Military Police Complaints Commission of Canada

Commission d'examen des plaintes concernant la police militaire du Canada

National Defence Act – Part IV
Section 250.53

FINAL REPORT
Following a Public Interest Investigation Pursuant to Section 250.38(1) of the *National Defence Act,* of a Conduct Complaint by Mr. Jeffrey Beamish Regarding the Conduct of MCpl Darrell Coughlin, Sgt Angela McKenna, Maj Eric Leblanc and WO Rodney Flowers

File: MPCC 2016-040
Ottawa, August 31, 2021

Hilary C. McCormack
Chairperson

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I EXECUTIVE SUMMARY

Introduction

This Military Police Complaints Commission (MPCC) public interest investigation (PII) relates to a 2015-16 investigation by Canadian Forces National Investigation Service (CFNIS) Central Region (CR) into a historical complaint about the abuse of recruits during an infantry basic training exercise in February 1984.

Exercise "Fatal Blow"

The exercise took place near the end of a five-month basic infantry training course for new recruits at the Princess Patricia's Canadian Light Infantry Regiment (PPCLI) Battle School in Wainwright, Alberta. This final exercise (dubbed Exercise "Fatal Blow") of the training course was supposed to be an "Escape and Evasion" type of exercise, which would test skills learned in previous course exercises. Basically, it was to involve the trainees being required to make their way from a certain point and to capture a pre-determined objective without getting caught. Such an exercise would test the recruits' navigational skills as well as other elements of infantry fieldcraft. Instead, however, the recruits were subjected to a "Conduct After Capture" type exercise, which involved testing the trainees' capacity to withstand detention, aggressive treatment and interrogation by enemy forces.

In the event, the recruits were stripped naked and placed in the military police (MP) cells on the base. They were then sprayed repeatedly with cold water while the window to the cells was kept open. It was February at the time and the temperature was approximately minus 20 degrees Celsius. They were denied access to food or drink, as well as sanitary facilities, so the recruits were obliged to relieve themselves within the confines of the cells in close proximity with one another. They were subjected to blaring rock music throughout their detention. At intervals, some of them would be removed from the cells and interrogated individually under a cold shower. This treatment went on for several hours.

All the recruits on the course ended up completing the course and entering military service. Over the course of the intervening years, some of the former recruits came to feel that they suffered permanent psychological harm as a result of this training exercise.

CFNIS Investigation

Many years later, two of the former recruits – Rodger Junkin and Jeffrey Beamish, the complainant in this PII – came forward with complaints to the CFNIS in October 2015. The complaint from Mr. Beamish was accompanied by supporting written statements by Oscar Sprenger and Angelo Balanos, two other former trainees from the "Landing in Sicily" platoon (the class of recruits who did the 1983-84 basic infantry training course together at the Wainwright Battle School).

Originally, two separate CFNIS files were opened, one for each complainant. However, once it was determined that both complaints were related to the same training exercise, they were combined into one MP investigation file, General Occurrence (GO) # 2015-20602, with Master Corporal (MCpl) Darrell Coughlin,[1] of CFNIS CR, as lead investigator.

On October 14, 2015, Mr. Junkin was interviewed by telephone from Germany where he was then residing. The interview was not conducted by MCpl Coughlin, but instead by an MP posted to the Global Affairs MP Security Section in Europe. The interview was unrecorded.

It came to the attention of MCpl Coughlin that, coincidentally, the CFNIS CR's Evidence Custodian, Paul Lirette, was also a member of the "Landing in Sicily" platoon and experienced Exercise "Fatal Blow" along with Messrs., Beamish and Junkin. MCpl Coughlin spoke to Mr. Lirette on October 26, 2015. Mr. Lirette confirmed the essential elements of the events as described by the complainant, however he indicated that he was not interested in providing a formal statement in the investigation. In his view, while unpleasant, it was just part of training as it then existed, and he did not feel he had been traumatized by it.

An initial investigation plan was drawn up by MCpl Coughlin on October 28, 2015. It contemplated thirteen witness interviews, including the four named complainants (Beamish, Junkin, Sprenger and Balanos), as well as some former instructors and members of the chain of command of the PPCLI Battle School.

[1] All ranks in this Report refer to the ranks of the individuals at the time of the events discussed.

On November 2, 2015, MCpl Coughlin consulted with the Regional Military Prosecutor (RMP). The content of the advice given is redacted in the version of GO # 2015-20602 provided to the MPCC. However, through its investigation, the Commission learned that the advice was to the effect that military service charges under the Code of Service Discipline of the *National Defence Act* (NDA) would not be possible in the case because of a three-year limitation period which applied to military justice prosecutions at the time of the events in question.

On November 17, 2015, MCpl Coughlin submitted a second investigation plan. In this version, the list of interviews was now 40, including all of the trainees, the class (platoon) commanders and non-commissioned officers (NCOs) as well as the Battle School chain of command.

Between November 18, 2015 and January 6, 2016, MCpl Coughlin made numerous efforts to obtain the course syllabus for the 1983-84 "Landing in Sicily" class at the PPCLI Battle School. All such efforts were without success.

On January 27, 2016, a prosecution brief was sent to the office of the provincial Crown Attorney in St. Paul, Alberta.

The provincial prosecutor provided his opinion to MCpl Coughlin on March 18, 2016. Once again, the opinion was redacted from the version of the MP investigative file disclosed to the MPCC, however, through its investigation, the MPCC determined that the advice was to the effect that the case lacked a reasonable prospect of conviction. This means that, even if there is some evidence to support the elements of a chargeable offence, the chances of actually proving the case are such that it is not worth the expenditure of judicial resources of proceeding with the case. It does not mean that the prosecutor disagrees that the facts, as alleged, occurred.

MCpl Coughlin concluded his "case summary" notation for the file on April 7, 2016 and added his "concluding remarks" the next day. While no further investigation was done, the investigation technically remained open until officially closed by the CFNIS CR Detachment Commander, Major (Maj) Éric Leblanc, on July 8, 2016. MCpl Coughlin advised the complainant, Mr. Beamish, of the results of the investigation in a phone call on August 9, 2016.

Mr. Beamish's Conduct Complaint

Mr. Beamish submitted his conduct complaint to the MPCC on December 28, 2016. The complainant's main allegation (**Allegation #1**) was that the CFNIS CR investigation, led by MCpl Coughlin, was professionally negligent and incompetent. The complaint also included four further allegations, all related to the August 9, 2016 telephone debriefing of the complainant by MCpl Coughlin (which the complainant had recorded, without the knowledge of MCpl Coughlin, and transcribed):

- MCpl Coughlin failed to review the investigation file before closing it (**Allegation #2**);
- MCpl Coughlin declined to further investigate the complainant's criminal complaint simply because "torture" was not a specific criminal offence at the time (**Allegation #3**);
- MCpl Coughlin seemed primarily concerned with the consequences for the potential accused than for the suffering of the victims (**Allegation #4**); and
- MCpl Coughlin declined to commit anything to writing about the disposition of the case (**Allegation #5**).

CFPM Professional Standards Investigation

In accordance with the usual process for MP conduct complaints, the MPCC referred the complaint to the Office of Professional Standards (PS) of the office of the Canadian Forces Provost Marshal (CFPM).

After an investigation, PS found all the allegations to be unsubstantiated. On September 20, 2017, PS issued its Final Letter regarding the complaint.

The complainant wrote to the MPCC to request a review of his complaint on September 26, 2017.

MPCC's Public Interest Investigation

After receipt of the main body of disclosure from the CFPM on November 15, 2017, the MPCC proceeded to review all the material. Taking into consideration a number of factors, including media attention which the case had garnered, the MPCC Chairperson decided, on April 11, 2018 to conduct this public interest investigation. Due to concerns that such a serious matter was not

adequately investigated, the MPCC decided to investigate the underlying training exercise as part of its assessment of the CFNIS CR investigation.

While primary disclosure was received from the CFPM on November 15, 2017, the MPCC continued to receive further disclosure in response to specific requests, up to July 2020.

Unfortunately, the MPCC fared no better than MCpl Coughlin in tracking down training standards documentation for the Battle School course. However, MPCC investigators did gain additional relevant insights by interviewing members of the Battle School chain of command.

One problem which arose regarding disclosure related to access to emails by CFNIS personnel about the case which had not been scanned into the Security and Military Police Information System (SAMPIS) and therefore were not included in disclosure to MPCC. The discrepancy was discovered as the result of an *Access to Information Act* and *Privacy Act* (ATIP) request made by complainant's counsel. These other emails, which had not been scanned into SAMPIS, were considered to be beyond the control of the CFPM, as they formed part of the Department of National Defence (DND) information system. A number of searches were done, and the MPCC was ultimately satisfied that no further relevant emails were available.

In April 2018 and 2019 additional subject members were added: those responsible for supervising MCpl Coughlin's investigation: Sergeant (Sgt) Angela McKenna, Warrant Officer (WO) Rodney Flowers and Maj Eric Leblanc. Between November 28, 2018 and October 6, 2020, MPCC investigators conducted 40 witness interviews.

Former Trainees

The MPCC was able to track down most of the 33 members of the 1984-84 "Landing in Sicily" training platoon. Investigators contacted seventeen of these individuals, all but one of whom agreed to be interviewed for this PII. The following common points emerged which were consistent with the complainant's allegations:

- The exercise occurred in the final week of training, which the recruits expected to be Escape and Evasion.

- Unexpectedly the trainees were rounded up in the field and told to get into a truck. Some tried to run off, but the instructors told them to come back or they would be re-coursed.
- They were driven to the Wainwright base Military Police detachment.
- On arrival, they marched into the detachment and were ordered to strip naked.
- The entire platoon was placed in cells.
- The windows in the cells had a small window. This window was open and extremely cold outside air was allowed to flow in.
- Loud rock music was played via a "boom box". The same song was continually re-played over and over. Most of the recruits remember the song to this day (Led Zeppelin's "Dazed and Confused").
- A number of recruits were removed individually from the cells and subjected to interrogation during which some report being subjected to a cold shower and told to stand outside in the cold.

The only significant variance among some of trainees who were interviewed related to the duration of the time they were held in cells. Recollections ranged from a couple of hours to more than a day.

None of the former recruits recall seeing anyone harmed physically during the exercise (apart from the exposure to extremely cold air and water). Some handled it better than others. Some of the younger recruits were crying. There was no toilet available, so they had to relieve themselves in the cell.

The recruits did not believe the exercise was part of regular training and that it was concocted by the platoon leadership: Lieutenant (Lt) X[2] and Sergeant Y. None of the former recruits who were interviewed could think of any logical reason why their platoon was put through this exercise. However, all the trainees were consistent in stating that, at the time, they never questioned or discussed the exercise amongst themselves.

[2] As no charges were laid with respect to this training exercise, the MPCC considered it appropriate to anonymize the names of the platoon commander, Lieutenant (Lt) X, and the platoon warrant, Sgt Y (both deceased), and the instructors who took part in "Fatal Blow": A, B, C and D. The identities of some of the trainees were also obscured.

The former trainee witnesses spoke highly of the instructors and did not express ill-will towards them, despite the events of "Fatal "Blow". Yet, they were appreciative of the MPCC investigation, and hoped that it might discourage this from happening again.

There was a noticeable divide among the former trainees regarding their views and outcomes resulting from the "Fatal Blow" exercise. A number of the former trainees stated that they now suffer from Post-Traumatic Stress Disorder (PTSD) as a result of the exercise. Others simply stated it was not a pleasant experience, but they accepted it as part of their training, intended to toughen them up, and they simply moved on and never gave it much thought afterward.

Former Instructors

None of the three section commanders – A, B and C – recalled, or would admit to recalling, any salient details of the "Fatal Blow" exercise. However, the former "swing NCO" for the platoon, D, did recall the exercise. D's recollections were consistent with those of the trainees. D further indicated that he recalled the use of the MP cells had been arranged by Lt X (former section commander B also recalled Lt X making plans for the use of the MP cells) and was meant to be kept a secret, at the MPs' request.

Other Battle School Witnesses

A former section commander for the 'Landing in Sicily' platoon, Rui Amaral, was replaced (by B) prior to "Fatal Blow" to deploy to Germany. Mr. Amaral indicated that the "Fatal Blow" exercise, as it actually took place, was not consistent, in his experience, with the type of "escape and evasion" exercises that normally concluded basic infantry training.

This was also the view of the former Battle School chain of command, notably, LCol (Ret'd) Robert Dallison, who had no recollection of authorizing such an exercise. Likewise, none of the other trainees or staff from that period who were contacted by the MPCC could recall anything similar to "Fatal Blow".

Other military, or former military, personnel contacted by the MPCC who had experience with treatment comparable "Fatal Blow" invariably noted it was part of "conduct after capture"

training. However, they noted that type of training was only conducted at a later point in their military careers. Such training was done with warning and chain of command approval.

Former Wainwright MPs

MPCC investigators tracked down a number of former Wainwright MPs who served at the time. One of them, (now Royal Canadian Mounted Police (RCMP) Constable (Cst.) retired (Ret'd)) Dan Chevalier, recalled the "Fatal Blow" exercise in a manner consistent with the former trainees. Another MP from that period, Chief Warrant Officer (CWO) Jack Kent, – who happens to be Cst. Chevalier's brother-in-law recalled the "captured" recruits being sleep deprived and soaked with water but was adamant that this did not occur in the MP cells. Coincidentally, CWO Kent was serving in the CFNIS Western Region (WR) detachment when Mr. Beamish's criminal complaint was submitted.

CFNIS Investigation and the Subject Members

The MPCC reviewed the entire CFNIS CR investigation file – GO #2015-20602 – and interviewed three of the four subject CFNIS Canadian Armed Forces (CAF) members: MCpl Coughlin, Sgt McKenna and Maj Leblanc. WO Flowers declined an interview.

The CFNIS CR investigation of Mr. Beamish's criminal complaint consisted mainly of an unrecorded telephone interview with co-complainant, Rodger Junkin, on October 14, 2015, and an audio-video recorded interview with Mr. Beamish, on December 15, 2015. There was also an unofficial statement by the CFNIS CR Evidence Custodian, Paul Lirette, which confirmed the Beamish-Junkin allegations, but which wrote off the experience as just a part of training. Many other interviews of former recruits and Battle School staff had been planned in the two investigation plans prepared by lead investigator, MCpl Coughlin. Yet once CFNIS CR had received the advice of the local provincial Crown Attorney on March 18, 2016, it was decided not to further pursue the investigation or to lay charges. Concluding comments were added to the MP investigation file on April 7 and 8, 2016 by MCpl Coughlin. The last paragraph of the file's Case Summary reads:

> *Given the historical nature and type of allegations brought forward, and the possible list of suspects, CFNIS CR engaged a Crown prosecutor early in the investigation. In conjunction with the legal advice sought and information learned during the investigation it was determined by*

the CFNIS that further investigative steps would not prove beneficial based on the inability to meet the elements of the offences and no reasonable expectation of conviction.

In a telephone update of May 2, 2016, Mr. Beamish was advised by MCpl Coughlin of the results of the consultation with the Crown prosecutor and of the fact that MCpl Coughlin agreed with the legal advice. However, the file was not formally closed until reviewed by the CFNIS CR detachment commander, Maj Leblanc, in July 2016. Mr. Beamish was given a final telephone debrief (which he recorded) on August 9, 2016.

Provincial Prosecutor

MPCC also spoke with the local provincial Crown Attorney in the case, Mr. Paul Rudiak. He could not remember the details of the case. However, when the case was described to him, he indicated that he would give the same advice today as he gave then. In such a scenario, he said he would have advised against proceeding due to a lack of a reasonable prospect of conviction. His disinclination to proceed was based in part on an arguable defence of consent available to the accused, as the treatment was considered to be part of training. However, by far the greatest concern for Mr. Rudiak was the amount of time that had elapsed – over thirty years – and the intervening evolution in social norms, especially in the military context. In his view, such a case had no reasonable prospect of conviction and he could not have justified the use of court resources on such a matter.

Allegation #1

In large measure, the answer to the complainant's first allegation – that the CFNIS CR investigative response to his criminal complaint was incompetent and professionally negligent – rests on the reasonableness of MCpl Coughlin and his superiors in accepting the prosecutor's assessment.

As part of this assessment, the MPCC conducted legal research on the nature of possible charges and their applicability to this case.

A number of Code of Service Discipline offences which might otherwise have applied to this case were barred by a three-year limitation period on military liability which was then in place (since repealed in 1998). This left options for liability under the *Criminal Code*.

The crime of torture, which the complainant alleged in his complaint, was unavailable as it was not enacted as a distinct offence until 1989, five years after the "Fatal Blow" exercise.

The available jurisprudence suggests that the following offences were the most likely to have application in this case: assault, assault causing bodily harm, unlawfully causing bodily harm, and forcible confinement.

While Mr. Rudiak raised the issue of consent as a significant obstacle to the prosecution of this case, the Criminal Code provision dealing with consent in the context of the above offences suggests that consent might not have been a significant impediment to a prosecution. Subsection 265(3) of the *Criminal Code* specifies that consent is not a defence where obtained by fraud or the exercise of authority. Given the apparently unauthorized nature of the "Fatal Blow" exercise, and the fact that conducting the training involved the instructors in exercising their military authority over the trainees, consent might not have been an impediment to prosecution.

On the other hand, it would have been more difficult to overcome the defence of superior orders, as that defence is presently understood in Canadian law. This defence could have operated to exonerate the 'Landing in Sicily' platoon instructors, A, B, C and D, on the basis that they were merely following the directions of their superiors (the now deceased Lt X and Sgt Y).

The exception to this defence – for orders that are "manifestly unlawful" – is limited to those orders that are not merely technically illegal, but which are also clearly immoral, such that they "[shock] the conscience of society", are "obviously and flagrantly wrong," or are "patently and obviously wrong".[3] It is meant to apply to orders to commit war crimes or crimes against humanity. As inappropriate and unauthorized as it may have been, Exercise "Fatal Blow" was not in this category. While some jurisdictions – such as Israel – have generated case law which allows for a more flexible interpretation of the "manifestly unlawful" threshold in the context of routine peacetime military activities (such as training), there is no evidence that this jurisprudence influenced Canadian law on the matter.

[3] *R. v. Finta*, 1994 CanLII 129 (SCC), [1994] 1 SCR 701, at pp. 829 and 834.

The best that could be hoped for in this case, from the prosecution's perspective, would have been to try to demonstrate that the instructors agreed with the platoon leadership's plans, and so were participating voluntarily and not pursuant to superior direction.

But even if the defence of superior orders could somehow have been overcome in this case, it might in any event have been perceived as unfair to proceed with charges against the instructors alone – while those most responsible – the platoon commander and platoon warrant – were unavailable for prosecution. It was they – Lt X and Sgt Y – who planned, arranged and instigated this rogue training exercise. In considering the public interest in prosecuting – which is part of the exercise of prosecutorial or charging discretion – the fact that only the subordinate instructors were still available for prosecution might well have influenced the Crown prosecutor's perception of this case. This is suggested by the following passage in the investigation file Case Summary:

> *CFNIS investigators attempted to locate course documentation and course SOPs with respect to Fatal Blow; however, were unable to locate any documents pertaining to the investigation. It was also determined through speaking with the complainants that this was the only time these types of actions took place and that* ***the officer in charge has since passed away****.*
>
> *Given the historical nature and type of allegations brought forward,* ***and the possible list of suspects****, CFNIS CR engaged a Crown prosecutor early in the investigation. In conjunction with the legal advice sought and information learned during the investigation it was determined by the CFNIS that further investigative steps would not prove beneficial ....* [emphasis added].

The issue of the perceived unfairness in singling out the instructors for prosecution is a function of the length of time which had passed before the complainant came forward. No amount of further investigation by CFNIS CR would have altered the reality that those most responsible were no longer available for prosecution.

This is not to say that the CFNIS CR investigation was perfect. Mistakes were made. The interview with Mr. Junkin should have been recorded, though no doubt MCpl Coughlin intended a further recorded interview. In the MPCC's view, in the absence of access to the training course syllabus from the time of "Fatal Blow", more effort should have been placed on interviewing the PPCLI Battle School chain of command about the nature of the exercise and whether or not it was authorized, as the MPCC did. However, in fairness to the subject CFNIS CR members, such witness interviews were planned and presumably would have occurred if the prosecutor's advice had been different.

In any event, the legal standard of negligence for police investigations is not one of perfection, but one of reasonableness. As stated by the Supreme Court of Canada in *Hill v. Hamilton-Wentworth Police Services* (2007):

> *The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made ….*[4]

The allegation that the CFNIS CR investigation was professionally negligent or incompetent comes down to deciding whether it was unreasonable for the CFNIS CR to refer the investigation to a prosecutor at the stage that they did, and further, whether it was reasonable to follow the prosecutor's advice not to pursue charges.

Given the legitimate need to consider the best use of policing and court resources, it certainly does not make sense to require police to complete all evidence-gathering before consulting with a prosecutor. If a prosecution is not viable, it is better for police to know this sooner rather than later. Moreover, there was no reason to assume that the prosecutor was going to provide a definitive opinion on proceeding with the case at that point. He could have come back with suggested charges and priority areas of investigation.

While police are not bound to follow prosecutorial advice, it is usually reasonable for them to do so. In light of the negligence standard set out in the *Hill* case (above), legal advice would itself have to be unreasonable for police to be reasonably expected to ignore it. This will surely be a rare situation.

In this case, given the length of time elapsed since the alleged offences, the high standard of proof demanded in criminal prosecutions, the obstacle posed by the defence of superior orders, and the fact that those most responsible for the impugned training exercise were since deceased, the MPCC does not consider it unreasonable for the CFNIS CR to have followed the prosecutorial advice to end the investigation without laying charges.

[4] 2007 SCC 41, [2007] 3 SCR 129, at para. 73.

As such, allegation #1, that MCpl Coughlin and the other subjects conducted a professionally negligent and incompetent investigation, is not substantiated.

The remaining allegations are derived from the recorded August 9, 2016 debriefing of the complainant by MCpl Coughlin.

Allegation #2

In allegation #2, the complainant claims that MCpl Coughlin closed the investigation file without "going through it". On review of the transcript of this telephone conversation, it is apparent that this remark was taken out of context by the complainant, and that MCpl Coughlin was merely acknowledging that he could not completely understand what the trainees had endured because he had not gone through it himself. As such, this allegation is not substantiated.

Allegation #3

In allegation #3, the complainant alleged that MCpl Coughlin failed to complete the investigation because the offence of "torture" was not part of the *Criminal Code* at the time of Exercise "Fatal Blow". Once again, the allegation is based on a misunderstanding of what MCpl Coughlin was trying to say. MCpl Coughlin did explain that "torture" could not be charged, but he did not say that this was the reason for discontinuing the investigation. It is clear that the investigation was discontinued due to the prosecutor's advice. This allegation is also not substantiated.

Allegation #4

In allegation #4, the complainant claims that MCpl Coughlin was overly concerned with the potential consequences of prosecution for the would-be accused rather than the impact of the training exercise on the victims. The MPCC's investigation established that MCpl Coughlin did not discount the impacts suffered by the former trainees. Rather, he was simply being open with the complainant and sharing with him a concern which the prosecutor had considered in formulating his advice. As such, this allegation is not substantiated.

Allegation #5

In allegation #5, the complainant objects to the fact that MCpl Coughlin would not provide him with written reasons for not proceeding with the case. However, police are not obliged to provide written reasons for the conclusion of the investigation. Nonetheless, MCpl Coughlin was trying his best to verbally explain the reasons to the complainant, and to refer him to the appropriate authorities for requesting a copy of the investigation file under access to information and privacy legislation. As such, this allegation not substantiated.

Recommendations

As a result of its public interest investigation, the MPCC made the following recommendations:

Recommendation #1:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal provide additional training to Military Police members on interactions with complainants, specifically in the context of explaining charge-laying decisions. (Accepted by the CFPM)

Recommendation # 2:

The Military Police Complaints Commission recommends that military police members be authorized to disclose to complainants the content of prosecutorial advice that has led to charges not being laid, and further, that military police members be required to accurately record and explain the reasons behind their charge-laying decisions in their General Occurrence reports. (Partially accepted by the CFPM)

Recommendation # 3:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's access to relevant solicitor-client privileged information in appropriate cases on terms equivalent with those granted to the Civilian Review and Complaints Commission for the RCMP.

Recommendation # 4:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal directs that *all* emails related to a Military Police investigation file must be scanned into that file via the Security and Military Police Information System. (Accepted by the CFPM)

Recommendation # 5:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's addition to the list of designated investigative bodies in Schedule II of the *Privacy Regulations*.

Notice of Action

The Commission issued its Interim Report on June 4, 2021. The Canadian Forces Provost Marshal responded in a Notice of Action dated July 9, 2021. The CFPM accepted all of the Commission's findings and, of the three recommendations made to the CFPM, two were accepted and one was partially accepted.

The MPCC recommendation which was partially accepted by the CFPM is recommendation #2, above. This recommendation concerns the need for greater transparency regarding the exercise of prosecutorial discretion, when dealing with complainants who are alleged victims of crime, and in the drafting of MP investigation file notes on SAMPIS.

