



SPECIAL Policy Report

The Arbour Report and Supporting Effective Cultural Reform in the Canadian Armed Forces

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Introduction

The recent publication of the widely anticipated report by former Supreme Court Justice Louise Arbour (Arbour Report) addressing the culture of the Canadian Armed Forces (CAF) and Department of National Defence (DND) marks yet another milestone in ongoing efforts to foster cultural reform in the military. The commitment to consistently evaluate and improve culture in the CAF and DND is commendable. However, the report must be subjected to a rigorous internal assessment before any specific recommendations are implemented if the goal of meaningful and effective cultural change is to be realized.

Although the external report and recommendations developed by Mme Arbour represent a constructive resource in support of the laudable goal of meaningful cultural improvement, this policy brief outlines some fundamental methodological limitations that must be considered when evaluating the effectiveness of the recommendations presented in the report. One central methodological limitation addressed herein is that the resources from which Mme Arbour drew for her study did not necessarily present an accurate impression of the current state of the culture in the CAF. A second limitation is that these sources appear to have served to confirm a biased and potentially inaccurate initial impression of CAF culture brought to the project by Mme Arbour from the outset.

In the introduction to the report, Mme Arbour notes, "Every problem must have a solution."¹ This may well be true. However, endeavoring to implement solutions that are developed from a potentially inaccurate perception of the current state of culture in the military and that are therefore not adequately tailored to the plenary goal of improving culture in the DND and CAF will limit the overall potential effectiveness of the report and recommendations.

As a retired U.S. Army judge advocate and current law professor, discussions involving military culture reform are of particular professional interest for me. Because I experienced sexual assault very early in my career in the U.S. Army,² the issue of cultural change in the military is deeply personal to me. Likewise, because I have close ties and connections with CAF members who experience

the culture of the Canadian military daily at work, I have a personal stake in the current and future state of the culture within the DND and CAF.

Unfortunately, I see reflected in the Arbour Report many of the same missteps and miscalculations that have afflicted similar efforts to reform military culture in the United States and elsewhere in recent years.³ While the views expressed herein are solely my own, an informed comparison of recent developments in the United States can contribute to more effective outcomes here in Canada. A more comprehensive comparison of parallel efforts over the course of the last several years to change military culture in Canada and the United States would offer valuable insight, and indeed I am currently engaged in such a study. For present purposes of assessing the potential effectiveness of the recommendations presented by Mme Arbour specifically, however, I will address some of the most striking limitations inherent in the Arbour Report.

These limitations include methodological factors that likely impacted the reliability of the qualitative data developed during the course of the study, as well as the validity of the processes utilized to analyze the data and thereafter to develop recommendations from the analysis. Along with an assessment of the potential impact of these methodological limitations on the suitability of the recommendations presented in the Arbour Report, I also consider some methodological similarities reflected in this report and the most recent independent review conducted at the request of the U.S. Department of Defense. Then, the policy brief concludes with some reflections regarding the role of external reviews in shaping contemporary political and public discourse and some related reflections regarding suggestions for influencing current discourse in support of more effective efforts to assess and improve the culture of the Department of National Defense and the Canadian Armed Forces.

A report presented to Parliament and made public earlier this week on 13 December 2022 announced that Minister of National Defence Anita Anand “has decided that none of Madame Arbour’s recommendations will be rejected.”⁴ The prudence of accepting recommendations presented from an external reviewer without first engaging in a comprehensive internal appraisal of the advisability of each recommendation will be addressed in due course. As the path toward institutional assessment and potential implementation of the recommendations presented in the Arbour Report continues to develop, bringing focus to identifiable methodological limitations inherent in the report and the consequent effect on the credibility of the recommendations presented therein will be vitally important.

Methodological Limitation #1: Selection Bias, Data Transparency, and Reliability of Qualitative Data

A foundational limitation of the Arbour Report is that Mme Arbour’s impression of the problems that must be addressed to improve culture in the military is developed largely from anecdotal evidence presented by unnamed sources and that therefore do not necessarily present a comprehensive and accurate depiction of current DND/CAF culture. The report does indicate that Mme Arbour and her team “conducted over 115 interviews with members of the Defence Team and other government entities in their official capacity”⁵ and the report identifies these contacts by name and position.⁶ However, the primary purpose of these

identified exchanges was for Mme Arbour to learn about “particular functions, roles and concerns of those officials and organizations.”⁷

Although this background was undoubtedly vital for Mme Arbour to develop a comprehensive understanding of the various organizational structures that exist within the DND/CAF and how they relate to one another, these official interviews were not the primary mechanism utilized by Mme Arbour to cultivate an impression of the current state of the DND/CAF culture. Instead, the review team drew extensively upon input generated from “more than 80 written submissions from stakeholders” and “over 245 confidential interviews with stakeholders who reached out with information related to” the review’s terms of reference for that purpose.⁸ This core methodological component of the external review introduces two primary limitations that can have a significant impact on the conclusions and recommendations that are developed from the data received from these stakeholders.

