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The Honourable Dean Allison  
Chair, Standing Committee on Public Accounts  
House of Commons  
Ottawa, Ontario  
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Dear Mr. Allison,

In response to your letter of 13 March 2020, received on 22 April 2020, National Defence presents the enclosed update on its work to address Recommendation 4 of the Standing Committee on Public Accounts entitled *Report 5, Inappropriate Sexual Behaviour – Canadian Armed Forces, of the fall 2018 Reports of the Auditor General of Canada*.

Sincerely,



Jody Thomas

Enclosures: 3

Canada

**Response to the Standing Committee on Public Accounts'  
Report 5, Inappropriate Sexual Behaviour – Canadian Armed Forces, of the fall  
2018 Reports of the Auditor General of Canada**

**Recommendation 4**

*That, by 31 October 2019, the Canadian Armed Forces present the House of Commons Standing Committee on Public Accounts with a report outlining its revised approach regarding members' obligations to report inappropriate sexual behavior to the proper authority, including how such an approach balances the safety of the organization with the need to support victims by allowing them to disclose and seek support without the obligation to trigger a formal report.*

**Background**

National Defence is committed to eliminating sexual misconduct in the Canadian Armed Forces and understands that real culture change requires sustained, long-term effort. That is why the Defence Team continues to improve its approach regarding members' obligations to report sexual misconduct and has sought to provide clarity around reporting obligations – clarity that ensures a balance between protecting the safety of the organization and ensuring victims are well supported.

In its Government Response presented to the House on 20 June 2019, National Defence addressed Recommendation 4 by reaffirming its commitment to clarifying reporting obligations, while ensuring that the views of victims are considered and respected to the greatest extent possible. In that response, National Defence stated that a Duty to Report Working Group would determine whether the Auditor General's recommendations could be met within the existing regulatory framework. National Defence's response indicated that recommendations were expected from this working group by October 2019. Further, National Defence stated that it would concurrently draft an updated internal policy on sexual misconduct, including a revised approach regarding the duty to report.

On 22 April 2020, National Defence received an additional request from the Committee for information on how it has addressed recommendation 4. In response, the Defence Team is pleased to present the following update.

**Revising the approach to reporting obligations**

Even as the Duty to Report Working Group continued its work on whether Defence could meet the Auditor General's recommendations within the existing regulatory framework, National Defence released two interim documents (attached for reference). As stated by National Defence officials in their January 2019 appearance before the Committee, the Duty to Report will continue. However, the two interim products provide guidance on how members can receive support and seek advice from the Sexual Misconduct Response Centre prior to reporting. These interim products will be updated

as appropriate upon completion of the new policy, to ensure alignment with National Defence's revised approach and fulsome victim support.

### *Operation HONOUR Manual*

The Operation HONOUR Manual is a comprehensive guide with information and resources on sexual misconduct, including background information on Operation HONOUR, an overview of the broader culture change being pursued by National Defence, links to educational and training resources, as well as information on disclosures and seeking support.

Chapter Three of the manual guides members on how to respond to all forms of sexual misconduct, noting first and foremost to contact the Sexual Misconduct Response Centre for anonymous advice. Members are then directed to inform their chain of command. The manual states that all Canadian Armed Forces members have a duty to report any incidents of sexual misconduct by another member, and that upon learning of an incident, the chain of command must take prompt and decisive action to ensure the safety and wellbeing of affected persons.

### *Sexual Misconduct Incident Management Decision Tree*

The Sexual Misconduct Incident Management Decision Tree guides Canadian Armed Forces leaders' responses to a reported incident. The Tree's accompanying instructions note that members can be referred to the Sexual Misconduct Response Centre for confidential support and information. Further, the document emphasizes that leaders should be sensitive to the fact that victims traumatized by incidents of sexual misconduct have experienced a sense of loss of control and lack of choice as a result of what happened to them. The document notes that the response to alleged incidents of sexual misconduct should, to the greatest extent possible, reflect the victim's preferences, including the decision whether to proceed with disciplinary or administrative processes.

### *Duty to Report Working Group*

This working group, renamed the Policy Working Group, undertook extensive consultation and legal analysis regarding the regulatory framework surrounding the duty to report. In September 2019, ahead of the October 2019 deadline, the working group provided their evaluation to both the Executive Director of the Sexual Misconduct Response Centre and the Director General of Professional Military Conduct – Operation HONOUR. Ultimately, National Defence moved forward with developing a new internal policy to provide guidance on reporting requirements (discussed below) within the existing regulatory framework.

### *Toward a new, unified policy on sexual misconduct*

Further to this commitment to develop an updated internal policy, National Defence is finalizing a comprehensive, expert-informed policy, “Defence Administrative Orders and Directives 9005-1 Sexual Misconduct Response.” National Defence will provide the Committee with a copy of this new policy when it is complete (anticipated in Summer 2020), as well as copies of the interim products when they are revised accordingly.

### **National Defence’s ongoing commitment to eliminating sexual misconduct**

Addressing reporting obligations is an important part of National Defence’s wider effort to address and eliminate sexual misconduct. Success requires a broader and continued commitment to people – the women and men of the broader Defence Team.

For example, as reported to the Committee in April 2020, the Defence Team has launched a comprehensive case management service to better support victims of sexual misconduct. National Defence also championed Bill C-77, which received royal assent in June 2019 and will introduce the *Declaration of Victims’ Rights* into the Code of Service Discipline. Once fully in force, these measures will support victims of service offences. National Defence is developing a national survivor support strategy to fully address the needs of any member affected by sexual misconduct, and is continually improving its policies, procedures, and training to better support victims based on the advice of experts in the field.

Further, National Defence recognizes that the success of these initiatives and Operation HONOUR in eliminating sexual misconduct depends on achieving real change over the long term. To do this, National Defence is finalizing a formal culture change strategy, which includes a conceptual framework, strategic direction, a campaign plan and a performance measurement framework, to establish a preventative approach to sexual misconduct and institutionalize culture change.

Taken together, these efforts will ensure that National Defence remains a safe and healthy workplace for every member of the Defence Team.



# THE OPERATION HONOUR MANUAL

## (Interim Edition)

*A Comprehensive Guide to Information and Resources on  
Sexual Misconduct*



Operation  
**HONOUR**

Current release date: July 2019  
For any questions, please contact DPMC-OpH  
[DPMC-OpH-DCMP-OpH@forces.gc.ca](mailto:DPMC-OpH-DCMP-OpH@forces.gc.ca)

Canada 

## FOREWORD

The Operation HONOUR Manual is issued on the authority of the Chief of the Defence Staff (CDS). It was developed in cooperation with, and on the expert advice of, the Sexual Misconduct Response Centre (SMRC), in consultation with the External Advisory Council. It is intended to provide all Canadian Armed Forces (CAF) personnel with guidance, tools, and resources to promote a common understanding regarding sexual misconduct response, prevention, and support. It should not be construed or referenced as an authoritative source. If the content of this manual is in conflict with any legislation, regulation, directive, order, or policy, those will prevail.

Please send questions or suggestions for improvement by e-mail to [DPMC-OpH-DCMP-OpH@forces.gc.ca](mailto:DPMC-OpH-DCMP-OpH@forces.gc.ca).

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This document is for explanatory and/or educational use only, and is not a substitute for current direction, policy or law.

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## List of changes

| Amendment: | Changes   | Date       |
|------------|---|------------|
| 1          | Incorporation of updates to the personal information bank on Administrative Review Case Files (DND PPE 814) | 4 Jul 2019 |

## USE OF TERMINOLOGY

### NOTICE TO READERS

This manual contains language and references to sexual situations which may trigger an emotional response. There are numerous resources available to help you, and a good starting point is the [Sexual Misconduct Response Centre \(SMRC\)](#), whose counselors provide supportive counselling and information on facilitated access to services.

The words we use as descriptions or labels subconsciously influence how we perceive and how we communicate what is being described or labeled; therefore, it is important to choose our words carefully.

In an effort to be mindful of the impact of the words we choose, we offer the following definitions, terminology, and explanations:

### SEXUAL MISCONDUCT

The term sexual misconduct is defined in the Defence Terminology Bank (DTB) as conduct of a sexual nature that can cause or causes harm to others. Sexual misconduct, includes:

- Actions or words that devalue a person or group of persons on the basis of their sex, sexuality, sexual orientation, gender identity or expression;
- Jokes of a sexual nature, sexual remarks, advances of a sexual nature or verbal abuse of a sexual nature in the workplace;
- Harassment (DAOD 5012-0) of a sexual nature, including initiation rites of a sexual nature;
- Viewing, accessing, distributing or displaying sexually explicit material in the workplace; and
- Any *Criminal Code* offence of a sexual nature such as:<sup>1</sup>
  - Surreptitiously observing or recording a person in a place where the person could expose his or her genital organs or anal region or her breasts or could be engaged in explicit sexual activity, or distributing such a recording (voyeurism: section 162 of the *Criminal Code*);
  - Publishing, distributing, transmitting, selling or making available an intimate image of another person - i.e., a visual recording in which the person depicted is nude, exposing genital organs, anal region or breasts, or engaged in explicit sexual activity - without their consent (publication of an intimate image without consent: section 162.1 of the *Criminal Code*);
  - Engaging in any kind of sexual activity with another person without their consent (sexual assault: section 271 of the *Criminal Code*);
  - Engaging in any kind of sexual activity with another person who is incapable of consenting, for example due to intoxication (sexual assault: section 271 of the *Criminal Code*); and

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<sup>1</sup> Criminal Code, <https://laws-lois.justice.gc.ca/eng/acts/c-46/>



- Engaging in any kind of sexual activity with another person by inducing that person to agree to the sexual activity through abuse of a position of trust, power or authority by virtue of rank or position (sexual assault: section 271 of the *Criminal Code*).

Sexual misconduct can be addressed through the application of administrative measures, through the military justice system by charging an individual with a service offence, or, in the case of behaviour that is also captured in the Criminal Code, through the civilian criminal justice system.

## **WORKPLACE**

The physical work location and the greater work environment where work-related functions and other activities take place and work relationships exist.

Note: in the CAF context, the workplace can include places such as messes, on-base clubs, quarters, dining halls, gyms, and sanctioned events such as holiday gatherings and course parties as well as office spaces, classrooms, garrisons, ships, hangars, vehicles, aircraft, online forums, etc. CAF members do not simply work for the CAF, but work, socialize and often live within institutional and social structures established by the military.

## **SEXUAL ASSAULT**

In accordance with the *Criminal Code*, this is an assault committed in circumstances of a sexual nature such that the sexual integrity of the complainant/victim is violated. In simple terms, sexual assault is unwanted physical contact of a sexual nature, which includes unwanted sexual touching and sexual activity where the victim was unable to consent.<sup>2</sup>

## **SEXUAL HARASSMENT**

Is harassment (as defined in DAOD 5012-0 Harassment Prevention and Resolution) that is sexual in nature; sexual harassment may take many forms including overt sexualized behaviour as well as discrimination based on sex, sexual orientation, and gender expression and identity.<sup>3</sup>

A list of examples can be found in [Chapter 2 Understanding Sexual Misconduct](#).

## **VICTIM/AFFECTED PERSON/SURVIVOR**

It is recognized and acknowledged that individuals may define their own context and/or experience differently. Consider asking affected individuals about their preferred terminology.

People who prefer the term “survivor” often choose it because, for them, it conveys a positive message of strength and resilience, a triumph of hope over despair. Others feel the term “survivor” places undue expectations on them to be strong (or stronger than they feel). They prefer the word “victim,” because it puts the focus back where they feel it belongs: on the attacker who took away their choices and “victimized” them.

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<sup>2</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

<sup>3</sup> Ibid.

Some individuals do not identify with either term, and prefer to use other descriptors to define their experience, for example: “affected person”, someone “who has experienced” a sexual assault or sexual harassment.

Given the sensitivity surrounding the use of the term ‘victim’, the term ‘affected person’ will be used in its place when not being used in a legal or police context.

### **COMPLAINANT**

A CAF member who files a complaint (an incident of sexual misconduct) is the complainant. They<sup>4</sup> may not necessarily be the affected person, but may be reporting on behalf of the affected person.

### **RESPONDENT**

A CAF member who is the subject of the complaint is the respondent. It is important to remember that the respondent has a right to due process and procedural fairness, and an accused member is presumed innocent until proven guilty with the right to a fair trial as guaranteed by the *Canadian Charter of Rights and Freedoms*.

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<sup>4</sup> In this document ‘they’ will be used as a singular third person pronoun.

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“Any form of harmful and inappropriate sexual behaviour is a threat to the morale and operational readiness of the CAF, undermines good order and discipline, is inconsistent with the values of the profession of arms and the ethical principles of DND and CAF, and is wrong. To achieve mission success, the CAF requires effective teams working in a highly professional environment.”

General Vance, Chief of Defence Staff, 2015

## CHAPTER 1 – OVERVIEW

### BACKGROUND

- 1.1. Following the integration of women into combat roles in the mid to late 1980s, CAF harassment policies were promulgated, beginning with CFAO 19-39 in 1988, which first defined sexual harassment and outlined complaint and investigative procedures. A subsequent update would include the addition of harassment on the basis of sexual orientation.
- 1.2. The Standard for Harassment and Racism Prevention (SHARP) education and awareness program was stood up in 1998 in response to a [Maclean's article](#). SHARP was not sustained or expanded and was gradually phased out by 2000.
- 1.3. In 2000, [DAOD 5012-0 Harassment Prevention & Resolution Policy](#) was introduced, which placed increased emphasis on prevention and applied to both military and civilian employees. Between 2004 and 2008 the DAOD 5019 series was published, which provided updated direction to CAF members, replacing much of the CFAO 19 series.
- 1.4. In April 2014, in response to allegations of sexual misconduct within the CAF, the CDS announced an external independent review of CAF workplace policies and procedures. In April 2015, former Supreme Court Justice and External Review Authority (ERA) Marie Deschamps published her [report](#) on sexual misconduct within the CAF. The report indicated the existence of an underlying sexualized culture in the CAF, which if not addressed, would be conducive to more serious incidents of sexual harassment and sexual assault. The CDS accepted the report and committed to address the issue of sexual misconduct in the CAF as a top institutional priority.
- 1.5. In August 2015, the CDS issued orders for Operation HONOUR to eliminate sexual misconduct within the CAF, with a primary focus of ensuring the health, safety, and dignity of all CAF members. The CDS' direction also highlighted the negative effects sexual misconduct has on operational readiness.

The cornerstone of any military is the ability to be ready to respond to a wide variety of challenges at a moment's notice. Personnel readiness is a function of many factors, the most basic of which is a high degree of physical and mental fitness. Harmful and inappropriate sexual behaviour grievously erodes the confidence that members need to successfully carry out military duties. It is from this perspective that harmful and inappropriate sexual behaviour involving members of the CAF is an operational readiness issue, incongruent with our ethics and values, potentially in violation of the law, and wrong. Sustained engagement on this issue is critical to our effectiveness as a military force and the continued support of the Canadian people. (CDS Op Order – Operation HONOUR, August 2015).

## OPERATION HONOUR

- 1.6. [Operation HONOUR](#) is the mission to eliminate sexual misconduct in the CAF. It is based on the principles that:
- a. every member who serves their country deserves to be treated with dignity and respect – anything less is simply unacceptable; and
  - b. any attitudes or behaviours which undermine the camaraderie, cohesion, and confidence of serving members threatens the CAF’s long-term operational success.
- 1.7. Operation HONOUR seeks to achieve a positive institutional culture change in the Canadian Armed Forces through four lines of effort:
- a. understanding the issue of sexual misconduct;
  - b. responding more decisively to incident;
  - c. supporting affected persons more effectively; and
  - d. preventing incidents from occurring.

### THE DIRECTORATE PROFESSIONAL MILITARY CONDUCT - OPERATION HONOUR (DPMC-OPH)

- 1.8. The Directorate Professional Military Conduct - Operation HONOUR (DPMC-OpH) leads the CAF response to sexual misconduct at the strategic level. It focuses on:
- a. policy development;
  - b. training and education;
  - c. performance measurement; and
  - d. advice to the chain of command.

### THE SEXUAL MISCONDUCT RESPONSE CENTRE

- 1.9. The Sexual Misconduct Response Centre (SMRC) is part of the Department of National Defence (DND), but is independent from the chain of command. Their mandate is to provide timely, compassionate, and comprehensive support to CAF members affected by sexual misconduct. It works in partnership with the CAF to increase understanding, improve preventative measures, and enhance responding to these behaviours in the CAF.



“We are an armed forces that absolutely embraces everybody — everybody!  
If you don the uniform, you deserve to feel 10 feet tall and bulletproof just like I do.”

General Vance, Chief of Defence Staff addressing his Formation Command Teams at the CDS Leadership Engagement on Operation HONOUR in November 2015.

**OPERATION HONOUR RESPONSIBILITIES FOR ALL CAF MEMBERS**

1.10. The following table describes the responsibilities of all CAF members in each of the Operation HONOUR lines of effort.

| <b>OPERATION HONOUR<br/>RESPONSIBILITIES OF ALL CAF MEMBERS</b>  |   |   |   |
|--|---|---|---|
| <b>UNDERSTAND the issue of sexual misconduct</b>   | <b>RESPOND more decisively to incidents</b>   | <b>SUPPORT affected persons more effectively</b>  | <b>PREVENT incidents from occurring</b>   |
| <ul style="list-style-type: none"> <li>• Attend professional development activities, and training and education activities in support of Operation HONOUR;</li> <li>• Be familiar with the <a href="#">Spectrum of Sexual Misconduct</a>;</li> <li>• Understand the signs and impacts of bullying, <a href="#">harassment</a>, and <a href="#">hazing</a>;</li> <li>• Distinguish between <a href="#">consent</a> and lack of consent; and</li> <li>• Base professional relationships on trust and respect, aligned with CAF ethics and values.</li> </ul> | <ul style="list-style-type: none"> <li>• Respond to and report instances of sexual misconduct;</li> <li>• Respond to acts of retaliation and reprisal; and</li> <li>• Maintain confidentiality of information.</li> </ul> | <ul style="list-style-type: none"> <li>• Be sensitive to affected person’s needs when receiving disclosures of sexual misconduct;</li> <li>• Provide continued support to affected persons; and</li> <li>• Practice self-care.</li> </ul> | <ul style="list-style-type: none"> <li>• Reinforce and model Operation HONOUR-appropriate behaviours;</li> <li>• Enforce standards of conduct;</li> <li>• Promote a culture in which bystander intervention is widely accepted, expected, and supported; and</li> <li>• Intervene in instances of sexual misconduct.</li> </ul> |

### CULTURE CHANGE AND LEADERSHIP

- 1.11. The majority of personnel within the CAF do not behave inappropriately and have not committed offences. Real and lasting culture change must begin with those personnel who require influence to guide them towards the expected behaviour norm. Leadership will demonstrate integrity and moral courage to promote an environment free of sexual misconduct. High expectations will be communicated, along with clear direction and support tools to facilitate this mission. Leadership, however, is not the sole purview of institutional commanders; the influence of the non-commissioned member (NCM) core within the CAF cannot be overstated. Given that the majority of the CAF is made up of NCMs, NCMs are critical enablers in achieving meaningful and lasting culture change. Instilling large-scale culture change, as that sought with Operation HONOUR, is a long and arduous process, requiring sustained attention and investment over a period of many years.
- 1.12. “Leaders need to drive change by providing vision and a consistent personal example that empowers and inspires subordinates to set the conditions for the elimination of sexual misconduct,” (General Vance, CDS, addressing the Standing Senate Committee on National Security and Defence Evidence, June 2018).
- 1.13. Sexual misconduct undermines morale, operational effectiveness, and our legitimacy as a national institution. It is a real and serious problem for the CAF which requires the direct, deliberate, and sustained engagement by the leadership of the CAF and the entire chain of command to address. Continued attention to this issue is critical to our effectiveness as a military force and the continued confidence of the Canadian people and all CAF members. Accordingly, leaders must understand and use the myriad internal and external support services available to both CAF members and the chain of command when dealing with sexual misconduct.

**OPERATION HONOUR RESPONSIBILITIES FOR THE LEADERSHIP TEAM**

1.14. The following table describes the additional responsibilities for members of a Leadership Team.<sup>5</sup>

| <b>OPERATION HONOUR<br/>LEADERSHIP TEAM ADDITIONAL RESPONSIBILITIES</b>   |   |  |   |
|---|---|--|---|
| <b>UNDERSTAND the issue of sexual misconduct</b>  | <b>RESPOND more decisively to incidents</b>   | <b>SUPPORT victims more effectively</b>  | <b>PREVENT incidents from occurring</b>   |
| <ul style="list-style-type: none"> <li>• Ensure personnel are familiar with their roles and responsibilities in the four lines of effort of Operation HONOUR;</li> <li>• Establish clear expectations and boundaries; and</li> <li>• Provide unit professional development activities, and training and education activities in support of Operation HONOUR.</li> </ul> | <ul style="list-style-type: none"> <li>• Take action in response to incidents and allegations of sexual misconduct;</li> <li>• Investigate suspected instances of sexual misconduct;</li> <li>• Apply disciplinary, administrative and/or academic measures as required;</li> <li>• Address acts of reprisal;</li> <li>• Provide ongoing victim support; and</li> <li>• Maintain confidentiality of information.</li> </ul> | <ul style="list-style-type: none"> <li>• Create a safe environment for victims;</li> <li>• Identify members who need support;</li> <li>• Facilitate access to support resources provided by the CAF and the community; and</li> <li>• Provide continued support to victims.</li> </ul> | <ul style="list-style-type: none"> <li>• Ensure personnel receive training on bystander intervention;</li> <li>• Align and maintain command climate with CAF values;</li> <li>• Reinforce Operation HONOUR-appropriate behaviours through personal example; and</li> <li>• Enforce standards of conduct.</li> </ul> |

**EDUCATION AND TRAINING**

1.15. Education and training are critical elements for an institution to create and sustain the highest standards of performance and conduct.

**NATIONAL EDUCATION AND TRAINING PRODUCTS**

1.16. The DPMC-OpH, in collaboration with various stakeholders, are developing and implementing a suite of National education and training products, all of which can be found and accessed through the [Operation HONOUR website](#). Training and education will ensure a common understanding of the issues associated with sexual misconduct and give CAF members the tools they need to appropriately identify, respond to, and prevent sexual misconduct in the workplace.

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<sup>5</sup> The leadership team is comprised of the CO and their key personal staff. More detail is contained in [CDS GUIDANCE TO COMMANDING OFFICERS AND THEIR LEADERSHIP TEAMS 17 NOV 2017](#).

### RESPECT IN THE CAF WORKSHOP

- 1.17. The Respect in the CAF workshop is a one-day training session delivered by Health Promotion facilitators and is designed to foster a sustained change in attitudes and behaviours focused on building a respectful climate and culture in the CAF.
- 1.18. Contact your local [Base/Wing Health Promotion Office](#) for current offerings and schedules.

### BYSTANDER INTERVENTION TRAINING

- 1.19. CAF Bystander Intervention unit-level training helps CAF members recognize and react decisively to sexual misconduct and harassment when they see it. This program illustrates to bystanders and leaders that if they fail to act when faced with an incident of sexual misconduct, they are perpetuating the behaviour. The program also explains the power that bystanders and leaders have to take positive action to stop sexual misconduct and support CAF members. In short, it demonstrates why it is crucial for witnesses to sexual misconduct to speak out against it, rather than stay silent.
- 1.20. Bystander training is designed to be delivered by unit leaders. The training materials, including a facilitator's guide, can be downloaded from the [Operation HONOUR website](#), "Training and Education."

### VIDEOS

- 1.21. In order to assist CAF members in addressing the very complex and sensitive issue of sexual misconduct, educational and training videos, designed and developed specifically for use by the CAF, can be downloaded from the [Operation HONOUR website](#), under the "Training and Education" link.

### RELATED TRAINING AVAILABLE TO CAF MEMBERS

- 1.22. The following training modules complement the Operation HONOUR-specific education and training initiatives and are available to the entire Defence Team.

### UNDERSTANDING DIVERSITY AND EMPLOYMENT EQUITY

- 1.23. Accessible via the [Defence Learning Network](#), the introductory learning tool is intended for anyone who is new to the topic of diversity and employment equity. It can also be taken as a refresher for those who have previous training.

### POSITIVE SPACE AMBASSADOR PROGRAM

- 1.24. The objective of a Positive Space is to foster the creation of an inclusive work environment for everyone, regardless of their sexual orientation, gender identity or gender expression. Positive Spaces are volunteer and peer-based support groups for Lesbian, Gay, Bisexual, and Transgender (LGBT) and non-LGBT community members, where they can create networks and seek information and assistance from Positive Space ambassadors. More information on the

Program can be found at <http://cmp-cpm.mil.ca/en/support/employment-equity/positive-space.page>.

### INTRODUCTION TO DEFENCE ETHICS

- 1.25. Accessible via the [Defence Learning Network](#), the interactive online module covers the meaning of ethics in government and in Defence and examines what that implies for DND employees and CAF members.

### INTRODUCTION TO GENDER-BASED ANALYSIS PLUS (GBA+)

- 1.26. The objective of the Intro to GBA+ course is to help personnel define the key concepts of GBA+, recognize how various identity factors can influence the experience of federal government initiatives, identify how GBA+ can enhance the responsiveness, effectiveness and outcomes of those initiatives, and apply foundational GBA+ concepts and processes. The course can be accessed at: [https://www.swc-cfc.gc.ca/gba-acs/course-cours-2017/eng/mod00/mod00\\_03\\_01.html](https://www.swc-cfc.gc.ca/gba-acs/course-cours-2017/eng/mod00/mod00_03_01.html).