The CFPM expressed the concern that such transparency would breach solicitor-client privilege and would undermine MPs' confidence in their ability to obtain candid and independent legal advice; and this, in turn, would deter MPs from seeking legal advice when they should.

The MPCC's full response to the CFPM's Notice of Action regarding this recommendation is provided within the report, at paragraphs 411-13. Briefly however, the MPCC distinguishes legal advice from the exercise of prosecutorial discretion, which is the issue addressed in this recommendation. Moreover, the MPCC has difficulty seeing the connection between greater transparency on the exercise of prosecutorial discretion and the adverse consequences cited by the CFPM.

In its Notice of Action, the CFPM deferred responding to recommendations #3 and #5 to the Minister of National Defence. It should be noted that at the time of the issuance of the Final Report, the Commission had not obtained a response from the Minister of National Defence with respect to recommendations #3 and #5. Once the Minister's response is obtained, the Commission will review and publish it verbatim in its Final Report, along with the Commission's comments.

II FACTUAL BACKGROUND TO THE COMPLAINT

2.1 Introduction

1. This complaint concerns a CFNIS investigation into historical allegations of assault and torture arising from a basic infantry training course conducted in the mid 1980s.

2.2 The underlying event

2. Between October 14, 1983 and March 1, 1984, the Princess Patricia's Canadian Light Infantry Regiment of the CAF conducted a training course for new infantry recruits at the Battle School at Canadian Forces Base (CFB) Wainwright, Alberta. The course was entitled "Landing in Sicily" (course 8332). Towards the end of the course, there was an escape and evasion exercise which became referred to as "Fatal Blow". Mr. Jeffrey Beamish was a recruit within the class of 33 trainees. Among his classmates were Rodger Junkin, Angelo Balanos, Oscar Sprenger, Paul Lirette and Dennis Young. Although not officially confirmed through military records, it is not disputed that the exercise took place and it involved certain activities that eventually formed the basis of complaints filed years later (2015) with the CFNIS.

3. The essence of the criminal complaint was an allegation of torture as it related to the harsh treatment imposed upon the trainees. Based on well-corroborated evidence, it is also not disputed that, as a minimum, the recruit class was divided into two groups, placed in MP cells, and ordered to strip naked. They were then placed in a common jail cell. Over the course of the next several hours (possibly as much as a day or more) they were sprayed with cold water, not allowed to eat or sleep and were individually interrogated. The exercise was conducted during the month of February and despite the cold temperature the windows of the jail cells were left open. There were no sanitary facilities provided, compelling the recruits to relieve themselves within the confines of the crowded jail cell. As the MPCC learned from interviews with the Battle School chain of command, this was not a standard or officially-sanctioned part of the recruit training. All of the recruits graduated the course and entered military service.

4. A copy of the original class list provides the names of the officers who comprised the chain of command at the CFB Wainwright Battle School at the time of the alleged events. The Commanding Officer (CO) in charge of the school was Lieutenant Colonel (LCol)

R. L. Dallison and the Chief Instructor is listed as Captain (Capt) R. H. Halpin. Others listed in the chain of command are:

- Lieutenant (Lt) X (Platoon Commander)
- Sgt Y (Platoon Warrant)
- A, B, C (Section Leaders)

5. In 1997, Mr. Beamish was medically released from the Canadian Forces, reporting both physical and mental health problems, most of which he alleged were a direct result of the training exercise. He has since been awarded health benefits through Veterans Affairs Canada (VAC) to assist him in dealing with the effects of PTSD which he also attributes to the events of the prisoner of war exercise.

2.3 Mr. Beamish's criminal complaint

6. In October 2015, Mr. Beamish and Mr. Junkin each made separate complaints to the CFNIS regarding their treatment at the Wainwright Battle School.

7. Additionally, Oscar Sprenger submitted a formal letter to VAC describing similar treatment at the PPCLI Battle School in the same time period. He stated that he graduated from Battle School with Mr. Beamish in March 1984. Mr. Beamish included this letter as part of his initial complaint to the CFNIS.

8. Angelo Balanos also sent a written statement describing his experiences at the Battle School to Mr. Beamish on September 30, 2015, and it too was included in the initial complaint. Upon being contacted later by the lead CFNIS investigator, he indicated his willingness to be interviewed in person.

9. Both Mr. Beamish and Mr. Sprenger attached a copy of the class list to their statements. It contained the names of the chain of command, the instructors, and trainees. The list illustrates that the class was divided into sections and which instructor was responsible for each group.

10. Also, on October 13, 2015, Mr. Beamish submitted a written statement describing his treatment at the Battle School, along with a class list, to several agencies - VAC, *Esprit de Corps* magazine, DND/CAF Ombudsman, Bruce Stanton, Member of Parliament for Simcoe

North, as well as the DND public inquiries desk. Andrew Tom at the DND public inquiries desk forwarded Mr. Beamish's information for further assessment and it was ultimately received at CFNIS WR on October 21, 2015.

2.4 The CFNIS investigation

11. General Occurrence file 2015-20602 was opened on October 13, 2015 at CFNIS CR. The Complaint Synopsis indicates that on that date, the Military Police Unit (MPU) in Ottawa received a phone call from Mr. Junkin reporting that, while a CAF member in 1984, he was subjected to torture and was assaulted by training staff at CFB Wainwright.

12. On October 14, 2015, Mr. Junkin, residing in Germany, was interviewed by Brad Westerman (an MP posted to Global Affairs Canada's MP Security Section) via telephone. The interview was not recorded. Mr. Junkin added that he had statements from three other former classmates, Jeff Beamish, Oscar Sprenger and Angelo Balanos. This material was forwarded to CFNIS CR on October 16, 2015.

13. General Occurrence file 2015-21422 was opened on October 22, 2015 at CFNIS WR based on the statement and complaint from Mr. Beamish. It had been sent there as Mr. Beamish's allegations pertained to events that occurred at CFB Wainwright in Alberta.

14. On October 23, 2015, the Ottawa MPU requested that CFNIS CR conduct an assessment of Mr. Junkin's complaint. MCpl Coughlin conducted the assessment and advised that CFNIS CR would assume responsibility for the investigation, and he would be the lead investigator. His immediate supervisor was WO Rodney Flowers and the detachment commander was Maj Eric Leblanc.

15. On October 26, 2015, MCpl Coughlin spoke with one of the evidence custodians at CFNIS CR, a Mr. Paul Lirette, of the Corps of Commissionaires as he had seen his name on the class list received from the complainant. Mr. Lirette recalled being in the same class as Mr. Junkin and acknowledged that the events occurred as detailed in the allegation. He advised that the platoon commander, Lt X, is now deceased.

16. On November 2, 2015, when it was recognized that the two CFNIS investigations were in relation to the same events, the files were amalgamated under CFNIS CR GO file # 2015-20602, with MCpl Coughlin as the lead investigator.

17. MCpl Coughlin contacted Mr. Beamish and made arrangements to conduct an in-person interview with him on December 15, 2015.

18. On November 13, 2015 MCpl Coughlin had a phone conversation with Mr. Junkin and advised him he was investigating the complaints. He added it may take some time given the historical nature of the allegations but stated he would keep him informed. Also, on this date, MCpl Coughlin began making efforts to try and obtain documentary records pertaining to the escape and evasion exercise "Fatal Blow" in 1984.

19. MCpl Coughlin contacted the Regional Military Prosecutor (RMP) regarding potential misconduct charges pursuant to the *National Defence Act* (NDA) against the named instructors. He was advised that the NDA could not be applied given that the events occurred more than three years prior, and at the time, there was a limitation period of three years on laying service offence charges.

20. On December 15, 2015, MCpl Coughlin conducted an audio/video recorded interview with Mr. Beamish.

21. On January 11, 2016, MCpl Coughlin contacted the St. Paul, Alberta, Crown prosecutor's office. He would later indicate in the GO file that he did this early on due to the complexity of the case. MCpl Coughlin briefed Crown counsel, Mr. Paul Rudiak, on the investigation and Mr. Rudiak asked MCpl Coughlin to send him a brief on the investigation, with statements, and he would review it and get back to him. On January 27, 2016, MCpl Coughlin sent a brief of the investigation to Mr. Rudiak of the St. Paul Crown Office as per his request.

22. From this point in time, and until he received a full response from Mr. Rudiak in mid-March, there are no further significant investigative actions undertaken by MCpl Coughlin. He made contact with Mr. Beamish in response to e-mails he received requesting updates. He

contacted Mr. Balanos and Mr. Young to determine if they were available for interviews, but no further action was taken.

23. On March 18, 2016, MCpl Coughlin was contacted by the Crown prosecutor, Mr. Rudiak. The disclosure documents provided to the MPCC pertaining to the recommendations are fully redacted on the basis of solicitor/client privilege. However, given the events that transpired from that point on, it is apparent that the Crown Attorney had advised that charges should not be pursued in respect of the matter. MCpl Coughlin did not pursue the investigation any further.

24. On April 7, 2016, a Case Summary prepared by MCpl Coughlin was added into the file. The summary repeated the allegations reported by Mr. Junkin on October 13, 2015 stemming from the "Fatal Blow" exercise. The Case Summary noted that CFNIS investigators had attempted without success to locate course documentation and SOPs relating to "Fatal Blow". It was further determined, through speaking with the complainants, that this was the only time they were subjected to these types of actions and that the officer in charge (Lt X) had since passed away.

25. The Case Summary then stated that, given the historical nature and type of allegations, as well as the possible list of suspects, CFNIS CR engaged a Crown prosecutor early in the investigation. It then indicated that:

> *…in conjunction with the legal advice sought and information learned during the investigation it was determined by the CFNIS that further investigative steps would not prove beneficial based on the inability to meet the elements of the offence and no reasonable expectation of conviction.*

26. On April 8, 2016, MCpl Coughlin added Concluding Remarks into the file, stating:

> *… as a result of the investigative steps taken by the CFNIS, based on information obtained during the investigation including the historical nature of the complaints, the investigator and CFNIS will not be proceeding with this investigation as no charges are anticipated to be laid. This CFNIS investigation is concluded.*

27. On April 15, 2016, MCpl Coughlin added an entry in the file indicating that he spoke to Mr. Balanos and, during their conversation, Mr. Balanos asked when he would be interviewed. MCpl Coughlin advised him that he was reviewing the investigation and would contact him if an interview was required. Mr. Balanos stated he believed that Sgt Y was the main person

responsible. He asked if his counselor could be present when he was interviewed. Mr. Balanos had been receiving treatment for PTSD, which he attributes to his treatment during training.

28. On April 29, 2016, MCpl Coughlin received an e-mail from Mr. Beamish requesting an update. On May 2, 2016, MCpl Coughlin contacted Mr. Beamish and updated him on the status of the investigation. MCpl Coughlin advised Mr. Beamish of the Crown prosecutor's recommendation and that, given this recommendation, it would be hard to proceed. MCpl Coughlin told Mr. Beamish that he agreed with the Crown prosecutor but advised him that the file still had to be reviewed by the CFNIS chain of command, and that an official answer would therefore be provided once the file was completed.

29. On May 19, 2016, WO Flowers added an entry in the file indicating he had reviewed the file and concurred with the investigative activities to date.

30. The Clearance Information page of the GO file states that the file was cleared on July 8, 2016 by Maj Leblanc, with a status of "Departmental Discretion", and that the complainant/victim was notified by telephone by MCpl Coughlin on May 2, 2016.

31. On July 8, 2016, Maj Leblanc added Supervisor's Remarks in the file indicating that he had reviewed this investigation and concurred with the steps taken and that the complainant in this case has been advised of the status of the investigation. Maj Leblanc's remarks add that, should the material facts of this case change by way of new information, this case may be reopened.

32. On August 9, 2016, MCpl Coughlin contacted Mr. Beamish by phone and advised him that the CFNIS chain of command agreed with MCpl Coughlin's disposition of the investigation. MCpl Coughlin also supported his decision by conveying elements of the opinion provided to him in March by the Crown prosecutor. Mr. Beamish expressed that he was not pleased with the decision. This telephone conversation was recorded by Mr. Beamish.

33. On December 28, 2016, Mr. Beamish, through his legal counsel, submitted a formal letter of complaint to the MPCC regarding the investigation conducted by CFNIS CR.

III COMPLAINANT'S CONDUCT COMPLAINT

34. On December 28, 2016, counsel for Mr. Beamish submitted an MP conduct complaint to the MPCC.

35. The complaint contained a transcription of the August 9, 2016 telephone conversation between Mr. Beamish and the lead CFNIS CR investigator, MCpl Darrell Coughlin, where the latter advised Mr. Beamish that the investigation would be closed.

36. In the covering letter of the complaint, complainant's counsel took issue with certain things said, or taken to have been said or implied by the CFNIS CR investigator during this telephone conversation. The letter of complaint concluded with a general criticism of the adequacy of the investigation conducted by the subject investigator, MCpl Coughlin.

37. As a result, the following allegations were distilled from the complainant's conduct complaint arising from this CFNIS CR investigation:

1) MCpl Coughlin was professionally negligent and incompetent, and failed to investigate serious criminal matters;

2) MCpl Coughlin failed to review the complaint or the investigation file before closing it;

3) MCpl Coughlin declined to further investigate the complainant's criminal complaint merely because "torture" was not a named offence at the time of the events in question;

4) MCpl Coughlin was primarily concerned with the consequences for the assailants who might face prosecution for acts more than 30 years old, rather than doing justice for the victims; and

5) MCpl Coughlin declined to commit anything to writing.

IV CANADIAN FORCES PROVOST MARSHAL'S DISPOSITION OF THE COMPLAINT

38. In accordance with the usual process for conduct complaints, the complaint was referred to the Office of Professional Standards of the Canadian Forces Provost Marshal for disposition in the first instance. PS conducted an investigation of the complaint.

39. On September 20, 2017, PS issued its Final Letter in response to the complaint. PS found the complaint to be unsubstantiated. Its reasoning with respect to the various allegations, as set out above, may be summarized as follows:

1) The CFNIS investigator, MCpl Coughlin, did conduct a professional and competent investigation. He reviewed the criminal complaint. He conducted an interview with the complainant. He obtained an interview from fellow complainant, Roger Junkin. He sought legal advice on charges from both a military prosecutor and the relevant provincial Crown Attorney's office. He sought, albeit unsuccessfully, the curriculum for the relevant training course. MCpl Coughlin only terminated his investigation upon being advised by the prosecutor that there was no reasonable prospect of conviction.

2) MCpl Coughlin did in fact review the complaint and the file before concluding the case. A reference to his saying something to the contrary in his August 9, 2016 telephone conversation with Mr. Beamish was taken out of context. What MCpl Coughlin was referring to when saying that he "didn't go through it", was the fact that MCpl Coughlin could not fully know what the complainant went through in the training exercise, because he himself did not experience it.

3) The absence of the specific offence of "torture" from the *Criminal Code* as it read in 1984 was not the reason that MCpl Coughlin stopped his investigation. What stopped the investigation was the prosecutor's advice that there was no reasonable prospect of conviction and that it would not be in the public interest to pursue a prosecution.

4) MCpl Coughlin denied this allegation during his interview with PS. He recognized the courage it took for Mr. Beamish to come forward. For this reason, MCpl Coughlin engaged in a more than usually detailed and direct debriefing with the complainant after receiving the Crown prosecutor's advice.

5) In PS's view, this allegation simply meant that MCpl Coughlin directed the complainant to the *Access to Information Act* and *Privacy Act* regimes for requesting government records. PS notes that in so doing, MCpl Coughlin was merely following MP Group Orders regarding the release of MP investigation reports.

V REQUEST FOR REVIEW AND CHAIRPERSON'S DECLARATION OF PUBLIC INTEREST

40. On September 26, 2017, complainant's counsel submitted a request for a review of the complaint by the MPCC.

41. On September 29, 2017, the MPCC requested disclosure of the relevant MP file material from the CFPM. The main body of disclosure was received on November 15, 2017. The MPCC proceeded to review the MP file and the complaint.

42. Having reviewed the relevant MP file materials, the MPCC considered the possible application of NDA section 250.38. According to that provision of the Act, the MPCC Chairperson may decide at any time to conduct a PII into a complaint where it is advisable to do so. Subsection 250.38(1) of the *National Defence Act* reads as follows:

> *If at any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation, and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.*

43. In this case, the allegations of torture and abuse of the complainant and other trainees during basic infantry training had generated a certain amount of news media coverage. The claim that the CFNIS had failed to investigate, or only minimally investigated, allegations of abusive conduct, possibly amounting to torture, which conduct may have been sanctioned – or at least condoned – by the military chain of command, potentially called into question the necessary investigative independence of the CFNIS. For these reasons, on April 11, 2018, the Chairperson decided it would be in the public interest for the MPCC to conduct a PII into the complaint, including the underlying events that were the subject of the CFNIS investigation.

44. While determining a hearing was not warranted, the decision for the MPCC to investigate in the public interest offers greater transparency than an ordinary conduct complaint review by the MPCC, as in the case of a PII, the Final Report is made public, subject to overriding privacy concerns.

VI THE MPCC INVESTIGATION PROCESS

45. In addition to the initial disclosure of information from the CFPM received on November 15, 2017, further requests for disclosure of records and information were made by the MPCC in October and December 2018, and January, September and December 2019. The final response to MPCC disclosure requests was received from the CFPM on July 20, 2020.

46. As regards disclosure of records, a significant problem with MP information storage and access became apparent during this investigation. There was an inconsistency in the storage and retention of emails by MPs relative to this case. Those which were scanned into the electronic MP investigation report on the Security and Military Police Information System (SAMPIS) became part of the MP file, and therefore formed part of the disclosure provided by the CFPM to

the MPCC in accordance with NDA paragraph 250.31(2)(*b*). However, the decision to scan an email is a discretionary one, and so MP members not appreciating the pertinence of certain email messages might neglect to scan them into the electronic file, particularly if the MP member in question was not part of the immediate investigative team.

47. The MPCC discovered this problem after an *Access to Information Act* and *Privacy Act* (ATIP) request for information on behalf of the complainant yielded a number of email messages concerning the CFNIS investigation which were not found within the CFPM's disclosure to the MPCC. Through 2019 and 2020, the MPCC made a number of attempts to verify that there were no further relevant emails which had not been disclosed. However, the difficulty was that emails not scanned into SAMPIS eventually fall under the control of the Department of National Defence's Director of Information Management End-User Services (DIMEUS) and are therefore beyond the control of the CFPM. Yet, outside the context of a public interest hearing, disclosure obligations are limited to information under the control of the CFPM. The solution offered to the MPCC was for the organization to try to get itself added to the schedule of investigative bodies specified in the *Privacy Regulations* to whom personal information may be disclosed. Indeed, the MPCC is proposing precisely this in its submissions to the third independent review of the NDA. In the meantime, however, in regards to this case, the MPCC was advised by PS, in a letter dated July 20, 2020, that there was no indication that there were any further emails of relevance in the possession of DIMEUS.

48. An Investigative Assessment and plan were approved by the Chairperson on September 5, 2018. In April 2018 and 2019, the MPCC added new subject MPs to the complaint proceeding: more senior MP members of CFNIS CR, who were in a position to supervise the work of MCpl Coughlin: Sgt McKenna, WO Flowers, and Maj Leblanc.

49. Witness interviews commenced on November 28, 2018. Ultimately, the MPCC conducted interviews with 40 witnesses, which included:

- former Battle School trainees;
- former instructors;
- former members of the Battle School chain of command;
- former MP members posted to CFB Wainwright at the relevant time;

- the subject MP members;
- other CFNIS personnel;
- the provincial Crown attorney for St. Paul, Alberta; and
- subject matter experts in training within the Canadian Armed Forces (CAF).

The last witness interview was conducted by phone on October 6, 2020. The pace of the interviews in 2020 was significantly affected by travel and meeting limitations imposed by government due to the impact of the Covid-19 pandemic.

50. The MPCC also conducted significant research into the criminal law applicable to the training exercise conducted in February 1984 at CFB Wainwright.

51. Following the completion of witness interviews in October 2020, the MPCC finalized an Investigation Assessment Report, which was submitted to the Chairperson on November 9, 2020. On January 28, 2021, the Chairperson approved the Investigation Assessment Report and proceeded to prepare the Interim Report.

VII ANALYSIS, FINDINGS AND RECOMMENDATIONS

7.1 Allegation #1: CFNIS CR investigation was negligent and incompetent

7.1.1 Overview

52. The concerns raised by this complaint went to the heart of public confidence in MP independence and competence. This is why the Chairperson decided to investigate this complaint in the public interest. It is also why the MPCC took a robust view of its mandate in relation to this complaint and extended its investigation to the underlying events that were the subject of the CFNIS investigation in this case. When seized of a complaint, Parliament has authorized the MPCC to "investigate any matter related to the complaint."[5]

53. In so doing, the MPCC conducted a thorough investigation of the PPCLI Battle School training exercise dubbed "Fatal Blow", which occurred in late February 1984. The MPCC was

[5] NDA s. 250.32(2).

able to establish a number of things. First, that the exercise took place, more or less as alleged by the complainant. Second, that this exercise was not an officially authorized part of the Battle School training. Third, that this exercise was not in keeping with basic infantry training standards at the time. It was also learned that military police were involved in this training exercise in the sense that they lent the platoon the use of the MP cells. However, as this exercise took place prior to the establishment of the MP complaints process and the MPCC, the relevant MPs from CFB Wainwright cannot be subjects of this or any other MP conduct complaint in relation to these activities.

54. More to the point of the MPCC's mandate, it was apparent from our investigation that the foregoing conclusions could also have been established by further investigation of Mr. Beamish's complaint by MCpl Coughlin. This being said, MCpl Coughlin was guided by advice from the Crown prosecutor that there was 'no reasonable prospect of conviction', due to the length of time which inevitably must be taken to have an impact on witness testimony, the perceived difference in the military and social norms of that era (the mid 1980s), and the fact that the abuse took place in the context of a training exercise, which raised the issue of possible implied consent. In the face of such considerations and given the exacting criminal law standard of proof beyond any reasonable doubt, the prosecutor advised against pursuing charges in this case. While further investigation by MCpl Coughlin would indeed have found corroboration for Mr. Beamish's allegations, it would not likely have overcome the vulnerabilities noted above. This was confirmed to the MPCC by the prosecutor himself.

55. The prosecutor's advice did not preclude further investigation of the case by CFNIS. Prosecutorial advice is just that: advice. Moreover, MCpl Coughlin was personally inclined to conduct a few more interviews, but was overruled by his superiors. However, when it comes to exercises of policing discretion, such as the discontinuance of an investigation, the appropriate standard for evaluating such a decision is the standard of reasonableness, rather than the standard of correctness. In other words, to find impropriety in a decision to cease investigating a criminal complaint, one must be able to determine that the decision was unreasonable, and not just that it was wrong, or that the person reviewing the decision disagrees with it. It will rarely be unreasonable to act in accordance with the advice of prosecuting counsel.

56. The requisite legal standard for the conduct of police investigations is one of reasonableness, as has been clearly established by the Supreme Court of Canada in *Hill v. Hamilton-Wentworth Regional Police Services Board* (2007).[6] In order for this allegation to be substantiated, MCpl Coughlin's decision to take the case to a prosecutor early, and his decision to follow the advice received, would have to be deemed unreasonable. While the MPCC is convinced that Mr. Beamish was a victim of the mistreatment he has described in his complaint, the MPCC is unable to conclude that MCpl Coughlin and the rest of the CFNIS CR team acted unreasonably in their conduct of the investigation that is the subject of this complaint.

7.1.2 Evidence of the Former Trainees

57. In all, the MPCC was able to track down most of the 33 members of the 'Landing in Sicily' training platoon from the 1983-84 class. Investigator made contact with seventeen former trainees, of whom sixteen agreed to be interviewed.

58. The first group of former trainees to be interviewed by the MPCC were naturally those associated with the initial complaints: Jeffrey Beamish, Rodger Junkin and Angelo Balanos. Certain features emerged from these initial trainee interviews. For instance, Rodger Junkin, who was interviewed for several hours, displayed a detailed level of recall, despite the passage of 35 years. The events of the "Fatal Blow" exercise had clearly left a deep impression on these individuals.

59. After the graduation ceremony, the platoon returned to their PPCLI Battalion in Winnipeg and most were then deployed to Germany shortly thereafter. Much of the platoon stayed together and many of the soldiers continued to report to the same Section Commanders/ non-commissioned officers (NCO). None of the former trainees ever talked about the PoW exercise among themselves again nor with the former instructors.

60. Mr. Beamish noted in his interview that it was not until 2015 that he sought psychological help and was then diagnosed with PTSD, which he attributes to the "Fatal Blow"

[6] *Supra* note 4.

exercise. He began contacting former platoon mates and founded a Facebook page, which he called “Fatal Blow”.

61. One notable point to emerge from these early MPCC interviews was that “Fatal Blow” was not an isolated incident of physical abuse of trainees within the ‘Landing in Sicily’ class/platoon. One trainee, E, was apparently struck in the leg with a stick by an instructor, F, and required some medical attention. E was also the subject of another incident. He was allegedly tied up with rope by an instructor and in such a fashion that the rope would tighten around his testicles if he moved in any overt way. Another trainee, G,[7] was allegedly choked into unconsciousness by the Platoon Warrant, Sgt Y. The incident with F resulted in disciplinary action, and F was removed from the platoon, to be replaced by B.

