



Military Police  
Complaints Commission  
of Canada

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

*National Defence Act - Part IV*  
Section 250.53

**FINAL REPORT**

Following an Investigation Pursuant to  
Section 250.38(1) of the *National Defence Act*, of an  
Interference Complaint by Sgt Daniel Mongraw and Cpl Patrick Bain  
Regarding the Conduct of Maj Roland Russell, CPO2 Dean MacKinnon and  
WO Jeffrey Eves, of a Military Police Unit, and  
Capt Evan Foster and WO William Evershed, of the  
Canadian Forces National Investigation Service

File: MPCC 2021-012  
Ottawa: November 27, 2023

Bonita Thornton B.A, LL.B, CD.  
Commission Member

Ron Kuban Ph.D., CD.  
Commission Member

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## **I Summary of Complaint**

1. This interference complaint relates to the handling of a military police investigation into the conduct of a military police officer, X<sup>1</sup>. An interference complaint may be made by a military police member when he or she has grounds to believe that a member of the military or senior official with the Department of National Defence has “improperly interfered” in a military police investigation.
2. This complaint arises from an incident of drunkenness on the part of X that occurred off base where X was prevented by bystanders from driving herself and her three young children home from a restaurant. Both the local civilian police and the military police (a subordinate of X’s from her own military police detachment) attended the scene. The matter was left with the military police detachment to deal with.
3. The military police members in charge of the investigation of the incident involving X allege that members of the military police detachment leadership improperly interfered with the investigation by pressuring them not to recommend the laying of charges against X. They further allege that the detachment leadership sought to cover up the incident involving X by not informing the Canadian Forces National Investigation Service (CFNIS) and the Office of Professional Standards of the Canadian Forces Provost Marshal (CFPM) about the incident, and by trying to prevent members of the detachment from notifying CFNIS and Professional Standards. They also alleged that members of the local CFNIS detachment assisted in this cover-up by not taking over the investigation of the incident.
4. Through its investigation, the Military Police Complaints Commission (MPCC or Commission) determined that the military police detachment leadership did not pressure the complainant military police Corporal into not recommending charges. It was further determined that the military police detachment leadership had notified both CFNIS and Professional Standards of the incident involving X in a timely fashion. Furthermore, the

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<sup>1</sup> Due to the sensitivity of this matter, the name and location of the military police officer involved have been withheld

complainants were mistaken as to the requirements regarding referral of cases to CFNIS involving possible offences by military police. While such cases must be referred to them for an assessment, CFNIS may waive their jurisdiction in favour of the originating military police unit, as was done here.

5. The MPCC also determined that it was legitimate for the military police detachment leadership to seek to prevent detachment members from disseminating information about the incident outside the unit, and thereby uphold X's privacy interests as well as proper channels of external communication. The MPCC also noted that these efforts, and the effort to determine who had disclosed the incident to CFNIS without authorization, occurred after the military police investigation had been concluded, and thus could not be said to have interfered with it.

6. In response to the MPCC's Interim report in this matter, the Chief of the Defence Staff (CDS) noted that, as there are no recommendations in this report, no further action was required on this matter.

## II Findings

### Finding #1:

**The Military Police Complaints Commission finds that the allegation that WO Eves improperly interfered with a Military Police investigation by making improper alterations to the investigation file is NOT SUBSTANTIATED.**

### Finding #2:

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by pressuring Cpl Bain to not recommend service offence charges is NOT SUBSTANTIATED.**

### Finding #3:

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by failing to refer the investigation to the Canadian Force National Investigation Service is NOT SUBSTANTIATED.**

**Finding #4:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by failing to notify the Office of Professional Standards of the Canadian Forces Provost Marshal, about the incident is NOT SUBSTANTIATED.**

**Finding #5:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by pressuring Military Police members not to report the incident involving X to persons outside the unit, and by trying to identify who reported the incident to the Canadian Forces National Investigation Service without authorization, is NOT SUBSTANTIATED.**

**Finding #6:**

**The Military Police Complaints Commission finds that the allegation that Capt Foster and WO Evershed improperly interfered with a Military Police investigation by failing to investigate the incident involving X is NOT SUBSTANTIATED.**

### **III The MPCC Public Interest Investigation Process**

7. A joint interference and conduct complaint was received by the Commission on April 30, 2021. A separate file - MPCC 2021-017 - was opened to deal with the conduct complaint, which will be addressed in a separate report.