### ROAD TO MENTAL READINESS TRAINING

- 1.27. Road to Mental Readiness (R2MR) training encompasses the entire package of resilience and mental health training that is embedded throughout a CAF member's career, including the deployment cycle. It is designed to ensure that the most appropriate training is provided when required to ensure CAF personnel are prepared mentally for the challenges they may encounter. The overall goal of this training is to improve short term performance and long term mental health outcomes.
- 1.28. R2MR has a solid foundation in the concept of resilience. Resilience is the capacity of a member to recover quickly, resist, and possibly even thrive, in the face of direct/indirect traumatic events and adverse situations in garrison, training, and operational environments. Recovery from the greatest physical and mental hardships of the military environment is geared in the near term to the member's current mission, but also is required in the long term throughout one's career.<sup>6</sup>
- 1.29. More information about the R2MR training can be found at: <http://www.forces.gc.ca/en/caf-community-health-services-r2mr/index.page>

## RESEARCH, DATA, AND ANALYSIS

- 1.30. The success of Operation HONOUR in achieving organizational change is measured using empirical, systemic research. The CAF is conducting research to:
- a. determine the scope of sexual misconduct in the CAF;

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<sup>6</sup> Definition from Canadian Army and adopted by CAF as definition for resilience.

- b. identify key risks and barriers to a healthy and inclusive CAF/DND culture;
  - c. identify key cultural factors and behaviours that enable positive culture change, and that proactively address inappropriate sex and gender-based behaviours in CAF/DND; and
  - d. guide ongoing program and policy development.
- 1.31. There are a number of research studies and/or surveys that are ongoing between Director General Military Personnel Research and Analysis (DGMPRA) and DPMC-OpH that examine the issue of sexual misconduct in the CAF. Further information can be found at the [Operation HONOUR website](#).

### LITERATURE REVIEWS

- 1.32. The Directorate Professional Military Conduct - Operation HONOUR (DPMC-OpH) has numerous literature reviews available on request. They can be acquired by contacting the DPMC-OpH.

### STATISTICS CANADA SURVEY INTO SEXUAL MISCONDUCT IN THE CAF

- 1.33. The CAF has engaged Statistics Canada to conduct regular, voluntary surveys on Sexual Misconduct every 24-36 months. These surveys collect information on the prevalence of sexual misconduct in the CAF, reporting trends, and member awareness of policy, programs, and support mechanisms. This information is used to precisely understand and track the evolving scope and nature of sexual misconduct in the CAF – a pivotal function in implementing and sustaining organizational culture change. The initial survey was completed in 2016 and provided essential baseline data to guide our efforts to address sexual misconduct. The results from the second survey in the series were published in May 2019. [Results of the Survey on Sexual Misconduct in the CAF surveys](#) can be found on the Statistics Canada website. Please see the Operation HONOUR [Research, data and analysis on sexual misconduct](#) for more information about the survey.

### OPERATION HONOUR TRACKING AND ANALYSIS SYSTEM (OPHTAS)

- 1.34. One goal of Operation HONOUR is to increase leadership awareness and track all reported incidents of sexual misconduct to ensure they are duly reported, investigated, and brought to a suitable conclusion, while respecting the privacy of those involved. OPHTAS is a Protected B system with limited access to select administrators and users. This application was developed to provide an automated capability that captures and maintains case information generated by reports of sexual misconduct filed within a unit. The database allows for detailed tracking of sexual misconduct incidents, from report to closure, even after changes in unit.
- 1.35. OPHTAS is supported by training and standard operating procedures. Each of the respective Commands/L1s appoint unit administrators and unit representatives who maintain oversight of the cases within their unit. Each L1 has an oversight function within their command only, and DPMC-OpH will run periodic audits to ensure data integrity. Privacy is protected through a secure environment that prevents access to records that are not within the users' chain-of-

command. Due to safeguards within the system, no personal information that can identify an individual can be extracted or used in reports; only aggregated data is used in the generation of reports.

- 1.36. The unit has 48 hours to input the case into OPHTAS once a complaint has been received. If a case warrants a Significant Incident Report (SIR), the SIR must be sent to all relevant stakeholders. DPMC-OpH will follow up by cross-referencing the SIR 48hrs after reception to ensure unit input into OPHTAS.

## INITIATIVES, PROGRAMS, AND STAKEHOLDERS WITH COLLATERAL INTEREST

1.37. Sexual misconduct is a complex and multifaceted issue that demands the active participation of every member of the CAF. DPMC-OpH has the overall lead to coordinate this effort and provide oversight of all CAF activities related to Operation HONOUR, with the SMRC operating outside the CAF to deliver victim support and subject matter expertise, but there are many other organizations that play a critical role (Figure 1) including:

- a. CDA – Canadian Defence Academy
- b. CFHS – Canadian Forces Health Services
- c. CFNIS – Canadian Forces National Investigative Services
- d. DGMPRA – Director General Military Personnel Research and Analysis
- e. DHRD – Directorate of Human Rights and Diversity
- f. DMCA – Director Military Career Administration
- g. DMP – Director Military Prosecutions
- h. ICCM – Integrated Conflict and Complaint Mechanism
- i. JAG – Judge Advocate General

### This is Operation HONOUR

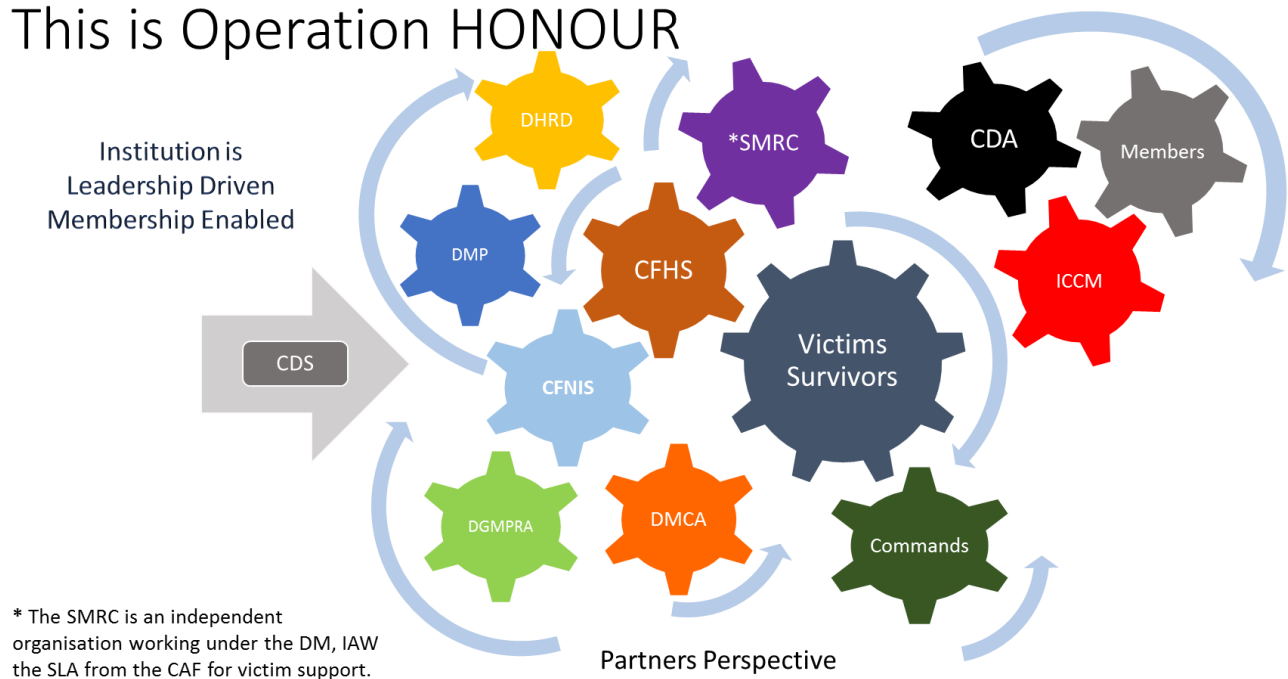


Figure 1: Operation HONOUR Partners' Perspective



### **STRONG, SECURE, ENGAGED**

- 1.38. Canada's Defence Policy *Strong, Secure, Engaged*<sup>7</sup>, (also referred to as SSE), contains people-centred initiatives and policy direction which form the foundation for a well-supported, resilient and diverse workforce.
- 1.39. It is the CDS's intent to reinforce the Operation HONOUR efforts across the CAF with a long-term plan that integrates the mission with the extensive personnel policy changes from SSE, to achieve the desired institutional culture change.
- 1.40. The SSE initiatives which are in direct or in complementary support of Operation HONOUR are listed below.

### **PROMOTING A CULTURE OF LEADERSHIP, RESPECT AND HONOUR**

- 1.41. SSE 18: Complete the full implementation of the 10 recommendations of the Deschamps Report through Operation HONOUR.
- 1.42. In order to more effectively coordinate the CAF's response to Mme. Deschamps' report, as well as demonstrate the organizational commitment to the elimination of sexual misconduct, the Directorate Professional Military Conduct - Operation HONOUR (DPMC-OpH) was created. The DPMC-OpH reports to the VCDS and is responsible for:
  - a. Policy;
  - b. Training and Education;
  - c. Performance Measurement; and
  - d. Advice to the chain of command.
- 1.43. Upon taking command as the Chief of the Defence Staff (CDS) in July 2015, General Vance initiated Operation HONOUR as a much broader and more comprehensive mission to eliminate sexual misconduct.
- 1.44. Progress Reports can be found at the links below.

Progress Report One: <http://www.forces.gc.ca/en/caf-community-support-services/sexual-misconduct-progress-report.page>

Progress Report Two: <http://www.forces.gc.ca/en/about-reports-pubs-op-honour/2016/second-progress-report.page>

Progress Report Three: <http://www.forces.gc.ca/en/caf-community-support-services/third-progress-report.page>

Progress Report Four: <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/sexual-misbehaviour/progress-report-four.html>

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<sup>7</sup> Canada Defence Policy *Strong, Secure, Engaged*: <http://dgpaapp.forces.gc.ca/en/canada-defence-policy/docs/canada-defence-policy-report.pdf>.

### 1.45. SSE 19: Provide a full range of victim and survivor support services to Canadian Armed Forces members.

In 2016-2017, the SMRC made significant progress towards meeting client needs. This included strengthening tracking and analytical capabilities through the development and implementation of a comprehensive Case Management System, and expanding the hours of operation to 24/7 to meet the needs of CAF members posted across Canada. In response to its evolving understanding of victim needs, the SMRC is investigating a number of areas to enhance victim support services and will be using data from research and validation initiatives to identify gaps and needs which may include:

- a. response and support coordination program (name TBD);
- b. expanding the options for reporting;
- c. integrated national victim support strategy and plan; and
- d. provision of legal services to affected persons.

### ENHANCEMENTS TO THE CANADIAN MILITARY PROSECUTION SERVICE

1.46. As a result of comprehensive reviews of all policies pertaining to sexual misconduct offences, the Director of Military Prosecutions (DMP) directed [changes](#) to a number of DMP policies in the following areas:<sup>8</sup>

- a. choice of jurisdiction;
- b. keeping the victim informed;
- c. victims and the investigation of sexual misconduct offences;
- d. witness preparation; and
- e. victims' comfort and security.

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<sup>8</sup> DMP Policy Directives, <http://www.forces.gc.ca/en/about-policies-standards-legal/index.page>

CHAPTER 2 – UNDERSTANDING SEXUAL MISCONDUCT

This chapter provides an overview and guidance for CAF members and leadership teams on understanding and recognizing the signs of sexual misconduct, and its impact on individuals, units and the team.

SPECTRUM OF SEXUAL MISCONDUCT

The spectrum of sexual misconduct conceptually represents the range of attitudes, beliefs, and actions that contribute to a toxic work environment. The negative behaviours span from unacceptable conduct in the yellow to Criminal Code violations in the red; even behaviours in the yellow zone could result in a charge under the Code of Service Discipline.

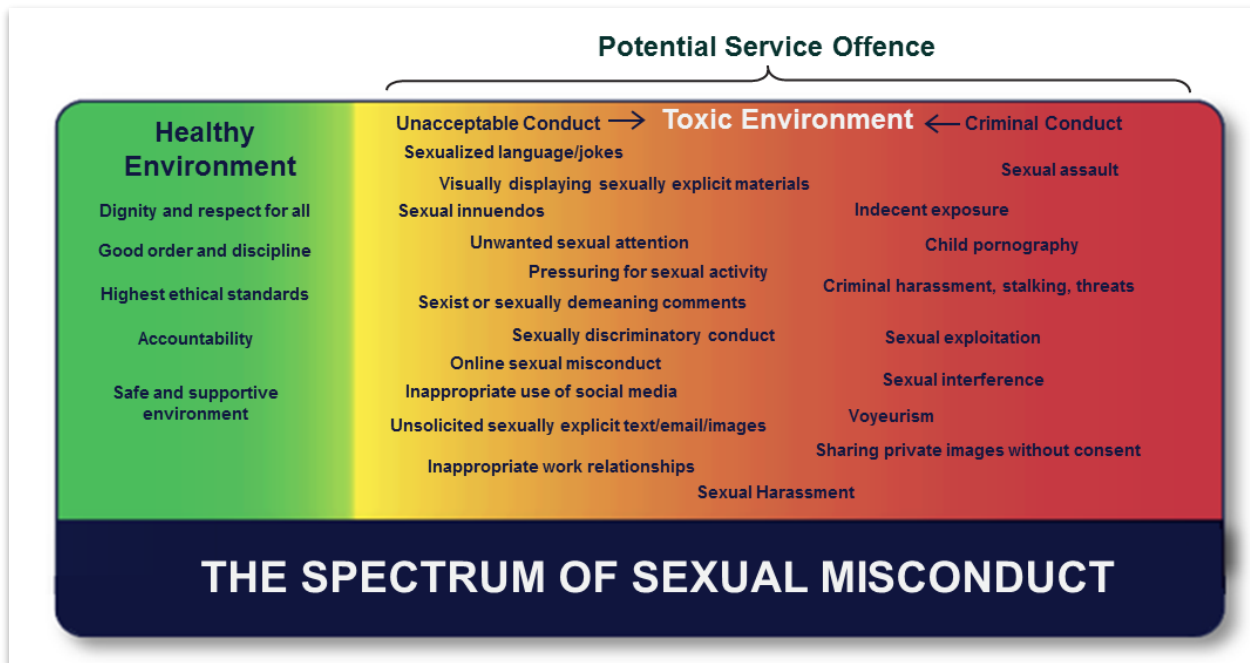


Figure 2: The spectrum of sexual misconduct

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

### CONSENT

- 2.0. In the context of sexual misconduct, consent is the voluntary and ongoing agreement to engage in sexual activity that is granted without the influence of force, threats, fear, fraud or abuse of authority.<sup>9</sup>
- 2.1. Questions regarding consent can arise in the context of relationships where there is a power imbalance. Accordingly personal relationships where the individuals involved are of a different rank could be considered adverse, unless the relationship is properly disclosed IAW DAOD 5019-1 Personal Relationships and Fraternization.
- 2.2. The CAF respects the right of individuals to form personal relationships IAW DAOD 5019-1 Personal Relationships and Fraternization. However, if a personal relationship, particularly one not declared to the chain of command, involves differences in rank, authority, and power it calls into question the consensual nature of the relationship.
- 2.3. Silence should not be interpreted as consent. Consent can be revoked at any time and can be in question if the victim is intoxicated. Consent cannot:
- be assumed;
  - be given if unconscious;
  - be obtained through threats or coercion; and
  - be obtained if the perpetrator abuses a position of trust, power, or authority.
- 2.4. Consenting to one kind or instance of sexual activity does not mean that consent is given to any other sexual activity or instance. Consent can be withdrawn at any time, even after sexual activity has been initiated.
- 2.5. While not limiting the circumstances, section 273.1 of the Criminal Code sets out when there is no consent:
- where the agreement is expressed by the words or conduct of a person other than the complainant [individual];
  - where the complainant [individual] is incapable of consenting to the activity;<sup>10</sup>
  - where the accused induces the complainant [individual] to engage in the activity by abusing a position of trust, power or authority;

#### MYTH:

*If it's a sexual assault, it means that someone was beaten.*

**Myth:** It's only sexual assault if there was penetration and if the survivor was beaten and bleeding, or they were threatened with a weapon.

**Fact:** According to the Criminal Code, sexual assault is any sexual activity without consent, regardless of whether there are physical injuries or a weapon used.

<sup>9</sup> [Criminal Code S. 273.1 \(1\)](#)

<sup>10</sup> For example, intoxicated, mentally incapacitated, and under the age of consent.

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

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- d. where the complainant [individual] expresses, by words or conduct, a lack of agreement to engage in the activity; or
- e. where the complainant [individual], having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.<sup>11</sup>

### EXAMPLES OF WHAT CAN CONSTITUTE SEXUAL HARASSMENT

- 2.6. The following examples are not exhaustive, but should help identify what may be considered sexually harassing behaviour:
  - a. Sexual advances which may or may not be accompanied by threats or explicit or implicit promises;
  - b. Making rude, sexually degrading or offensive remarks or gestures;
  - c. Engaging in reprisals for having made a complaint of sexual harassment;
  - d. Discrediting, ridiculing, or humiliating an individual by spreading malicious gossip or rumours of a sexual nature;
  - e. Questions, suggestions or remarks about a person's sex life.
  - f. Sexual or sexually suggestive name calling in private or in front of others; and
  - g. Belittling a person by making fun of their sex, sexuality, sexual orientation, gender identity or expression (as described in [Canadian Human Rights Act](#)).
  - h. Placing a condition of a sexual nature on employment or on any career opportunity including but not limited to training or promotion;
  - i. Displaying pictures, posters, or sending e-mails that are of a sexual nature; and
  - j. Unwelcome social invitations, with sexual overtones or flirting, especially when there is a rank or power differential between the individuals involved.
- 2.7. For examples of what does and does not constitute sexual harassment, refer to the [Tool to Guide Employees on the Government of Canada website](#).
- 2.8. For guidance on what to do if you or someone else is being sexually harassed, refer to [HOW TO RESPOND TO SEXUAL MISCONDUCT in Chapter 3](#).

### THE IMPACT

- 2.9. Trauma for victims of sexual misconduct is individual; directly after an incident, there is often shock. When a victim knows the alleged offender, there can be guilt and self-doubt. The emotional damage can emerge immediately after or take time to appear, and can include anxiety, long-term insomnia, a sense of alienation and thoughts of suicide. While some victims may experience hyper-vigilance, others may start taking risks and turning to harmful coping strategies. The trauma of sexual assault can impact victims for a lifetime,

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<sup>11</sup> *Criminal Code*, R.S.C. 1985, c. C-46, ss. 273.1(2)

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

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affecting their health, education and careers. However, with proper care and social support, victims can recover and grow beyond the incident.

- 2.10. In the case of sexual assault, the brain interprets this as a threat to survival, and responds accordingly to protect the individual. This is not a conscious choice. Physiological reactions can include what is commonly described as, “fight, flight, or freeze”. Furthermore, sexual responses during assault may occur, which can be confusing and horrifying to the individual. Depending on the body’s reaction at the time of the event, this could influence how the person interprets their experience and be a factor in their recovery.<sup>12</sup>

### IMPACTS ON VICTIMS

- 2.11. The short and long-term impacts of sexual misconduct may include (not an exhaustive list):<sup>13</sup>
- a. **Fear.** Feeling afraid to leave home/go to work or fearing people in general. The process of restoring self-confidence is particularly difficult if the victim was targeted by someone they trusted, respected, or loved. In this case, their faith and trust in others, in the world and in their own judgment may also be threatened;
  - b. **Guilt.** Feelings of guilt and self-blame may affect the decision to seek help. Some people may feel that the victim is to blame for being targeted, and that they provoked the incident(s) through their appearance or behaviour. Victims may also feel responsible for ‘not knowing any better’ or not paying attention to “gut instincts” they may have had. They may not even identify what was happening as sexual misconduct;
  - c. **Shame.** The destruction of self-respect, the deliberate efforts by the attacker to humiliate them, or make them do things against their will, may make the victim feel dirty, disgusted by the assault, and ashamed. That they “allowed” the incident(s) to happen at all may also make them feel ashamed. Feelings of shame may make them reluctant to report the crime to the police or to reach out for help. Because of their own actions (e.g. partying, drinking) they may believe others will blame them. They may also believe their previous sexual experiences will be scrutinized;
  - d. **Loss of control over their life.** A victim may have believed they would be able to resist, or that they could defend themselves from a sexual assault. If the attacker overcame their resistance by coercion, force or fear, they may no longer feel confident about themselves or their ability to stand up for themselves;

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<sup>12</sup> Campbell, R. (2012). Transcript “The Neurobiology of Sexual Assault”. An NIJ Research for the Real World Seminar. <https://nij.gov/multimedia/presenter/presenter-campbell/Pages/presenter-campbell-transcript.aspx>.

<sup>13</sup> Smith, S. G., & Breiding, M. J. (2011). Chronic disease and health behaviours linked to experiences of non-consensual sex among women and men. *Public Health*, 125, 653-659.

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

- e. **Shock, feeling disoriented or out of touch with reality.** Many people may go through a period of numbness, disbelief or denial, feeling detached from their lives etc. Some people may appear unemotional or speak of the event in a matter-of-fact way. They may feel a degree of separation from their everyday life, as though it does not quite feel real.
- f. **Intrusive Memories, Flashbacks and Re-experiencing:** Intrusive memories of the sexual assault can interfere with a person’s day-to-day functioning, negatively impacting their mood and cognitive capacity. Some will re-experience memories of their assault with a magnitude beyond the intrusion of unwanted negative memories. They may feel as though the assault is happening in the present; they feel as though they are back at the time the sexual assault occurred. The re-experiencing of the assault involving full physical and emotional response is called a flashback. Flashbacks can be extremely disruptive to a person’s life, often making them feel like they have little control over their own thoughts, feelings and physical reactions.
- g. **Embarrassment.** It is often normal for victims to feel embarrassed. If there was a sexual assault, the attacker may have used offensive sexual language. The victim may be uncomfortable or embarrassed to say these words in recounting the assault. If the sexual assault involved sexual acts that they may perceive as being “deviant”, they may have a harder time finding the words to describe what has happened to them. The [medical exam](#) can feel like another form of violation. Their body is again exposed and is an object of attention and inspection by strangers. They may be too embarrassed to admit their uneasiness and discomfort during the exam. The person may benefit from additional support during this procedure;
- h. **Incomplete memories of the incident or periods of time since the incident(s).** Stress hormones released during traumatic experiences can affect the creation and consolidation of memories, making it hard to recall chronological details of the event. It’s like putting together a puzzle without all of the pieces. The use of alcohol and drugs can further impair this function;
- i. **Use of intoxicants.** Drinking too much alcohol, taking more drugs than prescribed, or using illegal drugs may be an affected person’s way to cope;
- j. **Anger.** They may be angry at themselves, the perpetrator and/or the situation in

### FACT:

*In Canada, the vast majority of reported sexual assaults are committed by someone close to the victim.*

In most cases of sexual assault, the offender is known to the victim—a supervisor, co-worker, friend, boyfriend, girlfriend, spouse, neighbour, or relative. In 2007, police forces reported that in 82% of sexual assaults the victim knew the perpetrator.

- 31% of accused were family members;
- 28% were casual acquaintances;
- 8% were identified as friends;
- 6% were identified as authority figures; and,
- 5% were current or former boyfriends/girlfriends.

Source:

<http://www.calgarycasa.com/resources/sexual-assault-myths-and-facts/> (Canadian Centre for Justice Statistics, 2009) (*Statistics Canada (2010), The Nature of Sexual Offences*)

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

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general. This is common, and victims require compassion as they work through the aftermath of their experience. The person can appear more reactive or agitated, which can have an influence in various aspects of their life, including their social relationships (people react to their reactivity). Anger can affect one's outlook on life and be communicated in many different ways;

- k. **Wondering - why me?** Some people wonder why the alleged offender chose them. These feelings arise from the common misconception that people “ask for it,” or in some other way made themselves vulnerable;
- l. **Changes in intimate relationship functioning.** Examples include increased isolation, decreased desire for sexual intimacy or increase in risky sexual behaviours;
- m. **Increased symptoms of a pre-existing condition;**
- n. **Concern for the perpetrator.** If the attacker was someone the victim knew or cared about, they may express concern about what will happen if they report the attack to the police and may feel guilty reporting the crime. Some victims prefer that the perpetrator receives counselling rather than jail time;
- o. **Work and/or career implications.** In the short-term, affected persons of sexual violence in the workplace often talk of feeling sick to their stomach going in to work, and having anxiety, and panic attacks at work. They may have trouble paying attention and staying focused on a task, they may participate less in group meetings or skip them all together. They may avoid going to work or think about quitting work completely. Their current behaviour at work can negatively influence their interest or ability to seek career advancement; and
- p. **Impacts on quality of life, work loss, and criminal justice costs.** In a qualitative study of sexual violence survivors, research has shown that sexual violence and the trauma resulting from it can have an impact on the survivor's employment in terms of time off from work, diminished performance, job loss, or being unable to work.<sup>14</sup>

2.12. Many of the impacts described above can be reasons why affected persons may hesitate to come forward. The Tool “[Why it may be difficult to disclose](#)” discusses this subject in more depth.

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<sup>14</sup> Loya, R. M. (2014). Rape as an economic crime: the impact of sexual violence on survivors' employment and economic well-being. *Journal of Interpersonal Violence*, 30(16), 2793-2813.



## 2 – UNDERSTANDING SEXUAL MISCONDUCT

### IMPACTS ON THE UNIT

- 2.13. The impacts of unaddressed sexual misconduct in a unit can lead to:
- increased absenteeism,
  - deteriorating relationships among coworkers,
  - lack of unit cohesion,
  - reduced morale,
  - loss of trust in the leadership, and
  - a negative effect on mission effectiveness.<sup>15, 16</sup>
- 2.14. If the alleged offender is from the same unit as the affected person, the unit can become polarized as members often feel compelled to choose sides. Even if the perpetrator is not from the unit, unit cohesion may still suffer if members perceive that the chain of command is not doing its job.
- 2.15. The impacts of sexual misconduct are far-ranging and affect many people. This can include friends and family, members of the chain of command, as well as those who support affected persons.