62. While there was consensus among those trainees interviewed as to what happened in the “Fatal Blow” exercise, a number of the trainees did not support the complaints by Mr. Beamish and Mr. Junkin, as they felt that, while the exercise was unpleasant, it was just part of training and they were not the victims of some sort of illegal mistreatment. Former ‘Landing in Sicily’ trainees, Paul Lirette and Oscar Sprenger, fell into this category.

63. Paul Lirette, who was, coincidentally, an evidence custodian with the CFNIS CR at the time of their investigation of Mr. Beamish’s criminal complaint, was mentioned at a number of points in MCpl Coughlin’s investigation file. He was one of the first witnesses who was of the opinion that although “Fatal Blow” was a very unpleasant experience - it was just training as the Battle School was intended to toughen them up. It happened at the very end of the course and he knew once he got through it, it would be over. In the GO file, MCpl Coughlin stated that Mr. Lirette did not want to participate in the investigation. Yet he was quite amenable to speaking with the MPCC investigators.

64. Mr. Lirette was advised by WO Rod Flowers that his name was on a list of the recruits who were on the same training course that Mr. Beamish was claiming was “torture”. Mr. Lirette indicated at that time that he did not consider it to have been

[7] This witness was located however he would not respond to any MPCC communication.

torture. He was also later asked his opinion by MCpl Coughlin and repeated his view. He added that he felt they (Beamish and Junkin) were just out to get money from VAC.

65. These comments by Mr. Lirette were later echoed by several other former trainees. It would become indicative that there was a division among the former trainees – those who felt wronged and claimed psychological issues many years later, and those who felt that what the complainants were doing was wrong and not truly justified.

66. Oscar Sprenger was one of the witness/complainants who supplied a short, written statement that formed the initial package received by the CFNIS in October 2015. In his MPCC interview, Mr. Sprenger stated he had not actually authored the statement but had signed it after Mr. Beamish sent it to him. Mr. Beamish had acknowledged this as well in his MPCC interview. Mr. Sprenger recalled that Rodger Junkin contacted him via Facebook and encouraged him to get in on the lawsuit saying there could be a lot of money in it. Mr. Sprenger's response was that it was just training and that he was not interested in getting money out of it.

67. But despite this divergence as to the merits of a criminal complaint or civil compensation arising from their treatment during exercise "Fatal Blow", as a group, the trainees corroborated the statements of Mr. Beamish and Rodger Junkin, in terms of the substantive nature of how the exercise unfolded.

68. The trainees were made aware of the course schedule by a weekly posting in the barracks common area. They did not receive individual handouts detailing the course training schedule overall. There was no indication of a Prisoner of War exercise for the final week. There were multiple classes of the same infantry training being processed at CFB Wainwright at any given time. The trainees were housed in "H huts" which accommodated a single platoon on each side and a common area in between. The various platoons would often discuss among themselves and with each other what the training entailed and the group ahead would give a "heads-up" to the following group as to what to expect next. Nobody ever mentioned or described in these conversations a PoW exercise.

69. The final week was supposed to entail an Escape and Evasion practical exercise. It was a scenario-based exercise that involved them being dropped behind enemy lines, and they had to

make it back to their base without being detected. They would have to rely on the various aspects of their training over the previous months to make it back without being captured.

70. Collectively, the following key points were reported consistently across the group, which supported the initial complainant's versions:

- The exercise occurred in the final week of training, which the recruits expected to be Escape and Evasion.
- Unexpectedly the trainees were rounded up in the field and told to get into a truck. Some tried to run off[8] but the instructors told them to come back or they would be re-coursed.
- They were driven to the Wainwright base Military Police detachment[9].
- On arrival, they marched into the detachment and were ordered to strip naked.
- The entire platoon was placed in cells.[10]
- The cells had a small rectangular vent-style window. The window was open and extremely cold outside air was allowed to flow in.
- Some witnesses describe the cell as being configured with bars from floor to ceiling and others describe a solid door with a small, barred window.
- Over the next period of time, loud rock music was played via a "boom box". The same song was continually re-played over and over. Most of the recruits remember the song to this day – Led Zeppelin's "Dazed and Confused".
- A number of recruits were removed individually from the cells and subjected to interrogation during which some report being subjected to a cold shower and told to stand outside in the cold.

71. The only significant variance among some of trainees who were interviewed related to the duration of the time they were held in cells. Recollections ranged from a couple of hours to more than a day. This could be due to the fact that some of the men were held longer than others or just lack of recall. Some recruits who "talked" under interrogation were allowed food, a blanket and returned to barracks. From a practical perspective, it is unlikely the cells could have

[8] Some witnesses state a few of them still ran off and never ended up in the PoW exercise.
[9] Some witnesses say the Section Commanders drove them and a few state it was the MPs who drove them.
[10] Some witnesses say the platoon was divided in two. Later on certain individuals, or pairs, were put in single cells over the course of the exercise.

been rendered unusable by the MP for any significant period of time in the event the need should arise of a legitimate nature.

72. Some of the former trainees recall organizing a "jail break" in order to escape. When the instructors[11] came to extract a trainee for interrogation, they rushed the door and fled. The exercise then ended. It appears that not all the trainees may have been in that same cell at the time so some of the versions varied here as well.

73. None of the former recruits recall seeing anyone harmed physically (apart from the exposure to extremely cold air and water). Some handled it better than others as they would defy the instructors and tried to block the water being thrown or hosed on the others. Some of the younger recruits were crying. There was no toilet available, so they had to relieve themselves in the cell. The fact they were crowded together and naked resulted in one recruit experiencing an erection which led to at least one other trainee becoming assaultive towards that recruit.

74. The recruits did not believe the exercise was part of regular training and that it was somehow concocted by the platoon leadership and would have had to be ordered by the Platoon Commander, Lt X. None could think of any logical reason why their platoon was put through this exercise.

75. For the most part, the former trainees were unable to attribute specific behaviours or actions to individual instructors and generalized that "they all" took part. Not all trainees were interrogated.

76. All of the trainees were consistent in stating that they never questioned the execution of the exercise afterward and never spoke about it again.

77. The former trainee witnesses all spoke highly of the instructors and did not express ill-will towards them, despite the events of "Fatal Blow". They were appreciative of the MPCC investigation and felt it might discourage this from happening again.

[11] Some witnesses indicated that the Military Police assisted in removing them from cells for interrogation.

78. As noted earlier with respect to the impressions of Paul Lirette and Oscar Sprenger, in comparison to those of Jeff Beamish, Rodger Junkin and Angelo Balanos, there was a noticeable divide among the additional witnesses regarding their views and outcomes resulting from the "Fatal Blow" exercise. In all, there were nine witnesses who state they now suffer from PTSD, wholly or partially as a result of the PoW exercise; while others simply state it was not a pleasant experience, but it was part of their training to toughen them up and they simply moved on and never gave it much thought afterward.

79. This MPCC PII confirmed that none of the witnesses, aside from the original four, were ever contacted by the CFNIS although they were named in the investigation plans of MCpl Coughlin. Yet, they were all cooperative and willing to participate in the PII when contacted by the MPCC (with the exception of G, as referenced earlier).

7.1.3 Former Training Instructors and Platoon Leaders

80. The original platoon leadership for the 'Landing in Sicily' class was Lt X as platoon commander, and Sgt Clay MacLean, as platoon warrant. However, Sgt Y ended up replacing Sgt MacLean.

81. Early interviews revealed that two of the three Section Commanders initially assigned to the Landing in Sicily platoon changed over the duration of the course. Originally, the three designated Section Commanders were Sgt Rui Amaral, A and F. Sgt Amaral was re-deployed approximately halfway through and was replaced by B. F was disciplined and removed for striking a trainee and replaced by C. The administrative or "Swing NCO" assigned to the platoon was D.

7.1.3.1 A

82. A was the first former instructor interviewed. Early in the interview, A described in detail his career with the CAF and subsequently being assigned as a Section Commander for the Landing in Sicily Platoon at Wainwright in 1983. He described the changes in platoon leaders and their replacements, and how these many changes in one platoon could be disconcerting. He described how the Platoon Warrant, in this case Sgt Y, would be the real leader of a platoon and

is typically a well-experienced NCO, who is charged with mentoring the Platoon Commander, who is typically a newly appointed officer with little or no field experience.

83. When asked about the final exercise, A recalled that the last exercise of the final week of training typically involved and escape and evasion exercise. Sgt Y was in charge. He did not remember much about it. He vaguely recalled picking up trainees and taking them to the PW cage. A said he did not even remember the scenario that year. The PW cage was a small area fenced in with cattle wire. From there, they were taken to the MP guardroom. He assumes Lt X had arranged it with the MPs. He recalled driving some people to the MP guardhouse and dropping them off. He does not remember how many. He does not know what happened to them, as he soon left to start on the course paperwork. He recalled that a number of the trainees succeeded in evading capture. They spent most of the afternoon in their bunks, as he understood it. He did not remember any of the trainees' names.

84. A went on to state that he did see the Canadian Broadcasting Corporation (CBC) story regarding the complaints. Although he states he personally does not recall or was not present in the MP cells during "Fatal Blow", he disputes the facts presented by the complainants: "*40 hours of interrogation they are talking about – ludicrous, doesn't follow the timeline.*" A stated he spoke with former trainee H and former instructor B after seeing the story. H had detailed recollections consistent with the complainant's allegations, but A claimed he still had no recollection. He just did not think the event could have lasted as long as was alleged. Two people who could shed more light on the matter are both deceased: Lt X and Sgt Y.

7.1.3.2 B

85. The interview with Mr. B went very similarly to that of A. In fact throughout the interview he made frequent references to having spoken with A previously about the course and final exercise. When asked about the other Section Commanders, he recalled most of them. He stated he had little recollection of C, and referred to him as "the kid", as he was quite young for an NCO. He recalled D as being the "Swing NCO".

86. He recounted his career in a detailed manner leading up to how he was designated to replace Rui Amaral on the "Landing in Sicily" platoon in January 1984.

87. When asked about the final exercise of the course his recollection became vague and for the most part, he stated he did not recall much of it. He did however make some references to details which confirmed or corroborated some of the former trainee witness accounts. He remembered Lt X and talk about doing an escape and evasion exercise, and about obtaining a 'ghetto blaster' for playing loud music. Mr. B said that he had been speaking with A and he has a vague memory of chasing down the trainees. He recalled that when trainees were spotted and their name was called out, they were to get into the truck.

88. Mr. B also recalled Lt X talking about using the MP "shack" for part of the exercise. But he has no memory of going to the guardhouse himself. He recalled Lt X, or possibly Sgt Y, arranging use of the guardhouse with the MPs. With respect to the organizing and implementation of the exercise, Mr. B eventually stated that he recalled it being mostly Lt X's idea, which he planned with Sgt Y, and that the interrogation phase would involve use of the MP cells and playing loud music.

89. Mr. B noted that he thought the course was not that challenging. When asked to expand on that thought, Mr. B pointed to the conduct of the inspections, and noted that he was not even sure "*if they were allowed to yell at them*" and, referring to the training regime, Mr. B said: "*I didn't find it that hard, I didn't find it that challenging, let's put it that way I guess*." Mr. B went on to explain that the only thing he could compare it to was what he experienced on Escape and Evasion when he took his Combat Leader's Course (CLC) in 1975:

> *And they did several similar stuff, although we all went on patrols, came to a house, got captured, and that's when the interrogation started you know. Bags over our heads, transported to another area, this is the fall in Dundurn, and being herded up and then put through interrogation. And some of the guys got it pretty, pretty tough.*

When asked for further details, Mr. B stated:

> *They'd – this was in the middle of the night, They went out and they'd dug a slit trench about 6 feet deep, maybe ten feet long, and it was in a swampy area, so there was water up to your chest, and they would tie you with two ropes, throw you in there with a bag over your head and then start pulling you back and forth. …if you handled that, the course was over, you got to go back to the [unit] with hot coffee, a meal…that was our final exercise, we were out in the field for over a week, every day we got less and less food, this was the final thing, they didn't tell us we were going to get captured.*

7.1.3.3 C

90. C confirmed he was a former Section Commander with the 'Landing in Sicily' platoon. As per B's comment, he mentions the fact he was quite young for a Master Corporal at the time with only three years in the CAF. He further recalls that he was brought in late to the course as a replacement.

91. The interview with C revealed that he too did not recall anything about the final exercise. Unlike A and B however, he was unable to recall any details at all. He stated he had not spoken with either A or B previously.

92. There is a notable discrepancy regarding C's involvement in the final exercise found between the interviews of Jeffrey Beamish and Rodger Junkin.

93. Mr. Beamish stated he was in "3 Section", under F and after the incident, F was replaced by C. Yet C was not part of the final week ("Fatal Blow"), as he was sent away on course.

94. Rodger Junkin, on the other hand, specifically recalled that it was C who was with A during his (Junkin's) interrogation.

95. On interview, after stating numerous times that he recalled nothing at all of the exercise, he said: "*I don't – and that – It just, it bothers me to hell. I mean it really does. I wish I had a flicker…*" He went on to explain how he could not remember any of it and wondered if he was away for that part of the training (the end exercise). He asked if anyone had said that he was there and he was told someone had.

96. He later added:

> *You know, my memory, going back that far, you know I tend to remember only the good things. And I'll be honest with you, I only remember the things that made me feel warm and fuzzy, and something like that, I know wouldn't make me feel warm and fuzzy. So maybe I'm — I have this block.*

7.1.3.4 Sgt Rui Amaral

97. As indicated previously, Rui Amaral was one of the originally assigned Section Commanders to the Landing in Sicily platoon but he was re-deployed approximately halfway through the course.

98. It was learned from earlier interviews, particularly with H, who went on to become a Battle School instructor himself, that prior to an infantry course commencing, the platoon leaders and NCOs would go over all the course material and curriculum in advance.

99. Therefore, the MPCC investigators were hopeful that he might recall whether the "Fatal Blow" exercise, as implemented, was a planned part of the course from the outset and if so, how it was devised and approved.

100. Amaral was one of the original instructors for the 'Landing in Sicily' platoon. He was a Master Corporal then and acted as a Section Commander. He left the course mid-stream at around Christmas time (1983), as he was deployed to Germany. It had been his second tour of teaching at the Battle School. He explained that normally an instructor teaches only once, but he had previously instructed in 1982 (Passchendaele Platoon). Amaral explained that he had about two weeks of training at CFB Wainwright to be a Section Commander.

101. Amaral also explained that there is a Course Training Plan (CTP) for the Battle School course, and that has all the material that is to be taught on the course. He explained that there is a timetable for the course that is posted a week or two in advance of the training week.

102. Amaral confirmed that when he started with the course, the other Section Commanders were A and F. He remembered that C replaced F and B replaced him when he was deployed to Germany.

103. He was asked if on these courses there was normally a "Final Exercise" and what that consisted of and he explained that when he was an instructor with the Passchendaele Platoon, it consisted of such things as: field drill; section attacks; and, navigation. For Passchendaele, they ended up at a place called "Park Farm". It consisted of a couple old buildings near Wainwright. For their exercise, there was a simulated nuclear explosion. The trainees were given points where they were supposed to make their way to a safe area. That part of the exercise lasted for a few hours. Some of the instructors, and maybe the Swing NCO and some other instructors from the Battle School (staff), would drive around to see if they could find any of the trainees.

104. When asked what would happen if a trainee got caught, he replied that they would bring them to one of the buildings where they would sit in the corner. Amaral explained some trainees

got caught, and some managed to avoid detection. At a certain time, they let everyone know that the exercise was over. When asked if there were any consequences for a trainee if they got caught or not as to their success on the course, he said *"None. It doesn't mean anything."*

105. He was asked if he knew of any courses that had a "Prisoner of War" exercise as a component of the "Escape and Evasion" final exercise. He did not and remarked that they did not do that in Passchendaele. He speculated that possibly air force pilots underwent some sort of prisoner of war training but affirmed that it was not part of infantry basic training.

106. He was not aware of the CBC story detailing "Fatal Blow", and so the MPCC investigator reviewed with him the allegations as given by Jeffrey Beamish and Rodger Junkin. He was quite emphatic as to the legitimacy of conducting an exercise of this nature, without higher chain of command approval. Amaral could not understand how they could have used the MP cells without higher approval of the Battle School.

107. When asked if as a Section Commander he felt he had the latitude to do something a bit differently or switch an exercise around, he responded: "*You don't have – you don't have the freedom. I guess it depends on the individual. But you don't have the freedom to just go out and change things and do what you want. You know, because you are being watched.*"[12]

7.1.3.5 D

108. Previous witnesses had indicated that each recruit platoon would have attached to it a "Swing NCO". This person was responsible to look after all the logistics and all resource-related requirements of the platoon. The investigators were hopeful that D would recall the "Fatal Blow" exercise and whether or not anyone had asked him to secure the resources necessary to carry it out, including perhaps the acquisition of the MP facility.

109. D said he had spent two years at Wainwright as a staff member. After serving one year there, he was promoted to the rank of sergeant. He worked there as a Section Commander,

[12] During the interview on several occasions Amaral noted that the training was also importantly about how well the instructors did. It was seen as a good career move to be an instructor, and they were watched very carefully to see how well they were performing as leaders. Staff from the Battle School would often be on site during exercises to assess them.

Swing NCO and worked in the library. D said he had served as a Section Commander for several platoons that went through the Battle School.

110. D said that a couple days before a platoon started training, the instruction team would get together and go over the schedule for the course. He explained that the field exercises (finals) were standard and took place over what he believed was about a two-day timeframe - day and night. It was a time for the trainees to demonstrate all the skills they had learned.

111. When asked what the term "Escape and Evasion" referred to in terms of basic infantry training, he explained as follows:

> *If I remember correctly, we used to just drop them off in the training area, and then we just sort of go down the route there and try to pick them up there if we see them, basically – basically it.*

When asked what the consequences were if someone got captured - asking specifically if this was a "bad mark" against them, he responded in the negative and added that "w*e just put them in a holding area there, and that was it.*"

112. He explained that the "holding area" was just an area in the field where they were told to "*sit there and wait*". At the conclusion of the exercise, they would give them a briefing to tell them why they got caught etc.

113. D described the duties of a Swing NCO. They gather the training aids for the course; fill in occasionally for one of the Section Commanders if they are absent for some reason; and prepare the meals and deliver them to the trainees if they are in the field. He agreed the position was a "Jack of all trades" to supply the needs of the platoon.

114. He described Lt X this way:

> *Well, he was the type of guy that 'Let's put them through hell there', and you know 'toughen them up real good for the infantry'. Which makes sense, I mean they're training people to kill people in combat. So you gotta put em through the – put em through their paces.*

115. D had a fairly good recollection of the "Fatal Blow" exercise and the following comments are indicative as to it not being part of normal training and that the use of the MP facility was not officially approved:

> Mr. Wisker: *So, with this platoon, you know the collecting of information that we have, for some reason at the end, there was an exercise not quite the same as – as the norm. The guys were*

rounded up and taken to the Military Police Shack, and held in the cells, and it was kind of like a simulated prisoner of war exercise – sprayed with water, asked questions, interrogated. Do you recall that?

D: *Yes I do recall that.*

Mr. Wisker: *Yeah, and how was that organized? What was the – the lead up to that?*

D: *I don't know, to be quite honest with you.*

Mr. Wisker: *Oh, okay.*

D: *Because I know I was pretty shook – I was – when they told me what they were doing…*

Mr. Wisker: *Oh, okay, because it wasn't…*

D: *… because 'that's all part of training – Troop Commander sanctioned (unintelligible) so it's all good stuff – Military Police 'Yeah go ahead use our place' …*

Mr. Wisker: *Yeah, okay.*

D: *… but don't tell anybody. He said 'Don't tell anybody'.*

Mr. Wisker: *Who said don't tell anybody? …*

D: *The police, the Military Police. They're not allowed to use their building for stuff like that. It's not part of the training – the training area you know.*

Mr. Wisker: *Right. So they said go ahead and use it, but don't tell anybody.*

D: *That's right, Yeah, because…*

Mr. Wisker: *Do you know who that was? Do you remember who the …*

D: *Oh, I couldn't – I wish I could, but I can't.*

Mr. Wisker: *Because we've spoken to a couple of the old MPs.*

D: *Nope – nope, because see I wasn't involved in – in – in that part of the – the exercise, where they actually talked to the police (unintelligible) and said it would be a lot easier place to torture not torture but…"*

116. D was advised of the fact that in its investigation, the MPCC did not find that any other platoons that had gone through the same course had experienced this PoW exercise. He explained that using that type of PoW interrogation simulation of that intensity (he gave an example putting a towel over someone's face and pouring water on it to simulate drowning) was only done instructor to instructor, not with students.

117. D went on to state that he felt the whole exercise was the "brainchild" of the platoon commander (Lt X) and it may have been hastily planned, as he does not remember hearing anything about it until the day it happened.

7.1.4 Battle School chain of command

118. Robert Dallison was the Commanding Officer in charge of the PPCLI Battle School at the time of the "Fatal Blow" exercise. He was also quoted by the CBC in the story that aired in April 2017, when Mr. Beamish and others went public with their complaints. On interview by the CBC he is quoted in the published article as saying about what happened in 1984 "*doesn't sound right*", and further "*The purpose of exercises is to give them a feeling or an understanding of what it would be like to be a prisoner. Some of the things you mentioned, I certainly wouldn't have approved had I known about it*."

119. On interview with the MPCC investigators, when asked to detail his background with the CAF, it was readily apparent that he possessed a wealth of knowledge and experience with respect to training. It was based on this that he was appointed as the commander of the PPCLI Battle School. He held the position from July 1981 to July 1984.

120. A recruit class took on a platoon format with the Platoon Commander (usually a newly commissioned officer) coming from the Battalion. The Warrant Officer normally came from the Battle School staff and were assigned to a platoon, so there would be an experienced WO and enthusiastic new officer. Section Commanders are instructors, experienced Corporals. There was no "instruction" course, but in an infantry Battalion, when not in battle they are training so the Corporal would always be training the recruits. The instructors came together beforehand and were given about a week's worth of indoctrination, a schedule for the course, logistics instruction, etc.

121. When given the names of the 'Landing in Sicily' platoon and section leaders, he was surprised he did not recall any of them. When it was mentioned that there had been several changes at both the Platoon Warrant and Section Commander levels he said, *"That rings a warning bell – missing the experience from the Battle School. That tells me that they came from the Battalion, which means they didn't have the experience of taking people through the Battle School."*

122. He stated that Infantry Training as a whole has changed very little over many years. With respect to Escape and Evasion, he described:

> "*…yes, that's at the end of the course, they are getting to be trained, know map use, etc. Trying to remember whether we used Escape and Evasion as terms; but can see we would do that as a finale. The big one I remember is they did a fighting patrol, with a pretend missile site they had to destroy, in my mind that was the big finale where they had to put together everything they learned. Forget what we called it, but the troop went out with a mission that was defended, put together everything they learned as infantryman. There was no live fire, because we had live people playing the role of the enemy."*

123. With regard to the use of the Military Police facilities, he states that they did not use the MP cells in training. Dallison could not see one of his staff arranging such a thing without telling him.

124. Concerning the "Fatal Blow" exercise and how it was implemented he made several key comments:

> *Can't figure out how it could have happened. In March 1984* [I] *didn't hear anything about it. I ran a tight ship, visited every platoon often, night and day, because sometimes people abuse their power. Purpose was to train, not to break people. Upsets me to see command*[13] *changed a lot, and upsets me to see no Battle School staff in the platoon. I would call it POW training, rather than escape and evasion. We used to do that with trained soldiers, not recruits.*
>
> *There's a fine line between POW training and torture, I would assume in this case someone decided to do POW training. Only for experienced soldiers, not recruits. Stripping naked was part of POW training to break someone down. What they did was POW training, which is not part of recruit training, and whoever did it was not qualified and didn't understand how to do it. I suspect it was someone who'd just gone through it and tried to emulate it.*[14]

125. In terms of maintaining discipline at the school, he stated the number of hearings or summary trials he conducted was "substantial" and he sent many to jail or prison.[15] He did not have a specific recollection of any related to the 'Landing in Sicily' platoon.

126. He has not personally retained any documents related to course curriculum and is unsure where it could possibly be located now or if in fact it has been kept at all.

127. In follow-up to the comments of Dallison, MPCC investigators attempted to locate other members from the Battle School chain of command. Capt Paul Hale was listed in the chain of command for the Wainwright Battle School in 1983-84. The graduation pamphlet for the 'Landing in Sicily' platoon indicates he was the Battle School Adjutant.

[13] Referring to Landing in Sicily platoon leader replacements.
[14] This was in keeping with the comments of B and his training experience prior to becoming an instructor.
[15] In a follow up conversation with Capt. (Ret'd) Hale, he referred to LCol Dallison as a strict disciplinarian.

128. In speaking with him, he did not have any recollection of this particular platoon nor was he aware of the "Fatal Blow" exercise – until he saw the CBC story a couple of years ago. As an Adjutant his role was primarily administrative and he did not go out in the field. The course files were only retained for a period of three to five years.

