



Military Police
Complaints Commission
of Canada

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concernant la police militaire
du Canada

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Distribution List

Our Files: MPCC 2022-017, MPCC 2022-041 & MPCC 2022-043
Decision to Conduct a Public Interest Investigation (Hiestand PII)

Overview

On April 29, 2022, August 25, 2022, and September 30, 2022, respectively, the Military Police Complaints Commission (MPCC or Commission) received conduct complaints about the handling of a Military Police (MP) investigation of sexual assault allegations made against the late Major (Maj) Cristian Hiestand.

The initial letter of complaint, Ms. Andr ea Shorter, included a request that the MPCC initiate a public interest investigation (PII) into her complaint. A PII may be called in respect of a complaint at any time by the MPCC Chairperson. In the case of an MP conduct complaint, such a decision empowers the MPCC to conduct an immediate investigation of a conduct complaint without awaiting a request for a review from the complainant following an initial disposition of the complaint by the Canadian Forces Provost Marshal (CFPM).

In a decision dated August 4, 2022, I denied Ms. Shorter's request to initiate a PII into her complaint, considering that the regular conduct complaint process provided adequate accountability and transparency in the circumstances. Since then, however, this complaint and the underlying MP investigation have received news media attention, and two additional conduct complaints related to this matter have been received. Due to these new circumstances, I have decided to revisit the issue of public interest with respect to the original complaint and the other two related complaints.

After careful consideration, I have decided to call a public interest investigation to jointly address the three complaints in question pursuant to section 250.38 of the *National Defence Act* (NDA).

Background

Maj Cristian Hiestand was a flight instructor in a Royal Canadian Air Force flight training squadron.

On November 25, 2021, Maj Hiestand became the subject of a criminal complaint of sexual assault by X, with whom he had just ended a romantic relationship two days prior. The complaint was made to the local Military Police (MP) detachment, where an initial statement was taken. X apparently alleged that Maj Hiestand had had non-consensual sexual intercourse with her twice. In accordance with MP Orders, the case was referred to the Canadian Forces National Investigation Service (CFNIS).

On November 30, 2021, Maj Hiestand was arrested for sexual assault of X, and the next day, was charged with two counts of sexual assault contrary to section 271 of the *Criminal Code*.

On January 17, 2022, Maj Hiestand took his own life.

The first two MP conduct complaints, by Ms. Shorter and by Maj Hiestand's parents, respectively, allege that the subject CFNIS members conducted an inadequate investigation. In particular, they failed to take a statement from Maj Hiestand before deciding to lay charges and failed to receive allegedly exculpatory evidence in the form of text messages between X and Maj Hiestand.

The third complaint is from Mr. Warsame – a former MP with the local MP detachment which received the initial sexual assault complaint. This complaint concerns the initial handling of X's sexual assault allegations against Maj Hiestand by the local MP detachment.

In accordance with sections 250.21 and 250.26 of the *National Defence Act* (NDA), the three complaints have been forwarded to the CFPM. The CFPM has launched investigations into the three complaints by the CFPM's office of Professional Standards (PS).

The Complaints

MPCC 2022-017 (Shorter)

On April 29, 2022, the complainant, Ms. Andréa Shorter, the sister of the late Maj Hiestand and also the executor of his estate, submitted, through her legal counsel, Mr. Rory Fowler, a complaint against the misconduct of one or more investigators from the CFNIS.

The complaint emphasized the seriousness of the CFNIS investigators' "rush to judgment" – that is, the movement to lay charges based on the alleged victim's statement, without seeking an interview with the suspect. Investigators also allegedly declined to receive as evidence texts messages sent by the alleged victim to Maj Hiestand, which the latter considered inconsistent with the sexual assault allegations.

Counsel for the complainant also requested that the complaint proceeding be converted without delay into a PII. He made the point that the criticism lately made against the MPs for not taking sexual assault allegations seriously and may be contributing to another systemic problem whereby MPs become inclined to lay charges too readily in sexual cases, without due regard to exculpatory evidence. It was this request that prompted my earlier decision dated August 4, 2022.