8. In contrast with the more general, broader focus of the conduct complaint, the interference complaint – unique to the military police complaints process – is concerned specifically with the integrity of military police investigations.

9. The MPCC has the sole authority to dispose of interference complaints under Part IV of the *National Defence Act*. Apart from stipulating that “improper interference” in a military police investigation includes intimidation and abuse of authority, the Act provides no definition or guidance as to what constitutes improper interference. Nor is improper interference a legal term for which one may have recourse to other legislation or to the common law to assist in interpreting the concept. Rather, it is up to the MPCC alone to determine what constitutes improper interference on a case-by-case basis.

10. To be found to have engaged in improper interference in a military police investigation, it is not necessary that the person in question specifically intended to interfere in the investigation. It suffices that the individual knew or ought to have known of the existence of an active or potential military police investigation, and then acted or omitted to act in such a way as to impair or compromise such an investigation. In this case, the subject military police members' knowledge of the investigation alleged to have been the target or object of the interference is not in doubt.

11. Another key principle that has been developed and consistently applied by the MPCC is that guidance or direction provided to military police investigators from their military police superiors is generally not considered to be improper interference. As indicated above, three of the five military police members who are subjects of this complaint – Major (Maj) Russell<sup>2</sup>, CPO2 MacKinnon and Warrant Officer (WO) Eves – were in the complainants' military police chain of command at the time of the events pertaining to this complaint.

12. This is not to say, however, that military police superiors can never be found to have engaged in improper interference. Military police supervisors and other superiors must act in good faith and for a proper purpose in providing their direction or guidance regarding investigations conducted by their subordinates. Personal favouritism, which was alleged in this complaint, would not be a proper purpose or basis for guidance, direction, or other intervention in respect of a military police investigation - hence the need for this MPCC investigation.

13. Initial disclosure from the office of the Canadian Forces Provost Marshal (CFPM) was obtained and reviewed. On August 3, 2021, the Commission Chairperson called a public interest investigation into this complaint and the related conduct complaint, MPCC 2021-017. The complaint raised concerns about a possible blatant attempt by military police unit leadership to show favouritism toward a high-ranking member of the military police and to cover-up this fact. Also, calling a public interest investigation enabled the Commission to jointly investigate these two complaints at the same time.

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<sup>2</sup> All ranks in this report are those of the individuals at the time of the incident.

14. Twenty-five witness interviews were conducted between January 20, 2022, and March 25, 2022. A further interview of one of the witnesses occurred on September 6, 2022.

#### **IV The Interference Complaint**

15. The MPCC has identified the following allegations for the purposes of both this interference complaint and the related conduct complaint:

a. With respect to WO Eves:

*Allegation #1: Improper changes to the General Occurrence (GO) file.*

b. With respect to Maj Russell and CPO2 MacKinnon:

*Allegation #2: Improper pressuring of investigator against recommending charges.*

*Allegation #3: Failure to refer investigation to the Canadian Forces National Investigation Service (CFNIS).*

*Allegation #4: Failure to notify the office of Professional Standards of the Canadian Forces Provost Marshal, of the incident involving X.*

*Allegation #5: Pressuring of Military Police members not to report the incident involving X.*

c. With respect to Capt Foster and WO Evershed of CFNIS:

*Allegation #6: Failure of the Canadian Forces National Investigation Service (CFNIS) to investigate the incident.*

16. Thus, five of the six allegations are directed against the complainants' military police unit chain of command, while the sixth one is aimed at members of the local CFNIS detachment.

## V Factual Background to Complaint

Name of person involved in file	Relationship to file
X	Military Police (MP) Officer involved in the underlying incident whose investigation is the basis for this complaint
Cpl Patrick Bain	MP Member/Complainant
Sgt Daniel Mongraw	MP Member/Complainant
Cpl Monty Wheeler	MP Member/Witness
Maj Roland Russell	MP Officer/Subject
CPO2 Dean MacKinnon	MP Member/Subject
WO Jeffrey Eves	MP Member/Subject
Capt Evan Foster	MP Officer (CFNIS)/Subject
WO William Evershed	MP Member (CFNIS)/Subject
Maj Shreve	MP Officer/CF MP Group National Duty Officer on the night of the underlying incident
Maj Périard	Deputy Commanding Officer (CO) of CFNIS
Maj Yue-Devoe	MP Officer in charge of CF MP Group Professional Standards

17. On March 10, 2021, X, a newly posted military police officer was prevented from driving herself and her three children home from a restaurant by bystanders who believed her to be impaired. She had loaded her children into the vehicle but was prevented from getting into the driver’s seat. Two local police officers shortly arrived on the scene. When they learned that X was a military police member, they contacted the local military police detachment. One of the complainants in this matter, Cpl Bain, attended the scene.

