Military Police Complaints Commission of Canada
Commission d'examen des plaintes concernant la police militaire du Canada

FINAL REPORT
Following a Public Interest Investigation,
Pursuant to Section 250.53 of the *National Defence Act* (NDA),
of Conduct Complaints by Andréa Shorter and Ernst and Mihaela Hiestand,
and also, a Review of a Conduct Complaint by Andréa Shorter,
Pursuant to Section 250.31 of the NDA,
Regarding the Conduct of MCpl Katelyn Alton, MS Alexandra Brown,
Sgt Glenda Gauthier and WO Damon Tenaschuk of the
Canadian Forces National Investigation Service Western Region

Files: MPCC 2022-017 and
MPCC 2022-041

Ottawa, February 4, 2026

Me Tammy Tremblay, MSM, CD, LL.M.
Chairperson

Canada

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OVERVIEW

1. On November 25, 2021, Complainant C[1] reported to the military police in Moose Jaw, Saskatchewan, that she was sexually assaulted by her former boyfriend, Major (Maj) Cristian Hiestand, on two separate occasions.

2. On November 30, 2021, following two days of investigation by members of the Canadian Forces National Investigation Service Western Region (CFNIS WR) into Complainant C's allegations, Maj Hiestand was arrested and charged with two counts of sexual assault. Maj Hiestand died by suicide on January 17, 2022.

3. On April 29, 2022, Ms. Andréa Shorter, sister of Maj Hiestand, filed a conduct complaint with the Military Police Complaints Commission (MPCC) regarding the CFNIS WR investigation. On August 25, 2022, Ernst and Mihaela Hiestand, parents of Maj Hiestand, also submitted a complaint about the same matter. Both complaints alleged that Maj Hiestand was the victim of a "rush to judgment" and an incomplete police investigation, which ultimately contributed to his death by suicide. Due to the similarities between the two complaints, it was decided to address them together.

The MPCC Launches a Public Interest Investigation

4. On November 21, 2022, the MPCC launched a Public Interest Investigation (PII) into these two complaints, as well as a third-related complaint. The third-related complaint concerned the initial intake of the sexual assault allegations against Maj Hiestand by members of the Moose Jaw Military Police Detachment, and it is the subject of a separate report (file MPCC 2022-043).

5. The Canadian Forces Provost Marshal's (CFPM) Office of Professional Standards (PS) had already commenced an investigation into all three complaints. Given the exceptional nature of the circumstances and to avoid simultaneous parallel investigations, the MPCC decided to defer witness interviews until the PS process had concluded.

[1] For privacy reasons, I will refer to the sexual assault complainant as Complainant C or C.

Professional Standards Investigation

6. On February 22, 2024, PS issued reports of its findings with respect to the complaints (PS Findings Report). Copies of the PS Findings Reports were sent to the complainants and the subject military police members, as well as to the MPCC. PS found all the allegations against the three subject members to be "Unsubstantiated." The key rationale was that the sexual assault investigation was neither formally concluded, nor legally required to be, at the time Maj Hiestand was arrested and charged. The PS investigator noted that CFNIS WR investigators intended to complete the outstanding investigative tasks, but upon learning of Maj Hiestand's death, the investigation ceased. The PS investigator further noted that the CFNIS WR investigators had denied acting hastily, stating that "a substantial amount of investigative steps were taken to form their reasonable grounds prior to arresting Maj Hiestand and laying charges."

7. On February 26, 2024, PS provided the MPCC with a copy of an Observations Report (Observations Report). This report raised 24 observations in relation to the CFNIS investigation that were deemed to be "not in line with best practices in Canadian policing or in accordance with established standards" and submitted them for consideration by the military police chain of command.

8. In a letter dated April 15, 2024, Andréa Shorter requested a review of the complaint by the MPCC.

The MPCC Public Interest Investigation

9. Based on the information in the complaints, the following three issues have been identified:

Issue #1: Did the CFNIS WR investigative team fail to seek an interview with Maj Hiestand?

Issue #2: Did the CFNIS WR investigative team fail to conduct a sufficiently thorough investigation prior to arresting and charging Maj Hiestand?

Issue #3: Did the CFNIS WR investigation involve a rush to judgment and suffer from confirmation bias?

10. I identified the following members from CFNIS WR as subjects of this PII:

a) Master Corporal (MCpl) Katelyn Alton[2] (lead investigator);

b) Master Sailor (MS) Alexandra Brown (second investigator);

c) Sergeant (Sgt) Glenda Gauthier (case manager); and

d) Warrant Officer (WO) Damon Tenaschuk (team leader).

11. For the reasons that follow, I conclude that the CFNIS WR investigators conducted an inadequate investigation, marked by undue haste in arresting and charging Maj Hiestand. While the complainants also alleged that the CFNIS WR investigators failed to provide Maj Hiestand an opportunity to present his side of the story, I determined that this allegation is not supported by the evidence.

MPCC Interviews

12. In addition to reviewing the PS interviews, the MPCC interviewed the following persons:

a) Ernst and Mihaela Hiestand – complainants;

b) Andréa Shorter – complainant;

c) Sgt Glenda Gauthier – subject;

d) Sgt Katelyn Alton – subject;

e) Former MS Alexandra Brown – subject; and

f) WO Damon Tenaschuk – subject.

13. The MPCC asked to interview MWO (Ret'd) Grant Isles, the MWO in-charge of CFNIS WR as a witness, as he had conducted a review of the CFNIS WR investigation of Maj Hiestand. The MPCC also asked to interview the PS investigator of these complaints, Sgt Charlesworth. Both individuals declined to be interviewed. In addition, C advised at the beginning of the Public Interest Investigation that she did not want to communicate with the MPCC. Based on this, the MPCC did not seek to interview C.

[2] All ranks in this report are those of the individuals at the time of the CFNIS investigation.

Background to the Complaint

14. Maj Hiestand met C in August of 2021, and they started dating in September 2021. At the time, Maj Hiestand was a member of the Canadian Forces (CF), posted to 15 Wing CFB Moose Jaw, Saskatchewan, which houses the Canadian Forces Flight Training School (CFFTS). The relationship ended on November 23, 2021.

15. On October 15, 2021, C and Maj Hiestand travelled together to Medicine Hat, Alberta, to visit DH, a friend of C. On the evening of October 16, 2021, the three of them attended a social gathering at the private residence of "J," a friend of DH.

16. C alleged that, due to alcohol and cannabis consumption that night, she experienced a "black out" and was unable to remember anything after they returned to their hotel. She next recalls waking up to learn that she and Maj Hiestand had had sexual intercourse during the night. C alleged that, as she had no recollection of the intercourse, she could not have consented. C stated that Maj Hiestand apologized for the incident and that she forgave him.

17. A month later, on the night of November 19-20, 2021, C and Maj Hiestand attended the "Crushed Can Rec Room and Bar" in Moose Jaw with friends. These friends were mostly student pilots in training at 15 Wing Moose Jaw. Maj Hiestand left the bar later that evening and returned home while C remained. C told the investigators that, over the next several hours, she became extremely intoxicated, to the extent that, upon leaving at closing time, she had to be assisted by her friends while walking out to a taxi. The group of five people all left in the taxi together.

18. On arrival at Maj Hiestand's on-base residence, C was again assisted in walking to the front steps by two of her friends. Before she entered the residence, she paused to share a cigarette with them outside the front door. As Maj Hiestand had previously left the door unlocked, C let herself in.

19. In subsequent interviews with the military police, in describing her actions after entering the residence, C stated she could only recall removing her shoes and attempting to crawl up the stairs before she "blacked out." Her next recollection is of the following

Saturday morning, where she remembered waking up, wearing a pair of Maj Hiestand's pyjamas. As with the previous incident in October, she realized that the couple had engaged in sexual intercourse during the night—once again, with no memory of it herself. She stated that upon questioning him about it, Maj Hiestand acknowledged that they had sex during the night, and that this led to an argument between them.

20. On November 25, 2021, C made two allegations of sexual assault against Maj Hiestand to members of Military Police Unit Moose Jaw. The same day the CFNIS WR assumed investigative responsibility of the complaints.

21. MCpl Katelyn Alton was assigned as the lead investigator to be assisted by MS Alexandra Brown as the secondary investigator, and Sgt Glenda Gauthier as the case manager.

22. On November 26, 2021, MCpl Alton called C and arranged to have her undergo a forensic physical examination at the hospital to have the Sexual Assault Evidence Kit (SAEK) completed.

23. The CFNIS investigators travelled from Edmonton over the weekend and commenced the investigation at Moose Jaw on November 29, 2021. They completed various initial evidence gathering investigative tasks, including:

a) locating and interviewing witnesses;

b) seeking/obtaining any physical forensic evidence (clothing, SAEK kit, etc.); and

c) seeking/obtaining any documentary evidence such as medical or phone records, video footage, etc.

24. On November 29, 2021, between 09:14 hrs and 11:12 hrs, the CFNIS investigators interviewed C. During this audio/video recorded interview, C provided her account of the two incidents previously reported to the Moose Jaw Military Police Unit.

25. The next day, at 15:02 hrs, MCpl Alton called Maj Hiestand to ask him, to attend the MP detachment, Moose Jaw. She advised him he was to be arrested for sexual assault.

26. Upon his arrival at 15:15 hrs, Maj Hiestand was arrested by MS Brown for two counts of sexual assault and given rights to counsel. Intake processes were completed. After he contacted legal counsel, Maj Hiestand was asked if he wished to say anything about the charges. He declined to make any comment, citing the advice received from counsel. He was subsequently released on an undertaking.

27. Maj Hiestand's first court appearance was scheduled for January 5, 2022, in Moose Jaw. He attended court on that date, but due to an administrative error with the paperwork, the matter was not heard. He re-attended court on January 12, 2022, and the matter was postponed to a new date.

28. On January 18, 2022, at 01:07 hrs, Moose Jaw Police were dispatched to the residence of Maj Hiestand to conduct a welfare check. This was in response to a call they received from Maj Hiestand's father. He was concerned being unable to reach his son who he stated had been dealing with depression of late. The responding police officers discovered Maj Hiestand had died by suicide. The criminal charges against Maj Hiestand were withdrawn and the investigation ceased.

Notice of Action

29. Following its investigation of these complaints, I have concluded that, while Maj Hiestand was given an opportunity by CFNIS investigators to make a statement at the time of his arrest, the other allegations were substantiated. The CFNIS WR investigation was inadequate, rushed and affected by tunnel vision in the form of confirmation bias. I made a number of findings outlining various specific deficiencies in the CFNIS WR investigation. I also made a series of recommendations aimed at enhancing military police investigative procedures, policy, training, supervision and case management.

30. In accordance with section 250.51 of the *National Defence Act* (NDA), the CFPM must notify both me and the Minister of any action that has been or will be taken with respect to this complaint.

31. On January 27, 2026, the CFPM provided her Notice of Action in response to the MPCC's Interim Report issued on October 30, 2025. The Notice of Action included comments on the MPCC's findings and recommendations. I note with disappointment and concern that none of the 13 recommendations were accepted for implementation.

32. Given the significant and critical findings made regarding this CFNIS WR investigation the refusal to accept any of the recommendations is troubling. This shows a total lack of accountability for the shortcomings identified in this investigation. Without a willingness to confront these shortcomings and commit to meaningful change, the systemic issues highlighted in this investigation will remain unaddressed, to the detriment of future military police investigators, complainants and the integrity of military policing as a whole. In my view, such an outcome compounds the already tragic elements of this case.

33. It is imperative that the CFPM swiftly implement these recommendations to ensure that all future investigations are conducted to the high standards of rigour, impartiality, and professionalism that Canadians expect and that members of the Canadian Forces deserve.

ANALYSIS

Standard of Care Applicable to the Alleged Conduct

34. Military police members, in the performance of their duties, are expected to meet high standards of service to maintain public confidence and respect. The *Military Police Professional Code of Conduct,*[3] Military Police Orders and Military Police Policy Advisories set out the procedures and ethical standards that military police members are expected to follow or apply.

35. When reviewing a conduct complaint, the MPCC must determine whether the conduct of the military police members met the standard expected of a reasonable police

[3] *Military Police Professional Code of Conduct* (SOR/2000-14).

officer in similar circumstances. The law does not require perfect or optimal conduct on the part of military police members.[4]

36. The reasonableness of the military police member's conduct must be assessed considering the totality of the situation and the facts known at the time of the alleged misconduct, including the state of knowledge or best investigative or law enforcement practices then prevailing.[5]

The CFNIS WR Investigative Team Did Not Fail to Seek an Interview with Maj Hiestand

37. The complainants allege that Maj Hiestand was not offered an interview by CFNIS WR investigators. However, there is evidence confirming that, at the time of his arrest, Maj Hiestand was offered the opportunity to make a statement and answer questions, but he declined on the advice of legal counsel.

38. The processing of Maj Hiestand's arrest was audio-video (A/V) recorded. The A/V evidence is definitive in establishing that he was provided an opportunity to respond to the allegations.

39. Upon his arrival and ensuing arrest at the Moose Jaw MP Unit, Maj Hiestand was advised of his rights to counsel under s. 10(b) of the *Canadian Charter of Rights and Freedoms* (the Charter) and was afforded the opportunity to do so without delay. On completion of his call to counsel, Maj Hiestand was brought back to the interview room, whereupon MCpl Alton asked if he wished to provide his side to the story. He was unequivocal in his response by stating "I have nothing to say." The investigator offered another opportunity by saying "Well, I'm here if you do want to share anything about this" and he responded with "I've been instructed by counsel to say nothing so I'm going to follow what he says to say." The interview, which lasted approximately four minutes, was concluded shortly thereafter.

[4] *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] 3 S.C.R. 129, 2007 SCC 41 at paras 73-77.
[5] *Ibid* at para 77.

40. Under Canadian criminal law, questioning may lawfully continue in certain circumstances after a suspect asserts the right to silence, provided it does not become coercive or undermine the suspect's freedom of choice.[6] However, military police policies adopt a more conservative approach, requiring investigators to cease questioning immediately in such cases.[7]

Finding #1:

The MPCC finds that the CFNIS WR investigators did offer Maj Hiestand a chance to be interviewed and to provide information about the allegations against him.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

The CFNIS WR Investigative Team Failed to Conduct a Sufficiently Thorough Investigation Prior to Arresting and Charging Maj Hiestand

41. Under s. 495 of the *Criminal Code*, CFNIS WR investigators were required to have reasonable grounds to believe that Maj Hiestand had committed the alleged offences to arrest him: namely, that he engaged in sexual activity with C without her consent. The "reasonable grounds to believe" standard does not require proof beyond a reasonable doubt (the threshold used in criminal Courts), but it does require a belief founded on credible and reliable evidence that goes beyond mere suspicion or speculation.