129. The CBC story caught him by surprise, and he later spoke to the former commander, Bob Dallison about it. He added that Dallison was a strong disciplinarian and would not have tolerated abuse of troops or trainees. He has heard of Prisoner of War training in the CAF but not as part of the Battle School program.

7.1.5 Other Trainees and Staff at the Battle School at that Time

130. Over the course of this investigation, MPCC investigators were able to identify two other trainees and a course instructor who would have gone through the Battle School at CFB Wainwright during a time frame in close proximity to that of the 'Landing in Sicily' platoon. These three witnesses provided a comparative view of how the course was delivered in their experience and how the final exercise was conducted.

7.1.5.1 Alan Bishop

131. Alan Bishop's name arose out of our interview with Oscar Sprenger. Mr. Sprenger had stated that Bishop was a friend who went through a Battle School course just prior to him.

132. On interview, Bishop stated that he went to Wainwright in March of 1982, and it was a six-month PPCLI Battle School course. He graduated in approximately September of that year and was posted in Calgary. He stated that it was very different from civilian life and he was exposed to many extremes of hunger/thirst, cold/heat. The training was designed to stress them, not in terms of abuse, but such things as functioning on little sleep. He did not recall seeing anything overly harsh or abusive. He described the instructors as strict, but nothing more than that.

133. He did not recall receiving anything written at the beginning of the course as to what was to take place day-to-day. However, he did know that everything they were doing was building up to a final exercise, which would involve "live fire", and which involve sleep deprivation. He

understood that the instructors were trying to simulate a real conflict as best they could. In the event, they had a scenario: the trainees would be in trenches, and there were tanks and 'pop-up' targets, which they would have to shoot at. The scenario was to attack a position and take over. No prisoners were captured, and there was no simulated interrogation.

134. Bishop further explained that they did have training in "escape and evasion" exercise. It was a scenario where the trainees' position had been overrun by "the enemy" and the trainees had to find their way back without being detected. The exercise did not involve MPs, just the recruits, divided into two groups. If a recruit was spotted, they would be tagged to indicate simulated capture.

135. They covered topics such as prisoner-of-war but more in terms of their obligations under the Geneva Convention, as opposed to simulated post-capture mistreatment. He vaguely recalled a prisoner of war scenario in a field exercise where an NCO pretended to be a prisoner of war and the exercise was how to properly handle him.

136. When asked whether he saw or knew of any former classmates who were negatively impacted physically or mentally as a result of the course, he advised he was not aware of any injury or PTSD from his group.

7.1.5.2 David Hamilton

137. David Hamilton's name arose via a contact with one of the MPCC investigators. That MPCC investigator knew Mr. Hamilton personally and so did not participate in the subsequent interview.

138. Mr. Hamilton reviewed his military background. He started Battle School on October 3, 1983[16], and was posted to his unit in April 1984. Mr. Hamilton advised his Platoon was called "France and Flanders". Mr. Hamilton described his platoon set up and remembered Fred Litchfield as being his Section Commander. He did not recall any of the other Section Commander's names.

[16] This would have been virtually the same time frame as "Fatal Blow".

139. He was asked if at the onset of the training he was made aware of the training schedule that would be followed. Mr. Hamilton said that the training events were posted weekly on a bulletin board.

140. Mr. Hamilton described the relationship between the Section Commanders and the trainees: "*They were hard on us, but not overly hard. They – you could tell that they were actually trying to get the best out of us. Like they weren't – I didn't find them abusive at all.*"

141. Upon being asked if he had ever seen any physical discipline handed out. Mr. Hamilton said "no". He went on to explain that the only "physical discipline" would be having to do push ups or run a mile or two wearing a gas mask.

142. Mr. Hamilton explained that all the Battle School training culminated in a Final Training Exercise (FTX). He went on to describe it as follows:

> *Our Section Commanders told us it's going to be hard, you're going to go with very little sleep, because we were out on a week-long exercise for the FTX*[17]*. There's going to be a lot of patrolling, a lot of sentry duty, a lot of ambush duties, and you know all the stuff to try to bring everything that we had learned in the six months together. So, we knew we were going to be tired, deprived of sleep. We knew that we were going to probably be hungry because we had caught on they had a habit of attacking us when we were right in the middle of our meals out in the field.*

143. He went on to describe that, after they had completed the FTX, they went back to their lodgings. They thought the exercise was over, but it was not. They were told they had left the training area a mess and had to go back to clean it up. They were put on trucks to go back to the training area. On the way there, they were stopped and captured (part of the exercise). They were put in a "pen" in a field. First, they started out kneeling in the snow with their hands behind their heads. At one point, the Platoon Commander who was with them as a "POW", decided to "make a break for it" and they all scrambled. Some of them got recaptured. Their laces were removed from their mukluks and their parkas were taken away. They were made to lie in the snow with their combat shirts and sweater on.[18] "*We were only like that for a few hours, and then they finally rounded up the rest of them that had escaped and been re-caught*". In the end

[17] Final Training Exercise
[18] They were fully clothed otherwise with winter gear.

he stated "*That was the extent of our FTX. They didn't torture us – other than stealing my laces*". "*It wasn't a bad ending to the FTX. We all had a good laugh at it afterwards*."

144. Mr. Hamilton went over what he knew of the present complaint from what he had read in the media and stated: "*Compared to my experience, it's the polar opposite. Yeah, we were tired, we were hungry, we were cold, but we weren't physically abused. We weren't doused with water, told to lay on concrete, stripped naked. You know, we just – we were treated respectfully*."

145. Mr. Hamilton adamantly affirms that at no time were they sprayed or soaked with cold water. When asked if during the FTX any military police were present or involved, Mr. Hamilton replied that they were not involved. He never saw them.

146. As indicated above, Mr. Hamilton's Section Commander at Battle School was Fred Litchfield.

7.1.5.3 Fred Litchfield

147. Mr. Litchfield reviewed his military background. He joined the CAF in February 1975, in London, Ontario. He took his basic training in Cornwallis, Nova Scotia and then Battle School (Wainwright) in the summer of 1975. After that, he was posted to the 1st Battalion PPCLI in Calgary. He had a couple of United Nations tours and went on various courses. In 1981, he was promoted to the rank of master corporal. In the late summer of 1983, he was sent to the Battle School to be an instructor – a Section Commander.

148. Mr. Litchfield was asked if he had received an instructor's course before becoming a Section Commander, and he explained that prior to assuming the role of a Section Commander, he went through a one week "Standards" training course before the commencement of the Battle School course.

149. In describing the command structure of his platoon, it was typical of the day and the same as for 'Landing in Sicily'. There were two other Master Corporals. They had two Warrant Officers over the duration of the course with one being replaced halfway. There was also the Platoon Commander (a Lieutenant) and a "Swing NCO".

150. With respect to a final exercise, Mr. Litchfield describes that, at the end of the course as a component of the Final Exercise, they do an Escape and Evasion exercise. The trainees are brought by truck to a certain point – a roadblock. Then, they are told "*where they had to get to, and away they went*". This was on the base property, approximately 15 km away from the main base. He says that the Escape and Evasion exercise took approximately two to three hours at the most.

151. When asked if there was a capture aspect to the exercise, Mr. Litchfield explained that if they did catch anybody, they would probably put a sandbag on their head and put them in the back of the truck. That just signified that they were captured. They were not taken anywhere, they were just left in truck until the end of the exercise, and then they went for lunch.

152. When he was asked if being captured had any impact on the outcome of a trainee's training, Mr. Litchfield said it had no impact at all. He noted that by that point in the training they had completed all the requirements of the training, and this was kind of a "fun day".

153. When queried as to whether interrogation was a part of the Escape and Evasion exercise. Mr. Litchfield said it was not. When asked if in his entire career he had ever participated in, or known of, a PoW exercise as part of basic infantry qualification training, he had never heard of it.

154. Mr. Litchfield did not recall the 'Landing in Sicily' platoon nor did he remember any of the names of its leadership team group. He noted there were quite a few platoons going through the Battle School at that time.

155. The investigators reviewed the allegations in the "Fatal Blow" complaint and Mr. Litchfield acknowledged he had seen some information about it on Facebook a couple years ago. When asked if back in that time he had heard any stories about this having happened, Mr. Litchfield said he had not and commented, "*It's not part of the training syllabus, I know that for sure".*

156. When asked if there was any involvement of the MPs with Battle School training, Mr. Litchfield said there never was.

157. As far as having witnessed instances of "heavy handedness" towards trainees from that time era, Mr. Litchfield said he had never seen any.

7.1.6 Former CFB Wainwright MPs

7.1.6.1 CWO Jack Kent

158. Coincidentally, CWO Jack Kent, the Regional MWO for CFNIS WR, who was involved administratively with the files regarding the criminal complaints from Messrs. Beamish and Junkin, was an MP at CFB Wainwright at the time of the alleged incidents.

159. On October 28, 2015, CWO Kent wrote an email concerning the consolidation of the two cases into a single investigation under the responsibility of CFNIS CR (the investigation that is the subject of this complaint). In the course of this email, CWO Kent noted:

> *Finally, please note that I served as an MP in Wainwright from Jun 1981 until Jul 1985. I recall some escape and evasion courses being run but do not know if they were part of the basic infantry course or separate. I know, if they were captured, they were sleep deprived, soaked with water, locked in lockers etc.... but know for a fact that none of these activities ever took place in the Wainwright MP Cells. Once your investigators reach the appropriate point, if they want information WRT the MPs back in 1983/84, I would be happy to provide it.*

CWO Kent had no further involvement with the investigation after it went to Central Region. Naturally however, his presence as an MP at Wainwright at the time made him a pertinent witness for this PII.

160. On interview, CWO Kent confirmed that he was posted to Wainwright MP detachment as a newly appointed MP from 1981 to 1985.

161. When he was shown the e-mail of October 28, 2015, he was less definitive now in his remarks and stated his recollection is vague regarding his observations of Escape and Evasion exercises and to add context, he stated he was only a private, was not "*in the know on anything*" re: course content etc. and could only go by just what he observed or was told by his peers. He then described some recollections of seeing trainees put in their lockers (within the H-hut barracks), but recalled it not being surprising. In his view, it was all part of sanctioned training. All his observations and recollections of this type of exercise was that it occurred in the barracks, not the MP facility.

162. In regard to the use of the MP facility for "Fatal Blow", it was his recollection that MPs never were part of a training exercises. He did acknowledge though that during the timeframe in question, the MPs worked a twelve-hour shift, four days on, four days off, and he would not spend off-duty time there. However, if the cells had been used for something like this, he thinks he would have been told about it by someone. He thinks if the cell area was used, then it would have to have been "blessed" by the MP WO of the day.

163. With respect to CWO Kent's own assessment of the Mr. Beamish/Junkin complaint and the initial investigation, he observed:

> *This was a sanctioned course. Everything they're saying happened to them, probably happened to them but it was sanctioned at the time. It was not a criminal matter but something for the chain of command to handle. It likely happened to him, I just don't recall the part about the cells.*

164. When asked if he could recall other MPs from the day who might be helpful he mentioned the names of Daryl White and Len Demetruk as the two most likely to have been involved in something like this if it happened. A Sgt Wayne Smith and Robbie Robinson were posted there at the time as well as the Sawyers – referring to a married couple, Andy and Mickey.

165. At no time during this interview did he mention Dan Chevalier, who is his brother-in-law. When, in a follow-up interview, he was subsequently confronted with the fact that Chevalier was also posted to Wainwright at that time as an MP, he acknowledged it. He indicated that he thought he had provided Chevalier's name at the time of the first interview.

7.1.6.2 Chris Low

166. In making contact with a number of former MPs from Wainwright, Mr. Low's name was mentioned.

167. When Mr. Low was contacted, he had no knowledge of the "Fatal Blow" exercise but he too provided the names of some of the former members from the 1980's at CFB Wainwright, including Dan Chevalier and Robert Tarras. He also provided the MPCC with a copy of an old photograph of the MP "shack", which he believed was from 1983.

7.1.6.3 Robert Tarras

168. Mr. Tarras was contacted by telephone. When the purpose of the call was explained, Mr. Tarras confirmed he was a former MP at Wainwright. However, he became quite abrupt and stated there would be no use in conducting an interview with him as he has completely forgotten everything about his time as an MP at Wainwright. He mentioned that Dan Chevalier had just called him the day before.

7.1.6.4 Cst. Dan Chevalier

169. On initial phone contact, Chevalier, who had since become a member (Constable) with the RCMP, stated he was posted at Wainwright at the relevant time, and that he recalled the exercise in question that was conducted in the MP facility, as he was on duty that night. He recalled parts of what had happened but stated he would further consult his duty notebook as he has retained all of them throughout his career and it may help with his recollection of more details. He called back a short time later and said he searched for it but could only find notebooks from 1985 onward.

170. When the subsequent in-person interview took place, and prior to commencing the interview proper, Cst. Chevalier sought clarification on his status and wanted to clarify that the investigation was not about MPs back in that time, but rather the Battle School instructors. It was explained to him that the PII was about the investigation done by the MPs into the complaints about the Battle School exercise. With that clarified, he understood and was prepared to continue with the interview.

171. Cst. Chevalier confirmed he was posted to Wainwright as an MP at CFB Wainwright in January 1982. This was his only posting, and he remained there until February 1987, at which time he left the military and joined the RCMP.

172. Cst. Chevalier described his duties at CFB Wainwright as those of a patrolman, working twelve-hour shifts (two day shifts followed by two night shifts), followed by four days off. The night shift being from 18:00 hrs – 06:00 hrs. He described the MP operation as being headed by a Warrant Officer, three Master Corporals, a Corporal in charge of each of the four shifts, with two or three Privates per shift. He believed the total MP compliment at the time was fifteen or

sixteen. When shown a photograph of the facility from 1983-84, Cst. Chevalier confirmed that was how he remembered the "MP Shack".

173. Cst. Chevalier described the detachment in detail. His description was consistent with all other descriptions from previous interviews, except that he did not recall there being a shower facility. He believed there was a total of thirteen cells. The cells each had one bunk. There was no "bull pen" (large, general holding area). The cells were all the same size (approximately 8' x 10') with each cell having a window which opened inwards. There were bars outside the windows. He provided the investigators with a sketch diagram.

174. Cst. Chevalier identified the Warrant Officer at the time. Cst. Chevalier thought his NCO could have been Master Corporal Gary Hawks. Wayne Smith would have been the Master Corporal Investigator. It was acknowledged that both those individuals were now deceased.

175. Cst. Chevalier advised that he remembered a platoon from the Battle School conducting an exercise in the cells. He recalled probably working the night shift at that time and advised that the "daily log"[19] would have recorded this event and advised that he did not have any notebooks that covered this event. He recalled that it was "very wet" in the cell block area and "it was cold".

176. Over the course of the interview, the following comments of relevance to the PII were noted:

- Cst. Chevalier said they (the Battle School) were there (in the cells) for a long period of time (he thought for the duration of his shift[20]). He described himself as never spending much time in the Shack, being "*always out on the road*".
- When asked about whether he would have received a briefing that the Battle School would be using the cells that night, Cst. Chevalier had no specific recollection of that, but advised that any such briefing would have probably come from the Warrant Officer, as he ran the building.
- This was the "*first and only time*" that he was aware of the cells being used for such an exercise by the Battle School.

[19] These were called Daily Occurrence Books or "DOBs". Despite considerable efforts, MPCC investigators were unable to locate these records, or confirm if they were ever retained.
[20] According to CWO Kent, this would have been twelve hours.

- Cst. Chevalier said it was "really wet" - *"a ton of water all over the place, right down the whole hallway, the cells were soaked".*

- Asked if he knew what the source of the water was, he replied that he could only assume it came from the washroom (the first cell on the left).

- He recalled hearing *"a lot of yelling and screaming".*

- He never saw any of the trainees taken outside naked in the snow.

- Initially, when asked if he heard any music, he replied that he spent most of his time on the road, and only went in once in a while. He did not recall hearing any music. However, in a subsequent follow-up interview, Cst. Chevalier said he did remember there being loud music in the guardroom.

- Cst. Chevalier said he would see people moving down the hallway.

- He could not recall who he was working with that night with him but thought it could have been Gord Aitken. He mentioned other names of former MPs of the general time frame that he was posted there. Among them, he mentioned the name Robert Tarras, he was the Best Man at his wedding, and Chris Low was his coach officer.

- Another MP that was there at the time was Jack Kent (his brother-in-law) who is currently a Chief Warrant Officer in Edmonton.

- No one from CFNIS had contacted him about this matter.

- No one ever subsequently complained to him about the incident.

- He never saw anyone escape from the cells.

7.1.6.5 Ernie Louttit

177. Mr. Louttit was mentioned by Dan Chevalier in his initial interview as one of the former members he recalled from Wainwright.

178. Investigation revealed that Mr. Louttit resigned from the MPs and went on to have a full career with the Saskatoon Police Service, from which he has since retired. By all accounts he is a highly regarded figure and public speaker in Saskatchewan. He has authored three books reflecting on his career as an Indigenous police officer.

179. On interview, Mr. Louttit was quite candid in his remarks regarding the Military Police detachment operations back in the early 1980's. With respect to the Warrant Officer in charge

and the running of the detachment he offered that his was loose in some areas and stricter in others.

180. Mr. Louttit went on to say that he believed that a corporal working a night shift would not on their own allow the use of the cells by the Battle School. He added:

> *The culture when I got there was permissive. … there was a lot of 'wink wink nudge nudge stuff' that was going on, and you know, and if somebody let the Battle School use the – the cells it's – it's not out of the realm of possibility.*

7.1.7 Subject Matter Experts re CAF Training

7.1.7.1 CWO (Ret'd) Bert Scott

181. Mr. Scott had a lengthy career in the CAF and in particular, was a training instructor at Wainwright in the 1980's. Mr. Scott joined the Canadian Armed Forces in 1958. He went to the 1st Battalion PPCLI in Victoria, BC, then he did a three-year tour in Germany (1963 -1966). He then was posted to Edmonton, then to Calgary where he was a Sergeant. He was there for a number of years then went to Petawawa where he did three tours of duty with the Canadian Airborne Regiment. He retired as a Chief Warrant Officer. He could not remember the exact years that he was posted to the Battle School at Wainwright, but it was in the 1980s. He advised that he had completed two tours there.

182. Mr. Scott noted that, at the commencement of a Battle School training platoon, the course instructors were given lectures as to what they were going to teach and how they were to teach it. All this was set out in the course standard. They would review the entire content from the beginning to the end.

183. Mr. Scott stated that, while there was discretion for the course instructors to deviate from the planned training, such instructors would have to be very careful because there was supervision by the Battle School chain of command. Moreover, it would never be done with a view to hurting the trainees – "*There would be no physical contact – with the student".* As the Platoon Warrant, he would not allow a Section Commander to do any physical harm to a recruit.

184. When asked what he would expect a Section Commander to do with a captured recruit in an 'Escape and Evasion' exercise, he responded: *"Just, just capture them and bring them back,*

bring them back to the OP [operations post]. *That's it".* He explained that the OP was usually just a tent in the exercise area.

185. Mr. Scott confirmed that the MPs were not involved in any way in such exercises, to his knowledge.

186. When asked if there was any simulated interrogation for those who got captured and were taken back to the tent. *"No, not with me – no".* Mr. Scott said he had never heard of that being done.

187. When Mr. Scott returned to Wainwright for his second tour, he was posted to the "Standards" section. Mr. Scott said that was all about "training content". He explained that the standards were very detailed. Most of the times there was usually a "Standards guy" watching the training. That could be him or someone else in Standards. They would be assessing the Section Commander.

188. The course standard is set and he believed the Final Exercise was set out in detail. If they wanted to change anything, it would go to the Platoon Commander and then go up the chain of command: *"You always get approval if you want to do something other than what's in the Standard".*

189. Mr. Scott said he may have a copy of the Course Training Standard at home in a pile of documents he retained, however in a follow-up interview, it was determined he did not have a copy.

7.1.7.2 CWO (Ret'd) Steve Bartlett

190. Bartlett had a full military career (35 years) and described his background as an instructor. He stayed with the PPCLI throughout his 35-year career. He served with the second battalion of PPCLI in Winnipeg and served at various postings across Canada, including being a parachute instructor. From 1977 till his retirement, he was placed in leadership roles. He served as an instructor on infantry QL3 courses (QL3 refers to basic military trade qualification – in this case, infantry. This was the same training as that being conducted for the "Landing in Sicily" class.). When asked about his experience in instructing at Wainwright or at other similar courses, he advised that in 1991, he was at Wainwright for the last three-quarters of a course. He

was only at Wainwright as an instructor on that one course. At Gagetown, he was involved in officer training, which he described as being similar to the infantry basic training at the Battle School. He retired out of CFB Gagetown in 2011 where he was the base Regimental Sergeant Major.

191. Bartlett echoed the comments of others regarding the fact it is normally the Platoon Warrant who is the driving force behind the platoon and how the course will be run. There is usually an officer in charge of the platoon. This is usually a young officer, a Lieutenant or a Captain who is gaining experience. Bartlett explained that the Warrant Officer gives regular instructions to the Section Commanders on what exercises they will be doing and what role the Sergeants will have.

192. Bartlett was asked to describe his experience and own opinion with respect to the Escape and Evasion aspect of recruit training and if the Platoon Warrant Officer has the ability to alter the course training practice. He said that one could add one's imagination to the scenario. In this present case, he would have thought that trainees would be briefed to the point of "if you got caught, how you would be treated". If it was him, in an Escape and Evasion briefing, he would tell the trainees that they have to get from Point A to Point B without getting captured, and if they did get captured *"you'll pay the consequences"*.

193. Although the exercise was "Escape and Evasion" he felt it would likely be possible to add a "Prisoner of War" element to it. He went on to describe the Escape and Evasion exercise that he underwent when he took the course as a trainee. He said that on his course, he was also placed in the MP cells. He was also there in the wintertime. He said there were RCMP working there at the time and that they used police dogs. He said he was attacked by police dogs and thrown in the cells, which he described as *"realistic training"*. He was then asked if he had undergone some of the same alleged treatment that the trainees in this present matter had undergone - stripped naked, put in a cell with a bunch of other trainees. He said he was placed alone in a cell, "*because the other guys didn't get caught"*. He was not stripped naked.

194. Bartlett added that he had done a training exercise in 1993 with some similar elements as 'Fatal Blow':

> *I put them in a military police barracks, and used cold water on them. Not doused them with cold water, just enough to get them cold, and at the time, Leadership knew I was doing that though.*

However, they were not stripped naked, and he added, this was an Infantry Leadership Course, not Battle School basic infantry training (QL3). In that case, the trainees were told in advance that, if they got caught, they would be treated as prisoners. This exercise also took place in an MP facility under controlled circumstances, and there were commissionaires present to witness.

195. Bartlett was asked if a trainee felt overwhelmed, what were their options – could they stop doing it? He replied: "*Sure he could quit*", "*I've had enough, I want out of here*". However, Bartlett went on to explain if one quit the exercise – they quit the course.

196. He was asked if he ever knew of any trainees complaining of abuse back at that time and he said he had not.

197. When asked his opinion of in regard to the specific allegations of mistreatment, and what the limits in training were he stated

> *I think a lot of times the limit is a gut feeling. When you are talking about out of those list of things that you just mentioned to me, the ones I would have a gut feeling 'wrongness of' is: being stripped down naked; and also sprayed with water, … and in the middle of wintertime. That's the ones I would have [*concerns*] with. …*

7.1.8 The CFNIS Investigation

198. General Occurrence file 2015-20602 was opened on October 13, 2015 at CFNIS CR. The Complaint Synopsis indicates that on that date, the MP Unit in Ottawa received a phone call from Mr. Junkin reporting that while a CAF member in 1984, he was subjected to torture and was assaulted by training staff at CFB Wainwright.

199. On October 14, 2015 Mr. Junkin, residing in Germany, was interviewed by Brad Westerman (an MP posted to Global Affairs Canada's MP Security Section) via telephone. The interview was not recorded. Mr. Junkin added that he had statements from three other former classmates, Jeff Beamish, Oscar Sprenger and Angelo Balanos. This material was forwarded to CFNIS CR on October 16, 2015.

200. General Occurrence file 2015-21422 was opened on October 22, 2015 at CFNIS WR based on the Mr. Beamish information provided from the DND Public Inquiries desk in Ottawa. It had been sent there as Mr. Beamish's allegations originate out of events that occurred at CFB Wainwright in Alberta.

201. On October 23, 2015, the Ottawa MPU requested that CFNIS CR conduct an assessment of Mr. Junkin's complaint. MCpl Coughlin conducted the assessment and advised that CFNIS CR would assume responsibility for the investigation and he would be the lead investigator. His immediate supervisor was WO Rodney Flowers and the detachment commander was Maj Eric Leblanc.

202. On October 26, 2015, MCpl Coughlin spoke with one of the evidence custodians CFNIS CR, Mr. Paul Lirette, of the Corps of Commissionaires, as he had seen his name on the class list he received from Mr. Junkin. Mr. Lirette recalled being in the same class as Mr. Junkin and acknowledged that the events occurred as detailed in the allegation. He has worked with other parties involved in the investigation and stated Lt X is now deceased.

