



National
Defence

Défense
nationale



CANADIAN
ARMED FORCES

OFFICE OF THE DEPUTY MINISTER AND CHIEF OF THE DEFENCE STAFF
CANADIAN FORCES INTELLIGENCE COMMAND

ANNUAL REPORT TO THE MINISTER OF NATIONAL DEFENCE:
APPLICATION OF THE ACT AND THE DIRECTIONS TO DND/CAF FOR AVOIDING
COMPLICITY IN MISTREATMENT BY FOREIGN ENTITIES
2021





National
Defence

Défense
nationale

OFFICE OF THE DEPUTY MINISTER AND CHIEF OF THE DEFENCE STAFF
CANADIAN FORCES INTELLIGENCE COMMAND



CANADIAN
ARMED FORCES

Cover Photos left to right:

LEFT: A Spanish military doctor and a Canadian Armed Forces medical technician prepare a dose of a COVID-19 vaccine for a Spanish soldier during Operation REASSURANCE on April 26, 2021 at Camp Adazi, Latvia. Photo by MCpl Stuart MacNeil

CENTRE: Vice Admiral Ron Lloyd and Chief Petty Officer First Class Michel Vigneault converse with an officer of the Ghana Navy in Casablanca, Morocco during Operation PROJECTION West Africa on April 6, 2019. Photo by Corporal David Veldman

RIGHT: ATF Commander, Lieutenant-colonel Stephen Latwaitis (right) welcomes the arrival of the pilots at Mihail Kogalniceanu (MK) Air Base in Romania, on 26 July 2022 during Operation REASSURANCE. Photo by Corporal Eric Chaput

© His Majesty the King in Right of Canada, 2022

Cat. No. D1-31E-PDF

ISSN 2816-8445

Canada

Table of Contents

INTRODUCTION	4
Background	4
POLICIES AND PROCEDURES	5
DND/CAF Governance and Accountability Framework	5
Strengthening Information Sharing Policies and Directives	6
Implementing Best Practices and Procedures	6
Training	7
MONITORING AND RESTRICTIONS ON INFORMATION SHARING	8
Overview	8
Common Practices and Considerations	8
Monitoring and Reporting	8
Enhancing Risk Assessment and Mitigation Measures	9
Special Working Groups and Committees	9
Restrictions on Existing Information Sharing Agreements	10
Intelligence and/or Information Sharing Partnerships	10
WAY FORWARD	11
CONCLUSION	11

INTRODUCTION

This report by the Department of National Defence (DND) and the Canadian Armed Forces (CAF) is presented to the Minister of National Defence (MND) pursuant to the Governor in Council's *Directions for Avoiding Complicity in Mistreatment by Foreign Entities* (Deputy Minister of National Defence and the Chief of the Defence Staff) (the 2019 Directions), which were issued under the *Avoiding Complicity in Mistreatment by Foreign Entities Act* (the Act).

In accordance with clause 23 of the *Ministerial Direction to the Department of National Defence and the Canadian Armed Forces: Avoiding Complicity in Mistreatment by Foreign Entities* (the 2017 MD), the classified version of this report includes:

- a. Details of any cases where it was believed that the release or disclosure of information to foreign entities could have resulted in a substantial risk of mistreatment of an individual; and
- b. The restriction of any information-sharing arrangements due to concerns related to mistreatment.

The unclassified version of the report includes the contents described above without containing information:

- a. In accordance with subsection 7(2) of the Act:
 - i. the disclosure of which would be injurious to national security, national defence or international relations or compromise an ongoing operation or investigation; or
 - ii. that which is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege.
- b. In accordance with clause 25 of the 2017 MD:
 - i. that which compromises the national interest, the effectiveness of operations, or the safety or security of an individual.

This report describes the activities that support DND/CAF compliance with the 2017 MD, the Act, and the 2019 Directions from 01 January 2021 to 31 December 2021.

