

Ending the military's authority to prosecute sex crimes will not fix its culture

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Defence Minister Bill Blair has tabled government legislation in the House of Commons that would strip the Canadian military of their jurisdiction to investigate sexual offences committed by military members. Instead, sexual assaults and criminal harassment will be investigated by civilian police and prosecuted in the civilian court system. The logistical details of this shift are still to be determined in policy.

The seismic change in military justice in response to sexual violence follows two independent commissions by former Supreme Court justices Louise Arbour (2022) and Morris Fish (2021), which together determined that the military has been incapable of effectively responding to systemic sexual violence within its ranks. Moving sexual assault investigations and prosecutions to civilian courts is an important first step in the right direction for the Canadian Armed Forces (CAF) to begin to address the systemic

sexual harms and silence that continues to plague the military.

However, there is much more to sexual misconduct, sexual discrimination, and toxic workplace culture than those incidents which can be categorized as criminal offences.

In a news conference in December of last year, Mr. Blair reported that the CAF would be removing the words “sexual misconduct” from its policies and replacing them with the language used in the Criminal Code of Canada: “sexual assault” and “harassment.” While it is vital to name and respond to these recognized criminal offences, completely removing the term “sexual misconduct” from military policies in effect narrows the scope of the bad behaviour that can be effectively targeted. In other words, the removal of sexual misconduct opens a gulf for a range of unrecognized sexual harms to remain unaddressed and to proliferate.

This may inadvertently send a message to members who experience a sexualized workplace culture or other non-criminal forms of harassment, like inappropriate jokes, leering, innuendo or unwanted sexual advances, that there is no recourse for them to address these harms.

A 2022 Statistics Canada survey of Canadian Armed Forces members found that 66 per cent of members who reported sexual assault faced some form of negative consequences. They reported being bullied, teased, excluded, suffering blame and further victimization, as well as retaliation in the form of negative consequences for their careers. Merely transferring sexual assault cases to civilian authorities does not address the possibility of these kinds of negative consequences for victims. Victim blaming and retaliation are symptomatic of a culture that does not believe victims when they report sexual violence, that minimizes their experiences, and that does not respect their right to a safe and inclusive workplace. None of these cultural issues will be addressed by relying solely on criminal charges.

Reporting of sexual assault in the CAF dramatically increased in 2022 with

the publication of Ms. Arbour's report and widespread public attention to the issue (3.5 per cent of members surveyed reported they had experienced sexual assault in 2022, as compared with 1.6 per cent in 2018). This may reflect the fact that members in 2022 felt more able to identify their experiences as inappropriate and that standards of tolerance for sexualized behaviour are shifting. However, in order for this important cultural shift to continue, the members of the CAF need the language to articulate and identify the sexual harms that they experience that may not be criminal.

As we argued in our book, *Defining Sexual Misconduct*, one of the significant benefits of the discourse regarding sexual misconduct, as it emerged through media, was to give greater numbers of people who had experienced non-criminal sexual harms the language to identify and to condemn what had happened to them. To that end, we would argue that the language of sexual misconduct should remain part of military policies to open a space for members to talk about the everyday workplace events that they experience as harmful, but that are not criminal sexual assaults.

It is imperative that the Canadian public and military members hold CAF leadership accountable to ensure that they address the widespread prevalence of misogyny and toxicity that pervades the military. This includes ensuring that there are safe and effective reporting mechanisms for members to raise issues of sexual misconduct that do not meet the bar for criminal charges. The military must be prepared to mediate and address issues of toxic workplace culture and to ensure that those who call out that culture are protected from retaliation. This begins by building a new culture rooted in concerns for gender equity and respect and an explicit recognition that not all sexual harms are criminal offences.

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