42. MP Order 2-340 (Military Police Investigation Policy) emphasizes the importance of thorough and complete MP investigations. Paragraph 4 requires that MPs investigate without bias or prejudice and that identification and elimination of suspects shall be based on objective evidence and reasonable grounds. Moreover, paragraph 14 mandates MPs to conduct impartial, thorough, complete and rigorous investigations and to be sure to collect all relevant evidence, whether inculpatory or exculpatory.

[6] *R. v Singh*, [2007] 3 SCR 405; and Alanah Josey, "The Balancing Approach to Charter Interpretation: Theoretical and Practical Problems in the Context of Detention and Interrogation," 2022 CanLIIDocs 4173.
[7] *Military Police Policies and Technical Procedures*, Appendix 7E-1, para. 5.

43. CFNIS Standard Operating Procedure (SOP) 215 (Investigation of Sexual Related Offences), at paragraph 4, further emphasizes the need for thoroughness in sexual assault cases.

44. The evidence gathered in this Public Interest Investigation indicates that the CFNIS WR investigation leading up to the arrest of Maj Hiestand did not meet the standards established in these Orders and SOPs.

CFNIS Interview of C Failed to Adequately Address Critical Issues

45. Overall, the CFNIS interview of C lacked depth and failed to address critical elements of the investigation. In particular, C's level of intoxication, C's communications with other potential witnesses, C's blackout history, and the circumstances surrounding the alleged assaults, should have been probed in greater detail.

46. The interview, for example, did not sufficiently differentiate between C experiencing a blackout, in which the process of memory consolidation – the transfer of memories from short-term to long-term storage – is temporarily interrupted,[8] and being unconscious. This distinction is critical since a person may be able to provide consent while intoxicated but conscious, whereas unconsciousness or extreme intoxication resulting in incapacity negates legal consent.

47. The investigators' failure to fully explore C's level of awareness and capacity at the time of the alleged assaults limited their ability to assess a foundational aspect of the offence. A trauma-informed approach would also have considered how C's reported memory gaps might reflect her evolving understanding of the events and avoided focusing exclusively on recall when evaluating her account.

Context of the Incidents

48. To adequately investigate the sexual assault allegations, it is necessary to examine events before and after the incidents. The first alleged assault occurred on the weekend of October 15-17, 2021, in Medicine Hat. The MPCC notes that, aside from describing the

[8] "Interrupted Memories – Alcohol-Induced Blackouts," National Institute of Alcohol Abuse and Alcoholism. Updated June 2025.

alleged assault, C was not asked by the CFNIS investigators about her interactions with Maj Hiestand before the incident. There were no questions or information regarding any conversations between C and Maj Hiestand during the four-hour drive to Medicine Hat, their activities on Friday night, or any discussions about their relationship. Investigators also failed to inquire about what happened immediately after the incident, including detailing the circumstances within the hotel room when she awoke (e.g., their relative locations, who was wearing what, etc.), as well as the return trip home, the mood between them, and whether the alleged assault was mentioned again.

49. Regarding the Medicine Hat incident, C stated that the party took place at J's house and was attended by four of his friends and coworkers. Investigators did not attempt to identify these individuals, despite their potential relevance in assessing C's level of intoxication. This omission is particularly significant because C admitted to frequently blacking out when intoxicated. While investigators interviewed all of C's acquaintances who were with her prior to the November 19-20, 2021 incident in Moose Jaw, only one individual, DH, was interviewed regarding the Medicine Hat incident.

50. The same investigative deficiencies applied to the second alleged assault on Saturday, November 20, 2021, in Moose Jaw. C indicated that she confronted Maj Hiestand about having sex with her without her consent, leading to an argument and her departure to visit DH in Medicine Hat. C then stated there was a second argument on Monday, November 22, 2021. Investigators did not ask about whether there were interactions between Saturday morning and Monday night, even though phone records later showed substantial communication between them, including two meetings at a restaurant and a bar. Notably, Maj Hiestand did not text C about her intoxication until Sunday at 18:00 hrs, a comment that investigators relied on as evidence of his awareness of her level of impairment. Without exploring the events of that day (Sunday, November 21, 2021), the investigators missed an opportunity to add context to this message.

C's Prior Communications with Witnesses

51. Upon taking over the investigation on November 26, 2021, MCpl Alton of CFNIS WR contacted C to schedule an interview and assess any safety concerns. C stated that she did not want to be interviewed at the Moose Jaw MP detachment out of fear that Maj Hiestand would recognize her vehicle and realize she was reporting him. However, during her interview on November 29, 2021, she stated that she and her friend, JW, had decided together on November 27, 2021, whom she should inform about the allegations. This change in her disclosure approach was not addressed or clarified by investigators, despite its potential relevance to the timeline and consistency of her account.

52. During her CFNIS interview, C disclosed that she had informed multiple people, including potential witnesses, about the alleged assaults. This was despite advising MCpl Alton during a telephone conversation a few days earlier that she had not planned on telling anyone else, apart from the few she had already told (her best friend, her husband, and a couple of other friends). This raises concerns about witness "contamination" wherein a witness's evidence is potentially influenced by communication with another witness. While there may be legitimate trauma-related reasons for such disclosure, the statements nonetheless require careful documentation and follow-up. C's state of mind and the details of her account were important factors in this investigation, which should have been explored to assess the consistency and reliability of her statements. Moreover, the CFNIS investigators should have taken statements from each person contacted by C to determine, in detail, what she told them and what they may have said in return.

53. When questioned by MCpl Alton, C was vague about what she told these individuals, merely stating, "Just what I've told you." However, witness statements from the other individuals contacted by C revealed she had told them she was "raped twice," that bruises were found on her back, and that Maj Hiestand admitted to the assaults in text messages. These discrepancies between third-party accounts and the available evidence should have been documented and have prompted further investigative follow-up, particularly to determine whether there were misunderstandings, exaggerations, evolving recollections or corroborative evidence.

54. During her interview with MS Brown and MCpl Alton, C also named a student pilot, whom she referred to as "[B]," but asked investigators not to speak with him. A complainant requesting that a particular witness not be interviewed may warrant further inquiry, depending on the context, and should be assessed carefully rather than accepted at face value. Potentially probative leads should be followed up or a clear rationale for declining to do so should be clearly documented in the file. The mere fact that a complainant requests non-contact does not relieve investigators of their duty to consider whether the witness has relevant information. Despite this, investigators did not attempt to locate or speak with him.

Blackout History and the Breakup

55. C admitted to frequently blacking out when intoxicated, yet investigators did not probe this claim in detail. Exploring this statement further would have assisted in understanding whether memory loss was consistent with her past experiences and could inform both her reliability and vulnerability as a witness.

56. Investigators also failed to fully explore the circumstances of the breakup, which occurred only two days before she reported the allegations. While the timing of C's reporting of the allegations does not, in itself, cast doubt on C's credibility, the dynamics of the breakup may have provided important context for both parties' actions and perceptions.

Professional Standards Investigation

57. PS, in its Observations Report, found multiple deficiencies in the CFNIS's handling of C's interview. These included:

a) a failure to differentiate between blackout and unconsciousness;

b) insufficient probing into C's intoxication levels;

c) inadequate questioning about the layout of the locations where the alleged assaults occurred; and

d) a failure to pursue corroborative evidence.

58. Despite these observations, the PS Findings Report only highlighted the investigators' failure to follow up on Maj Hiestand's text message denials, leaving many other deficiencies unexamined or unaddressed.

59. A comprehensive and thorough complainant interview is an essential basis for an investigation. In this case, the lack of addressing critical issues and details directly impacted on the quality of the interview, which had a ripple effect on the sufficiency and focus of subsequent interviews and investigative steps. The investigators continued the investigation with an insufficient understanding of the actual circumstances or details of what had transpired in the critical time frame leading up to the sexual assault complaint. As a result, the subsequent witness interviews failed to explore and address critical contextual and corroborative issues.

Finding #2:

The MPCC finds that the CFNIS WR investigators' interview with C lacked depth and failed to sufficiently probe critical issues.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Investigators Failed to Adequately Probe Key Issues

60. Lack of consent is an essential element of the offence of sexual assault, and it was the main issue in this case. There were two primary factors impacting on this investigation:

a) C's intoxication, which she alleged resulted in a blackout; and

b) the termination of an intimate relationship with the subject just prior to the complainant's report to the police.

61. These issues are complex and warrant scrutiny. Canadian law has extensively addressed sexual assault involving intoxicated complainants.[9] While each case turns on its unique facts, Courts consistently assess the totality of the evidence to determine whether a complainant had the capacity to consent. Importantly, intoxication alone does

[9] Elaine Craig, "Sexual Assault and Intoxication: Defining (In)Capacity to Consent," 98, *The Canadian Bar Review* 70, 2020 CanLIIDocs 1871; and *R v GF*, 2021 SCC 20, [2021] 1 SCR 801.

not automatically negate consent (even when resulting in memory loss),[10] rather the key question is whether the complainant retained the mental capacity to make a voluntary and informed decision at the time of the sexual activity.[11] It is the subjective consent of the complainant which matters for purposes of the offence of sexual assault.[12]

62. For purposes of the offence of sexual assault, subsection 273.1(1) of the *Criminal Code* defines consent as the voluntary agreement of a person to engage in the sexual activity in question. Subsection 273.1(2), for greater certainty, sets out specific situations where there is no consent in law: this includes where the complainant does not have the capacity to consent to the activity (including by reason of intoxication).

63. Capacity is an essential prerequisite for valid consent in sexual assault cases. The Supreme Court of Canada reaffirmed in *R. v. GF* (2021) that for consent to be legally recognized, a person must possess the mental capacity to make a voluntary and informed decision. Specifically, they must be able to understand:

- the physical nature of the act;
- that the act is sexual in nature;
- the identity of the person with whom the act is occurring;
- that they have the autonomy and freedom to refuse or withdraw of the activity at any time;[13] and
- that an accused must take reasonable steps to ascertain whether a complainant consents to sexual activity.[14]

64. In Canadian criminal law, particularly in sexual assault cases, the existence of a prior intimate relationship does not negate the possibility of non-consensual conduct. Courts have repeatedly affirmed that consent must be present for each sexual act, regardless of relationship history. However, when allegations of sexual assault arise out

[10] *R. v. Kazmarek*, 2021 ONCA 771 (CanLII); and *R. v. SB*, 2023 ONCA 784 (CanLII).
[11] *R v GF*, 2021 SCC 20, [2021] 1 SCR 801; *R. v. Kirkpatrick*, 2022 SCC 33; *R. v. Pte Vu,* 2021 CM 4012 (CanLII); and *R. v. Le Goff* , 2022 ONSC 609 (CanLII).
[12] *R v GF*, 2021 SCC 20, [2021] 1 SCR 801, at paras 29 and 33; *R. v. Kirkpatrick*, 2022 SCC 33, at paras 50 and 51; and *R. v. Ewanchuk*, 1999 CanLII 711 (SCC).
[13] *R. v. GF*, 2021 SCC 20, at para 57.
[14] *Criminal Code,* s. 273.2.

of a pre-existing intimate relationship, it is important to evaluate whether recent emotional or interpersonal developments may have influenced the timing or framing of the allegations. In this case, the CFNIS had access to text messages from C's phone which they retrieved from her later in the day she was interviewed. These texts indicate a series of relevant exchanges between the parties shortly before the complaint was made.

65. Text messages exchanged between C and Maj Hiestand on November 23 – two days before the allegations were reported to the military police – indicate that Maj Hiestand had ended their relationship, despite C's apparent desire to continue. After leaving town for a couple of days, C returned and text messages from November 24-25 suggest an unsuccessful effort by C at a reconciliation. There followed, in texts on November 25, some accusations from C that Maj Hiestand had gotten her pregnant and he challenged the veracity of these claims. There were more angry comments in the November 25 texts from C prior to her police complaint.

66. In his interview with CFNIS investigators, JW stated twice that C told him she was the one who ended her relationship with Maj Hiestand. This version would support her narrative that the breakup was due to the alleged assaults. However, as noted above, text messages from November 23-24 contradict this, with C writing (on November 25 at 01:09 hrs and 01:10 hrs), "You left me/ I just want us to have a full chance."

67. Despite the potential relevance of these circumstances to motive, state of mind, and reliability, the CFNIS interview of C did not explore these issues. Of note, MS Brown commented in her interview with PS that she did not believe the break-up was a relevant factor to consider, and MCpl Alton believed that it was C who ended the relationship.

68. Again, exploring these areas is not about suggesting that prior sexual activity implies ongoing consent. Rather, in intimate partner cases, understanding relationship dynamics can help investigators assess the context of the complaint and pursue any related evidence that supports or contradicts either person's account.

Intoxication

69. The degree of C's intoxication on the evenings of the incidents was a vital issue in the CFNIS investigation. It related directly to the question of consent to sexual activity and the basis on which CFNIS investigators concluded that such consent was either absent or legally invalid. Canadian law requires more than mere intoxication to preclude consent; the complainant must be incapable of understanding the sexual nature of the act, its physical nature, the identity of the partner, or the option to refuse. In this case, investigators did not sufficiently probe this aspect of C's capacity at the relevant time.

70. The subject CFNIS investigators acknowledged that a person can legally consent while intoxicated. They established that C was likely intoxicated on the night of the second allegation in Moose Jaw, primarily based on witness accounts. However, investigators did not thoroughly investigate objective indicators that could have clarified the degree of her intoxication, including:

a) Whether she consumed alcohol before arriving at the bar.

b) Whether she used other intoxicants, drugs, or medications that evening.

c) What and when she had last eaten, which could impact alcohol absorption.

d) How much she spent at the bar (records, receipts, etc.)

71. No interviews were conducted with bar staff, despite C stating they knew her well and could provide insight into her level of intoxication. In her PS interview, MCpl Alton appeared to assume that this line of inquiry would not have been fruitful, as she believed that the bar staff would have been unable to remember C as distinct from other patrons that night.

72. Investigators placed significant emphasis on a text message Maj Hiestand sent the next day (Saturday, November 20, 2021) asking if C was still hungover. While this message confirms that she consumed alcohol the night before, it does not establish on its own that she was legally incapable of consenting to sexual activity. There is no indication that investigators sought to corroborate this inference with additional evidence regarding her physical or cognitive state at the time of the incident.

73. Additionally, C texted a friend that day, stating:

> **C:** "So hungover. I'm sorry for how drunk I was last night, I usually don't drink that much."
>
> **JW:** "It's all good, you weren't too much to handle. You seemed perfectly fine until we walked to the cab."
>
> **C:** "Yeah. I thought it was going well until that too. I'm not sure if that was the alcohol or the fact that my feet hurt so badly from those shoes and it was hard to keep balanced."

These messages provide contemporaneous insight into C's own perception of her condition and suggest that she was communicative, self-aware, and able to recall aspects of the evening. Investigators did not meaningfully assess this evidence in relation to her capacity to consent.

