.
- ⁶⁴⁰ Decision of the MGERC no. 2013-111 – Class B Reserve Service, Reserve Force, online: # 2013-111 - Class B Reserve Service, Reserve Force - Canada.ca, and Decision of the MGERC no. 2014-054 – Mishandling of a File by the Chain of Command, online: # 2014-054 - Mishandling of a File by the Chain of Command - Canada.ca.
- ⁶⁴¹ Decision of the MGERC no. 2012-153 - Harassment, online: # 2012-153 - Harassment - Canada.ca.
- ⁶⁴² Decisions of the MGERC no. 2010-032 and no. 2010-056 at 2. See also Decision of the MGERC no. 2014-003 – Recorded Warning, online: <https://www.canada.ca/en/military-grievances-external-review/services/case-summaries/case-2014-003.html>.
- ⁶⁴³ Decision of the MGERC no. 2012-144- Class B Reserve Service, Reserve Force, online: <https://www.canada.ca/en/military-grievances-external-review/services/case-summaries/case-2012-144.html>.
- ⁶⁴⁴ NDA, ss 29- 29.15 (Grievances) and ss 29.16 - 29.28 (Military Grievances External Review Committee) online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ⁶⁴⁵ *Director General Integrated Conflict and Complaint Management Annual Report 2019* (DND, 2019) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/DGICCM-annual-report-aug-en.pdf> at 20.
- ⁶⁴⁶ DAOD 2017-1, *Military Grievance Process* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html> at art 19.1.
- ⁶⁴⁷ DAOD 2017-1, *Military Grievance Process* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html> at art 19.1.
- ⁶⁴⁸ DAOD 2017-1, *Military Grievance Process* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html> at art 19.1.; see also DAOD 2017-0, *Military Grievances* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-0-military-grievances.html> at art 4.1.
- ⁶⁴⁹ DAOD 2017-1, *Military Grievance Process* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html> at art 19.1; see also DAOD 2017-0, *Military Grievances* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-0-military-grievances.html> at art 4.1.
- ⁶⁵⁰ Response to request for information re CAF grievance system, CFGA (11 March 2022).
- ⁶⁵¹ DAOD 2017-1, *Military Grievance Process* (last modified 26 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/2000-series/2017/2017-1-military-grievance-process.html> at arts 6.3, 6.4, 9.1, 9.2 and 9.8.
- ⁶⁵² QR&O 7.21 (Types of Grievances to be Referred to Grievances Committee) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-7-grievances.html>.
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- ⁶⁵⁴ *2013-2014 Biennial Report on the State of the Canadian Armed Forces Grievance System* (DND, 2014) online: http://forces.gc.ca/assets/FORCES_Internet/docs/en/dgcfga_2013_2014_report__en.pdf at 2.

- ⁶⁵⁵ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/Third-Independent-Report-Fish.pdf> at 174-175.
- ⁶⁵⁶ *Briefing Note to Madame Arbour*, CFGA (1 February 2021) at 1.
- ⁶⁵⁷ *Briefing Note to Madame Arbour*, CFGA (1 February 2021) at 2.
- ⁶⁵⁸ *Briefing Note to Madame Arbour*, CFGA (1 February 2021) at 3.
- ⁶⁵⁹ *Federal Courts Act*, RSC 1985, c F-7, s 18; *Fortin v. Canada (Attorney General)*, 2021 FC 1061 (CanLII), online: <https://www.canlii.org/en/ca/fct/doc/2021/2021fc1061/2021fc1061.html> at paras. 45-46 (currently under appeal to the Federal Court of Appeal in Court File No. A-278-21, to be heard in the spring of 2022).
- ⁶⁶⁰ *Strickland v. Canada (Attorney General)*, 2015 SCC 37 (CanLII), online: <https://www.canlii.org/en/ca/scc/doc/2015/2015scc37/2015scc37.html> at paras 37-42, and 59.
