



EXTERNAL MONITOR REPORT

First Status Report—May 2, 2023

May 2, 2023

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

Dear Minister Anand:

In accordance with the terms of reference for my engagement as external monitor, I am pleased to provide you with my first bi-annual report, in both official languages.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jocelyne Therrien".

Jocelyne Therrien

Enclosure: External Monitor Report—First Status Report

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External Monitor Report – First Status Report

Introduction

Background

In May 2022, the Honourable Louise Arbour, former justice of the Supreme Court of Canada, delivered her report: *The Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces* (IECR). The final recommendation of the IECR report (Recommendation 48) called for an external monitor to oversee the implementation of external report recommendations. I was appointed as the External Monitor by the Minister of National Defence in fall 2022. My mandate, stemming from this recommendation, includes providing a report to the Minister on a bi-annual basis that is suitable for publication. Now six months into my role, this is my initial report.

Methodology

The early months of my mandate consisted of high-level discussions with all senior leaders who are ultimately responsible for the changes that are required if the Department of National Defence and Canadian Armed Forces (DND/CAF) is to become a safe and inclusive workplace for all. I then reviewed all directives issued by the organization regarding culture change and official government responses to reports of Parliamentary Committees on this topic. I also acquainted myself with all external reports since 2015 that contained recommendations about sexual misconduct, harassment and discrimination in the military:

- *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*: External Review Authority, 2015
- Office of the Auditor General, 2018 : *Inappropriate Sexual Behaviour – Canadian Armed Forces*
- Final Settlement Agreement of the Heyder-Beattie Class Action, 2019
- *Report of the Third Independent Review Authority of the National Defence Act*, 2021– Chapter 2 – Sexual Misconduct
- *Report of The Minister’s Advisory Panel on Systemic Racism and Discrimination*, 2022

Throughout this review period, monthly update meetings were held with the leadership of the Chief Professional Conduct and Culture (CPCC), the organization created during the spring of 2021 to “unify and integrate all associated culture change activities” across the DND/CAF. During the last

few months I have met with the units responsible for implementing recommendations contained in the IECR report and have inquired about all initiatives currently underway. Some of these are not necessarily directly related to the IECR but would serve to nonetheless promote positive culture change. I have also interviewed many external stakeholders and have visited the two military colleges and the Canadian Forces Leadership and Recruitment School (CFLRS).

The Secretariat of the External Comprehensive Review Implementation Committee (ECRIC) has provided me with regular updates throughout this six-month period, including all related documentation as requested.

Included in this report

In this first status report I have organized the information under three themes:

- Prevention
- Support to affected persons
- Input and oversight

The objective of this report is to provide an overview of initiatives related to the three themes that aim to move the needle in the right direction, towards cultural reform. I also point to areas that require a more in-depth review on my part, which I plan to conduct over the next six months.

Within these themes I am able to capture many of the IECR recommendations. In my second status report in October I will provide an update on this information while bringing in the remaining recommendations, such as those on recruitment and retention, promotions, secondments, GBA+ application to universality of service, the overhaul of the complaints and grievance process and the policy framework to support the anticipated culture evolution. I will also report on how the CAF will be monitoring its effectiveness in responding to sexual misconduct.

First Report Findings

I – Prevention

Selection of recruits and probation

It stands to reason that choosing recruits who embody an ethos of inclusion is one way to ultimately achieve a harassment free workplace, along with swift release of individuals who exhibit unacceptable behaviour. The IECR report (Recommendations 20, 22 and 25) seeks to address this and suggests that the CAF create a probationary period “in which a more fulsome assessment of the candidates can be performed, and early release effected, if necessary.” Instituting a probationary period would require legislative/regulatory change. Considering the length of time it takes to modify legislative and regulatory frameworks, it would be important for the CAF to set that process in motion immediately.

In the interim, the CAF plans to use mechanisms existing within current engagement contracts to release individuals who present problematic attitudes and behaviour. For example, “irregular enrollment” release is described as a useful tool for early release, although it has seldom been used in the past. Use of this provision will be necessary until a probationary period is established.

The recommendations also call for improved screening of recruits. The CAF is currently reviewing a range of assessment tools that will support this, including methods that are backed by research.