74. While the foregoing exchange suggests that C may have been more intoxicated than usual, it does not, on its own, establish that she was incapable of consenting to sexual activity at the relevant time. C's self-described hangover and her conversation with a friend reflect post-incident perceptions but offer limited insight into her actual functional capacity during the events in question. In fact, she is questioning if it was the alcohol or her shoes that made it hard for her to keep balanced. There should be caution against relying solely on recollections or post-event communications to determine legal incapacity. A thorough investigation requires consideration of the totality of the evidence, including physical state, witness observations, and internal consistency, to assess capacity neutrally.

75. Regarding the first alleged incident in Medicine Hat, the only witness interviewed described C as "highly intoxicated" but also "coherent" and "acting normally." She was able to walk, traverse stairs unassisted, and was not displaying extreme signs of intoxication such as slurred speech, loss of coordination, or vomiting. Despite C identifying others who were present at the gathering, investigators failed to interview additional witnesses from Medicine Hat before charging Maj Hiestand in relation to that incident. This limited approach reduced the opportunity to corroborate or contextualize her condition and undermined the thoroughness of the investigation.

Blacking Out vs. Passing Out

76. The legal distinction between a "blackout" and unconsciousness is important in sexual assault investigations, as Canadian law states that an unconscious person cannot legally consent (*Criminal Code*, s. 273.1(2)(b)). In this matter, the investigative file indicates that the CFNIS members recognized that intoxicated individuals may retain legal capacity to consent. However, it is not clear whether investigators systematically applied the correct legal standard for capacity in cases involving memory loss, particularly when the complainant reported "blacking out." C used terminology suggesting memory loss, but investigators did not clarify whether this reflected unconsciousness or a gap in recall. For example, MCpl Alton described C as having "passed out," although there is no indication that C used that term herself. This suggests a missed opportunity to align the investigation with the applicable legal test and to document how investigators interpreted the complainant's capacity.

77. Additionally, C's initial interview with the Moose Jaw MPs was not recorded. Cpl Keranen, who conducted this interview, later admitted uncertainty about whether C initially described herself as unconscious or whether she inferred it. The absence of a recording or contemporaneous transcript of this initial account makes it difficult to assess the accuracy and consistency of C's later statements. It also limits the ability to evaluate whether investigators' interpretations or assumptions concerning C's evidence as to her state may have influenced their understanding of the case. The failure to record this crucial interview by the Moose Jaw detachment is addressed in the MPCC's decision in the related complaint of MPCC file 2022-043.

Professional Standards Investigation

78. The PS investigator's Observations Report identified several deficiencies in the CFNIS investigation relevant to assessing C's account, including:

a) Insufficient questioning to clarify the distinction between "blackout" and "unconsciousness," which is relevant to the legal test for consent under the *Criminal Code*;

b) Limited probing into [C's] alcohol consumption and memory recall during the incident, despite her reference to blacking out. While prior intoxication

patterns are not determinative, clarifying how she understood and described memory loss was relevant to evaluating her recollection; and

c) A lack of clarity in documenting [C's] behaviour and reported recollections the morning after the incidents, which may have been relevant to establishing a timeline or corroborating specific facts.

79. Despite highlighting these issues, the PS investigator categorized them as "observations" rather than adverse "findings" against the subject members. Yet these deficiencies identified, including gaps in questioning, lack of corroborative inquiry, and failure to clarify critical elements of the complainant's account, did not meet the standard of a reasonable police officer investigating a sexual assault allegation in these circumstances. The MPCC sought further clarification as to why these had been categorized as observations rather than findings that would have been shared with both the complainants and the subject members. The PS investigator declined an interview with the MPCC.

80. Significant investigative shortcomings were identified in the CFNIS investigators' handling of key issues, despite the seriousness of the allegations, which warranted meticulous scrutiny. In cases involving complex issues of consent, particularly when a complainant reports memory loss during the alleged events, it is essential for investigators to conduct a thorough and carefully documented investigation. The evidence gathered must support reasonable grounds to believe that an offence occurred, based on all available corroborative and contextual information.

Finding #3:

The MPCC finds that CFNIS WR investigators failed to adequately probe the issue of consent, particularly in relation to C's reported level of intoxication and other key contextual factors necessary to assess capacity and reliability.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Other Witness Interviews Were Inadequate

81. CFNIS interviewed a total of six witnesses, apart from C:

a) Four acquaintances who were with C in Moose Jaw on November 19-20, 2021.

b) The taxi driver in Moose Jaw who drove the group home that evening.

c) DH, who was present during the October 16, 2021, incident in Medicine Hat.

82. The witness interviews conducted by the CFNIS were generally brief and lacked the depth expected in a sexual assault investigation. In particular, the interviews did not include sufficient detail-oriented or probative questioning to explore key facts or corroborate the complainant's account. In sexual assault investigations, corroboration plays a critical role in supporting the complainant's account and strengthening the evidentiary foundation of the case.

Missed Opportunities in Identifying Witnesses

83. During her CFNIS interview, C listed several individuals to whom she had disclosed the alleged incidents, including friends "[R]" and "[A]." She identified A as a witness to events surrounding the Moose Jaw incident. However, investigators did not document any efforts to confirm their full identities, contact information, or follow up statements. Although C stated she would provide this information, the file contains no record of any subsequent attempts to obtain or verify it.

84. C indicated that A told her that "she [C] couldn't consent to anything that night." However, the reliability and context of this statement could not be assessed without interviewing A, as she was not contacted by investigators.

Lack of Follow-Up and Corroboration

85. Although the other witness interviews were conducted after C's interview, the investigators did not thoroughly question, corroborate or contextualize her statements. The witnesses, who were close acquaintances, were not asked about C's alcohol consumption, and behaviour the night of the alleged sexual assaults. This was a relevant line of inquiry that should have been pursued to assess the reliability of her recollection and self-assessment of her condition.

The Interview of DH

86. Although DH was one of the individuals C identified as having knowledge of the allegations, in his interview he stated he knew little about them and that their breakup was due to Maj Hiestand's discomfort with their relationship becoming public.

87. Regarding the October 16, 2021, incident in Medicine Hat, DH described C's level of intoxication using varying terms that were not probed further by investigators. Those include:

a) "Highly intoxicated."

b) "She was coherent."

c) "Normal behavior, nothing out of character."

d) "Able to walk on her own."

e) "Traversed stairs without difficulty and no assistance required."

88. DH further stated that since Maj Hiestand did not appear to be enjoying himself, Maj Hiestand and C left the party around 23:00 hrs.

89. DH account acknowledged that C was "highly intoxicated" but also suggested that she appeared to be functioning normally at the time. This contrasts with C's later statements about blacking out. Investigators did not follow up by probing these inconsistencies or identifying or interviewing other attendees at the gathering, including the host, "J," and four other acquaintances who were present.

90. Given DH's long-standing relationship with C, his account may have been influenced by familiarity or unconscious bias, limiting his independence as a witness. In contrast, other attendees, who did not share a personal connection with C, and who would have been in a better position to offer more objective and probative observations relevant to the investigation were not interviewed.

Speculative Assumptions Leading to Investigative Gaps

91. When interviewed by PS, MCpl Alton provided unconvincing justifications for not conducting certain witness interviews. For example, when asked why no hotel staff in Medicine Hat were interviewed, she stated, "Nothing would have stood out to an employee." However, a front desk attendant or other staff member might have recalled whether C required assistance walking, whether she and Maj Hiestand were arguing, or any other observable behaviour relevant to the investigation.

92. Regarding the "Crushed Can" bar in Moose Jaw, MCpl Alton stated that interviewing staff would be pointless, as they would likely respond, "Which drunk girl are you looking for? As it's a common theme in that kind of bar." However, C herself stated she was a regular at the bar and knew the doormen well, even suggesting that investigators speak with them. This dismissive rationale of MCpl Alton precluded what may have been valuable third-party observations regarding C's level of intoxication, behaviour, or interactions that evening.

93. The MPCC finds that it is below the standard expected of a reasonable police investigator to make assumptions about witness testimony and dismiss interviews based on unverified speculation or preconceived notions.

Additional Missed Witnesses

94. During her PS interview, MS Brown incorrectly stated that there was no one they could specifically identify in Medicine Hat. C had clearly indicated that the party was hosted by "J," a friend of DH. Investigators failed to ask DH for J's contact information or the identities of other attendees. Treating C's inability to recall their names as an insurmountable challenge demonstrates a lack of investigative diligence.

95. Similarly, MCpl Alton's assumption that nothing noteworthy occurred at the Medicine Hat hotel suggests an uncritical reliance on C's account and represents an attempt to rationalize investigative omissions. Investigators did not consider the possibility that hotel employees might recall C's level of intoxication.

96. The failure to pursue critical witness interviews significantly weakened the investigation. Investigators relied on assumptions about what witnesses might say and did not take reasonable steps to independently corroborate or challenge the reliability of C's claims. These omissions undermine confidence in the investigation's thoroughness, diligence and neutrality.

Finding #4:

The MPCC finds that investigators failed to pursue critical witness interviews, which significantly compromised the integrity of the investigation.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Investigative Avenues Not Pursued

Maj Hiestand's Cell Phone Evidence

97. CFNIS investigators obtained C's cell phone and downloaded her text messages for examination. There was an extensive exchange of messages between C and Maj Hiestand during the period of their relationship. However, investigators failed to seize and review Maj Hiestand's cell phone, creating two critical investigative gaps.

98. First, the failure to seek to obtain Maj Hiestand's phone eliminated a valuable opportunity to obtain further evidence. Given the extensive messaging between C and Maj Hiestand on her phone, the investigators could have investigated whether his phone contained similar, or additional texts or photos. Such evidence might be inculpatory, strengthening the case, or exculpatory, potentially affecting the decision to lay charges. Additionally, investigators should have considered the possibility that C may have deleted or edited messages, whether for practical or intentional reasons.

99. Second, failing to seek to obtain Maj Hiestand's phone created a risk that the Crown's case could be undermined at trial. The defence is not obligated to disclose exculpatory evidence beforehand, meaning that relevant texts or photos from Maj Hiestand's phone could emerge unexpectedly at trial.

Lack of Crime Scene Search Warrant – Moose Jaw

100. The CFNIS investigators did not obtain a search warrant for Maj Hiestand's residence. MCpl Alton's statements regarding the decision to not obtain a search warrant for Maj Hiestand's residence were internally inconsistent. When asked by the PS investigator if the decision was due to resource constraints or investigative judgment, she responded, "Both." MCpl Alton also stated she had questioned whether there were sufficient grounds for a warrant, particularly expressing concern that key evidence—such as the pyjama bottoms C claimed to have worn—might have been washed. While the issue in this case centred on consent rather than whether sexual contact occurred, CFNIS still had a duty to assess whether physical evidence might offer contextual or corroborative value, such as supporting C's account of unconsciousness or her timeline of events. When later asked if the fact that the residence was a crime scene alone would justify a warrant, she agreed: "Yes, yes you could obviously get a warrant for going into the crime scene."

101. MCpl Alton told MPCC investigators that she had never written a search warrant for a residence. This raises concerns with respect to MCpl Alton's understanding of the legal threshold required in cases involving sexual assault or other serious allegations, where timely and legally sound evidence collection is critical.

102. The concern about washed pyjamas was misplaced and speculative. The primary investigative goal should have been to determine whether Maj Hiestand owned pyjamas that matched C's description. Investigators failed to ask for such a description during C's interview. A search warrant requires only reasonable grounds to believe that evidence may be found, not certainty that it has not been compromised. Since the alleged incident had occurred just a week prior, the presence of such pyjamas in the residence could have had a corroborative value. Even if they had been washed, forensic testing might still have yielded probative results. Additionally, the location where the pyjamas were found, whether hidden, or concealed, separated or discarded, is information that assists an investigation.

103. MS Brown stated that she recalled discussing a search warrant but only in relation to Medicine Hat. She dismissed the idea, saying the hotel room would have been cleaned and that "it wouldn't have done anything." The MPCC finds that this rationale is flawed. While physical evidence collection might have been limited due to the passage of time, documenting the scene, including room layout, stairwells, and public areas, could still have held value in reconstructing events and supporting or challenging witness accounts.

104. MCpl Alton stated that she had discussed the possibility of seeking a search warrant with Sgt Gauthier but could not recall the specifics of their conversation. In contrast, Sgt Gauthier stated that a search warrant had never been discussed. This raises concerns about whether critical investigative steps were formally considered or internally communicated. The lack of documentation or follow-up on this issue reflects a breakdown in supervisory oversight.

105. The MPCC concludes that the investigators made premature and inappropriate assumptions about what the evidence would show instead of pursuing reasonable investigative steps as warranted. The failure to utilize basic investigative tools, such as a search warrant for the suspect's residence, constitutes a serious deviation from expected police conduct in sexual assault cases. This failure reflects substandard investigative decision-making and ineffective case management, particularly considering the seriousness of the allegations and the availability of potentially corroborative material evidence.

Investigative Shortcomings Regarding the Medicine Hat Incident

106. Investigators took no meaningful action at the scene of the first alleged assault at the Days Inn in Medicine Hat, beyond a phone inquiry regarding surveillance footage. Certain reasonable investigative steps were omitted, including:

a) Identifying and interviewing hotel staff who were on duty during the weekend in question. This could have helped in assessing C's level of intoxication; and

b) Photographing the hotel's premises and the specific guest room for future reference.

107. In terms of the remaining witness interviews (i.e., those at the party at "J's" place), MCpl Alton advised PS that if Maj Hiestand had not died, other investigative avenues would have been completed and "…the other interviews would have been done with whoever was left in Moose Jaw and then Suffield [Medicine Hat]." However, there is nothing in the investigation or General Occurrence (GO) file, such as an updated investigation plan, that documents this intention.

108. In fact, in her interview with PS, MCpl Alton indicated that there was no discussion about possibly delaying the charging of Maj Hiestand until the remaining witnesses had been interviewed.

109. When asked by PS whether they had "exhausted all principal relevant avenues of investigation," both MCpl Alton and Sgt Gauthier admitted that key investigative steps remained outstanding. In her PS interview, Sgt Gauthier specifically acknowledged that crucial evidence—including a Technical Crimes Unit (TCU) report on C's phone and pending DNA analysis—could have significantly altered the case's direction.

Professional Standard Investigation

110. The PS investigator identified multiple deficiencies in the CFNIS investigation, as documented in the Observations Report.

Observation 18 (directed at Sgt Gauthier and WO Tenaschuk) noted that:

- The investigative plan synopsis only covered the Moose Jaw incident (November 20, 2021) and omitted the Medicine Hat incident (October 16, 2021).
- There was no articulation of the specific elements of the offence that required investigative focus.
- Minimal detail was provided regarding proposed interview subjects and their relevance to the case.
- The investigative plan lacked a clear outline of necessary steps.