One primary limitation is the potential effect of self-selection bias. In general, bias can be described as “any influence that provides a distortion in the results of a study.”⁹ Self-selection bias, in turn, is a type of distortion that “often results when survey respondents are allowed to decide entirely for themselves whether or not they want to participate in a survey.”¹⁰ This research phenomenon can generate biased data because “respondents who choose to participate will not well represent the entire target population.”¹¹ A common strategy to mitigate the potential effect of this type of selection bias in qualitative data is “to recruit participants with a range of experiences in relation to the topic being explored.”¹²

Based on the methodology of the Arbour Report, it is reasonable to conclude that the qualitative data upon which the characterizations and recommendations are developed were distorted by the effects of self-selection bias and that the study design did not implement adequate measures to account for or mitigate effects associated with this limitation. Utilizing news releases and various social media platforms to inform members of “the public and the Defence Team” of the external review and inviting “them to share any information or opinions” with Mme Arbour¹³ is one potentially effective method by which to solicit input from various stakeholders. Although the report indicates that “more than 350 people contacted” Mme Arbour during the course of the study,¹⁴ it is by no means clear that the opinions and perspectives presented by these respondents are representative of the Defence Team as a whole. If it is more likely that a member of the target audience would accept the invitation to contact Mme Arbour and her team if the respondent seeks an opportunity to relate a grievance based on a negative experience or unsatisfactory outcome involving DND/CAF culture, the qualitative data set available for Mme Arbour will lead to a biased impression of the current state of the culture.

This is especially the case if the data provided by the respondents is based on a range of recent and past experiences, as this would dilute the proportion of responses that are relevant to the *current* state of DND/CAF culture. The methodological design developed for the study and explained in the report suggests that the process by which input was solicited and received by various stakeholders resulted in a biased impression of the culture that exists in the DND and CAF, and the report provides no explanation regarding any controls that were implemented to mitigate or offset the effects of this selection bias. This limitation

in the research design casts doubt on the depiction presented by Mme Arbour of the culture and, consequently, on the recommendations that are drawn from this impression of DND/CAF culture.

The effects of this distortion on the impression of DND/CAF culture developed and presented in the report are amplified by limitations related to data transparency that are inherent in the confidential nature of the responses received by Mme Arbour and her team. The terms of reference presented to Mme Arbour directed her to “ensure the anonymity of those who participated in the Review,”¹⁵ and the report confirms that Mme Arbour correspondingly took measures to “protect the confidentiality of” communications received by respondent stakeholders.¹⁶ Although allowing “participants the freedom to express themselves without fear of reprisal” is an obvious potential benefit of confidentiality in the collection of qualitative data, the competing concern is that such discretion may “allow researchers and participants to make claims that are only weakly substantiated, hidden behind the screen of anonymity.”¹⁷

As professor of politics and international affairs Andrew Moravcsik notes, data transparency allows readers of a study “to assess for themselves to what extent (and how reliably) that evidence confirms particular descriptive and causal interpretations and analyses,”¹⁸ and this benefit is degraded along with the corresponding virtue of participant confidentiality. In the context of the Arbour Report, drawing on confidential characterizations provided by current and former service members can, of course, be instructive. However, there is no way for the public to evaluate the persuasiveness of these perspectives without knowing the identities and backgrounds of the respondents. Nonetheless, these anonymous anecdotes form the foundation from which Mme Arbour develops her perception of the problems she seeks to address.

Indeed, while framing the problem of culture change near the beginning of the report, Mme Arbour asserts that “the military has failed to keep pace with the values and expectations of a pluralistic Canadian society.”¹⁹ If measurably accurate, this characterization would of course be cause for considerable concern. However, the report routinely presents only confidential anecdotes communicated to Mme Arbour during the course of her inquiry as support for this perception of the current state of the culture of the DND/CAF.

An unidentified “former senior male officer,” for example, expressed to Mme Arbour that the “appearance of activity is what is important in the CAF right now, not the actual activity.”²⁰ Likewise, an anonymous “retired senior officer” asserted that the military “is repeating the same mistakes as in 2015” by rushing “to publish direction and guidance and do stuff” but “none of it is well informed and considered.”²¹ An unnamed “female veteran” suggested that if good people “are not willing to be disruptive and stir the beehive, they [presumably from the context, “they” means suggested cultural reforms] aren’t going to go anywhere.”²²

While perceptions presented from current and former CAF members provide valuable insight regarding the condition of the culture in the military, they do not necessarily represent a balanced, holistic, and adequately informed account. A retired senior officer may genuinely believe, for example, that none of the “direction and guidance” being published by the CAF “is well informed and considered,” but it is impossible to assess whether this *actually* is the

case – especially since the public has no way of determining the background, qualifications, and even potential biases of an unnamed retired senior officer. Nonetheless, these anecdotes form the qualitative foundation of the problem set Mme Arbour endeavors to “fix” with her report and recommendations.

