

Sexual Misconduct in the Canadian Armed Forces (CAF)

The Honourable Louise Arbour's Report on Sexual Misconduct in the CAF

Recommendation

NCVA will continue to press the Government to fully implement without further delay all of the salient recommendations contained in the report of Madame Justice Arbour, the Independent External and Comprehensive Review (IECR).

Recommendation

That the Minister of National Defence extend the appointment of the external monitor to oversee the DND/CAF efforts to address sexual misconduct and harassment, and monitor the implementation of the IECR for at least three years.

Recommendation

That the Minister of National Defence take the necessary action to launch immediately the external review of the two military colleges.

Recommendation

That the Minister of National Defence ensure remedial steps are taken to address any challenges being encountered by individual claimants in the transition of their cases to the civilian/criminal courts.

The NCVA reports that, of our seven recommendations made to effect and ensure meaningful change, only one remains outstanding:

Recommendation

To effect and ensure meaningful change and oversight, the Government must establish a fully independent Office of the Inspector General of the DND and the CAF reporting to Parliament.

We would express our appreciation to Captain (RCN) (Ret'd) Andrea Siew, former president of the Canadian Military Intelligence Association (a member organization of NCVA), for her outstanding contribution to this critically important position paper, which represents a high-priority concern of NCVA's Legislative Program.

Background

In 2021, the NCVA provided a position paper and a high-level overview of the 30-year history of sexual misconduct in the CAF, including a summary of the findings of the previous investigations into the issue, the resulting recommendations and the recent response to address this unacceptable and abhorrent behaviour.

The 2021 evaluation concluded with five recommendations to effect immediate and enduring change:

- There must be immediate, meaningful and comprehensive cultural transformation in the Department of National Defence (DND) and CAF to restore the trust in the leadership. The men and women who serve our country deserve to work in an

environment that is free from all forms of harmful behaviour.

- There is a requirement for an external and independent reporting and investigation system outside the chain of command. This system must offer a reporting mechanism for incidents of sexual misconduct without reprisal, fear or isolation.
- There must be accountability for the actions of those who engage in this abhorrent and unacceptable behaviour.
- There must be the resources and support for all victims of sexual assault including CAF members and veterans.
- Lastly, to effect and ensure meaningful change and oversight, the Government must establish a fully independent Office of the Inspector General of the DND and the CAF reporting to Parliament.

In April 2021, in response to allegations of significant sexual misconduct, the Government launched an Independent External and Comprehensive Review (IECR) of current policies, procedures, programs, practices and culture within the DND/CAF and engaged former Supreme Court Justice Louise Arbour to undertake this review.

The final report was released on May 30, 2022.¹ The comprehensive report detailed the causes of the continued presence of sexual harassment and misconduct in the CAF and provided 48 recommendations to prevent and/or eradicate sexual harassment and misconduct. Those areas range from the CAF's definitions of sexual misconduct and harassment to the Sexual Misconduct Response Centre (SMRC) mandate and activities – including its independence and reporting structure, to issues around recruitment, military training and colleges, and internal and external oversight mechanisms. The report's recommendations were thorough and if fully implemented would ensure enduring change to prevent and eradicate harassment and sexual misconduct.

The Minister of National Defence (MND) stated at the release of the report that the Government agreed with all of the recommendations in the report and that work would begin immediately to implement 17 of the report's 48 recommendations – either through new efforts or by strengthening existing programs. Our previous 2022 update provided a summary of these 17 recommendations,² and the Government committed to studying, analyzing and developing plans to respond to the remaining 31 recommendations.

In the 2022 NCVA Legislative Program, we reported that our five recommendations made in 2021 remained outstanding and made two additional recommendations:

- That the Minister of National Defence immediately appoint an independent external monitor, mandated to oversee the implementation of recommendations as required by Recommendation 48 in the Independent External Comprehensive Review.
- That the Minister of National Defence not only inform Parliament of any recommendations that the Government does not intend to implement by the end of 2022 (Recommendation 47), but also provide the status, progress and timeline towards implementation of all the recommendations made by Madame Justice Arbour in the Independent External Comprehensive Review.

2023 Update

Over the last year, there has been significant progress that responds to our concerns by the DND/CAF to achieve enduring culture change and to prevent and eradicate harassment and sexual misconduct in the CAF. This report will provide an update on the progress being made to implement the recommendations of the Honourable Louise Arbour's Independent External Comprehensive Review (IECR) and will identify key recommendations yet to be implemented. We will conclude with an assessment of the NCVA recommendations for change.

1 <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/report-of-the-independent-external-comprehensive-review.html>

2 <https://www.ncva-cnaac.ca/en/legislative-program/#sexual-misconduct-in-the-canadian-armed-forces>

The following provides an overview of key progress in the implementation of the IECR recommendations since last year's report.

On October 24, 2022, the Government announced the appointment of Madame Jocelyne Therrien as the external monitor to oversee the DND/CAF efforts to address sexual misconduct and harassment in the CAF and monitor the implementation of the 48 recommendations of the IECR. While the appointment is initially for one year, the NCVA is optimistic that the Government will do the right thing and extend the appointment until the IECR recommendations are fully implemented. This appointment responds to Recommendation 48 of the IECR.

