



Military Police
Complaints Commission
of Canada

Chairperson

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

Présidente

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September 28, 2023

Decision to Conduct a Public Interest Investigation. MPCC 2016-027

Overview

On July 18, 2016, the Military Police Complaints Commission (MPCC) received a conduct complaint about the handling of a military police investigation into the fire at the residence of the complainant's former spouse and their three minor children.

For the reasons that follow, I have decided to cause the MPCC to conduct a public interest investigation into this complaint.¹

Background

The complaint is about the Canadian Forces National Investigation Service Western Region (CFNIS WR) investigation into the July 2015 fire at the residence of the complainant's former spouse and their three minor children. It also involves a second investigation into a letter written by the former spouse.

The complainant alleged that the CFNIS WR investigation into the fire was "not handled with professionalism or due diligence." He also complained that, even though investigators were aware the fire may have been deliberately set, and of suspicions about his former spouse's involvement, there "seemed to be no consideration for the children's safety" who had subsequent unsupervised visits with her.

In accordance with the legislative scheme for dealing with conduct complaints against Military Police,² the complaint was first examined and investigated by the head of the Military Police, the Canadian Forces Provost Marshal (CFPM), and more particularly the CFPM's Office of Professional Standards.

In August 2016, the complainant advised a member of the CFNIS WR that his son recalled that his former spouse had sent a letter and \$10,000 cash to a friend. The friend had returned the

¹ *National Defence Act*, RSC 1985 c N-5 at s. 250. 38 [NDA].

² NDA at ss. 250.26 – 250.3.

money to the former spouse the day after he received it. On October 24, 2016, the complainant emailed the CFNIS WR member to advise that the friend in question had found the letter.

On November 11, 2016, the letter was brought to the CFNIS WR. The letter was written on stationery from a local resort where the former spouse and the children had stayed during the days prior to the fire. In the letter, the author wrote that, by the time the friend received the letter, she would either be dead or in jail. The letter was signed with the former spouse's first name.

The CFNIS WR initiated a separate investigation into the letter. This led Professional Standards to suspend their investigation of this conduct complaint. On July 6, 2017, the CFNIS WR investigation of the letter was concluded having determined that the investigation did not uncover any new or relevant information pertaining to the house fire. The CFNIS WR, moreover, concluded that the letter in question was ambiguous and did not make direct threats of self-harm or harm to others, nor could they determine when the letter was written or by whom. Professional Standards subsequently resumed its investigation into the conduct complaint.

On December 11, 2017, Professional Standards advised the complainant that his allegations were not substantiated.

On January 18, 2018, the complainant emailed the MPCC with additional information about his complaint. The MPCC considered this to be a request for a review,³ and suspended its investigation while Professional Standards examined the additional information.

After Professional Standards reviewed this information, they advised the MPCC in January 2018 that the CFNIS investigation would not be reopened but it would be considered a new complaint. In April 2018, the Office of the CFPM determined that the fire investigation was conducted "professionally and with due diligence...no further investigation of this complaint will be undertaken having regard to all the circumstances as no further investigation is necessary."

The MPCC resumed its review of the complaint in April 2018 and began the examination of the file disclosure. Between April 2018 and October 2018, the MPCC contacted Professional Standards with additional requests for disclosure as part of its investigation. It was in reply to a request in October 2018 for additional disclosure and for clarifications regarding Military Police consultation with Crown prosecutors that Professional Standards informed the MPCC that the fire investigation had not been referred to the Crown. They advised that, while the investigation had not been re-opened, CFNIS was currently reviewing the file.

As the MPCC proceeded with its analysis of the Military Police investigation files, serious questions were being raised amid a growing concern over the safety of the minor children.

³ Under *NDA* s. 250.31(1), a complainant dissatisfied with the CFPM's disposition of a complaint may request a review by the MPCC.

As a result, on November 22, 2018, the then MPCC Chairperson, Hilary McCormack, contacted the CFPM and advised him that, in her opinion, the investigation files contained information pointing to one or more possible criminal offences which might warrant further police investigation and/or prosecution of the former spouse. The Chairperson recommended that the matter be referred to civilian police of jurisdiction. The CFPM decided to refer the case for reinvestigation to a different investigative team from the CFNIS WR and appointed an RCMP Inspector on secondment with the CFNIS as lead investigator.

On January 21, 2019, the Chairperson placed her review of this complaint in abeyance pending completion of the reinvestigation and any resulting judicial proceedings.