- ⁶⁶¹ *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 (CanLII), online: <https://www.canlii.org/en/ca/scc/doc/2017/2017scc50/2017scc50.html> at para. 22; see also *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, online: <https://www.canlii.org/en/ca/scc/doc/2012/2012scc10/2012scc10.html> at paras. 35-36.
- ⁶⁶² *Fortin v. Canada (Attorney General)*, 2021 FC 1061 (CanLII), online: <https://www.canlii.org/en/ca/fct/doc/2021/2021fc1061/2021fc1061.html> at paras. 24-25, 45-47 and 50 (currently under appeal to the Federal Court of Appeal in Court File No. A-278-21, to be heard in the spring of 2022).
- ⁶⁶³ Fish Report, online: <https://military-justice.ca/wp-content/uploads/2021/06/third-independent-report-fish.pdf> at 171 and 184.
- ⁶⁶⁴ The Honourable Gilles Letourneau and Michel Drapeau, *Behind the Times: Modernization of Canadian Military Criminal Justice* (2017) online: <https://military-justice.ca/wp-content/uploads/2019/01/Behind-The-Times.pdf> at 92; *Canadian Forces Grievance Process Ex Gratia Payments Order*, PC 2012-0861 (2012) C. Gaz. II, 146. This 2012 Order authorized the CDS to provide financial relief: “The [CDS] may authorize an ex gratia payment to a person in respect of whom a final decision is made under the grievance process established under the *National Defence Act*”.
- ⁶⁶⁵ *About the Committee* (last modified 27 June 2014) online: <https://www.canada.ca/en/military-grievances-external-review/corporate/about.html>; the Military Grievances External Review Committee was founded in March 2000, in accordance with legislation enacted in December 1998, which contained amendments to the NDA.
- ⁶⁶⁶ NDA, s 29.13(1), online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ⁶⁶⁷ QR&O 7.14 (Officers Who May Act as Initial Authority in Respect of Grievance) online: <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-7-grievances.html> at para. 7.14(1)(b),
(1) Subject to paragraph (2), the following officers may act as the initial authority in respect of a grievance:
... (b) the commander, or officer appointed to the position of Director General or above at National Defence Headquarters, who is responsible for dealing with the matter that is the subject of the grievance.
- ⁶⁶⁸ The duty to report only applies to members of the CAF and does not extend to DND employees and other civilians, such as those working at the SMRC, Conflict and Complaint Management Service (CCMS), and CF Health Services: DAOD 9005-1, *Sexual Misconduct Response* (date of issue 18 November 2020) online: <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/defence-administrative-orders-directives/9000-series/9005/9005-1-sexual-misconduct-response.html> at art 5.3.
- ⁶⁶⁹ QR&O 4.02 (General Responsibilities of Officers) online: <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-4-duties-responsibilities-officers.html#cha-004-02> at para. 4.02(1)(e) and QR&O 5.01 (General Responsibilities of Non-commissioned Members) online: <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-5-duties-responsibilities-non-commissioned-members/table-contents.html>.

- ⁶⁷⁰ QR&O 4.02 (General Responsibilities of Officers) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-4-duties-responsibilities-officers.html#cha-004-02> at para. 4.02(1)(e).
- ⁶⁷¹ Response to follow-up request for information re Duty to Report Working Group, CPCC (8 February 2022).
- ⁶⁷² Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf Part 5.
- ⁶⁷³ *CDS OP ORDER – OP HONOUR* (DND, 14 August 2015) online: https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/caf-community-support-services-harassment/cds-op-order-op-honour.pdf at para. 7, “All CAF members have a duty to report, to the proper authority, any infringement of the pertinent statutes, regulations, rules, orders and instructions applicable to military members. Furthermore, where a complaint is made or where there are other reasons to believe that a service offence has been committed, an investigation shall be conducted as soon as practicable.”
- ⁶⁷⁴ 2018 OAG Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201811_05_e_43203.html at paras. 5.77 and 5.79.