18. X is alleged to have indicated to police her intention to drive herself and her children home. According to the complaint, the civilian police left the military police to deal with the matter as a professional courtesy. After several unsuccessful attempts, X blew a “fail” on a voluntary alcohol-screening device test. According to both the civilian police officers and Cpl Bain, X was belligerent and argumentative with the police.

19. There is some dispute as to whether the available computer records indicated that X had valid car insurance. In any event, Cpl Bain had her car towed and impounded, and drove X and her children home.



20. The civilian police provided a statement to the military police on the incident. According to the military police investigation (General Occurrence or GO) file, the civilian police determined that X did not have ‘care and control’ of her vehicle at the time of the incident and thus the elements of a charge of impaired driving were not met.

21. Cpl Bain was directed by WO Jeffery Eves to have the investigation file completed in as much detail as possible, by the end of his shift. He did so and recommended the following charges under the *National Defence Act* (NDA):

- 1) Drunkenness (NDA s. 97(2)(b)); and
- 2) Conduct to the Prejudice of Good Order and Discipline (NDA s. 129(3)).

22. The following morning, Cpl Bain received a text message from WO Eves directing him to remove his personal opinion from the GO file narrative. According to Cpl Bain, his GO file narrative and his “will say” statement were subsequently modified by WO Eves without his consent.

23. It is also alleged that, in the days following the event, Cpl Bain was repeatedly summoned before the Detachment Commanding Officer, Maj Roland Russell and the Unit Sergeant Major, Chief Petty Officer 2<sup>nd</sup> Class (CPO2) Dean MacKinnon, and informed that there would be no charges under the NDA, and that the matter would be dealt with administratively. Cpl Bain was also allegedly advised that, if the foregoing decision was disclosed to a third party, he would be severely reprimanded.

24. On March 10, 2021, at 2200 hrs, a Commander’s Critical Information Requirement (CCIR) report about the incident was submitted to the Canadian Forces Military Police Group (CF MP Group) chain of command by WO Eves.

25. On March 12, 2021 at 1328 hrs, GO 2021-5616 was released by WO Eves to the regional Assistant Judge Advocate General (AJAG) for pre-charge advice. This advice was received by Maj Russell on March 17, 2021.

26. According to the complaint, the military police file did not indicate that the Canadian Forces National Investigation Service (which has jurisdiction over investigations of military police, as per CF MP Order 2-381.1(2)(s)) or the CF MP Group's office of Professional Standards (PS) had been advised of the incident. As such, another military police member from Cpl Bain's shift, Cpl Monty Wheeler (a complainant in the related conduct complaint, MPCC File 2021-017), reported the incident to the regional office of the CFNIS. Subsequently, CPO2 Mackinnon, started calling in each detachment member to find out who had reported the occurrence to CFNIS.

27. Ultimately, CPO2 Mackinnon came to Cpl Wheeler, who admitted that he had in fact reported the matter to the CFNIS. CPO2 Mackinnon told Cpl Wheeler he should have gone through him, rather than directly to the CFNIS. CPO2 Mackinnon asserted that proper procedures had been followed, and the proper authorities were notified, namely, CFNIS, the AJAG and PS. Cpl Wheeler responded that this was not indicated on the file in the electronic Security and Military Police Information System (SAMPIS). CPO2 Mackinnon replied that he had not himself checked that the file was annotated to indicate these steps, but was reporting what the CO (Maj Russell) had told him.

28. CPO2 Mackinnon further indicated that the AJAG had declined to recommend charges due to mistakes by the military police investigator, such as failing to provide a caution and right to counsel to X. CPO2 Mackinnon also indicated to Cpl Wheeler that CFNIS had declined to investigate. Again, Cpl Wheeler responded that this was not noted on SAMPIS.

29. On March 29, 2021, Maj Russell took administrative action against X.

30. On April 30, 2021, the MPCC received a joint conduct and interference complaint form.

## VI Evidence, Analysis and Findings

### *6.1 Allegation #1: Improper Changes to the General Occurrence (GO) File*

31. The April 30, 2021 complaint states that: “Upon Cpl BAIN’s return to work the following evening [March 11, 2021, at 18:00 hrs.], Cpl BAIN’s personal narrative and Police Will Say (Legal Police Observation Document) had been altered with significant changes, without his consent”. The complaint further indicated that the “personal narrative and ‘WILL SAY’ had been altered with significant changes”.