203. On October 28, 2015, MCpl Coughlin submitted his first investigation plan. It called for seven activities or investigative actions, to include up to thirteen interviews of former class members and course instructors as well as locating any documentation pertaining to the training exercise and/or syllabus, as well as seeking advice from the Regional Military Prosecutor (RMP). The time estimated to complete was 90 days. The offences to be investigated included two conduct-related offences pursuant to the NDA and one *Criminal Code* offence, Assault. At this time, the only complainant listed is Mr. Junkin. The plan was reviewed and approved by WO Flowers the same day.

204. On November 2, 2015, when it was recognized that the two CFNIS investigations were in relation to the same events, the files were amalgamated under CFNIS CR GO file # 2015-20602, with MCpl Coughlin as the lead investigator.

205. MCpl Coughlin contacted Mr. Beamish and made arrangements to conduct an in-person interview with him on December 15, 2015.

206. On November 13, 2015, MCpl Coughlin had a phone conversation with Mr. Junkin and advised him he was investigating the complaints. He added it may take some time given the historical nature of the allegations but stated he would keep him informed. Also on this date, MCpl Coughlin began making efforts to try to obtain documentary records pertaining to the "Fatal Blow" exercise in 1983-84.

207. MCpl Coughlin prepared his second investigation plan on November 17, 2015. The list of interviews had grown to forty people as it included all of the former class members, instructors and chain of command for the Battle School. The tasks to complete included conferring with the RMP and the primary offence to be investigated was listed as Criminal Negligence, per section 221 of the *Criminal Code*. There are several activities entered related to obtaining course material/documents as well as conferring with Crown counsel. The time estimated for conducting the investigation was sixty days and it was indicated that the plan was reviewed by WO Flowers on November 23, 2015.

208. MCpl Coughlin contacted the Regional Military Prosecutor (RMP) regarding potential misconduct charges pursuant to the NDA against the named instructors. He was advised that, due to a three-year limitation period in place at the time of the events, charges under the NDA were no longer possible.[21]

209. On December 15, 2015, MCpl Coughlin conducted an audio/video recorded interview with Mr. Beamish. According to the summary, Mr. Beamish said that he joined the CAF in 1983. After completing his basic training, Mr. Beamish attended the Infantry Battle School at CFB Wainwright. In the final phase, there was an escape and evasion exercise called "Fatal Blow". Mr. Beamish did not know what would transpire. There was an explanation as to what the scenario was going to be. This was discussed in the daily operations group meeting (O Group), but Mr. Beamish did not hear this. The trainees were then loaded onto trucks and told they were POWs. A few tried to escape but were told they had to participate in the training or would have to repeat the course.

[21] Prior to 1998, charges under the NDA's Code of Service Discipline could only be pursued up to three years after the event giving rise to a charge.

210. According to the interview summary, the trucks took the members to barracks where they had to change into coveralls. They were then marched over to the MP unit and split into two groups in two separate cells. The members who had tried to flee earlier had bags over their heads during the march. It was winter. Mr. Beamish recalled that they had been in full winter wear, with parkas. The members were instructed they had no rights and a document believed to be the *Canadian Charter of Rights and Freedoms* was burned in front of them. Once split between two cells, the members were instructed to strip naked and were then put into a single cell, with loud music playing and the windows left open, letting in cold air. Mr. Beamish recalled the temperature being around -20ºC. A few members were not participating in the exercise, but Mr. Beamish could not recall why.

211. MCpl Coughlin summarized that, while in the cells, the trainees were repeatedly hosed with water by the instructors, off and on. The trainees rotated some strong trainees to the front to take the brunt of the water, but when the instructors realized this, they removed the stronger trainees from the cells. Trainees were taken from the cells, one by one, to be interrogated, which consisted of a cold shower and questioning. Mr. Beamish believed the information they were trying to get was from the O Group. He would have provided it but, not having heard the information, he could not. Mr. Beamish believed that once members broke and gave the information, they were given clothing and food, and he saw some of them sweeping the floors. When Mr. Beamish could not give the information, he was marched to the door to the outside and the door was opened. He said his feet were sticking to the floor – he said he had never been so cold. Mr. Beamish does not have a clear memory of what happened after that. He recalled being returned to cells and the hosing continuing, and that members who provided the information were no longer being released.

212. At some point, which Mr. Beamish believes was 24 hours later and into the morning, Balanos opened the cell and a jail break took place. It is unclear whether this was part of the exercise or not. At this point, members got their uniforms and equipment back and participated in a mock attack scenario. Mr. Beamish recalls that his glasses were removed by Sgt Y and he could not see. During the exercise, Mr. Beamish believed he could not quit or he would have to do the course again. Also, based on his military training, he had become accustomed to doing as

he was told and not questioning; so, he pushed himself past his limits, as he states, causing injury.

213. Beamish stated that his section commander, MCpl C, was not part of the exercise as he was away on course. He was replaced by Sgt Y. Mr. Beamish obtained the nominal rolls for the course that he provided to CFNIS from a private Facebook group identified as "Fatal Blow". Mr. Beamish also stated that on October 9, 2015, he contacted the CFB Wainwright MP section and spoke to a woman who laughed and hung up on him when he reported what happened. The GO entry states that the interview with Mr. Beamish concluded at 1112hrs and that the video stopped recording at the two-hour mark.

214. On January 11, 2016, MCpl Coughlin contacted the St. Paul, Alberta, Crown prosecutor's office. He would later indicate in the GO file that he did this early on due to the complexity of the case. MCpl Coughlin briefed Crown counsel, Mr. Paul Rudiak, on the investigation and Mr. Rudiak asked MCpl Coughlin to send him a brief on the investigation, with statements, and he would review it and get back to him.

215. A Prosecution Summary prepared by MCpl Coughlin is dated January 13, 2016. The Summary indicates it relates to *Criminal Code* offences. It contains a synopsis setting out the initial call by Mr. Junkin, and adding that Mr. Beamish was on the same course and also reported the incident to the MP. The synopsis states that Mr. Beamish, who is one of the complainants, was interviewed, and the synopsis recounts in detail the facts relayed by Mr. Beamish during the interview. The synopsis further notes that Mr. Junkin and Mr. Beamish provided several written statements from other members who were on the course, attesting to their treatment. Further, it notes that it was learned during the investigation that a CFNIS Commissionaire, Paul Lirette, was also on the course and that Mr. Lirette does not want to be part of the investigation as he believed it was just training, but he did confirm the training described was accurate.

216. The synopsis concluded by stating that all attempts to obtain the course curriculum and other documents pertaining to the instruction of the course had met with negative results.

217. On January 25, 2016, WO Flowers added an entry indicating that he reviewed this GO and concurred with the investigative activities to date.

218. On January 27, 2016, MCpl Coughlin sent a brief of the investigation to Mr. Rudiak of the St. Paul Crown Office as per his request.

219. From this point in time, and until he received a full response from Mr. Rudiak in mid-March, there were no further significant investigative actions undertaken by MCpl Coughlin. He made contact with Mr. Beamish in response to emails he received requesting updates. He contacted Mr. Balanos and Mr. Young to determine if they were available for interviews but no further action was taken.

220. On March 18, 2016, MCpl Coughlin noted in his notebook that he was contacted by the Crown prosecutor Mr. Rudiak. The disclosure documents provided to the MPCC pertaining to the recommendations are fully redacted due to solicitor-client privilege. However, given the events that transpired from this point on, it is apparent that MCpl Coughlin did not pursue the investigation any further.

221. On April 7, 2016, a Case Summary prepared by MCpl Coughlin was added into the file. The summary repeated the allegations reported by Mr. Junkin on October 13, 2015, stemming from the "Fatal Blow" exercise, which was described as an escape and evasion exercise conducted at the end of the course. It noted that CFNIS investigators had attempted without success to locate course documentation and SOPs relating to "Fatal Blow". It was further determined, through speaking with the complainants, that this was the only time they were subjected to these types of actions and that the officer in charge (Lt X) had since passed away.

222. The Case Summary then stated that given the historical nature and type of allegations, as well as the possible list of suspects, CFNIS CR engaged a Crown prosecutor early in the investigation. It then indicated that:

> *…in conjunction with the legal advice sought and information learned during the investigation it was determined by the CFNIS that further investigative steps would not prove beneficial based on the inability to meet the elements of the offence and no reasonable expectation of conviction.*

223. On April 8, 2016, MCpl Coughlin added Concluding Remarks into the file, stating:

> *... as a result of the investigative steps taken by the CFNIS, based on information obtained during the investigation including the historical nature of the complaints, the investigator and CFNIS will not be proceeding with this investigation as no charges are anticipated to be laid. This CFNIS investigation is concluded.*

224. On April 15, 2016, MCpl Coughlin added an entry in the file indicating that he spoke to Balanos and, during their conversation, Balanos asked when he would be interviewed. MCpl Coughlin advised him that he was reviewing the investigation and would contact him if an interview was required. Balanos stated he believed that a Sgt Y was the main person responsible. He asked that if, when interviewed, his counselor could be present, as he has been getting treatment for PTSD as a result of the training exercise.

225. On April 29, 2016, MCpl Coughlin received an email from Mr. Beamish requesting an update. He stated that he might have further questions when he heard back. He added that Angelo Balanos said MCpl Coughlin had touched base with him for an interview but that he (MCpl Coughlin) had not followed up. He asked whether MCpl Coughlin was interviewing others in the group.

226. On May 2, 2016, MCpl Coughlin contacted Mr. Beamish and updated him on the status of the investigation. MCpl Coughlin advised Mr. Beamish of the Crown prosecutor's recommendation and that, given this recommendation, it would be hard to proceed. MCpl Coughlin told Mr. Beamish that he agreed with the Crown prosecutor but advised him that the file still had to be reviewed by the CFNIS chain of command, and that an official answer would therefore be provided once the file was completed.

227. Beamish indicated he started out wanting an apology for what had happened and was concerned that the investigation only looked at the criminal side and not how to prevent similar events from happening to others. MCpl Coughlin indicated that as a criminal investigator, he could only look at the criminal aspect and whether there were grounds to meet the elements of the offence. Mr. Beamish stated he had approached the CAF/DND Ombudsman, had a lawyer, and was waiting to hear back on the results of the investigation prior to going public. Mr. Beamish indicated that before doing anything, he would wait to hear back from MCpl Coughlin with the results of the investigation.

228. On May 19, 2016, WO Flowers added an entry in the file indicating he had reviewed the file and concurred with the investigative activities to date.

229. The Clearance Information page of the GO file states that the file was cleared on July 8, 2016 by Maj Leblanc, with a status of "Departmental Discretion", and that the complainant/victim was notified by telephone by MCpl Coughlin on May 2, 2016.

230. On July 8, 2016, at 06:12 hrs, Maj Leblanc added Supervisor's Remarks in the file indicating that he had reviewed the investigation and concurred with the steps taken and noted that the complainant in this case had been advised of the status of the investigation. Maj Leblanc's remarks add that, should the material facts of this case change by way of new information, the case might be reopened.

231. On August 9, 2016, MCpl Coughlin contacted Mr. Beamish by phone and advised him that the CFNIS chain of command agreed with MCpl Coughlin's outcome of the investigation. MCpl Coughlin also supported his decision by conveying some of elements of the opinion provided to him in March by the Crown prosecutor. Mr. Beamish expressed that he was not pleased with the decision. This telephone conversation was recorded by Mr. Beamish.

7.1.9 CFNIS CR Subjects

7.1.9.1 Sgt Angela McKenna

232. Sgt McKenna was deemed by the MPCC to be a subject of this PII, as she was in the supervisory chain of command of the lead investigator, MCpl Coughlin. Although through this investigation, it was learned that WO Flowers was more actively involved in supervising the investigation.

233. Sgt McKenna said she arrived at CFNIS Ottawa in July 2015. Sgt McKenna described the 2015 structure at CFNIS CR as: a Master Warrant Officer in charge, 2 Warrant Officers each having a Sergeant reporting to them, with each Sergeant having a small team of approximately four Master Corporals. She described her role as being the "buffer" between the Sgts and the WOs. She reported to WO Rod Flowers.

234. Sgt McKenna described the workload in 2015 as not being especially busy: *"We weren't overworked. Probably about four or five files each, on average I would say – manageable amount."*

235. Sgt McKenna explained that the MWO and the WO assign the investigator(s) for the files. There is always a Lead Investigator assigned, and sometimes an intern is assigned as a second investigator. Sgt McKenna said she was not a part of the decision-making process for the assignment of the Mr. Beamish file.

236. Sgt McKenna did not recall any involvement with determining what this file would require as far as work, resources etc. However, she noted she would at times meet with WO Flowers and the various investigators to discuss their files and at those times could offer her opinion, but she was not in a role to give direction. She did not recall giving any opinion herself on this particular investigation when she met with WO Flowers and MCpl Coughlin to discuss the file.

237. When asked what type of reaction there was when the file arrived at their office, Sgt McKenna did not remember any particular reaction. The fact that it was an historical case was not of concern as she said they often dealt with such files and added: *"I think it was more the allegations are pretty substantial. They were pretty strong allegations."*

238. The MPCC Investigator asked if she considered what type of charges might be applicable in the case. Sgt McKenna answered that she had not considered that the complaint presented a strong case for charges. In essence, she reasoned that the "Conduct after Capture" course, as she referred to it, was terrible back in the 1980s, but that it was a product of its times, adding that it is no longer done like that. She also suggested that there was a challenge in separating the abusive elements from the authorized training aspect.

239. When asked if Major Case Management – a special systematic approach to the investigation of complex cases by police – training was mandatory, Sgt McKenna advised that it was mandatory training for Warrant Officers and above. Further, Major Case Management is not used commonly in their office, as most of their files do not "*fall into it.*"

240. On being asked about her involvement in the file, she indicated that it was fairly limited. She reviewed the file. Apart from that, she simply helped the investigator, MCpl Coughlin, with any questions he had, such as: "*Where should I go for this? Who should I talk to for this?*". She did not recall giving him any directions on conduct of the investigation, indicating that it was not her role.

241. With respect to adherence to investigation plans, Sgt McKenna said that it was a living document and that it could be changed as the investigation progressed.

242. Sgt McKenna explained that when she reviewed MCpl Coughlin's work it was more for correcting his grammar mistakes than scrutinizing the content.

243. According to MCpl Coughlin's second investigation plan, there were up to forty people that MCpl Coughlin had identified for interviews, who by then (2015) would have by then been located all across Canada and even one in Germany. She was asked if the cost for such travel would have been a concern for this investigation. She advised: "*Not to my knowledge*."

244. Sgt McKenna was asked about CFNIS protocols for interviews involving travel. Sgt McKenna said sometimes they request other CFNIS detachments to conduct interviews on their behalf. Those would be for the more "minor" interviews. They do not normally do "Requests for Assistance" (RFAs) for subjects or victims.

245. It was noted that during MCpl Coughlin's interview with Professional Standards, he had mentioned there were many File Status Reviews (FSRs) over the course of this investigation. He asked Sgt McKenna to explain the FSRs. Sgt McKenna explained that there was no set rule on when FSRs happened. MWO Rouillard usually had them every other week. Sometimes he just sat with the two warrants, sometimes he included the sergeants, and sometimes he brought the whole team in and went into greater detail. There was an Excel sheet listing each file. They would go through each file and go over what was next for that file. She was asked if there were any team meetings to specifically discuss the direction, speed and flow of the Mr. Beamish file and she said she did not recall that.

246. When asked if Sgt McKenna was aware that MCpl Coughlin had spoken to Commissionaire Paul Lirette in October, shortly after getting the file, she said she was aware

that he had spoken to him, and she was aware that Mr. Lirette had been on the same course that was the subject of the investigation. Asked if she knew what Mr. Lirette had said about the course, her response was: "*I feel like he was kind of flippant about it. That this was just the course and that's what we did."* She never personally had any conversations with Mr. Lirette about the course.

247. Given the extent of the investigation plan, Sgt McKenna was asked if she felt it was appropriate to consult with the Crown at that early stage (following the victim's interview), and she stated:

> *This one, for sure I would have, just because it was so different from what we're used to, and again the timeline would have been a question for us, whether this should be Crown or RMP* [Regional Military Prosecutor]. *So there is a lot with this one that I think we would have reached out early to – to get some clarity.*

248. When asked if she sensed how MCpl Coughlin felt about the file, Sgt McKenna did not recall an opinion from him about the file, but noted that MCpl Coughlin had had bigger files previously, so she did not think this file was overwhelming for him.

249. When MCpl Coughlin received the Crown Attorney's response, he forwarded it to her. Sgt McKenna was asked if she agreed with the Crown's response. She responded: *I didn't disagree. I felt like it could have gone in any direction, and I totally understood all the points that the Crown brought up. Like I totally understood where the Crown was coming from."*

250. Sgt McKenna agreed that, notwithstanding the Crown's advice, they could still have gone ahead with charges: the Crown provides advice, not direction.

251. Regarding the fact that the MP cells were used for this exercise, she was asked if there was any discussion about the MP involvement in the exercise. Sgt McKenna believed that was probably just an accepted part of the course back in the eighties and that MPs might have actually been instructing on such courses back then. Again, she emphasized that things were different back then. She noted that "Conduct after Capture Course" was not just an Infantry course, other trades also took this course.

252. Sgt McKenna was under the impression that the training exercise at issue was a "Conduct after Capture" course and not part of the Battle School basic infantry trade

qualification, which was in fact the case. She was unsure if others on the investigative team were of the same understanding.

253. Sgt McKenna was also under the impression that "Fatal Blow" was a legitimate or sanctioned part of training at that time. She was asked for her thoughts in the event that it was not a sanctioned part of training:

> Mr. Mostrey: *So, if it wasn't part of training then what would your thoughts be about, like if it wasn't part of the…*
>
> Sgt McKenna: *"If this is not part of the syllabus of either"?*
>
> Mr. Mostrey: "Yeah".
>
> [Sgt McKenna went on to describe things that had happened when she did her Leadership course in 2001. She said they had *"guys who pulled, not this kind of stuff, but terrible stuff on my course"*. She noted that in that instance, those responsible were charged.]
>
> Sgt McKenna: *"Is that the same as this? Perhaps, if it's not part of the syllabus. But this not being part of the syllabus would really – that's not my understanding of it. My understanding was that this was part of the syllabus, this was part of the course"*.
>
> Mr. Mostrey: *"So, there's a difference in the thinking between – ok that was then, and things could have happened then as part of 'The Training', as opposed to oh it wasn't part of the training and it was rogue'"*.
>
> Sgt McKenna: *"I think it – Yeah, I think if – if Mr. Beamish or Junkin had said: 'no like this was outside of what we were there for, this was not part of our training and they came in and they did "A" "B" and "C" to us', I think that's a bit different than 'during the training we had to go through this', which is what they're saying. During the training we had to go through all this crap, they wouldn't let us quit, they wouldn't let us say no, as opposed to 'they came in my room outside training, brought me outside and did this, and that's not part of the training'. And I think that kind of – if that – that might sound really terrible, but I feel like that kind of in the bubble of training in 1983 was acceptable"*.
>
> Mr. Mostrey: *"Are you satisfied that the Crown had the full picture of whether or not this could have been part of training then, or that it could have been you know not part of training, and this was something rogue"*.
>
> Sgt McKenna: *"No I think – I think reading the information provided by the two complainants, it's part of training, they say that, right – like they – it was awful treatment definitely and*
>
> Mr. Wisker: *"Is there a difference in 'occurred during training'…*
>
> Sgt McKenna: *"and part of training?"*
>
> Mr. Wisker: "*They were definitely on Infantry training. It occurred during the course of their – of their training"*.
>
> Sgt McKenna: *"Was it part of it? Yeah, and I don't know, I don't have that information. I don't know if Darrell* [Coughlin] *clarified that"*.

254. Sgt McKenna was asked if she remembered MCpl Coughlin's reaction after receiving the Crown's opinion/advice on the file. She did not remember any particular response, but knowing MCpl Coughlin, she felt he like would have had a strong view either way, she just does not recall what it was.

7.1.9.2 WO Rodney Flowers

255. Due to his role in directly supervising MCpl Coughlin's handling of this CFNS CR investigation, WO Flowers was deemed to be a subject of this complaint. By the time of the MPCC's PII, WO Flowers had left the CFNIS. He was contacted several times by MPCC investigators but did not respond to requests for an interview.

7.1.9.3 Maj Eric Leblanc

256. Maj Leblanc was the Officer Commanding CFNIS CR. Therefore, he was part of the supervisory chain of command for the investigation that is the subject of this complaint. As such, he has been deemed to be a subject of the complaint.

257. Asked if it was common in the unit to investigate historical complaints, Maj Leblanc said they get some, and probably more than in civilian police services. Historical sexual assault investigations are very common.

258. He advised that they are trained in "Major Case Management", but it is not used often.

259. Maj Leblanc explained that when a file came in, he was aware of it shortly after it came in. WO Flowers was the Duty Officer who accepted this particular file. He said he would get periodic updates on the files. Every week or two they would have a file status update at a meeting – a snapshot of where they were at with the file and where they were going.

260. In describing MCpl Coughlin, Maj Leblanc indicated that Coughlin was one of their more senior and qualified investigators at that time.

261. With regard to the Mr. Beamish file and his overall assessment of it, Maj Leblanc stated the following:

> *This one is – I mean it's – in terms of the volume of people that – that could be implicated it was large. But so much time had passed, we needed to really dig in and like pull actual information*

to make a full assessment. And I think that's where Coughlin started with like trying to actually get course lists and proper documentation from Library and Archives or the unit. I don't know specifically all the places that he went, probably would have back then, but – also complicating is that, … the military and civilian justice systems, we have to figure out which system is best suited to – to handle this, and it's a conversation, and without getting into solicitor client – those conversations happened.

262. When asked if he saw the case as involving serious allegations, Maj Leblanc advised:

For sure. Like there is no doubt in my mind that the complaint – like it happened right, that's – that's not – it's not something we ever really doubt, in this case – we always – we try to go in as impartially as possible, …

263. Maj Leblanc was asked, if he had been the investigator on the file, what potential charges he would have considered. He thought: Forcible Confinement, Assault, and Assault Causing Bodily Harm, Torture – but he was not sure if Torture was in place at the time. He noted that there would have been a lot of service offences they could have looked at if charges under the Code of Service Discipline could have been laid. Maj Leblanc is referring here to the three-year limitation period that applied to military service offences at the time of the events in question. The limitation period (though since repealed) precluded charges under the Code of Service Discipline after three years had passed since the event. These legal issues are discussed more fully below in section 7.1.11 of this report.

264. It was noted that, unlike the first investigation plan, in the second investigation plan, the first step in that plan was to "meet with the Crown". Maj Leblanc was asked the reason for this change. He responded that the information was subject to solicitor-client privilege, so he could not tell us.

265. When asked if he saw the file as being taxing in any way for the unit, he advised that if the second investigation plan had been executed, there would have been more resources put into the file. Maj Leblanc discussed investigation plans and how they can shift over time as the investigation evolves.

266. With regard to how the File Status Reviews (FSR) were conducted back then, Maj Leblanc advised that they were held every couple weeks, he advised that, "*it's not a full file brief. Like, this is where I'm at, this is where I'm headed, and it's just intended to keep … the flow of investigations moving."* He did not recall if he had ever given any directions at FSRs for this file.

267. He was asked if he saw any issue with the amount of travel that would have to be done if the second investigation plan had been fully executed. Maj Leblanc saw no issue with that, as travel was typical with their files. He saw no barriers to executing the plan as laid out. He noted that they had engaged another unit in Germany to do one of the interviews. This was a short telephone interview of Rodger Junkin (co-complainant) in the first days of the investigation. Maj Leblanc noted however that this interview was unfortunately unrecorded, which he acknowledged was contrary to policy.

268. The MPCC investigator advised Maj Leblanc that in the file there were several references to the CFNIS CR Evidence Custodian, Commissionaire Paul Lirette, who had been on the 'Landing in Sicily' course with the complainant. It was noted that MCpl Coughlin, had a "conversation" with Mr. Lirette. Maj Leblanc agreed, and conceded that it should have been done as a formal interview. Maj Leblanc indicated that there likely would have been an actual interview with Mr. Lirette if the second investigation plan had been fully implemented. He agreed, however, that there should not have been this preliminary informal conversation with someone who was an obvious witness in the investigation.

269. In regard to seeking Crown advice on the file, Maj Leblanc observed that it was particularly common and advisable in historical cases to seek prosecutorial advice in the early stages of the investigation.

270. The MPCC investigator also discussed the closing of the CFNIS CF investigation file with Maj Leblanc. When asked about the April 7, 2017 Case Summary comment that "[f]*urther investigative steps would not prove beneficial,*" Maj Leblanc indicated that this was based on the legal advice obtained, which he could not discuss with the MPCC.

7.1.9.4 MCpl Darrell Coughlin

271. As the lead investigator on the file, MCpl Coughlin was the principal subject of this complaint.

272. To begin, MCpl Coughlin gave an overview of his career. He joined the CAF in 2004, graduating from the Military Police Academy in 2005. He was posted to CFNIS in 2011.

273. When asked about his experience with historical cases, MCpl Coughlin emphasized that the Mr. Beamish complaint was atypical, even for a historical investigation, because of the length of time elapsed, the allegation of torture and the military training context.