- ⁶⁷⁵ Standing Senate Committee on National Security and Defence, *Sexual Harassment and Violence in the Canadian Armed Forces* (Ottawa: May 2019) online: https://sencanada.ca/content/sen/committee/421/SECD/Reports/SECD_Report_harassment_May_19_e.pdf at 20.
- ⁶⁷⁶ Response to follow-up request for information re Duty to Report Working Group, CPCC (8 February 2022).
- ⁶⁷⁷ *Operation HONOUR Manual*, online (archived): <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/sexual-misconduct/orders-policies-directives/operation-honour-manual.html> at 3.10.
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- ⁹²³ *Evaluation of Diversity and Inclusion* (Defence Team Management Program) (DND, September 2020) at iv/vii.
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- ⁹³⁵ *Royal Military College Saint-Jean – Backgrounder* (last modified 18 January 2022) online: <https://www.cmrsj-rmcsj.forces.gc.ca/di-b/di-b-eng.asp>.
- ⁹³⁶ Royal Military College Saint-Jean, *2020-2025 Strategic Plan* (last modified 9 September 2020) online: <https://www.cmrsj-rmcsj.forces.gc.ca/ps-sp/ps-sp-20-25/ps-sp-20-25-eng.asp>.
- ⁹³⁷ In 2019, the Ministry of Higher Education granted RMC St-Jean the right to award a Bachelor of Arts degree for its university program in International Studies. On 3 June 2021, the National Assembly of Quebec passed Bill 93, recognizing RMC St-Jean as a university-level educational institution and conferring upon it the status of a full-fledged university: see *Royal Military College Saint-Jean – University Status* (last modified 8 June 2021) online: <https://www.cmrsj-rmcsj.forces.gc.ca/com-com/su-ul/su-ul-eng.asp>; *Royal Military College Saint-Jean – Backgrounder* (18 January 2022) online: <https://www.cmrsj-rmcsj.forces.gc.ca/di-b/di-b-eng.asp>.
- ⁹³⁸ Response to request for information re demographics, RMC-Kingston (18 January 2022).
- ⁹³⁹ DAOD 5002-9, *University Training Plan for Non-Commissioned Members – Regular Force* (date of issue 19 November 2015) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives/5000-series/5002/5002-9-university-training-plan-for-non-commissioned-members-regular-force.html>.
- ⁹⁴⁰ *Royal Military College of Canada – Campus Life* (last modified 24 May 2019) online: <https://www.rmc-cmr.ca/en/training-wing/campus-life>.
- ⁹⁴¹ *Regular Officer Training Plan (ROTP)* (last modified 20 September 2021) online: <https://www.rmc-cmr.ca/en/registrars-office/regular-officer-training-plan-rotp>.
- ⁹⁴² QR&O 15.07 (Voluntary Release After Subsidized Education or Training) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-15-release.html>.
- ⁹⁴³ *Royal Military College of Canada – The RMC Mission* (last modified 1 April 2019) online: <https://www.rmc-cmr.ca/en/college-commandants-office/rmcc-mission>.
- ⁹⁴⁴ Response to request for information re intake into Reg Force, DND (intake up to 31 October 2021).
- ⁹⁴⁵ Response to request for information re demographics, RMC-Kingston (18 January 2022).
- ⁹⁴⁶ Response to request for information re data points, CFRG (15 March 2022); note that ALOY cadets are enrolled at RMC for one academic year as an OCdt in CAF. After their ALOY year, ALOY cadets are offered the opportunity to apply to continue at RMC in a degree program under the Regular Officer Training Plan (ROTP), provided they meet the academic requirements, online: <https://www.rmc-cmr.ca/en/training-wing/aboriginal-leadership-opportunity-year-aloy>.
- ⁹⁴⁷ DND, *Canadian Armed Forces Employment Equity Report 2020-2021* at 4.
