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by Charlotte Duval-Lantoiné
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POLICY PERSPECTIVE

REFORMING THE OFFICE OF THE OMBUDSMAN: ESTABLISHING MEANINGFUL OVERSIGHT OF THE CANADIAN ARMED FORCES

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The sexual misconduct scandals of 2021 shattered the perception that there was any form of oversight for national defence in Canada. The very public demise (“[culmination](#)”) of [Operation Honour](#) following a tsunami of allegations against the most senior Canadian Armed Forces (CAF) officers and the government’s response to it left many to [wonder](#) if any form of control of the military even remained in Canada. Then-minister of Defence Harjit Sajjan’s [inability](#) to handle allegations against former chief of the defence staff Jonathan Vance, partisan tensions within the House of Commons’ Defence Committee, a prime minister [bewildered](#) by the CAF’s response to the crisis – it seems that the powers put in place to hold the CAF accountable broke down.

In December 2021, the recently appointed Anita Anand, Chief of the Defence Staff Wayne Eyre and then-deputy minister Jody Thomas acknowledged the government’s – and more specifically the defence team’s – failure to act in the face of sexual violence in the ranks. Trust will be hard to restore. In the [words](#) of advocacy group It’s Not Just 700 (now It’s Not Just 20K): “Many of our group members have expressed that they will remain skeptical until they see tangible changes happen in the CAF/DND.”

This crisis is not new. Throughout the spring of 1998, [Maclean’s](#) published a series of cover issues pertaining to sexual assaults in the CAF. The cycle repeated in 2014 and 2015; this time, the stories were unearthed by the francophone outlet [L’Actualité](#). As a result, experts have called for the establishment of an external oversight body that would monitor the CAF’s efforts towards culture change.¹

Historical Background: The Inspector General

The push for stronger external oversight dates to the mid-1990s. In 1995, Defence minister Doug Young called for a [commission of inquiry](#) into the [killing](#) of Somali teenagers at the hands of the Canadian Airborne Regiment and the defence headquarter’s attempts at cover-up. Responsible for investigating the circumstances that led to the crimes and the response from the Department of National Defence (DND) and CAF officials, the commission [drew the picture](#) of a CAF whose processes and culture had allowed for unethical behaviours to become the norm, contributing to profound leadership issues.

¹ Maya Eichler and Marie-Claude Gagnon, “External Monitoring Body Would Hold Military Accountable for Sexual Assault,” *Policy Options*, February 6, 2020, <https://policyoptions.irpp.org/magazines/february-2020/external-monitoring-body-would-hold-military-accountable-for-sexual-assaults/>; Lee Berthiaume, “Following Vance Allegations, Feds Urged to Monitor Military’s Handling of Sexual Misconduct,” *Global News*, February 22, 2021, <https://globalnews.ca/news/7654529/vance-allegations-sexual-misconduct-military-oversight-experts/>; Maya Eichler and Karen Breeck, “Canada’s Problematic Military Culture Warrants an Oversight Agency,” *Policy Options*, March 12, 2021, <https://policyoptions.irpp.org/magazines/march-2021/canadas-problematic-military-culture-warrants-an-oversight-agency/>; David Pugliese, “Creation of an Inspector General Position Recommended to DND, Nut Lawyer Says Watchdog Needs to be a Civilian,” *Ottawa Citizen*, December 20, 2021, <https://ottawacitizen.com/news/national/defence-watch/creation-of-inspector-general-position-recommended-to-dnd-but-lawyer-says-watchdog-needs-to-be-a-civilian>.



One of the commission's most notable recommendations was for the establishment of an office of the inspector general. The objective was to have a [Governor in Council](#)-appointed civilian, directly responsible to Parliament, to monitor almost every aspect of the military, from the military justice system and operational effectiveness, to morale, training, finances and whistleblower protection, as well as investigating officer misconduct and reviewing general/flag officer appointments. To fulfil its role, the inspector general would have been granted access to all documents and units without prior approval from the chief of the defence staff, the minister or deputy minister of National Defence.