274. In terms of how the caseload was back when this file came in, MCpl Coughlin said there were a lot of files, and that he liked to take on files. He said they all had a fair number of files at the time, but that he was comfortable with the workload, describing it as "manageable".

275. MCpl Coughlin was asked what his early impression of the file was when he received it. He explained that at first he had to review the *Criminal Code* to see what potentially relevant crimes existed at that time. He then started to research what the training was like then, and to try to determine if this was "out of the norm". He said there was a lot of "complexity" to the file because it was a training operation.

276. MCpl Coughlin explained that he worked the file pretty much by himself but said *"I leaned heavily on my supervisors with their experience as well…everything I did went through my supervisors."*

277. He believed he started by contacting CFNIS WR in Edmonton, in order to coordinate the two investigations (Beamish and Junkin were then separate files) – "*So then I was assigned as the lead investigator to it, and right off the get go I was told to contact the RMP* [Regional Military Prosecutor] *to have them do their assessment."* He could not recall who told him to contact the RMP, but he believed it was Maj LeBlanc. He went on to say that was standard practice for all their files.

278. It was noted to MCpl Coughlin that the first investigation plan was completed on October 28, 2015, and the GO file was under the heading "Unlawfully Cause Bodily Harm". In the first investigation plan the *Criminal Code* offence listed was "Assault". It called for some thirteen interviews and there were seven steps to the investigation listed. It was further noted that that by mid-November, there was a second investigation plan, and it listed "Criminal Negligence" as being the subject offence, with forty interviews being called for and six Steps. MCpl Coughlin was asked how that had evolved. MCpl Coughlin explained that the file was evolving, and the investigation plans are fluid and they evolve after various input from

supervisors, and that the number of interviews increased as he decided that he wanted to talk to everybody who was there.

279. It was observed to MCpl Coughlin that, in the first investigation plan, the first step was to conduct interviews; whereas in the second investigation plan, the first step was to meet with the Crown / RMP to discuss what if any criminal offences would apply and determine who was ultimately responsible. MCpl Coughlin explained that the steps in an investigation plan are not necessarily in chronological order, they are just steps that need to be covered off.

280. MCpl Coughlin advised that early on, the persons of interest for him were the instructors, the *"people running the training."* When asked if he saw forty interviews as a manageable number for the investigation, he replied that he did.

281. MCpl Coughlin was asked if he was satisfied with the telephone interview/statement that had been conducted with Mr. Junkin by Sgt Westerman, an MP stationed at the Canadian Embassy in Germany. He replied that he was not satisfied. Had the file moved forward he would have conducted his own recorded interview with Mr. Junkin.

282. MCpl Coughlin was asked about his interactions with CFNIS CR Evidence Custodian, Paul Lirette, who had also been in the same 1983-84 Wainwright Battle School platoon as Messrs. Beamish and Junkin. MCpl Coughlin did not recall exactly how he ended up speaking with Mr. Lirette, however, he knew that Mr. Lirette was ex-Princess Patricia Canadian Light Infantry (PPCLI) and, when he asked him if he had ever heard about this, he said he was there, and offered that he was the last person out of the cells. However, Mr. Lirette advised that he did not get want to get involved. MCpl Coughlin did invite him to do a formal interview, but he declined. Lirette did not dispute the scenario alleged in the Mr. Beamish complaint, he just took the view that it was a training exercise, and not torture or some other offence.

283. MCpl Coughlin was then asked about his contact with former trainee, Angelo Balanos, on February 3, 2016, and asked if he had discussed setting up an interview with him at that time. MCpl Coughlin said he was not scheduling further interviews at that time. He acknowledged that, from the time he sent the package to the Crown's office in late January 2016, he was in a "wait and see" mode, to see what the prosecutor's advice would be about the case. He was also

waiting to hear back from Library and Archives Canada for key documents, like the course training syllabus for the Battle School.

284. As noted by MCpl Coughlin, the course training material, and any advice from the Crown as to applicable charges, would have been essential in preparing for interviews, which need to be directed at obtaining evidence on the elements of the contemplated offences. Moreover, if the Crown were to come back with advice against laying any charges (which, in the event, is what occurred), it also did not make sense to be scheduling interviews at that time.

285. MCpl Coughlin was then asked about the package he had sent to the Crown, and specifically, about the indication that MCpl Coughlin had been told by Mr. Lirette this it was just a part of training. He was asked whether that piece of information was something that could have been expected to influence the Crown's opinion or understanding as to whether "Fatal Blow" was merely a controversial, but properly sanctioned training exercise. MCpl Coughlin replied:

> *I tried to be as transparent and open and say this is what I've got, I'm taking everything on face value, ... it's not a matter of did it happen or whatever, here's what it is. Like I ... never try to hold back anything, it was – I actually tried to be as open as possible.*

286. As indicated in the GO file, MCpl Coughlin's quest to obtain documentation about the course content from the Battle School had not been successful, and he then mentioned this as part of his rationale for concluding the investigation. He was then asked if, in default of having access to the official documentation, he had ever considered interviewing subject matter experts, previous and present instructors, trainees etc., to determine what the course was supposed to have consisted of. MCpl Coughlin explained that he had intended to interview the instructors, but had not considered interviewing others (i.e., more senior Battle School officials) about the course content at the time.

287. The MPCC investigator then reviewed with MCpl Coughlin paragraph two of the Case Summary which was dated April 7, 2016. It reads:

> *During the end of the course there was an exercise identified as Fatal Blow, which was an Escape and Evasion exercise, it was during this exercise that the allegations stemmed from. CFNIS investigators attempted to locate documentation and course SOPs with respect to Fatal Blow, unable to locate documents pertaining to the investigation. It was also determined through speaking with the complainants that this was the only time these types of actions took place and that the officer in charge has passed away.*

288. The following exchange occurred regarding the last sentence of the above extracted paragraph:

> Mr. Wisker: *When you say that was the only time these types of actions took place, are you referring to that group or…?*
>
> MCpl Coughlin: *From – I believe it was a conversation with one of them that said it didn't happen again, like that was the only year that that took place, I forget where that came from. And that was the only incident with them and I think that's what I was referring to there.*
>
> ….
>
> Mr. Wisker: *And that the officer in charge has since passed away. So in terms of – is that a factor in – in concluding the file, or, it was the only time these actions took place and that the Officer in Charge has since passed away?*
>
> MCpl Coughlin: *No I believe that was just a – one of the – like stating the officer that was in charge of it just passed away, I think I was just making note of that. Is it a determining factor for the file being closed? It – it wasn't.*

289. MCpl Coughlin was asked whether, if the officer in charge of "Fatal Blow" had directed the section commanders to do what they did, that would that have relieved the section commanders of liability. He replied that, unless an order was unlawful, military personnel were required to carry it out. He added that determining the lawfulness of an order was a complicated matter.

290. The MPCC investigator then reviewed to paragraph three of the Case Summary with MCpl Coughlin. It reads:

> *Given the historical nature and type of allegations brought forward, and the possible list of suspects, CFNIS CR engaged a Crown prosecutor early in the investigation. In conjunction with the legal advice sought and information learned during the investigation it was determined by the CFNIS that further investigative steps would not prove beneficial based on the inability to meet the elements of the offences and no reasonable expectation of conviction.*

291. MCpl Coughlin was asked if he could clarify or expand on that, specifically: *"further investigative steps would not prove beneficial"*. MCpl Coughlin said that was based on the legal advice they had obtained. With regard to the reference to "*the inability to meet the elements of the offence",* MCpl Coughlin noted that this was not in reference to any particular offence.

292. MCpl Coughlin was asked how he felt about the decision to close the file, MCpl Coughlin stated that he wanted to do some more follow-up interviews, but that his superiors said that there was no need to do anything more.

293. It was mentioned to MCpl Coughlin that, on April 15, 2016, there was an entry in the file which read: "*Balanos inquired about when he will be spoken to about this investigation. MCpl Coughlin advised that he's reviewing the investigation and will contact him if it's required to conduct an interview. Balanos stated that he believes that Sgt Y was the main person responsible."* Mr. Wisker noted that he had already completed the Concluding Remarks. MCpl Coughlin explained that a file is never really concluded until the Office Commanding (OC) signs off on it, which, in this case, did not occur until July 8, 2016.

294. MCpl Coughlin noted that the Case Summary and Concluding Remarks went through a number of iterations. For instance, the MPCC investigator noted that, on July 7, 2016, WO Flowers sent an email to him about re-wording the Case Summary. MCpl Coughlin explained that he had actually disclosed portions of the legal opinion in the first draft of the Case Summary, and WO Flowers wanted that removed, as that was not allowed in there.

295. MCpl Coughlin was asked if he had become aware of the CBC story about "Fatal Blow", and MCpl Coughlin said he had seen it on CBC. The investigator then asked him how it impacted him. He said he did not want to talk about that.[22]

296. Finally, MCpl Coughlin was asked what he meant when he said in his Professional Standards interview that he "*wished he had pushed a little more*".

297. MCpl Coughlin explained that he wished he had been able to do more interviews as he *"just didn't like to leave things hanging there".* He specifically noted that he regretted not having interviewed Mr. Junkin himself, and noted, *"I always want to do more on a file, because that's just who I am."*

7.1.10 Crown Prosecutor

298. The MPCC felt it was important to speak with the provincial Crown counsel who provided CFNIS CF with the advice on the pursuit of charges. It was decided that this should not take the form of a formal, recorded interview, given the possibility that matters subject to

[22] CFNIS CR MWO O'Brien noted in his interview with MPCC that he recalled Sgt Coughlin was quite upset by the documentary.

solicitor-client privilege would arise. As such, MPCC counsel conducted an unrecorded telephone conversation with the provincial Crown counsel on the file, Mr. Paul Rudiak, of St. Paul, Alberta.

299. However, Mr. Rudiak could remember little detail about the file, even after MPCC counsel read to him the Prosecution Summary from the GO file. Mr. Rudiak could not remember what was provided to him on which he would have based his opinion, nor even the specific advice he had provided at the time.

300. What Mr. Rudiak did offer however was confirmation that, presented with the same case now, he would advise against proceeding with charges or further investigation. He noted that there was an arguable consent issue, to the extent that the CAF members consented to training. However, for him, the major and insurmountable stumbling block in terms of a lack of a reasonable prospect of conviction was how long ago the incident occurred and the extent of the intervening evolution in societal and military norms. Mr. Rudiak said there is no way they would be able to justify using court time and resources on such a dubious case, especially in a small-resource rural Crown's office like St. Paul's.

301. Mr. Rudiak maintained this view despite being apprised that the other participants in the training class had confirmed the key facts of the incident, and also that this particular exercise ("Fatal Blow") was not typical, even according to other trainees at around that timeframe.

302. Mr. Rudiak had no recollection of the April 2017 CBC coverage of this case. He was also advised that there were indications that Mr. Beamish and some others who experienced this exercise later have suffered from PTSD, thought to be in part traceable to this episode. However, he said, these factors would not have affected his assessment of the case.

303. He did concede that, if a number of complainants had come forward, and if he had information that the exercise violated contemporary norms and standards AND it had occurred recently, then he might have advised in favor of charges, subject to legal research on issues of consent.

304. Mr. Rudiak did not recall specifically whether his advice to MCpl Coughlin was meant to be interim, pending further investigation, or final in nature. But he says, based on the essential

information provided, he could not see that more investigation by CFNIS would have altered his views, and does not recall requesting any. Normally, if he would have advised "No RPC [reasonable prospect of conviction]", that would be the end of things.

7.1.11 Military and Criminal Law Applicable to "Fatal Blow"

7.1.11.1 Introduction

305. This complaint allegation concerns the quality of the CFNIS CR investigation into Mr. Beamish's criminal complaint about exercise "Fatal Blow". Through this conduct complaint allegation, the complainant in effect is challenging the decision by CFNIS CR to conclude its investigation of his criminal complaint at the point it did, without laying charges. Therefore, it is relevant to consider what, if any, offences could have been charged on the basis of the evidence as it emerged in this PII.

306. The key facts which have emerged relative to potential penal liability are as follows:

1) In the course of the "Fatal Blow" exercise, the 'Landing in Sicily' trainees were forcibly confined and subject to prolonged period of intense discomfort caused by enforced nudity and exposure to extremely cold air and water and denial of food and access to toilet facilities, along with the associated psychological trauma which that entailed.
2) The evidence uncovered in this PII suggests that the above-noted elements of this "Fatal Blow" exercise were not part of a training exercise approved by the proper chain of command. Rather, it appears to have been a rogue exercise arranged by the platoon command team.

307. This second point in particular, the fact that the exercise appears not to have been officially sanctioned, opens up a number of avenues to penal liability for those responsible.

7.1.11.2 Military Law: Code of Service Discipline

308. At the time of the events in question, all the actors in this incident would have been covered by the CAF Code of Service Discipline, being Part III of the *National Defence Act*. A number of military charges could have application here. The conduct of an unauthorized exercise involving the mistreatment of subordinates could give rise to any of the following charges under the NDA: disobey lawful command (s. 83); cruel or disgraceful conduct (s. 93);

abuse of subordinates (s. 95); unnecessary detention (s. 99); negligent performance of duty (s. 124); and conduct to the prejudice of good order and discipline (s. 129).

309. Moreover, if these allegations had arisen and been investigated at the time, the military justice system would have been the most appropriate forum for dealing with this conduct. In addition to being a necessary military preoccupation, the training and development of soldiers has long been understood as a discipline in and of itself. It is an area of activity requiring a methodical approach and considerable planning and preparation. Had it come to light at the time, conducting a rogue exercise of this nature – which involved breaching military values of obedience to duty and the chain of command, and jeopardizing the military's investment to date in those trainees – would have rightfully been seen as at least as much an offence against the chain of command as an offence against individuals.

310. Yet it did not come to light at the time, but rather just over 30 years later. Delay of this nature is always an impediment to the good functioning of the justice system. In the case of the Canadian military justice system, the delay was fatal to the prospects of service liability. This is because, as has been noted previously, under the NDA at the time these events took place, there was a three-year limitation period for liability under the Code of Service Discipline. While this limitation period was abolished in 1998, this change in the law did not apply retroactively.

311. As such, recourse must be had to the civilian criminal law to assess possible criminal charges arising from these events.

7.1.11.3 Criminal Code offences

312. The most likely offences applicable to scenario presented in this case are addressed below.

7.1.11.4 Assault (*Criminal Code* (CC) ss. 265 and 266)

313. Obviously, the acts perpetrated against the trainees in Exercise "Fatal Blow" were capable of constituting assault. The only question that arises here is the issue of consent, which may be express or implied. Lack of consent on the part of the victim operates as a defence in two senses. First, if there is consent, then the guilty act (*actus reus*) element of the offence is not

made out. Second, if the accused has a reasonable (but mistaken) belief in consent, the accused lacks the guilty intent (*mens rea*) element of the offence.

314. Subsection 265(3) provides that no consent is obtained by reason of:

> (*a*) *the application of force to the complainant or to a person other than the complainant;*
> (*b*) *threats or fear of the application of force to the complainant or to a person other than the complainant;*
> (*c*) *fraud; or*
> (*d*) *the exercise of authority*

315. In the scenario presented by Exercise "Fatal Blow", at least two of these exceptions to consent would appear to apply. First, the exercise conducted was not one that was sanctioned by the Battle School, though it was presented as such. This at least arguably amounts to obtaining consent by fraud. Second, as the instructors had and exercised legal authority over the trainees, by reason of the military concept of command, any possible consent the trainees' participation by the trainees could be said to be negated by that authority.

316. The common law recognizes further limitations on the victim's capacity to consent to the application of force against them. One cannot consent to serious hurt or non-trivial bodily harm. In the context of activities with some social value, one may consent to the application of force, provided the application of force in question is within the customary norms and rules of the activity.[23] In the case of Exercise "Fatal Blow", there can certainly be said to be social value in military training. However, this was unauthorized military training. On the other hand, while this type of exercise was not authorized for basic infantry qualification training, it cannot necessarily be said to have been beyond the norms and customs of military training generally. POW training, with rough and unpleasant treatment of detainees, was authorized within the CAF in other contexts.

317. However, even if consent to such treatment in training was not necessarily contrary to common law limitations on consent, the statutory limits in *Criminal Code* subsection 265(3) could still have precluded them.

[23] *R v Jobidon,* [1991] 2 SCR 714.

7.1.11.5 Assault Causing Bodily Harm (CC s. 267(*b*))

318. "Bodily harm" is defined in section 2 of the *Criminal Code* as

> *...any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.*

319. Importantly, courts have held that "bodily harm" can be psychological in nature,[24] and can involve injury of just more than a very minor degree which results in a very minor degree of distress and need only last something more than a very short period of time.[25] Importantly for this case, there is case law indicating that the assaultive behaviour need not be the sole cause of the psychological harm; it only needs to be a significant contributing cause.[26]

320. Moreover, while the courts are not unanimous on the point, according to the leading decision, it does not matter that the perpetrator did not, or could not, foresee the harm in question. It is sufficient that the perpetrator had the necessary intent to commit the underlying offence of assault, and that bodily harm resulted.[27]

7.1.11.6 Unlawfully Causing Bodily Harm (CC s. 269)

321. The offence of unlawfully causing bodily harm, requires, in addition to the causing of harm, that the accused was at the time engaged in an unlawful act which objectively is likely to subject another to the risk of harm or injury.[28] The underlying unlawful act can be any offence

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[24] *R v. McGraw* (1991), 7th CR (4th) 314 (SCC), at para 23; and *R v N(WL)* (1993), 145 AR 262 (Alta CA), at para 8.
[25] *R v Bulldog*, 2015 ABCA 251, at para 44; and *R v Dixon*, 1988 CarswellYukon 38, [1988] 5 WWR 577 (Yuk CA), at para 45.
[26] *R v. Moquin*, 2010 MBCA 22, 22 CarswellMan 51, at para 39.
[27] *R v DeSousa*, 1992 SCC 80, 1992 CanLII 80 (SCC), [1992] 2 SCR 944, *dicta* by Sopinka J for the Court, at pp. 966-67; see also: *R. v. Brooks* (1988), 1988 CanLII 3018, 41 C.C.C. (3d) 157 (B.C.C.A.); *R. v. Swenson* (1994), 1994 CanLII 4683, 91 C.C.C. (3d) 541 (Sask. C.A.); *R v Paice*, 2005 SCC 22 (CanLII), [2005] 1 SCR 339, *dicta* in separate concurring opinion by Fish J, at para 26; and, by analogy with unlawful act manslaughter: *R v Smithers*, 1977 CanLII 7 (SCC), [1978] 1 SCR 506, at p. 519. See *contra*: *R v Dewey*, 1999 ABCA 5 (CanLII), 132 CCC (3d) 348, [1998] CarswellAlta 1220, [1998] AJ No 1456 (QL); *R. v. Blackwell*, 2007 BCSC 1240; *R v Colbourne*, 2008 NLPC 28719; and *R v Elliott*, [2008] NJ No 42, 2008 CanLII 4243 (NL PC), at para 49-50. Part of the confusion in the case law on this point may relate to the fact that some of the courts refer to the offences of assault causing bodily harm (CC s. 267(*b*) and aggravated assault (CC s. 268), interchangeably, or at least assume them to have the same intent requirements. However, given that they are created as separate offences, and that aggravated assault has a significantly higher maximum punishment (fourteen years imprisonment, versus ten years for assault causing bodily harm), such an assumption is at the very least open to doubt. Until the matter is expressly resolved by the Supreme Court, it would seem that the relevant *dicta* in the SCC by Sopinka J for the Court in *DeSousa* and by Fish J in *Paice*, and the provincial appellate court decisions in the same vein (*Brooks* and *Swenson*) more likely reflect the state of the law as regards the required intent for the offence of assault causing bodily harm.
[28] *R v DeSousa*, *supra* note 27, at p. 961.

(federal or provincial) which, in the circumstances of its commission, was likely to injure or put at risk the bodily integrity of others.[29]

322. In the case of the scenario presented by Exercise "Fatal Blow", the underlying unlawful act causing bodily harm could be a basic assault under *Criminal Code* section 266. Another possibility would be to utilize as the underlying offence one or more of the relevant military service offences noted above. To serve as the underlying or predicate offence, it does not seem to matter that the predicate offence itself could no longer be pursued for limitation reasons.[30]

323. A strategic advantage to prosecuting this offence of unlawfully causing bodily harm, and using one of the service offences under the NDA as the underlying unlawful act, is that it would bypass the issue of consent. Although, as observed above, the obstacles posed by a possible defence of consent were not insurmountable in light of limits to consent stipulated in *Criminal Code* subsection 265(3).

7.1.11.7 Forcible Confinement (CC s. 279(2))

324. To make out this offence, set out in *Criminal Code* subsection 279(2), it must be established that a person is coercively restrained or directed contrary to their wishes for a significant period of time.[31]

325. Pursuant to subsection 279(3) of the *Criminal Code*, the absence of resistance on the part of the victim is no defence unless the accused proves that there were no threats, duress, force or exhibition of force. In the scenario of Exercise "Fatal Blow", clearly there was duress involved in gaining the trainees' participation.

7.1.11.8 Torture (CC s. 269.1)

326. Torture is examined here as it is expressly raised by the complainant in his complaint.

[29] *R v DeSousa*, *supra* note 27, at pp. 958-61.
[30] *R v Curragh Inc.* (1994), 25 C.R. (4th) 377 (NSPC).
[31] *R v Pritchard*, 2008 SCC 59 (CanLII), [2008] 3 SCR 195, at para 24.

327. The relevant *Criminal Code* provisions read as follows:

> *269.1 (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.*
>
> *Definitions*
>
> *(2) For the purposes of this section,*
>
> official *means*
>
> *(a) a peace officer,*
>
> *(b) a public officer,*
>
> *(c) a member of the Canadian Forces, or*
>
> *(d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (a), (b), or (c), whether the person exercises powers in Canada or outside Canada;*
>
> torture *means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person*
>
> *(a) for a purpose including*
>
> *(i) obtaining from the person or from a third person information or a statement,*
>
> *(ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and*
>
> *(iii) intimidating or coercing the person or a third person, or*
>
> *(b) for any reason based on discrimination of any kind,*
>
> *but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.*
>
> *No defence*
>
> *(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.*

328. While the offence of torture might well have fit the scenario underlying this complaint, it would not have been available to CFNIS CR as a charge. The obstacle to a charge of torture is a purely legal one: the torture offence was only added to the *Criminal Code* in 1989,[32] and there can be no retroactive application of criminal offences.[33]

[32] The offence of torture was enacted in RSC 1985 (3rd Supp), c. 10, s. 2. The Act received Royal Assent on April 4, 1987, and came into force on May 4, 1989.
[33] See, e.g., *Canadian Charter of Rights and Freedoms*, s. 11(*g*).

7.1.11.9 Defence of Superior Orders

329. This is a common law defence to criminal liability which has only partially been codified in our criminal law.[34] Notwithstanding the general codification of Canada's criminal law in the *Criminal Code*, defences and excuses at common law are expressly preserved in the Code.[35]

330. In essence, the defence of superior orders holds that a military subordinate should not be held liable for acts committed on the orders of a superior, except where the order is manifestly unlawful. As the Supreme Court of Canada stated in the leading case of *R. v. Finta* (1994)[36]:

> *The absolute necessity for the military to rely upon subordinates carrying out orders has, through the centuries led to the concept that acts done in obedience to military orders will exonerate those who carry them out.*[37]

331. The relevance to this PII, is that the remaining Battle School instructors – the section commanders – who participated in Exercise "Fatal Blow", might have been able to claim that they were acting under the instructions of the platoon leaders: Lt X and Sgt Y, both of whom are deceased. If this were the case, there would have been no one left whom the CFNIS could have charged.

332. If applicable, this defence would have transferred any criminal responsibility from the instructors to the platoon leadership. As stated by the noted international criminal law scholar, Cherif Bassiouni, and quoted with approval by the Supreme Court in *Finta*:

> *…throughout the history of military law, obedience to superior orders has been one of the highest duties for the subordinate. The obedience exonerates the subordinate from responsibility because of the command responsibility of the superior who issued the order.*
>
> *This criminal responsibility attaches to the decision-maker and not to the executor of the order who is exonerated. …*[38]

333. While there is an exception to this defence where the order relied upon is considered "manifestly unlawful", the case law indicates that, at least in wartime, only a very high threshold

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[34] The defence is codified with respect to persons responsible for the enforcement of law and justice, per *Criminal Code* s. 25, and military personnel and peace officers involved in the suppression of riots, per *Criminal Code*, ss. 32(2) and (3); and with respect to war crimes and crimes against humanity: *Crimes Against Humanity and War Crimes Act*, s. 14.
[35] *Criminal Code*, s. 8(3).
[36] *Supra* note 3.
[37] *Ibid*, at p. 829.
[38] *Ibid*.

of unreasonableness will render the defence of superior orders unavailable to a subordinate accused.

334. As the Supreme Court noted, the defence of superior orders will be forfeited

> *…where the crimes committed in obedience to superior orders during hostilities were so atrocious that they exceeded the limits of acceptable military conduct, and shocked the conscience of society*.[39]

335. The Supreme Court has further described a manifestly unlawful order as follows:

> *It must be one that offends the conscience of every reasonable, right-thinking person; it must be an order which is obviously and flagrantly wrong. The order cannot be in a grey area or be merely questionable; rather it must be patently and obviously wrong*.[40]

336. As inappropriate as the "Fatal Blow" training exercise was, it was likely not on the level of "manifestly unlawful" as described above. However, there are some arguments that might have been available to undermine the defence of superior orders in this case.