These two methodological limitations – selection bias and a lack of data transparency – raise concerns related to the reliability of the qualitative data upon which the description of the current state of DND/CAF culture presented in the report is founded. That is, “reliability” involves measures to ensure “that data collection is undertaken in a consistent manner free from undue variation which unknowingly exerts an effect on the nature of the data.”²³ If the impression developed by Mme Arbour based on qualitative data assembled during the course of her study, and consequently presented in her report, of current DND/CAF culture is not complete and accurate, this limitation casts doubt on the potential capacity of her recommendations to improve that culture. In addition to these limitations involving the reliability of the qualitative data and the resulting recommendations, the next section addresses methodological concerns regarding the validity of the analytical process presented in the report.

Methodological Limitation #2: Analysis Bias and Structural Procedural Validity

Based on commentary presented throughout the report and on perceptions she has related during public remarks following the completion of her report, it seems more than possible that Mme Arbour had a preconceived understanding of the current state of the culture in the CAF and that the anecdotal evidence she received from the unnamed personnel with whom she engaged simply confirmed her own preexisting impressions. If so, this could impact both the reliability of the data presented in the report and the validity of the analytical process by which the report recommendations were developed. From a qualitative research perspective, “validity” is taken to mean that “[a]n account is valid or true if it represents accurately those features of the phenomena that it is intended to describe, explain or theorise.”²⁴

In the present context, the phenomenon Mme Arbour intends to describe or explain is the current state of the culture in the DND and CAF – and recommendations for institutional improvement are developed from the impression Mme Arbour develops of the current state of DND/CAF culture. In addition to the potential effects of selection bias and a lack of data transparency addressed in the previous section, the reliability of the qualitative data presented in the report may have been impacted by data collection bias, which “can occur when a researcher’s personal beliefs influence the way information or data is collected.”²⁵ Likewise, the structural validity of the inquiry may have been affected by analysis bias, which occurs when a researcher looks “for data that confirm their hypotheses or confirm personal experience, overlooking data inconsistent with personal belief.”²⁶

Based on reflections presented in public remarks and in the actual report, it appears likely that Mme Arbour brought a stylized and generally unfavorable impression of the current state of DND/CAF culture to the study and the resulting report. During an interview conducted following the release of the report, for example, Mme Arbour relates her own professional experience as she first joined the judiciary. She describes that, back then, there “were many men judges in very senior positions who were persuaded that women couldn’t

do that job” because women supposedly “just didn’t have the moral fibre or the intellectual toughness to own a decision.”²⁷ Mme Arbour then likens her own experience early in the judiciary with the current culture of the CAF by observing that “in the military it’s the same thing” because there are ostensibly “still men in leadership position who believe women in the military cannot do their job, cannot do their work.”²⁸

In the transcript of a separate interview published a few weeks after completion of the report was announced to the public, Mme Arbour expresses a perspective related to the current culture of the CAF that is strikingly similar. While contemplating the proposal for outside agencies to consult with the CAF on culture reform, Mme Arbour observes, “If you just recruit white boys who like guns but don’t like women or anybody who doesn’t look like them, you’ll perpetuate that culture.”²⁹ This is undoubtedly true, and it is quite likely that there are personnel in the CAF who conform to this description. However, it is worth pondering whether Mme Arbour’s impression about the current state of CAF culture is itself founded upon outdated stereotypes and, if so, what effect this might have on her perception of the problem set she endeavors to address and, likewise, of the recommendations she develops to correct these problems.

This impression of the current state of CAF culture is reflected in the introduction to Mme Arbour’s independent review when she observes that the CAF must “adapt to a new reality – the women warriors are here to stay” and that women “will stay on their terms, seeking the substantive equality to which they are entitled.”³⁰ Mme Arbour recalls here that a “former senior female officer” indicated that many women “feel like guests in the CAF.”³¹ While this anonymous perspective appears to support Mme Arbour’s impression that “in the military it’s the same thing” as her experience early in the judiciary, her report never does identify which men in leadership positions in the CAF believe that women cannot do their job or cannot do their work. The leaders in the CAF who purportedly do *not* believe women warriors are here to stay or that women will stay on their terms likewise are never identified. As such, the anecdotal impression of the current state of DND/CAF culture Mme Arbour brought to the study and subsequently presents in her report may constitute an inaccurate representation of the current culture and the apparent deficiencies she seeks to address with the recommendations presented in the report.