The CFNIS WR reinvestigation resulted in charges of arson and attempted murder against the complainant's former spouse. On February 24, 2023, she was convicted in the Alberta Court of King's Bench on all charges. After the Court released its decision, I, as the newly appointed MPCC Chairperson, took the review of the complaint out of abeyance on March 10, 2023, and resumed the MPCC's investigation of the complainant's allegations.

Considerations Relevant to a Public Interest Investigation Determination

Under the *NDA*, I have a broad discretion to decide whether the MPCC should conduct a public interest investigation. The *NDA* provides that:

250.38 (1) If at any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.⁴

The following factors, which are not meant to be exhaustive, have been recognized by the MPCC as relevant to decisions on the holding of public interest investigations in respect of complaints:

- The inherent seriousness of the alleged conduct;
- The systemic issues raised in the complaint;
- The involvement of senior officials or military officers;
- The public interest in the issues related to the complaint;
- Process considerations which suggest that it would be more fair, credible, coherent or efficient to deal with the complaint as a public interest case.

Not all these factors are engaged in all cases. Those relevant to this complaint are addressed below and establish the reasons for this decision.

⁴ *NDA*, s. 250.38(1).

Seriousness of the Allegations

The allegations in this complaint are serious. If substantiated, they will amount to a failure to investigate a most serious criminal act, and one which had implications for the safety of young children.

The facts collected by the MPCC in 2018 from the original CFNIS WR investigations into the fire and the letter in 2015 - 2017 presented a substantial and persuasive circumstantial case against the former spouse as having deliberately set the fire and having sent the letter and money to her friend as part of a murder-suicide attempt. Yet these original CFNIS WR investigations failed, respectively, to determine whether the fire was deliberately set by the former spouse, or that there was a connection between the letter and the fire despite the evidence.

The seriousness of this case is aggravated by the alleged failure of the Military Police office of Professional Standards to notice any deficiencies when they reviewed the original CFNIS WR investigations, following the filing of this complaint. Further, in January 2018, after reviewing the additional information the complainant provided, Professional Standards advised the MPCC that the investigation would not be reopened. In April 2018, the Office of the CFPM determined that the investigation had been conducted professionally and with due diligence and no further investigation was necessary. In October 2018, in reply to one of the MPCC's requests for additional disclosure, Professional Standards advised the file was under review.

After determining that evidence in the Military Police investigative files pointed to possible criminal offences, Chairperson McCormack met with the CFPM in November 2018 and the CFNIS investigation was subsequently reopened.

Systemic Implications

In this case, serious questions have been raised about a systemic failure to correctly assess the evidence at all levels within the CFNIS WR.

Furthermore, there is a serious concern of whether the Military Police office of Professional Standards failed to note the apparent deficiencies in the initial CFNIS WR investigation of the fire, and the related investigation into the letter.

Involvement of Senior Personnel

The Military Police subject members that investigated the fire and letter are not high-ranking. However, the office of Professional Standards was, at the time, under the direct command of the CFPM on whose behalf it exercised important delegated authorities in the handling of Military Police complaints under the *National Defence Act*.

Public Interest

The charging and prosecution of the former spouse were widely reported in the media, both regionally and nationally. The fact that the issues related to this complaint have been raised in the public domain is a consideration which favours a public interest investigation by the MPCC.

Finally, because of the overall seriousness of this complaint, it is in the public interest to address the concerns raised in a greater public forum than the more commonly received complaints about Military Police conduct.

Decision

For these reasons, I designate this conduct complaint, MPCC 2016-027, an MPCC public interest investigation.

By declaring a public interest investigation, I am concurrently deciding that the Final Report in this matter will be made public (subject to the need to protect especially sensitive personal information, such as the identities of children).

Further, after examining the evidence available on this file, I have decided, in accordance with my authority to investigate any matter related to a complaint,⁵ to also investigate the following question:

- 1) Whether the Military Police office of Professional Standards failed to conduct an adequate review of the CFNIS WR investigations at issue in this complaint.

In addition, the seriousness of the issues in this complaint could warrant public hearings. Declaring a public interest hearing gives the MPCC the authority to compel witness cooperation and issue subpoenas for documents. However, at this time, I consider it more expeditious and in the public interest to proceed with a public interest investigation without a hearing. I am prepared to revisit this decision as required by the circumstances, which may include inadequate voluntary cooperation in the ongoing public interest investigation into this complaint.

The MPCC will continue with its investigation of this complaint, including notifying Military Police subject members that it has now been designated a public interest investigation.

SIGNED in Ottawa, Ontario, on this 28th day of September 2023.

Original signed by:

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

⁵ NDA s. 250.32(2).