337. First, there are, broadly speaking, two schools in the international jurisprudence regarding the nature of the "manifestly unlawful" threshold for triggering a subordinate's duty to disobey. One school insists that the threshold of "manifestly unlawful" represents a constant or absolute standard. The other school suggests that the standard may be relative and capable of being relaxed or lowered in the context of routine, non-emergency military activity, such as training.[41]

338. According to the first school of thought, which seems ascendant in the United States,[42] the emphasis is put on military obedience and cohesion over the strict application of the law. The second school seeks a more nuanced approach with a greater emphasis on the rule of law, at least in the context of routine, or non-emergency military activity.[43]

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[39] *Ibid*.
[40] *Ibid*, at p. 834.
[41] Ziv Bohrer, "The Superior Orders Defense: A Principal-Agent Analysis," (2012) 41:1 *Georgia Journal of International and Comparative Law* 1; and Ziv Bohrer, "Clear and Obvious? A Critical Examination of the Superior Order Defense in Israeli Case Law," (June 2006) 2 IDF Law Review 193.
[42] *United States v. Lusk* (1985), 21 MJ 695 (Army Court of Military Review), at p. 700: "*In combat, … obedience to orders is vital. … In peacetime, soldiers must be trained in the same climate of obedience. The discipline which enables armies to prevail cannot be switched on and off like a lightbulb.*"
[43] Bohrer, "The Superior Orders Defense…," *supra* note 41, at pp. 53-55; and Bohrer, "Clear and Obvious? …," *supra* note 41, at pp. 222-52.

339. A concrete example of the second school of thought may be found in the Israeli court martial case of *Chief Military Prosecutor v. Gil and Hadar* (1965).[44] In that case, two soldiers were delivering loaves of bread to civilians and the senior one directed that the remaining loaves be dumped at the roadside so they could finish up early. Even though the order did not reach the level of being "manifestly unlawful" in the classic sense, the subordinate who complied with the direction to dump the bread was convicted. Israeli court martial jurisprudence supplies a number of other examples of subordinates being convicted when following orders that were clearly illegal, but not manifestly unlawful in the sense of being obviously and absolutely immoral, as well as illegal.[45]

340. A further example which is perhaps somewhat comparable to the scenario at issue in this complaint, is the case of *Eliyahu v. Chief Military Prosecutor* (1950).[46] In that case, an order for a solider to remain lying on the floor in order to show the military police the position the soldier was in when he was caught sleeping during guard duty was ruled to be manifestly unlawful in that it had no military rationale and was given for the sole purpose of humiliating the soldier.

341. Yet the Israeli jurisprudence is far from unanimous on this issue. There are other cases where soldiers have been acquitted for following clearly illegal orders because they fell short of the classic version of the "manifestly unlawful" threshold.[47]

342. In Canada, there is a paucity of case law dealing with the defence of superior orders in the context of non-emergency, routine military activities. Canada's court martial cases which

[44] Appeal/15/65, 1965 PDZ 28.
[45] In *Elkobi v. Chief Military Prosecutor* (Appeal/341/82, 1982 PDZ 57), a subordinate soldier who complied with an order to help steal equipment from another unit was convicted at court martial. In *Tupahi v. Chief Military Prosecutor* (1984), a soldier was convicted for following an order to vandalize some of the unit's weapons with a view to getting better ones (Appeal/239/84 (unpublished), cited in Boher, "Clear and Obvious?" *supra* note 41, at p. 229). In *Chief Military Prosecutor v. Gahan* (1959), a soldier was ordered to drive with one hand so that he could hold onto a rubber boat being carried on the top of the vehicle – his superior being unable to find ropes to properly secure it. The car got into an accident and the solider was convicted at court martial because the order violated road safety laws (Appeal/1/59, cited in Boher, "Clear and Obvious?" *supra* note 41, at p. 231). Also, in *Dgani v. Chief Military Prosecutor* (1950), soldiers were convicted when they followed a commander's direction to steal some sheep from a nearby farm in order to cook them on a bonfire (Appeal/20/50, 1948-50 PDZ 85).
[46] Appeal/20/50, 1948-50 PDZ 85.
[47] Appeal/139/75, *Shlomo v. Chief Military Prosecutor*, 1975 PDZ 251, where a soldier who followed orders to render a military vehicle unserviceable so that his unit could received a newer one was acquitted; and District Court Martial/313/86, *Military Prosecutor v. Ben-Zaken* (unpublished), cited in Boher, "Clear and Obvious?" *supra* note 41, at pp. 213-14, where a soldier was acquitted for complying with an order to make a false report.

have involved the defence of superior orders in modern times have mainly focused on the courts martial in the mid-1990s of members of the Canadian Airborne Regiment in connection with the 1992-93 mission to Somalia. There the superior order at issue was an order by a company commander, passed on by a platoon commander, to physically abuse (but not kill) anyone caught sneaking into the Canadian camp, as a deterrent against further incursions by the local civilian population. As this order was a clear violation of the law of armed conflict, it easily fell within the classic sense of "manifestly unlawful". As such, these cases provide no guidance on the application of the defence of superior orders to lesser degrees of illegality.

343. It is probably a good sign that Canadian military jurisprudence has had little experience in applying the defence of superior orders and the exception of "manifest unlawfulness" in the context of peacetime routine activities. After all, Canada has, with a couple of time-limited exceptions, had an all-volunteer military, and these are known to be generally more law-abiding than conscript ones. This is part of the reason that the Somalia episode was so shocking to Canadians.

344. The other major legal area where defence of superior orders comes up is the citizenship and immigration field, specifically in cases involving the exclusion or removal of persons for past participation in crimes against humanity or war crimes. By the very nature of the legal grounds for exclusion and removal, courts in these cases only deal with allegations of seriously brutal conduct in the context of emergency situations, usually those involving internal upheavals in the subject's country of origin. These cases generally involve allegations of engaging in, or aiding and abetting, brutal mistreatment of others, conduct that is obviously immoral as well as illegal. Thus, there has been no need for the courts in these cases to consider nuances in the application of the "manifestly unlawful" exception to the defence of superior orders.

345. Finally, there have been three domestic criminal prosecutions in Canada for crimes against humanity or war crimes: one, *R. v. Finta* (discussed above),[48] under the former 7(3.71) of the *Criminal Code*; and two, *R. v. Munyaneza*[49] and *R. v. Mungwarere*,[50] under the *Crimes*

[48] Acquitted by judge and jury on May 25, 1990 under the former s. 7(3.71) of the *Criminal Code* – Crown appeal dismissed: [1992] OJ No 823 (QL), 1992 CanLII 2783 (ON CA), further appeal to SCC dismissed: *supra*, note 3.
[49] Accused convicted at trial: [2009] QJ 4913, 2009 QCCS 2201 (CanLII); appeal dismissed: [2014] QJ 3059, 2014 QCCA 906 (CanLII); leave to appeal to SCC denied: 2014-12-18, 2014 CanLII 76857 (SCC).
[50] Accused acquitted by judge: 2013 ONSC 4594, [2013] OJ No 6123 (QL), 2013 ONCS 4594 (CanLII).

Against Humanity and War Crimes Act. Of these cases, only in *Finta* did the defence of superior orders arise. But *Finta* involved a police officer rounding up people for deportation to concentration camps in the midst of 1944 wartime Hungary, then occupied by Germany (so under military rule) and under threat of invasion by the forces of the Soviet Union. Not surprisingly, the *Finta* case presented no opporunity for the Court to consider obedience to superiors in less abhorrent circumstances.

346. There is, however, one line in *Finta* which speaks to the importance of strict obedience to orders outside the context of combat, specifically in the context of training. At one point in the judgment, Cory J, writing for a majority of the Court, stated:

> *... a prime object of training is to inculcate in every recruit the necessity to obey orders instantly and unhesitatingly. This is in reality the only way in which the military unit can effectively operate.*[51]

This language is suggestive of the American approach, where primacy is given to military cohesion, command and control of soldiers, and the command responsibility of superiors for their subordinates. However, the above excerpt from *Finta* is too brief and beside the point at issue in the litigation to count as a definitive indication of the Court's view of the issue.

347. While the issue is far from certain, it would seem that the most prudent course for the Crown prosecutor, and therefore the CFNIS CR, would have been to assume that the "manifestly unlawful" exception to the defence of superior orders was not likely available in this case.

348. It is important to note however that this would not necessarily shut the door on a prosecution of the Battle School section commanders. After all, the defence of superior orders is only available where the person was acting under the compulsion of superior direction. If it could be shown that the section commanders were voluntarily putting into effect the plans of the platoon leadership, if they agreed with the unauthorized modifications to Exercise "Fatal Blow", and willingly or voluntarily carried them out, surely they cannot successfully claim the defence of superior orders. If someone, voluntarily and not in response to the coercive effect of an order,

[51] *Finta, supra* note 3, at p. 828, per Cory J, for himself, Gonthier and Major JJ, and whose reasons were adopted by Lamer CJC.

decides to act in accordance with the illegal will of a superior, it cannot be that the mere presence of superior direction should operate as a complete defence.

7.1.11.10 Conclusion

349. Based on the foregoing analysis, there appears to be a number of potential pathways to criminal liability under the *Criminal Code* in this case, namely: assault, assault causing bodily harm, unlawfully causing bodily harm, and forcible confinement. This would be contingent, of course, on being able to establish that the remaining suspects, the section commanders, acted on a voluntary basis and not through compulsion from orders of the platoon leadership.

350. This is not to say that charges *should* necessarily have been laid. That involves an exercise of prosecutorial and police enforcement discretion. Even where there is evidence to satisfy the various elements of an offence, consideration must be given to whether a charge should be laid. The common considerations for prosecutorial discretion are whether there is a reasonable prospect of conviction and whether prosecution is in the public interest.

351. The issue of whether CFNIS CR's exercise of charge-laying discretion was reasonable will be addressed in the course of the next and final section of this report dealing with this allegation.

7.1.12 Analysis and Conclusion

7.1.12.1 Introduction: The Standard of Negligence

352. In this part of the complaint, the complainant alleges that MCpl Coughlin's investigative response to his criminal complaint was negligent and incompetent. These terms need to be defined before they can be applied to the facts of this case.

353. The standard of negligence for a police investigation was established and described in the seminal Supreme Court of Canada decision in *Hill v. Hamilton-Wentworth Police Services* (2007).[52] The applicable standard is that of the reasonable police officer in the position of the

[52] *Supra* note 4.

subject officer, armed with the same information that the subject officer knew or ought to have known at the time. The Court elaborated on this negligence standard as follows:

> *I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances .... Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made — circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results (...). ... . The law distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgment" which any reasonable professional might have made and therefore, which do not breach the standard of care.* [emphasis added][53]

354. The complainant also alleges in this allegation that MCpl Coughlin conducted an investigation that was "incompetent". The *Compact Oxford English Dictionary* defines "incompetent" as: "*not sufficiently skillful to do something successful*."[54] The Merriam-Webster online dictionary defines "incompetent" as: "*lacking the qualities needed for effective action*," or "*inadequate to or unsuitable for a particular purpose*."[55] Thus, for this investigation by MCpl Coughlin to be deemed incompetent it would have to have been done in such a way as to be indicative of someone lacking in the necessary skills or qualification. It seems to go beyond saying that the investigation was merely negligent in certain discrete respects. In effect, it is sort of an extreme form of negligence. However, since the concept of negligence subsumes that of incompetence, and the former has the advantage in this situation of being a legal term which has been the subject of considerable judicial consideration, it makes sense to simply focus on negligence for the purpose of this allegation.

355. As recognized in the *Hill* decision, professionals must bring to bear discretion and judgement as well as experience and training. Perfection is not expected. Minor errors are tolerated. A sub-optimal performance is not negligence. The error(s) need to be unreasonable ones, that is errors that no other professional in the same situation would be reasonably likely to

[53] *Ibid,* at para 73.
[54] Oxford University Press, Third edition revised (2008), at p. 512.
[55] https://www.merriam-webster.com/dictionary/incompetent.

commit. While regulated professionals are subject to myriad specific and technical obligations largely of an administrative nature, professional governing bodies do not discipline their members for the quality of their professional services unless unreasonable errors are made.

356. With that in mind, we can turn to MCpl Coughlin's investigative efforts. Having reviewed in detail this CFNIS CR investigation, there are two decision points which bear particular scrutiny: 1) the decision to seek prosecutorial advice early in the investigation; and 2) the decision not to continue the investigation after receiving the provincial Crown prosecutor's advice. These decisions shall be considered in turn.

7.1.12.2 The Decision to Refer the Case to the Prosecutor Early

357. The first point to make about the question of seeking prosecutorial advice early is that "early" is a relative term, and so may mean different things in different cases. It is certainly not the case that police are required to complete the fact-gathering process before going to the prosecutor for advice. To the contrary, MP policy in place at the time of the CFNIS CR investigation in this matter, expressly advised investigators to consult as needed with prosecutors during an investigation.[56] If a prosecution is not viable, it is better to know this sooner rather than later. Police resources are finite and there are always other cases claiming investigators' attention.

358. Indeed, the MPCC has in a previous case criticized a CFNIS investigator for continuing to investigate a case after it should have been apparent that charges were not feasible.[57] That case has a number of similarities with the present case. It was a complaint about a CFNIS investigation into an incident from the early 1980s, which, coincidentally, also included allegations of torture – before torture was a separate criminal offence – as well as possible service offences under the *National Defence Act*, which, as in the present case, were precluded by the three-year limitation period then in place. In this case, the complainant who was a former Canadian soldier complaining about an injury that had occurred 28 years previous. The CFNIS

[56] *Military Police Policies and Technical Procedures* (MPPTP), Chapter 6, Annex A, paragraph 26. This MPPTP has since been superseded by MP Order 2-340, paragraph 39, which is even stronger on this point, requiring MP investigators to work closely with prosecutors throughout the course of an investigation. See also: MP Orders 2-130 and 2-363.
[57] MPCC 2012-010, Final Report by Chairperson Stannard issued March 27, 2015, at pp. 23-24 and 28.

ended up conducting a 30-month investigation, which the MPCC considered to be excessive under the circumstances.

359. While the MPCC is not bound by its previous decisions, the above case nonetheless provides an apt illustration of how the imperative of absolute justice for victims needs to be balanced against other legitimate societal needs and interests, such as the rational allocation of police, prosecutorial and judicial resources.

360. The CFNIS investigation at issue in this PII lasted only a small fraction of the one at issue in the previous MPCC file cited above. The only information that had been gathered in the present case was from interviews with two complainants, Mr. Beamish and Mr. Junkin. The CFNIS also had, and shared with the prosecutor, the unofficial statement of CFNIS CR Evidence Custodian, Mr. Paul Lirette, who confirmed the details of the incident as alleged by Messrs. Beamish and Junkin, but who considered the incident simply a part of training and did not wish to get involved in the investigation. MCpl Coughlin indicated in the January 13, 2016 Prosecution Summary that "*all attempts to obtain the course curriculum and other documents pertaining to the instruction of the course have met with negative results*." Thus, the prosecutor should have understood that the official authorization of the exercise was still a live issue.

361. In fact, the issue of whether this was a chain of command sanctioned exercise, or a rogue one which went beyond the authorized training, is a critical aspect of the complainant's criminal complaint and of this allegation. The MPCC has determined through its investigation that "Fatal Blow" was likely a rogue exercise planned and instigated by the platoon leadership (Lt X and Sgt Y). But this had not been established by the CFNIS CR investigation because MCpl Coughlin was focussing his efforts in this area on obtaining the course syllabus or other official course documentation. He did not consider seeking out other valuable sources – namely, the Battle School leadership from that time period. This appears to be the most significant oversight by MCpl Coughlin, and his CFNIS CR supervisory chain of command.

362. This was arguably a significant omission, as it left the prosecutor with no firm picture of whether this was normal training, which reflected the different norms and standards of its day, or whether, on the other hand, it was something that was out-of-bounds, even by the rules then in place. As was observed in the previous section of this report that dealt with the applicable penal

law (section 7.1.11), the latter characterization would have opened up a number of potential pathways to criminal liability.

363. However, some countervailing factors need to be borne in mind. First, the documentary evidence on the course curriculum and standards would have been very important evidence to be able to present in any prosecution, and so MCpl Coughlin was quite right to continue to search for it. Second, by submitting the file to the prosecutor as he did, MCpl Coughlin was not necessarily seeking a definitive response as to whether the criminal allegations of the complainant should be prosecuted. The prosecutor could well have come back with advice on which offences CFNIS CR should focus the investigation, or advice on specific priority areas of investigation. Indeed, this might have been the safest course for the prosecutor in the absence of evidence as to the status of the impugned training exercise.

364. In the event, however, Prosecutor Rudiak was, according to his recollection, overwhelmingly concerned about the intervening length of time (35 years). He was also concerned that consent might have been an issue, meaning that the trainees might be deemed to have consented to the exercise, or else that the instructors may have had an honest, but mistaken, belief in the trainees' consent. His other concern was that it was likely consistent with the norms of the day for military training. Unfortunately, the MPCC does not have access to Mr. Rudiak's actual opinion to CFNIS CR (see MPCC Recommendation # 3 below).

365. As noted above, there were potential answers to the question of consent. While the trainees volunteered to serve and therefore to undergo training, it is less likely that they could be said to have consented to an extreme and unauthorized training exercise. Given these circumstances, the trainees' participation in the exercise could be said to have been obtained by fraud and/or the exercise of authority, factors which are specifically deemed to negate consent according to paragraphs 265(3)(*c*) and (*d*) of the *Criminal Code*, as discussed above in section VII 1) k) of this report.

366. More challenging to counter is the prosecutor's concern about the training exercise being within the norms of the day. This PII has been able to determine that this was likely not the authorized "Escape and Evasion" training that was supposed to be taught for purposes of basic infantry qualification at the Battle School. However, it has also been learned from some

witnesses that this type of treatment was utilized in the CAF for other purposes, such as 'conduct after capture' training. Moreover, some of the trainees also referred to a French commando course that they took after being posted to Germany, which was described by some trainees as being worse than Exercise "Fatal Blow". The point of this is not to take away from the fact that this training exercise was harsher than what seems to have been authorized by the Battle School. The point is, rather, that such training was akin to that to which members of the CAF were exposed in other contexts. So in that sense, Exercise "Fatal Blow" might arguably have fallen within or close to the military norms of the day, even though it was not authorized for the basic infantry qualification training which they were supposed to be doing in the 'Landing in Sicily' class.

367. In addition, some trainees were not overly concerned about the exercise. They considered it unpleasant but understood that the training was intended to toughen them up for military service.

368. But in any event, it would seem that the age of the case (32 years), with all the inherent challenges that litigating such a case would carry, was the overriding concern of the prosecutor – and no amount of further investigation by CFNIS CR was going to change that.

7.1.12.3 The Decision to End the Investigation Without Charges

369. This brings us to the second of the critical decision points in the CFNIS CR investigation: the decision to discontinue the investigation without laying charges, following receipt of the prosecutor's advice.

370. While prosecutorial advice is important, it is still just that, advice. In the jurisdiction relevant to this case (Alberta), it is the police who ultimately make decisions on continuance of investigations and the laying of charges. However, except in those rare cases where the prosecutorial advice is unreasonable, police should generally not be criticized for relying on legal advice. Indeed it would be surprising if they did not rely on such advice.

371. The second critical decision by CFNIS CR in this case was whether or not it was reasonable to follow the Crown prosecutor's advice and conclude the investigation without laying criminal charges. While it is not for the MPCC to judge the quality of the advice of

prosecutors, assessing the military police decision to follow the prosecutor's advice requires us to do so indirectly, to a limited extent.

372. The advice provided by the provincial prosecutor in this case was not unassailable. His concerns about consent as a viable defence for the potential accused, as we have seen, may not have been that well founded in light of subsection 265(3) of the *Criminal Code*, as discussed above. His sense of the norms of the 1980s seems to have been based on little more than personal intuition, rather than any research or evidence – evidence which might have been obtained by interviewing more witnesses.

373. However, the prosecutor's concern regarding the lateness of the criminal complaint is more difficult to overcome. While timeliness of complaint is not a factor affecting the strict legality of an accused's actions, the prosecutor must nonetheless turn their mind to such questions in order to assess whether there would be a reasonable prospect of conviction. In other words, the prosecutor had to put his mind, not only to the question of whether a prosecution *could* theoretically proceed, but also to whether it would realistically succeed, and therefore whether it *should* proceed. Given the inherent fragility of human memory, especially over time, and the fact that the defence need only raise a reasonable doubt to succeed, the prosecutor considered that it might not be worth tying up so much court time and other public resources for such a case. A further challenge to prosecution, stemming from the lateness of the complaint, was the apparent difficulties in obtaining contemporaneous training records, which MCpl Coughlin encountered in this case.

374. Given the foregoing, the Crown prosecutor's advice not to pursue charges due to a lack of a reasonable prospect of conviction was not unreasonable. Another prosecutor looking at the same information might well have reasonably chosen to guide the CFNIS CR investigator toward key investigative priorities. However, even in the latter case, this advice would most likely only have extended the length of the investigation; it would not likely have changed the outcome. Thus, the prosecutor's advice to CFNIS CR was within the bounds of reasonableness.

375. For the same reasons that the prosecutor's advice was reasonable, it was reasonable for MCpl Coughlin and his supervisory superiors to follow that advice and conclude the investigation. Another investigator might reasonably have conducted some further investigation

in response to the legal advice. But, by the very nature of reasonableness, there will be a range of acceptable choices.

376. However, there is one additional consideration which further supports the reasonableness of the decision to conclude the investigation without charges. It is not clear whether it was a concern of the prosecutor, but it does appear to have entered into the thinking of CFNIS CR. The factor in question is the death of the two principal suspects: Lt X and Sgt Y. While MCpl Coughlin suggests in his MPCC interview that this was not a decisive consideration, his April 7, 2016 Case Summary in the GO file suggests that it was an important one. The relevant passage reads:

> *CFNIS investigators attempted to locate course documentation and course SOPs with respect to Fatal Blow; however, were unable to locate any documents pertaining to the investigation. It was also determined through speaking with the complainants that this was the only time these types of actions took place and that* ***the officer in charge has since passed away****.*
>
> *Given the historical nature and type of allegations brought forward,* ***and the possible list of suspects****, CFNIS CR engaged a Crown prosecutor early in the investigation. In conjunction with the legal advice sought and information learned during the investigation it was determined by the CFNIS that further investigative steps would not prove beneficial ....*

377. The bolded text in the above extracted portion of the Case Summary suggests that there was some concern that, with the deaths of the main instigator (Lt X) and his second in command (Sgt Y), the only people left to prosecute would have been the lower ranking section commanders: A, B, C and D.

378. It was noted in the previous section of the report (section 7.1.11.8), that it might have been possible to establish, based on further interviews with the section commanders, that they were acting on a volunteer basis, rather than pursuant to the direction of the platoon leadership. However, it must be remembered that the section commanders would only have had to raise a reasonable doubt that they were acting pursuant to superior direction. Moreover, even if the defence of superior orders could have been thwarted, it might have created the perception of unfairness if only the subordinates were being prosecuted for something that their superiors had instigated and planned. This relates to the other ground of prosecutorial discretion: whether a prosecution is in the public interest.

379. Thus, while the decision to go to the prosecutor when MCpl Coughlin did might have been premature, it cannot be said to be unreasonable. Nor can the subsequent decision to act on

the legal advice received and conclude the investigation be said to be unreasonable. Therefore, the CFNIS CR investigation into the complainant's criminal allegations is found not to have been negligent. Based on the relative meanings of the terms, as discussed above, it follows that an investigation that is not negligent cannot be said to be incompetent.

380. Finally, it should be noted that the MPCC found no evidence of improper external influence in the handling of this CFNIS CR investigation.