The commission sought to give the inspector general wide-ranging powers to examine all aspects of defence after it found the Office of the Auditor General lacked the capacity to monitor the defence team on an ongoing basis. The grievance system was “slow”, “unresponsive” and lacking transparency and there was no review system outside of DND.

Then-Defence minister Art Eggleton, [rejected](#) this recommendation, arguing the office of the inspector general “would [have] obscure[d] the authority of the Minister before Parliament [[ministerial responsibility](#)] and introduce[d] ambiguities regarding the responsibilities of the Chief of the Defence Staff and Deputy Minister in both practice and law,” as it would create a “counter-expert body” that would report to Parliament.

Also, before the commission tabled its report, DND had created the Office of the DND/CAF Ombudsman, the [National Investigative Services](#) (CFNIS) and the [Military Police Complaint Commission](#). The minister therefore argued that those new entities, alongside the chief of review services, the CAF provost marshal and the military police, the Office of the Auditor General, the [Canadian Human Rights Commission](#), the [Commissioner of Official Languages](#), the [Office of the Privacy Commissioner](#) and the [Access to Information Commissioner](#) offered substantial oversight of the military.

Some of the problems with oversight the commission identified in 1997 still exist. With the CAF now having faced its third sexual misconduct crisis in 20 years, it is time to give thought to former Supreme Court Justice Marie Deschamps' recommendation and the spirit of the Somalia Commission of Inquiry.

The Status Quo

The agencies responsible for external oversight for DND/CAF are siloed, operate on an ad hoc basis and lack the resources to provide continuous monitoring.

The [Office of the Auditor General](#) only conducts studies on a topic it “[considers](#) to be of significance and of a nature that should be brought to the attention of the House of Commons.” Since 2015, the Office delivered [11](#) reports pertaining to national defence (excluding matters related to sustainable development, which it covers more regularly). One of those studies investigated sexual misconduct ([in 2018](#)). For fiscal year 2021-22, the Auditor General is not



[planning](#) to deliver any defence-related studies. The Auditor General directly reports to the House of Commons Standing Committee on [Public Account](#), meaning the committee would only discuss defence-related issues if the Office published a study.

Defence matters have their own dedicated committees in the House of Commons and the Senate. The defence portfolio being wide, external monitoring of the CAF's progress on any topic is not continuous. Nor do committee studies necessarily lead to reports, as we [saw in 2021](#) at the House of Commons Standing Committee on National Defence. Across all parliamentary committees that can review defence-related matters, there have been only four parliamentary reports discussing sexual misconduct between 2015 and March 2022 – two of those came from the House of Commons Standing Committee on the Status of Women.²

Internal monitoring entities in the DND follow the same patterns; however, their lack of independence and the limited possibilities for public access to their findings have been additional sources of concern.

These entities include³ the [Assistant Deputy Minister \(Review Services\)](#), the [Defence Audit Committee](#), the [Military Police Group](#) and the [Canadian Forces National Investigative Services](#), the [Provost Marshal](#), the [Military Police Complaint Commission](#), [Military Grievances External Review Committee](#) and the [DND/CAF Ombudsman](#). While these organizations' responsibilities and to whom they report differ, they can only investigate when they receive a complaint or request from the minister, the deputy minister, or the chief or vice-chief of the defence staff. Their mandates revolve around [grievances](#) or the military justice system (the exception being Assistant Deputy Minister [Review Services] and the Defence Audit Committee). Not all organizations release their reports to the public or can make formal recommendations to the leadership.