- ⁹⁴⁸ Response to request for information re data points, CFRG (15 March 2022).
- ⁹⁴⁹ Response to request for information re demographics, RMC-Kingston (18 January 2022): 49.2% of the 1130 ROTP cadets currently at the RMC are from Ontario, 14.2% are from BC, and 9.4% are from Quebec.

- ⁹⁵⁰ *Royal Military College Saint-Jean – 2020-2025 Strategic Plan* (last modified 9 September 2020) online: <https://www.cmrsj-rmcsj.forces.gc.ca/ps-sp/ps-sp-20-25/ps-sp-20-25-eng.asp>.
- ⁹⁵¹ *MacLean's 2022 University Guide – Royal Military College of Canada* (2022) online: *MacLean's* <https://www.macleans.ca/schools/royal-military-college-of-canada/>. MacLean's reports the male to female ratio at RMC as 19% female and 81% male, which is lower than the figures provided by CFRG and those in the CAF Guardian system.
- ⁹⁵² *MacLean's 2022 University Guide – University of Ontario Institute of Technology* (2022) online: *MacLean's* <https://www.macleans.ca/schools/ontario-tech-university/>.
- ⁹⁵³ *MacLean's 2022 University Guide – University of Toronto* (2022) online: *Maclean's* <https://www.macleans.ca/schools/University-of-Toronto/>.
- ⁹⁵⁴ *MacLean's 2022 University Guide – Dalhousie University* (2022) online: *Maclean's* <https://www.macleans.ca/schools/dalhousie-university/>.
- ⁹⁵⁵ *MacLean's 2022 University Guide – University of British Columbia* (2022) online: *MacLean's* <https://www.macleans.ca/schools/university-of-british-columbia/>.
- ⁹⁵⁶ *MacLean's 2022 University Guide – University of Waterloo* (2022) online: *Maclean's* <https://www.macleans.ca/schools/university-of-waterloo/>.
- ⁹⁵⁷ *MacLean's 2022 University Guide – Algoma University* (2022) online: *Maclean's* <https://www.macleans.ca/schools/algoma-university/>.
- ⁹⁵⁸ *MacLean's 2022 University Guide – Carleton University* (2022) online: *Maclean's* <https://www.macleans.ca/schools/carleton-university/>.
- ⁹⁵⁹ *MacLean's 2022 University Guide – Saint Mary's University* (2022) online: *Maclean's* <https://www.macleans.ca/schools/saint-marys-university/>.
- ⁹⁶⁰ *MacLean's 2022 University Guide – Mount Allison University* (2022) online: *Maclean's* <https://www.macleans.ca/schools/mount-allison-university/>.
- ⁹⁶¹ Universities Canada, *Equity, diversity and inclusion at Canadian universities: Report on the 2019 national survey* (October 2019) online: <https://www.univcan.ca/wp-content/uploads/2019/11/Equity-diversity-and-inclusion-at-Canadian-universities-report-on-the-2019-national-survey-Nov-2019-1.pdf> at 11.
- ⁹⁶² *Paid Education - Regular Officer Training Plan* (last modified 1 April 2019) online: <https://forces.ca/en/paid-education/rotp>.
- ⁹⁶³ *Paid Education - Regular Officer Training Plan* (last modified 1 April 2019) online: <https://forces.ca/en/paid-education/rotp>.
- ⁹⁶⁴ Response to request for information re officers, Director Senior Appointments (21 January 2022) (note: the data provided is only as accurate as the data contained within the CAF HR repository, Guardian. There are known errors, especially in the Entry Plan area).
- ⁹⁶⁵ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.66-6.68.