### IMPACTS ON THE CAF

- 2.16. Sexual misconduct which remains unaddressed can have the following impacts on the CAF:
- the perception that victims and their well-being are not a priority for the CAF;
  - the perception that aggressors can act with some degree of impunity;
  - lack of trust in the chain of command; and
  - the loss of valued personnel when they leave the CAF prematurely due to sexual misconduct.

**Myth:** If someone were sexually assaulted, they wouldn't be talking to the perpetrator the next day.

**Fact:** There are many reasons why a victim might maintain a relationship with someone who has assaulted them.

The victim might feel their safety would be threatened if they ended the relationship.

The victim may be unable to avoid the perpetrator if they live together, work together, are in class together, or have the same social circles.

Or the victim might still be defining and trying to understand what's happened to them.

Victims often feel social pressure to act like everything is okay, regardless of how they actually feel.

The important thing to remember is that people cope with traumatic incidents in different ways.

<sup>15</sup> Merkin (2008); U.S. Merit Systems Protection Board 1988

<sup>16</sup> Gruber and Bjorn (1982); Loy and Stewart 1984

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

- 2.17. Sexual misconduct undermines the CAF's institutional credibility by eroding Canadian society's confidence in its ability to deliver results on its behalf.

**Myth:** Tough men don't get sexually assaulted.

**Fact:** A man's physical strength does not necessarily protect him from being assaulted.

A sexual assault can be committed through coercion or manipulation, can involve objects, or can be drug- or alcohol-facilitated.

### MEN AS SURVIVORS OF SEXUAL ASSAULT

- 2.18. Men may face some unique challenges following an experience of sexual trauma.<sup>17</sup> Men are often less willing to seek support, and may feel isolated, alienated from others, and emotionally vulnerable.
- 2.19. According to research on sexual assault and sexual harassment in the United States military, many sexual assaults of men involve more than one attacker, weapons, or forced participation—even when no immediate physical assault or force was involved. Relative to women, men are more likely to experience multiple incidents of sexual assault, during duty hours or at their duty station, where alcohol is not necessarily a factor. Most of those sexual assaults go unreported because men are more likely to identify it as a hazing event – they simply do not think of it as a sexual assault.<sup>18</sup>
- 2.20. For men, sexual assault may trigger negative self-judgments and cause them to question their masculinity.
- 2.21. Male victims of sexual assault may contend with issues of:
- Legitimacy (“Men can't be sexually assaulted”, “No one will believe me”);
  - Masculinity (“I must not be a real man if I let this happen to me”; “My manhood has been stolen”);
  - Strength and power (“I should have been able to fend him/her/them off”; “I shouldn't have let this happen”); and
  - Sexual identity (“Am I gay?”; “Will others think I'm gay and only pretended not to like it?”).

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<sup>17</sup> “Men as Survivors of Sexual Violence.” AfterDeployment, 13 Sep 2017

<sup>18</sup> Morral, Andrew R., Kristie Gore, Terry Schell, Barbara Bicksler, Coreen Farris, Madhumita Ghosh Dastidar, Lisa H. Jaycox, Dean Kilpatrick, Steve Kistler, Amy Street, Terri Tanielian and Kayla M. Williams. Sexual Assault and Sexual Harassment in the U.S. Military: Highlights from the 2014 RAND Military Workplace Study. Santa Monica, CA: RAND Corporation, 2015. [https://www.rand.org/pubs/research\\_briefs](https://www.rand.org/pubs/research_briefs).

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

### WOMEN AS SURVIVORS OF SEXUAL ASSAULT

2.22. According to research on sexual assault and sexual harassment in the United States military, women survivors of sexual trauma in the military face unique challenges.<sup>19</sup> Because there are fewer women than men in the military, a woman may feel the need to prove herself; she may worry that others will see her as weak if she speaks up. She may fear that others may think she is just causing trouble or undermining the group's strength. Women survivors may also worry that speaking up will damage unit morale, especially if their attacker is a co-worker or fellow service member; they may worry that coming forward will interfere with social opportunities and career advancement.

### MEMBERS OF THE LGBTQ2+ COMMUNITY AS SURVIVORS OF SEXUAL ASSAULT

2.23. For LGBTQ2+ survivors of sexual assault, their identities – and the discrimination they face surrounding those identities – sometimes make them hesitant to seek help from police, hospitals, shelters or sexual assault centers, the very resources that are supposed to help them.

#### MYTH:

*Young, physically attractive women are assaulted because of how they look.*

**Myth:** Young, physically attractive women are assaulted because of how they look, or because they dress provocatively, are out alone at night or have been drinking a lot.

**Fact:** The belief that only young, pretty women are sexually assaulted stems from the myth that sexual assault is based on sex and physical attraction.

Women of all ages and appearances, and of all classes, cultures, abilities, sexualities, races and religions are sexually assaulted.

What a woman was wearing when she was sexually assaulted or how she behaved is irrelevant.

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<sup>19</sup> Ibid

### VICTIM-BLAMING

#### WHAT IS VICTIM-BLAMING?

- 2.24. A person who wonders how the victim of a crime could have behaved differently or made different choices to avoid what happened can be said to be engaging in some degree of victim-blaming. Questioning what a victim could have done differently in order to prevent a crime from happening can imply that the fault of the crime lies with the victim rather than the perpetrator.<sup>20</sup>
- 2.25. Examples of victim-blaming might include suggestions that an individual was sexually assaulted because they traveled through a “bad” neighbourhood, or somehow invited/allowed a sexual assault to happen by wearing provocative clothing or getting too intoxicated.
- 2.26. Victim-blaming is sometimes subtler, and people may participate in it without intending to blame the victim and may not even realize that they are doing it. A person who hears about an assault and thinks, “I would have been more careful,” or “That would never happen to me,” for example, is blaming the victim on some level, often unintentionally.
- 2.27. The following are examples of victim-blaming comments:
- "Did you do anything that could have been misunderstood?"  
*Some people may think sexual assault is just a result of miscommunication, especially if they know the attacker and have trouble believing that they could do something like that.*
  - "Were they drinking?"  
*This question is often a euphemism for "Did you make yourself more vulnerable to sexual assault by drinking?" An analogy would be to criticize someone for being in a car accident where another driver was entirely responsible for the accident.*
  - "Why did he/she stay with her/him?"  
*This is frequently said of victims of domestic violence who weren't able to leave their abusers. Often, victims don't acknowledge that they are being abused because their abusers teach them it is normal, and sometimes getting out of an abusive relationship is riskier than staying in it because victims don't have a safe place to go.*

#### MYTH:

*"I am careful—that would never have happened to me."*

**Myth:** Most victims of sexual assault can prevent the assault from taking place by resisting.

**Fact –** Assailants commonly overpower victims through threats and intimidation tactics.

A person might not fight back for any number of reasons, including fear or incapacitation.

Silence or the absence of resistance does not mean that the victim is giving consent.

<sup>20</sup> Issue Brief: Sexual Violence Against Women in Canada, <https://www.swc-cfc.gc.ca/svawc-vcsfc/index-en.html>

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

### WHY DO PEOPLE BLAME VICTIMS?

2.28. Victim-blaming is a common reaction to crime.<sup>21</sup> The idea that bad things can randomly happen to good people who do not deserve them is frightening to many, as it suggests that anyone could become a victim at any time. In order to protect against this fear, people may develop an idea that the world is a fair and just place, subscribing to a psychological phenomenon known as the “just world hypothesis”.<sup>22</sup> This ideology allows people to believe the victim of a crime bears responsibility for that crime, an erroneous belief that nonetheless may often allow people to feel comforted, as they can then tell themselves, “If I’m careful, that will never happen to me.” In this way, victim-blaming can be a form of self-protection.

### VICTIM-BLAMING IN THE MILITARY

2.29. Competing loyalties can lead to victim-blaming when a CAF member has been the victim of another CAF member’s sexual misconduct. Other members of the unit may be torn between support and compassion for the victim and loyalty to the alleged offender and/or the unit, especially if the alleged offender is perceived to be a valuable member of the team. It may be implied, whether overtly or in more subtle ways that the victim is to be blamed for undermining unit morale and hurting the team.

2.30. Victim-blaming in a military unit, if not addressed, can lead to [retaliation](#) in the form of a [reprisal](#), [ostracism](#), or maltreatment, one of the main reasons that victims can be reluctant to come forward.

### HOW CAN VICTIM-BLAMING AFFECT VICTIMS?

2.31. Many people who have been the victim of a crime will experience some degree of self-blame and shame. Victim-blaming can perpetuate those feelings of shame and also decrease the likelihood of a victim seeking help and support, due to fear of being further shamed or judged for their “role” in the crime or attack.



Figure 3: Victim-blaming

<sup>21</sup>Roberts, K. (2016, October 5). The psychology of victim-blaming. The Atlantic. Retrieved from <http://www.theatlantic.com/science/archive/2016/10/the-psychology-of-victim-blaming/502661>

<sup>22</sup> Strömwall, L., Alfredsson, H., & Landström, S. (2012). Blame attributions and rape: Effects of belief in a just world and relationship level. *Legal and Criminological Psychology*, 1-8 doi:10.1111/j.2044-8333.2012.02044.x

## 2 – UNDERSTANDING SEXUAL MISCONDUCT

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- 2.32. Being a victim of crime is likely to be traumatic in itself. Being blamed for the crime, even subtly or unconsciously, may lead a person to feel as if they are under attack once again. This can lead to increased depression, anxiety, and post-traumatic stress.
- 2.33. Victim-blaming may also prevent people from reporting the crime. Victims of a crime may hesitate to report the issue, for fear of being blamed, judged, or not believed.

### HOW TO AVOID VICTIM-BLAMING

- 2.34. When speaking with someone who has been sexually assaulted, it may be helpful to avoid asking too many questions about the event to avoid giving an impression of blaming the victim. An individual who already feels ashamed may be more likely to interpret “why” questions as a kind of blame.
- 2.35. Simply offering compassion to the victim and listening to what they have to say without offering judgments or interpretations of the event may be the best way to show support.<sup>23</sup>
- 2.36. For more guidance on how to provide a supportive response to a victim of sexual misconduct, refer to [Chapter 4 – SUPPORT](#).

### RETALIATION

- 2.37. While growing numbers of affected persons are making the difficult choice to report sexual assault, some are subjected to retaliation.
- 2.38. [Retaliation](#) can come in the form of a [reprisal](#), [ostracism](#), or maltreatment. The propagation of rumours about a sexual assault case can often lead to retaliation, which is a deterrent to reporting.<sup>24</sup>
- 2.39. Sometimes retaliation is unintentional; someone is ignored and excluded from group activities because others feel awkward around them following an incident or a report. Well-intentioned team members may also exclude affected persons intending to give them personal space to recover, but this can be perceived as retaliation by the affected person.
- 2.40. Chapter 3 discusses the [prohibition on reprisals](#), and provides guidance on [reporting allegations of reprisals](#).

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<sup>23</sup> Avoiding victim blaming. (2015). Retrieved from <http://stoprelationshipabuse.org/educated/avoiding-victim-blaming>

<sup>24</sup> Fear of the negative consequences for reporting was cited by 35% of the Stats Can survey respondents as their main reason for not coming forward.

### CHAPTER 3 – GUIDANCE FOR RESPONDING TO INCIDENTS OR ALLEGATIONS

This chapter provides an overview and guidance for responding to instances or allegations of sexual misconduct.

#### RESPONDING TO SEXUAL MISCONDUCT – ALL CAF MEMBERS

##### HOW TO RESPOND TO ALL FORMS OF SEXUAL MISCONDUCT

- 3.0. Seek advice from the [SMRC](#). The SMRC offers confidential and bilingual assistance, and can provide information about options and resources, as well as reassurance, support, and referrals to the various services offered to CAF members.
- 3.1. Inform the chain of command as soon as you are ready. The chain of command is responsible for ensuring the wellbeing of subordinates, and for responding promptly and decisively to all incidents of sexual misconduct. Leaders can provide support and guidance on how to proceed.
- 3.2. If there are concerns about the chain of command bring them to someone you trust further up the chain of command or seek assistance from another person including a peer, doctor, nurse, social worker, or chaplain.
- 3.3. For advice about investigative processes, the Military Police Liaison Officer ([MPLO](#)) can be contacted through the SMRC.
- 3.4. Seek assistance regarding harassment, grievance, and alternate dispute resolution systems from your [Workplace Relations Advisor \(WRA\) / Harassment Advisor \(HA\)](#), or [Conflict and Complaint Management Services \(CCMS\) office](#).
- 3.5. CAF members who wish to proceed with a formal criminal complaint have the option of reporting to their local Military Police unit, civilian police services or directly to the [Canadian Forces National Investigative Service](#). The CFNIS have specially trained teams who deal exclusively with offences of a sexual or sensitive nature.
- 3.6. Civilian Defence Team members are encouraged to report inappropriate behaviour to their superiors, or contact their union representatives.

### REPORTING

#### DUTY TO REPORT

- 3.7. As part of the maintenance of discipline, all officers, and non-commissioned members (NCMs) have a duty to report to the proper authority any infringements of the pertinent statutes, regulations, rules, orders, and instructions governing the conduct of persons subject to the Code of Service Discipline (CSD). As such, all CAF members are required to report to the proper authority:
  - a. any incidents of sexual misconduct by a member of the Canadian Armed Forces, in accordance with QR&O subparagraph 4.02 (1)(e), General Responsibilities of Officers, or QR&O paragraph 5.01(e), General Responsibilities of Non-Commissioned Members, as applicable; and
  - b. if they have been arrested by civil authority, in accordance with QR&O article 19.56, Report of Arrest by Civil Authority.
- 3.8. Further amplification can be found at DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

#### HOW TO REPORT SEXUAL MISCONDUCT

##### SEEK ADVICE IF YOU ARE UNSURE

- 3.9. If you are uncertain if the incident constitutes sexual misconduct, contact the Sexual Misconduct Response Centre (SMRC) for a confidential discussion with a counsellor. As well, there is a Military Police Liaison Officer ([MPLO](#)) located at the SMRC who can provide confidential and anonymous advice on what to expect if a formal report is filed with the police. Further details regarding support tools and options are available on the Operation HONOUR website, in the Respect in the CAF mobile app, and from the SMRC.
- 3.10. Contact your Unit WRA or local CCMS office for information on what constitutes sexual harassment, guidance on available options, assistance interpreting harassment policies and how to proceed with a complaint

##### INFORM THE CHAIN OF COMMAND

- 3.11. It is recommended that leaders in the chain of command be informed as they are mandated by the CDS to take prompt decisive action to ensure the safety and wellbeing of affected person(s) immediately upon notification of an incident of sexual misconduct.



- 3.12. If there are concerns about the chain of command's response, or lack thereof, bring it to the attention of someone you trust further up the chain of command or seek advice from another person including peers, doctor, nurse, social worker, or chaplain.
- 3.13. In any circumstance, support can be obtained through the SMRC.

### CONTACT THE POLICE

- 3.14. CAF members who wish to proceed with a formal criminal complaint have the option of reporting to their local Military Police unit, civilian police services or directly to the Canadian National Investigative Service (CNIS). The CNIS have specially trained teams who deal exclusively with offences of a sexual or sensitive nature.
- 3.15. CAF Members who wish to obtain more information about the process of reporting to the police can call the SMRC MPLO. If they wish, members may speak with the MPLO anonymously.

**Website:** <https://www.canada.ca/en/department-national-defence/services/contact-us/canadian-forces-military-police-group.html>

### FILE A HARASSMENT COMPLAINT WITH CONFLICT AND COMPLAINT MANAGEMENT SERVICES (CCMS)

- 3.16. Sexual misconduct can be reported through the complaint management system, which combines harassment, grievance, and alternate dispute resolution systems in a streamlined fashion, and is accessible online or at local offices at select CAF bases.
- 3.17. A Harassment Investigation will be conducted when the misconduct meets the criteria outlined in DAOD 5012-0. Consult with your Harassment Advisor (HA) and your local Conflict and Complaint Management Services (CCMS) centre to determine the need.

**Website:** <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/integrated-conflict-complaint-management.html>

### PROHIBITION ON REPRISALS

- 3.18. QR&O 19.15 *Prohibition of Reprisals*, prohibits any member of the CAF from taking administrative or disciplinary action, or threatening to take such action against a member who has in good faith reported a wrongdoing.<sup>25</sup> No CAF member will obstruct or attempt to obstruct an investigation into an allegation of sexual misconduct, or threaten, intimidate, ostracize or discriminate against a member who has in good faith made an allegation or

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<sup>25</sup> QR&O 19.15 - Prohibition of Reprisals.

report of sexual misconduct. Any such behaviour is considered misconduct. Any CAF member participating in such behaviour will be subject to administrative or disciplinary action or both. The CO must investigate any reports of threatening, intimidating or discriminatory behaviour taken in response to a report of sexual misconduct.<sup>26</sup>

### FALSE ACCUSATIONS

- 3.19. According to Canadian studies, only 2 - 4% of all sexual assaults reported are false reports.<sup>27</sup>
- 3.20. [Section 96 of the National Defence Act](#)<sup>28</sup>, *Making false accusations or statements or suppressing facts*, states that a member who “makes a false accusation against an officer or non-commissioned member, knowing the accusation to be false” is guilty of an offence. No CAF member shall knowingly falsely accuse a CAF member of sexual misconduct. Any CAF member participating in such behaviour will be subject to administrative and/or disciplinary actions.

### CIVILIAN DEFENCE TEAM MEMBERS

- 3.21. Civilian Defence Team members are encouraged to report inappropriate behaviour to their superiors, or contact their union representatives. Sexual offenses should be reported to civilian police.

## GUIDANCE FOR COMMANDING OFFICERS AND LEADERSHIP TEAMS

- 3.22. COs and their leadership teams play a critical role in the care of our personnel and their families, in understanding and responding to subordinates’ circumstances, needs, concerns and expectations, including the effective supervision and administration of complaint and grievance processes. They should establish clear expectations and boundaries, leading by example and creating and maintaining a safe, respectful and professional work environment that recognizes and respects the important contributions made by every member of the Defence Team.<sup>29</sup>
- 3.23. COs must deal with disciplinary and administrative issues in a firm, fair, consistent, and transparent manner with particular emphasis on exercising personal empathy, discretion and a genuine commitment to promoting the welfare of personnel and their families.<sup>30</sup>
- 3.24. The following best practices apply when responding to a sexual misconduct incident:
- a. Transparency (explain procedures, rights and responsibilities of parties, etc.);

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<sup>26</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

<sup>27</sup> <https://www.sexassault.ca/statistics.htm>

<sup>28</sup> <http://laws-lois.justice.gc.ca/eng/acts/n-5/page-11.html>

<sup>29</sup> CDS Guidance to Commanding Officers and their Leadership Teams, 17 Nov 17

<sup>30</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

- b. The need to deal with both the victim and the alleged perpetrator fairly, which will often include taking immediate action upon notification of an incident (i.e. removal from course, supervisory position, attach posting, etc.);
  - c. Importance of providing all parties with support and information resources available to them; and
  - d. A thorough and well documented investigation by the chain of command or appropriate authorities.
- 3.25. The DMCA [website](#) has a set of scenarios and recommended appropriate administrative actions to be taken by the chain-of-command.<sup>31</sup>

When considering options for disciplinary and/or administrative action for incidents of sexual misconduct, the chain of command should consult Chapter 6, Article 6.44, their unit legal advisor, and DMCA 2.

DMCA 2 can be reached via the positional mailbox at  
++DMCA 2 - 2 DACM@CMP DMCA@Ottawa-Hull or  
by phone at 613-901-8292 / CSN: 225-8292

### DISCIPLINARY ACTION

- 3.26. When a CO learns of an alleged or suspected incident of Sexual Misconduct, legal advice should be sought from the Unit Legal Advisor in order to determine if the CAF or a civilian authority has jurisdiction in respect of the incident.
- 3.27. In some circumstances, inappropriate behaviour will constitute a service offence and/or a criminal offence, which in turn may be dealt with through either the military justice system or the civilian justice system.
- 3.28. Although military tribunals are uniquely positioned to ensure that justice is properly administered in accordance with the particular needs of the CAF, there are times when it may be appropriate for charges against a CAF member to proceed in a civilian criminal court. This transfer of legal jurisdiction does not exempt the CAF from its duty to support affected persons and perpetrators throughout the process.
- 3.29. When determining which system will exercise jurisdiction, investigators and military prosecutors consider a number of factors including the degree of military interest in the case, the degree of civilian community interest, whether the accused, the affected person,

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<sup>31</sup> <http://cmp-cpm.mil.ca/en/recruitment-careers/administrative-review/misconduct.page>

or both are members of the CAF, and the views of the affected person.<sup>32</sup> It should also be noted that the Military Justice System has more options in the type of charges that can be laid with respect to sexual misconduct. In addition to certain offences under the Criminal Code the military justice system can also deal with charges of disgraceful conduct, abuse of a subordinate, and conduct to the prejudice of good order and discipline (including sexual harassment).

- 3.30. Note: Discrimination and/or harassment based on sex, sexual orientation, gender identity and gender expression may not be obviously “sexual in nature”, however; these behaviours are captured by the sexual misconduct definition as they ‘perpetuate stereotypes and modes of thinking that devalue members on the basis of their sex, sexuality, or sexual orientation’ and may constitute an offence under the CSD.
- 3.31. Note: Any use of DND and CAF electronic networks or computers, to access or distribute any material whose focus is pornography, nudity or sexual acts involving adults over age 18, that is prohibited under DAOD 6002-2 *Acceptable Use of the Internet, Defence Intranet and Other Electronic Networks, and Computers* is captured by the sexual misconduct definition under ‘accessing, distributing, or publishing in the workplace material of a sexual nature’. This unauthorized and prohibited use of DND and CAF electronic networks or computers may constitute an offence under the CSD. As such, these behaviours are included and will be subject to the same administrative and/or disciplinary considerations as other sexual misconduct.

### ADMINISTRATIVE ACTION

- 3.32. If sexual misconduct occurs, the chain of command has a wide range of administrative action options available to address the behaviour while ensuring that all affected CAF members receive the necessary support.
- 3.33. Administrative actions for incidents of sexual misconduct could include, but are not limited to:
- a. Posting, Attach Posting, or removal from command, supervisory, training duties, etc.;
  - b. Remedial measures, in increasing significance:<sup>33</sup>
    - i. Initial Counselling;
    - ii. Recorded Warning; and
    - iii. Counselling and Probation;
  - c. Notice of Intent to Recommend Release; and

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<sup>32</sup> DMP Policy Directive 002/99 at paragraph 17; DMP Policy Directive 003/00 at paragraph 15; and DMP Policy Directive 004/00 at paragraph 13. 2120-0 (Policy Coord) CF MP Gp HQ - DPM Police Policy Advisory 11/2015 dated 20 July 2015- Investigation of Criminal Sexual Offences .

<sup>33</sup> DAOD 5019-4 *Remedial Measures*, <http://intranet.mil.ca/en/defence-admin-orders-directives/5000/5019-4.page>.

d. Release.

3.34. The chain of command is responsible for a fair and neutral approach to the respondent in order to prevent backlash from peers and other parties. It is important to remember that the respondent has a right to due process and procedural fairness, and, as a CAF member, to the full range of services available to any other CAF member.

3.35. The scope of procedural fairness for administrative decisions varies based upon the nature of the decision, the context in which it is made, and the impact of the decision on the affected person(s).<sup>34</sup> In general, it includes the following four principles:

- a. Notice (of the issue or issues involved),
- b. Disclosure (of the relevant information),
- c. Opportunity to make representations (to an unbiased decision-maker), and
- d. Reasons for the decision.<sup>35</sup>

3.36. The CO shall act in good faith in addressing any report of sexual misconduct. A failure to act on a report by not initiating a thorough investigation or by failing to properly report the incident up the chain of command is a breach of conduct. Administrative actions for a CO failing to take appropriate action could include removal from the Command position. Additional administrative and/or disciplinary action will be similar to that taken for sexual misconduct in that a conviction for failing to act may result in a NOI to recommend release.

### CONFIDENTIALITY OF INFORMATION

3.37. To the extent practicable, strictly limit knowledge of the facts or details regarding the incident to only those personnel who have a legitimate need-to-know.

### PROTECTION AND FAIR TREATMENT

3.38. In order to protect CAF members in vulnerable situations and to ensure fair treatment, restrictions may be imposed on the duty or posting of CAF members involved in a personal relationship, if the circumstances could result in:

- a. An instructor/student relationship that would have an effect on the security, morale, cohesion and discipline of a unit; or
- b. A senior/subordinate or inter-rank personal relationship in the same direct chain of command if there is a difference in rank or authority.<sup>36</sup>

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<sup>34</sup> DAOD 2017-1 *Military Grievances*, <http://intranet.mil.ca/en/defence-admin-orders-directives/2000/2017-1.page>.

<sup>35</sup> Ibid.