Background

DND/CAF shares defence-related information with other government departments, agencies, international partners and allies as a means to contribute to the defence and security of Canada, and satisfy international defence-related obligations. DND/CAF ensures that information sharing activities with other government departments, allies and other foreign partners are done in accordance with applicable Canadian and international law, including the Act and the 2019 Directions. The 2017 MD strictly prohibits the sharing of information (request from and/or disclosure to a foreign entity), under any circumstance, if there is a substantial risk of mistreatment to an individual that cannot be mitigated. The 2017 MD prescribes, for certain cases, specific referral mechanisms to the Chief of the Defence Staff (CDS) and the Deputy Minister (DM) to determine if information can be lawfully requested, disclosed or used. The

MD also requires annual reporting obligations to the MND, National Security and Intelligence Committee of Parliamentarians (NSICOP), and the public. The Act and the 2019 Directions (which came into force in July and September 2019, respectively), supplemented the direction issued to DND/CAF in the 2017 MD. Notably, the 2019 Directions added reporting requirements to the National Security and Intelligence Review Agency (NSIRA). The Act reflects broader international obligations placed on Canada by customary international law, the law of armed conflict, and from international agreements to which Canada is a party including: the *Geneva Conventions* and its *Additional Protocols*, the *International Covenant on Civil and Political Rights*, and the *Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment* (CAT). These legal obligations permeate through DND/CAF's internal governance and oversight mechanisms.

DND/CAF did not encounter any instances in 2021 where information sharing activities with a foreign entity could not proceed due to a substantial risk of mistreatment of an individual. DND/CAF was able to meet the requirements under the Act, the 2019 Directions and 2017 MD, and followed a robust framework of internal directives and procedures.

In 2021, DND/CAF updated and implemented the *Chief of Defence Intelligence Functional Directive DND/CAF Information Sharing Activities with Foreign Entities* (CDI FD), provides detailed guidance and protocols on information sharing with foreign entities. Additionally, DND/CAF finalized the Deputy Minister and Chief of Defence Staff (DM/CDS) *Directive on Information Sharing Activities: Avoiding Complicity in Mistreatment by Foreign Entities*, as well as the Ministerial Directive *Avoiding Complicity in Mistreatment by Foreign Entities*. The latter two are awaiting final sign off. These updated policies and directives further refine internal procedures and guidance to DND/CAF personnel and represents the completion of the policy suite and all related protocols.

POLICIES AND PROCEDURES ON AVOIDING COMPLICITY IN MISTREATMENT

DND/CAF Governance and Accountability Framework

DND/CAF conducts its operations and activities within a robust accountability framework, subject to: applicable Canadian and international laws, Cabinet direction, Ministerial authorization and oversight, the authority of the DM and the CDS, Assistant Deputy Ministers, and operational commanders. Internal oversight mechanisms and bodies, including the military chain of command, oversight boards and compliance processes, as well as policies, directives and operational orders that have been developed through extensive consultation with policy, legal and operational stakeholders help ensure compliance with the law. This accountability framework has been supplemented with the creation of two external review bodies in 2017 and 2019, respectively – the NSICOP and the NSIRA.

CAF members and DND employees are required to comply with applicable legal obligations, as well as DND/CAF orders, directives, policies and procedures concerning the sharing and the protection of information. The imperative to operate in a lawful and policy-compliant manner is both a personal and an institutional obligation.

Strengthening Information Sharing Policies and Directive

Since the issuance of the 2017 MD, DND/CAF has continuously improved and refined its policy framework. Enhancements such as the development of detailed and abbreviated risk assessment methodologies; the issuance of the *CDI Interim FD: Information Sharing with Certain Foreign States and their Entities* (April 2018); and the issuance of the 2019 Directions have ensured that the information DND/CAF discloses, requests, or uses does not involve, nor lead to, the mistreatment of an individual by a foreign entity.

While the COVID-19 pandemic delayed the development and implementation of many non-operational activities, DND/CAF has since reinforced its information sharing practices, policy, procedures, and directives including by:

- Working with partners and stakeholders for the purposes of updating its suite of policies and directives, in order to articulate more clearly what constitutes information that would lead to mistreatment; and amending the DM/CDS Directive to include the CDI as the functional authority over any information-sharing activities as it pertains to avoiding complicity in mistreatment and consolidate a centre of responsibility for information sharing.
- Including in the revised CDI FD an updated terms of reference for the Defence Information Sharing Assessment Committee (DISAC), which advises the DM and CDS on the sharing of defence information with foreign entities; the introduction of terms of reference for the Defence Information Sharing Working Group (DISWG), which is a working-level body that advises Release and Disclosure Officers / Authorities (RDO/A), and operational commanders on the sharing of defence information; and enhanced record keeping practices.
- Refining the decision-making process for sharing information through revised decision-making flowcharts, which outline the requirements for sharing information with, or using information from, foreign entities in three specific circumstances – disclosure of, requests for, and the use of information. This process provides greater clarity to operators when higher-level referrals and human rights assessments are required.