Observation 19 (directed at all four subject members) noted that:

- The investigation log failed to document a rationale for either pursuing or forgoing specific investigative actions.

- The owner of the private residence where C had been before the alleged incident was neither identified nor interviewed.
- No effort was made to identify or interview additional attendees of the Medicine Hat party.
- Investigators did not document or explain the decision not to search the scenes of the alleged assaults.
- No descriptions or diagrams of the scenes were obtained from C.
- No hotel or bar employees were identified or interviewed.

111. Although the PS investigator documented these extensive shortcomings, the *Findings Report* did not reflect the full scope of these investigative deficiencies. This omission raises concerns regarding the transparency and completeness of the PS report. Moreover, this approach weakens institutional transparency and limits learning. The PS investigator declined to be interviewed, leaving key questions unresolved about the criteria and rationale used to assess and categorize these deficiencies.

112. The CFNIS investigation suffered from multiple failures to pursue standard investigative avenues. Investigators relied on assumptions, failed to consider or pursue search warrants, and neglected relevant witness interviews. These deficiencies raise serious concerns about the thoroughness, objectivity and professionalism of the investigation.

Finding #5:

The MPCC finds that CFNIS WR investigators failed to conduct relevant interviews and to investigate the alleged crime scenes.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Recommendation #1:

The MPCC recommends that CFNIS investigators receive enhanced training focused on core investigative practices, including the timely identification and interviewing of relevant witnesses and the thorough examination of alleged crime scenes. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. All CFNIS members receive advanced training (i.e. MPIC [Military Police Investigator's Course], Sexual Assault Investigator Training, etc.) which covers the noted topics."***

  This recommendation is not accepted.

  The recommendation calls for "enhanced" training for CFNIS investigators on core investigative practice. While the MPCC understands that CFNIS investigators received training that touches on these topics, the facts of this complaint demonstrate that this training is plainly insufficient given the seriousness of the shortcomings identified.

  This refusal to even examine whether improvements are needed in the wake of such a case is deeply troubling.

Inadequate Review of C's Cell Phone Contents (Text Messages)

113. One of the significant failings in the CFNIS investigation was the lack of systemic examination of key text messages, despite investigators having access to them as of the night of November 29, 2021.

114. The GO file indicates that on the night of November 29, 2021, at 22:00 hrs, MCpl Alton began downloading the contents of C's cell phone via a Data Pilot device. Her Security and Military Police Information System (SAMPIS) notes indicate the process took some six hours, completing at 04:00 hrs on the morning of November 30, 2021. As per the disclosure received by the MPCC regarding this information, the text messaging information alone resulted in 1,299 pages of data. Regarding the messages which pertain solely to exchanges with Maj Hiestand, the Forensic Report prepared by Tech Services on January 18, 2022, indicates the extremely high volume of information that was extracted: 121 calls and 7,363 texts.

Insufficient Review of C's Text Messages

115. MCpl Alton admitted in her interview with PS to conducting only a "cursory" five-minute review of the text messages on the night of November 29, 2021, prior to downloading the data into the Data Pilot.

116. MCpl Alton described accessing specific text messages to bolster her grounds for arrest, yet her notebook entries do not reflect this. The last entry for November 29, 2021, was at 19:25 hrs, with the next entry not occurring until 11:25 hrs the following morning. No notations were made about handling or reviewing the Data Pilot and cell phone contents.

117. During her PS interview, MCpl Alton initially referred to finding "evidence" for both alleged incidents. However, in her MPCC interview, she stated she could not recall whether she reviewed texts from the first incident in Medicine Hat. When reminded that her PS interview and TCU request referenced evidence for both dates, she stated she would need to see the messages again.

118. When interviewed by MPCC, MCpl Alton frequently responded that she did not recall details regarding how she navigated through the phone or what she reviewed. Later in her MPCC interview, when asked if there were aspects of the investigation she would handle differently, she admitted, "Yeah, there's a couple of things. One is making sure my notes are more detailed because coming back three years later is a problem, to try to remember everything." She also added, "Yes, going back through the phone and looking at absolutely everything, that would be something that I would do differently."

119. The timing of obtaining C's phone also raises concerns regarding the preservation of key evidence. MCpl Alton first discussed acquiring the phone during the phone call with C on November 26 but it was not collected until November 29. On that day, C reportedly delayed multiple times before handing it over at 20:14 hrs. In line with best investigative practices, key evidence should be secured promptly to reduce the risk of data loss, tampering, or a witness declining to cooperate.

Key Text Messages Relied Upon by Investigators

120. MCpl Alton claimed she located corroborating messages showing post-incident conflict between C and Maj Hiestand regarding the Medicine Hat incident. However, the MPCC's review of the text messages did not identify any explicit argument or tension in the days following the October 16 weekend.

121. With respect to the Moose Jaw incident, MCpl Alton considered that Maj Hiestand's text at 18:00 hrs on November 20—"Are you still hungover?"—was evidence corroborating C's intoxication. This view was echoed by MS Brown and Sgt Gauthier. However, this message, while suggestive of alcohol consumption, does not establish an inability to consent.

122. When questioned by MPCC, MCpl Alton could not recall whether she saw C's response to the "hungover" question or whether she attempted to review additional context pertaining to that message.

123. Sgt Gauthier, in her PS interview, characterized Maj Hiestand's "Are you still hungover?" text as "digital evidence." However, the investigative team gave significantly less weight to Maj Hiestand's denials of C's allegations in the November 25, 2021, text messages.

124. Sgt Gauthier's notes from November 29, 2021, were brief, mentioning only the allegations and ongoing evidence collection. There is no information to demonstrate she was fully aware of the November 25, 2021, text messages (containing Maj Hiestand's denials), which would have been important to evaluating the evidence before proceeding with an arrest. When asked about this by the MPCC investigator, Sgt Gauthier confirmed that she viewed the "hungover" text as significant evidence but could not recall if MCpl Alton had provided her with any other text messages from C's phone.

125. MS Brown and MCpl Alton had already decided on the night of November 29, 2021, that they would arrest Maj Hiestand the next day. Although the cell phone data had already been extracted into the Data Pilot system, they did not conduct a sufficient review of the messages prior to the prospective suspect interview on arrest.

126. While investigators are not legally obligated to complete all evidentiary steps prior to making an arrest, best practices, particularly in investigations such as sexual assault, strongly support conducting key investigative action beforehand. These include evaluating digital evidence, forensic testing, and securing corroborating interviews. Exceptions may arise in situations involving urgent risk to public safety or potential

flight. In this case, the decision to proceed after only a five-minute review of the thousands of text messages reflects a lack of investigative diligence and contributes to the perception that the arrest was carried out with undue haste.

Finding #6:

The MPCC finds that CFNIS WR investigators failed to conduct an adequate review of the text messages between C and Maj Hiestand.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Recommendation #2:

The MPCC recommends that military police undergo enhanced training on digital evidence handling and contemporaneous documentation, particularly in serious interpersonal violence cases. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "Action to be taken. A review of the necessary MP training will be conducted, and where applicable, enhanced to include the comments noted in recommendation 2."***

  This recommendation is not accepted.

  While the CFPM has indicated that she will review the "necessary MP training" her response is vague and there is no commitment to implementing any change. In this case, critical digital evidence was not systematically accessed or analyzed prior to the arrest and charging of Maj Hiestand, underscoring that the existing training is inadequate.

Recommendation #3:

The MPCC recommends that the CFNIS implement a digital evidence handling protocol. This protocol should include supervisory consultation before charge decisions, minimum thresholds for review, documentation of rationale for non-seizure of comparative devices, and timelines for forensic processing. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. Existing SOPs within the CFNIS as well as MP policy and procedures currently include comments noted in recommendation 3. These docs are continuously reviewed and amended to ensure they are indicative of best practices of Canadian policing."***

  This recommendation is not accepted.

The recommendation calls for implementing of dedicated digital evidence handling protocol incorporating supervisory consultation, minimum review thresholds, documented rationale for non-seizure, and forensic timelines. While the CFPM asserts that existing SOPs already cover these points and are "continuously reviewed," she does not commit to establishing a dedicated protocol that meets the recommendation's requirements.

The current approach, where relevant guidance is scattered across various CFNIS and MP policies and procedures, has proven ineffective. In this case, there was no systemic approach to accessing and reviewing critical digital evidence. A dedicated protocol, supported by supervisory consultation and documented decision making, would help prevent similar failures and enhance both accountability and investigative quality.

No Effort to Prepare for an Interview with Maj Hiestand

127. Maj Hiestand was the suspect and the only witness to the alleged sexual assaults. Preparing to interview him would have been an important investigative step. Yet the CFNIS WR investigators failed to adequately prepare for the possibility of an interview with Maj Hiestand, including by failing to prepare an interview plan. They could not have known in advance that Maj Hiestand would exercise his right to counsel and decline to answer any questions.

128. Investigators also failed to consider the option of a non-custodial, cautioned interview (that is, offering the suspect a chance to answer questions independent of an arrest). While an interview on November 30, 2021, may still have been premature given the early stage of the investigation, a non-custodial approach would have preserved the opportunity to speak with him later (at the time of arrest).

129. A premature arrest and or an ineffective suspect interview can have long-term investigative consequences. Once charges are laid, the investigators rarely have a further opportunity to obtain any additional information from the accused.

Recommendation #4:

The MPCC recommends that the CFPM mandate interview plans for all suspect interviews in sexual assault files. These plans should be prepared in advance, reviewed by a supervisor, and include strategies to explore key facts while respecting Charter rights and trauma-informed practices. (Not Accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action to be taken. Current MP policy and procedures include comments regarding the use of interview plans for all interviews to be conducted during the course of an investigation. The CFPM will continue to reinforce the importance of interview plans within the MP Branch."***

  This recommendation is not accepted.

  The recommendation calls for "mandating" interview plans for all suspect interviews in sexual assault files, with specific requirements: advance preparation, supervisory review, and strategies aligned with Charter rights and trauma-informed practices.

  This review demonstrated that the existence of "comments" in current MP policy and procedures and the CFPM's current practice were not adequate to prevent the serious deficiencies noted. While it is positive that current MP policy and procedures "include comments" on the use of interview plans and that the CFPM will "continue" reinforcing their importance, this falls short of what is required.

  In this case, investigators were unprepared for a critical interview (the proposed interview of Maj Hiestand). Given that the CFPM clearly supports the use of interview plans, the refusal to mandate them is difficult to understand. Declining to implement this recommendation risks allowing the very deficiencies exposed in this file to persist unaddressed.

Inadequate Supervision and Case Management

The Investigation Team

130. The full investigative team responsible for the investigation of Maj Hiestand consisted of: the two investigators (MCpl Alton – lead; and MS Brown – secondary); the case manager (Sgt Gauthier); and the team leader (WO Tenaschuk). Above the level of WO Tenaschuk was MWO Isles and the Officer Commanding, Maj Cooper, however, neither were significantly involved in the investigation until after it had concluded.

131. MP Order 2-500 (Investigation Management) focusses on the importance of effective supervision of MP investigations. Paragraph 2 emphasizes the importance of quality control, which it describes as a daily, ongoing activity of all supervisory levels, with investigative decisions recorded and tracked in SAMPIS (the electronic MP investigation file system). Paragraph 12 stipulates that supervisors, in consultation with the lead investigator, are responsible for determining what, if any, investigative assistance

may be required. According to paragraph 17, supervisors must supervise the work of subordinates and maintain full situational awareness of investigations. While paragraph 25 calls for investigations to be conducted quickly and efficiently, it also specifies that this must not be at the expense of thoroughness or integrity.

132. One of the most significant issues identified by the MPCC investigation was the lack of documentation to verify what directions, if any, were given to investigators regarding key decisions. WO Tenaschuk had no notes at all, and Sgt Gauthier made no notes after the first full day of the investigation (November 29). This issue was particularly evident in two critical areas:

a) The decision to charge Maj Hiestand for the Medicine Hat incident.

b) The decision to arrest Maj Hiestand.[15]

133. WO Tenaschuk and Sgt Gauthier both stated in their MPCC interviews that clear direction had been given to investigators not to charge for the Medicine Hat incident. In contrast, the investigators stated they received no such instruction. There is no record, either in the SAMPIS system or in any officers' notes of such an instruction.

134. Sgt Gauthier's lack of notes beyond the first day of the investigation (November 29, 2021) is particularly troubling. When asked to explain during her interview with MPCC about the lack of notes in SAMPIS from her for the second day of the investigation, Sgt Gauthier answered that it was probably because there were no notes. She offered no further explanation. As the primary conduit in the vertical flow of information between investigators and the upper military police chain of command, her failure to document critical decisions raises serious concerns.

135. MWO Isles only became involved after discovering that charges had been laid for the Medicine Hat incident. He then ordered remedial measures against the CFNIS WR investigators for their conduct of the Hiestand investigation, particularly in respect of the Medicine Hat incident. He also conducted a Quality Review of the investigation.

[15]An arrest involves police taking someone into custody for suspicion of a crime, while charging is the formal act of accusing someone of committing a specific crime, which triggers the court process.

Although an MPCC interview was scheduled with him, he later declined, preventing further clarification on his involvement and on his critical Quality Review Report on the investigation.

136. Maj Cooper, the Officer Commanding the unit, was not interviewed by the MPCC as his involvement in the Maj Hiestand file was minimal until much later, after the investigation had concluded.

137. Both the MPCC and the PS interviews revealed significant discord, conflict, and mistrust among members of CFNIS WR at the time of the Hiestand investigation. A toxic work environment can significantly compromise the integrity, effectiveness, and fairness of a police investigation. It can lead to biased decision-making, poor communication, and a breakdown in accountability. In this case it is difficult to assess how much the toxic work environment compromised the investigation, but it is worth noting that it could have contributed to some of the shortcomings identified in this decision, including the investigators' decision to lay charges without proper supervisory consultation.

Training and Experience Deficiencies

138. At the time of the Hiestand investigation, MS Brown was still on her CFNIS internship and was being mentored by MCpl Alton and Sgt Gauthier. MCpl Alton described the mentorship process as one in which MS Brown would pause interviews to confer with her mentor on additional lines of questioning. While this is standard practice, I note that after these consultations, MS Brown did not modify her interview approach in a way that led to more effective or probative questioning. While experience is gained through practice, MS Brown had well-documented difficulties with interviews (lack of focus, challenges controlling the interview), raising concerns about why she was assigned to interview C. Additionally, although MCpl Alton was "intern-qualified" and assigned as lead investigator, she had not yet completed the basic Sexual Assault Investigator course.

139. Of the entire investigative team, only WO Tenaschuk claimed to have had extensive Major Case Management training.

140. When interviewed by the MPCC, all relevant subject members admitted to having little experience in case prosecutions or courtroom testimony. This inexperience may explain the lack of comprehensive note-taking and investigative tracking, as their work had not been tested under courtroom scrutiny.