<sup>36</sup> DAOD 5019-1 *Personal Relationships and Fraternization* at 4.4, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-5000/5019-1.page>

### ADVERSE PERSONAL RELATIONSHIPS

- 3.39. An [‘adverse personal relationship’](#) is one that has a negative effect on the security, cohesion, discipline or morale of a unit. This is most often seen between two members within the same chain-of-command (where one is superior to another by virtue of rank or appointment) or between an instructor and student, which is considered inappropriate because of the power dynamic. The power dynamic can call into question the ‘consensual’ nature of the relationship (pressure – perceived or real) or can be seen as garnering favour.
- 3.40. If an adverse personal relationship cannot be changed within the applicable unit/sub-unit, for the CAF members in a supervisor/subordinate relationship, the CAF members shall be separated by attached posting, posting, change in work assignments, or other action. This form of separation is not intended to be punitive in nature and is not to result in negative stigma or career implication towards the CAF members.<sup>37</sup>
- 3.41. Further to DAOD 5019-1 *Personal Relationships and Fraternalization*, a personal relationship between CAF members will be considered sexual misconduct if a difference in rank and/or authority was used to coerce participation. Regardless of whether consent was coerced or not, differences in rank, authority, and power can call into question the ‘consensual’ nature of a relationship (e.g. a student and instructor, supervisor and subordinate).<sup>38</sup>

### INITIATION RITES

- 3.42. To prevent initiation rites from developing into conduct constituting sexual harassment, the following practices are prohibited:
- competitions involving drinking of alcoholic beverages; and
  - all initiation rites, unless authorized by a CO (as per Annex C of [Harassment Prevention and Resolution Instructions, dated 27 Jan 2017](#)).
- 3.43. Unauthorized initiation rites or activities are forbidden. A CO may pre-approve, in writing, activities that will not harm or humiliate participants. A CO who authorizes an initiation rite shall ensure that:
- he/she has signed the form at Annex C of [Harassment Prevention and Resolution Instructions, dated 27 Jan 2017](#) acknowledging and sanctioning the activity. The original signed form is to be forwarded to DHRD prior to the activity taking place to ensure appropriate safeguards are put in place;
  - the activity will be both conducted and supervised by senior personnel;
  - no person is, or will be, coerced, either expressly or implicitly, into participation in the activity;

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<sup>37</sup> Idem, 5.3.

<sup>38</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

- d. the activity does not include acts of violence, however minor, nudity, or competitions involving the drinking of alcoholic beverages; and
- e. all activities conducted are consistent with the promotion of morale and esprit de corps and are conducted with respect for the dignity of all participants.

### CHAPTER 4 – SUPPORT

This chapter provides an overview and guidance for CAF members and for leadership teams on their roles and responsibilities in creating a safe, supportive environment of compassion and empathy for individuals who have been impacted by sexual misconduct.

#### GET SUPPORT - STEPS YOU CAN TAKE AFTER A SEXUAL ASSAULT

- 4.0. **Share with someone you trust.** Consider sharing with a friend, a co-worker, a family member, or coach. There are also more options available such as health care providers, the CAF Member Assistance Program, Chaplains, Mental Health, and external support mechanisms such as the SMRC.
- 4.1. **Seek medical care.** Even if there are no obvious injuries or you don't want to report the assault to the police, it is important to seek medical attention if the assault just happened. Sexual assault may result in injuries that are physical (e.g., bruising, genital trauma, STIs, HIV, pregnancy) or psychological (e.g., depression, anxiety, suicidal thoughts). The consequences may also be chronic; some affected persons experience re-occurring gynecological, gastrointestinal, and sexual health problems. Affected persons may also suffer from post-traumatic stress disorder. Sexual assault is also associated with risk behaviours (e.g., smoking, excessive alcohol use) for chronic disease and medical conditions (e.g., high cholesterol, increased risk of a heart attack). The Sexual Misconduct Response Centre (SMRC) can assist you with information on facilitated access to services.
- 4.2. **Connect with support.** Sexual assault is a traumatic experience that can impact you on many levels: work, psychological, physical, academic, social and emotional. Contact the SMRC, CAF Mental Health Services, your local chaplain, the Conflict and Complaint Management staff (CCM), or your local health service clinic, where someone is ready to listen to you, and will help you access resources and make an informed decision about next steps - if and when you choose to.
- 4.3. **Find time to look after yourself.** If you can find time for self-care, it will help in your healing. The Tool "[Practicing self-care after trauma](#)" can help you get started.
- 4.4. Victims who are the complainants in a matter where charges have been laid in the military justice system can ask for information about the process directly from the Canadian Military Prosecution Service at the following positional mailbox: [+CMPS Victim Information-SCPM Information Victime@JAG DMP@Ottawa-Hull](mailto:+CMPSVictimInformation-SCPMInformationVictime@JAGDMP@Ottawa-Hull).



### **PROVIDE SUPPORT - How to respond to disclosures and provide initial and ongoing support**

You do NOT have to ‘solve’ the problem to be an important support. If someone discloses sexual misconduct to you, it is okay to not have all the answers. People most often first disclose to people they trust, not because you are an expert. In fact, you do not have to be an expert to be supportive.

#### **HOW TO RESPOND TO A DISCLOSURE**

##### **BELIEVE THAT THE PERSON IS BEING HONEST**

This is the most important thing you can do. One of the main reasons affected persons do not come forward is because they feel they will not be believed or they will be blamed for what happened.

##### **LISTEN AND ASK WHAT THEY NEED**

Do more listening than talking. It is the person's experience and decision to make. Avoid giving advice and instead, ask them what they need and what is best for them.

##### **CONNECT THEM WITH RESOURCES**

Offer information on resources that they have expressed they want to access and assist them in contacting those resources or be with them when they do it.

- 4.5. Some victims may appear very calm and describe the assault with little or no emotion. Others may express feelings verbally or by shaking, crying, restlessness, or tenseness. Remember, sexual assault victims have just experienced a traumatic event.
- 4.6. For more detailed information and guidance on providing a supportive response to a disclosure of sexual assault, see the [First Contact Support tool](#). The tool is meant to guide CAF members in how to provide a compassionate, supportive and consistent response to someone disclosing a sexual assault.

### START BY BELIEVING

- 4.7. How we respond to sexual assault disclosures affects everyone. Start by believing that the person reporting is being honest. Other victims of sexual assault, and future victims, are watching to see how someone is treated when a sexual assault is disclosed. A negative response – disbelief, blaming, questioning, minimizing – can worsen the trauma and make it less likely that victims will seek the support and services they need. This also fosters an environment where perpetrators are not held to account for their actions, which may lead to more victims in the future and a deepening of the harm that is caused when such an event occurs.
- 4.8. “Start by believing” is a necessary first step in minimizing the harm that could arise from a sexual assault. It is not about skipping due process. It is not assuming a suspect is guilty, as that is for the justice system to decide. “Start by believing” is about reacting to a disclosure, recognizing such an event would be a traumatic experience, and responding with the goal of minimizing harm now, and into the future, by offering support in a compassionate non-judgmental way.

### COMMON REACTIONS TO A DISCLOSURE

- 4.9. It is important to know that there is no normal or single way to react when someone you know has survived an act of sexual assault. Learning how to manage conflicting thoughts, feelings, and emotions which can be intense and difficult to deal with, can help you support the affected person and can help you feel less overwhelmed as well.
  - a. **Disbelief.** When you first hear about the assault, it may seem surreal; you might have trouble believing the assault happened. After a traumatic experience, it is common for victims and those around them to experience denial. It is important to focus on acknowledging their story.
  - b. **Anger.** You might feel anger for a number of reasons: towards yourself for not being able to protect the affected person; towards the affected person for telling you about something that is hard to hear; or towards the alleged offender for carrying out the assault and hurting the victim. It can be difficult to keep anger from affecting the way you communicate.
  - c. **Sadness.** When you learn that a trauma such as sexual assault has happened to someone you know, it is normal to feel worried, or powerless. You might feel sad for how this has changed the victim’s life. If you know the alleged offender, you might feel sad for how this has changed their life as well. Self-care strategies and coping skills can help you move through these feelings.
  - d. **Guilt.** You may feel guilty that you could not prevent the assault from happening. You may feel guilty that something so terrible happened to someone else and not to you. It

can be helpful to refocus your energy on making the victim feel supported as they move forward.

- e. **Anxiety.** You might feel anxious about responding the “right” way or worried about how this event will impact your relationship with the victim. Reassure them that the assault was not their fault and that you believe that they are being honest. These can be the most powerful and helpful words for a victim to hear.
- f. **Confusion.** You might feel confused by what you are hearing. You might not understand how it could happen or why it has happened. Sadly, sexual assaults are more common than we would like to think. Although you may be struggling with feelings of confusion, especially if you know the alleged offender, you should always try to believe the victim. They are never to blame for the assault.

### COMMON PITFALLS WHEN REACTING TO A DISCLOSURE

- a. A judgmental, shocked, or over-reactive initial response.
- b. Disbelief, minimizing, or questioning the “truth” of a victim’s story or reactions – especially if they seem to be very calm, or do not want to report to police.
- c. Asking for unnecessary details, or focusing on the behaviour, appearance, and/or location of the victim at the time of the assault.
- d. Focusing on your own emotional reaction (e.g., horror, sadness, anger, recalling a similar experience you may have had).
- e. Questioning why a victim did not act in certain ways (e.g., fighting back, reporting immediately to police, or discontinuing contact with the alleged offender after the assault). It is important to note that people respond to a traumatic incident in many different ways; there is no “typical” response.

4.10. The table at Figure 4 contains a list of harmful and helpful reactions to a disclosure.

**HARMFUL AND HELPFUL REACTIONS TO A DISCLOSURE**

| <b>Harmful reactions</b>   | <b>Helpful reactions</b>   |
|--|--|
| <p><b>Judging</b><br/> <i>Asking direct questions, trying to pull out details, or talking incessantly.</i></p>   | <p><b>Listening</b><br/> <i>Listening to what the victim says without judgment and letting the victim express themselves in their own way and at their own pace.</i></p>                                   |
| <p><b>Doubting</b><br/> <i>Appearing to be sceptical or questioning what the victim tells you.</i></p>   | <p><b>Believing</b><br/> <i>Believing what the victim tells you because it is their experience and their perception. For the moment, you must focus on what the victim is saying and experiencing.</i></p> |
| <p><b>Trivializing, minimizing, or over-dramatizing</b></p>  | <p><b>Receiving</b><br/> <i>Receiving what the victim says without minimalizing or amplifying the facts, emotions, or consequences.</i></p>  |
| <p><b>Emphasizing what the victim could have said or done differently</b></p>  | <p><b>Encouraging their strengths</b><br/> <i>Recognizing accomplishments and highlighting their strength and courage for talking about the traumatic experience.</i></p>                                  |
| <p><b>Blaming</b><br/> <i>Blaming the victim for what they did or did not do or implying that the victim is partially responsible for what happened.</i></p> | <p><b>Removing guilt</b><br/> <i>Getting the victim to understand that it is not their fault, that the aggressor is completely responsible for their own actions.</i></p>                                  |

**Figure 4: Harmful and helpful reactions to a disclosure**

### UNDERSTANDING WHY VICTIMS MAY FIND IT DIFFICULT TO DISCLOSE OR REPORT

- 4.11. “Why didn’t you tell anyone?” is a common enough question which is asked of victims of sexual assault. A sexual assault most often includes profound humiliation and shame. Even though sexual assault is more about aggression, power and control, sexual assault involves a person’s sexual body parts and behaviours, both of which some people are embarrassed or feel ashamed to talk about. When there is physical violence (such as overpowering someone or using sex as a weapon), the trauma and shame can be deep; sexual assault is intensely dehumanizing, and the victim may feel like they lack control over their life.
- 4.12. The following list explains some of the reasons expressed by victims for not coming forward after an assault.<sup>39</sup> It is likely that a victim of sexual assault may:
- a. feel deeply embarrassed, ashamed, or humiliated, especially if the assault was perpetrated by someone they trusted, or if there were drugs or alcohol involved;
  - b. fear they will not be believed or will be blamed, especially if this has been their experience in the past or they have seen this kind of thing in popular culture (e.g., television, movies);
  - c. be confused about whether or not it was sexual assault (especially if alcohol or drugs were involved);
  - d. fear for their safety, or the safety of their friends, especially if threats were involved;
  - e. feel conflicted about the perpetrator getting into trouble, especially if they were assaulted by someone they know (e.g., intimate/dating partner, friend, family member) or if the perpetrator is part of the same unit;
  - f. fear retaliation, such as reprisal, ostracism, or maltreatment for having reported the incident;
  - g. fear the response of the police and the justice system or fear nothing will come of reporting; and
  - h. hope to put it behind them quickly by avoiding talking about it or avoiding having contact with the perpetrator.

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<sup>39</sup> <https://www.femifesto.ca/wp-content/uploads/2015/12/UseTheRightWords-Single-Dec31.pdf>

- 4.13. All responses to sexual assault are attempts to survive this traumatic experience, both physically and emotionally. These responses can be particularly complex for victims who have experienced early and/or repeat trauma. They may appear anywhere on a continuum from calm and collected to frantic and distraught. A victim may also respond with anger, aggression, or even violence. All are ways of coping. If you are hearing about a sexual assault immediately after it happens, you may see the victim expressing anxiety, confusion, shock, and disbelief. They may also appear numb. They may be disoriented and their articulation of what happened may not seem coherent.
- 4.14. Each victim copes with sexual assault differently. It is important to remember that there is no right way for a victim to feel, and there is no set timeline for when a victim should be feeling better. To heal from sexual assault, victims need to draw on their individual strengths and skills and find what works best for them.

### PROVIDING CONTINUED SUPPORT

- 4.15. If someone has trusted you enough to disclose the event to you, consider the following ways to show your continued support:
- Check in periodically.** The event may have happened a long time ago, but that does not mean the pain is gone. Check in with the victim to remind them you still care about their well-being and believe their story.
  - Avoid judgment.** It can be difficult to watch a victim struggle with the effects of sexual assault for an extended period of time. Avoid phrases that suggest they are taking too long to recover such as, “You’ve been acting like this for a while now,” or “How much longer will you feel this way?”
  - Remember that the healing process is fluid.** Everyone has bad days. Do not interpret flashbacks, bad days, or silent spells as “setbacks.” It is all part of the process.
  - Provide resources.** You can communicate that there are resources available to help them with self-care after trauma.
- 4.16. Additionally, if the victim is a subordinate:
- Ensure that the person is allowed time to attend medical and other appointments.** Assist with administrative and logistical arrangements so that the person can access services and receive care. Inform only those with a legitimate need to know why the person is absent or requires logistical assistance.
  - Respect medical employment limitations.** Do not ask or demand to know the diagnosis.
  - Keep an eye on the person’s safety:** Consider developing a workplace safety plan. If a Restraining or Protection Order has been issued to keep someone away from the victim, ensure that the terms are being respected. If the order is violated, notify law enforcement and the Commanding Officer at once.

- d. **Movement of the victim or alleged offender.** When determining if circumstances warrant temporary redeployment or reassignment of the victim or the alleged offender, consider the victim’s input on any movements prior to action.

Note: Good self-care enables you to better care for others, especially if there is someone in your life who has survived sexual assault. Refer to “[Self-care for points of first contact](#)” for guidance and tips in looking after yourself when providing continued support for a victim.

## INFORMATION AND SUPPORT RESOURCES

### SEXUAL MISCONDUCT RESPONSE CENTRE (SMRC)

- 4.17. The SMRC was specifically created to support CAF members who have been affected by sexual misconduct. The SMRC provides confidential supportive counselling and information on options, 24 hours a day, 7 days a week. The SMRC is independent from the chain of command.
- 4.18. A Military Police Liaison Officer (MPLO) is co-located with the SMRC to assist affected persons or leaders who are interested in discussing any matter that falls under a policing mandate. The MPLO can provide information with respect to the investigative process and facilitate reporting of a complaint to the CFNIS, as required.
- 4.19. The SMRC also has access to a Military Liaison Officer (MLO), a senior officer who has extensive up-to-date knowledge of the CAF, and can offer case-specific assistance and advice regarding CAF processes to affected persons or leaders.
- 4.20. Civilian members of the Defence Team who contact the SMRC will be referred to services such as the Employee Assistance Program (EAP) and other existing local specialized centres.

**Phone:** 1-844-750-1648 (North America toll-free)  
613-996-3900 (Iridium (satellite) and collect from anywhere except the US)  
86-996-3900 (CSN from Canada and many deployed operations)  
(See website for alternate or international number)

**Website:** <http://www.forces.gc.ca/en/caf-community-support-services/sexual-misconduct-response-centre.page>

**Email:** [DND.SMRC-CIIS.MDN@forces.gc.ca](mailto:DND.SMRC-CIIS.MDN@forces.gc.ca).

### CANADIAN ARMED FORCES MEMBER ASSISTANCE PROGRAM (CAF MAP)

- 4.21. The CAF MAP is a confidential service, 24 hours a day, 365 days a year, initiated by the CAF to help members and family members who have personal concerns that affect their well-being and/or work performance. Eligibility criteria can be found at the link below.

**Phone:** 1-800-268-7708

**Website:** <https://www.canada.ca/en/department-national-defence/services/guide/programs-canadian-forces/cfmap.html>

### CANADIAN ARMED FORCES HEALTH SERVICE CENTRES

- 4.22. Find your local CAF Health Service centre online at:

**Website:** <https://www.canada.ca/en/department-national-defence/services/benefits-military/health-support/medical-dental-centers.html>

### CANADIAN FORCES MILITARY POLICE

- 4.23. To report a non-emergency crime, contact your nearest Military Police detachment or the police service of jurisdiction in your area.

### CANADIAN FORCES NATIONAL INVESTIGATIVE SERVICE (CFNIS)

- 4.24. For serious and sensitive matters, you may file a complaint or speak with a member of CFNIS. The CFNIS Sexual Offence Response Team (SORT) is a team employed across the country dedicated to investigating sexual offences throughout the CAF and DND. Members are selected based on their experience, as well as a victim-orientated focus and a proven track record. They receive training on trauma-informed interviewing techniques and a variety of specialized courses taken at Canadian-based police colleges such as the Ontario Police College or Canadian Police College.

**Website:** <https://www.canada.ca/en/department-national-defence/services/contact-us/canadian-forces-military-police-group.html>

### CAF CHAPLAIN SERVICES

- 4.25. Chaplains can provide support in many areas of your life, regardless of your beliefs. They offer a full spectrum of moral, spiritual, and religious support, advice, and care, including:
- crisis intervention;
  - support and counseling;
  - addressing moral and ethical dilemmas; and



- d. referring you to other care providers such as social workers, psychologists, or medical personnel.

**Email:** [ChaplainMain-AumoneriePrincipale@forces.gc.ca](mailto:ChaplainMain-AumoneriePrincipale@forces.gc.ca)

**Phone:** 1-866-502-2203

### CONFLICT AND COMPLAINT MANAGEMENT SERVICES (CCMS)

- 4.26. Conflict and Complaint Management Services (CCMS) centres are located across Canada. The service is available to members with a complaint or problem, those who receive a complaint, or those that are the subject of a report. Within the CAF, this service is available to:
  - a. members of the Regular Force;
  - b. members of the Reserve Force;
  - c. members of the Canadian Rangers;
  - d. members of the Cadet Organizations Administration and Training Service (COATS); and
  - e. members of the Supplementary Reserve.
- 4.27. Contact a CCMS agent to learn about your rights, responsibilities, and options. Some of the services that CCMS agents provide include:
  - a. assistance in determining the best option for resolving the conflict/complaint;
  - b. assistance in opening avenues of communication with all parties associated with the conflict;
  - c. guiding parties through an ADR process that will identify options for resolution; and
  - d. providing service in person, by video-conference, or by telephone.

**Website:** <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/integrated-conflict-complaint-management/centres.html>

### DND/CAF OMBUDSMAN

- 4.28. The Ombudsman's Office is a direct source of information, referral, options, assistance, and education. CAF members who are not sure how to have a concern addressed are free to contact the Ombudsman.

**Website:** <http://www.ombudsman.forces.gc.ca/en/index.page>

### FAMILY CRISIS TEAM

- 4.29. The CAF has mandated teams of personnel located on each base and wing called Family Crisis Teams. These teams include medical and support personnel such as: social workers, health promotion field staff, chaplains, military police (MP), Military Family Resource Centre (MFRC) social workers and, as appropriate, professional health and social service workers from the civilian community. Each team has a designated team leader, normally a CAF/DND social worker appointed by the Base/Wing Commander or CO, who serves as the focal point for coordinating education and interventions in the matter of family violence.

Contact your local Health Services to be put in touch with your local Family Crisis Team.

**Website:** <https://www.canada.ca/en/department-national-defence/services/benefits-military/health-support/medical-dental-centers.html>

### FAMILY INFORMATION LINE

- 4.30. As a Morale and Welfare Services initiative, this team of trained professionals provides a wide range of services to the extended military community, including counselling, referrals, information on programs and services and crisis support.

**Website:** <https://www.cafconnection.ca/National/Stay-Connected/Family-Information-Line/Connect-With-Us.aspx>

### UNIT WORKPLACE RELATIONS ADVISOR

- 4.31. To submit a formal complaint, consult with a Unit Workplace Relations Advisor (WRA)<sup>40</sup>, a resource for either a complainant or a respondent. They can provide assistance on policy and process interpretation, but do not get involved in the particulars of a complaint. If you are not comfortable with your unit Workplace Relations Advisor, you can seek advice from a Workplace Relations Advisor at another unit or a CCMS agent.

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<sup>40</sup> [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/support/harassment-prevention-resolution-instructions.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/support/harassment-prevention-resolution-instructions.pdf)

### UNIT HARASSMENT ADVISOR

- 4.32. Harassment Advisors (HA) and Labour Relations Officers (LRO) play a key role in advising the Commanding Officer (Responsible Officer (RO)) when dealing with harassment complaints. The HA advises the RO when a complaint involves CAF members and the LRO advises the RO when a complaint involves DND employees. The HA is also the advisor for the coordination of harassment and prevention programs within their unit.

### VETERANS AFFAIRS CANADA (VAC)

- 4.33. CAF members or former CAF members who suffered an injury or illness as a result of sexual misconduct while serving should contact VAC to discuss benefits and options to ensure continuing support post-release.

**Website:** <http://www.veterans.gc.ca/eng/services/health/mental-health>

### THE RESPECT IN THE CAF MOBILE APPLICATION

#### WHAT IS THE APP FOR?

- 4.34. The Respect in the CAF app includes downloadable tools, educational information, and resources to support anyone who is responding to an incident of sexual misconduct.
- 4.35. It can offer the location and directions to the closest military and civilian resources by using your mobile's location, while still retaining your privacy and confidentiality.
- 4.36. It directs users to both military and civilian resources.

#### WHO SHOULD USE THE APP?

- 4.37. Anyone who needs help responding to an incident of sexual misconduct including affected persons in crisis.
- 4.38. Anyone who is supporting an affected person but is not sure what to do next.
- 4.39. All members of the Canadian Armed Forces, military or civilian, looking for support and guidance.

#### WHAT IS SPECIAL ABOUT THE APP?

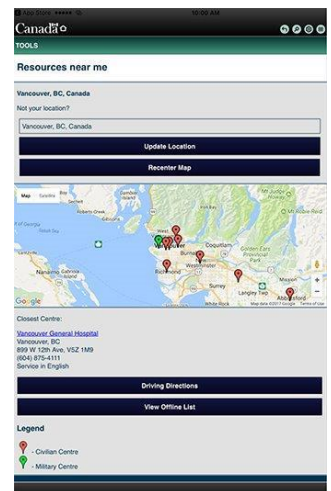
- 4.40. It is a tool kit that you carry around discreetly on your mobile device at home or on deployment internationally.
- 4.41. It is a free download from your mobile device's app store – Android, iOS, or BlackBerry.
- 4.42. To download the app, go to:

**CAF mobile app page:** <http://www.forces.gc.ca/en/stay-connected/mobile-apps.page>

**iOS:** <https://itunes.apple.com/ca/app/respect-in-the-caf/id1249418271?mt=8>

**Android:** <https://play.google.com/store/apps/details?id=ca.gc.forces.ritcaf>

**Blackberry:** <https://appworld.blackberry.com/webstore/content/60002764/?lang=en&countrycode=CA>



### CHAPTER 5 – PREVENTION OF SEXUAL MISCONDUCT

This chapter provides an overview and guidance for CAF members and for leadership teams on their roles and responsibilities in promoting a culture in which the prevention of sexual misconduct is widely accepted, expected, implemented, and supported.

#### OVERVIEW

##### DEFINING PREVENTION

5.1. Prevention is defined as “the action of stopping something from happening or arising”.<sup>41</sup>

##### PREVENTION MEASURES

5.2. The CAF is taking the following measures to prevent sexual misconduct from happening in the first place and to lessen the immediate and long-term harms of sexual misconduct:

- a. informing policy;
- b. institutionalizing prevention practices and programs;
- c. setting, communicating, and enforcing standards for appropriate conduct; and
- d. integrating prevention through a formal training and education framework, which is in place throughout a member’s career.

5.3. The U.S. Center for Disease Control and Prevention (CDC) has identified three categories (or levels) of prevention of sexual misconduct: primary, secondary, and tertiary.

##### PRIMARY PREVENTION

5.4. Primary prevention focuses on approaches that take place before sexual misconduct has occurred to prevent initial perpetration or victimization.<sup>42</sup> Although increasing knowledge or awareness of sexual misconduct may be a feature of primary prevention, it is not a sufficient outcome. Primary prevention must also change behaviours.

5.5. The overall goal of primary prevention is to reduce the actual incidence of sexual misconduct within the population. To achieve this, the strategy targets the factors that give rise to, or create the conditions for sexual misconduct, and aims to influence behaviour.

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<sup>41</sup> <https://en.oxforddictionaries.com/definition/prevention>

<sup>42</sup> *Sexual violence prevention: beginning the dialogue*. Atlanta, GA: Centers for Disease Control and Prevention; 2004.

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- 5.6. The CAF has a number of programs and initiatives contributing to the primary prevention strategy, including the sustained engagement of the leadership cadre to provide a vision and consistent personal example that empowers and inspires subordinates, coaching and mentoring the leadership cadre, and embedding training and education activities throughout a member’s career.

### SECONDARY PREVENTION

- 5.7. Secondary prevention strategies include the immediate responses to deal with the short-term consequences after sexual misconduct has occurred. The CAF has put into place victim support services as outlined in Chapter 4, as well as guidelines for responding to sexual misconduct as described in Chapter 3.