If it is true, as the Government of Canada claims, that “Canada is a world leader in terms of the proportion of women in its military, and the areas in which they can serve” or that the CAF is “highly regarded as being at the forefront of military gender integration” among Canada’s allies,³² it would seem that military and civilian leadership *have* adapted to the “new reality” that “women warriors are here to stay.” The DND/CAF portion of the Government’s National Action Plan on Women, Peace and Security³³ as well as the related CAF plan to “integrate gender perspectives and the principles of Gender-based Analysis Plus (GBA+) into operations”³⁴ provide support to the assertion that the CAF is at the forefront of gender integration. The assertion that Canada “is one of the strongest and most visible proponents at the UN of increasing gender responsiveness of UN peace operations and of encouraging women’s full and meaningful participation as a means to achieve greater operational effectiveness”³⁵ likewise supports the characterization that Canada is at the forefront of military gender integration among its allies. If a primary objective of the recent

major update for “Canadian Forces Dress Instructions is to make the policy more inclusive and less prohibitive”³⁶ and to “provide individuals with more choices to support respect, diversity, and inclusiveness,”³⁷ as recent CAF messaging suggests, it may well be the case that the existing culture in the DND and CAF has embraced that women warriors are here to stay – without the requirement for an external review to convince senior leadership of this putative “new” reality.

In short, it appears that Mme Arbour approached the task of developing recommendations to “fix” the culture of the military with an impression of existing problems that may not be consistent with the actual *current* state of culture in the DND/CAF. Anecdotal observations from anonymous current or former CAF members, while at least somewhat probative, may well have confirmed any biases Mme Arbour brought to the project. Nonetheless, it seems likely that there is an appreciable gap between the impression Mme Arbour presents of the existing problems and the *actual* current state of the culture Mme Arbour sets out to “fix.” These potentially extensive structural limitations inherent in the design of the study conducted by Mme Arbour raise fundamental concerns regarding the reliability of the qualitative data presented in the report and the validity of the process by which that data was analyzed. These methodological limitations, in turn, cast doubt on the validity of the characterizations regarding the current state of DND/CAF culture, as well as the potential effectiveness of the recommendations developed to “improve” that culture.

A foundational requirement in the endeavor to present suggestions for institutional improvement is to develop an accurate understanding of the problems that need to be addressed. Design limitations inherent in the methodological approach of the study call into question the impressions of DND/CAF culture and on the effectiveness of the recommendations presented in the report. During a press conference announcing the completion of the report, Mme Arbour asserts that cultural change “won’t happen if they [the military] lock the doors and try to fix it all by themselves.”³⁸ While this observation is almost certainly true, it is by no means apparent that recommendations developed from an inaccurate understanding of the current culture in the DND/CAF will contribute to “fixing” existing problems, either.

Pervasive Media Coverage Distorts Public Opinion and Report Perceptions

In addition to anecdotal evidence presented to Mme Arbour during the course of her inquiry, the full report also notes that the media has, for decades, “played a pivotal role in holding senior military leadership accountable for sexual misconduct.”³⁹ However, press accounts relying on external analysis of only the degree of information that is available to the public are not a reliable source upon which to base impressions of institutional cultural challenges. Additionally, mass media platforms experience a significant profit motive that encourages sensationalized coverage and the exaggeration of public scandal.⁴⁰ Recent media coverage involving the culture of the Canadian Armed Forces is no exception.

Although Mme Arbour notes that “the setting up of three external reviews addressing sexual misconduct in the CAF in the last six years...has largely been attributable to the public concern generated by the work of the press,” then, it is by no means clear that “investigative reports of Canadian media outlets” actually have “played a critical part in bringing to light

the *extent* and *severity* of sexual misconduct in the military and the shortcomings in the CAF's handling" of allegations of sexual misconduct.⁴¹ As LCol Rory Fowler (ret'd) observes on the topic of high-profile media coverage addressing allegations of sexual misconduct in the CAF, in a "constitutional Parliamentary democracy governed by the Rule of Law, such as Canada, we do not try people...in the media. We do that before impartial and independent tribunals and courts, and for good reason."⁴² Investigative press reporting serves a vital role in informing the public, but media coverage is not a reliable source upon which to form impressions regarding culture of the CAF related to, among other high-profile topics, sexual assault prevention and response.

This phenomenon is largely attributable to a number of factors that inherently limit the capability of the media to present a balanced and thoroughly informed *external* account of *internal* governmental processes or of disciplinary and judicial proceedings. Of course, journalists are not bound by technicalities such as rules of procedure, admissibility of evidence, elements of offences, or other factors that must be considered by relevant officials when determining the appropriate disposition of alleged misconduct. As I have examined separately in the context of recent high-profile media coverage involving U.S. military combat operations,⁴³ the perceived role of the media functioning as the "fourth estate" to hold governments to account on behalf of The People in liberal democracies generates bias in journalistic practices such as source selection and narrative construction. The bias that results from the impulse to engage in "accountability journalism," in turn, creates public perception regarding governmental functions – including the current context of evaluating the culture of the military – that is not necessarily a complete and accurate depiction of these official matters. Similarly, observers to whom journalists turn for analysis rarely have the benefit of reviewing actual case files before rendering their expert opinions, and these perspectives often reflect the political or ideological inclinations of the learned specialists providing the commentary presented in the reporting.