Education as a prevention tool

The IECR report recommended (Recommendation 15) that training and education related to sexual offences and harassment become the responsibility of the recently established Chief of Professional Conduct and Culture (CPCC) organization. This recommendation has been implemented. Prior to that, this task was part of the mandate of the Sexual Misconduct Support and Resource Centre (SMSRC), which was created in 2015.

Beyond recommending this transfer, Justice Arbour specified that training recommendations from Justice Deschamps’ report should also be implemented (Recommendation 27). These recommendations spoke of the importance of the method of delivery and the qualifications of instructors, and that there should be regular, interactive training sessions regarding sexual misconduct. This has been a recurring theme in the consultations that CPCC has held nationwide with CAF members.

In 2022, CPCC built an education and training framework that proposes a continuum of the education and learning events that should be delivered to different ranks, at different periods of their career. The spectrum focuses on sexual misconduct, conflict management, workplace violence prevention, diversity, equity and inclusion, and hateful conduct. Within this framework, CPCC is looking for ways to make education and training more immersive. Their leadership development training includes both the Leadership Support and Coaching programs, which are examples of the implementation of experiential learning.

The IECR report also recommended that the CAF should equip all training schools with the best possible people and instructors by prioritizing postings to training of cadets and new recruits, and that there be appropriate screening of instructors, not only in terms of competence but also in terms of character (Recommendation 23). The IECR report pointed out that postings to training units were seen as barriers to career progression and that this “needs to be reversed.”

In 2022, the CDS and DM directed that the recruiting group and the recruit school be staffed at full capacity. This directive has had the desired impact and staffing is approaching 100%. Furthermore, the CAF has adopted a more flexible approach which allows “right-fit candidates” (including increasing diversity) to be posted even if there is no direct correlation with the rank/occupation of the position available.

The CFLRS is responsible for the basic military qualification training of approximately 5,000 recruits every year. This represents approximately 90% of all CAF enrollments in any given year, which means it plays a critical role in reinforcing appropriate standards of behaviour and professional military conduct.

The training curriculum and teaching approach at the CFLRS have recently undergone comprehensive change. The education program is based on four pillars: Professional Conduct and Culture, Resiliency, Physical Fitness, and Military Skills. The instructional approach has been redesigned to support a more robust learning of the values and ethics of the CAF. So, for example, under the Conduct and Culture Pillar, the school is using “flipped classroom” lessons on topics such as harassment and diversity, built upon a pre-reading of policy followed by guided discussions and more frequent use of case studies.

A recent call for instructors at the CFLRS states: “As part of the CAF reconstitution efforts the CAF will need the best leaders and role models at its training institutions.” In an attempt to incentivize postings to the CFLRS, selection boards for promotion now award equivalent points for a CFLRS instructor tour as are allocated to operational deployment. Other incentives are being explored. I note also that the school has created links with community groups and other levels of government to assist in attracting military families to the area.

And, finally, the instructor screening process and course have been revitalized to better capture the character aspects that are now promulgated within the CAF, including a scientifically validated screening tool and character references. The CAF’s efforts towards professionalization of the instructor cadre will continue while considering the IECR report (Recommendation 24), which suggests that the CAF assess the advantages and disadvantages of forming a new distinct CAF trainer/educator/instructor occupation.

I noted a strong commitment at the CFLRS to operationalize CAF ethics and values with regard to creating a safe and inclusive workplace and inculcating those values into the next generation of military personnel. I believe that DND/CAF has recently been particularly attentive to the type of individuals who are chosen to lead the formative CAF institutions. This will be instrumental in the

shift towards a safer workplace. At the very least, the message surrounding desired attributes and the focus on character has become clear.

Review of the military colleges

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.

The IECR report also recommended interim measures to address the “long-standing culture concerns” at the colleges including adapting the current exit survey to “capture cadets’ experiences with sexual misconduct or discrimination.” That suggestion has been addressed fully. The survey has been modified in several ways. It will be administered annually in April or May and every year for the duration of the cadet’s stay at the college. The content has been expanded to include several elements such as psychosocial factors (stress/workload), college climate/environment, harassment, discrimination, bullying and sexual misconduct.

The plan is to use the findings of the annual survey as a baseline from which DND/CAF can measure progress in terms of the culture elements of the colleges.