32. In his interview with MPCC investigators, Cpl Bain said:

So then when I arrived on – for my first day shift (March 16<sup>th</sup>) and I went back in the file to make some edits, I noticed that a lot of the text boxes were changed, and in the bottom of the text boxes it said, ‘Edited by’ and then it has [WO Eves’s] badge number.

33. Sgt Mongraw supports Cpl Bain’s contention that substantive information was removed, apparently including Cpl Bain’s observations as to X’s impairment.

34. WO Eves denies making or requesting substantive changes. The only changes he claimed he would make were regarding grammar or spelling. That said, he did direct Cpl Bain to remove personal opinion statements in the file: the statement in question was something to the effect that Bain was disgusted or embarrassed by X’s conduct. WO Eves was adamant that he would not have removed information on signs of impairment, as that was clearly relevant to the case.

35. Maj Russell supported the evidence of WO Eves.

36. It is without dispute that modifications to the original content of Cpl Bain’s file were made. It is also without dispute that the only persons who made modifications to the file were WO Eves and Cpl Bain. While the SAMPIS case notes confirm that changes were made, and who made them, the content of the changes is uncertain.

37. We know from the case notes that WO Eves modified the “will say” on March 12, 2021, at 1326 hrs. While we cannot know with certainty what precisely was changed, the remaining information in the “will-say” text box, in support of a charge of “Drunkenness”, seems comprehensive; it is difficult to imagine what further observations

in support of that charge could have been made. The level of X's "intoxication" is articulated throughout the General Occurrence file, including where Cpl Bain wrote that the civilian police officers had described her as being "extremely intoxicated".

38. Both Capt Foster and Maj Russell viewed the General Occurrence file both before and after the modifications by WO Eves. Both indicated that the changes to the file were not significant and focused on personal opinions expressed by Cpl Bain about X's conduct.

39. CF MP Order 2-500 provides direction on file management by supervisors. Paragraphs 18 and 19 of that Order read as follows:

18. Supervisors at all levels shall record their observations and comments in SAMPIS under the title "Supervisory Comments." These supervisory comments shall include detailed advice provided to investigators and have the secondary benefit of demonstrating the investigation has had supervisory oversight. Supervisory comments shall also include direction in regard to the conduct, speed, flow and direction of the investigation, including the reasons for those directions. In accordance with section 250.19 of the NDA, day-to-day advice, guidance and direction with regard to investigations is not considered interference.

19. Supervisors shall not directly amend or alter a GO created by a subordinate. When corrections to a GO are required, a "Follow-Up" as per CF MP Gp Order 2-510 shall be generated with the required corrections and/or actions identified in a text box attached to the specific follow-up. If work is required in a specific text box, the review status inside the header shall be set to open and the Date and By fields shall be updated.

40. CF MP Order 2-510.3 further provides:

**SAMPIS FOLLOW-UPS PROCEDURE  
GENERAL**

1. The Follow Ups feature allows supervisors to assign an individual MP tasks when further action is required within a GO.

**PROCEDURE**

2. As per CF MP Gp Order 2-510, when a GO requires further action, MP shall use the Follow Ups feature to track/assign tasks. Subordinates whom are assigned follow ups are required to complete them by the diary date given.

41. In this case, it appears that the motivation behind the changes made by WO Eves to the military police General Occurrence file, and the content of those changes, was proper, and within the scope of WO Eves' authority to direct that they be made. It was reasonable to seek the removal of personal comments by Cpl Bain regarding X. The evidence, on a

balance of probabilities, does not establish that WO Eves made changes to the file which sought to downplay the degree of X's apparent intoxication or the seriousness of the event. Rather, it appears that WO Eves simply sought to have removed certain personal comments by Cpl Bain about how he felt about the incident. Moreover, WO Eves had first attempted to effect the required changes through the author of the file entry – only making them directly after Cpl Bain had failed to make them.

42. Yet the direction provided in CF MP Order 2-500, paragraph 19, is clear that supervisors are not to make such changes directly to military police investigation files authored by their subordinates. On the other hand, CF MP Order 2-510.3, paragraph 2, clearly contemplates that a supervisor's requested changes are not merely suggestions ("subordinates whom [sic] are assigned follow ups are required to complete them by the diary date given." [emphasis added]).