- ⁹⁶⁶ *Academic Director's Biography* (last modified 5 September 2018) online: <https://www.cmrsj-rmcsj.forces.gc.ca/com-com/bio/bde-adb-eng.asp>; QR&O, Volume IV – Appendix 6.1, The Queen's Regulations and Orders for the Canadian Military Colleges, 1.02 (Definitions), 2.05 (Command and Control), 2.81 (Staff of the Colleges), 2.82 (Faculty of the Colleges) and 2.83 (Commandant) online: <https://www.canada.ca/en/departement-national-defence/corporate/policies-standards/queens-regulations-orders/vol-4-appendices/appendix-6-1/table-contents.html>.
- ⁹⁶⁷ Deschamps Report, online: https://publications.gc.ca/collections/collection_2015/mdn-dnd/D2-506-2015-eng.pdf at 14.
- ⁹⁶⁸ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at para. 35.
- ⁹⁶⁹ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.68-6.69.

- ⁹⁷⁰ QR&O, Volume IV – Appendix 6.1, The Queen’s Regulations and Orders for the Canadian Military Colleges, 2.80 (Organization of the Colleges) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-4-appendices/appendix-6-1/table-contents.html>.
- ⁹⁷¹ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at Annex F – Command and Control and Governance, para. 27.
- ⁹⁷² 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at para. 6.60.
- ⁹⁷³ Statistics Canada, *Experiences of unwanted sexualized and discriminatory behaviours and sexual assault among students at Canadian military colleges, 2019* (8 October 2020) online: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00011-eng.pdf?st=GzPzu6i4>.
- ⁹⁷⁴ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf>; 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.60-6.72.
- ⁹⁷⁵ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.17-6.20.
- ⁹⁷⁶ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at para. 6.19.
- ⁹⁷⁷ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at iii, v, and Annex G – Selection, para. 3(e).
- ⁹⁷⁸ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.45 and 6.52.
- ⁹⁷⁹ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at paras. 6.55, 6.57, and 6.107.
- ⁹⁸⁰ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at para. 6.56.
- ⁹⁸¹ Response to request for information re officers, Director Senior Appointments (21 January 2022).
- ⁹⁸² 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at iv, Executive Summary.
- ⁹⁸³ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at paras. 49 and 53-56.
- ⁹⁸⁴ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html at para. 6.20.
- ⁹⁸⁵ Statistics Canada, *Experiences of unwanted sexualized and discriminatory behaviours and sexual assault among students at Canadian military colleges, 2019* (8 October 2020) online: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2020001/article/00011-eng.pdf?st=GzPzu6i4> at 3, 6, and 19.
- ⁹⁸⁶ RMC Kingston, *Royal Military College Canada – Response to Comd CDA on Statistics Canada Report on CMCS* (30 November 2020).
- ⁹⁸⁷ *Canadian Forces Provost Marshal Annual Report 2019-2020* (DND, 30 November 2020) online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2019/canadian-forces-provost-marshal-report-fiscal-year-2019-2020.pdf> at 13 and 19. Kingston area also had ten (10) ongoing criminal cases transferred to the civilian authorities following the recommendations of my Interim Report.
- ⁹⁸⁸ RMC Kingston, *Royal Military College Canada – Response to Comd CDA on Statistics Canada Report on CMCS* (30 November 2020).
- ⁹⁸⁹ *CDA Response to MNDO re CAF Education and Training on Gender/Diversity Themes* (DND, 25 March 2021) at Annex A.

- ⁹⁹⁰ *Operation Honour, Respect, Diversity and Inclusion Training and Education Update – Examples*, CDA (2021); RMC Kingston, *Royal Military College Canada – Response to Comd CDA on Statistics Canada Report on CMCS* (30 November 2020) at Annex C.
- ⁹⁹¹ *Royal Military College of Canada – Diversity, Equity, and Inclusiveness* (23 October 2020) online: <https://www.rmc-cmr.ca/en/corporate-wing/diversity-equity-and-inclusiveness>.
- ⁹⁹² *Royal Military College of Canada – Parent Handbook* (last modified 9 March 2021) online: <https://www.rmc-cmr.ca/sites/default/files/rmc-parent-handbook-en.pdf> at 27.