The approval of the CDI FD, and all associated protocols relating to information sharing with foreign entities, represents a significant milestone for DND/CAF. Collectively, they provide detailed transactional directions for operators and decision makers at the tactical level, while the DM/CDS Directive and Ministerial Directive, currently awaiting approval, provide high level policy direction.

Implementing Best Practices and Procedures

With the completion of the CDI FD, DND/CAF was able to begin a phased implementation on a number of initiatives to support decision makers. This includes:

- Information Exchange Plans – These plans are designed at the outset of a named operation where it is expected that operational information will be routinely and frequently disclosed and/or requested to or from coalition partners or other foreign entities. The purpose is to document the information sharing and mistreatment-related considerations made prior to the start of the mission and assist individuals in

information sharing positions in determining whether information sharing activities with foreign partners would result in substantial risk of mistreatment.

- Partner Entity Assessments – These assessments are created when information sharing with a foreign entity is required and will document the risks associated with partnering or sharing information with a particular foreign entity. The assessments consider factors such as: contextual information on the necessity of information sharing within the relationship, partner relationship history (with Canada and/or Allies), security of information history, risk mitigation strategies, determination from L1 Op Command (with advisory support) on whether the relationship presents residual risks of mistreatment which cannot be mitigated.
- Country Human Rights Profiles – These profiles are used for identifying a foreign states' human rights records. The profiles consider factors such as state's historic and current practice of systemic and non-systemic repression of human rights and civil liberties which assists DND/CAF in determining the level of risk of mistreatment when sharing with foreign entities.
- Pre-Deployment Information Packages – In order to further support CAF members in fulfilling their roles and responsibilities with regards to the applicable laws and agreements for the protection of human rights and avoiding complicity in mistreatment by foreign entities, information regarding the relevant laws and agreements are included in pre-deployment information packages.

Training

The above policies and directives are complemented by a rigorous RDO/A Training Program that all military and civilian personnel are required to complete in order to be qualified to occupy positions in which they are primarily responsible for information sharing with foreign entities. In 2021, due to the COVID-19 pandemic, this two day course was again provided virtually. The virtual format allowed the training to reach a broader audience of DND/CAF personnel across the country who could study at their own pace.

In 2021, CFINTCOM led the training and qualification of 94 DND employees and CAF members responsible for information sharing as part of RDO/A training in 2021, bringing the total of DND employees and CAF members that have received accreditation since the implementation of the 2017 MD to 470. This number does not include individuals who received information sharing training as part of larger information sessions provided by RDCO throughout the year.

In addition, various mandatory and role-specific training and courses include sessions on CAF members' roles and responsibilities with regards to human rights. These include detailed information on the Law of Armed Conflict, the Geneva Conventions, the Hague Conventions, international human rights laws, Core Human Rights Instruments, and other related international laws and agreements. CAF members are extensively trained in how to comply with these laws, identify breaches, and to support partners and Allies in upholding them.

MONITORING AND RESTRICTIONS ON INFORMATION SHARING

Overview

During 2021, DND/CAF identified no instances of information sharing with a foreign entity, including disclosures of information, requests for information, or use of information, where there was a substantial risk of mistreatment to an individual. This outcome resulted from a combination of factors, including the application of standard practices and risk mitigation measures. Moreover, no new restrictions on existing DND/CAF information sharing arrangements were implemented in 2021 as a result of concerns over the risk of mistreatment by a foreign entity.

Common Practices and Considerations

The extent to which DND/CAF shares information with partners and allies varies depending on the nature of its various engagements. DND/CAF maintains its greatest level of privileged information and intelligence sharing with the U.S. under the auspices of the North American Aerospace Defence Command (NORAD) and the Five-Eyes (FVEY – Australia, Canada, New Zealand, the United Kingdom, and the United States of America) – which are both long-standing and highly integrated relationships characterized by shared values and enduring mutual trust. Beyond NORAD and the FVEY community, DND/CAF shares extensively with NATO member state militaries, various military coalitions, and select foreign partner forces.