Since the integration of women into the combat arms in 1989, establishing measurements, assessing progress and changing course have been an issue for the CAF. A [report](#) from the Assistant Deputy Minister (Review Services) found there was a discrepancy between what those responsible for the implementation of [Operation Honour](#) declared publicly ([namely](#) that the military had fully put in place the Deschamps recommendations) and the reality of said implementation. The lack of strategy behind Operation Honour and the ever-changing measurements and directives (on average once every three months) were some of the issues leading to such a discrepancy.⁴ The Canadian Forces Strategic Response Team – Sexual Misconduct, the agency responsible internally to implement and track the effect of Operation Honour-related policies, operated without a plan, published four reports in a four-year period

² Standing Committee on Public Accounts, "Inappropriate Sexual Behaviour—Canadian Armed Forces, of the 2018 Fall Reports of the Auditor General of Canada," February 2019, <https://www.ourcommons.ca/Committees/en/PACP/StudyActivity?studyActivityId=10386693>; Standing Senate Committee on National Security and Defence, "Sexual Harassment and Violence in the Canadian Armed Forces," May 2019, https://sencanada.ca/content/sen/committee/421/SECD/Reports/SECD_Report_harassment_May_19_e.pdf; Standing Committee on the Status of Women, "A Force for Change: Creating a Culture of Equality for Women in the Canadian Armed Forces," June 2019, <https://www.ourcommons.ca/DocumentViewer/en/42-1/FEWO/report-18/>; Standing Committee on the Status of Women, "Eliminating Sexual Misconduct within the Canadian Armed Forces," June 2021, <https://www.ourcommons.ca/DocumentViewer/en/43-2/FEWO/report-10/>.

³ As described by then-Defence minister Art Eggleton in 1997 and by the current DND leadership. These exclude any form of monitoring that is not centralized in NDHQ, such as the different lessons-learned centres in the army, navy and air force.

⁴ Allan English, "'Comprehensive Culture Change' and Diversity in the Canadian Armed Forces: An Assessment of Operation Honour after Three Years and Implications for the Latest CAF 'Diversity Strategy,'" Paper presented at the IUS Canada Conference, Ottawa, October 2018.



(the reports were supposed to be semi-annual) and there was no consistent measurement and tracking system.⁵

The implementation of Operation Honour revealed significant gaps in the CAF's ability to conduct culture change and assess progress. Whether it is a lack of understanding of how to pursue organizational culture change and tackle sexual violence or a lack of dedicated resources (time, money and personnel), keeping the status quo in terms of oversight can no longer be an option. The diffuse services available for service members to issue a complaint (related to sexual violence or not) has led some of them not to [report](#) because they did not know [which service](#) to go to. The [delays](#) in the treatment of grievances and the lack of independence (perceived or real) of those from the military hierarchy are also contributing factors.

The CAF has also argued the [Sexual Misconduct Response Centre](#) (SMRC) and Statistics Canada (through their [surveys](#) concerning sexual misconduct in the ranks) offer monitoring on the sexual misconduct and culture change file. However, both Deschamps and the SMRC's executive director [have said](#) the centre does not meet the criteria to do proper oversight. On the other hand, the focus of the Statistics Canada survey on service members' awareness of Operation Honour (rather than its efficacy) has led researchers to [question](#) their ability to provide an accurate enough picture of the incidence of sexual misconduct year by year. Also, no survey has been published since the spring of 2019.

The 2021 scandals cast doubt on the [limited independence](#) of the National Investigative Services, the provost marshal and the military justice system. The allegations against Vance – who has [pleaded guilty](#) to obstruction of justice – also [brought into question](#) the Office of the DND/CAF Ombudsman's independence and its ability to oversee the CAF. Former and current ombudsmen Gary Walbourne and Gregory Lick have painted a dim picture of the power of the role, especially when a complaint involves a chief of the defence staff. Stories of interference and reprisals also emerged in their [committee testimonies](#) and many of the Office's [reports](#) since its inception.