141. The overall lack of experience, knowledge, and training were contributing factors in the quality and effectiveness of the investigative actions taken, or not taken, throughout the case.

Recommendation #5:

The MPCC recommends that the CFPM require all CFNIS investigators assigned to sexual assault cases to complete the Sexual Assault Investigator course prior to conducting such an investigation. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. It is mandatory for all CFNIS members to now take this training."***

  This recommendation is not accepted.

  While the CFPM states that the training is now mandatory for all CFNIS members, the issue in this case was not the existence of the course, but the fact that an investigator was assigned to a sexual assault investigation before completing it. The CFPM's response does not address the timing of the training relative to investigative assignment, nor does it commit to ensuring that only fully trained investigators are tasked with sexual assault investigations. As a result, the underlying problem identified in this case could easily recur.

Recommendation #6:

The MPCC recommends that the CFNIS implement a minimum competency standard for lead investigators in sexual assault investigations, including demonstrated proficiency in search warrant procedures. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. Existing CFNIS training includes the comments noted in recommendation 6."***

  This recommendation is not accepted.

  The CFPM's response does not address the substance of the recommendation which does require action.

This recommendation calls for the creation of a minimum competency standard for lead investigators in sexual assault cases, something distinct from simply offering or referencing existing training. The core issue is determining what specific competencies a military police investigator must demonstrate before being assigned to a sexual assault investigation. Whether existing training include "comments" about minimal competency standard does not resolve the problem identified in this case: without a defined competency standard, there is no assurance that investigators possess the necessary skills when they are actually tasked with these highly sensitive and complex files.

Recommendation #7:

The MPCC recommends that the CFPM directs that supervisors ensure investigators assigned to sexual assault investigations possess the requisite training and experience or receive appropriate guidance and support throughout the investigation. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. The comments noted in recommendation 7 fall within the current expectations of persons in a policing leadership posn [position] of the MP."***

  This recommendation is not accepted.

  The issue here, closely linked with recommendation 6, is the need for supervisors to "ensure" that investigators assigned to sexual assault investigations possess the necessary training and experience or received appropriate guidance and support throughout the investigation. Simply stating that this falls within "current leadership expectations" does not address the recommendation. The recommendation calls for this supervisory responsibility to be made explicit in policy, not left to assumption or informal practice. Without a clear, codified requirement, there is no assurance that the shortcomings identified in this case will not recur.

142. MCpl Alton, a junior investigator, led a file involving two sexual assault allegations in different jurisdictions, with forensic, digital, and consent-related complexities, despite reportedly never having drafted a residential search warrant. The lack of oversight in matching case assignments to experience creates risk for high-consequence investigations.

Recommendation #8:

The MPCC recommends that the CFPM revise assignment protocols for sexual assault investigations. Such a protocol should include that (1) lead investigators must have recent experience with major case procedures, including evidence seizure and digital analysis, and (2) when assigning less experienced members, supervisors

must implement and document a mitigation strategy, including coaching, documentation checks, and active file-monitoring. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action taken / required.***

  1) While the MCM principles can be and are often applied, not every sexual assault investigation requires Major Case experience, or digital analysis.

  2) MP have a current mitigation strategy for less experienced members."

  This recommendation is not accepted.

  Closely linked to recommendations 6 and 7, it aims to prevent the recurrence of numerous deficiencies noted in this CFNIS investigation by establishing a clear assignment protocol that ensures experienced investigators are selected for sexual assault investigations and that meaningful supervisory mitigation measures are applied when less experienced members are assigned.

  The CFPM's response, that existing policies are adequate, disregards the findings of this report which found that the existing policies on their own are not adequate. The CFPM does not address the value of a dedicated protocol that would consolidate and coordinate these expectations into a coherent standard.

  Moreover, while the CFPM asserts that a mitigation strategy exists, no information is provided about its content, application or effectiveness, or why there are no lessons to be learned from the events in this investigation.

  In light of the serious investigative shortcomings documented in this case, the refusal to formalize these safeguards fails to reflect the gravity of the deficiencies identified.

Professional Standards Investigation

143. The PS investigator also identified serious deficiencies in case management and supervision. These observations, shared by the MPCC, are as follows:

> **Observation 18:**
>
> The investigation plan focused only on the Moose Jaw incident (November 20) and failed to address the Medicine Hat incident (October 16).
>
> No articulation of the specific elements of the offence that needed focus.
>
> Minimal detail on interview subjects and their relevance.
>
> Lack of investigative planning steps.
>
> **Affected Entities:** Sgt Gauthier and WO Tenaschuk.
>
> **Observation 19:**
>
> No rationale documented for why certain investigative steps were taken—or omitted.

No attempts to identify or interview additional individuals at the Medicine Hat party.

No effort to document or explain why crime scenes were not processed.

No diagrams or descriptions of the scenes obtained from C.

No interviews were conducted with hotel or bar employees.

Affected Entities: Sgt Gauthier, WO Tenaschuk, ex-MS Brown, MCpl Alton.

Observation 20:

Sgt Gauthier approved most of her own text boxes in the system.

WO Tenaschuk did not document any review of the case while it was ongoing.

MWO Isles only became involved after a complaint had already been made.

Affected Entities: Sgt Gauthier, WO Tenaschuk, MWO Isles.

Finding #7:

The MPCC finds that the Hiestand investigation suffered from inadequate and ineffective supervision and case management on the part of Sgt Gauthier and WO Tenaschuk.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Failure to Conduct a Thorough Investigation Prior to Arresting and Charging Maj Hiestand

144. The decision to arrest and charge Maj Hiestand was made on the second full day of the investigation, even though key evidence such as forensics, cell phone contents, witnesses and complainant statements had yet to be fully analyzed. Additionally, several critical investigative steps remained outstanding at the time of the decision.

145. Both investigators, MCpl Alton and MS Brown, felt they were under a substantial "time crunch," which was known to both Sgt Gauthier and WO Tenaschuk. Based on their schedule, they felt they had only two full working days available to investigate before deciding on the arrest and charging of Maj Hiestand.

146. When WO Tenaschuk was asked by MPCC, considering the complexities of this case, particularly around the issues of consent, could they have been adequately addressed in the time frame of less than two days, he responded, "It's another good question, I don't know."

147. As noted earlier in this report, MP Order 2-340 (Military Police Investigation Policy) emphasizes the importance of thorough and complete MP investigations. It specifically calls on MPs to avoid tunnel vision - a known phenomenon where police fixate on a suspect or version of events and then fail to adequately consider evidence which points in a different direction. Moreover, paragraph 39 stipulates that "MP must work closely with the appropriate military legal advisor or civilian Crown prosecutor (collectively legal advisors) during all phases of an investigation…"

148. As already discussed, critical investigative steps remained outstanding at the time of the arrest of Maj Hiestand. In particular, the issue of level of intoxication and consent were inadequately probed. Also, apart from a five minute "cursory" examination of a couple of selected text messages, the vast trove of electronic communications between C and Maj Hiestand were virtually ignored.

149. In the circumstances, the investigation, at least as of the time of the arrest of Maj Hiestand, was not "thorough, complete and rigorous" in accordance with MP Order 2-340, as described above. In addition, as discussed below in the Investigation Timeline section (paragraphs 153-160), there was no objective urgency to arresting Maj Hiestand on November 30, 2021. Moreover, contrary to MP Order 2-340, investigators neglected to make appropriate use of legal advisors before arresting and charging Maj Hiestand.

150. As discussed above, MP Order 2-500 (Investigation Management) requires effective and active supervision of MP investigations. Yet there was little evidence of timely, hands-on supervision on this file and no evidence of any case conferencing involving the team leader, WO Tenaschuk. It is difficult to see how he maintained "full situational awareness" of the investigation, as required by MP Order 2-500. A major indicator of this is the fact that WO Tenaschuk and the CFNIS WR chain of command were surprised to learn, after the fact, that Maj Hiestand had been charged with the Medicine Hat incident.

151. The MPCC finds that the Hiestand investigation was seriously deficient and did not meet the above noted military police standards. Significant information remained unprobed, or insufficiently probed, at the time the investigators decided to arrest and charge Maj Hiestand.

152. The MPCC therefore finds that proceeding with an arrest and charges after only two days of active investigation, despite multiple unresolved investigative steps, the complexity of the allegations, and the absence of legal consultation, fell below the standard expected of a reasonable police investigator.

Finding #8:

The MPCC finds that the CFNIS WR investigative team failed to conduct a sufficiently thorough investigation prior to arresting and charging Maj Hiestand.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

The CFNIS WR Investigation Was Marked by a Rush to Judgment and Was Undermined by Confirmation Bias

Inadequate Investigation Timeline

153. As determined above, a key factor in the inadequacies identified regarding the CFNIS WR investigation, was the perception by MCpl Alton and MS Brown that the pre-arrest phase of the investigation had to be completed prior to the investigators' scheduled return to Edmonton on December 1, 2021, prior to embarking on training courses. Many of the deficiencies identified in the preceding section dealing with Issue #2 (the thoroughness of the investigation prior to arrest, at paragraphs 41-152) further reinforce the impression that the decision to arrest was premature and suggest a potential rush to judgment.

154. The tight timeframe for the investigation was contemplated from the outset. The travel request for MCpl Alton and MS Brown reads as follows:

> Travel Request: CFNIS WR is requesting permission to travel to Moose Jaw SK between 28 Nov to 1 Dec 21 by Airplane. A rental car will be required upon arrival in Regina.
>
> Task: This request is in support of the following investigations: GO#21-33597 (victim, witness and subject interviews along with arrest and release of subject).

155. Asked to indicate the timing of the decision to arrest and charge Maj Hiestand, MS Brown provided the following information:

> … we had had the conversation on the 29th [of November 2021], talked about it, we slept on it. Got up on the 30th, talked to the Chain of Command again, I talked to MCpl Alton and with what we had we decided that the elements of the offence were met and we decided to lay the charges.

156. MCpl Alton indicated she discussed the arrest of Maj Hiestand with Sgt Gauthier on November 30, 2021. Sgt Gauthier stated that, when she was consulted on November 30, she cautioned the investigators about rushing into an arrest. However, there is conflicting evidence as to what guidance or direction made its way to the investigators from Sgt Gauthier.

157. Sgt Gauthier states she cautioned them to not rush into it after MCpl Alton told her they were going to arrest at around noon on November 30 (the day of the arrest). Sgt Gauthier says she called MCpl Alton and told her not to charge after receiving such direction from WO Tenaschuk. However, MCpl Alton says that she does not recall any cautions or "red flags" from Sgt Gauthier, nor was she ever told not to arrest. MS Brown states she thought there was pushback from the chain of command, but they were never told specifically what it was, so they went ahead with the arrest and charges.

158. In any event, the investigators decided to not only arrest Maj Hiestand, but to charge him with both counts of sexual assault (i.e., one for each of the Medicine Hat and Moose Jaw incidents).

159. As MS Brown stated, on the morning of the second day of the investigation, they felt the elements of the offence had been met and they decided to go ahead with the arrest and charges. However, as discussed above, at this time there were still multiple factors to be considered and key issues to be investigated relative to the elements of the offence, such as level of intoxication/consent. In addition, as already stated, there was no consultation with a legal advisor or prosecutor prior to the arrest and laying of charges.

160. During their interviews with PS, the subject members all referred to the lack of time. There was no objective basis for this belief that they lacked time. The investigation of two allegations of sexual assault with complicating factors around the issue of consent

takes time. The only "urgency" provided was that the investigators were going on course the following week. This is not a reasonable basis for accelerating a criminal investigation of this complexity and significance.

Finding #9:

The MPCC finds that the CFNIS WR investigative team failed to allocate sufficient time to the investigation of Maj Hiestand prior to his arrest.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Concerns About Whether the Objective Component of the Standard to Arrest and Charge Maj Hiestand Was Met

Legal Basis for Arrest

161. Maj Hiestand's was arrested under section 495(1)(a) of the *Criminal Code*, which allows a peace officer to arrest without a warrant if they have reasonable grounds to believe an indictable offence has been committed.

> Arrest without warrant by peace officer
>
> **495 (1)** A peace officer may arrest without warrant
>
> **(a)** a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
>
> **(b)** a person whom he finds committing a criminal offence; or
>
> **(c)** a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

162. For an arrest to meet the reasonable grounds threshold, it must satisfy both:

a) Subjective belief: The arresting officer must genuinely believe the suspect committed the offence.

b) Objective standard: A reasonable person, presented with the same facts, must also conclude that reasonable grounds exist.

163. Once police have satisfied themselves as to the reasonable grounds to lay a charge, there is the question of police discretion. While police have a legal duty to enforce the

law, they also have charge-laying discretion, which must be justified on the basis of subjective and objective considerations and must be exercised in the public interest.[16]

Investigators' Decision-Making Process

164. During her PS interview, MS Brown stated that she and MCpl Alton decided to arrest Maj Hiestand on their first full day in Moose Jaw (November 29, 2021). They resolved to reflect on the decision overnight. The next day, MCpl Alton consulted with Sgt Gauthier by phone, and they proceeded with the arrest a few hours later.

165. Their decision was based primarily on C's recorded statement. Forensic analysis or phone data review had yet to be completed. While a complainant's statement can, in law, be sufficient to justify an arrest, particularly where it is detailed and internally consistent, it is advisable, where feasible in sexual assault investigations for corroborative steps to be undertaken, especially in complex cases involving intoxication and consent.[17]

166. Additionally, upon his arrest, Maj Hiestand declined to provide a statement. While this left investigators with only C's version of events, an accused's silence does not validate a complainant's allegations. Corroborating evidence helps strengthen the case and protect both parties, ensuring the accused is not wrongfully charged and the complainant's account is properly supported.

Intoxication and Consent

167. Both MCpl Alton and MS Brown acknowledged in their PS interviews that a person can legally consent while intoxicated. However, they repeatedly cited their belief in C's intoxication as supporting their grounds for arrest. This reasoning is insufficient as intoxication alone does not determine the absence of consent.[18]

[16] *R. v. Beaudry*, 2007 SCC 5.
[17] As noted above, MP Order 2-340 requires military police to conduct impartial, thorough, complete and rigorous investigations and to collect all relevant evidence, whether inculpatory or exculpatory.
[18] *R. v. GF*, 2021 SCC 20, at paras 5 and 84, per Karakatsanis J (for the majority), and para 118, per Browne and Rowe JJ (concurring).

168. Although C reported blacking out during the incident, and as found above in Issue #2 (dealing with the thoroughness of the investigation prior to the arrest, at paragraphs 41-152), the investigators did not adequately explore her state of intoxication or other available contextual indicators that might shed light on the question of consent. Police are expected to seek relevant corroborative evidence, including witness observations, complainant demeanour, and sequence of events, all in a trauma-informed manner.

