



Recommendations by It's Just 700

Overview

The External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces found that “the difficulties met by victims of sexual assault have a damaging effect not only on the individual victims—who do not achieve resolution to serious and traumatic incidents—but on the CAF as a whole. When incidents of sexual assault go unresolved, this negatively impacts the CAF both because individual members have been harmed, and because it perpetuates the perception that the CAF does not take such incidents seriously.” Changes to the Military Justice System must be undertaken in order to improve the CAF’s overall goal of being more inclusive and less-hostile towards women and LGBTQ personnel.

Civilian and Military Justice System

Civilian Justice System

According to the ERA, “In the Canadian civilian justice system, sexual assaults rank among the most serious offences and are frequently dealt with through specialized procedures by prosecutorial and court authorities.” “Victims criticize (...) 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.” For these reasons, “There is a perception among some members that there is more expertise in the civilian justice system, if only because of the volume of cases.”

Military Justice System

The ERA acknowledged that the Canadian Armed Forces “has the human and physical resources which, when properly marshalled, could benefit victims of sexual assault”, but unfortunately, “these services are generally not currently performing to an appropriate level and do not adequately address the needs of victims.”

IJ700 MST Survivors’ Opinion

The opinion shared by the members of the group on this matter is fairly similar as the opinion reflected in External Review into Sexual Misconduct and Sexual Harassment in



the Canadian Armed Forces. “There is a perception among some members that there is more expertise in the civilian justice system, if only because of the volume of cases.” However, some MST survivors also believed that the Canadian Armed Forces “has the human and physical resources which, when properly marshalled, could benefit victims of sexual assault”. IJ700 supports ERA recommendation no.8. We also align ourselves with the ERA findings that “In any event, 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.”

ERA recommendation no. 8:

“Outside of deployment, a victim of sexual assault should be able to request to have her complaint transferred to the civilian justice system. In deciding whether or not to request the transfer of jurisdiction, the victim should receive support from CASAH through the help of an advocate. The advocate can advise the victim about different avenues and resources available. In the event the CAF resolves not to follow the victim’s request, information should be provided to the victim explaining the reasons.”

Adopting a civilian process specializing in handling military cases

In the cases where the victim requests to have a complaint transferred to the civilian justice system, we recommend that the civilian process adopt a civilian court system specialized in handling sexual assaults relating to military personal such as the example shared by the ERA. “In France, the process of abolishing military tribunals, initiated in 1953, culminated in 2011 and a specialized chamber within the civilian court system now exists to handle sexual assaults relating to military personnel. In sum, each country has developed its own response as to how best to investigate, prosecute and adjudicate sexual assaults.”

Delays

IJ700 criticized delays in seeking justice

It is hard to recover from a trauma while pursuing legal action. Expediting the legal process will allow a quicker recovery and could avoid unnecessary medical releases.

Victim Support

Lack of communications with the plaintiff

Plaintiffs from the IJ700 group complained about the lack of communication once their complaint was sent to the CFNIS. IJ700 recommends that the CAF assign a trained expert with the “responsibility for providing, coordinating and monitoring victim support



to the center for accountability for sexual assault and harassment, including the responsibility for advocating on behalf of victims in the complaint and investigation processes.” ([External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces](#)- Recommendation no. 9) This should also include ongoing victim support, a list of steps the victim should expect along with a timeline, regular “check-ins” with the victim, regular updates about the complaint and a way to collect data (such as victim’s overall satisfaction with the legal process) that can be anonymously compiled for quality assurance purposes.

Victim Legal Support

Ensure the provision of qualified and specially-trained lawyers to ensure the following:

- Proper counsel for victims (preparedness for interrogations etc.);
- A mechanism for reaching/considering what the victim needs/wishes for "justice". i.e. restorative justice needs a greater place in the process for healing of all parties;
- Enforcement of victims of military crimes’ rights;
- That demeaning and unrelated questioning are avoided and restricting the focus to determining probable cause of whether a crime has been committed; and
- Victims can get proper services throughout the legal proceeding such as the use of a therapy animal during cross examination.