### TERTIARY PREVENTION

- 5.8. Tertiary prevention focuses on the long-term responses after sexual misconduct has occurred, and deals with both the lasting consequences of misconduct, and identifying and holding perpetrators accountable.<sup>43</sup>

### THE LINK BETWEEN EARLY REPORTING AND PREVENTION

- 5.9. The CAF has committed to ensure that required supports are there and they include appropriate reporting and investigative mechanisms, protection from reprisals, confidentiality to the extent permissible by law, medical and emotional care, and responding decisively against those who cause harm. Each of these elements is a key component to preventing further and more serious incidents from occurring for both the individual who made the complaint, the victim, and other potential victims. Moreover, there is clear evidence that getting early support for an incident leads to a quicker restoration of well-being for the individuals as well as the units involved.

## BYSTANDER INTERVENTION

### OVERVIEW

- 5.10. **Primary prevention** involves intervening before sexual misconduct has occurred. Bystanders are individuals who observe inappropriate behaviour or witness the conditions that perpetuate sexual misconduct, and are potentially in position to discourage, prevent, or interrupt an incident.<sup>44</sup>

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<sup>43</sup> The CDC considers “intervention” as any prevention or service-related activity in this context.

<sup>44</sup> Banyard, V. L., Plante, E. G., & Moynihan, M. M. (2004). Bystander education: Bringing a broader community perspective to sexual violence prevention. *Journal of Community Psychology*, 32, 61–79.

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5.11. **Bystander intervention** is the act of feeling empowered and equipped with the knowledge and skills to effectively assist in the prevention of sexual misconduct. Bystander intervention does not have to jeopardize the safety of the bystander.<sup>45</sup> Bystander intervention training is intended to assist people in developing the awareness, skills, and courage needed to intervene in a situation when another individual needs help; it sends a powerful message about what is acceptable and expected behaviour. It also gives individuals the skills to be an effective and supportive ally to victims after an assault has taken place.<sup>46</sup>

### WHY PEOPLE DON'T GET INVOLVED

5.12. “37 Who Saw Murder Didn’t Call the Police.” This was the headline of the Times article in 1964, which described a horrifying scenario where numerous witnesses watched a man stalk, sexually assault, and murder “Kitty” Genovese over the course of three separate attacks. Notwithstanding later clarification that the number of witnesses was proven to be exaggerated, there is no question that the attack occurred, and the fact that neighbours ignored cries for help.

5.13. The article and ensuing outrage led to wide-spread research and discussion of the social-psychological phenomenon that later become known as the bystander effect or bystander apathy, including a “diffusion of responsibility”, where people in a crowd are less likely to step forward and help a victim.

### WHY BYSTANDER APATHY OCCURS

5.14. Research has shown that the reluctance of bystanders to act can often be attributed to one of two factors: the ‘diffusion of responsibility effect’, where the presence of other people leads individuals to assume that someone else will step in or already has, or ‘the power of social norms’, in which people observe others’ reactions to evaluate the severity of a situation and follow what the rest of the group is doing.

### WHY PEOPLE DO GET INVOLVED

5.15. In hundreds of bystander studies, a few anomalies stand out when bystanders actually helped the victim. When the groups observing an emergency were friends, they were more likely to help than when bystanders were strangers to each other. They were particularly likely to help when the person in need of help was someone they saw as similar to them in an important way.<sup>47</sup>

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<sup>45</sup> Katz, J. (2011, December 01). Penn State: The mother of all teachable moments for the bystander approach.

<sup>46</sup> National Sexual Violence Resource Center, (2011). It’s time to incorporate the bystander approach into sexual violence prevention. Retrieved from National Sexual Violence Resource Center website: <https://www.nsvrc.org/saam>

<sup>47</sup> The responsive bystander: how social group membership and group size can encourage as well as inhibit bystander intervention. Levine & Crowther, 2008.

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- 5.16. Some social scientists believe that unselfishness, not aggression, is programmed into our human genome. On United Flight 93 on September 11, 2001, passengers took their fate into their own hands and together joined against the hijackers to attempt to save, if not the plane, then the intended target of the plane. Overcoming bystander apathy in such dire circumstances takes unbelievable courage, but it is clearly within our human potential to do so.

### WHEN TO INTERVENE

- 5.17. There are hundreds of comments, progressive actions, harassments, and other forms of abuse that can lead to a sexually violent act. Chapter 2 described events as being on a spectrum, or a [continuum of behaviours](#) that demand interventions at each step. At one end of the spectrum are healthy, respectful, and safe behaviours. At the other end of the spectrum are sexual assault and other violent behaviours. If we limit our interventions to a culminating “event,” we miss multiple opportunities to do something or say something before a behaviour or a situation escalates and moves to the right along the spectrum.
- 5.18. Always remember that you are not intervening because you are a hero, or because you are being chivalrous, or because you want to be patted on the back. You are intervening because it is the right thing to do, because it is required of all CAF members, and it is a meaningful way to do your part in ending sexual misconduct.



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### THE SIX STEPS TO BYSTANDER ACTION

**Step 1.** Notice an occurrence along the [spectrum of behaviours](#). Some questions to ask could include:

- What is the context? For example, is this part of a pattern between these (two) people? What just happened before this situation? Is this part of a pattern in society generally?
- Who has the most power in this situation? For example, can the person in this situation leave freely? Is someone under pressure? Has everyone given their consent?
- What is the impact on the person in the situation? For example, how is their physical and mental health affected? Will other people see them differently as a result of what is happening?

**Step 2.** Decide that something is amiss or unacceptable.

**Step 3.** Take personal responsibility.

- If no one intervenes, what will likely happen?
- Is someone else better placed to respond?
- What would be my purpose in responding?

**Step 4.** Assess your options for giving help (See Bystander Intervention Strategies).

**Step 5.** Determine the potential risks of acting.

- Are there risks to myself? (See [Recognize the reasons why people DON'T get involved](#))
- Are there risks to others (e.g. potential retaliation against the person being "helped")?
- How do I approach the situation in a friendly way so that I do not further escalate the situation?
- Is there a low-risk option?
- How could I reduce risks?
- Is there more information I can get to better assess the situation?
- How can I create more options for the person experiencing violence?

**Step 6.** Intervene:

- In all cases, a successful bystander intervention will provide more options for the person experiencing the sexual misconduct. It is important to note that bystander intervention should be seen as a sort of “first-aid” for sexual misconduct, and will unfortunately not address the root causes of the incident of sexual misconduct; and
- It is also important to note that the strategy used by a bystander will depend on the context, and the bystander’s confidence level. The important point to remember is that there is no bad bystander intervention, as any action on behalf of the bystander is better than none. With practice, jumping in as a bystander becomes easier, and just like any skill or habit, people become more comfortable and creative in how to diffuse situations.

## 5 – PREVENTION OF SEXUAL MISCONDUCT

### BYSTANDER INTERVENTION STRATEGIES

5.19. The following list of intervention strategies is by no means exhaustive. Use your judgment, common sense and consider your own strengths and weaknesses.

| Strategy  | Description  |
|---|--|
| Name or acknowledge an example of sexual misconduct, and open a dialogue for discussion | Name or identify inappropriate behaviour so it is not just glossed over or ignored.  |
| Publicly support a victimized person  | Help someone who has been the target of sexual misconduct, and/or prevent further injury or offense.   |
| Use body language to show disapproval   | Refuse to join in when derogatory, degrading, abusive, and violent attitudes or behaviours are being displayed. Crossing arms, looking away, or facial expressions are all examples of this.   |
| Interrupt the behaviour   | Intervention may be direct and obvious, such as stating directly to the offending person that the behaviour is unacceptable. Intervention can also be via subterfuge, such as interrupting an argument to ask for directions.  |
| Use humour (with care)  | If you are witty, this may fit with your style. Be careful, not to be so witty that you end up mocking or making light of your own feelings or reactions. Funny does not mean unimportant.   |
| Talk privately with the person who acted inappropriately                                | Give clear feedback and express your opinion calmly and privately.   |
| Talk privately with the person who is the target of the perpetrator                     | Express your opinion calmly and offer your support.  |
| Ask for help directly or indirectly   | Make sure that something is done, while acknowledging that you do not have the skill or capacity to handle it. You can talk with your immediate supervisor, to the aggressor's immediate supervisor, to your unit harassment advisor, to the RSM, or to the CO, for example. |

Figure 5: Bystander Intervention Strategies

### CHAPTER 6 - TOOLS AND RESOURCES

#### SUPPORT TOOLS

##### FIRST CONTACT SUPPORT TOOL – SEXUAL ASSAULT

When someone discloses an incident of sexual assault for the first time, a supportive reaction can make all the difference, but that does not mean it will be easy. You may feel some conflicting thoughts and emotions about the disclosure but this person trusted you enough to disclose a very personal experience to you and the priority is to focus on their needs.

##### IMMEDIATE ACTION

- 6.1. **Ensure the victim's safety.** Are they away from the alleged offender? If they are phoning you, can you help them get to somewhere safe? If the person is out of danger now, tell them, "You are safe now."
- 6.2. **Once safety is established, medical care is the next consideration.** Encourage the victim to get medical care for their immediate needs and offer to provide a support person to accompany them. If appropriate, explain the importance of preserving evidence. (Not all hospitals hold Sexual Assault Evidence Kits; check the resource list in the 'Respect in the CAF Mobile App' to determine the location nearest to the victim.)
- 6.3. **You can say, "I won't have all of the answers, but I will make sure you are supported."** There is a wide range of support services available to victims of sexual assault such as health care providers, the SMRC, the CAF Member Assistance Program, Chaplains, and Mental Health.

##### LISTEN

- 6.4. **Find a private place to talk, clear your schedule.** Be patient – it can take time.
- 6.5. **Ask, "How can I help you?"** Do not ask what happened. This is a question which should only be asked by the investigating officer and/or trained medical staff.
- 6.6. **Keep your voice calm.** Your calm voice and manner can help the victim remain focused and feel safe.
- 6.7. **Practice active listening.** Show that you are actively listening through your body language (e.g., nodding, facing in their direction, sitting down) and words (e.g., "I hear what you're saying").
- 6.8. **Respect their personal space, and do not touch them without permission.** Even if you think they want a comforting touch, resist your urge to do so without first enquiring whether such contact would be welcome. Always follow their lead. You can offer them something to keep

them warm, like a blanket or your jacket, (shock can involve feeling cold, shivering, and shaking).

### **BELIEVE**

- 6.9. **Communicate without judging.** “I’m so glad that you came to me. I believe you.” “This doesn’t change how I think of you.”
- 6.10. **Assure them that their reactions to a very traumatic event are normal.** Avoid promising them that everything will be okay.
- 6.11. **It is not their fault.** If the victim says things that sound like they ‘should’ have done something differently, should have dressed differently or in some way behaved in a way which could have prevented the assault, let them know that, it is not their fault. The person who commits the assault is responsible.

Note: Be aware that feelings of guilt and shame can contribute to thoughts of self-harm. Behaviours, thoughts, and feelings expressed by the person may reveal a heightened level of distress.

Note: If you suspect that the person is having thoughts of suicide, ask them clearly and directly, ex: “Are you thinking of suicide?” If they answer yes, offer to assist them in accessing professional psychological services, or escort them directly to the nearest medical care facility, military or civilian.

### **IF YOU THINK SOMEONE IS SERIOUSLY CONTEMPLATING SUICIDE**

- **ASK** the individual directly if they are thinking of suicide.
- **LISTEN** to what they have to say without judging.
- **BELIEVE** what the individual says and take all threats of suicide seriously.
- **REASSURE** the person that help is available.
- **ACT** immediately. Make contact with others to ensure the person’s safety.

Don’t try to deal with the situation yourself. Medical staff, a Social Work Officer, a Chaplain, and the individual’s CO are all people you can turn to for help.

### FOLLOW-UP ACTION

- 6.12. **Police involvement is recommended**; offer to contact them on the victim's behalf or arrange for them to speak with a police representative themselves. The assault can be reported at your local Military Police detachment or by contacting one of the Canadian Forces National Investigation Service (CFNIS) Regional Offices. It can also be reported to civilian police forces.
- 6.13. The SMRC, as well as CAF Health Service Centres and most civilian emergency departments have access to many resources (including which local hospital is the best choice to meet the needs of the person you are assisting). Offer to contact them or assist the person to contact them themselves.
- 6.14. If the victim wishes to call the police or the SMRC, offer to sit with them as they place the call.
- 6.15. If the victim gives you explicit permission to place the call on their behalf:
- Identify yourself by name.
  - Note that you are calling for someone else.
  - Ask any questions the victim wishes answered.
  - Be sure to note the name and any other contact information of a specific person with whom the victim may follow up.

### RECOGNIZE YOUR OWN LIMITATIONS

While you can provide the initial supportive and compassionate response, there are professional services available that have people with in-depth knowledge and training in the complexities of sexual assault.

### A GUIDE FOR VICTIMS OF SEXUAL ASSAULT

#### YOU ARE NOT ALONE

- 6.16. We recognize this is a very difficult time for you. Along with your colleagues, friends, and family, the Canadian Armed Forces is here to support you; you are not alone. The CDS pledged in the Operation HONOUR Op Order that he would “leverage the unequivocal support of his commanders and all members of the CAF” in support of this monumental effort. Since that initial pledge, many organizations and programs have been created, staffed and monitored to enable this effort, and to above all, support victims of sexual assault.
- 6.17. A sexual assault can happen to someone once, more than once, or even over many years. It can happen to anyone, women, men, LGBTQ2+, young or old. A person can be sexually assaulted by a stranger, their partner, dates, coworkers, acquaintances, or family members. People in authority and professionals can also commit sexual assault. Even if the victim was very close to the person who sexually assaulted them, it is still a crime.
- 6.18. Sometimes people who have been sexually assaulted feel as though it is their fault. Sexual assault is never your fault. It does not matter what you were wearing, what you were doing, who you were with, or where you were. Sexual assault is the fault of the person who commits the crime.
- 6.19. If you are not ready to report to police, we encourage you to seek medical attention and reach out for support.

#### WHAT WILL I BE FEELING DURING THIS TIME?

- 6.20. There is no “right” way to feel. Some victims are very emotional, tearful, and anxious after an assault. Others seem to be very cool, calm and collected, and may seem to be in control. You might have trouble sleeping and begin to have nightmares. You may lose your appetite and find that thoughts about the assault start to interfere with your daily life. You may feel you are re-experiencing the sexual assault. You may find it difficult to cope with work or the course that you are on as it becomes harder to concentrate. You may feel especially anxious when you see or hear anything that reminds you of the sexual assault. All of these feelings are normal.

#### SOME OF THE EFFECTS THAT YOU MAY EXPERIENCE...

- 6.21. **Physical problems:** Headaches, fatigue, sexually transmitted infections, unwanted pregnancy, injuries, etc.
- 6.22. **Psychological problems:** Sadness, denial, depression, guilt, anger, shame, fear, nightmares, irritability, etc.
- 6.23. **Sexual problems:** Decreased desire or promiscuity, disgust, pain during intercourse, avoidance, etc.

- 6.24. **Interpersonal problems:** Dependence on others for support, isolation, rejection, lack of trust, victimization, etc.
- 6.25. **Frustration or anxiety:** Heightened sensitivity to prejudices, feelings you have no power over your life, etc.
- 6.26. **Financial, social, or family problems:** Difficulty at work, rejection by friends, loss of income, etc.
- 6.27. **Addiction problems and other response mechanisms:** Alcohol, drugs, gambling, medication, food, exercise, self-harm, etc.
- 6.28. Sometimes these feelings gradually fade on their own, but some people need to talk to a counsellor or even take medication to help them deal with these emotions. Contact the [Sexual Misconduct Response Centre](#) for information and access to support services.

### WHAT TO EXPECT AT THE HOSPITAL

- 6.29. **It is important to receive medical care as soon as possible after a sexual assault.** Even if it has been a while since it happened, this care is essential.
- 6.30. **Go to a hospital or to the closest CAF Health Services Centre.** A nurse in the emergency room will examine you (take your vital signs, etc.) and determine if you require medical treatment. If so, the nurse will follow up with a doctor.
- 6.31. **The doctor will give you the medical care you need and provide information on services available to you.** The hospital may complete a Sexual Assault Evidence Kit to collect forensic evidence.

### SEXUAL ASSAULT MEDICAL/FORENSIC EXAM

**Content Awareness:** The following section contains specific details of what occurs during a sexual assault medical exam. Some individuals may find this level of detail helpful, while others may find this causes distressing thoughts or images to surface. Please take care of yourself and make the choice that is best for you.

- 6.32. DNA evidence from a crime like sexual assault can be collected from the crime scene, but it can also be collected from your body, clothes, and other personal belongings. You may choose to have a sexual assault forensic exam to preserve possible DNA evidence. You do not have to report the crime to have an exam, but the process gives you the chance to safely store evidence should you decide to report at a later time. You can also receive medical care at this time, should you require and request this. The Sexual Assault Evidence Kit actually refers to the kit itself: a container that includes a checklist, materials, and instructions, along with envelopes and containers to package any specimens collected during the exam.

6.33. The contents of the kits can vary by jurisdiction, but they normally include:

- bags and paper sheets for evidence collection;
- a comb;
- documentation forms;
- envelopes;
- instructions;
- materials for blood samples; and
- swabs.

Note: Not all hospitals/medical facilities collect forensic evidence. To find a location near you that performs sexual assault forensic exams, call the [Sexual Misconduct Response Centre](#) or your nearest CAF Health Services Centre.

### **PREPARING FOR A SEXUAL ASSAULT FORENSIC EXAM**

6.34. If you are able to, try to avoid activities that could potentially damage evidence such as:

- bathing;
- showering;
- using the restroom;
- changing clothes;
- combing hair;
- cleaning up the area; and
- brushing teeth.

6.35. It is natural to want to go through these motions after a traumatic experience. If you have done any of these activities, you can still have an exam performed. You may want to bring a spare change of clothes with you to the hospital or health facility where you are going to have the exam.

6.36. DNA evidence should be collected as soon as possible after an incident (typically within 72 hours), but a sexual assault forensic exam can reveal other forms of evidence beyond this time frame that can be useful.

6.37. Some medical interventions also have a timeline, for example:

- Prophylaxis treatment for the human immunodeficiency virus (HIV): up to 72 hours
- Emergency contraception: Plan B: up to 5 days, copper IUD: up to 7 days

### **WHAT HAPPENS DURING A SEXUAL ASSAULT FORENSIC EXAM?**

6.38. The steps below outline the general process for the exam. Remember, you can stop, pause, or skip a step at any time during the exam. It is entirely your choice. You may also wish to have someone accompany you through this process.



- **Immediate care.** If you have injuries that need immediate attention, those will be taken care of first.
- **History.** You will be asked about your current medications, pre-existing conditions, and other questions pertaining to your health history. Some of the questions, such as those about recent consensual sexual activity, may seem very personal, but these questions are designed to ensure that DNA and other evidence collected from the exam can be connected to the perpetrator. You will also be asked about the details of what has happened to you to help identify all potential areas of injury as well as places on your body or clothes where evidence may be located.
- **Head-to-toe examination.** This part of the exam may be based on your specific experience, which is why it is important to give an accurate history. It may include a full body examination, including internal examinations of the mouth, vagina, and/or anus. It may also include taking samples of blood, urine, swabs of body surface areas, and sometimes hair samples. The trained professional performing the exam may take pictures of your body to document injuries and the examination. With your permission, they may also collect items of clothing, including undergarments. Any other forms of physical evidence that are identified during the examination may be collected and packaged for analysis, such as a torn piece of the perpetrator's clothing, a stray hair, or debris.
- **Follow up care.** You may be offered prevention treatment for STIs and other forms of medical care that require a follow up appointment with a medical professional. Depending on the circumstances and where you live, the exam site may schedule a follow up appointment, or you can ask about resources in your community that offer follow up care for victims of sexual assault.

### WHO CAN PERFORM THE EXAM?

6.39. Not every hospital or health facility has someone on staff that is specially trained to perform a sexual assault forensic exam and interact with recent victims of sexual assault. When you call the Sexual Misconduct Response Centre or your nearest CAF Health Services Centre, you will be directed to a facility that is prepared to give you the care you need.

- **Sexual Assault Nurse Examiners (SANEs)** — registered nurses who receive specialized education and fulfill clinical requirements to perform the exam
- **Sexual Assault Forensic Examiners (SAFEs) and Sexual Assault Examiners (SAEs)** — other healthcare professionals who have been instructed and trained to complete the exam

### WHY SHOULD YOU CONSIDER HAVING A SEXUAL ASSAULT MEDICAL FORENSIC EXAM?

6.40. Having a sexual assault forensic exam ensures that the forensic evidence will be safely preserved if you decide to report at a later time.

- It increases the likelihood of a successful prosecution. The importance of DNA evidence in sexual assault cases cannot be overstated. Not only does DNA evidence carry weight in court, but it may lead to the identification of serial predators and thus reduce the chances of other people being attacked. Even if the perpetrator is not prosecuted, their DNA may be added to the national database, making it easier to connect the perpetrator to a future crime.
- Your health matters. Sexual assault can affect your physical health. You may have injuries and trauma related to the assaults that are not immediately visible. Even if you chose not to go through the SAEK process, getting examined and treatment for these injuries, including preventative treatment for STIs, and obtain emergency contraception to prevent pregnancy, is still very important.

### HOW LONG WILL THE EVIDENCE BE STORED?

6.41. The amount of time an evidence kit will be stored varies by location. The SANE, victim advocate or law enforcement officer should let you know how long the evidence will be stored. Although there is no statute of limitation for sexual assault in Canada, it is important to note that hospitals may not keep the evidence for as long as an investigation and trial may take. Once the crime has been reported to law enforcement, the kit is normally requested by the police, and transferred from the hospital to the law enforcement agency for storage until it is needed in court.

### THE CANADIAN MILITARY JUSTICE PROCESS

6.42. The following sections explain, in a general way, how a Canadian military justice prosecution works.

#### GENERAL

6.43. [Canada's military justice system](#) is a unique, self-contained system that is an integral part of the Canadian legal mosaic. This separate, constitutionally valid, military justice system operates in parallel with its civilian criminal justice counterpart. The system is created within the Code of Service Discipline (CSD), which is Part III of the National Defence Act (NDA). The purpose of the military justice system is to maintain discipline, efficiency, and morale in the military.

6.44. The operational realities of military life mean that service members are often held to a higher standard of conduct than what would be expected of a civilian. Because military personnel are often required to risk injury or death in the performance of their duties, both inside and outside of Canada, the military justice system puts a premium on the necessity for discipline and for cohesion of military units.

6.45. The military justice system employs a two-tiered tribunal structure. The term “service tribunal” means either an officer presiding at a summary trial, or a court martial. Both tribunals can be held wherever the CAF is deployed.

- **Summary trials (ST)** are designed to deal with relatively minor service offences that are important for the maintenance of military discipline and efficiency at the unit level. These trials allow military commanders to effectively and swiftly administer discipline, enabling members to return to duty as soon as possible.
- **Courts martial (CM)** are formal military courts presided over by independent military judges. These tribunals are similar in nature to civilian criminal courts and are designed to deal predominantly with offences that are more serious in nature.

#### SUMMARY TRIALS

6.46. A summary trial may be held wherever a unit is located, whether it is in garrison, in an exercise area or deployed abroad. Approximately 95% of all service tribunals are summary trials. This is consistent with the central role of the chain of command in the disciplinary process and also with the purpose stated in QR&O 108.02:

“The purpose of summary proceedings is to provide prompt but fair justice in respect of minor service offences and to contribute to the maintenance of military discipline and efficiency, in Canada and abroad, in time of peace or armed conflict.”

6.47. Not all service offences can be dealt with at summary trial. QR&O 108.07 lists the offences that can be dealt with by a commanding officer at summary trial. Some offences, including

most Criminal Code offences charged under section 130 of the NDA, cannot be tried by summary trial. Currently, only nine enumerated civil offences can be tried by summary trial, including assault (contrary to s. 266 of the Criminal Code), and possession of a controlled substance (contrary to s. 4(1) of the Controlled Drugs and Substances Act).

- 6.48. QR&O 108.17 specifies when an accused person has the right to elect to be tried by court martial. An accused person will generally be offered an election to be tried by court martial, unless two criteria are met: first, all the offences with which the individual has been charged must be for insubordination, drunkenness, absent without leave (AWOL), quarrels and disturbances, or (under limited circumstances) conduct to the prejudice of good order and discipline; and, second, the circumstances surrounding the commission of the offence must be so minor in nature that the presiding officer concludes that a punishment of detention, reduction in rank or a fine in excess of 25 per cent of monthly basic pay would not be warranted if the accused were found guilty of the offence.
- 6.49. Summary trials are generally presided over by officers from within the accused person's chain of command, from within one of the following classes of officer: Commanding Officers (CO), Delegated Officers (officers to whom a CO has delegated their powers to try matters), and Superior Commanders. The maximum punishments that can be imposed by each of these presiding officers is as follows: CO – 30 days detention; Delegated Officer – a reprimand (although a fine of 25% of basic monthly pay can also be imposed); and, Superior Commander – a severe reprimand (although a fine of 60% of basic monthly pay can also be imposed).
- 6.50. A presiding officer generally has the discretion to try an accused charged with any offence detailed in QR&O 108.07, provided the following conditions are satisfied:
- the presiding officer has jurisdiction to try people of the accused person's rank (for instance, a Commanding Officer cannot try a commissioned officer, and a Superior Commander cannot try a junior NCM).
  - the presiding officer considers that their powers of punishment are adequate;
  - the accused has not elected to be tried by court martial; and
  - the presiding officer does not have reasonable grounds to believe the accused is unfit to stand trial or was suffering from a mental disorder when the alleged offence was committed.
- 6.51. During a summary trial, the accused is provided with an assisting officer, but they do not have a right to be represented by counsel. The primary functions of an assisting officer are to assist the accused in the preparation of their case and to assist the accused during the trial to the extent desired by the accused. In addition, before the accused makes an election, the assisting officer shall ensure that the accused is aware of the nature and gravity of the offence(s) with

which the accused has been charged and the differences between trial by court martial and trial by summary trial.<sup>48</sup>

6.52. All offenders found guilty at summary trial have the right to request a review in accordance with QR&O 108.45 of the finding and/or punishment imposed at summary trial. The military review authorities acting under this article must obtain legal advice before making any determination on requests for review. As well, the findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.