169. With respect to the Moose Jaw incident, witnesses confirmed that C was intoxicated. However, for the Medicine Hat incident, the only witness interviewed (DH) seemed to describe a level of intoxication that was significantly lower than in Moose Jaw. Even C admitted in her statement, "I wasn't as out of it" that night (i.e., the night in Medicine Hat).

170. Moreover, MCpl Alton, MS Brown, and Sgt Gauthier all cited a single text message— "Are you still hungover?"—as somehow corroborating Maj Hiestand's awareness that C had been too intoxicated to consent relative to the Moose Jaw incident.

MCpl Alton's Limited Review of Cell Phone Data

171. MCpl Alton conducted a download of data from C's phone, which finished at 04:00 hrs on November 30. Yet, as noted earlier in this decision, she admitted in her PS interview that she conducted only a five-minute "cursory" review of the phone before performing the data dump. During this brief review, she:

a) Went directly to the two incident dates (October 16 and November 20).

b) Noted a supposed argument after the Medicine Hat incident (which MPCC and PS found no record of).

c) Identified the "Are you still hungover?" text without reviewing its context.

d) Did not examine messages from November 25—the day C accused Maj Hiestand of sexual assault and then reported the assault to police.

Maj Hiestand's Texted Denials

172. Maj Hiestand explicitly denied C's allegations via text messages sent on November 25, hours before she went to the police. Here is the relevant text exchange:

> C: …but I want to stop texting and like let's not forget that you had sex with me twice while I was unconscious and I didn't even know about it until I found camera [sic] dripping down my leg the next morning and then you admitted it.
>
> Maj Hiestand: OMG you are insane! You were NEVER unconscious! You were fully lucid, gave FULL CONSENT, and was absolutely enthusiastic while having sex!!!
>
> C: That's why I don't remember any of it and I was completely blacked out and unconscious. Now leave me alone we don't need to call or text anymore.
>
> Maj Hiestand: You're a liar. Get help. You think this is going to be "evidence"?
>
> C: I'm not lying I have a witness to one of the nights where I was completely blacked out and like I don't remember having sex with you when I told you that when I found the come [sic] dripping down my leg and you were like yeah we did. Evidence for what [?].
>
> Maj Hiestand: Evidence that I had non consensual sex with you. You consented!!! What witness?! No one saw us! You consented ECPLICITLY!!! You consented explicitly EVERY single time we were physically intimidate [intimate].

173. However, when questioned by PS about these texts, MCpl Alton first claimed she did not recall them, even when the investigator read them aloud to her. When pressed, she admitted, "Absolutely, yeah" that the denials were relevant.

174. Later, when the PS investigator asked whether Maj Hiestand's denial messages were factored into the decision to arrest, MCpl Alton responded: "Of course, if somebody is being texted saying 'you sexually assaulted me' and they say back 'no,' they're smart enough to know not to confess in a text." This response reflects a problematic assumption, that a denial in a text message is inherently self-serving and therefore dismissible. While denials must be weighed carefully, they should be assessed objectively, especially in cases where other forms of corroboration may be limited. Failure to do so may contribute to tunnel vision and a lack of investigative neutrality.

Supervisors' Failure to Ensure Against the Premature Arrest and Charging of Maj Hiestand

175. When interviewed by MPCC, WO Tenaschuk expressed concerns about the investigators' decision-making, stating:

> A police officer can have grounds to arrest in their mind, but if there's a whole bunch of investigative steps that are not correct, or if something needs to be worked on, that arrest and charge become, in my opinion, unlawful.

176. Despite this, the investigators' supervisors failed to ensure against the premature arrest and charging of Maj Hiestand. WO Tenaschuk and Sgt Gauthier later admitted they never discussed conducting a case conference to ensure reasonable grounds were fully established.

177. Interviews with members of the investigators' supervisory chain indicate that they had prior concerns about the investigators' judgment in complex cases. Based on this, the supervisors had an increased responsibility to ensure close oversight and to take an active role in critical decision points.

178. As with the investigators, the MPCC also asked questions related to reasonable grounds of the case manager, Sgt Gauthier, and the team leader, WO Tenaschuk. Surprisingly, both felt that it was outside their role and responsibility to advise or question an investigator as to their reasonable grounds, and that it is up to the investigators to be able to articulate what they were. These responses indicate that both Sgt Gauthier and WO Tenaschuk misunderstood their role as police supervisors in two important ways:

- First, case conferences with investigators are not intended as venues to dictate whether grounds for arrest exist. Rather, they serve as a critical supervisory function, where the case manager and team leader are responsible for guiding the investigation and ensuring that all reasonable investigative avenues have been thoroughly pursued.
- Second, advising an investigator they should not proceed with an arrest or charges at a particular stage of the investigation does not necessarily reflect a lack of reasonable grounds, but rather a determination that, considering all factors, the timing is not appropriate.

179. Both WO Tenaschuk and Sgt Gauthier state that the investigators were directed to not lay a charge for Medicine Hat, however, in her PS interview, Sgt Gauthier was more nuanced, suggesting that what she passed on to MCpl Alton may not have been that explicit. Unfortunately, neither WO Tenaschuk nor Sgt Gauthier have notes on this supposed direction and MCpl Alton denied having been given such a direction.

180. The extremely short time frame for the investigation was insufficient to address all the complexities involved with both incidents. Based on past experience, Sgt Gauthier should not have been confident that MCpl Alton had fully and accurately briefed her on the investigation to date. Sgt Gauthier allegedly expressed her concerns regarding the complainant and cautioned the investigators not to rush into anything, yet she ultimately allowed the investigators "on the ground" to make the decision.

181. Knowing what they knew about the state of the investigation, and at such an early stage of two complex sexual assault investigations, it would have been prudent for WO Tenaschuk and Sgt Gauthier to advise the investigators to not arrest and charge at that point in time – for either incident.

182. Although Sgt Gauthier allegedly advised MCpl Alton not to rush into anything (denied by MCpl Alton), when interviewed by the MPCC, both WO Tenaschuk and Sgt Gauthier acknowledged that there was never a discussion around slowing the pace of the investigation and taking time to not only assess what they had, but to ensure investigative actions were undertaken to effectively build a case.

183. The arrest of Maj Hiestand was made at a very early stage of the investigation and based on limited evidence, and a failure to apply best practices – and, in some instances, minimum standards – for case consultation and evidentiary review. Investigators:

a) Relied heavily on the mere fact of C's intoxication without adequately examining other contextual or corroborative factors that might speak to her capacity to consent.

b) Conducted only a cursory review of phone data, missing or failing to assess surrounding messages that may have provided important context.

c) Gave elevated weight to a single text message, "Are you still hungover?" while not clearly integrating other electronic exchanges or the respondent's denial messages into their assessment of available evidence.

d) Failed to adequately consult their supervisors before proceeding with the arrest, despite the complex nature of the allegations.

e) Did not consult legal advisors, despite the serious nature of the allegations and the potential legal implications.

While the legal threshold for arrest under section 495(1)(a) of the *Criminal Code* allows for arrest based on an officer's reasonable grounds, including subjective belief and objective support, the limited investigative work completed at the time, the lack of key investigative steps and legal advice, and minimal supervisory oversight raise concerns about whether the objective component of that standard was met.

Finding #10:

The MPCC finds that the investigative shortcomings, specifically the limited and hasty investigation, the lack of supervisory oversight and the failure to seek legal consultation raise concerns about whether it was reasonable to arrest and charge Maj Hiestand.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

The Arrest of Maj Hiestand Was Not Justified

184. Section 495(2) of the *Criminal Code* sets out criteria for determining whether a warrantless arrest is necessary. This power may only be exercised when a police officer has reasonable grounds to believe that the person has committed an offence,[19] and that arrest is required in the public interest. Section 495(2) reads:

> Limitation
>
> (2) A peace officer shall not arrest a person without warrant for
>
> …
>
> (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction…

[19] *R. v. Storrey*, 1990 CanLII 125 (SCC); *R. v. Feeney*, 1997 CanLII 342 (SCC); *R. v. Wilson,* 2012 BCCA 517 (CanLII); *R. v. Day*, 2014 NLCA 14 (CanLII); and *R. v. Zacharias,* 2023 SCC 30 (CanLII).

…

in any case where

(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Legal Requirements for Arrest Without a Warrant

185. In addition to the police having a subjective belief that there are reasonable and probable grounds for arrest, the arrest must also be objectively justifiable.[20] In assessing reasonable grounds, police are expected to consider inculpatory and exculpatory elements and to weigh them objectively.[21]

186. In this case, the CFNIS investigators were required to justify their decision to arrest Maj Hiestand under s. 495(2) of the *Criminal Code*,[22] which places limitations on warrantless arrests for dual procedure offences (i.e., offences which may be prosecuted by indictment or by summary conviction procedure), like sexual assault.[23] Paragraphs (d) and (e) of subsection 495(2) specify that an arrest is only justified if it is believed on reasonable grounds to be necessary to:

- Establish the accused's identity;
- Secure or preserve evidence;
- Prevent the continuation or repetition of the offence, or the commission of another offence; or
- Secure the accused's attendance in court.

[20] *R. v. Storrey*, 1990 CanLII 125 (SCC).
[21] *Lacombe c. André*, 2003 CanLII 47946 (QC CA), at para 42.
[22] Police discretion must be subjectively and objectively justifiable: *R. v. Beaudry*, 2007 SCC 5.
[23] See, e.g., *R. v. Carignan*, 2024 QCCA 86 (CanLII) (presently under appeal to the SCC).

187. None of the above factors justifying an arrest were properly analyzed or documented. There was no dispute about Maj Hiestand's identity, no evidence at risk of destruction or disposal, and no indication that he posed a flight risk or a threat to public safety. In the absence of such factors, the arrest was not demonstrably necessary, and alternatives such as a summons or undertaking should have been more fully considered.

MCpl Alton's Reasons for Arrest

188. When interviewed by PS, the subject members struggled to articulate how the legal threshold under section 495(2) was met.

189. During her interview with PS, MCpl Alton was asked whether C had expressed safety concerns before the investigators arrived in Moose Jaw. She responded:

> [C] said at the time, right now, because he did not know that she was reporting a sexual assault investigation, she had no safety concerns. But she did say once he would be made aware of the investigation, she would have safety concerns.

When asked to specify the nature of these concerns, she was unable to recall, stating: "I don't know, I don't remember… I don't want to say something that didn't happen." Later in the interview, the PS investigator asked her to read section 495(1) and (2) aloud and explain how the public interest factors in paragraph 495(2)(d) justified the arrest. When questioned about preventing the continuation or repetition of the offence, she referenced C's claim that Maj Hiestand threw objects and smashed items in his residence during their breakup. However, when pressed for details, she admitted: "I don't recall when she told me that." She further acknowledged that when she conducted a criminal background check on Maj Hiestand, he had no prior record or history of violence.

190. Moreover, C was not asked key questions about the incident, such as:

a) Were the objects thrown at or in the direction of C?

b) Was there any physical assault or threats?

c) Were police or witnesses aware of the alleged incident?

MS Brown's Reasons for Arrest

191. MS Brown provided conflicting justifications for the arrest. Initially, she told PS that C's concerns centered on her husband's career rather than any physical danger: "She was concerned because her husband was a student on course that [Maj Hiestand] was in charge of." When specifically asked if physical violence had been discussed, she responded: "Not that I recall."

192. Later in the interview, when asked to explain why an arrest was necessary under section 495(2)(d)(iii) (preventing a continuation or repetition of the offence), she stated: "We're not just talking about a single occurrence, we're talking about two occurrences, so in the back of my mind, there was the 'could this happen again?'" However, she was unable to provide any specific evidence or risk factors supporting this conclusion. While it is appropriate for investigators to consider the possibility of recurrence of the offence, especially in sexual assault investigations, such risk assessments must be supported by documented, concrete evidence or contextual indicators, none of which were identified or pursued in this case. She did not articulate how the risk of continuation or repetition of the offence was assessed considering the prior relationship dynamics or current circumstances (notably, C and Maj Hiestand did not live together).

Sgt Gauthier's Reasons for Arrest

193. In her PS interview, Sgt Gauthier justified the arrest by citing Maj Hiestand's position of authority over student pilots, arguing that he could potentially influence witnesses. However, when asked whether the investigators had articulated reasonable grounds to support this concern at the time of the arrest, she admitted she was summarizing her own understanding rather than relaying a specific articulation from the investigators. Moreover, it later became clear, none of the student pilot witnesses were in Maj Hiestand's training subunit or "wing."

MWO Isles's Review of the Arrest

194. In his Quality Assurance Report, MWO Isles questioned the prevention of further offences justification for the arrest:

> …there is a clear break in the two incidents of over 30 days and there is no reasoning articulated in the file. This could be understandable if there some form of oppression on the part of the accused against the victim but there is no indication in the file that would suggest that this is the case. The victim is free to move around on her own as indicated by the events leading up to the second assault; she was out with friends able to travel independently of the accused. Also, the victim does not provide any information to suggest the accused is physically abusive/ violent with the victim outside of the allegations under investigation in this file.

During his PS interview, he further criticized the decision to arrest instead of issuing an Appearance Notice or Summons, stating: "The investigators haven't articulated anywhere in the file the need to conduct an arrest… There were other options."

Alternatives to Arrest Were Not Considered

195. CFNIS investigators failed to explore alternative measures that could have achieved the same objectives, such as:

a) A documented warning instructing Maj Hiestand not to interfere with witnesses.

b) A Peace Bond under section 810 of the *Criminal Code*.

c) A military order from his chain of command prohibiting witness contact.

d) Compelling attendance by way of an Appearance Notice or Summons under Part XVI of the *Criminal Code*.

196. When asked whether Maj Hiestand could have been compelled to appear in court through other means, MWO Isles stated:

> The thing is right now that the investigators called him up and told him that he was going to be arrested, which is fine, but if there was such an urgency or need for protection of the victim, chance of re-occurrence and all that stuff, why would you call him? If you need to make that arrest, why would you call him to say you're going to be arrested, other than to place conditions, and we can't arrest to place conditions. … We had other means of compelling his attendance to court.

The desire to place conditions (particularly no witness contact) on Maj Hiestand may have unduly influenced the arrest decision. This is not a lawful basis for an arrest. The need for release conditions arises upon arrest, however, that does not justify an arrest itself.

197. Given that the relationship had already ended, the two individuals did not cohabit, and no further interactions were anticipated, the available facts did not reasonably support a belief that arrest was necessary to prevent continuation or repetition of the offence, preserve evidence, or ensure court attendance. The record shows no indication of Maj Hiestand posing an ongoing risk to the complainant or others. As such, there was no clear articulation by investigators that all elements of s. 495(2) had been satisfied prior to the decision to arrest. There is also no evidence that alternatives, such as a summons, were explored.