Penalties

Stronger penalties to create an environment less hostile to women and LGBTQ

According to the ERA, “Only strong sanctions, through military justice, disciplinary and administrative action, will deter further assaults. Both individual and general deterrence are important.” The comments provided by members of IJ700 are similar as the ones received by the ERA: “Even where sexual harassment complaints were ultimately held to be well-founded and remedial measures were imposed, the sanctions were often perceived by interviewees as a “slap on the wrist” and “meaningless”.

Appropriate sanctions

According to the ERA, “Factors to be taken into account in determining the appropriate sanction should include not only the personal circumstances of the offender and the nature of the incident, but the organization’s over-arching goal of creating a more inclusive organizational culture that is less hostile to women and LGBTQ members.”

In addition to the ERA recommendation, IJ700 would like to add the following:



- Establishing minimum sentencing guidelines for those found guilty of offenses related to Harmful and Inappropriate Sexual Behaviour that are harsher than currently established. When comparing sentencing to other offenses such as QR&O 103.46 Stealing while Entrusted, where many offenders are sentenced to imprisonment, the scale of punishment applied to sexual offenses of anything less than detention is perceived to be a “slap on the wrist”; and
- Prohibit the use of “Good Military Character” “Good behaviour” “Signs of regret” or “public shame” or other elements of character and military service of the accused that reduce sentences.

Take Seriously Complaints of Sexual Assaults without Penetration

- According to the ERA, “discounting incidents of sexual assault where there has been no physical injury is inconsistent with Canadian law, which views psychological harm as seriously as physical harm”; and
- Handling Complaints of Sexual Assaults without Penetration appropriately is key to prevent further harm from the same perpetrator. It will also help fostering a healthier and safer working environment.

Retaliation

As stated by the ERA, IJ700 also believes that “victims of sexual misconducts in the CAF deserve fuller protection by the military justice system.”

To ensure victims protection, we recommend the creation of regulations that

- Criminalize retaliation against individuals reporting themselves as the victim of a sexual assault or other member of the CAF who reports a criminal offense; and
- Hold the COC accountable for maintaining a command climate in which sexual assault allegations are properly managed and fairly evaluated and where victims can report criminal activity, including sexual assault, without fear of retaliation.

Training and Standards

All military lawyers should be held ethically to the standards proposed by the Ontario Law Society of Upper Canada under their recent report "working together for change: strategies to address issues of systemic racism in the legal profession". Although the report focused on racism, the report clearly identifies it as a diversity and inclusion issue that overlaps with sexism, ageism etc. Prosecutors should be trained in military sexual assault crimes and made aware of the services offered to victims.



All military judges should be held to the same standards as civilian judges and have Bill C-337 apply to them, mandating sexual assault law training and ongoing continuing education in this area. As military law has many unique issues in this area, CAF should develop a military specific addition to this training for all military lawyers and judges and for all those that support this system including MPs and medical personnel. More transparent oversight mechanism of judges when their behaviour/bias is in question personally or professionally. Sexual assault victims in the military tend to be female vs male and the perpetrator male and in a position of power professionally over the victim. Judges that have themselves been involved in fraternization cases should not be on the bench or at the very least should be recused from gender related cases.

Diversity

Establish a quota or other temporary measures to ensure more female MPs, more female lawyers and the judges must represent gender diversity themselves. This is based on UN recommendations including UNSCR 1325, CEDAW and other international documents that Canada is signatory for that are designed to be ensuring the full and equal participation of women in all parts of society, including the military.

Quality Assurance

There needs to be a database of all gender based legal complaints/investigations with follow-up surveys to the victim about unintended repercussions of making a complaint/entering the justice system. Further harassment/medical complications/career limitations etc. The surveys should be sent to a person with the power to intercede and correct if so required. This data of "satisfaction" levels in the judicial process should be made public.