A case-by-case analysis of the various scandals recently covered in mass media that have fueled the flames of public fury and the resulting demands for systemic reforms is beyond the scope of the present contribution.⁴⁴ Several high-profile cases involving current and former senior military leaders accused of serious sexual misconduct are still pending resolution, or were very recently adjudicated, at the time of this writing.⁴⁵ Regarding the allegations of misconduct involving former CDS Gen Jonathan Vance (ret'd) that were recently adjudicated, for example, expert analysis related to the outcome may express "disappointment" because "it really is sort of a setback to efforts to convince the public that there is a real serious commitment to" the issue of accountability for allegations of sexual misconduct.⁴⁶ Likewise, commentary presented as expert analysis in the press may suggest that the outcome reveals that the Canadian military justice system "has some serious flaws."⁴⁷ However, an alternative perspective that may not be as appealing in the forum of mass media is that the agreement negotiated between the Crown and defence counsel and later approved by the judge represents an "outcome derived from the negotiations between two experienced and respected criminal litigators" and does not demonstrate "serious flaws in the military justice system"⁴⁸ at all.

In short, there is often a significant gap between public perceptions that are shaped by mass media coverage and the outcomes that are eventually derived from actual disciplinary or

judicial proceedings where procedural fairness genuinely matters. The media performs a vital function in informing the public, but it is not adequately positioned to play “a pivotal role in holding senior military leadership accountable for sexual misconduct,” as Mme Arbour contends.⁴⁹ Nonetheless, depictions presented in media coverage, as well as anecdotal observations offered by interviewees and respondents whose identity has not been disclosed to the public, are central to the impression of the cultural challenges Mme Arbour seeks to correct.

Recommendations Not Properly Scoped for Substantive Cultural Improvement

With what can be characterized as a decidedly unempirical impression of the problems that need to be addressed, the solutions proposed by Mme Arbour are, predictably, not adequately scoped to support her stated goal of presenting “avenues of reform that will be essential to effecting the culture change that is long overdue.”⁵⁰ For example, although Mme Arbour recommends that “*Criminal Code* sexual offences should be removed from the jurisdiction of the CAF,”⁵¹ the justification for this sweeping proposal is not based on an identifiable empirical deficiency and there is, therefore, no reason to believe this recommendation would contribute to an *actual* improvement to CAF culture. Instead, Mme Arbour notes that in this regard she “cannot but echo the findings”⁵² of the review conducted in 2015 by former Justice Marie Deschamps. However, the reflections presented in the report published by Mme Deschamps were themselves developed from anecdotal, unattributable “participant comments...concerning the need to create an outside mechanism to receive complaints of sexual harassment and assault.”⁵³

In addition to echoing the unempirical reflections presented by Mme Deschamps in 2015, Mme Arbour builds her own recommendation related to removing concurrent jurisdiction for criminal sexual offences on sources that do not, individually or collectively, adequately establish that this measure is warranted. These sources include a scholarly article⁵⁴ of debatable utility⁵⁵ and a study of court-martial process timeliness from 2008⁵⁶ that raises questions concerning “the experience of counsel prosecuting and defending at courts martial compared to their civilian counterparts.”⁵⁷ Additionally, Mme Arbour refers to “approaches in other countries”⁵⁸ that are the subject of the same manner of criticism that is often leveled against the Canadian military justice system.⁵⁹ Although these sources are relevant and indeed informative, no recent quantitative study of the performance of the Canadian military justice system supports the conclusion that removing concurrent jurisdiction related to allegations of sexual misconduct currently exercised by the CAF constitutes a significant factor in improving – or indeed even affecting – the culture of the military in general. Without establishing such a connection, this recommendation may support the *appearance* of cultural “reform” – but it does not constitute one of the “avenues of reform that will be essential to effecting the culture change” Mme Arbour strives to identify.⁶⁰

This jurisdictional recommendation, then, is not only devoid of empirical justification, it also represents a potentially significant impediment to the ability of the CAF to investigate and adjudicate alleged offences committed in an expeditionary setting. While Mme Arbour expresses the expectation for “victims to be told to contact civilian authorities directly” to report an alleged offence,⁶¹ it is not clear how this recommendation should be implemented while on a deployment to, say, Afghanistan, Mali, or Latvia. As a recent landmark Court

Martial Appeal Court of Canada (CMAC) decision observes, “The government of Canada requires, and its citizens expect, an operationally ready force for the defence of Canadian interests. This includes an operationally ready and portable courts martial system.”⁶² Implementing this recommendation from Mme Arbour regarding concurrent jurisdiction would exonerate both the “operationally ready” and “portable” characteristics of the courts martial system – at least in regard to all *Criminal Code* sexual offences.

The conclusion that the CAF should be divested of concurrent jurisdiction for *Criminal Code* sexual offences, which is based upon a collection of largely anecdotal sources of evidence curated by Mme Arbour in support of her recommendation, stands in sharp contrast to judicial decisions and governmental characterizations that affirm the fairness and effectiveness of the military justice system. Indeed, the same recent CMAC decision notes, “The Supreme Court of Canada has affirmed repeatedly the constitutionality of military members being tried by military officers.”⁶³ This observation, like the cases this decision cites for precedent, is presented in response to an attempt to impugn, on various grounds, the fairness and effectiveness of the military justice system.

