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18 January 2024

**Federal-Provincial-Territorial
Heads of Prosecutions Committee**
Office of the Director of Public Prosecutions
Public Prosecution Service of Canada
160 Elgin Street – Room 1220
Ottawa ON K1A 0H8

**RE: INTERIM HANDLING OF SEXUAL ASSAULT AND OTHER CRIMINAL
OFFENCES OF A SEXUAL NATURE SUBJECT TO CONCURRENT JURISDICTION**

References:

- A. Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities, Federal-Provincial-Territorial Heads of Prosecutions Committee, 1 November 2023
- B. Interim recommendations from the Independent External Comprehensive Review of the Department of National Defence (DND) and the Canadian Armed Forces (CAF), 20 October 2021: <https://www.canada.ca/en/department-national-defence/services/conduct-and-culture/iecr-interim-recommendations.html>
- C. Minister of National Defence's Response to the Interim Recommendations, 3 November 2021: <https://www.canada.ca/en/department-national-defence/services/conduct-and-culture/iecr-interim-recommendations.html#toc1>
- D. Joint Statement of the CFPM and the DMP, 5 November 2021: <https://www.canada.ca/en/department-national-defence/news/2021/11/joint-statement-of-the-canadian-forces-provost-marshall-and-the-director-of-military-prosecutions.html>
- E. DMP's Interim Direction Regarding the Implementation of Madame Arbour's Interim Recommendation, 26 November 2021: <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/implementation-mme-arbour-interim-recommendation.html>
- F. Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces, 20 May 2022: <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/report-of-the-independent-external-comprehensive-review.html>

OVERVIEW

1. On 1 November 2023, the Federal-Provincial-Territorial Heads of Prosecutions Committee adopted a statement on the principles and presumptions that guide the exercise of concurrent jurisdiction (reference A). Notwithstanding those principles and presumptions, and in response to Madame Arbour's interim recommendation as a part of her Independent External Comprehensive Review of sexual misconduct in the military (reference B), I have agreed not to exercise jurisdiction over sexual assault and other criminal offences of a sexual nature under the *Criminal Code* at this time. This letter to the Committee is intended to outline the interim and final recommendations of the Independent External Comprehensive Review related to military jurisdiction to investigate and prosecute sexual assault and other criminal offences of a sexual nature under the *Criminal Code*, and to describe the impact of those recommendations on the application of the principles and presumptions.

THE INDEPENDENT EXTERNAL COMPREHENSIVE REVIEW

2. On 29 April 2021, the Minister of National Defence appointed former Supreme Court Justice, Madame Louise Arbour to conduct an independent and comprehensive review of sexual misconduct in the CAF. The terms of reference provided the authority for Madame Arbour to issue any interim assessments and recommendations to address issues for immediate action that may become apparent during the conduct of the review.

THE INTERIM RECOMMENDATIONS

3. On 20 October 2021, Madame Arbour recommended 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 should be referred to civilian authorities.

4. As reflected in the Joint Statement of the Canadian Forces Provost Marshal (CFPM) and the Director of Military Prosecutions (reference D), both the CFPM and I have fully accepted the interim recommendation. Since implementing the recommendation, I have not accepted any new case that involves sexual assault or other criminal offence of a sexual nature under the *Criminal Code*. Additional details on my implementation of the interim recommendation can be found at reference E.

5. Notwithstanding the principles and presumptions for the exercise of concurrent jurisdiction, I have decided to continue to implement the interim recommendation until final recommendation #5 has been fully addressed by the Government of Canada and, if necessary, Parliament.

FINAL RECOMMENDATION #5

6. Madame Arbour's final report was released on 20 May 2022 (reference F). It outlined 48 substantive recommendations related to sexual misconduct. One of these recommendations (recommendation #5) is to remove military jurisdiction to investigate and prosecute *Criminal Code* sexual offences. No final decisions regarding the implementation of this recommendation have been made, but development of proposed legislative amendments addressing this recommendation has begun.

7. If the recommendation to remove military jurisdiction over *Criminal Code* sexual offences is fully implemented, these offences will automatically be excluded from the definition of "offences subject to concurrent jurisdiction" contained at reference A. In other words, the principles and presumptions will cease to apply to these offences. Alternatively, if jurisdiction is not removed, then I will reconsider the implementation of Madame Arbour's interim recommendation at the appropriate time.

8. I and my staff will be happy to answer any questions regarding our ongoing implementation of the interim recommendation.

Sincerely,



Colonel Dylan Kerr
Director of Military Prosecutions