198. While investigators are afforded discretion in deciding whether to arrest, that discretion is not unfettered. It must be exercised in accordance with legal thresholds that balance the public interest against individual liberty.

199. In this case, the evidence suggests that the perceived time constraints were a more significant factor than legal necessity.

Finding #11:

The MPCC finds that the CFNIS investigators failed to properly demonstrate reasonable grounds to believe in the necessity of arresting Maj Hiestand in the public interest under section 495(2) of the *Criminal Code*.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

  Arrest of Maj Hiestand – Failure to Consult with Civilian Police (Medicine Hat Incident)

200. It is unclear how charges from two different provinces could be entered on the same undertaking and processed in one province, given section 478(1) of the *Criminal Code* which states: "Subject to this Act, a court in a province shall not try an offence committed entirely in another province."

201. This was also addressed by MWO Isles in his after-the-fact qualitative review:

> [C]harging the accused in Saskatchewan for an offence that occurred in Alberta. While, changes to the Criminal Code allow for some latitude on the part of the crown to prosecute the matter a continuation of the offence, there is a clear break in the two incidents of over 30 days and there is no reasoning articulated in the file. This could be understandable if there some form of oppression on the part of the accused against the victim but there is no indication in the file that would suggest that this is the case.

202. In Canada, the military police have jurisdiction over members of the Canadian Forces regardless of whether the sexual assault occurred off DND property, if the person is subject of the Code of Service Discipline, as was the case here. However, MP Orders have placed certain policy limits on the exercise of that jurisdiction off military property, at least when charges are to be preferred in the civilian justice system.

203. The subject investigators, case manager and team leader were all asked questions by PS regarding jurisdictional issues. The PS Observation Report addresses this:

> OBSERVATION 23
>
> 23. There was no observable consideration or action taken in the file to contact the local Civilian Police Jurisdiction regarding the Sexual Assault reported to have taken place in Medicine Hat, AB, in a Hotel in Civilian Jurisdiction.
>
> [MP Order 2-110] JURISDICTION OVER PERSONS SUBJECT TO THE CODE OF SERVICE DISCIPLINE:
>
> 8. Sections 60 and 61 of the NDA provide an extensive list of all persons who are subject to the CSD [Code of Service Discipline]. Of this list, MP will most commonly deal with the following persons in a law enforcement or policing role:
>
> a. Regular Force personnel: MP maintain jurisdiction over Regular Force personnel at all times and in all places. However, *this authority does not provide MP automatic primary jurisdiction outside a defence establishment*. Outside a defence establishment, the appropriate civilian police service has primary jurisdiction unless it authorizes MP to take charge of a person subject to the CSD; [emphasis added]

204. There is also MP Order 2-110.2[24] which provides (at paragraph 19):

> Prior to exercising peace officer authority off a defence establishment, MP shall first ensure that some other police agency does not have primary jurisdiction. In cases where there is concurrent jurisdiction with civilian police services (e.g. bar fights downtown where a civilian and military persons are participants), the civilian police should take jurisdiction unless there is a clear military interest in respect of the matter and the civilian police specifically request, or agree to, the assumption of jurisdiction by MP.

[24] Issued October 28, 2013.

205. It is incorrect to frame the issue as ensuring that "some other police agency does not have primary jurisdiction" [my emphasis] since, pending full implementation of Madame Arbour's Independent External Comprehensive Review, the jurisdiction of the military police over a regular member of the CF suspected of sexual assault was concurrent with the jurisdiction of other police services. However, no steps were taken by the CFNIS investigators to consult with the Medicine Hat Police Service. This was contrary to the MP Orders noted above.

206. When MP Order 2-110 was reviewed with the subjects, they agreed with it, and could not articulate why it had not been adhered to in this case. Neither WO Tenaschuk nor Sgt Gauthier took steps to ensure that contact was made with the Medicine Hat Police Service.

207. The MPCC interview with MCpl Alton revealed that she did not have a clear understanding of either judicial or MP jurisdiction. Regarding MP jurisdiction, MCpl Alton stated: "Yeah, I agree with what's written [referring to MP Order 2-110] like consideration, we should have called the local police, but I didn't even think it was a concern at the time, I didn't even…yeah." When asked why it was not a concern, "Because I thought that if the person, if there was a military nexus then military police automatically have jurisdiction over them but, obviously that's not the case." It should be noted that, the Supreme Court of Canada held in *Moriarty* that no military nexus is required for prosecution under the military justice system;[25] even if it was, MCpl Alton's belief would not obviate the MP Order requirement to consult with local civilian police having concurrent jurisdiction.

208. Regarding judicial jurisdiction, when asked to explain how two different judicial districts in different provinces can be entered on the same information, MCpl Alton advised:

> The way that I was thinking at the time is because it's the same people and I know courts can waive jurisdiction. If it would be an inconvenience to have everyone go to a different court location and because everyone resided in Moose Jaw for the first, well I guess the second occurrence that everything should be dealt with in Moose Jaw…

[25] See, e.g.: *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at paras 35-46 and 49-56; and *R. v. Stillman*, 2019 SCC 40, [2019] 3 SCR 144.

209. According to Sgt Gauthier, MCpl Alton had advised her that she had consulted with a Crown attorney who advised her that the Medicine Hat charge was feasible. However, MCpl Alton indicated in her interview with the MPCC that she only consulted legal counsel while on training after charges were laid.

210. When it was discovered that the Medicine Hat charge had been laid erroneously, WO Tenaschuk and Sgt Gauthier did not take any actions to mitigate this problem, such as contacting Medicine Hat police or taking steps to have the information amended by removing the Medicine Hat charge.

211. In view of all the foregoing, it was concerning to note that WO Tenaschuk made no notes whatsoever at this time and that Sgt Gauthier's notes ended on November 29. She has no notes to reflect the discussions she had, and what direction(s) were given to the investigators on this issue. This absence of documentation represents a breach of MP Order 2-500, paragraph 20, which requires supervisors to maintain written records of their oversight and direction, particularly during critical decision points.

Finding #12:

The MPCC finds that the CFNIS investigators failed to consult with Medicine Hat Police Service prior to exercising jurisdiction in respect of the Medicine Hat incident, contrary to MP Orders.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

Recommendation #9:

The MPCC recommends that the CFPM remind military police supervisors of the need to document the oversight and direction of investigations. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. MP Policy contains supervisor responsibilities including the responsibility to record ongoing supervisor comments in SAMPIS. MP are expected to be knowledgeable and current on all MP policy and procedures."***

  This recommendation is not accepted.

  While existing military police policies do require supervisors to document their investigative input this is not the point of this recommendation. The supervisory

deficiencies in this case were extensive and had a direct detrimental impact on the quality of the investigation. In such circumstances, a simple reminder to military police supervisors of their documentation obligations is a minimal and entirely reasonable precaution. Yet this modest step is rejected outright.

The CFPM refusal to implement such a basic, low effort measure, one that merely reinforces existing expectations, reflects a troubling unwillingness to acknowledge or address the supervisory failure that contributed to the serious shortcomings in this investigation.

The CFNIS Investigation Was Compromised by a Rush to Judgment

212. From the outset, CFNIS WR investigators raised concerns about the appropriateness of their continuing with the investigation considering their pending training and suggested that it might be better to send a different team of investigators instead. That suggestion was rejected by their supervisors. The CFNIS WR investigators limited time in Moose Jaw appears to have influenced key decisions in the early stages of the file, including the intention to arrest Maj Hiestand after their first full day of investigative work. Despite the complexity of the case – including two allegations a month apart in different provinces and issues surrounding consent and intoxication – the investigative team did not travel to Medicine Hat, request assistance of other military police (such as those from CFB Suffield, near Medicine Hat), or seek to modify the self-imposed timetable for the investigation. Their only steps regarding the Medicine Hat incident were a phone call to the hotel and one telephone interview.

213. The MPCC interviews further revealed that supervisory guidance was either misunderstood or ignored. There was a breakdown in decision-making at multiple levels, leading to conflicting recollections among investigators and supervisors.

214. The compressed timeline compromised investigative thoroughness in favour of expediency.

215. Even before Maj Hiestand arrived at the detachment to be arrested, investigators were preparing charge and release documents for both incidents. However, they did not prepare for a possible interview by, for example, conducting a more than cursory review of C's text message or having an interview plan ready.

216. During PS interviews, Sgt Gauthier, MCpl Alton, and MS Brown struggled to articulate the necessary legal grounds under s. 495 of the *Criminal Code* to justify a warrantless arrest. They did not consult with legal counsel, despite Sgt Gauthier claiming she instructed MCpl Alton to seek Crown approval.

217. The failure to consult a prosecutor before proceeding with charges in a complex sexual assault case represents a significant oversight. MP Order 2-340 (MP Investigation Policy), paragraph 39 states that, "MP must work closely with the appropriate [legal advisor] during all phases of an investigation." CFNIS SOP 215 (Investigation of Sexual Related Offences), paragraph 4, indicates that, in sexual offence investigations specifically, it is "imperative" that investigators consult with military or civilian prosecutors throughout the duration of the investigation. Consulting with a prosecutor was essential in a case of this complexity. The nuanced issues surrounding consent, combined with the limited scope of the investigation at the time, made prosecutorial input critical to ensuring sound decision-making.

Finding #13:

The MPCC finds that the CFNIS WR investigators failed to consult with a prosecutor prior to charging Maj Hiestand, despite the complexity of the file. This omission was inconsistent with MP Order 2-340, CFNIS SOP 215 and with best practices and reflected a lapse in investigative judgment.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

218. Despite the clear language in the relevant MP Orders and SOPs stating that investigators "must" consult with legal advisors, and describing such consultation as "imperative," it does not explicitly state a requirement for legal consultation prior to laying charges in sexual assault cases. This policy gap is particularly concerning in cases involving nuanced issues such as this one. Filling this gap would enhance the integrity of the investigative process including by ensuring proper application of legal standards and avoiding premature or unsupported charges.

Recommendation #10:

The MPCC recommends that MP Orders should explicitly require that investigators consult with prosecutors before laying charges in all sexual assault cases, unless exigent circumstances exist. The consultation (or the exigent circumstances) should be documented in the investigative file and confirmed by a supervisor. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. MP currently follow Canadian best policing practices. During the course of an investigation, consultation is done with prosecutors regularly, to include pre-charge discussions. When addressing issues in the civilian justice system, the MP follow existing provincial procedures."***

  This recommendation is not accepted.

  The CFPM's response that military police currently follow best policing practices and existing provincial procedures (in the case of charges under the civilian justice system) fails to grapple with the serious lapse in judgment demonstrated by the investigators' failure to consult a prosecutor in this legally complex case. This investigation, like others before it (such as the Fortin PII), shows that simply asserting adherence to "best practices" is insufficient. Military police do not have the same volume, frequency or diversity of exposure to sexual assault investigations as their civilian counterparts, making timely legal consultation all the more essential. The recommendation sought only to formalize a safeguard that should already be routine: mandatory, documented pre-charge consultation with a prosecutor in sexual assault cases. The CFPM refusal to adopt such a basic and prudent measure, particularly in light of the significant errors made here, is difficult to understand and reflects a troubling unwillingness to acknowledge or address the systemic risks highlighted by this case.

Confirmation Bias or Tunnel Vision

219. Tunnel vision is a form of confirmation bias wherein a police investigator or prosecutor displays a "tendency…to focus on a particular theory of a case and to dismiss or undervalue evidence which contradicts that theory."[26] A fair and impartial investigator must maintain objectivity. However, both PS and MPCC interviews revealed that the CFNIS team based their arrest decision on a subjective belief in C's allegations rather than a balanced assessment of all the evidence.

[26] "Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada", Report of the Federal/Provincial/Territorial Heads of Prosecutions Subcommittee on the Prevention of Wrongful Convictions – 2018, Chapter 2.

220. Investigators failed to properly examine Maj Hiestand's denials in text messages and instead focused narrowly on evidence they believed supported the charges. Investigators also failed to conduct a thorough, or even a reasonable, review of C's phone data before laying charges. Instead, they conducted a five-minute "cursory" search, assuming only inculpatory evidence would be found. Any exculpatory evidence that later emerged could have blindsided the prosecution, reinforcing the importance of a complete and unbiased investigation before proceeding with charges.

221. Finally, tunnel vision, unconscious bias or the making of assumptions about the evidence is apparent in a number of the missed investigative steps described earlier in this report in relation to Issue #2 (dealing with the thoroughness of the investigation prior to arrest, at paragraphs 41-152), such as: the failure to interview bar staff in Moose Jaw; failure to conduct more than the one interview relative to the Medicine Hat incident; and failure to consider a search warrant for Maj Hiestand's residence. In these instances, the CFNIS WR investigators either assumed they knew what these steps would reveal or else assumed that they would not contribute important evidence to the case relevant to the decision to arrest and lay charges.

Case Management Failures

222. The premature arrest and charging of Maj Hiestand reflect poor case management. While the supervisory chain was aware of the investigators' lack of experience and their limitations, they failed to take proactive steps to prevent these issues from compromising the investigation. This lapse in oversight highlights a concerning breakdown in CFNIS WR's management of complex cases.

223. Best practices in major case management emphasize objectivity and collective decision-making. This includes case conferencing, where the investigative team – along with the supervisors – strategically reviews the evidence and ensures thoroughness before making critical decisions. However, in this case, there was no case conference before the arrest.

224. As the case manager, it was Sgt Gauthier's responsibility to delay the arrest until a full case conference could be held. Case conferencing is a standard practice in serious criminal investigations, allowing for collective assessment of evidence and consensus on investigative direction. Had a case conference been convened before the arrest decision, procedural concerns, such as timing, evidence sufficiency, and legal consultation, could have been assessed collaboratively. This would not have entailed interference by the supervisors, but rather, proper adherence to major case management protocols requiring structured team deliberation in complex investigations.

225. The foregoing comments apply equally to WO Tenaschuk as he was, as team leader, overseeing the entire investigative team. As indicated previously in this report, when Sgt Gauthier and WO Tenaschuk were interviewed by MPCC, they both indicated that there was never a discussion around waiting and investigating further before the arrest and charges. WO Tenaschuk readily acknowledged that his training in Major Case Management speaks to thoroughness and not rushing. He also agreed that with his position as team leader and his rank he had the authority to restrain the investigators.

Recommendation #11:

The MPCC recommends that the CFPM require case conferencing before arrest or charge decisions in complex investigations, unless exigent circumstances exist (such as imminent risk to public safety, risk of evidence loss, risk of flight, or hot pursuit). This requirement aligns with Major Case Management principles and ensures investigative rigour and supervisory accountability. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action to be taken/required. Major Case Management is currently encouraged and used when applicable, to include case conferencing. Case conferencing is a best practice for complex investigations under Major Case Management, but not all sexual assault cases require full MCM processes."***

  This recommendation is not accepted.