In light of those shortcomings, Deschamps reignited the idea of an external monitoring body in her 2015 [report](#) examining the prevalence of sexual violence in the CAF (the first report of its kind). The [Office of the Auditor General](#) (2018), the House of Commons [Standing Committee on Public Accounts](#) (2019), the Standing Senate Committee on [National Security and Defence](#) (2019), the House of Commons [Standing Committee on the Status of Women](#) (2021), the [Department of National Defence \(DND\)/ CAF Ombudsman](#) (2021), experts and retired service members who have experienced sexual violence have echoed this recommendation ever since.⁶

⁵ CSRT-SM, "Canadian Armed Forces Progress Report Addressing Inappropriate Sexual Behaviour," Ottawa: National Defence, February 2016, https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/caf-community-support-services/sexual-misconduct-progress-report-en.pdf; CSRT-SM, "Canadian Armed Forces Progress Report Addressing Inappropriate Sexual Behaviour," Ottawa: National Defence, August 2016, https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/about-report-pubs-op-honour/op-honour-progress-report-29-aug-2016.pdf; CSRT-SM, "Canadian Armed Forces Progress Report Addressing Sexual Misconduct," Ottawa: National Defence, April 2017, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/sexual-misbehaviour/third-progress-report.html>; CSRT-SM, "Canadian Armed Forces Progress Report Addressing Sexual Misconduct," Ottawa: National Defence, February 2019, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/sexual-misbehaviour/progress-report-four/part-one.html>.

⁶ Eichler and Gagnon; Berthiaume; Eichler and Breeck; Pugliese.



A Modest Proposal: Reform the Office of the Ombudsman

External monitoring does not have to be as far-ranging as an inspector general to have an impact and Parliament does not need to start from scratch to establish the necessary body. In June 2021, the DND/CAF ombudsman published a [position paper](#) that included a draft legislation offering ideas on how to strengthen the office's power of oversight.

The proposed [Act to Establish the Office of the Defence Ombudsman](#) reiterates some of the duties the Office already holds. Where it diverges from the way the Office already operates is by suggesting the ombudsman report directly to Parliament, table its reports directly to the Speaker of the House (the same way the Office of the Auditor General operates) and gain control over all aspects of the Office's management.

The proposal also grants the ombudsman's office the power to escalate matters when it deems the response from the original authority insufficient. If the insufficient response comes from the minister of National Defence, the proposal allows the ombudsman to directly inform the prime minister. The draft legislation also seeks to expand the ombudsman's access to all necessary documents, individuals and facilities, except when the chief of the defence staff judges access would impinge on "operational and security priorities" or when it would compromise the integrity of a military police investigation. While those restrictions would grant significant discretion to the chief of the defence staff and the provost marshal, the act suggests denial of access ought to be communicated in writing.

While this draft bill offers the opportunity for change, some parts need to be modified. First, having the ombudsman report to the House of Commons directly stands against fundamental principles that guide how governments work in Canada. Military experts, particularly [Christian Leuprecht](#) and [Philippe Lagassé](#), have pointed out that the movement to make Parliament the agent of defence oversight weakens a central principle of government in Canada: [ministerial responsibility](#). Every minister is responsible and accountable to the prime minister and Parliament for what happens in their department. This principle is all the more important in the context of national defence, as it is the prerogative of the executive (it is the Governor General, as representative to the Queen in Canada, who acts as commander-in-chief).

To avoid the structural weakening of ministerial responsibility, the ombudsman can be independent from the minister of National Defence (by having full autonomy from the DND in terms of finance and administration) and still table its reports to that minister before making its findings public.

Second, to make the Office of the Ombudsman the oversight body the CAF needs, parts of its mandate need to be strengthened. Establishing the Office of the Ombudsman as the centre for data gathering on grievances (grievances will remain the purview of the chain of command) that have received a ruling, and as an entity for whistleblower complaints for service members (akin to the [U.S. Inspector General](#)) are two critical aspects. This would give the ombudsman the power to review grievances in a systemic fashion, rather than as silos. It would also allow for an analysis of the common themes among the sets of grievances the Office has received and resolved, giving



the minister, deputy minister and the chief of the defence staff insights into some of the recurring issues in the CAF, as well as ideas on how to remedy the problems institutionally, rather than just rule on individual complaints. A whistleblower branch would allow for individuals who have identified issues to communicate them with an external entity that is not their chain of command, and to do so anonymously. The whistleblower complaints would be included in the analysis of grievances as well.