External review of administrative files recommending release

There was concern expressed in the IECR report about cases where NDHQ decided to retain a member notwithstanding a unit commander’s recommendation to release due to allegations of sexual misconduct. The data indicates that, between approximately 2015 and 2021, there were 52 cases where the final decision by the central authority was to retain without any career restrictions.

The IECR report (Recommendation 6) suggests an externally led quality assurance assessment of these files. At this time, the CAF is reviewing its contracting options, which will be followed by a statement of work and evaluation criteria. I expect to have more significant progress to convey in my October report.

II - Support to affected persons

The Sexual Misconduct Support and Resource Centre

The SMSRC was established in 2015 shortly after the report by former Justice Deschamps was released. Since then, the SMSRC has grown exponentially. For example, it has expanded its services beyond current CAF members to other groups affected by sexual misconduct such as DND employees and former CAF members. Soon it will be extending its services to members of military families. In 2022–23, it grew its network across Canada so that individuals can connect with an SMSRC counsellor in those locations. By the end of this year, there will be a presence in many areas across Canada. And, recently, a total of 32 community projects have been funded to provide a range of counselling/therapy services in areas that had historically been underserved. The SMSRC also sponsors a clinically moderated online DND/VAC peer support program which will be expanding in the fall to include facilitated peer sessions.

Several recommendations made in the IECR report focus on the SMSRC, including a name change from the Sexual Misconduct Response Centre (SMRC) to SMSRC to better reflect the SMSRC's main purpose as a resource centre for victims of sexual misconduct. Its original name stated that it was a response centre and the concern was that this could lead some to mistakenly believe that it was a CAF entity. In this vein, it was also recommended that the SMSRC no longer be responsible for monitoring CAF's effectiveness in responding to sexual misconduct. These changes have been made. (Recommendations 12, 13, 16)

The report also recommended that the SMSRC facilitate access to legal assistance by victims of sexual misconduct (Recommendation 14). This need has been highlighted in several other independent reviews. The SMSRC will soon be launching a program to provide coverage for legal costs incurred by those who have been affected by misconduct in the CAF, retroactive to 2019. The program consists of providing a reimbursement for eligible legal costs. A communication plan has been developed to ensure that all affected individuals will be made aware of the program.

The SMSRC has also launched several proactive initiatives. Its research unit is currently conducting empirical research with regard to perpetrators of sexual misconduct. Preliminary results are expected this fall and could serve to inform preventive measures. Also, a prevention training program was developed for use at the military college in Kingston. In collaboration with the CPCC, the program was delivered in March 2023.

After reviewing the advantages and disadvantages of completely removing the SMSRC from DND, the IECR report confirmed that the SMSRC would be more effective if it remained with DND and continued to report to the Deputy Minister. That said, recommendations have also highlighted the need for a review of the administrative structure of the SMSRC in order to ensure that it does not compromise the perception of independence from the chain of command. A governance review is currently underway and a business plan will be presented in the fall. The Chief Operating Officer of the SMSRC has informed me that this will provide the foundation for its financial sustainability

going forward. This review is running concurrently with the recommended review of the role and composition of the SMSRC's External Advisory Committee. (Recommendations 17, 18, 19)

Restorative justice

In November 2021, the SMSRC developed its Restorative Engagement (RE) program, a legal commitment stemming from the Heyder-Beattie Class Action Settlement. Essentially, class members who wish to participate have various options for engagement including meeting with DND/CAF leaders. The "Defence representatives are present to acknowledge, listen and learn, and to ensure that what class members choose to share contributes to making a difference within the institution..." This work is ongoing and is currently scheduled to end in 2026.

The CPCC, as part of its revised complaints process, has recently launched a restorative service program. It is accessible to all DND/CAF members who wish to access it as a means of re-establishing workplace relationships. It can include the affected individual, and/or the respondent, and/or the chain of command. The trends that are beginning to emerge from the data so far are being used to inform other CPCC initiatives such as its leadership support and coaching programs.

Duty to report as a barrier to reporting

In its 2018 review of inappropriate sexual behaviour at the CAF, the Office of the Auditor General identified policies related to the duty to report (DTR) as problematic for many individuals affected by sexual misconduct insofar as they discouraged some victims from disclosing an incident. The issue has been raised in several other reports since that time.