As a recent Supreme Court of Canada decision notes on the subject, “Just as the civilian criminal justice system grows and evolves in response to developments in law and society, so too does the military justice system. We see no reason to believe that this growth and evolution will not continue into the future.”⁶⁴ The judiciary, then, has repeatedly characterized the existing court-martial system as fair and effective and, importantly for the mandate of the judicial branch, constitutional.

The Government of Canada likewise maintains that the CAF “has a sound, fair, and effective military justice system” that “has operated successfully throughout its existence, most recently through over a decade of intense operational activity with elements of the CAF deployed in Afghanistan and throughout the world.”⁶⁵ Serving the “particular disciplinary needs of the military”⁶⁶ requires a system of justice that is as expeditionary as the CAF is, which means maintaining the capability to investigate and, when necessary, adjudicate allegations of misconduct committed both at home and abroad. This is true regarding sexual offences just like any other category of crimes, regardless of where the offences may be committed.

Even here at home, current efforts by the CAF to transfer sexual assault investigations to civilian jurisdictions have already been met with considerable resistance from civilian authorities.⁶⁷ This is to be expected, as a significant number of law enforcement organizations expressed a wide range of concerns directly to Mme Arbour during the course of her inquiry regarding her proposal to offload military sexual assault investigations to civilian jurisdictions.⁶⁸ Although the report published by Mme Arbour claims “the number of *cases*, spread across the country”⁶⁹ that would be transferred to the exclusive jurisdiction of civilian authorities would not constitute a significant impediment to implementation, the statistical estimate of potential *investigations* that would be handled by civilian jurisdictions alone each year is not inconsequential.⁷⁰

Indeed, these latter figures do not reflect potential complications that exist within the statistics, such as investigations involving alleged offences that may have occurred while deployed overseas – or even domestically on a training exercise – with evidence, witnesses, the victim

or the accused located far away from the civilian jurisdiction that may be called upon to conduct the investigation. The need for a portable justice system in the military context is in large part a function of the mobile nature of military service. A stationary system of justice based on territorial jurisdiction is entirely adequate for adjudicating many offences, civilian and military alike.

However, the inherently and predictably mobile nature of military service makes a portable but fair justice system better suited than the inherently static and stationary civilian model in some circumstances. Not only is this recommendation built upon anecdotal rather than quantitative evidence, then, but removing concurrent jurisdiction involving *Criminal Code* sexual offences from the military justice system would likely require civilian authorities to *investigate* and, when appropriate, prosecute these alleged offences even when the civilian jurisdiction is not a particularly suitable forum in which to pursue justice. The assertion that this recommendation constitutes an avenue “of reform that will be essential to effecting” culture change⁷¹ in the CAF, then, is tenuous at best.

The focus thus far of the analysis involving the recommendations in the Arbour Report has been on the proposal related to concurrent jurisdiction for sexual offences, but other recommendations are beset by many of the same limitations. The recommendation for a “combination of Defence Team members and external experts, led by an external education specialist” to “conduct a detailed review of the benefits, disadvantages and costs... of continuing to educate ROTP [Regular Officer Training Plan] cadets at the military colleges”⁷² is founded upon an impression that “military colleges appear as institutions from a different era, with an outdated and problematic leadership model.”⁷³ While there is certainly value in consistently evaluating and seeking ways to improve the culture and the effectiveness of existing institutions, Mme Arbour considers the existing challenges to be “almost insurmountable” based on her impression that “the view persists within the CAF that military colleges do not have a significant problem with harassment, bullying and sexual misconduct.”⁷⁴

This understanding seems inconsistent with the measures Mme Arbour describes in the report indicating that the “CAF has taken steps to address [the] cultural and systemic failures”⁷⁵ that have been identified in the institutions. Although Mme Arbour describes a “real risk that the perpetuation of a discriminatory culture at the colleges will slow the momentum for culture change the CAF has embarked upon,”⁷⁶ it is just as likely that the considerable change the CAF has experienced over the course of recent decades is *attributable* in large part to the cadre of officer cadets educated and trained at these institutions. The alternative to Mme Arbour’s perspective, then, is that military educational institutions have been, and will continue to be, a vital resource for fostering and generating positive cultural change throughout the CAF. Suggesting that the CAF should throw the proverbial baby out with the institutional bathwater constitutes a narrow perspective built largely upon anecdotal evidence that disregards ongoing efforts for institutional improvement and neglects the potential force for positive cultural reform the colleges represent.