  Case conferencing (with engaged and effective supervisors), could have very likely prevented the premature arrest and charging of Maj Hiestand in this investigation by bringing together different perspectives, experience levels, and legal considerations before critical decisions were made.

The CFPM acknowledges that case conferencing is a best practice for complex investigations under Major Case Management, yet she declines to require it even in serious sexual assault cases.

The recommendation does not call for full Major Case Management processes in every file; it simply seeks to ensure that, in complex circumstances, investigators pause to consult, reflect, and validate their approach before taking irreversible steps. Given the serious deficiencies in this investigation and their consequences, the CFPM's refusal to adopt such a modest, prudent safeguard is again difficult to understand.

Finding #14:

The MPCC finds that the CFNIS WR investigation of Maj Hiestand suffered from a rush to judgment and confirmation bias.

- ***In the Notice of Action, the CFPM stated the following: "No identifiable action required."***

226. The deficiencies identified in this report were in part due to the relative inexperience of the subject members. The price of assigning inexperienced investigators to serious crime investigation has been identified by the MPCC in numerous files, going back at least to the Fynes Public Interest Hearing.

227. The opportunities for military police to gain experience in sexual assault investigations has been diminished as a result of the 2022 Report of the Independent External Comprehensive Review (IECR) by former Supreme Court Justice Louise Arbour which recommended that the military police transfer sexual assault investigations to civilian police services wherever possible.

228. This IECR recommendation was accepted by the Minister of National Defence and has been implemented. However, civilian police have not, in all instances, agreed to accept cases from the military police and the civilian police do not have jurisdiction over CF members committing sexual assaults abroad unless it involved children or human trafficking. Thus, the military police (CFNIS) will continue to conduct sexual assault

investigations.[27] Given this ongoing role, it is essential to address the relative lack of experience within the military police compared to their counterparts in large civilian police services.

229. CFNIS already has a certain number of seconded civilian police serving as major case advisors, however, a more systematic approach is warranted to address the unique challenges posed by sexual assault investigations. Moreover, as this case revealed, it is necessary to incorporate this additional experience directly into the investigative team for sexual assault cases.

Recommendation #12:

The MPCC recommends that the CFPM develop a formal program allowing experienced members of civilian police services to serve embedded as case managers or team leaders in CFNIS sexual assault investigations. This program should focus on operational mentoring and major case oversight in live investigations. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. There is currently an embedded Major Case Advisor in place within the CFNIS who provides guidance on Major Case Management for live investigations."***

  This recommendation is not accepted.

  The CFPM's assertion that a major case advisor is "available" within CFNIS does not address the substance of this recommendation. There is a fundamental difference between having advisory support that may be consulted at discretion and having an experienced civilian police investigator formally embedded as a case manager or team leader in individual sexual assault investigations. These files are among the most serious and complex investigated by military police. An embedded civilian investigator (actively engaged rather than passively available) would likely have had a significant, positive impact on the conduct and outcome of this investigation. The refusal to consider such a practical and targeted measure is difficult to reconcile with the seriousness of the failures identified.

[27] This will remain the case until military police investigative jurisdiction over such offences is terminated, as presently proposed in clause 8 of Bill C-11 (*Military Justice System Modernization Act*) with respect to sexual offences committed in Canada. Military police could still investigate sexual cases under the Code of Service Discipline when committed in operations outside Canada.

230. Many if not most of the supervisory and case management lapses in this case can be traced to failures to follow Major Case Management principles. Major Case Management is a modern system of organizing and conducting police investigations of major crimes which requires a high degree of organization and coordination of effort among members of an investigative team. While the Major Case Management positions of primary and secondary investigator, case manager and team leader, were adopted in this case, the relevant principles governing roles and responsibilities – particularly for the case manager and the team leader – were not adequately implemented.

Recommendation #13:

The MPCC recommends that the CFPM enforce the full use of Major Case Management principles and explore the acquisition and deployment of a Major Case Management software system. Such systems enhance accountability, coordination and evidentiary control in complex investigations. (Not accepted by the CFPM)

- ***In the Notice of Action, the CFPM states: "No action required. Major Case Management principles are presently encouraged for investigations when required in complex investigations. MP currently use the Versaterm MCM software."***

  This recommendation is not accepted.

  The CFPM's response, that Major Case Management is merely encouraged, falls short of what the recommendation requires. There is a significant difference between encouraging and mandating the use of Major Case Management in complex investigations and experience has shown that encouragement alone is not enough.

  This is not the first time the MPCC makes such a recommendation (see, e.g.: MPCC 2011-046, 2018-014 and 2019-007) and yet the same gaps persist. Major Case Management has been a recognized best practice in Canadian policing for many years, and its consistent application is a cornerstone of modern investigative standards. Leaving the application of Major Crime Management to the discretion of individual investigative teams allows them to bypass key elements of a system that has a well-established record of improving accountability, coordination and evidentiary control in modern policing. The refusal to require its consistent use, particularly in serious and complex cases such as sexual assault investigations, is difficult to reconcile with the recurring deficiencies identified in this and previous files.

CONCLUDING REMARKS

231. The Hiestand investigation was a classic case involving competing narratives, with no independent evidence of what occurred. Given C's claims of intoxication and blackouts – and consequent inability to recall the incidents in question – the investigators needed to conduct a thorough investigation of the surrounding circumstances. It was unrealistic to suppose that such a thorough investigation could be accomplished within the timelines the investigators imposed on themselves. Instead, the investigators made premature conclusions and proceeded with arrest and charges despite incomplete evidence and the lack of objective urgency.

232. When asked whether all investigative avenues had been pursued, Sgt Gauthier admitted that crucial steps – such as reviewing the TCU Report regarding C's cellphone contents and awaiting DNA results – had not yet been completed. She acknowledged that this evidence "could have changed things."

233. The investigators referred to the fact that if exculpatory evidence did emerge after the arrest, they could simply have the charges withdrawn. Although charges can always be withdrawn, this does not undo the personal and reputational harm caused by the unnecessary arrest and charging of an individual. It also exposes the investigators, and the police service, to the risk of legal repercussions and reputational damage. Such an attitude reflects a misunderstanding of the legal and ethical responsibilities of law enforcement.

234. While the MPCC finds that the investigative response in this case fell short of professional standards, it makes no determination regarding the truth or falsity of the allegations against Maj Hiestand. Nevertheless, even in the absence of findings on the factual merits of the criminal case, a deficient investigation, particularly in the context of allegations of sexual assault, can have lasting repercussions for individuals involved and their loved ones. Accordingly, and as part of broader institutional accountability, it would be appropriate for the CFPM to acknowledge the impact of these investigative shortcomings on those affected. Acknowledging shortcomings and their potential harm is a key part of building trust especially in cases involving serious allegations. The CFPM in her Notice of Action unfortunately did not indicate if she will make such an apology.

The Hiestand family deserves a response that reflects the seriousness of the deficiencies identified in this report.

235. In light of the serious investigative failures documented throughout this report, I issued a series of recommendations aimed at strengthening the quality, oversight, and professionalism of military police sexual assault investigations. These recommendations were practical, proportionate, and grounded in well-established policing standards. They sought not sweeping structural reform, but modest and targeted improvements, many of which simply reinforced practices that should already be routine. Yet the responses to these recommendations reveal a deeply concerning pattern and show a total lack of accountability for the shortcomings identified in this investigation.

236. Taken together, these refusals reveal a consistent and troubling pattern. Despite the serious investigative failures identified in this case, the CFPM repeatedly declines to implement even modest, practical recommendations aimed at preventing recurrence. Instead, the responses rely on broad assurances that existing policies, practices, or training are sufficient, an approach that ignores the very deficiencies this investigation has identified. In several instances, the recommendations merely sought to reinforce or formalize expectations that should already be standard in any professional policing environment, yet even these straightforward measures were rejected.

237. I am troubled by the CFPM's weak and dismissive response to recommendations grounded in clear and serious investigative failings. These recommendations were designed to strengthen investigative experience, procedures, supervision, and case management in sexual assault investigations, all of which were plainly deficient here. Yet, in response to 13 recommendations, none were accepted by the CFPM. Despite the extensive problems documented in this report, the CFPM was unable to acknowledge the need for improvement in any of the areas addressed.

238. Given the facts of this case, such complacency is astonishing. The family, and indeed the members of the military police, deserve better. Without a willingness to confront these shortcomings and commit to meaningful change, the systemic issues highlighted in this investigation will remain unaddressed, to the detriment of future military police investigators, complainants and the integrity of military policing as a whole. It is imperative that the CFPM swiftly implement these recommendations to ensure that all future investigations are conducted to the high standards of rigour, impartiality, and professionalism that Canadians expect and that members of the Canadian Forces deserve.

239. Finally, I wish to acknowledge the courage of the Hiestand family involved in bringing forward this complaint and revisiting these events. I am truly sorry for their loss. I hope that the military police will consider the lessons learned in this case and take the opportunity to make the improvements outlined in this decision.

SUMMARY OF THE FINDINGS AND RECOMMENDATIONS

Finding #1:

The MPCC finds that the CFNIS WR investigators did offer Maj Hiestand a chance to be interviewed and to provide information about the allegations against him.

Finding #2:

The MPCC finds that the CFNIS WR investigators' interview with C lacked depth and failed to sufficiently probe critical issues.

Finding #3:

The MPCC finds that CFNIS WR investigators failed to adequately probe the issue of consent, particularly in relation to C's reported level of intoxication and other key contextual factors necessary to assess capacity and reliability.

Finding #4:

The MPCC finds that investigators failed to pursue critical witness interviews, which significantly compromised the integrity of the investigation.

Finding #5:

The MPCC finds that CFNIS WR investigators failed to conduct relevant interviews and to investigate the alleged crime scenes.

Finding #6:

The MPCC finds that CFNIS WR investigators failed to conduct an adequate review of the text messages between C and Maj Hiestand.

Finding #7:

The MPCC finds that the Hiestand investigation suffered from inadequate and ineffective supervision and case management on the part of Sgt Gauthier and WO Tenaschuk.

Finding #8:

The MPCC finds that the CFNIS WR investigative team failed to conduct a sufficiently thorough investigation prior to arresting and charging Maj Hiestand.

Finding #9:

The MPCC finds that the CFNIS WR investigative team failed to allocate sufficient time to the investigation of Maj Hiestand prior to his arrest.

Finding #10:

The MPCC finds that the investigative shortcomings, specifically the limited and hasty investigation, the lack of supervisory oversight and the failure to seek legal consultation raise concerns about whether it was reasonable to arrest and charge Maj Hiestand.

Finding #11:

The MPCC finds that the CFNIS investigators failed to properly demonstrate reasonable grounds to believe in the necessity of arresting Maj Hiestand in the public interest under section 495(2) of the *Criminal Code*.

Finding #12:

The MPCC finds that the CFNIS investigators failed to consult with Medicine Hat Police Service prior to exercising jurisdiction in respect of the Medicine Hat incident, contrary to MP Orders.

Finding #13:

The MPCC finds that the CFNIS WR investigators failed to consult with a prosecutor prior to charging Maj Hiestand, despite the complexity of the file. This omission was inconsistent with MP Order 2-340, CFNIS SOP 215 and with best practices and reflected a lapse in investigative judgment.

Finding #14:

The MPCC finds that the CFNIS WR investigation of Maj Hiestand suffered from a rush to judgment and confirmation bias.

Recommendation #1:

The MPCC recommends that CFNIS investigators receive enhanced training focused on core investigative practices, including the timely identification and interviewing of relevant witnesses and the thorough examination of alleged crime scenes. (NOT ACCEPTED)

Recommendation #2:

The MPCC recommends that military police undergo enhanced training on digital evidence handling and contemporaneous documentation, particularly in serious interpersonal violence cases. (NOT ACCEPTED)

Recommendation #3:

The MPCC recommends that the CFNIS implement a digital evidence handling protocol. This protocol should include supervisory consultation before charge decisions, minimum thresholds for review, documentation of rationale for non-seizure of comparative devices, and timelines for forensic processing. (NOT ACCEPTED)

Recommendation #4:

The MPCC recommends that the CFPM mandate interview plans for all suspect interviews in sexual assault files. These plans should be prepared in advance, reviewed by a supervisor, and include strategies to explore key facts while respecting Charter rights and trauma-informed practices. (NOT ACCEPTED)

Recommendation #5:

The MPCC recommends that the CFPM require all CFNIS investigators assigned to sexual assault cases to complete the Sexual Assault Investigator course prior to conducting such an investigation. (NOT ACCEPTED)

Recommendation #6:

The MPCC recommends that the CFNIS implement a minimum competency standard for lead investigators in sexual assault investigations, including demonstrated proficiency in search warrant procedures. (NOT ACCEPTED)

Recommendation #7:

The MPCC recommends that the CFPM directs that supervisors ensure investigators assigned to sexual assault investigations possess the requisite training and experience or receive appropriate guidance and support throughout the investigation. (NOT ACCEPTED)

Recommendation #8:

The MPCC recommends that the CFPM revise assignment protocols for sexual assault investigations. Such a protocol should include that (1) lead investigators must have recent experience with major case procedures, including evidence seizure and digital analysis, and (2) when assigning less experienced members, supervisors must implement and document a mitigation strategy, including coaching, documentation checks, and active file-monitoring. (NOT ACCEPTED)

Recommendation #9:

The MPCC recommends that the CFPM remind military police supervisors of the need to document the oversight and direction of investigations. (NOT ACCEPTED)

Recommendation #10:

The MPCC recommends that MP Orders should explicitly require that investigators consult with prosecutors before laying charges in all sexual assault cases, unless exigent circumstances exist. The consultation (or the exigent circumstances) should be documented in the investigative file and confirmed by a supervisor. (NOT ACCEPTED)

Recommendation #11:

The MPCC recommends that the CFPM require case conferencing before arrest or charge decisions in complex investigations, unless exigent circumstances exist (such as imminent risk to public safety, risk of evidence loss, risk of flight, or hot pursuit). This requirement aligns with Major Case Management principles and ensures investigative rigour and supervisory accountability. (NOT ACCEPTED)

Recommendation #12:

The MPCC recommends that the CFPM develop a formal program allowing experienced members of civilian police services to serve embedded as case managers or team leaders in CFNIS sexual assault investigations. This program should focus on operational mentoring and major case oversight in live investigations. (NOT ACCEPTED)

Recommendation #13:

The MPCC recommends that the CFPM enforce the full use of Major Case Management principles and explore the acquisition and deployment of a Major Case Management software system. Such systems enhance accountability, coordination and evidentiary control in complex investigations. (NOT ACCEPTED)

Ottawa, February 4, 2026

Original document signed by:

Me Tammy Tremblay, MSM, CD, LL.M.
Chairperson