In the context of culture change and sexual misconduct, this would allow for the early identification of unintended consequences from new policies put in place. Despite leaders' best intentions, some policies can have harmful effects on personnel, and, if not caught in time, on the organization. Identifying them early and offering recommendations on how to alleviate their impact can go a long way to making culture change in the CAF successful. The Office of the Ombudsman, if granted the resources needed to act as an external monitoring entity, could set that bar by establishing measures of success and progress. It would then be up to the elected civilian authorities to decide what not meeting the goals means for the top defence leadership.

Giving Monitoring Weight

The question of how an external oversight body can compel the minister to act is complex. During the integration of women in the combat arms during the 1990s, the external monitoring bodies – the Minister's Advisory Board on Gender Integration in the Canadian Forces and the Canadian Human Rights Commission – grew frustrated with the minister not pursuing their recommendations.⁷ Accountability for the CAF and DND is complex. Many entities and individuals [are involved](#) in the civilian control of the military: the prime minister, the minister of National Defence, the clerk of the Privy Council and the deputy minister of National Defence. Ultimately, though, it is the Defence minister who has to answer to Parliament for national defence. But it does not mean the deputy minister and the chief of the defence staff can act with impunity. As Governor in Council appointments, both occupy their position “at the pleasure” of the government. This means the Governor in Council can dismiss them if their work does not meet expectations (see the language of the [order-in-council](#) dismissing former chief of defence staff Adm. Art McDonald for an idea of how this principle operates).

With the ombudsman's report in hand, the minister must direct and order the deputy and the chief of the defence staff to implement the recommendations, and it is up to the minister and the deputy minister to inform Parliament, the clerk of the Privy Council and the prime minister if they believe the chief of the defence staff is not living up to expectations. And it is the prime minister's and Parliament's responsibility to ensure the minister is taking the recommendations seriously.

It would be naïve to believe this is the perfect solution, especially after we have seen the House of Commons Standing Committee on National Defence unable to come to an agreement and finish

⁷ Charlotte Duval-Lantoiné, “Word Without Deeds: Toxic Culture of Leadership and Gender Integration in the Canadian Forces, 1989-1999,” Master's Thesis, Queen's University, 2019: 54.



its study of the circumstances that led to the 2021 scandals, with Sajjan seemingly unaware of the extent of his oversight powers. Strengthening the Office of the Ombudsman to make it an external oversight body is not the silver bullet that will fix the oversight and accountability issues that we have seen in defence over the past decade.

Without buy-in, no change in the oversight structure will amount to much. Under the current structure, it is already difficult to compel the DND and CAF to pursue recommendations from House of Commons and Senate committees, the Auditor General or even from external studies the defence team has itself mandated (the Deschamps report is a prime example).

But it does not mean a change in the oversight structure cannot lead to positive behavioural changes. According to organizational change specialist Edgar Schein, when it comes to culture change, consistent attention to an issue is more important than the intensity of the message. Systematically monitoring personnel issues will send the message that it is an aspect of defence to which management leaders are attuned. It will compel other parts of the CAF to be actors of change in their own way, and in the longer term.⁸ The appointments of Anita Anand as minister of National Defence and Wayne Eyre as chief of the defence staff bring hope, and their constant messaging on culture change points to the matter being a priority.