MPCC 2022-041 (Hiestand)

On August 25, 2022, the complainants, Mihaela and Ernst Hiestand, the parents of the late Maj Hiestand, submitted a complaint regarding CFNIS's handling of the sexual assault investigation of Maj Hiestand. As with the complaint by Ms. Shorter, the complainants allege that CFNIS investigators concluded that Maj Hiestand was guilty and arrested and charged him without conducting an impartial and thorough investigation, including by failing to interview him and review evidence that may have cast doubt on the allegations against him.

MPCC 2022-043 (Warsame)

On September 30, 2022, the complainant, Muhsin Warsame, filed a complaint regarding the conduct of two senior NCOs (a Sergeant and a Warrant Officer) from the local MP detachment which initially dealt with the sexual assault complaint, before the case was transferred to CFNIS in accordance with MP Orders. The complainant is currently serving with another police service but was previously a member of the MP detachment in question. The complainant alleges that he was present at the detachment and that the following occurred:

- 1) The Warrant Officer failed to ask the victim if she preferred to be interviewed by a female.
- 2) An unprofessional comment was made by the Warrant Officer about the victim by stating: "*Why does she not go to [the local civilian] Police Service?*" in a frustrated manner.
- 3) The Sergeant attended the detachment and sought to assist with the investigation while off duty and intoxicated.
- 4) The Warrant Officer assigned inexperienced MPs to interview the victim and take notes.
- 5) The Warrant Officer decided to not record the interview despite the necessary equipment being available.
- 6) The Warrant Officer allowed an unidentified person to sit in on the interview with the victim, only identifying him a day or two after the interview.

Considerations Relevant to PII Determination

Subsection 250.38(1) of the NDA provides that:

250.38 (1) 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.

The following factors, which are not necessarily exhaustive, have generally been recognized by the MPCC as relevant to decisions in favour of holding a public interest investigation:

- 1) The inherent seriousness of the alleged conduct;
- 2) Systemic implications of the complaint;
- 3) The involvement of senior personnel;
- 4) Public awareness of issues related to the complaint; or
- 5) Process considerations which suggest that it would be more fair, credible, coherent or efficient to deal with the complaint as a public interest case.

Not all of the above factors are engaged in all cases. Those relevant to this complaint are discussed below.

Seriousness of the alleged conduct

Regarding the Shorter and Hiestand complaints (MPCC 2022-017 and 2022-041, respectively), the laying of criminal charges for certain offences, based solely or largely on the evidence of the complainant/victim, is a known police practice. This practice is usually noted in cases of domestic violence and sexual assault. In these cases, police or prosecutors may be encouraged or required to lay charges upon receipt of information from complainants which makes out the elements of such offences. Such an approach is often part of so-called 'zero-tolerance' strategies, which are intended to favour the laying of charges in certain types of cases.

Such charge-favouring policies and strategies may serve legitimate public policy aims of countering historical systemic bias against certain victims. Yet they may be perceived as deviating from the public's sense of fairness and their conception of police as neutral arbiters of justice, who would normally be expected to gather and consider at least the readily available evidence, before deciding whether to interfere with an individual's liberty and reputational interests by arresting and charging them with a serious offence.

Given the foregoing considerations, the Shorter and Hiestand complaints raise the following issues at this stage:

- 1) Did the CFNIS investigative team fail to take a statement, or receive exculpatory evidence from, Maj Hiestand, before laying charges?
- 2) If so, was such an omission attributable to a charge-favouring policy?
- 3) If so, was/is the policy or decision appropriate? And
- 4) In any event, was the policy appropriately applied in this case?

With respect to the Warsame complaint (2022-043), the alleged deficiencies in the handling of the complainant's interview are also very serious: the use of inexperienced members, the lack of recording, allowing an unidentified third party to attend the victim's interview, the presence of an off-duty senior NCO from the detachment who was intoxicated to assist, etc.

The totality of the allegations of misconduct listed above is, in my view, serious enough to weigh in favor of conducting a PII, particularly given that these issues have arisen in the context of a sexual assault investigation. MP treatment of sexual assault allegations has been an issue of particular public attention and concern in recent years. Furthermore, the Shorter and Hiestand complaints in particular suggest a connection between the handling of the sexual assault investigation and Maj Hiestand's suicide; MP responsiveness and sensitivity to mental illness has been a matter of special interest to the MPCC in previous PIIs.