Although the analysis of the methodology and selected recommendations presented in the Arbour Report has, thus far, been unreservedly critical, a number of the suggestions do appear to be more than adequately supported by evidence developed during the course of

the inquiry. If CAF members genuinely are confused about the role of the Sexual Misconduct *Response* Centre and changing the name to the Sexual Misconduct *Resource* Centre while also seeking ways to clarify the role of the SMRC among the ranks would improve the effectiveness of this important organization,⁷⁷ for example, this recommendation is linked directly to a specific shortcoming and admirably tailored to correct the problem. The same appears to be true regarding the recommendation and underlying justification related to considering abolishing the controversial “duty to report” all *Code of Service Discipline* infractions.⁷⁸ Also, recommendations related to modifying the existing definition of sexual misconduct appear to be suitably tailored to a set of specific, identifiable problems,⁷⁹ though I suggest there is still room for discussion within the military regarding what the precise content of the updated definitions should be.

The point, though, is that many of the recommendations presented by Mme Arbour are adequately tailored to a specifically defined existing problem and, therefore, have the potential to stimulate genuine cultural change in the DND/CAF. The important next step will be for civilian leadership to create the time and political space required to solicit and consider candid input from stakeholders throughout the organization. In this regard, recent events across the border in the United States can be instructive.

The Way Ahead: Comprehensive Institutional Assessment, Not Unquestioning Acceptance and Implementation

In July 2021, a Pentagon-appointed study published sweeping recommendations intended to improve the culture of the U.S. military. Like the present Arbour Report, the recommendations from the Independent Review Commission (IRC) were developed from an expert with no military background or experience⁸⁰ and were founded largely on anecdotal evidence⁸¹ (in the case of the IRC Report, also on a fundamental misinterpretation⁸² of available quantitative data). As a result, the recommendations reflected in the IRC Report were generally not adequately scoped to achieve the actual desired effect of improving the culture of the military.⁸³

Although the purpose of this brief description is not to engage in an extensive critical analysis of the Independent Review Commission Report and recommendations, the DoD experience reveals one decisive misstep that the Canadian government can still avoid. That is, the Secretary of Defense “accepted all of the recommendations” presented by the IRC⁸⁴ even though senior military leaders had expressed “serious concerns” about some of the core proposals.⁸⁵ Ever since, the DoD has been dutifully implementing the IRC recommendations⁸⁶ notwithstanding the serious concerns expressed by military leadership.

This is a crucial mistake the Canadian government must avoid by engaging in a critical and thorough *internal* assessment of the sweeping recommendations made by the independent *external* review conducted by Mme Arbour. Although Minister of National Defence Anita Anand did initially express that “we [senior members of “the Defence Team”] welcome and agree with the 48 thoughtful recommendations,”⁸⁷ she has also articulated the intent to “analyze, review, and plan” the government response to Mme Arbour’s recommendations and to personally assess “*whether* and when we can implement these recommendations efficiently and effectively.”⁸⁸ Expressing outright *agreement* with all 48 thoughtful recommendations

without first confirming internally, throughout the DND, the advisability and feasibility of each was, to be quite candid, an unforced error.

In the end, a thorough and forthright evaluation from stakeholders *throughout* the CAF is absolutely vital before deciding whether it is in the interest of the military, and therefore of the nation's security, to implement *any* recommendations presented from a review conducted outside of the military. The United States government has already utterly failed in this regard. It is not too late for Canada to avoid the same mistakes.

It is now up to political leadership – in the Government and in opposition parties alike – to provide adequate time and space to allow the DND and CAF to evaluate and assess these most recent recommendations. Based on the Terms of Reference developed for the External Monitor appointed by Minister Anand in response to the final recommendation presented in the Arbour Report (#48),⁸⁹ there is significant cause for concern that pressure resulting from the prevailing political climate is motivating what will ultimately be a rush to failure by the current Government. Improving the culture of any organization is irrefutably an enduring project. Requiring “*monthly* reports to the Minister of National Defence relating to the implementation of the recommendations” presented in the Arbour Report and previous similar studies, then, while tasking the External Monitor to draft “a progress report...that is suitable for publication” to the public every six months⁹⁰ sets the tone for decidedly short-term expectations of progress in relation to what will inherently remain a long-term endeavor.

Even more concerning than short-term “progress” report time horizons, however, is the lack of *explicit* policy-level guidance seeking candid and comprehensive input from stakeholders within the DND and CAF regarding the feasibility – and *especially* the advisability – of implementing the recommendations presented in the current Arbour Report and previous studies such as the Deschamps Report, Fish Report, and the Minister's Advisory Panel on Systemic Racism and Discrimination Final Report. Each of these previous studies exhibits some degree of the types of methodological and analytical limitations examined herein regarding the Arbour Report. This observation is not intended to suggest that inherent methodological limitations warrant the dismissal of characterizations, conclusions, and recommendations presented therein.

Nonetheless, these reports and recommendations are not, individually *or* collectively, a source of unassailable prescriptions for effective culture change in the DND and CAF. They should, therefore, not be treated as though they are. This mandate requires, above all else, three attributes that have long been in short supply, regardless of which party happens to be in Government at any given moment: political leadership, political courage, and political cooperation.

