



Statement by the Ontario Association of Chiefs of Police on Supporting Victims and Survivors of Military Sexual Offences

Supporting Victims and Survivors of Military Sexual Offences Requires Cooperation and Collaboration by Police Leaders, Community Partners, the Government of Canada, and the Department of National Defence

Ontario's Police Leaders Call on the Government of Canada to Establish a National Working Group

I. Introduction

As Ontario's police leaders, the Ontario Association of Chiefs of Police (OACP) supports our police members – sworn and civilian – as they undertake their duties each and every day. We support our national police leaders' voice, the Canadian Association of Chiefs of Police (CACPP), which provides vital law enforcement leadership at the national level.

Given the need to ensure justice for victims of sexual offences related to Canadian Armed Forces (CAF) members, the OACP is calling for the Government of Canada to establish a National Working Group in consultation with relevant stakeholders to support a coordinated and consistent approach to the transfer of military sexual investigations to civilian police services. In keeping with the challenges identified herein, this National Working Group should establish a clear framework to collect and share information at federal, provincial, and municipal levels to support an accurate depiction of the number of cases of military sexual offences being reported (and other trends), the identification of prolific offenders within the CAF, and the sharing of information to support investigations, the safety of victims/survivors (including the recording and monitoring of offenders on a sex offender registry and any training that may be required to ensure victim-centred, trauma informed investigations).

II. Acknowledging Justice Arbour's Report

The OACP acknowledges the valuable work by the Honourable Louise Arbour in delivering the *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, and especially Recommendation #5:

"Criminal Code sexual offences should be removed from the jurisdiction of the [Canadian Armed Forces] CAF. They should be prosecuted exclusively in civilian criminal courts in all cases. Where the offence takes place in Canada, it should be investigated by civilian police forces at the earliest opportunity. Where the offence takes place outside of Canada, the MP may act in the first instance to safeguard evidence and commence an investigation, but should liaise with civilian law enforcement at the earliest possible opportunity...."¹

¹ Honourable Louise Arbour's *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, p. 310

III. **Victims Voices: Trust cannot be built by our words only by our actions**

Ontario's police leaders believe that it is prudent to pause; to consider objectively what needs to be done to ensure the voices of victims and survivors of sexual offences in the military are served by civilian police organizations. Police leaders have been criticized for speaking out about the challenges that we see in this transition. Let us be clear: We will always seek to use our collective voice to support the administration of justice and to highlight what needs to be done to support *safe justice* for victims/survivors of a military sexual offences. Trust is built not simply by our words, but by our actions. The transition must not only offer hope for change, but we need to consider collectively how we can deliver a robust system which meets the expectations of victims/survivors and the public, ensures fair procedures, and stands up to any legal challenges based on a human rights approach to policing.

As police leaders, we seek to ensure that the faith placed in us as police professionals by Justice Arbour and government decision-makers in transferring sexual assault investigations to civilian police is not unwarranted. We seek to be, and have been, honest about the current limitations of our police services and the need for a comprehensive framework, clear communication, and the setting of clear expectations based on an understanding of the unique needs of victims/survivors of military sexual offences. Victims will have heard the recommendation that civilian police services should take over military sexual assault investigations. We would be doing a disservice to the voices who have fought for change if we do not acknowledge our need for frameworks, training, expertise, and additional resources to ensure a victim-centred, trauma-informed approach and cultural humility in investigating military sexual offences. Respectfully, while it has been said that the numbers of cases which may be transferred to us may be small, we have learned from the voices of victims/survivors and, therefore, do not underestimate through numbers alone what we need to do to build trust for victims/survivors moving forward.

Police leaders are cognizant that if we earn the trust of military members who have been subjected to sexual offences, they may feel safe in coming forward to civilian police. Understanding the challenges faced by victims/survivors of military sexual assaults will support a needs-based, victim-centred response should a victim choose to report. Without being honest about our limitations and our challenges, and for the Government of Canada to listen, hear, and act on them, we are at risk of creating a fragmented, inconsistent system and thereby failing the recommendations of the *Survivor Support Consultation Groups Final Report* (December 2021), which seeks a:

*"...culture that is firmly grounded in trauma-informed and survivor-centred approaches and cultural humility is our aspiration – one that cannot be achieved by disparate, disconnected, under-resourced, or uncoordinated processes or enhancements in multiple areas of the DND/CAF, nor by "tweaks" to individual programs."*²

IV. **Challenges in investigating military sexual assaults by civilian police**

Despite the existence of concurrent jurisdiction, we acknowledge that additional challenges and complexities can and may arise as it relates to the investigation of military sexual offences which might occur on military bases, planes, boats, submarines, and vehicles. In addition, Justice Arbour has indicated

² *Survivor Support Consultation Groups Final Report* (December 2021) available at: <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/survivor-support-consultation-group-final-report/dnd-caf-response-final-report-sscg.html>

in Recommendation #5 that where an offence occurs outside of Canada, the Military Police should liaise with civilian police at the earliest opportunity.

The very nature of military life results in the movement of persons, which can create complexities for civilian police in considering and identifying prolific offenders and sexual offences which can take place in multiple civilian police jurisdictions, including multiple countries, over different periods of time. Civilian police are also aware of the safety challenges facing victims/survivors. These challenges are arguably unique in the manner by which members of the CAF live and work in close proximity to an offender and the need for victims/survivors to have access to civilian police, but also for civilian police to have swift and timely access to victims/survivors and witnesses, appreciating that victims/survivors may have limited access to technology.