Systemic Implications

As described in the preceding section, the MP conduct issues raised by these complaints include:

- The acceptance of evidence from sexual assault suspects prior to laying charges;
- The proper extent of investigation prior to laying criminal charges generally, and sexual assault charges, specifically;
- The existence and application of any charge-favouring policies in cases of sexual assault;
- The existence of an unfair bias in favour of sexual assault victims; and
- The initial taking of evidence from sexual assault victims.

These are all areas which at least potentially speak to MP policy or training, or their absence. As such, these complaints raise potential systemic issues, which is another factor favouring public interest treatment by the Commission.

Public awareness of issues related to the complaint

In spring 2022, there was a CTV web story about the alleged sexual assault case from the perspective of the alleged victim. In addition to exposing some of the details of the alleged assaults, the story focused on the alleged victim's perception that she was not adequately supported by the Canadian Armed Forces and, more particularly, by the local Royal Canadian Air Force chain of command. While the news article does not expressly raise concerns about Military Police conduct, it should be noted that advising victims about support services is part of the duties of the MP investigating unit, in this case, the CFNIS.

Following the initial PII decision on the Shorter complaint in August, this case was the subject of a September 29, 2022 online CBC article titled: "Military officer accused of sexual assault killed himself. Now his family wants answers". The story was also picked up by other news sites. The same story was also covered on CBC TV's "The National" and CBC Radio's "The World at Six".

The CBC story reviews the case of Maj Hiestand and discusses the MPs' omission to interview the suspect before laying charges. The story quotes a law professor to the effect that it is not unusual for police not to interview sexual assault suspects before deciding to lay charges, adding that this step is considered "discretionary" on the part of police. However, the CBC reporter goes on to quote counsel for the complainant (Ms. Shorter) that MPs cannot "disregard relevant avenues of inquiry." In addition, the story contains segments of an interview of a member of the Canadian Institute of Global Affairs who has conducted extensive research on the military's handling of sexual misconduct. Ms. Charlotte Duval-Lantoinne indicated that a case like this is important to the credibility of the justice system, which must be perceived as fair and legitimate by both sexual assault survivors and accused.

The foregoing clearly indicates that there is public awareness and further supports a decision to declare a PII.

Process Considerations

By declaring a PII, the MPCC is ensuring a more public treatment of these complaints than is afforded by the ordinary conduct complaint process. A key manifestation of this is that, for PIIs, unlike conduct complaint reviews, the MPCC publishes its entire Final Report online (though with appropriate modifications for exceptional privacy or security interests).

Additionally, by initiating a joint PII for all three complaints, the MPCC is also ensuring that the different complainants will be made privy to the MPCC's disposition of complaints connected with their own. This additional dimension of transparency would not normally occur in the course of a conduct complaint review.

Decision

For the foregoing reasons, I hereby designate the present conduct complaints, MPCC 2022-017, MPCC 2022-041 and MPCC 2022-043 as MPCC PII's, pursuant to NDA section 250.38(1). I do further hereby consolidate these three PII's into a single investigation, pursuant to the authorities granted to me under NDA sections 250.14 (informal and expeditious) and 250.15 (Chairperson's Rules).

The Canadian Forces Provost Marshal (CFPM) has advised the Commission that an MP Professional Standards investigation has been initiated in respect of these complaints, pursuant to NDA sections 250.26 and 250.28. The CFPM has further advised that their investigation into these complaints will be given priority treatment and completed as expeditiously as possible. The CFPM wishes to ensure that he is in a position to take immediate action if necessary.

In light of these assurances, the MPCC intends, for the time being, to hold off on interviewing witnesses for this PII, in order to allow time for the CFPM to complete an expedited Professional Standards investigation. The MPCC will, in the meantime, undertake other investigative steps including a thorough review of relevant documentation available. After allowing time for the completion of the Professional Standards investigation, the MPCC will complete its PII, including a review of the Professional Standards investigation into these complaints.

As the CFPM's office of Professional Standards is proceeding with an investigation at this time, they will be identifying and notifying the MP subjects whom they consider to be subjects of these complaints pursuant to NDA section 250.22. The MPCC will defer its naming of subjects in this PII decision in accordance with NDA section 250.38(3) until the Professional Standards investigation has concluded. Once the MPCC has taken over these complaints from Professional Standards, it may identify different subject members.

DATED at Ottawa, Ontario, on this 21st day of November 2022

Original signed by:

Bonita Thornton
Interim Chairperson

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