Alleviating Current Toxic Political Climate as a Requirement for Effective Improvement of DND/CAF Culture

The exercise of effective political leadership would require MND Anand to initiate a process for receiving and considering candid input from stakeholders at all levels in the DND and CAF before “accepting” any recommendations presented in an external review – and most *certainly* before committing to implement any of them. Announcing on the day it was released

to the public that the Arbour Report “charts our path forward”⁹¹ for the DND without first engaging in an extensive internal review and assessment set the stage at the outset for the current path of unquestioning acceptance of the report recommendations. The imprudence of this approach is already evident, for example, in MND Anand’s recent revelation that her “officials will come and present options”⁹² to implement the recommendation to divest the military justice system of jurisdiction for *Criminal Code* sexual offences even though the Minister has already accepted the recommendation.

Tasking an External Monitor to “[o]bserve and document the progress, and capability, to implement the recommendations”⁹³ without first engaging in a comprehensive evaluation – complete with extensive input from throughout the Department and the military – of the advisability of those recommendations likewise constitutes inadequate political leadership. Announcing to the DND and CAF, and indeed to the Canadian public writ large, that a thorough and comprehensive internal evaluation of the characterizations and recommendations presented in the current collection of external reviews – and then creating the time and the mechanism by which to collect and consider those internal perspectives – would demonstrate effective political leadership. As the path toward assessment and potential implementation of the sweeping recommendations presented in the Arbour Report continues to develop, it is not too late for MND Anand to take into account the methodological limitations inherent in the report, commit to soliciting comprehensive input from stakeholders throughout the DND and CAF regarding the characterizations of DND/CAF culture presented therein, and adjust the current implementation plan accordingly.

Doing so, in turn, would require no small degree of political courage. While essentially outsourcing the problem of evaluating and improving the culture of the DND and CAF to external entities and then uncritically accepting and implementing the recommendations developed therein may be politically expedient, this is not the path to truly effective reform. Accepting the ultimatum to inform Parliament of the recommendations presented in the Arbour Report that MND Anand “does not intend to implement” based on the arbitrary timeline of “by the end of the year”⁹⁴ creates the distinct impression that the appearance of action is politically as important – potentially even more important – than fostering meaningful reform. This appearance is supported by MND Anand’s recent revelation indicating, “We need Canadians to see the progress and we need to be held to account.”⁹⁵

Impressions of the current state of DND/CAF culture from within Government must be developed based on methodologically sound and ideologically balanced processes.⁹⁶ Committing to such an approach will require political courage, but this is the only way for the Government to develop a comprehensive evaluation of the current challenges and opportunities for future improvement. A balanced and comprehensive understanding of the current state of the culture in the DND and CAF is likewise required for the Government to counter distorted and sensationalized narratives constructed in media coverage as well as ideological criticisms crafted by opposition parties.

As for current and future opposition parties, seeking to score political points from *outside* the Government⁹⁷ based on perceptions of the CAF cultural challenges articulated in the Arbour Report, for example, is imprudent and, ultimately, counterproductive. Foundational democratic values require the military to remain devoutly apolitical, and this unfortunately

makes the military an easy target for current or prospective politicians pursuing a particular partisan agenda at the expense of either the CAF directly or of the present Government that bears ultimate responsibility for the current state of the military. Nonetheless, the culture of the military is cultivated and evolves over the course of time, regardless of which political party happens to govern the country at any specific moment.

Effective engagement requires constructive and informed opposition perspectives rather than ideologically and politically motivated spin and talking points. Pursuing *effective* political engagement in the context of the Arbour Report, for example, would entail questioning by opposition parties related to steps the Government took to assess any potential methodological limitations inherent in the report before accepting the recommendations presented therein, the extent to which the Government endorses the characterizations of the current DND/CAF culture presented by Mme Arbour in the report and in subsequent public remarks, and measures employed by the Government to solicit comprehensive input from across the DND and CAF regarding the feasibility *and* advisability of the recommendations presented in the report before accepting and committing to implement them. Effective political engagement rather than ideologically reflexive criticism of the current Government in support of a predetermined political agenda will, in turn, require a commitment to political cooperation for the good of the DND, the CAF, and, therefore, the good of the country as a collective constituency.

Just like any individual assessment, the characterizations and consequent recommendations presented in the Arbour Report constitute *a* tool for potential policy change – but not an unassailable prescription. In pursuit of genuine and effective cultural improvement, the prevailing political climate must be transformed to create the space and time for extensive and comprehensive evaluation of the Arbour Report in light of previous similar external studies. For any specific recommendations from external evaluations that are determined to be unsuitable or inadvisable, stakeholders in the CAF must be entrusted with the latitude necessary to fully explain that assessment. Because the military – and not an external reviewer or monitor – is responsible for maintaining operational effectiveness, CAF stakeholders must also be trusted to chart a path toward implementation for those recommendations that are determined to be advisable. The Canadian military, as well as the country they serve to defend, deserve nothing less.

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