This problem is addressed by the IECR report (Recommendation 11), which states that the policies and regulations specific to duty to report should be amended to exempt sexual misconduct from its application, and that consideration be given to abolishing DTR for all infractions under the Code of Service Discipline.

The CAF reconvened its DTR working group to review the matter and I am told that a decision is forthcoming. Repealing the DTR would require a regulatory change which would then lead to the modification of many internal policies and directives. DND/CAF will need to prioritize this issue if it is to be finally addressed.

The Declaration of Victims' Rights

The provisions of the Declaration of Victims' Rights (DVR) were brought into force in June 2022, approximately at the same time that the IECR was concluded. Other than procedural changes to the military justice system, the objective of the DVR was to provide CAF victims with the same rights as those provided in the civilian justice system. Justice Fish, in his 2021 review of the military justice system, emphasized the need for the full application of these rights for CAF members.

There has been consolidated effort to operationalize the DVR provisions since 2022. During the next several months I will conduct more work regarding the measures that have been put into place, including how well victim liaison officers (VLOs) have been selected, trained and supported, and how well victims are informed of their rights.

Independent administrative investigations

The Assistant Deputy Minister of Review Services (ADM(RS)) within DND has the mandate to provide the Deputy Minister and the Chief of the Defence Staff with “independent, objective, and timely assurance services” in a number of areas. The IECR (Recommendation 43) proposes that the SMSRC should be empowered “to independently direct the ADM(RS) to conduct an administrative investigation” into matters relevant to SMSRC’s mandate. This was viewed as an important element of support for SMSRC’s independence from the chain of command. SMSRC and ADM(RS) are working jointly on developing a process to enable this.

Transfer of criminal code sexual offence cases to non-military jurisdiction

The IECR report (Recommendation 5) states that Criminal Code sexual offences should be removed from the jurisdiction of the CAF. They should be investigated and prosecuted exclusively in civilian criminal courts. This formalized an interim recommendation previously issued in November 2021 by Justice Arbour.

In response to this recommendation, the Minister of National Defence directed DND/CAF to review how these jurisdictional changes can best be met, in consultation with federal, provincial and territorial (FPT) partners. These discussions are taking place and 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 various jurisdictions.

III - Input and oversight

In establishing the terms of reference for the *Independent External Comprehensive Review*, the Government asked for an assessment and recommendations regarding external oversight and/or review mechanisms related to misconduct. As reflected in her report, Justice Arbour is of the view that, rather than instituting another entity that would report “after-the-fact” problems of misconduct (such as an inspector general), the focus should be on “outside input to truly transform the insular culture, entrenched in the CAF.” As a result, several recommendations in the IECR report prescribe a role for external players.

Academics and research

Academics and external researchers are viewed as an important source of outside input. Thus, several recommendations encourage an opening up of internal research to academics and external researchers. The work conducted by the Director General Military Personnel Research and Analysis (DGMPPRA) is a rich source of evidence-based information for the leadership as input into policy and program development. The IECR report recommends (Recommendations 45 and 46) that the CPCC host an online database of this information and that DND/CAF revise its internal policies to facilitate external research into CAF topics, including potentially waiving DND/CAF formal ethics review through the Social Science Research Review Board (SSRRB) whenever the external proposal has already been approved by the research ethics board (REB) of an academic institution.

The database is being built and will soon be available. It will contain a bibliography of policies and research documents organized by theme that will be directly accessible, or available on demand in the interim. The policy related to ethics review approval by DND/CAF is under review. A user satisfaction survey will soon be launched to seek ways to improve on the information provided to external stakeholders on the process. Incremental improvements have been adopted, such as allowing for SSRRB and research ethics board applications to run concurrently, instead of insisting that the REB complete its review before the project is considered by the SSRRB.

DND/CAF has had collaborative arrangements with academics for several years, whereby it funds research projects related to such topics as sexual misconduct. As pointed out in the IECR report, making their internal research products available publicly would ensure that external researchers do not duplicate research that has already been done by DND/CAF.