- ⁹⁹³ *Royal Military College of Canada – Diversity, Equity, and Inclusiveness* (23 October 2020) online: <https://www.rmc-cmr.ca/en/corporate-wing/diversity-equity-and-inclusiveness>.
- ⁹⁹⁴ *Royal Military College of Canada – RMC Success Centre* (last updated 22 January 2021) online: <https://www.rmc-cmr.ca/en/rmc-success-centre>.
- ⁹⁹⁵ 2017 OAG RMC Report, online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201711_06_e_42671.html.
- ⁹⁹⁶ 2017 SSAV Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/20170329-rmc-ssav-report-final.pdf> at i.
- ⁹⁹⁷ British Army, *Royal Military Academy Sandhurst* (2020) online: <https://www.army.mod.uk/who-we-are/our-schools-and-colleges/rma-sandhurst/>; United States Military Academy West Point (2020) online: <https://www.westpoint.edu/>; United States Air Force Academy (2020) online: <https://www.usafa.edu/>; United States Naval Academy, online: <https://www.usna.edu/About/index.php>.
- ⁹⁹⁸ RMC Kingston, *Response to Comd CDA on Statistics Canada Report on CMCS* (30 November 2020).
- ⁹⁹⁹ The terms of reference for my Review are found at Schedule A.
- ¹⁰⁰⁰ *Organization and Accountability: A Reference Document for Members of the Canadian Armed Forces and Employees of the Department of National Defence* (DND, 3rd ed June 2016) at C-76 to C-78.
- ¹⁰⁰¹ *Overview Slide*, DGMC (19 July 2021).
- ¹⁰⁰² NDA, s 28, online: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-n-5/latest/rsc-1985-c-n-5.html?autocompleteStr=national%20defence%20act%20&autocompletePos=1>.
- ¹⁰⁰³ QR&O 12.01 (Promotion of Officers -General) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-12-promotion-officers/table-contents.html> and QR&O 14.01 (Promotion and Reclassification of Non-Commissioned Members – General) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-14-promotion-reclassification-non-commissioned-members.html>.
- ¹⁰⁰⁴ QR&O 11.02 (Promotion, Reversion and Compulsory Remustering – Conditions Governing Promotion) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-11-promotion-reversion-compulsory-remustering.html>.
- ¹⁰⁰⁵ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at para. 6.
- ¹⁰⁰⁶ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at para. 4(a).
- ¹⁰⁰⁷ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at para. 4(c).
- ¹⁰⁰⁸ DND, Blank Personnel Evaluation Report; *Rapport d'appréciation du personnel (RAP)* (2009).
- ¹⁰⁰⁹ Maj. Shain Ronalds, *Performance Evaluations: Are They a Useful Tool in the Canadian Armed Forces* (CFC, May 2019) at 7; *New common competency dictionary developed for performance appraisals* (7 July 2018) online: <http://www.drdc-rddc.gc.ca/en/dynamic-article.page?doc=new-common-competency-dictionary-developed-for-performance-appraisals/iumuws92>; *Canadian Armed Forces Competency Dictionary (CAF CD) Update* (DND, March 2021).
- ¹⁰¹⁰ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at para. 4(a).

- ¹⁰¹¹ *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 1-4/6, paras. 13- 14.
- ¹⁰¹² *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 1-4/6 and 1-5/6.
- ¹⁰¹³ *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 1-5/6.
- ¹⁰¹⁴ *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 1-5/6.
- ¹⁰¹⁵ *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 1-5/6.
- ¹⁰¹⁶ *Canadian Armed Forces Selection Board Guidance Manual* (DND, 30 July 2020) at 2-5/8, para. 18.
- ¹⁰¹⁷ Interview with the DGMC and OJAG (7 April 2022).
- ¹⁰¹⁸ Maj. Shain Ronalds, *Performance Evaluations: Are They a Useful Tool in the Canadian Armed Forces* (CFC, May 2019) at 9.