The safety of victims/survivors of military sexual assault are of the utmost importance to us. We want to ensure that current legislation and frameworks are robust enough that federal, provincial, municipal, and indigenous police services have the appropriate authorities, but also the ability to share information (respecting privacy) to identify prolific offenders and to work with our partners and the CAF to ensure the safety of victims/survivors. Police services do not seek any additional powers; we require the same legal authority we currently exercise where we are not faced with possible hurdles if unable to access bases or military jurisdictions in a timely fashion. We seek engagement with the Government of Canada to ensure that federal, provincial, municipal, and indigenous police services have the appropriate authorities to conduct investigations and there is consistency in how this is achieved by each level of civilian police organization.

V. A Framework to support prevention, transparency and to build trust and confidence

Ontario's police leaders are mindful of the importance and the need for a clear framework to collect and share information at a federal, provincial, and municipal level to support an accurate depiction of the number of cases of military sexual offences being reported (and other trends), the identification of prolific offenders within the CAF, and the sharing of information to support investigations, the safety of victims/survivors (including the recording and monitoring of offenders on a sex offender registry). This is in keeping with Justice Arbour's report, which highlighted the need for data to ensure evidence-informed decision making, such that repeat victims can be identified to reduce their risk of victimization, but also that repeat offenders can be "*tracked if they reoffend*".³

The building of such a framework, with our partners, is in keeping with not just the letter, but the spirit of the recommendations. Without a coordinated approach, preventative measures cannot be put in place to support the CAF. While we appreciate and understand that the collection of the data may fall to civilian police, we need the support of the Government of Canada and CAF to develop such a framework to support prevention, transparency for the public, and to build trust and confidence. Without such a mechanism, trust in us as gatekeepers will erode.

VI. A call to action to the Government of Canada

In addition to a National Working Group, the Ontario's police leaders are also calling on the Government of Canada to urgently engage with the OACP and CACP to allocate appropriate resources to achieve the frameworks needed to support the safety of victims/survivors and to effectively transfer cases to civilian

³Supra Note 1 p. 58

police, such that, as Justice Arbour states, “*the targeted need for additional resources, if any, can easily be identified and accommodated*”.⁴

The OACP believes the Government of Canada should identify appropriate representatives from within the Department of National Defence and the Department of Justice, including those who worked on the *Survivor Support Consultation Groups Final Report* and the Sexual Misconduct Resource Centre, to form part of the National Working Group. The government must provide the necessary resources to carry out this work, which should also include but is not limited to:

- A. The development of clear, consistent information for victims/survivors of military sexual offences, in consultation with all relevant subject matter experts (SMEs), such that victims/survivors are receiving the same information from all relevant parties
- B. The establishment of clear procedures between military police and civilian police with respect to communications and transfer of information
- C. The establishment of clear procedures and processes in cross-border cases, including a consideration of relevant legal authorities
- D. Clarity regarding who makes the final determination as to who is responsible for investigating an offence, the subject matter of Recommendation 5, if there is uncertainty as to who has jurisdiction
- E. The identification and development of appropriate resources, training, protocols, and policies to support victims and survivors, bearing in mind the need for cultural humility and a victim-centred and trauma informed approach, and
- F. Ensure relevant stakeholders consider and seek clarity around respective roles to ensure that there is no duplication of services or work, including but not limited to:
 - a. Existing survivor supports such as those provided through the Sexual Misconduct Resource Centre (SMRC), including the implementation of Recommendations 13 and 14
 - b. Identification of clear roles, in light of the implementation of Bill C-77, in particular the Declaration of Victims’ Rights, and the provision of Victim Liaison Officers (VLOs) to victims/survivor within the military system and how they might interact with VLOs or investigators within the civilian policing system
- G. Engagement with civilian police in the development of any policy, process and/or draft legislation which may identify civilian police as an appropriate investigative body. Engagement should also take place if existing policy/processes impact civilian police and decision making on the choice of investigative body (see [Military Justice at the Unit Level Policy Chapter, 1: Pre-Charge – Choice of investigative body](#))

The OACP and CACP, in a true partnership with the Government of Canada, have the ability to effect the operationalization of a framework based on the rights, needs, and interests of victims and survivors of military sexual offences, thereby ensuring that past, present, and future victims have faith in coming forward to civilian police.

⁴ Supra Note 1 p. 98

I. Conclusion

The transfer to civilian police organizations of sexual assault investigations creates an opportunity for us all to *re-imagine how* CAF sexual offences are investigated. With one eye to the past, we seek to help victims/survivors navigate what can be for many some of the darkest days of their lives. A “people first” approach requires us to consider our legislative authority, and framework as well as the resources, expertise, and training needed to embrace victim-centred investigations to CAF sexual offences. It also requires the Government of Canada to support us to achieve our common goal: to protect victims/survivors of military sexual offences. These are all factors necessary for safe justice and for victims/survivors to feel respected and heard.

The voices of the past and present have taught us that we need these frameworks and resources as change, “*cannot be achieved by disparate, disconnected, under-resourced, or uncoordinated processes*”.⁵ While we appreciate that changes to the *National Defence Act* may take time, we call upon the Government of Canada to support the approach outlined herein, as soon as is reasonably possible, and to act and acknowledge that resources are needed for civilian police, just as resources have been provided in the past, in support of change within CAF.

⁵ Supra Note 2