On occasion, the CAF is mandated by the Government of Canada to operate in areas of the world where human rights are not respected and mistreatment is prevalent. The CAF needs to be able to engage in these environments with non-traditional partner forces while taking into account its legal obligations under applicable Canadian and international law, including the Act and the 2019 Directions. As such, foreign partner vetting is a critical component of operations and DND/CAF will continue to monitor closely for any change of circumstances which may require restricting information sharing.

Monitoring and Reporting

Throughout 2021, DND/CAF maintained a variety of monitoring and reporting mechanisms to ensure that its information sharing practices complied with the provisions of the Act, the 2019 Directions, the 2017 MD, the DM/CDS Directive, and the CDI Interim Functional Directive to avoid mistreatment by foreign entities. CFINTCOM raised awareness across the defence community on DND/CAF's obligations related to avoiding complicity in mistreatment by providing training, responding to queries from personnel posted outside Canada, and through multiple engagements with other civilian branches and military commands during meetings of the Defence Information Sharing Working Group (DISWG), as well as through regular updates to the DM and CDS chaired Defence Intelligence Oversight Board.

Enhancing Risk Assessment and Mitigation Measures

DND/CAF continues to conduct a collection of comprehensive risk assessments and implement viable risk mitigation measures on missions at higher risk of encountering a substantial risk of mistreatment in their information sharing activities.

As part of enhanced risk assessment and mitigation measures, the Act and its completed policy suite are being integrated into DND/CAF business planning activities to ensure the appropriate number of staff and skill mixes are available to effectively implement the suite. In order to bridge the knowledge gap for current members and employees, DND/CAF personnel are receiving information sessions and operational experience in planning, risk management, and compliance considerations from an avoiding complicity in mistreatment by foreign entities perspective.

Furthermore, a new section relating to avoiding complicity in mistreatment by foreign entities has been included in broader operational risk assessments.

Special Working Groups and Committees

As noted in previous years' reports, DND/CAF created a governance framework to allow rapid and efficient decision-making and broadly engage at various levels at headquarters, including senior operational commanders and, as required, to the CDS, the DM and the MND. This framework included the creation of two bodies for consultation and decision-making: the DISWG and the Defence Information Sharing Assessment Committee (DISAC). DND/CAF is also an active member of the Information Sharing Coordination Group (ISCG), a Public Safety Canada-led forum supporting interdepartmental collaboration in the implementation of the *Avoiding Complicity in Mistreatment by Foreign Entities Act*.

Defence Information Sharing Working Group (DISWG). The DISWG provides a platform for open discussion among representatives from relevant DND/CAF branches and commands on existing or proposed information sharing arrangements or transactions. The DISWG topics of discussion may include, but are not limited to, reporting pertaining to alleged mistreatment in an area where CAF operates, lessons learned, challenges and potential operational impacts of specific information sharing arrangements or transactions.

The DISWG membership is comprised of representatives from the Strategic Joint Staff (SJS), the Assistant Deputy Minister for Policy (ADM (Pol)), the Canadian Joint Operations Command (CJOC), the Canadian Special Operations Forces Command (CANSOFCOM), the Office of the Judge Advocate General (OJAG), the Office of the Legal Advisor to DND/CAF (DND/CF LA), and CFINTCOM. Records of Discussion are documented by the DISWG Secretariat within CFINTCOM, distributed to the DISWG membership, and submitted to the CDS and the DM, through the CDI.

The DISWG is a key part of the DND/CAF governance framework for information sharing and provides advice to operational commanders where there are concerns that information sharing activities with foreign partners pose a risk of mistreatment. While CJOC and CANSOFCOM commanders ultimately decide whether to share information

with foreign partners, the DISWG provides advice on whether there could be a substantial risk of mistreatment and/or on how any such risk might be mitigated to ensure that information sharing is done in accordance with the law and policy. Based on the advice provided in the DISWG Record of Discussion, the operational commander will determine whether a proposed information sharing request or arrangement can be allowed under the Act and associated directions. If doubt continues to exist with respect to whether or not a substantial risk of mistreatment can be mitigated, the DISAC (see below) will be convened.

In order to provide an independent view of the operational commander's decision with respect to information sharing that could pose a substantial risk of mistreatment, representatives from ADM(Pol) and the SJS provide a high level challenge function throughout the assessment process by participating in the DISWG, as well as by raising concerns directly with the operational commander and/or the DM and CDS should ADM(Pol) or the Director of Staff of the SJS have reservations with the commander's decision. This process has been established to ensure that decisions made by an operational commander on the most sensitive requests for information sharing are not based solely on operational imperatives.