On December 13, 2022, the Minister of National Defence tabled a report in Parliament outlining the path forward and providing direction to the DND/CAF to undertake on all 48 of the IECR recommendations. The report responds to **Recommendation 47** of the IECR.

The report also outlines the work taken to implement the 17 recommendations that were immediately directed for implementation, the steps that will be undertaken to address the remaining 31 recommendations, as well as other ongoing and forthcoming DND/CAF initiatives that will further advance culture change within the institution.³



On May 2, 2023, Jocelyn Therrien, the external monitor of the DND/CAF response to the IECR, provided her first progress report.⁴ While the report concluded that “a significant level of tangible activity” has been undertaken on the 48 recommendations, she raised concern that there is no overall strategic plan or framework that sets out how the organization, as a whole, will move from one phase to the next. While progress is being made, she states there needs to be an overall strategic plan that would serve to ensure that the resources are aligned to priorities.

The progress report also highlighted the changes being made with respect to Recommendation 5 of the IECR, which states that Criminal Code sexual offences should be removed from the jurisdiction of the CAF.

³ Details on the progress of specific recommendations are available here: <https://www.canada.ca/en/department-national-defence/news/2022/12/update-on-madame-arbours-independent-external-comprehensive-review-final-report-and-culture-change-reforms-in-the-department-of-national-defence-an.html>.

⁴ The May 2023 progress report is available here: <https://www.canada.ca/en/department-national-defence/corporate-reports-publications/external-monitor-report-first-status-report-may2-2023.html#toc1>.

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Specifically, that they should be investigated and prosecuted exclusively in civilian criminal courts.

Last year, the NCVA reported that of the 62 cases that had been transferred to civilian authorities, at least half had been returned to the CAF.

In response to these challenges, the Minister of National Defence directed the DND/CAF to review how these jurisdictional changes can best be met, in consultation with federal, provincial and territorial (FPT) partners. The progress report highlighted that these discussions are achieving results. For example, the Office of the Provost Marshal and the Ontario Provincial Police have formalized the process for the referral of cases between the two organizations. To date, more than 90 files have been referred to and accepted by various jurisdictions. All cases are being investigated and prosecuted in civilian criminal courts.

The progress report also stated that an external review panel for the military colleges is expected to be in place by June 2023:

“The IECR report (Recommendations 28 and 29) calls for an external review of the two military colleges and for the elimination of the cadet chain of responsibility. The process for finding qualified members for the review panel will be launched shortly via an executive search firm. The plan is to have the panel operational in June.”

It is important to note that this external review has not yet been launched.

The next progress report will be October/November 2023.

On August 15, 2023, the Minister of National Defence announced changes to the military grievance and harassment process, which implement Recommendations 7 and 9 of the IECR. The announcement stated that effective immediately, “any CAF members who have experienced sexual harassment, sexual misconduct or any other form of discrimination based on sex/gender while performing their duties have a new path to justice available to them. They can choose to bring their complaint directly to the Canadian Human Rights Commission (CHRC).” The CHRC operates independently from the Government of Canada.

With this change, a CAF member who intends to file a complaint of sexual harassment or discrimination on the basis of sex will have two options for lodging a complaint: (1) they can file a complaint through the existing CAF grievance and harassment processes, or (2) they can file directly with the CHRC. Members who choose to go directly to the CHRC will no longer be required to exhaust internal



grievance and harassment processes first. The implementation of these recommendations applies to both new and existing complaints.

On August 23, 2023, the Minister of National Defence announced that the DND/CAF are initiating a process to repeal the regulations on Duty to Report and will be strengthening and updating policies, orders and directives to ensure appropriate reporting. Repealing the Duty to Report regulations responds to Recommendation 11 of the IECR as well as recommendations received in other external reviews.



Repealing the Duty to Report is an important step in the process to restore relationships with members of the institution who have been harmed by sexual assault, sexual harassment or discrimination based on sex, gender, gender identity or sexual orientation. While the Duty to Report was designed to promote good order and discipline among CAF members by requiring them to report misconduct to the proper authorities, it has created unintended negative consequences for survivors by taking away their agency and control in the reporting process. As Madame Arbour stated in her

report, “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.”

Repealing the Duty to Report regulations will not limit a CAF member’s ability to report their own experiences of misconduct, nor will it prevent appropriate reporting. This change simply removes the general legal obligation of CAF members to report misconduct, thereby providing space for a more survivor-centric, responsive, and evidence-informed approach. Removing the obligation to report will create a safe space for members to exercise discretion and choose the best path forward.

Summary

Significant progress has been made over the last year in the implementation of the IECR recommendations, which have also responded to the NCVA recommendations made in 2021 and 2022 to effect immediate and enduring change in the CAF. However, the NCVA is concerned that while the independent monitor reported “an external review panel for military colleges is expected to be in place by June” as required by IECR recommendations 28 and 29, this remains outstanding. This is a key recommendation.

The NCVA is also concerned that the Government has only committed to the establishment of the external monitor to oversee the implementation of the IECR for one year.

The NCVA looks forward to the next report of the external monitor, which is due before the end of 2023.