- ¹⁰¹⁹ Decision of the MGERC no. 2015-304 – *Alignment of Performance Evaluation Report (PER) ranking instructions with the Canadian Forces Personnel Appraisal System Policy (CFPAS)*, online: <https://www.canada.ca/en/military-grievances-external-review/services/case-summaries/case-2015-304.html> (11 February 2016).
- ¹⁰²⁰ CANFORGEN 045/20, *Changes to CAF PER For 2019/2020* (February 2020) at 5(d).
- ¹⁰²¹ Anti-Racism Panel Final Report, online: <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2022/mnd-ap-final-report-7-jan-2022.pdf>.
- ¹⁰²² DND, *Canadian Armed Forces Employment Equity Report 2020-2021* at 7.
- ¹⁰²³ Response to request for information re selection board and promotion data, DGMC (3 November 2021).
- ¹⁰²⁴ *Deep Dive into Women in the CAF: Synthesis of Analytic Research Insights Slides*, Director Research Workforce Analytics (September 2021) being Annex A to *Deep Dive into Women in the CAF*, DRDC (November 2021); Barbara Waruszynski et al, *Women in the Profession of Arms: Female Regular Force members' perception on the attraction, recruitment, employment, and retention of women in the Canadian Armed Forces* (DND, July 2018) at 21.
- ¹⁰²⁵ *Deep Dive into Women in the CAF: Synthesis of Analytic Research Insights Slides*, Director Research Workforce Analytics (September 2021) being Annex A to *Deep Dive into Women in the CAF*, DRDC (November 2021); Barbara Waruszynski et al, *Women in the Profession of Arms: Female Regular Force members' perception on the attraction, recruitment, employment, and retention of women in the Canadian Armed Forces* (DND, July 2018) at 21.
- ¹⁰²⁶ Response to request for information re selection board and promotion gender trends, DGMC (3 August 2021).
- ¹⁰²⁷ *Representation Rates of Women in the Canadian Armed Forces: Focus on Senior Ranks*, DGMPRA (June 2021) at Figure 1.
- ¹⁰²⁸ *Representation Rates of Women in the Canadian Armed Forces: Focus on Senior Ranks*, DGMPRA (June 2021) at Figure 2.
- ¹⁰²⁹ Maj. Shain Ronalds, *Performance Evaluations: Are They a Useful Tool in the Canadian Armed Forces* (CFC, May 2019) at 8.
- ¹⁰³⁰ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 4/11, para. 8.
- ¹⁰³¹ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 4/11, para. 8.
- ¹⁰³² *Using CFPAS – Chapter 1 – 117. Reporting of Other Factors on PERs*, DMCA (accessed 21 July 2021) para 1.
- ¹⁰³³ *Briefing Note for the Independent External Comprehensive Review (IECR) – CFPAS Reporting of Other Factors on PERS*, DGMC (2 March 2022) at para. 2.
- ¹⁰³⁴ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at para. 4(b).

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- ¹⁰³⁶ *Performance and competency Evaluation (PaCE)* (accessed 14 February 2022) online: <http://www.cmp-cpm.forces.gc.ca/pace-epc/en/index-LO.asp>.
- ¹⁰³⁷ *Competency one-pagers, Director Military Careers Policy and Grievances* (accessed 10 May 2022).
- ¹⁰³⁸ *Canadian Armed Forces Competency Dictionary (CAF CD) Update* (DND, March 2021) at Annexes A and B.
- ¹⁰³⁹ *Performance and Competency Evaluation Project*, DMCA (August 2021).
- ¹⁰⁴⁰ *Performance and Competency Evaluation Project*, DMCA (August 2021).
- ¹⁰⁴¹ *CAF Performance Appraisal Report (PAR) – Sgt / PO2*, DMCA (March 2021); *CAF Performance Appraisal Report (PAR) – Maj / LCdr*, DMCA (March 2021).