### **COURTS MARTIAL**

6.53. Courts martial are designed to deal with more serious offences and are conducted in accordance with rules and procedures similar to those followed in civilian criminal courts while maintaining the military character of the proceedings. Like summary trials, courts martial may be held anywhere in the world. Statutorily, courts martial have the same rights, powers, and privileges as superior courts of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction,” including the attendance, swearing and examination of witnesses, the production and inspection of documents, and the enforcement of their orders.

6.54. At a court martial, the prosecution is conducted by a legal officer from the office of the Director of Military Prosecutions (DMP). In accordance with s. 249.19 of the NDA and QR&O 101.20, an accused person is entitled to legal representation by or under the supervision of the Director of Defence Counsel Services (DDCS), and, as a matter of policy, this legal representation is provided to an accused person at no cost to the accused person. An accused person may also choose to retain a lawyer at their own expense.

6.55. The DMP has directed that a prosecutor must seek and consider the views of the complainant when determining the most appropriate jurisdiction for the matter to be dealt with and has set out a number of different factors that a prosecutor must take into consideration including:

- the urgency of resolution;
- safety concerns about possible reprisals from the suspect or others;
- concerns relating to conditions imposed on the suspect following release from custody;
- access to victim support services;
- physical or mental trauma resulting from the alleged offence;
- physical or mental trauma resulting from participation in court proceedings; and
- the needs of any children or other dependents affected by the alleged offence.

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<sup>48</sup> QR&O 108.14

6.56. There are two types of courts martial provided for under the NDA: General Courts Martial and Standing Courts Martial.

- **General Court Martial:** The General Court Martial is comprised of a military judge and a panel of members. The panel is roughly analogous to a jury in a civilian criminal court and includes five CAF members. The panel is responsible for the finding on the charges (e.g. guilty or not guilty), while the military judge makes all legal rulings and imposes the sentence. At present, when the accused is an officer, the court martial panel consists entirely of officers and when the accused is a non-commissioned member, the panel is composed of the senior member, one other officer, and three non-commissioned members who are of, or above, both the rank of the accused person and the rank of Sergeant. A decision of the panel in respect of a finding of guilty or not guilty, of unfitness to stand trial or of not responsible on account of mental disorder is determined by the unanimous vote of its members. A decision in respect of any other matter is determined by a majority vote.
- **Standing Court Martial:** The Standing Court Martial is conducted by a military judge sitting alone who is responsible for the finding on the charges and imposing a sentence if the accused is found guilty. For the most serious class of offences under the NDA, a General Court Martial will generally be convened, while for the least serious class of offences, a Standing Court Martial will be convened. In all other cases, the accused person has the right to choose between trial by General or Standing Court Martial.

6.57. Both the convicted offender and the MND have the right under the circumstances listed in s.230 of the NDA to appeal to the Court Martial Appeal Court (CMAC) from a court martial. CMAC decisions may be appealed to the SCC. Such appeals may be made on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted. The CMAC typically hears several appeals each year.

### **THE CIVILIAN CRIMINAL JUSTICE PROCESS**

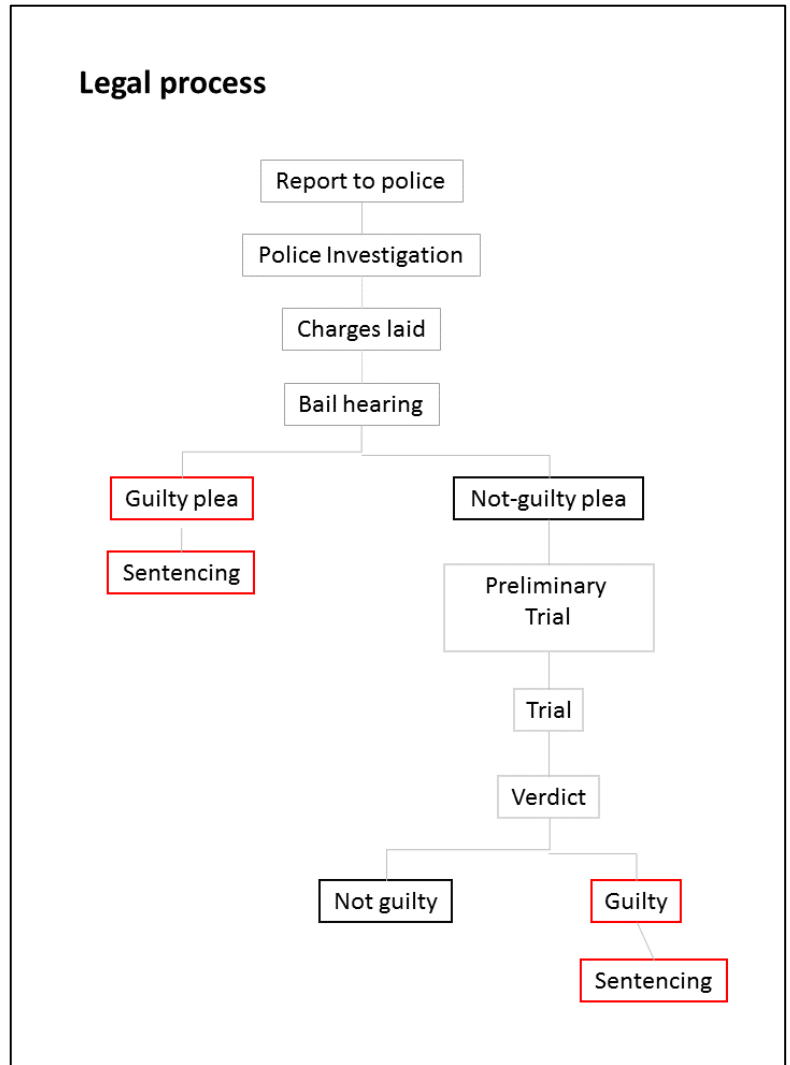
6.58. The following sections explain, step-by-step, in a general way, how a Canadian civilian criminal prosecution works.

### **WHO WILL INVESTIGATE MY CASE?**

6.59. The police conduct criminal investigations. Investigations begin when police witness behaviour or receive information about behaviour which may be a crime. Some criminal investigations are completed quickly. Others take weeks, months, or, in complex matters, years to complete.

### WHAT HAPPENS AFTER THE ARREST?

- 6.60. Once a person has been arrested and charged with a crime, they become “the accused”. Depending on the circumstances, the police can hold the accused in custody for a bail hearing.
- 6.61. If the police have not released the accused, the accused must go before a Justice of the Peace or a judge within 24 hours of the arrest for a bail hearing.
- 6.62. At a bail hearing, the Justice of the Peace or judge will decide if the accused is granted bail or kept in jail. Bail means someone known to the accused provides money or any type of surety as a promise that the accused will show up for their future court dates. The accused may also be required to agree to obey certain conditions as decided by the Justice of the Peace or judge.
- 6.63. One of the conditions is usually a “No Contact Order”. This means the accused cannot have any contact with you directly or indirectly– not even through a third party. An example of a third party is the accused getting a friend to call you for them. The accused cannot contact you by phone, letter, e-mail, text message or in person. Generally, the accused will not be allowed near your home, school and/or work. If the accused disobeys any of their bail conditions, you need to contact the police. An additional charge for breaching the bail conditions can be laid against the accused.



**Figure 6: Canadian Criminal Justice Process**

- 6.64. The accused will make many court appearances throughout the judicial process. Some of these court dates will be referred to as a “Set Date”. You are not required to attend these court dates. These dates are routine preparation dates for the lawyers.

You will only have to attend court if there is a preliminary hearing or a trial.

### **DO POLICE ALWAYS LAY CHARGES?**

- 6.65. Sometimes the police decide not to lay a charge. This does not mean that the police do not believe you or that the sexual assault did not happen. It may mean that there is not enough evidence to prove a criminal charge in court. If this does occur, the investigators can tell you of other options available to you.
- 6.66. The decision to lay a charge rests with the police. If, based on reasonable grounds, the police believe a person has committed a crime, they may lay a charge. They must consider all evidence against the accused: witness statements, case law, burden of proof and other variables.
- 6.67. When the police lay a charge, they complete an information package describing all the evidence and deliver a package to the Crown attorney. The accused person or, more often, the accused person's lawyer, also receives a copy of the information package. Personal information, such as the home address of the victim, is restricted to only the Crown attorney. The court receives a list of charges against the accused person from the police.

### **DECIDING WHETHER TO PROSECUTE**

- 6.68. The Crown attorney is responsible for deciding whether to proceed with charges against an accused person. They are required to prosecute cases fairly and treat all parties in the case, including victims, witnesses and the accused, in a fair manner. The Crown attorney will consider the victim's wishes when deciding whether to proceed, but must also consider the public interest in making a decision. The Crown attorney must answer two very important questions:
- Is there a reasonable likelihood of conviction?
  - Is it in the public interest to proceed?
- 6.69. If the answer to both of these questions is yes, the Crown attorney will prosecute. If the answer to either or both of these questions is no, the Crown attorney will not prosecute. In this way, the Crown attorney exercises prosecutorial discretion. Another element of this discretion is that the Crown attorney may decide that it is not beneficial to proceed with all the charges against the accused. In that case, some of the charges may be dropped.



### HOW LONG DOES THE COURT PROCESS TAKE?

6.70. Depending on the case, it might take between a few months to 30 months from the time a charge is laid. This long wait may be difficult for you. It is important to get support during this time. Contact the Sexual Misconduct Response Centre for information and access to support services. If certain criteria are met, you may be entitled to support from provincial victim support services throughout the court process, of which the Crown will inform you.<sup>49</sup>

### WHAT IS A PRELIMINARY HEARING?

6.71. A preliminary hearing is a mini trial in front of a judge. It is not required in every case but it is very common when sexual assault charges are laid. In a preliminary hearing, the judge will decide if the Crown attorney has enough evidence for a trial. You will most likely have to testify in a preliminary hearing. Other witnesses may have to testify as well. The accused and their lawyer may also attend and testify.

### WHAT IS A TRIAL?

6.72. The Crown attorney and the accused's lawyer will ask you and other witnesses what happened before, during and after the sexual assault. At the end of the trial, the judge will make a decision.

6.73. It is important to remember that if the judge decides the accused is not guilty, this does not mean you or the other witnesses were not believed. If the accused is found not guilty, the accused is free to go. This is called an acquittal. If the accused is found guilty, the judge will choose from a range of sentences.

6.74. At the beginning of the trial, the accused will plead "guilty" or "not guilty" to the sexual assault. A plea of "guilty" means the accused admits to the crime. In these cases, there will not be a trial and you will not have to testify. The judge will listen to the facts of the case, find the accused guilty, and decide the punishment to be imposed.

6.75. A plea of "not guilty" means the accused does not admit to the crime. The accused will then request a trial before a judge alone or before a judge and Jury. In these cases, you will have to attend court to testify at the trial.

### WILL I HAVE TO TESTIFY IN COURT?

6.76. If the accused chooses to plead not guilty, you will most likely be required to testify at the preliminary hearing and at the trial.

### THE VERDICT

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<sup>49</sup> Consult the federal, and your respective provincial, victim support services website for further information.  
<https://www.victimfirst.gc.ca/serv/vsc-svc.html>, <https://www.victimfirst.gc.ca/serv/spt-spt.html>

- 6.77. Once the judge or jury has considered all the evidence, they can find the accused guilty or acquit the accused. The judge can also order an adjournment if the jury is deadlocked and is unable to reach a unanimous decision.
- 6.78. There is also the possibility that charges may be “stayed” or “withdrawn”. If the judge or jury find the accused not guilty, the accused is free to go and cannot be tried again on the same charge, unless the Crown attorney appeals and the appeal court orders a new trial. If the accused is found guilty, the judge may sentence the accused immediately or set a later date for sentencing.

### SENTENCING

- 6.79. The judge decides the sentence. In making the decision, an independent assessment of the background of the case or a pre-sentence report may be asked for by the judge. The Crown attorney and defence lawyer may make sentencing recommendations. The judge considers these recommendations, as well as victim impact statements, but it is the judge who makes the final decision on the sentence. There can also be joint submissions agreed upon by the prosecutor and the defence attorney. The judge will normally accept a joint submission unless it is not in the interest of justice.

### PROBATION

- 6.80. The offender serves their time in the community. The offender will be supervised by, and must visit with, a probation officer. The offender usually has rules to follow that are listed on the probation order. These rules, known as conditions, may include abstaining from alcohol, staying away from certain areas or people, to attend counselling, to seek or maintain employment and to obey a curfew. A Probation Order cannot last more than three years.
- 6.81. If the offender violates any one of the conditions of probation, they may be arrested and charged with a new offence of “Breach of Probation”.

### SUSPENDED SENTENCE WITH PROBATION

- 6.82. A judge may choose to delay or “suspend” giving a sentence to the offender. The judge may then release the offender on a probation order. The offender does not serve any jail time but is under the supervision of a probation officer.
- 6.83. A judge may use this option to see how the offender complies with their probation. A suspended sentence provides for a specific penalty that will be available to a judge if the offender does not comply with the conditions of the probation. This allows the judge to decide on a more serious penalty or to suspend the sentence until the probation period is complete.

### INTERMITTENT SENTENCE

- 6.84. When a judge orders a sentence of 90 days or less, the offender may be able to serve the sentence on weekends instead of on a continuous basis. This allows the offender to go to work

or school, care for children, or manage any health concerns. This sentence always comes with a probation order. The offender must abide by the probation order when they are not in jail.

### IMPRISONMENT

- 6.85. The offender may go to jail. The judge can also order a “No Contact Order” as part of the sentence. This means the offender cannot contact the victim from jail.
- 6.86. If the sentence is less than two years, the offender is sent to a “Provincial Jail”. A probation order may also be given to start when the offender gets out of jail.
- 6.87. If the sentence is two years or more, the offender will be sent to “Federal Prison”. There are minimum, medium and maximum-security prisons. The security level is determined by the risk the offender poses within the prison.
- 6.88. Victims are entitled, upon request, to receive information about the offender who harmed them, to provide information at specific times, and to attend parole hearings, through services provided by the Correctional Service of Canada and the Parole Board of Canada.

### A GUIDE FOR DEALING WITH SEXUAL VIOLENCE IN MOVIES, SHOWS, NEWS, AND SOCIAL MEDIA

#### GENERAL

6.89. The media can be a great tool for increasing public awareness about sexual misconduct, but it can also pose challenges for some affected persons. Portrayals of sexual violence in movies, television shows, the news, and social media can prompt negative reactions, from flashbacks and anxiety to feelings of sadness or irritability. Below are a few ways to help limit your exposure to media that could prompt these uncomfortable experiences.<sup>50</sup> Above all, you are in control of what you watch or read.

#### MOVIES AND TV SHOWS

6.90. Movies and television programs can contain dramatic plots that depict sexual violence, graphic scenes, or emphasize trauma over healing.

- **Pay attention to the warnings.** If you're concerned a movie or television show might make you feel uncomfortable, read ahead. TV Guide blurbs, movie reviews, and explanations of ratings can give you a sense of the content. If you want to watch but are unsure, plan to view in a space that feels safe for you, such as your home, rather than a crowded theatre.
- **Remember, this isn't the whole story.** Often, movies and television shows leave out the most critical part: the healing process. It can take a long time for a victim to move forward—but that doesn't necessarily make for entertaining content. Movies and television shows might emphasize the drama of the victim experience over the positive steps forward.

#### NEWS MEDIA

6.91. Newspapers, magazines, and their web components can all report on instances of sexual violence. Usually these cases feature a high-profile person or expose a larger issue within an institution.

- **It's not just news.** News outlets work hard to attract readers. These accounts might be graphic, sensationalize the crime, or even defend the perpetrator.
- **People are going to react.** Stories of sexual violence tend to prompt strong reactions from the public, who either agree or disagree with the allegations. It can be painful to read about people not believing a victim's story or the difficulties of a particular investigation. Remind yourself that these stories are not happening to you in this moment, and find comfort by talking to someone you trust.

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<sup>50</sup> "Tips for Survivors on Consuming Media." Rape, Abuse & Incest National Network (RAINN), 13 Sep 17

### SOCIAL MEDIA

6.92. Used the right way, social media can be part of a healing experience for victims, but it also has the potential to cause negative reactions.

- **You are in control of your social media experience.** If you see something that makes you uncomfortable, you can close it at any time. When posting on social media sites, explore privacy and viewing settings to control what information you share with others and what information is visible to you.
- **Pros and cons of sharing.** Many victims share their stories online, either on personal blogs or by contributing to conversations through hashtags like #MeToo. These outlets can give victims a voice and help them move forward. Reading these stories might be inspiring, but it also runs the risk of causing anxiety or other unexpected feelings. Keep in mind you are not obligated to share your story publicly—that is a personal choice.
- **Not everyone uses social media for good.** Sometimes people use technology to hurt another person. They may engage with a victim in a bullying, unsolicited, or non-consensual way. They could also belittle someone’s character or expose details of someone’s life that aren’t meant to be shared.

### A TOOL TO HELP VICTIMS OF SEXUAL MISCONDUCT DEAL WITH DOCTOR'S AND DENTIST'S APPOINTMENTS

6.93. Many victims of sexual misconduct express difficulty with doctor's appointments and other situations, especially when the circumstances may be triggering, but the victim is not comfortable expressing what they need in words. The following cards can be printed and used in these situations. They can be given to the receptionist when you check in for your appointment at the doctor's or dentist's office, or given to the nurse or other health care provider.

**Doctor's appointment -**  
You prefer a woman present

***I am a survivor of sexual assault***

*Often times I find my experience difficult to talk about, and some medical procedures are very triggering. I would be more comfortable with a female in the room.*

*Could you please...*

Explain what you are doing before you do it?  
Explain what you are doing while you're doing it?  
Be patient with me?  
Schedule a longer appointment in case I need it?

**Doctor's appointment -**  
You prefer a male present

***I am a survivor of sexual assault***

*Often times I find my experience difficult to talk about, and some medical procedures are very triggering. I would be more comfortable with a male in the room.*

*Could you please...*

Explain what you are doing before you do it?  
Explain what you are doing while you're doing it?  
Be patient with me?  
Schedule a longer appointment in case I need it?

Dentist appointment -  
General

*I am a survivor of sexual assault*

*Often times I find my experience difficult to talk about, and having dental work done is very triggering for me so I may need to ground myself. Please schedule a longer appointment for me if you think it will be a problem.*

*Could you please...*

Explain what you are doing before you do it?  
Explain what you are doing while you're doing it?  
Have a female in the room?

### SELF-CARE

#### GENERAL

- 6.94. Self-care following trauma is vital, both for victims of trauma as well as for those who support them. Traumatic events can cause people to feel angry, frustrated, helpless, and afraid. They can also make people want to seek revenge. Studies have shown that acting on this anger and desire for revenge can increase feelings of distress, anger, and guilt rather than decreasing them.
- 6.95. While some people recover after traumatic events on their own, others seek the assistance of a mental health professional within weeks of the event. It is important to note that some individuals delay seeking appropriate support until much later. If you or a person you know is experiencing any of these symptoms, and/or they persist for more than 3-4 weeks, you are encouraged to make contact with a health professional. It is normal to have intense reactions to abnormal events. It is when those reactions persist that medical attention becomes important.

#### A TOOL FOR PRACTICING SELF-CARE AFTER TRAUMA

- 6.96. Whether it happened recently or years ago, self-care can help you cope with the short- and long-term effects of a trauma like sexual assault. Positive coping actions help to reduce anxiety, and lessen other distressing reactions. These types of coping actions improve things not only for today but for the future as well. The following are just a few suggestions that you may like to try.
- **Maintain your lifestyle.** Maintaining your lifestyle and continuing to do what you enjoy is important for your emotional wellness. If you enjoy painting, cooking, exercising, spending time with friends, or other activities, keep them up. It may seem challenging to make time to do these activities, but they can be helpful self-care strategies in the long run. After a trauma, you may be healing from injuries or feeling emotionally drained. Good physical health can support you through this time.

- **Physical self-care.** After a trauma, you may be healing from injuries or feeling emotionally drained. Good physical health can support you through this time.
  - Eat regularly (e.g. breakfast, lunch, dinner)
  - Eat healthily
  - Exercise
  - Get regular medical care when needed
  - Get enough sleep
  - Make time away from technology
- **Reach out and talk about it.** It can continue to be difficult as time goes on and you begin the healing process. You can call the SMRC at 1-844-750-1648 to speak with a trained professional who understands what you're going through for support, options, or to have your questions answered.
- **Make plans.** Sometimes talking about what happened can help you cope with your feelings, and other times it can make you feel more stuck. Make plans that give you a break from talking or thinking about the assault. It could mean starting a new hobby or revisiting one you already enjoy. You could go to dinner with a group of friends who understand this isn't time to discuss what happened. Maybe you prefer a solo activity, like going on long walks. Let this be a time where you can take your mind off the assault.
- **Take time to relax.** Relaxation looks different for everyone. You might consider meditation or deep breathing exercises. Maybe journaling helps you sort through your thoughts and find peace. Build time into your day for these moments of relaxation so that you don't skip out.
- **Take care of your emotional well-being.** Emotional self-care means different things to different people. The key to emotional self-care is being in tune with yourself.
  - Stay in contact with important people in your life
  - Find ways to increase your sense of self-esteem
  - Identify comforting activities, objects, people, relationships, places, and seek them out
  - Allow yourself to cry
  - Find things to make you laugh

### SELF-CARE WHEN SUPPORTING A VICTIM OF SEXUAL ASSAULT

6.97. Good self-care enables you to better care for others, especially if you are supporting someone who has survived sexual assault.



- **Understand the signs of vicarious trauma.**<sup>51</sup> For someone who is providing continued support for a co-worker/friend/someone they supervise, an alleged offender, or for anyone who has been impacted by sexual misconduct, it is important to be aware of the signs of vicarious trauma, which can include:
  - becoming cynical or losing hope;
  - avoiding social or work contact;
  - becoming fearful and overprotective because the world is seen to be dangerous;
  - setting rigid boundaries in relationships or, displaying a lack of boundaries and rescuing others; and
  - abandoning spiritual beliefs.

Self-care isn't always easy to take on by yourself. To speak with someone who is trained to help, contact [Mental Health / Injury resources](#).

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<sup>51</sup> "Trauma and Victimization" issue of Visions Journal, 2007, 3 (3), pg. 15-16

### ADMIN/DISCIPLINARY RESPONSE TOOLS

#### 6.98. TOOL: COMMANDER'S CHECKLIST FOR REPORTS OF AN INCIDENT OR ALLEGATIONS OF SEXUAL ASSAULT

##### IMMEDIATE RESPONSE\*

- Ensure the physical safety of the victim - determine if the alleged offender is still nearby and if the victim desires or needs protection.
- Provide the victim access to emergency healthcare, regardless of visible injuries, unless the victim declines healthcare. Ensure the victim is given priority and treated as an emergency case.
- If the victim wants to have forensic evidence collected after a sexual assault, inform them on how to preserve evidence (by not bathing, showering, having anything by mouth, voiding bladder, or washing garments).
- Ensure Military Police/CFNIS are notified immediately (if a crime is suspected).
- Request JAG support as soon as the victim's immediate safety is assured.
- To the extent practicable, strictly limit knowledge of the facts or details regarding the incident to only those personnel who have a legitimate need-to-know.
- Take action to safeguard the victim from any informal investigative interviews or inquiries, except those conducted by authorities who have a legitimate need-to-know.
- Collect only the necessary information (e.g., victim's identity, location, and time of the incident, name and/or description of the alleged offender(s)). Do not ask detailed questions and/or pressure the victim for responses or information about the incident.
- Ensure that the victim understands the availability of, and benefits associated with, receiving support from the SMRC and other victim support services.
- Ask if the victim needs a support person, which can be a personal friend or family member, to immediately join them. Please note that this support person could later be called to testify as a witness if the case goes to trial.
- Ask if the victim would like a chaplain to be notified and notify accordingly.

##### FOLLOW-UP

- Provide ongoing [victim support](#).
- Apply [disciplinary](#) and/or [administrative](#) as appropriate.
- Establish and implement a plan to protect the affected person, any named witnesses, and the alleged offender from [acts of reprisal](#), where applicable.

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\* The immediate responses will vary depending on how long ago the incident has occurred (weeks, months, or years).