Several academics have indicated that, while DND/CAF is apt to genuinely seek their input, they do not necessarily get feedback on whether or not their proposals have gained traction. DND/CAF is aware of this concern and is working to improve its tracking of the input it receives from many stakeholders. It also has plans to publicly release its framework for external engagement soon. The framework will address the matter of timely feedback to stakeholders.

Information to the Minister

The IECR report (Recommendations 41 and 42) refer to information that should regularly be provided to the Minister for the purposes of the Minister’s oversight role of DND/CAF. The ADM(RS) is tasked with informing the Minister directly on all investigations related to sexual harassment, sexual misconduct and leadership culture in the Defence Team; and to report annually to the Minister on statistics and activities related to investigations under the DAOD 7026-1. This information will be reported by the end of June 2023. Furthermore, briefings will be provided to inform the Minister of all new investigations as required.

Internal input

The April 2022 report of the Minister’s Advisory Panel on Systemic Racism and Discrimination proposed several measures that would help the DND/CAF leadership gain more from its Defence Advisory Groups (DAGs).¹ The overall message was to “elevate” and “strengthen” them. Echoed in the IECR: “The DAGs should be given the time and resources to do their work.” In July 2022, the CDS and DM issued a directive indicating that they would both be meeting the national DAG leadership three times per year and encouraging local commanders and senior managers to regularly meet with their local DAG representatives. Going forward, DAG input will be supported through a secretariat and more stable funding. I plan to review whether or not the new measures are having the desired impact.

¹ Five specific Defence Advisory Groups (DAGs) have been created to provide unfettered advice and grassroots insight to DND and CAF leadership on issues relevant to their respective designated group on the implementation of employment equity and diversity across the Defence Team.

Conclusion

During these last several months I have witnessed a significant level of tangible activity within DND/CAF as it responds to the hundreds of recommendations from external reviews on sexual misconduct in CAF ranks. As pointed out in the IECR, “there is now a palpable change in the air.”

The challenge, as I see it, is to manage the projects and initiatives in such a way as to prioritize the changes that will bring fundamental reform in a timely manner. Although I have seen some cross-referencing among the recommendations, there is no overall framework that sets out how the organization, as a whole, will move from one phase to the next.

Does this mean that there is no progress? Not at all. Many individuals are working hard to achieve the individual steps required to meet the intent of the recommendations. But an overall strategic plan would serve to ensure that the resources are aligned to priorities. Currently, there is some prioritization, but it is mainly within specific organizations and not at a strategic level.

For example, many of the recommendations from these external reports require legislative and/or regulatory changes. This can be a lengthy process that involves central agencies and Parliament. Even though the timing cannot be controlled per se, it is incumbent on DND/CAF to at least have a plan that shows what it proposes to present to Parliament, from year to year, based on departmental priorities. It appears at this point that the agenda is instead being driven by availability of resources and capacity issues.

In and of itself, this will not prevent reform, but there is something to be said about steering the ship based on the changes that are considered to be the most critical to culture evolution. In the interim, there are many positives. For example, there is increasingly more reliance on evidence-based approaches. And I believe that the creation of the CPCC is making a difference. Unit commanders have a place to go for advice on how to deal with situations as they arise.

Ultimately, however, the proof will be in the frequency of incidents and whether or not DND employees and CAF members see improvements. It is too soon to tell if that is happening. The data that will be used to monitor the situation is being refined. Therefore, in time, at least the information to track progress will be better. But data is only one part of the picture. In the coming months I will seek to gain a qualitative understanding of whether or not the Ottawa-based efforts are bringing about changes on the ground.

This report reflects my review of efforts towards implementing certain IECR recommendations, which in my view can be categorized under three themes: prevention (Recommendations 5, 15, 20, 22, 23, 24, 25, 27, 28, 29), support to affected persons (Recommendations 5, 11, 12, 13, 14, 16, 17, 18, 19, 43), and input and oversight (Recommendations 41, 42, 45, 46).

In my next bi-annual report I will provide an update on all aforementioned recommendations in addition to those that I have not yet touched upon from the IECR report:

- Recruitment
- Promotions, succession planning and appraisals
- Secondments
- Increasing the percentage of women
- Application of GBA + analysis to universality of service
- Complaints and grievances
- Policy framework/definitions

Collaboration from DND/CAF has been very good. I anticipate that this will continue as I enter the next phase of my review.