Finding # 1:

The Military Police Complaints Commission finds that the complainant's allegation that CFNIS conducted a negligent and incompetent investigation into his historical claims of abuse during the 1984 Battle School training exercise, "Fatal Blow", is UNSUBSTANTIATED. (Accepted by the CFPM)

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7.2 Allegation #2: MCpl Coughlin failed to review the file prior to closing it

381. On August 9, 2016, at 1547hrs, MCpl Coughlin had a telephone conversation with Mr. Beamish, which was recorded by Mr. Beamish. The following exchanges are from a transcript of that call:

> MCpl Coughlin: *... And then that's why I got the Crown prosecutors involved, just the enormous, how big the file would be with so many people, I got them in early. And then that's just because I wanted to make sure that, listen, I obviously understand what you guys were going through, umm, sitting around and talking with you."*
>
> Beamish: *I – I don't think you do.*
>
> MCpl Coughlin: *Well –*
>
> Beamish: *And I know you do, because you didn't go through it.*
>
> MCpl Coughlin: *Okay. Granted, I'll give you that. You're correct on that. I didn't go through that. But I understand how it was — affected, from what I could see for you, and that's why I got the Crowns to invest — to invest in this early on.*

382. This exchange would seem to be the basis for this allegation. Yet it is apparent that the remark, "*I didn't go through that*," when viewed in its context, was a reference by MCpl Coughlin to the mistreatment suffered by the 'Landing in Sicily' trainees in 1984, and not to the investigation file. MCpl Coughlin was admitting that he could not fully appreciate Mr. Beamish had experienced because he "*didn't go through that.*"

383. This understanding is corroborated an Administrative Activity entry in the GO file authored by MCpl Coughlin which reads: *"At 11:19 hrs., 26 Oct 15, Sgt COUGHLIN has reviewed this file in its entirety."*

384. This interpretation was also confirmed in the May 11, 2017 Professional Standards interview with MCpl Coughlin. After showing MCpl Coughlin a copy of the relevant portion of the transcript, the PS investigator wrote in his report:

> *Sgt COUGHLIN immediately spotted on page 04/13 paragraph d where BEAMISH said 'You didn't go through (the file).' and Sgt COUGHLIN replied '0k. Granted. I'll give you that.' He stated that if one listened to the recorded conversation, what he was talking about was that he (Sgt COUGHLIN) did not go through what BEAMISH went through during that course. When BEAMISH replied 'no you don't' meaning that 'you don't know what I've been through' Sgt COUGHLIN realized he made a slip after which he said "0k. Granted. I'll give you that (that he has not been through what he went through during that course). Sgt COUGHLIN added that it is not about 'the file' but what BEAMISH went through.*

385. On July 7, 2020, the MPCC investigators interviewed MCpl Coughlin. He explained to the investigators that that this comment was taken out of context and reiterated that he was referring to the fact that he had never gone through what they went through when they were in the cells at Battle School, as opposed to not reviewing the complaint.

386. It is clear that the remark that is the basis of this complaint was taken out of context and so this allegation is without merit.

Finding # 2:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin closed the investigation file without reviewing it is UNSUBSTANTIATED. (Accepted by the CFPM)

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7.3 Allegation #3: MCpl Coughlin failed to complete the investigation due to the offence of "torture" not being in the Criminal Code at the time of the incidents

387. This allegation arises from the same recorded telephone conversation of August 9, 2016, between MCpl Coughlin and Mr. Beamish. In the course of their conversation, the following exchange occurred:

Beamish: *And torture, you guys never even looked at that?*

MCpl Coughlin: *"Okay, so torture, the problem with the torture is torture didn't become an offence until 2 – in 1985. So we have to as criminal investigators, and even the civvy cops have to follow the same rule, is what offences occurred at the time of the offence. So if it's not in the Criminal Code at that time, we can't go back 10 years later and charge for a different charge now that they've created (inaudible). Do you know what I mean?*

Beamish: *So you're telling me that torture wouldn't be allowed –*

MCpl Coughlin: *Came into effect in 1985.*

Beamish: *So torture was allowed before 1985.*

MCpl Coughlin: *It's not that it was allowed. There just wasn't an offence for it. So there were certain things that would fall under what that was. But then when we looked at that, it was, umm, because the National, we couldn't go under the National Defence Act, so I had to go under the Criminal Code.*

388. In his interview with the MPCC investigators, MCpl Coughlin explained that it did not matter whether or not torture was a distinct offence, he just "*needed to determine what the offences were, and then move it forward*."

389. The MPCC investigator, in his interview with Mr. Beamish put this allegation to him and quoted from the August 9th transcript. It was noted to Mr. Beamish that MCpl Coughlin explained that he was not "*hung-up*" on the word "torture", he was just trying to explain that he had to deal with what the *Criminal Code* had as offences at that time. He agreed he could have done a better job in explaining this to Mr. Beamish and wished he had done so.

390. It is a fact that the crime of "Torture," Section 269.1 (1) of the *Criminal Code,* did not come into effect until 1989. MCpl Coughlin attempted to explain that, notwithstanding the fact that the specific crime of "Torture" did not exist at that time, he still was investigating the complaint in the light of other potential *Criminal Code* offences. It should be noted that the GO file caption was "Unlawfully Cause Bodily Harm. The first investigation plan (October 28, 2015) noted the *Criminal Code* offence under investigation as "Assault". The second investigation plan (November 17, 2015) listed "Criminal Negligence" as the object of the investigation. Both of those are *Criminal Code* offences. Thus, it is clear that MCpl Coughlin had initiated a criminal investigation, and the fact that the crime of "Torture" was not available, did not prevent him from investigating Mr. Beamish's criminal complaint.

391. Often police officers deal with victims who describe a crime in a certain way. For example, a citizen will call the police and say "*I've been 'robbed'*" when reporting a theft or a

break and enter. The police know it is not a "Robbery" as defined by the *Criminal Code*, but the citizen does not know that. In like fashion, Mr. Beamish was asking if they ever looked at "Torture". MCpl Coughlin gave a technical response which would be akin to telling the citizen "You have not been robbed." It was technically correct that the offence of "Torture" did not exist in 1984, but for an uninformed person, it required further explanation. MCpl Coughlin attempted to explain that other offences were potentially relevant, however he could have articulated that information better.

Finding # 3:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin closed the investigation file simply due to the absence of the offence of "torture" in the *Criminal Code* at the time of the 1984 "Fatal Blow" exercise is UNSUBSTANTIATED. (Accepted by the CFPM)

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7.4 Allegation #4: MCpl Coughlin was overly concerned with the potential consequences for the accused

392. In the same August 9, 2016 telephone conversation between MCpl Coughlin and Mr. Beamish, the following exchange occurred:

> MCpl Coughlin: *Now this doesn't mean that at a later date, somebody else can come and reopen it and look at it. There's cold cases all the time. But given the – the timeframe of this, of how and unfortunately that's what it comes down to – and then what we had to look at is even if we did find a suspect in this –*
>
> Beamish: *Yeah.*
>
> MCpl Coughlin: *what is the court going to do to that person for this type of offense? And that's really what – what, you know, we had to take a look at as well is, you know, are they going to put somebody that's 65 years or whatever in jail for something like this?* [emphasis added]

393. When the MPCC investigators put this allegation to MCpl Coughlin he said it is his practice to focus on the effects to the victim, rather than the suspect, and that he wished he had expressed himself better.

> *Yeah, and I – I gave information, like I even said in the PS investigation, I gave information that wasn't mine to give, and using examples that – I was just fairly open with him – like actually I have never, for this file or any file, considered anything to do with what a subject (unintelligible). I always consider what the effects on people are, … . Do I wish I could better explain it, at that time to him? Yeah I do.* [emphasis added]

394. Although the actual advice the Crown gave on this matter is unknown to the MPCC, MCpl Coughlin's remarks suggest that the Crown considered the age of the potential accused to be a factor in deciding whether prosecution was in the public interest. However, as MCpl Coughlin said, he was passing on the prosecutor's reasoning. There is nothing to suggest that the age of the suspects was a primary consideration for MCpl Coughlin. He seemed very genuine when he said "*I always consider what the effects on people are….*" Nor, in fact did these considerations prevent MCpl Coughlin from partially investigating Mr. Beamish's complaint and seeking the views of the Crown prosecutor.

395. In any event, the age of the suspects and the length of the intervening time period, plus the fact that those that bore the greater responsibility (the instigators – Lt X and Sgt Y) were deceased, were relevant considerations for the prosecutor regarding the public interest in pursuing a prosecution. Furthermore, if the situation of the prospective accused was a relevant consideration for the prosecutor, they were, by extension, relevant to the police in deciding on the laying of charges. While it does not seem that MCpl Coughlin was overly influenced by the situation of the suspects, it is appropriate that he was alive to this consideration.

Finding # 4:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin was overly concerned with the potential consequences for the accused, rather than whether a crime had been committed, is UNSUBSTANTIATED. (Accepted by the CFPM)

396. Police face particular challenges when dealing with alleged victims of crimes. Victims are often emotionally invested in their criminal complaints to police. Their expectations must be managed by investigators during the course of the investigation. Furthermore, at the conclusion of an investigation where no charges are laid, investigators need to be prepared to deliver unwelcome news to victims. MPs need to communicate this message in a manner that is accurate, frank, and sensitive to the victim's emotional commitment to their case. Where a debrief on a no-charge decision lacks these qualities, it significantly increases the likelihood of the victim making a conduct complaint about the investigation. While no particular deficiency is noted with respect to MCpl Coughlin's debrief of the complainant in this case, four out of five of the allegations in this complaint are directly related to the victim debrief. Moreover, the MPCC

has had a number of files where the manner of the victim's debriefing by an MP investigator has contributed to the making of a complaint. Yet there appears to be no policy or training standard for MPs when debriefing victims at the conclusion of investigations. This is an area in need of attention.

Recommendation #1:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal provide additional training to Military Police members on interactions with complainants, specifically in the context of explaining charge-laying decisions. (Accepted by the CFPM)

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7.5 Allegation #5: MCpl Coughlin would not provide written reasons for not proceeding with the case

397. Also in this same telephone conversation, the following exchanges occurred between Mr. Beamish and MCpl Coughlin:

> Beamish: *Okay. Is there any written instruction that you provide me, or –*
>
> MCpl Coughlin: *"No. Uh, no. Like, yeah, like if you want, I have no problem. Usually what I can do is I can come and meet you. And that's why I wanted to call you. I can come meet you and sit down and talk to you about it. I have no problem doing that. Or, you know, if it's something in writing that you need, we don't usually give anything in writing. It's just that the file, we just advise that, you know, what the status of the file is or not."*
>
> *...*
>
> Beamish: *"And how do I go about that, because I do want a copy."*
>
> Sgt. Coughlin: *"It's – just, uh, I can email you all the information on how to do that, and I'll give you the file number and everything. Like I gave it to you at the time of our interview."*
>
> Beamish: *"Okay."*
>
> MCpl Coughlin: "*But I'll give you all that again, and, uh, I'll send that email off to you by the end of the week. And just I'll – I'll just show you. It's just a — it's on the website of Access to Information, or the Privacy –*
>
> Beamish: "*Okay.*"
>
> MCpl Coughlin: *"for Access to Information, and then it's just when — a link that you click on, you've got to fill it out. And, obviously because your name (inaudible) complainant, yourself and –*
>
> Beamish: *"Roger."*
>
> Sgt. Coughlin: *"Yeah, there won't be an issue, but you'll get a redacted version because they don't ever give you everything. There are certain things that you won't get. But it's just a request to the office."*
>
> Beamish: *"Okay."*

398. What occurred in these exchanges is that MCpl Coughlin was providing Mr. Beamish with information on the final disposition of his criminal complaint to the CFNIS. MCpl Coughlin offered to speak to Mr. Beamish in person. MCpl Coughlin noted that it was not CFNIS practice to write reasons for their discretionary decisions but referred Mr. Beamish to the *Access to Information Act* and *Privacy Act* disclosure regimes.

399. It would not have been reasonable to expect MCpl Coughlin to hand over a copy of the GO file. *Queen's Regulations and Orders for the Canadian Forces* at 19.36 – "Disclosure of Information or Opinion" states:

> *(2) Subject to article 19.375 (Communications to News Agencies), no officer or non-commissioned member shall without permission obtained under article 19.37 (Permission to Communicate Information):*
> *(i) furnish to any person, not otherwise authorized to receive them, official reports, correspondence or other documents, or copies thereof;*

400. CF MP Order 2-155 states: *"The release of information held by the government of Canada or any of its institutions (such as DND) is governed by the Access to Information Act and the Privacy Act."*

401. Section 6 of the *Access to information Act* states*:*

> *A request for access to a record under this Part shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution to identify the record with a reasonable effort.*

402. The *Military Police Professional Code of Conduct* at Section 4 (k) reads: "*No member of the military police shall disclose military police information unless authorized.*"

403. CF MP Order 2-155.1 at paragraph 4 states:

> *The release of MP information without appropriate authority is subject to disciplinary and/or administrative action. MP information shall remain in the custody of the MP organization except as permitted by regulation.*

404. With respect to this allegation, the PS report stated that the recording shows that MCpl Coughlin informed Mr. Beamish how to obtain a copy of the report through an ATIP request. The report adds that MCpl Coughlin was bound by CF MP Order 2-155 on the disclosure of MP Reports, which states that the DAIP is the releasing authority for MP Reports, and that requests for those reports must be made in writing to the DAIP. The PS investigator

therefore indicates that MCpl Coughlin's actions and directions to Mr. Beamish in this regard were in accordance with MP policies and procedures.

405. MCpl Coughlin was not obligated under any order or policy to commit to writing why he was not proceeding with the investigation. MCpl Coughlin was not authorized to release the MP report. He advised Mr. Beamish of the correct procedure to obtain a copy of his report. Beyond that, however, police are under no obligation to give written reasons for their exercises of charge-laying discretion,[58] nor is it their practice. For this, MCpl Coughlin cannot be blamed.

Finding # 5:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin wrongly refused to put in writing his reasons for not proceeding with the investigation is UNSUBSTANTIATED. (Accepted by the CFPM)

406. Most of the allegations in this complaint related to the phone call in which MCpl Coughlin sought to explain to the complainant the decided disposition of his criminal complaint – that no charges would be laid. Clearly, this was an unsatisfactory experience for Mr. Beamish. A contributing factor to the unsatisfactory nature of this encounter in this case, as in many other cases dealt with by the MPCC, lies in the fact that the investigating MP was artificially constrained in what he could say to the victim. It is MP policy that prosecutorial advice about the exercise of charge-laying discretion must not be disclosed to victims. It is viewed by them as a matter of preserving solicitor-client privilege in the prosecutor's advice. This is a most unfortunate and unnecessary position to take.

407. This policy leads to MPs engaging in linguistic contortions in conversations with victims, and even in making their case summary and concluding entries in their GO files. It may be recalled how MCpl Coughlin's original case summary had to be rewritten at the behest of his superiors because it came too close to disclosing the Crown's advice on the exercise of charge-laying discretion in this case. Under this policy, MPs are in effect required to try to explain the reason for charges not going forward without being able to explain why charges are not going

[58] The common law duty to provide reasons for decisions is generally associated with decisions of a judicial or quasi-judicial nature. The decisions made by police in the conduct of their investigations are focussed on the gathering and assessing of facts, which distances them from judicial or quasi-judicial decision-making: *Hill v. Hamilton-Wentworth Police Services*, *supra* note 4, at para 49.

forward. Often, MPs end up providing misleading information to victims and in their GO files by framing their reasons for not laying charges in terms of insufficient evidence on the elements of the offence, even if that is not in fact the case, and the real reason for the no charge decision is prosecutorial advice that there was not a reasonable prospect for conviction, or that it was somehow not in the public interest to pursue a prosecution.

408. Moreover, the MPCC cannot see how the disclosure of this information in this context would seriously damage solicitor-client privilege. First, the exercise of prosecutorial or police enforcement discretion is not technically legal advice. Second, it is difficult to see how the disclosure of this information to victims would in any way discourage MPs from seeking such advice or from being frank and open with prosecutors when seeking such advice. Indeed, being able to be frank and transparent with victims and in their own reports would likely make the work of MPs easier. Moreover, it must be remembered that solicitor-client privilege is supposed to exist for the benefit of the client, in this case MPs.

409. The MPCC well understands that MPs may lay charges regardless of the views of the prosecutor. But it is reasonable for MPs to give the prosecutor's opinion considerable weight in coming to their determination. After all, it is the prosecutor who must carry the case forward if charges are laid, and it must be exceedingly rare that a prosecutor's advice will be so unreasonable that an MP would be expected to not follow it. Indeed, while the residual discretion lies with the police as to whether charges will be laid, the police member is placed in a Catch-22 situation if he or she lays charges when there is no reasonable prospect of conviction, as the Crown will not proceed with the case in any event.

Recommendation # 2:

The Military Police Complaints Commission recommends that military police members be authorized to disclose to complainants the content of prosecutorial advice that has led to charges not being laid, and further, that military police members be required to accurately record and explain the reasons behind their charge-laying decisions in their General Occurrence reports. (Partially accepted by the CFPM)

- ***In partially accepting this recommendation, the CFPM noted the following: "Prosecutorial advice is solicitor-client privileged information. The disclosure of this advice, even to complainants in the event charges are not laid, may adversely impact MP confidence in obtaining candid and independent legal advice from their legal***

counsel and prosecutors. There is a significant public interest in protecting the independence of MP and access to solicitor-client privileged material. The disclosure of this privileged information may erode confidence in maintaining that independence from third parties and in protecting the MP from other legal claims.

Military Police members must accurately record and explain all reasoning in regard to all decisions in the General Occurrence reports. CF MP Orders issued in July 2018 address this requirement and highlight the need for accuracy and clarity."

7.6 MPCC Response to the CFPM

410. In the view of the MPCC, a prosecutor's assessment of the reasonable prospect of conviction represents the exercise of prosecutorial discretion, rather than the provision of legal advice. While prosecutorial discretion is a vital part of any criminal justice system, it does not attract the same protections against disclosure as legal advice.

411. Furthermore, the CFPM does not explain how the disclosure of the exercise of prosecutorial discretion in certain cases would lead to the adverse consequences which he has cited. The value of obtaining pre-charge assessments by prosecutors would be unaffected. It is particularly difficult to see the connection between greater transparency in charge-laying decisions and MP independence.

412. If anything, such transparency would be of assistance to MPs by providing victims, and anyone charged with reviewing an MP investigation, with a more precise delineation of MPs' responsibilities in charge-laying decisions. Transparency in such matters would help demonstrate due diligence or reasonableness of MP investigators in seeking and following pre-charge assessments by prosecutors. To be clear, charge-laying decisions would remain the ultimate responsibility of MP investigators. The transparency advocated by the MPCC's recommendation would simply shed light on the decision-making process associated with the laying of charges.

7.6.1 Recommendation #3

413. It is also apparent from this and other cases that the MPCC is at a disadvantage in reviewing and investigating complaints without having access to the same information that is available to the overseen military police organization. Specifically, the issue is information deemed to be solicitor-client privileged. Such information is presently redacted from the disclosure provided to the MPCC, though it is of course accessible by the CFPM when PS deal

with the complaint in the first instance. This is not a satisfactory situation from the point of view of the MPCC's mandate to foster transparency and to provide effective and credible oversight of Canadian military policing.

414. As a result, the MPCC has made a proposal to the Independent Review Authority for the Third Independent Review of the *National Defence Act* (presently ongoing) for access to solicitor-client privileged information received and sought by MPs, on terms equivalent to those already granted to the Civilian Review and Complaints Commission for the RCMP. This would not involve routine access by MPCC to this type of information. It would only be for cases where it was considered to be necessary for the determination of the complaint. Moreover, MPCC access to such information would be granted on terms such that the privileged information would be safeguarded and the privilege would be maintained against other parties. The MPCC would like to have support from the appropriate authority within the Department of National Defence for this initiative. The MPCC has previously been advised by the CFPM and by the Office of the Judge Advocate General that the Minister of National Defence is the appropriate authority for matters relating to access to solicitor-client privileged information. As such, this recommendation is exceptionally addressed to that authority.

Recommendation # 3:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's access to relevant solicitor-client privileged information in appropriate cases on terms equivalent with those granted to the Civilian Review and Complaints Commission for the RCMP.

415. Another disadvantage of the MPCC is that there is no guarantee that it will receive all the CF MP Group emails that are relevant to one of its investigations. The problem was only noticed in this case because of an ATIP request on behalf of the complainant which turned up a number of emails which had not been disclosed to the MPCC pursuant to the CFPM's obligation under NDA paragraph 250.31(2)(*b*). It is anomalous that a citizen requesting information through ATIP is likely to get more information related to an MP investigation file than a statutorily established body with a mandate conferred by Parliament which involves having access to MP files. Nor is this the first time this problem has arisen.

416. One of the reasons this problem arises is that MPs are allowed to use their discretion in determining which emails relative to an investigation are to be scanned into the electronic SAMPIS file. It seems that the only logical solution is to remove that discretion.

Recommendation # 4:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal directs that *all* emails related to a Military Police investigation file must be scanned into that file via the Security and Military Police Information System. (Accepted by the CFPM)

417. However, the problem of access to records is broader than the issue of unscanned MP emails. Unlike other police services, the CF MP Group is not an independent institution. Rather, it is a unit within CAF/DND. Thus there are records relevant to MPs, but which fall outside the control of the CFPM, and therefore outside the CFPM's disclosure obligation toward the MPCC. Moreover, offices which are external to the CF MP Group are disinclined to cooperate with MPCC requests for records due to *Privacy Act* concerns. It has been suggested to the MPCC that the best way to remedy this situation is to have the MPCC added to the list of designated investigative bodies in Schedule II of the *Privacy Regulations*. Paragraph 8(2)(*e*) of the *Privacy Act* allows a designated investigative body to obtain personal information on written request. The MPCC has proposed this legislative fix to the Third Independent Review of the NDA. However, given the disclosure issues encountered in this case, the MPCC considers it appropriate to reiterate this recommendation here.

Recommendation # 5:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's addition to the list of designated investigative bodies in Schedule II of the *Privacy Regulations*.

VIII CONCLUDING STATEMENT

418. In this PII, the MPCC has carried out a more complete investigation into the underlying events surrounding Exercise "Fatal Blow" in February 1984 at the PPCLI Battle School at CFB Wainwright. It is hoped that this investigation, in as much as it has vindicated the complainant's memory and viewpoint, will help to provide him and the other victims with some closure to what was clearly a traumatic event. The criminal justice system is an imperfect institution and one that is not designed for obtaining personal validation or vindication for victims. This is especially true for those who seek recourse after the passage of many years.

IX SUMMARY OF FINDINGS AND RECOMMENDATIONS

Finding # 1:

The Military Police Complaints Commission finds that the complainant's allegation that CFNIS conducted a negligent and incompetent investigation into his historical claims of abuse during the 1984 Battle School training exercise, "Fatal Blow", is UNSUBSTANTIATED. (ACCEPTED)

Finding # 2:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin closed the investigation file without reviewing it is UNSUBSTANTIATED. (ACCEPTED)

Finding # 3:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin closed the investigation file simply due to the absence of the offence of "torture" in the *Criminal Code* at the time of the 1984 "Fatal Blow" exercise is UNSUBSTANTIATED. (ACCEPTED)

Finding # 4:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin was overly concerned with the potential consequences for the accused, rather than whether a crime had been committed, is UNSUBSTANTIATED. (ACCEPTED)

Finding # 5:

The Military Police Complaints Commission finds that the complainant's allegation that MCpl Coughlin wrongly refused to put in writing his reasons for not proceeding with the investigation is UNSUBSTANTIATED. (ACCEPTED)

Recommendation #1:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal provide additional training to Military Police members on interactions with complainants, specifically in the context of explaining charge-laying decisions. (ACCEPTED)

Recommendation # 2:

The Military Police Complaints Commission recommends that military police members be authorized to disclose to complainants the content of prosecutorial advice that has led to charges not being laid, and further, that military police members be required to accurately record and explain the reasons behind their charge-laying decisions in their General Occurrence reports. (PARTIALLY ACCEPTED)

Recommendation # 3:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's access to relevant solicitor-client privileged information in appropriate cases on terms equivalent with those granted to the Civilian Review and Complaints Commission for the RCMP.

Recommendation # 4:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal directs that *all* emails related to a Military Police investigation file must be scanned into that file via the Security and Military Police Information System. (ACCEPTED)

Recommendation # 5:

The Military Police Complaints Commission recommends that the Minister of National Defence support the Commission's addition to the list of designated investigative bodies in Schedule II of the *Privacy Regulations*.

Ottawa, August 31, 2021

Original signed by:

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Hilary C. McCormack
Chairperson

GLOSSARY OF TERMS AND ACRONYMS USED THROUGHOUT THIS REPORT

Glossary of Terms / Acronyms used throughout this Report

ATIP	Access to Information Act and Privacy Act
CAF	Canadian Armed Forces
Capt	Captain
CBC	Canadian Broadcasting Corporation
CC	Criminal Code
CFB	Canadian Forces Base
CFNIS	Canadian Forces National Investigation Service
CFPM	Canadian Forces Provost Marshal
CLC	Combat Leader's Course
CO	Commanding Officer
CR	Central Region
Cst.	Constable
CTP	Couse Training Plan
CWO	Chief Warrant Officer
DIMEUS	Director of Information Management End-User Services
DND	Department of National Defence
FSR	File Status Reviews
FTX	Final Training Exercise
GO	General Occurrence
LCol	Lieutenant Colonel
Lt	Lieutenant
Maj	Major
MCpl	Master Corporal
MP	Military Police
MPCC	Military Police Complaints Commission
MPU	Military Police Unit
NCO	Non-Commissioned Officer
NDA	National Defence Act
OP	Operations post
PII	Public Interest Investigation
PoW	Prisoner of War
PPCLI	Princess Patricia Canadian Light Infantry
PS	Professional Standards
PTSD	Post-Traumatic Stress Disorder
RCMP	Royal Canadian Mounted Police
Ret'd	Retired
RFA	Request for Assistance
RMP	Regional Military Prosecutor
SAMPIS	Security and Military Police Information System
Sgt	Sargent
VAC	Veterans Affairs Canada
WO	Warrant Officer
WR	Western Region