**TOOL: SEXUAL MISCONDUCT INCIDENT MANAGEMENT DECISION TREE  
(ADMINISTRATIVE/DISCIPLINARY ACTION FOCUS)**

|   |  |
|---|--|
| 1 | <p>The CoC's role and responsibilities:</p> <ul style="list-style-type: none"> <li>• Be prepared to receive disclosures. Consult the Respect in the CAF App or the online Operation HONOUR Manual for more details on how to be prepared, particularly with respect to support to victims, and procedural fairness.</li> <li>• Ensure ongoing communication and transparency with the victim. Inquire with the victim as to immediate care, safety and support needs and ensure these are addressed, including encouraging the victim to seek support from individuals close to them (such as friends, partners or colleagues) and referring the victim to support services such as the Sexual Misconduct Response Centre (SMRC).</li> <li>• Determine whether there is a relationship between the victim and the alleged perpetrator which may need to be mitigated. Do you need to separate those involved? Check what the victim would like to have happen. Consider how to mitigate (and monitor continually) the real and ongoing risk of retaliation and immediately address any such issues.</li> <li>• Document lessons, as they are part of a prevention strategy.</li> <li>• Initiate Operation HONOUR Tracking &amp; Analysis System (OPHTAS) case management.</li> <li>• Consult your local Conflict and Complaint Management Services (CCMS) Centre for suspected cases of harassment.</li> <li>• Consult with the SMRC for guidance on effective response as well as on support to victims. SMRC is available to provide coaching to members of the chain of command.</li> </ul> |
| 2 | <p>The CO should consult the Unit Legal Advisor to determine the best approach to dealing with the incident. There are circumstances that will warrant administrative action even before any police or disciplinary investigation is contemplated/complete, such as: removal from command, relief from the performance of military duty (e.g., from supervisory, instructional or key positions), separating the member from their unit, and ordering no contact, nor any form of communication, directly or indirectly with the victim(s) if applicable. An SIR or CDS CCIR may be required.</p>  |
| 3 | <p>COs are not to investigate alleged incidents of sexual misconduct until it is clear that all police with jurisdiction to investigate the matter have declined to investigate. Before proceeding they are to seek advice from their unit legal advisor.</p>  |
| 4 | <p>Regardless of where the complaint was made, jurisdictions (mil or civ) will be decided among the implicated police services and prosecutors, in consultation with the victim. If the incident is sensitive or complex, the Military Police may conduct the investigation even if the alleged behaviour does not constitute a criminal offence. Your Unit Legal Advisor will advise on the most appropriate investigation process. The unit should not conduct an investigation while there is an ongoing police investigation.</p>  |
| 5 | <p>The incident may best be served by conducting a disciplinary investigation, administrative investigation, or a harassment investigation. If a police investigation is not required, and on advice from the Unit Legal Advisor, a Unit Disciplinary Investigation may be conducted. Cases of sexual harassment may be of a serious/sensitive nature such that a special harassment investigator is required IAW DOAD 5012-0. Consult with your Harassment Advisor (HA) and your local CCMS centre to determine the need. Alternate Dispute Resolution may be desired by the affected person for incidents where they feel the impact is minor, or where they prefer a restorative approach, but they must not be ordered to pursue such processes.</p>   |
| 6 | <p>Charges will normally be laid after consultation with the appropriate legal advisor. Lack of a charge should not be construed as a belief that unacceptable behavior did not occur; administrative decision-makers must exercise their own discretion, based on the evidence that is available to them, and based on the standard of proof that they are required to consider (i.e. proof on a balance of probabilities) in making decisions to take or not take any particular administrative action.</p>  |
| 7 | <p>If the member was found not guilty on all charges the CoC should still evaluate if, based on the known facts, it is more likely than not that sexual misconduct did occur, in order to determine whether administrative action is warranted. A review of the facts of the case is required to determine whether, on a balance of probabilities, an incident, special circumstance, or professional deficiency has occurred. If such a determination is made, then a review of the facts of the case is required in order to ensure that the most appropriate administrative action is selected IAW DAOD 5019-2. This includes the CAF member's entire period of service (taking into account their rank, military occupation, experience &amp; position), previous conduct deficiencies, if any, and leadership role, if any.</p>   |
| 8 | <p>Administrative action, including remedial measures, may be taken regardless of the outcome of any disciplinary/criminal investigation or trial. For a conviction in a court, the standard of proof is 'beyond a reasonable doubt', for administrative purposes the standard of proof is 'balance of probabilities'. In conducting the review of the case, keep these principles in mind and carefully look at the evidence based on this standard of proof in order to determine whether an incident, special</p>   |

|    |  |
|----|--|
|    | <p>circumstance, or professional deficiency has occurred. If so, then, IAW DAOD 5019-2, carefully look at the facts of the case, their entire period of service (taking into account the CAF member's rank, military occupation, experience and position), previous conduct deficiencies, if any, and leadership role, if any, in order to ensure that the most appropriate administrative action is selected. Investigation reports may be sought from the MPs/CFNIS by the CO as part of the review. Civilian investigative reports are not normally made available to the CoC; however, in the event that a CAF member is found “not guilty”, a review of the trial transcript, decision of the court, or account of the proceedings obtained from the attending officer may be necessary to determine whether there is sufficient evidence to determine, on a balance of probabilities, that sexual misconduct did occur. Legal advice should be sought in such cases, and DMCA 2 consulted, to ensure consistency across the CAF.</p> |
| 9  | <p>If the case involves repeat offences, cumulative misconduct, or based on other considerations is serious, then a release may be warranted. After reviewing the <a href="#">DMCA 2 - Misconduct Administrative Review web page</a>, consult DMCA 2 for guidance on what administrative actions are warranted. If a NOI to Recommend Release is not advised, and in conjunction with all available information and advice from DMCA 2, take the appropriate administrative action. A guilty finding is not required to recommend a release or impose other administrative actions.</p>  |
| 10 | <p>The NOI to Recommend Release is in and of itself an administrative action. The notice format and requirements can be found at <a href="#">DMCA 2 - Misconduct Administrative Review</a>.</p>  |
| 11 | <p>IAW DAOD 5019-2, the Admin Review file to DMCA 2 shall include the following:</p> <ul style="list-style-type: none"> <li>• CO’s administrative action recommendation</li> <li>• Investigation report(s)</li> <li>• Member’s conduct history</li> <li>• Synopsis of member’s personnel file</li> <li>• Member’s representation</li> <li>• The court transcript, if applicable</li> <li>• Any other pertinent information</li> </ul> <p>Ensure that the OPHTAS case management file is updated as necessary.</p>  |

### SEXUAL MISCONDUCT INCIDENT MANAGEMENT DECISION TREE (GUIDANCE FOR THE CHAIN OF COMMAND WITH RESPECT TO VICTIMS)

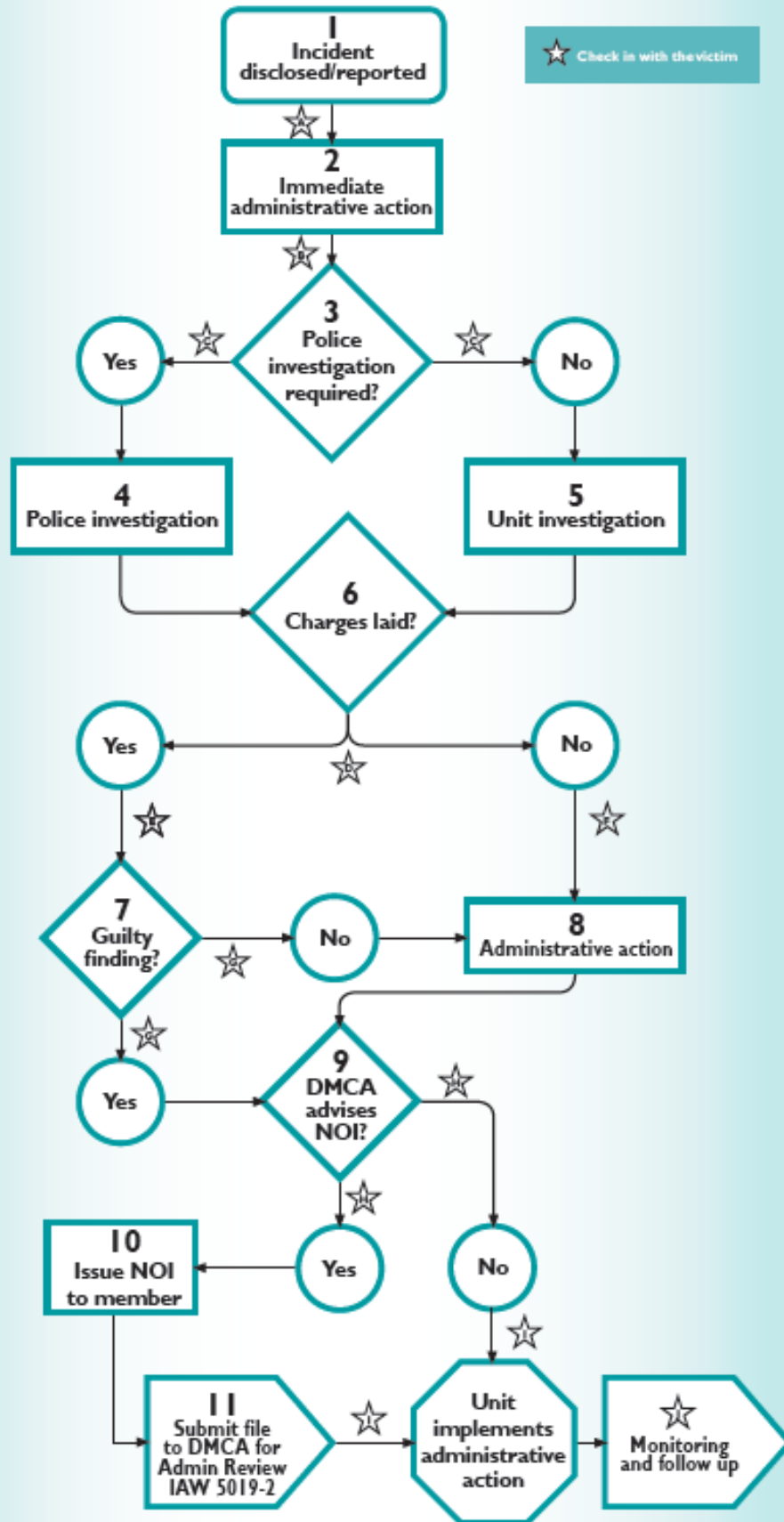
|   |  |
|---|--|
| A | <ul style="list-style-type: none"> <li>• Victims should not be forced to report if they do not feel prepared to do so; they can be referred to SMRC to receive confidential support and information. SMRC can also facilitate anonymous contact with their MP LO, who can provide further information on the options available to them and the process that would be involved.</li> <li>• The guiding principles for supporting affected members, particularly victims, through any process include: maintaining regular and open two-way lines of communication (rather than only one-way transmission of information); checking in with the victim throughout the process at all stages, including during delays (long silences and inaction without information can be very difficult); verifying at regular intervals whether the necessary and appropriate resources and services have been secured for the affected member, whether there are any barriers or other concerns preventing them from reaching out and seeking the needed supports, resources or information. Victims should be strongly encouraged to reach out to, and receive support from, the person(s) of their choosing. In certain regions, professionally trained victim accompaniment personnel may be available, although this new service is not yet widely implemented. Consult the SMRC for more information on the accompaniment services which may be available.</li> <li>• Given that sexual misconduct can often be an experience of losing control and having choices taken away from a victim, it is essential to avoid, as much as possible, repeating that experience through the formal reporting and investigation process. Providing choices and information and ready access to resources at all stages will help ensure that the impact on the affected member is minimized as much as possible and will increase the chances of retention in the long term. This includes being clear and upfront about what kinds of information they may and may not have access to throughout the process (e.g. privacy limitations on the sharing of sensitive personal information such as medical or psycho-social assessments or treatment).</li> <li>• It is important to remember that those affected by sexual misconduct, particularly the more severe and harmful forms, can be under significant emotional/psychological stress. One of the effects this can have is to impair executive functioning (including memory, planning, decision-making, multi-tasking, etc). Affected members may need to receive information</li> </ul> |
|---|--|

## 6 – TOOLS AND RESOURCES

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|---|---|
|   | <p>more than once, and it is important to not only convey information, but also to ensure that it has been understood. This is one of the reasons for ensuring that the affected member has a trusted support person to accompany them; they can assist them through the process.</p> <ul style="list-style-type: none"> <li>• Consult with victims on any accommodations needed to enable them to function effectively until the situation is fully resolved. It is important to work with the victim to balance their perspective and needs with the requirements of the service.</li> </ul>  |
| B | The response to alleged incidents of sexual misconduct should, to the greatest extent possible, reflect the victim's preferences, including with the decision whether to proceed with disciplinary or administrative processes. The victim should be made aware that an administrative process (such as harassment or ADR) may be conducted and the victim will be informed and constantly updated throughout either (disciplinary, administrative, harassment) process.  |
| C | Explain to the victim who will be investigating and why. Provide information on what factors contribute to deciding whether the matter will be investigated by CFNIS, the MPs, the civilian police, or the Unit. Provide information to the victim, via the investigator on case progress. The victim should also be made aware of the different avenues available to them IOT obtain information on the status of their investigation and case (e.g. MP LO through SMRC, via the prosecutor, or the chain of command). SMRC response and support coordinators may also be available to support them through this process, should the victim choose to make a request. If the decision is not to lay a charge the investigator should explain why and discuss the next steps. Victim should be made aware if a Service and/or Criminal Offence is suspected to have occurred and who will be conducting the investigation. CoC should discuss with the victim of how determination was made (and by whom) and ensure a clear understanding of the difference between Code of Service Discipline and Criminal Code and what constitutes an offence under each, as it relates to the incident.  |
| D | Explain whether charges were laid and why, in consultation with legal advisor. When determining which system will exercise jurisdiction, investigators and military prosecutors consider a number of factors including the degree of military interest in the case, the degree of civilian community interest (e.g., public safety concerns), whether the accused, the victim, or both are members of the CAF, and the views of the victim. It should also be noted that the Military Justice System has more options in the type of charges that can be laid with respect to sexual misconduct. In addition to offences under the Criminal Code and the civilian Criminal Justice System, service offences that can be prosecuted also include sexual assault, as well as disgraceful conduct, abuse of a subordinate, and conduct to the prejudice of good order and discipline (including sexual harassment). A decision to not lay charges may be significantly upsetting for those affected by the incident. It is important to set aside sufficient time for a discussion with them to help them understand the decision taken, and to ensure they understand their options if they are not satisfied with the process undertaken. It is important at this stage to check in with the victim about the impact of the decision on them, and to ensure again that they have adequate supports in place. |
| E | The case will proceed either through a Court Martial, Summary Trial, or through the civilian criminal justice system. The chain of command needs to ensure that the victim is provided with the necessary information regarding the type of trial that will take place. The chain of command should provide information regarding the Summary Trial process. The prosecutor and the investigator will provide information to the victim IAW their policies about the Court Martial process. If the matter proceeds through the civilian criminal justice system, the participants in that system will provide information to the victim as per their policies. Victims may obtain information about the status of their case and the court martial process, from military prosecutors at <a href="mailto:CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca">CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca</a> , monitored daily, or to get answers on questions they may have about their file. Information available to victims includes the decision of the prosecutor on whether to prefer a charge against the accused.   |
| F | The CoC must ensure that victims have adequate supports in place if charges are not laid. Victims should also be provided adequate information regarding options available to them in cases where their complaint is not pursued or they are not satisfied with the outcome (admin action, relocation request, etc).  |
| G | Discuss the process after a finding of guilty or not guilty. The process does not stop here, and administrative action up to and including release could still be applied.  |
| H | Ensure that the victim understands the contents of CANFORGEN 049/19 which does not automatically necessitate that the CoC issue a NOI to Recommend Release. Administrative action short of release can also be applied.   |
| I | Inform the victim whether any administrative actions or disciplinary measures have been or will be taken and the substance of these actions/measures if it is deemed appropriate to do so. However information about such actions/measures that include highly sensitive personal information such as medical or psycho-social assessments or treatment will not be shared.   |
| J | The CoC should check in on occasion with the victim, to ensure they are fully supported in their recovery (e.g., access to support services). Monitor the impact on unit morale and cohesion and seek supports ( <a href="#">ICCM</a> , <a href="#">SMRC</a> , etc) to address remaining issues.  |



### Sexual Misconduct Incident Management Decision Tree



6.99. **TOOL: SEXUAL MISCONDUCT VICTIM FLOW CHART (Under Development by SMRC)**

6.100. **TOOL: SEXUAL MISCONDUCT RESPONDENT MAP (Under Development)**

## ANNEX A - GLOSSARY

### ABUSE OF SUBORDINATES<sup>53</sup>

Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to them is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

### ADVERSE PERSONAL RELATIONSHIPS<sup>54</sup>

If a personal relationship has a negative effect on the security, cohesion, discipline or morale of a unit, the personal relationship is considered adverse for the purpose of CAF policy or chain of command directive.

The CAF respects the right of individuals to form personal relationships IAW DAOD 5019-1 *Personal Relationships and Fraternalization*. However, if a personal relationship, particularly one not declared to the chain of command, involves differences in rank, authority, and power it can call into question the consensual nature of the relationship.<sup>55</sup>

Adverse personal relationships are not to be mistaken for “fraternization.” Fraternalization is any relationship between a CAF member and a person from an enemy or belligerent force, or a CAF member and a local inhabitant within a theatre of operations where CAF members are deployed.

### BULLYING<sup>56</sup>

Habitual behaviour that seeks to harm or intimidate those who are perceived as vulnerable.

### BYSTANDER EFFECT<sup>57</sup>

The term bystander effect refers to the phenomenon in which the greater the number of people present, the less likely people are to help a person in distress.

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<sup>53</sup> National Defence Act (R.S.C., 1985, c. N-5), Section 95

<sup>54</sup> DAOD 5019-1 *Personal Relationships and Fraternalization* at 5.1 and 5.2

<sup>55</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

<sup>56</sup> <https://en.oxforddictionaries.com/definition/bully>

<sup>57</sup> The term bystander effect was coined in 1969 by John Darley and Bibb Latane to refer to the effect of certain social pressures on emergency responses in people.



### **CISGENDER**<sup>58</sup>

Due to the developing understanding of constructs, shifting usage of terms, and contextual use of this term, the following definition, taken from the American Psychological Association. (2015). *APA Dictionary of Psychology* (2nd ed.), is offered as guidance only.

Cisgender relates to a gender identity that corresponds to the culturally determined gender roles for one's birth sex (i.e., the biological sex one was born with.) A cisgender man or cisgender woman is thus one whose internal gender identity matches, and presents itself in accordance with, the externally determined cultural expectations of the behaviour and roles considered appropriate for one's sex as male or female. Also called cisgendered.

### **CODE OF SERVICE DISCIPLINE**<sup>59</sup>

Disciplinary action through the military justice system is carried out in accordance with the [Code of Service Discipline \(CSD\)](#), which is Part III of the National Defence Act (NDA). The CSD establishes a number of offences that are uniquely military in nature, for example conduct to the prejudice of good order and discipline, and disgraceful conduct. The CSD also incorporates all offences under the Criminal Code, all other federal statutes and, in certain circumstances, foreign laws.

### **CONSENT**<sup>60</sup>

In the context of sexual misconduct consent is the voluntary and ongoing agreement to engage in sexual activity that is granted without the influence of force, threats, fear, fraud or abuse of authority.

### **DISCRIMINATORY BEHAVIOUR**<sup>61</sup>

Behaviours that are discriminatory in nature. In the context of sexual misconduct this behaviour can be divided into two groups:<sup>62</sup>

- a. Discrimination on the basis of sex:
  - Suggestions that people do not act like a man or woman is supposed to act;
  - Someone being insulted, mistreated, ignored, or excluded because of their sex; and
  - Comments that people are either not good at a particular job or should be prevented from having a particular job because of their sex.

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<sup>58</sup> [American Psychological Association. \(2015\). APA dictionary of psychology \(2nd ed.\). Washington, DC.](#)

<sup>59</sup> The Code of Service Discipline and Me, A Guide to the Military Justice System for Canadian Forces Members.

<sup>60</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

<sup>61</sup> Canadian Human Rights Act, Part I

<sup>62</sup> Statistics Canada Survey, [Sexual Misconduct in the Canadian Armed Forces \(85-603-X\)](#) released November 28, 2016

- b. Discrimination on the basis of sexual orientation, gender identity, or gender expression:
- Someone being insulted, mistreated, ignored, or excluded because of their sexual orientation or assumed sexual orientation; and
  - Someone being insulted, mistreated, ignored, or excluded because they are (or are assumed to be) transgender or because their gender expression does not conform to traditional gender rules and norms.

### **DIVERSITY**<sup>63</sup>

Diversity is any collective mixture characterized by differences and similarities, or all the ways in which we differ. Diversity includes variations within a group such as race, ethnicity, religion, sexual orientation, age or gender amongst others, encompassing differences in natural abilities, personalities and physical characteristics. Managing and valuing diversity is about allowing individuals to make their maximum contribution regardless of any differences. This multiplicity of thoughts, opinions and viewpoints results in a creative and effective team. Finally, diversity is a question of leadership and not a simple matter of embracing a social cause; it means the active inclusion of all CAF members as equitable contributors to mission accomplishment.

### **EMPLOYMENT EQUITY**<sup>64</sup>

Employment Equity is a strategy designed to eliminate discrimination or barriers and open the competition for employment and advancement opportunities to those who might otherwise be excluded. The purpose of the Employment Equity Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

### **FAMILY VIOLENCE**<sup>65</sup>

Family violence (also called domestic violence) is a pattern of behaviour used by one person to gain power and control over another with whom they have or have had an intimate relationship. It includes many different forms of physical and emotional abuse, as well as neglect carried out by family members or intimate partners. It may include a single act of violence, or a number of acts

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<sup>63</sup> "Employment Equity – What is diversity?" National Defence, 18 Sep 2017, <http://cmp-cpm.mil.ca/en/support/employment-equity/employment-equity-index.page>

<sup>64</sup> "Employment Equity – What is diversity?" National Defence, 18 Sep 2017, <http://cmp-cpm.mil.ca/en/support/employment-equity/employment-equity-index.page>

<sup>65</sup> DAOD 5044-4 Family Violence, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-5000/5044-4.page>

that form a pattern of abuse. Family violence can have serious-and sometimes fatal-consequences for victims and for those who see or hear the violence.

Although the Criminal Code does not refer to specific "family violence offences", many Criminal Code offences could be used to charge someone with acts of family violence. For more information on the criminal laws that could be applied, please see family violence [Laws](#).

### **GBA+**<sup>66</sup>

GBA+ is an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives. The "plus" in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. We all have multiple identity factors that intersect to make us who we are; GBA+ also considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability.

### **GENDER**<sup>67</sup>

Refers to the roles, behaviours, activities, and attributes that a given society may construct or consider appropriate for men and women.

### **GENDER EXPRESSION**<sup>68</sup>

Refers to how a person publicly presents gender. This can include behaviour and outward appearance such as dress, hair, make-up, walk, mannerisms, body language and voice. A person's chosen name and pronoun are common ways of expressing their gender.

### **GENDER IDENTITY**<sup>69</sup>

Is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.

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<sup>66</sup> "What is GBA+?" Status of Women Canada, 4 Dec 2018, <http://www.swc-cfc.gc.ca/gba-acis/index-en.html>

<sup>67</sup> [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf)

<sup>68</sup> Ibid

<sup>69</sup> Ibid

### **HAZING**<sup>70</sup>

Hazing is any action taken or any situation created intentionally, that causes embarrassment, harassment or ridicule and risks emotional and/or physical harm to members of a group or team, whether new or not, regardless of the person’s willingness to participate.

### **INTERSEX**<sup>71</sup>

Intersex people are born with any of several variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals that, according to the UN Office of the High Commissioner for Human Rights, "do not fit the typical definitions for male or female bodies". Such variations may involve genital ambiguity, and combinations of chromosomal genotype and sexual phenotype other than XY-male and XX-female.

### **LEADERSHIP TEAM**<sup>72</sup>

The leadership team is comprised of the CO and their key personal staff. Royal Canadian Navy leadership teams normally consist of the CO, Coxswain and Executive Officer (XO). In Army units, leadership teams typically include the CO and RSM. In the Royal Canadian Air Force, the “leadership team” approach is integral to the Team Performance model applied to air crews and controllers. The relationship between the CO and their leadership team is based on the military ethos, which calls for a strong, cohesive team based on a common understanding of the primacy of operations and the shared beliefs, expectations and core values of military service.

### **LGBTQ+**<sup>73,74</sup>

An acronym standing for the categories of lesbian, gay, bisexual, transgender, queer and two-spirit. It may be used to refer to anyone who is non-heterosexual or non-cisgender, instead of exclusively to people who are lesbian, gay, bisexual, or transgender. Those who add intersex people to LGBT groups or combine the two acronyms, use the term LGBTIQ. Others use LGBT+ to encompass a wide spectrum of gender and sexuality.

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<sup>70</sup> “WHAT HAZING LOOKS LIKE” HazingPrevention.Org, 15 Sep 2017, <http://hazingprevention.org/home/hazing/facts-what-hazing-looks-like/>

<sup>71</sup> Money, John; Ehrhardt, Anke A. (1972). *Man & Woman Boy & Girl. Differentiation and dimorphism of gender identity from conception to maturity.* USA: The Johns Hopkins University Press. ISBN 0-8018-1405-7.

<sup>72</sup> CHIEF OF THE DEFENCE STAFF GUIDANCE TO COMMANDING OFFICERS AND THEIR LEADERSHIP TEAMS, June 2017.

<sup>73</sup> <https://www.canada.ca/en/privy-council/campaigns/free-to-be-me/about-us/about-lgbtq2-secretariat.html>

<sup>74</sup> Some use the much shorter style LGBT+ to mean "LGBT and related communities". The initialism LGBTTQIAAP (lesbian, gay, bisexual, transgender, transsexual, queer, questioning, intersex, asexual, ally, pansexual) has also resulted, although such initialisms are sometimes criticized for being confusing and leaving some people out, as well as issues of placement of the letters within the new title. There is also the acronym QUILTBAG (queer and questioning, intersex, lesbian, transgender and two-spirit, bisexual, asexual and ally, and gay and genderqueer).

### **OSTRACISM<sup>75</sup>**

Retaliation in the form of ostracism typically involves exclusion from social acceptance and can include acts like bullying, “unfriending” someone on social media sites, or deliberately not inviting someone to a group activity they normally would have been a part of. It threatens psychological needs (belonging, self-esteem, control, and meaningful existence); and it unleashes a variety of physiological, affective, cognitive, and behavioural responses.