- ¹⁰⁴² *Performance and Competency Evaluation Project*, DMCA (August 2021).
- ¹⁰⁴³ *CAF Performance Appraisal Report (PAR) – Sgt / PO2*, DMCA (March 2021); *CAF Performance Appraisal Report (PAR) – Maj / LCdr*, DMCA (March 2021).
- ¹⁰⁴⁴ *Performance and Competency Evaluation (PaCE) – Competency One-Pager (Lieutenant Colonel / Commander), Director Military Careers Policy and Grievances* (accessed 10 May 2022).
- ¹⁰⁴⁵ *Performance and Competency Evaluation (PaCE) – Competency One-Pager (Lieutenant Colonel / Commander), Director Military Careers Policy and Grievances* (accessed 10 May 2022).
- ¹⁰⁴⁶ CF Mil Pers Instruction 003/21 – Inclusion and the Performance Appraisal Process, CMP (29 October 2021); Message from the Deputy Minister and the Chief of the Defence Staff, *Message to Defence Team members: Promoting and measuring inclusive behaviours within the Defence Team* (1 April 2022) online: <https://www.canada.ca/en/department-national-defence/maple-leaf/defence/2022/04/promoting-measuring-inclusive-behaviours.html>.
- ¹⁰⁴⁷ Defined as GOFOs, colonels and captains (Navy) in a director general role, and chief warrant officers / chief petty officers 1st class supervised as per *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at Flag B, Annex A.
- ¹⁰⁴⁸ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at Flag B 5-6.
- ¹⁰⁴⁹ *Military Human Resources Records Procedures, Topic: 10 – Unit Personnel Record (UPR) Sub-Topic: Unit Personal File*, DMCA (last modified 16 December 2019) at 2.
- ¹⁰⁵⁰ Although this number varies slightly from year to year.
- ¹⁰⁵¹ *Sustainability of the GOFO Cadre*, DGMPRA (November 2021).
- ¹⁰⁵² QR&O 11.02 (Promotion, Reversion and Compulsory Remustering – Conditions Governing Promotion) online: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders/vol-1-administration/ch-11-promotion-reversion-compulsory-remustering.html> at para. 11.02(1).
- ¹⁰⁵³ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 5/11, para. 10.
- ¹⁰⁵⁴ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 5/11, para. 12(a).
- ¹⁰⁵⁵ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 6/11, para. 13.
- ¹⁰⁵⁶ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 6/11 – 8/11, paras. 14 – 15.
- ¹⁰⁵⁷ “Acting while so employed” denotes an acting rank, and means that the member is granted the temporary rank while they remain in that specific position.
- ¹⁰⁵⁸ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 7/11 – 8/11, para. 15(d).

- ¹⁰⁵⁹ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 7/11, para. 15(a).
- ¹⁰⁶⁰ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 8/11, para. 17.
- ¹⁰⁶¹ *CDS Directive for Reinforcing General Officer / Flag Officer (GOFO) Selection Promotion Year 2022* (9 July 2021); Joy Klammer, *The Interim General Officer/Flag Officer Confirmatory Tool: Purpose and Interpretation*, DRDC (2021).
- ¹⁰⁶² Joy Klammer, *The Interim General Officer/Flag Officer (GOFO) Selection Process*, DRDC (November 2021); Joy Klammer, *The Interim General Officer/Flag Officer Confirmatory Tool: Purpose and Interpretation*, DRDC (2021).
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- ¹⁰⁶⁴ *CDS Directive for Reinforcing General Officer / Flag Officer (GOFO) Selection Promotion Year 2022* (9 July 2021) at para. 6(c)(2).
- ¹⁰⁶⁵ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 11, para. 21(d).
- ¹⁰⁶⁶ *Briefing Note for the Independent External Comprehensive Review (IECR) – CAF Selection-Promotion Process*, DMCA (23 January 2022) at 11, para. 21(d).
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