Evidently, expanding the duties and the power of the Office of the Ombudsman would indeed strip some powers away from the military. It will also offer opportunities. Having an agency dedicated to recommending policies, courses of action and monitoring efforts will not necessarily lead to the military being punished every time policies have unintended consequences. If well planned, oversight can allow for the conceptualization of sound measurements of progress, for the early identification and remediation of issues and for the presentation of recommendations the military could implement quickly. This type of oversight could not only free some of the resources the CAF needs, but also help improve the implementation of change at all levels of the organization. This is all the more important considering that the Defence minister is also a member of Parliament with constituents to engage with, and with legislative duties. The Defence portfolio being wide and very demanding, this means a minister has very limited time to scrutinize every aspect of the file.⁹ The reports would allow issues to make it directly to the minister's desk.

A centralized and institutionally independent office for the review and analysis of complaints and grievances that guarantees the complainants' anonymity could lead to increased reporting, earlier identification of systemic issues and a decrease in leaks (which are often the sign of a loss of trust in the chain of command). The new version of the Office of the Ombudsman, by reporting directly to Parliament, could enhance the visibility of issues and grant the transparency experts and those who have experienced sexual misconduct have pleaded for, while strengthening the government's accountability in terms of defence. Implementing the recommendations would also stop the boom-and-bust cycle of scandals the military has faced since the 1990s and send a positive signal

⁸ Edgar H. Schein with Peter Schein, *Organizational Culture and Leadership*, 7th ed. (Hoboken, NJ: John Wiley & Sons, Inc), 2017: 125.

⁹ Ian Brodie, *At the Centre of Government: The Prime Minister and the Limits on Political Power* (Montreal: McGill-Queen's University Press), 2018: 90-1.



to service members that their grievances are being listened to (whether or not rulings on individual cases are positive).

Conclusion: A Happy Medium?

More than two decades after the Somalia affair, the case for centralized, dedicated and institutionally independent oversight of National Defence is stronger than it was in 1997. The sexual misconduct scandals of the past seven years have been critical for bringing the conversation back, as questions over accountability, monitoring and reporting have resurfaced.

To these barriers and the urgent need for culture change come the strategic environment and the demands of running a department as large as DND/CAF. The COVID-19 pandemic and climate-induced natural disasters for which the CAF is assisting civilian authorities, the current tensions over Ukraine (which signal great-power competition is a reality once again) and the need to procure capabilities for the 21st century (ships, fighters, digital capabilities, NORAD modernization) provide added complexity to the challenge of culture change. Better oversight is necessary if we want to avoid culture change ending up on the back burner, like [gender integration](#) did throughout the 1990s.

Considering the CAF (through the chief of personnel and culture) is already engaging in culture change efforts, a rapid solution is needed to ensure effective oversight. The draft legislation in Lick's 2021 position paper offers an opportunity to enhance external oversight capabilities promptly. The proposal not only aligns with some of the Somalia commission's recommendations, but also allows for a prompt remedy to the oversight shortfalls the recent years have uncovered. In response to the call for external oversight of sexual misconduct and culture change-related matters, adding the missing language and provisions would require limited effort.

The current oversight governance has shown its limitations, and the costs for the CAF and service members have been high. Two decades after the first major sexual misconduct scandal and the Somalia affair, it is time to reform the oversight of National Defence and establish the Office of the Ombudsman the way it was intended.

► About the Author

Charlotte Duval-Lantoiné is the Ottawa operations manager and a fellow at the Canadian Global Affairs Institute. She completed a master's in military history at Queen's University, during which she started researching the toxic culture of leadership in the Canadian Armed Forces during the 1990s and its impact on gender integration, which had begun in 1989. She continues to study leadership and culture change issues in the military in her free time. She obtained her BA in history and political science at McGill University in 2017.

Charlotte is author of [*The Ones We Let Down*](#) (coming out May 2022), in which looks at failed efforts to achieve gender integration “in full” during the 1990s. She reveals an organization unwilling and unable to change, and attitudes held by military leaders that fed a destructive dynamic and cost lives.

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