### **PERSONAL RELATIONSHIPS<sup>76</sup>**

The CAF respects the rights of its members to form personal relationships, which it defines as: "An emotional, romantic, sexual or family relationship, including marriage or a common-law partnership or civil union, between two CAF members, or a CAF member and a DND employee or contractor, or member of an allied force."<sup>77</sup>

CAF members must notify their chain of command of any personal relationship which could jeopardize the following CAF policy objectives:

- a. To prevent the erosion of lawful authority;
- b. To maintain operational effectiveness;
- c. To protect vulnerable CAF members and others;
- d. To maintain general standards of professional and ethical conduct; and
- e. To avoid detrimental effects on unit operational effectiveness.

If a personal relationship has a negative effect on the security, cohesion, discipline or morale of a unit, the personal relationship is considered [adverse](#) for the purpose of CAF policy.

### **PROHIBITION ON REPRISALS<sup>78</sup>**

QR&O 19.15 *Prohibition of Reprisals*, prohibits any member of the CAF from taking reprisals against a member who has in good faith made an allegation or report of sexual misconduct.

### **REPRISAL**

Reprisal can involve a range of unjustified personnel actions, such as interfering with promotion, unreasonably downgrading someone’s evaluation, or unfairly denying an award or an assignment.

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<sup>75</sup> Williams, K. D., & Nida, S. A. 2011. Ostracism. *Current Directions in Psychological Science*, 20: 71-75.

<sup>76</sup> DAOD 5019-1 *Personal Relationships and Fraternalization*, 3.3, <http://www.forces.gc.ca/en/about-policies-standards-defence-admin-orders-directives-5000/5019-1.page>

<sup>77</sup> Ibid, 2. Definitions

<sup>78</sup> QR&O 19.15 - Prohibition of Reprisals.

Reprisal can also be subtle, and take the form of things like belittling of ideas, being less friendly, selective exclusion from projects, not overlooking minor mistakes that would otherwise be overlooked, or micromanaging.

### **RESPONDENT**

A CAF member who is the subject of the complaint is deemed to be the respondent. It is important to remember that the respondent has a right to due process and procedural fairness, and an accused member is presumed innocent until proven guilty with the right to a fair trial as guaranteed by the Canadian Charter of Rights and Freedoms.

### **RETALIATION**

Retaliation is an umbrella term encompassing illegal, impermissible, or hostile actions taken as a result of making or being suspected of making a report or a complaint, either formally or informally, of a criminal offense.

### **SAFETY PLAN**

A personalized and proactive tool used to reduce the risk of further harm.

### **SEX<sup>79</sup>**

Refers to the biological and physiological characteristics that define men, women and intersex persons. A person's sex is most often designated by a medical assessment at the moment of birth. This is also referred to as birth-assigned sex.

### **SEXUAL ASSAULT<sup>80</sup>**

In accordance with the Criminal Code, is an assault committed in circumstances of a sexual nature such that the sexual integrity of the complainant/victim is violated. In simple terms, sexual assault is unwanted physical contact of a sexual nature, which includes unwanted sexual touching and sexual activity where the victim was unable to consent.

### **SEXUAL HARASSMENT<sup>81</sup>**

Is harassment (as defined in DAOD 5012-0 *Harassment Prevention and Resolution*) that is sexual in nature; sexual harassment may take many forms including overt sexualized behaviour as well as discrimination based on sex, sexual orientation, and gender expression and identity.

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<sup>79</sup> [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf)

<sup>80</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

<sup>81</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

### SEXUAL MISCONDUCT

The term sexual misconduct is defined in the Defence Terminology Bank (DTB) as conduct of a sexual nature that can cause or causes harm to others. Sexual misconduct, includes:

- Actions or words that devalue a person or group of persons on the basis of their sex, sexuality, sexual orientation, gender identity or expression;
- Jokes of a sexual nature, sexual remarks, advances of a sexual nature or verbal abuse of a sexual nature in the workplace;
- Harassment (DAOD 5012-0) of a sexual nature, including initiation rites of a sexual nature;
- Viewing, accessing, distributing or displaying sexually explicit material in the workplace; and
- Any *Criminal Code* offence of a sexual nature such as:<sup>82</sup>
  - Surreptitiously observing or recording a person in a place where the person could expose his or her genital organs or anal region or her breasts or could be engaged in explicit sexual activity, or distributing such a recording (voyeurism: section 162 of the *Criminal Code*);
  - Publishing, distributing, transmitting, selling or making available an intimate image of another person - i.e., a visual recording in which the person depicted is nude, exposing genital organs, anal region or breasts, or engaged in explicit sexual activity - without their consent (publication of an intimate image without consent: section 162.1 of the *Criminal Code*);
  - Engaging in any kind of sexual activity with another person without their consent (sexual assault: section 271 of the *Criminal Code*);
  - Engaging in any kind of sexual activity with another person who is incapable of consenting, for example due to intoxication (sexual assault: section 271 of the *Criminal Code*); and
  - Engaging in any kind of sexual activity with another person by inducing that person to agree to the sexual activity through abuse of a position of trust, power or authority by virtue of rank or position (sexual assault: section 271 of the *Criminal Code*).

Sexual misconduct can be addressed through the application of administrative measures, through the military justice system by charging an individual with a service offence, or, in the case of behaviour that is also captured in the Criminal Code, through the civilian criminal justice system.

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<sup>82</sup> *Criminal Code*, <https://laws-lois.justice.gc.ca/eng/acts/c-46/>

### **SEXUAL ORIENTATION<sup>83</sup>**

Due to the developing understanding of constructs, shifting usage of terms, and contextual use of this term, the following definition, taken from the American Psychological Association. (2015). *APA dictionary of psychology* (2nd ed.), is offered as guidance only.

Sexual orientation refers to the sex or gender of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex or gender (gay men or lesbians), attraction to members of the other sex or gender (heterosexuals), and attraction to members of both male and female sexes or genders (bisexuals). Some people identify as pansexual or queer in terms of their sexual orientation, which means they define their sexual orientation outside of the gender binary of 'male' and 'female' only.

### **TRANSGENDER<sup>84</sup>**

Is a broad term referring to people with diverse gender identities and expressions that differ from their sex-assigned at birth.

### **TWO-SPIRIT<sup>85</sup>**

Some indigenous people choose to identify as Two Spirit rather than, or in addition to, identifying as lesbian, gay, bisexual, trans\* or queer. Prior to European arrival, Two Spirit people were respected members of their communities and were often accorded special status based on their unique abilities to understand the perspectives of both men and woman. These identities were recognized and celebrated from a young age as gifts from the Creator; Two Spirit people were often the visionaries, healers and medicine people. The term Two Spirit affirms the interrelatedness of all aspects of identity — including gender, sexuality, community, culture, and spirituality. It is an English term used to stand in for the many indigenous words for those with sexual and gender diverse identities.

### **VICARIOUS TRAUMA<sup>86</sup>**

Vicarious trauma can be thought of as the negative changes that happen to someone over time as they witness and deal empathically with victims that they are supporting.

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<sup>83</sup> American Psychological Association. (2015). *APA dictionary of psychology* (2nd ed.). Washington, DC.

<sup>84</sup> [http://cmp-cpm.mil.ca/assets/CMP\\_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf](http://cmp-cpm.mil.ca/assets/CMP_Intranet/docs/en/policies/cfmilpers-01-19-transgender-guidance.pdf)

<sup>85</sup> "Two Spirits, One Voice" Egale, Canada Human Rights Trust. Retrieved from <https://egale.ca/portfolio/two-spirits-one-voice/> on 18 Sep 2017

<sup>86</sup> Signs and symptoms of vicarious traumatization (Saakvitne et al., 2000) Lutherville, MD: Sidran Press



### **VICTIM-CENTERED APPROACH**

A deliberate focus on the needs and concerns of a victim to ensure they receive compassionate and sensitive delivery of services in a non-judgmental manner.

### **WORKPLACE<sup>87</sup>**

The physical work location and the greater work environment where work-related functions and other activities take place and work relationships exist. In the CAF context, the workplace can include places such as messes, on-base clubs, quarters, dining halls, gyms, and sanctioned events such as holiday gatherings and course parties as well as office spaces, classrooms, garrisons, ships, hangars, vehicles, aircraft, online forums, etc. CAF members do not simply work for the CAF, but work, socialize and often live within institutional and social structures established by the military.

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<sup>87</sup> DAOD 9005-1 *Sexual Misconduct Response* (to be promulgated)

### ANNEX B – ORDERS, POLICIES AND DIRECTIVES

#### OPERATION HONOUR – OPERATION ORDER AND FRAGMENTARY ORDERS

- [CDS Operation Order – Operation HONOUR](#)
- [FRAGO 001 to CDS Op Order – Operation HONOUR](#)
- [FRAGO 002 to CDS Op Order - Operation HONOUR](#)
- [FRAGO 003 to CDS Op Order - Operation HONOUR](#)
- [FRAGO 004 to CDS Op Order - Operation HONOUR](#)

#### OTHER RELATED ORDERS AND DIRECTIVES

- [Strong, Secure, Engaged: Canada’s Defence Policy](#)
- [CAF Diversity Strategy \(DWAN only\)](#)
- [CDS Direction on Women, Peace, and Security](#)
- [CDS Guidance to Commanding Officers and their Leadership Teams \(DWAN Only\)](#)
- [Defence Ethics Program](#)
- [QR&O article 4.02 General Responsibilities of Officers](#)
- [QR&O article 5.01 General Responsibilities of Non-Commissioned Members](#)
- [DAOD 5012-0 Harassment Prevention and Resolution](#)
- [DAOD 5019-1 Personal Relationships and Fraternalization](#)
- [DAOD 5019-2 Administrative Review](#)
- [DAOD 5019-4 Remedial Measures](#)
- [DAOD 5019-7 Alcohol Misconduct](#)
- [DAOD 5044-4 Family Violence](#)
- [DAOD 5046-0 Alternative Dispute Resolution](#)
- [DAOD 5047-1 Office of the Ombudsman](#)
- [DAOD 7026-1 Management of Administrative Investigations](#)
- [DAOD 9005-1 Sexual Misconduct Response \(to be promulgated\)](#)

#### MILITARY JUSTICE SYSTEM

- [Canada’s Military Justice System](#)
- [Canada’s Court Martial System](#)

#### DIRECTOR OF MILITARY PROSECUTIONS POLICY DIRECTIVES

- [002 Pre-Charge Screening](#)
- [003 Post-Charge Review](#)
- [004 Sexual Misconduct Offences](#)
- [007 Responding to Victims’ Needs](#)
- [008 Plea, Trial and Sentence Resolution Discussions](#)
- [012 Witness Interviews](#)



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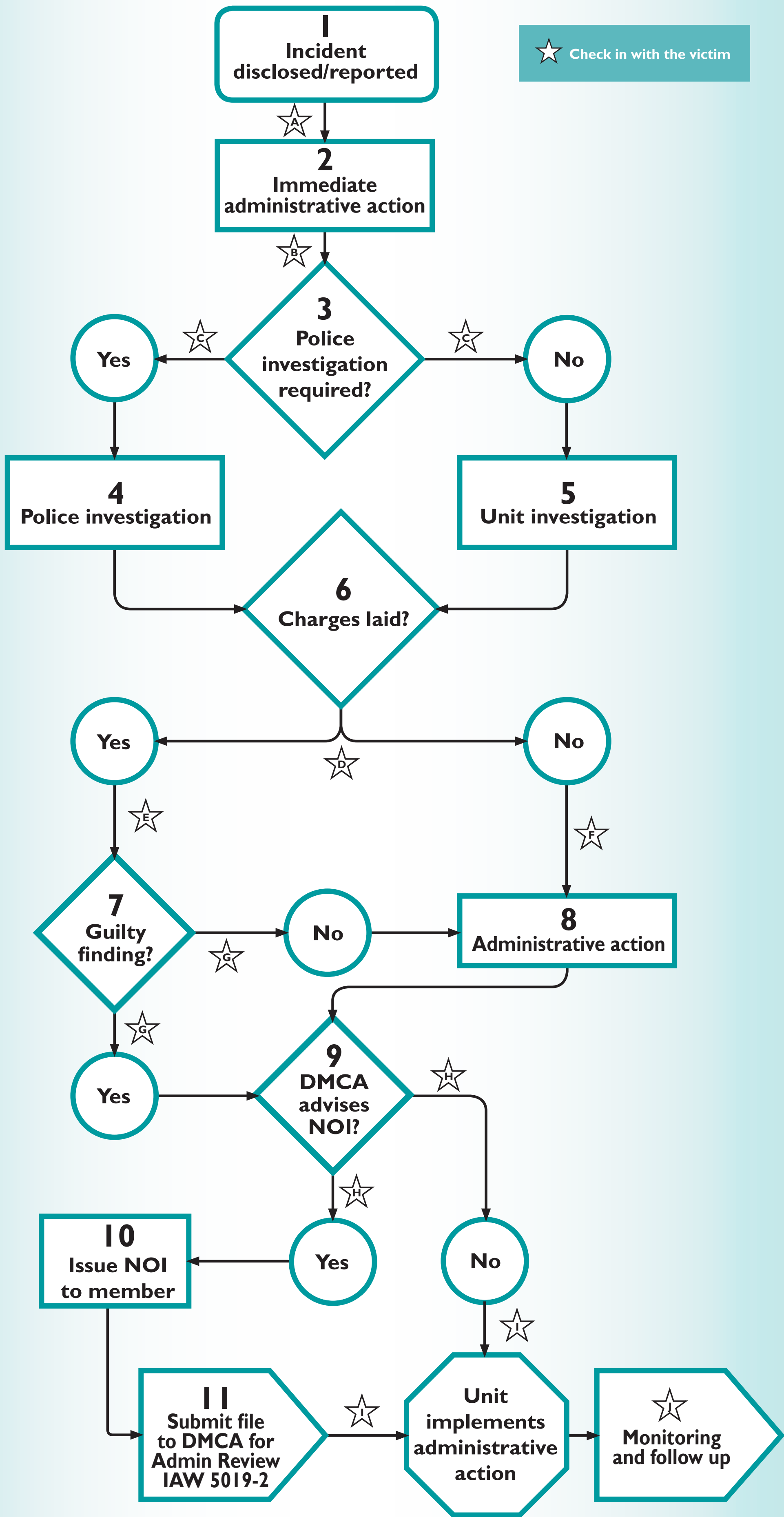
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### Sexual Misconduct Incident Management Decision Tree

★ Check in with the victim





## Sexual Misconduct Incident Management Decision Tree (Administrative/Disciplinary Action Focus)

- 1** The chain of command's role and responsibilities:
  - Be prepared to receive disclosures. Consult the Respect in the CAF App or the online Operation HONOUR Manual for more details on how to be prepared, particularly with respect to support to victims, and procedural fairness.
  - Ensure ongoing communication and transparency with the victim. Inquire with the victim as to immediate care, safety and support needs and ensure these are addressed, including encouraging the victim to seek support from individuals close to them (such as friends, partners or colleagues) and referring the victim to support services such as the Sexual Misconduct Response Centre (SMRC).
  - Determine whether there is a relationship between the victim and the alleged perpetrator which may need to be mitigated. Do you need to separate those involved? Check what the victim would like to have happen. Consider how to mitigate (and monitor continually) the real and ongoing risk of retaliation and immediately address any such issues.
  - Document lessons, as they are part of a prevention strategy.
  - Initiate Operation HONOUR Tracking & Analysis System (OPHTAS) case management.
  - Consult your local Conflict and Complaint Management Services (CCMS) centre for suspected cases of harassment.
  - Consult with the SMRC for guidance on effective response as well as on support to victims. SMRC is available to provide coaching to members of the chain of command.
- 2** The commanding officer should consult the Unit Legal Advisor to determine the best approach to dealing with the incident. There are circumstances that will warrant administrative action even before any police or disciplinary investigation is contemplated/complete, such as: removal from command, relief from the performance of military duty (e.g., from supervisory, instructional or key positions), separating the member from their unit, and ordering no contact, nor any form of communication, directly or indirectly with the victim(s) if applicable. A Significant Incident Report (SIR) or CDS Commander's Critical Information Requirement (CCIR) may be required.
- 3** Commanding officers are not to investigate alleged incidents of sexual misconduct until it is clear that all police with jurisdiction to investigate the matter have declined to investigate. Before proceeding they are to seek advice from their Unit Legal Advisor.
- 4** Regardless of where the complaint was made, jurisdictions (mil or civ) will be decided among the implicated police services and prosecutors, in consultation with the victim. If the incident is sensitive or complex, the Military Police may conduct the investigation even if the alleged behaviour does not constitute a criminal offence. Your Unit Legal Advisor will advise on the most appropriate investigation process. The unit should not conduct an investigation while there is an ongoing police investigation.
- 5** The incident may best be served by conducting a disciplinary investigation, administrative investigation, or a harassment investigation. If a police investigation is not required, and on advice from the Unit Legal Advisor, a Unit Disciplinary Investigation may be conducted. Cases of sexual harassment may be of a serious/sensitive nature such that a special harassment investigator is required in accordance with DOAD 5012-0. Consult with your Harassment Advisor (HA) and your local CCMS centre to determine the need. Alternate Dispute Resolution may be desired by the affected person for incidents where they feel the impact is minor, or where they prefer a restorative approach, but they must not be ordered to pursue such processes.
- 6** Charges will normally be laid after consultation with the appropriate legal advisor. Lack of a charge should not be construed as a belief that unacceptable behavior did not occur; administrative decision-makers must exercise their own discretion, based on the evidence that is available to them, and based on the standard of proof that they are required to consider (i.e. proof on a balance of probabilities) in making decisions to take or not take any particular administrative action.
- 7** If the member was found not guilty on all charges the chain of command should still evaluate if, based on the known facts, it is more likely than not that sexual misconduct did occur, in order to determine whether administrative action is warranted. A review of the facts of the case is required to determine whether, on a balance of probabilities, an incident, special circumstance, or professional deficiency has occurred. If such a determination is made, then a review of the facts of the case is required in order to ensure that the most appropriate administrative action is selected in accordance with DAOD 5019-2. This includes the CAF member's entire period of service (taking into account their rank, military occupation, experience & position), previous conduct deficiencies, if any, and leadership role, if any.
- 8** Administrative action, including remedial measures, may be taken regardless of the outcome of any disciplinary/criminal investigation or trial. For a conviction in a court, the standard of proof is 'beyond a reasonable doubt', for administrative purposes the standard of proof is 'balance of probabilities'. In conducting the review of the case, keep these principles in mind and carefully look at the evidence based on this standard of proof in order to determine whether an incident, special circumstance, or professional deficiency has occurred. If so, then, in accordance with DAOD 5019-2, carefully look at the facts of the case, their entire period of service (taking into account the CAF member's rank, military occupation, experience and position), previous conduct deficiencies, if any, and leadership role, if any, in order to ensure that the most appropriate administrative action is selected. Investigation reports may be sought from the MPs/CFNIS by the commanding officer as part of the review. Civilian investigative reports are not normally made available to the chain of command; however, in the event that a CAF member is found "not guilty", a review of the trial transcript, decision of the court, or account of the proceedings obtained from the attending officer may be necessary to determine whether there is sufficient evidence to determine, on a balance of probabilities, that sexual misconduct did occur. Legal advice should be sought in such cases, and Director Military Career Administration (DMCA) 2 consulted, to ensure consistency across the CAF.
- 9** If the case involves repeat offences, cumulative misconduct, or based on other considerations is serious, then a release may be warranted. After reviewing the [DMCA 2 - Misconduct Administrative Review web page](#), consult DMCA 2 for guidance on what administrative actions are warranted. If a Notice of Intent (NOI) to Recommend Release is not advised, and in conjunction with all available information and advice from DMCA 2, take the appropriate administrative action. A guilty finding is not required to recommend a release or impose other administrative actions.
- 10** The NOI to Recommend Release is in and of itself an administrative action. The notice format and requirements can be found at [DMCA 2 - Misconduct Administrative Review](#).
- 11** In accordance with DAOD 5019-2, the administrative review file to DMCA 2 shall include the following:
  - Commanding officer's administrative action recommendation
  - Investigation report(s)
  - Member's conduct history
  - Synopsis of member's personnel file
  - Member's representation
  - The court transcript, if applicable
  - Any other pertinent information
 Ensure that the OPHTAS case management file is updated as necessary.

## Sexual Misconduct Incident Management Decision Tree (Guidance for the Chain of Command with respect to victims)

- A**
  - Victims should not be forced to report if they do not feel prepared to do so; they can be referred to SMRC to receive confidential support and information. SMRC can also facilitate anonymous contact with their Military Police Liaison Officer, who can provide further information on the options available to them and the process that would be involved.
  - The guiding principles for supporting affected members, particularly victims, through any process include: maintaining regular and open two-way lines of communication (rather than only one-way transmission of information); checking in with the victim throughout the process at all stages, including during delays (long silences and inaction without information can be very difficult); verifying at regular intervals whether the necessary and appropriate resources and services have been secured for the affected member and whether there are any barriers or other concerns preventing them from reaching out and seeking the needed supports, resources or information. Victims should be strongly encouraged to reach out to, and receive support from, the person(s) of their choosing. In certain regions, professionally trained victim accompaniment personnel may be available, although this new service is not yet widely implemented. Consult the SMRC for more information on the accompaniment services which may be available.
  - Given that sexual misconduct can often be an experience of losing control and having choices taken away from a victim, it is essential to avoid, as much as possible, repeating that experience through the formal reporting and investigation process. Providing choices and information and ready access to resources at all stages will help ensure that the impact on the affected member is minimized as much as possible and will increase the chances of retention in the long term. This includes being clear and upfront about what kinds of information they may and may not have access to throughout the process (e.g. privacy limitations on the sharing of sensitive personal information such as medical or psycho-social assessments or treatment).
  - It is important to remember that those affected by sexual misconduct, particularly the more severe and harmful forms, can be under significant emotional/psychological stress. One of the effects this can have is to impair executive functioning (including memory, planning, decision-making, multi-tasking, etc.). Affected members may need to receive information more than once, and it is important to not only convey information, but also to ensure that it has been understood. This is one of the reasons for ensuring that the affected member has a trusted support person to accompany them; they can assist them through the process.
  - Consult with victims on any accommodations needed to enable them to function effectively until the situation is fully resolved. It is important to work with the victim to balance their perspective and needs with the requirements of the service.
- B** The response to alleged incidents of sexual misconduct should, to the greatest extent possible, reflect the victim's preferences, including the decision whether to proceed with disciplinary or administrative processes. The victim should be made aware that an administrative process (such as harassment or ADR) may be conducted and the victim will be informed and constantly updated throughout either (disciplinary, administrative, harassment) process.
- C** Explain to the victim who will be investigating and why. Provide information on what factors contribute to deciding whether the matter will be investigated by CFNIS, the MPs, the civilian police, or the Unit. Provide information to the victim, via the investigator on case progress. The victim should also be made aware of the different avenues available to them IOT obtain information on the status of their investigation and case (e.g. Military Police Liaison Officer through SMRC, via the prosecutor, or the chain of command). SMRC response and support coordinators may also be available to support them through this process, should the victim choose to make a request. If the decision is not to lay a charge the investigator should explain why and discuss the next steps. Victim should be made aware if a Service and/or Criminal Offence is suspected to have occurred and who will be conducting the investigation. Chain of command should discuss with the victim how the determination was made (and by whom) and ensure a clear understanding of the difference between Code of Service Discipline and Criminal Code and what constitutes an offence under each, as it relates to the incident.
- D** Explain whether charges were laid and why, in consultation with legal advisor. When determining which system will exercise jurisdiction, investigators and military prosecutors consider a number of factors including the degree of military interest in the case, the degree of civilian community interest (e.g., public safety concerns), whether the accused, the victim, or both are members of the CAF, and the views of the victim. It should also be noted that the Military Justice System has more options in the type of charges that can be laid with respect to sexual misconduct. In addition to offences under the Criminal Code and the civilian Criminal Justice System, service offences that can be prosecuted also include sexual assault, as well as disgraceful conduct, abuse of a subordinate, and conduct to the prejudice of good order and discipline (including sexual harassment). A decision to not lay charges may be significantly upsetting for those affected by the incident. It is important to set aside sufficient time for a discussion with them to help them understand the decision taken, and to ensure they understand their options if they are not satisfied with the process undertaken. It is important at this stage to check in with the victim about the impact of the decision on them, and to ensure again that they have adequate supports in place.
- E** The case will proceed either through a Court Martial, Summary Trial, or through the civilian criminal justice system. The chain of command needs to ensure that the victim is provided with the necessary information regarding the type of trial that will take place. The chain of command should provide information regarding the Summary Trial process. The prosecutor and the investigator will provide information to the victim in accordance with their policies about the Court Martial process. If the matter proceeds through the civilian criminal justice system, the participants in that system will provide information to the victim as per their policies. Victims may obtain information about the status of their case and the court martial process, from military prosecutors at [CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca](mailto:CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca), monitored daily, or to get answers on questions they may have about their file. Information available to victims includes the decision of the prosecutor on whether to prefer a charge against the accused.
- F** The chain of command must ensure that victims have adequate supports in place if charges are not laid. Victims should also be provided adequate information regarding options available to them in cases where their complaint is not pursued or they are not satisfied with the outcome (administrative action, relocation request, etc.).
- G** Discuss the process after a finding of guilty or not guilty. The process does not stop here, and administrative action up to and including release could still be applied.
- H** Ensure that the victim understands the contents of CANFORGEN 049/19 which does not automatically necessitate that the chain of command issue a NOI to Recommend Release. Administrative action short of release can also be applied.
- I** Inform the victim whether any administrative actions or disciplinary measures have been or will be taken and the substance of these actions/measures if it is deemed appropriate to do so. However information about such actions/measures that include highly sensitive personal information such as medical or psycho-social assessments or treatment will not be shared..
- J** The chain of command should check in on occasion with the victim, to ensure they are fully supported in their recovery (e.g., access to support services). Monitor the impact on unit morale and cohesion and seek supports (CCMS, SMRC, etc) to address remaining issues.