In 2021, the DISWG met on nine occasions. Generally, the DISWG convenes at least monthly, whether virtually or in person, with some meetings being held secretarially. The DISWG deliberated a number of issues within this period.

Defence Information Sharing Assessment Committee (DISAC). The DISAC was not convened in 2021, given that there was no decision required by the DM/CDS regarding a potential substantial risk of mistreatment of an individual borne from a proposed information sharing activity.

Information Sharing Coordination Group (ISCG). The ISCG is the primary interdepartmental forum supporting collaboration between departments and agencies as they implement the Act and their respective Order-in-Council Directions. Similar to 2020, DND/CAF actively participated in multiple meetings of the ISCG in 2021, along with representation from the eleven other departments and agencies that either received, or were considered for receipt of, Order-in-Council Directions, in respect of their information sharing activities with foreign entities. During 2021, the ISCG further discussed implementation of the 2019 Act and associated directions, including planning to collaborate on country-level human rights assessments, and developing best practices and common definitions; and discussed reporting requirements and responses to Review Body recommendations.

Restrictions on Existing Information Sharing Agreements

No new restrictions on existing DND/CAF information sharing arrangements were implemented during the reporting period as a result of concerns over the risk of mistreatment by a foreign entity.

Intelligence and/or Information Sharing Partnerships

DND/CAF has a number of bilateral and multilateral information and intelligence sharing arrangements with various international defence intelligence partners. The Commander of CFINTCOM, in his role as Chief of Defence Intelligence, also issues strategic guidance for Defence Intelligence Partnerships for the purpose of providing

functional direction and guidance to DND/CAF stakeholders, as a means to consult with stakeholders and obtain feedback, and allow the DM and CDS to hold the DND/CAF accountable for defence intelligence partnerships.

Beyond the sharing of defence intelligence, the sharing of information more generally takes place with a wide variety of other nations in order to support authorized DND/CAF activities, such as: capacity building operations, disaster response operations, non-combatant evacuation operations, and defence diplomatic missions (Canadian Defence Attachés).

WAY FORWARD

With the approval of the completed policy suite, DND/CAF will focus on ensuring that all members of the CAF and employees of DND, including those who are not directly responsible for information sharing activities, are able to access and receive training, information, and ongoing support in avoiding complicity in mistreatment by foreign entities. This includes:

- The creation of an RDO Field Handbook, which will be accessible to all DND/CAF members, and will consolidate all policies, directives, procedures, tools and processes relating to information sharing in order to aid individuals in the evaluation of key obligations, policy considerations, and application of information sharing related to their responsibilities;
- Amendments to the National Defence Security Orders and Directives (NDSOD) which articulates the security obligations and responsibilities of all DND employees and CAF members, to include specific references concerning the obligation to avoid complicity in mistreatment by foreign entities;
- Increasing the number of information sharing awareness sessions to include key task force commands and bases. These information sharing sessions will provide a high level overview of the RDO/A training and will increase awareness of the Act, and individuals' responsibilities as a result, among individuals who are not directly responsible for information sharing but may be required to partake in these activities in the future;
- Partial automation of the RDO/A training program to allow for individuals to receive the training on the Defence Learning Network. This will enable individuals to receive training as and when required, and provide greater accessibility and awareness for DND employees and CAF members who are not directly responsible for information sharing to the Act and associated information sharing responsibilities. As part of this, RDCO will be automating components of the exam, which will also enhance the bandwidth of instructors.

CONCLUSION

DND/CAF did not encounter instances in 2021 where information sharing activities with a foreign entity could not proceed due to a substantial risk of mistreatment of an individual. DND/CAF continued to ensure that all information sharing activities complied with the Act, the 2019 Directions, the 2017 MD and all direction from the DM, the CDS, and the CDI.

A number of activities were carried out in 2021 in order to enhance DND/CAF information sharing practices, policy procedures, and directives, including reducing ambiguous language and agreeing on common terms and definitions,

strengthening record-keeping and decision-making practices and processes, completing the policy suite on avoiding complicity in mistreatment by foreign entities, implementing the CDI FD, operationalising decision-making processes and tools, expanding and enhancing training and information sessions; and building policy capacity. Looking ahead, DND/CAF will broaden awareness to CAF members and DND employees who are not directly responsible for information sharing and assist them in understanding and applying key information sharing considerations, if and when required