43. The situation here then is one where subject member WO Eves made reasonable changes to the file which he was entitled to have made, but he did so in a way which was contrary to procedures established in CF MP Orders. While WO Eve's actions in this connection were, therefore, inappropriate, they do not appear to have been motivated by a desire to alter the course of the investigation or the disposition of the case. As discussed above, while the aim of the conduct complaint is to uphold standards of military police competence and professionalism, the interference complaint is more specifically focused on safeguarding the integrity and independence of military police investigations. Thus, while the conduct complaint is concerned with the appropriateness of military police actions from a number of perspectives, the interference complaint seeks to address and deter attempts to improperly influence the course of an investigation. There is no indication that the changes made to the military police file by WO Eves had this intention or effect. Thus, whether or not it was proper for him to have made these alterations the way he did, the MPCC concludes that that these changes do not amount to improper interference in an investigation.

**Finding #1:**

**The Military Police Complaints Commission finds that the allegation that WO Eves improperly interfered with a Military Police investigation by making improper alterations to the investigation file is NOT SUBSTANTIATED.**

***6.2 Allegation #2: Improper Pressuring of Investigator Against Recommending Charges***

44. In the complaint, it was alleged that, in an effort to pressure him not to recommend *Code of Service Discipline* charges against X, Cpl Bain was summoned to see Maj Russell and CPO2 MacKinnon “in excess of five times” and advised that charges would not be laid, and the matter would be dealt with administratively.

45. Yet, during his interview with MPCC investigators, Cpl Bain claimed that he had no recollection of being told that he could not recommend charges. Moreover, Maj Russell and CPO2 MacKinnon indicated in their interviews that they did not meet with Cpl Bain prior to the GO file being submitted by Cpl Bain, with the charge recommendations included.

46. Nor was there any subsequent attempt to have the charge recommendations removed from the General Occurrence file. The last entry on the file was at 0504 hrs on March 11, 2021, the morning after the incident. It was at around this time that Maj Russell met with Cpl Bain and Sgt Mongraw to discuss the file. Rather than telling Cpl Bain not to recommend charges, Maj Russell asked Cpl Bain and Sgt Mongraw for their views on how to proceed. According to Maj Russell, Cpl Bain suggested administrative action, while Sgt Mongraw recommended charges under the *Code of Service Discipline*.

47. Maj Russell and CPO2 MacKinnon were no doubt anxious to have the investigation file completed, so that they could then move to take the appropriate measures. However, this is not interference. Moreover, the evidence provided to MPCC investigators by Cpl Bain himself, does not support this allegation that he was pressured not to recommend charges in the investigation report.

## **Finding #2:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by pressuring Cpl Bain to not recommend service offence charges is NOT SUBSTANTIATED.**

### ***6.3 Allegation #3: Failure to Refer Investigation to the Canadian Forces National Investigation Service (CFNIS)***

48. Contrary to this allegation, the evidence indicates that CFNIS was in fact notified of the incident involving X on the night that it occurred.

49. In his interview with MPCC investigators, WO Eves advised that he had made a call to the regional CFNIS officer commanding, Capt Foster, at 2032 hrs on the night of the incident, March 10, 2021. During his interview with MPCC investigators, WO Eves provided a copy of his call log for that date in support of his claim. Moreover, this was confirmed by Capt Foster in his MPCC interview.

50. Later that evening, at 2200 hrs local time, WO Eves submitted a Commander's Critical Information Request (CCIR) on the incident involving X, with a copy to Capt Foster of CFNIS. The CCIR was sent to Ottawa, more specifically, to the Naval MP Group chain of command and the MP Group Operations Centre, as well as to Capt Foster. The CCIR read, in part, as follows:

(e) Why: While attending dinner at the aforementioned location, the subject was observed consuming several alcoholic beverages during the course of their meal. Upon completion the subject and their three small children proceeded to return to their vehicle. Other patrons of restaurant noted the subject appeared to be under the influence of alcohol and contacted [local police]. [Local police] members attended and believed the subject was under the influence of alcohol and had intent to operate their vehicle. Concurrently [the police officers] contacted [the MPU] and a patrol member attended the scene. [Local police] administered an ASD test which resulted in a fail. As a result the subject's vehicle was towed/impounded and the subject was turned over to the MP member who provided the family a ride home. It should be noted during the incident the MP member observed the subject showed outward signs of impairment and was uncooperative with the [local police] members.

(f) Action: [The MPU] has generated a privatized GO to be reviewed by the OC of CFNIS [regional office] and [the MPU] Command will seek legal advice from the [base] AJAG office. CO of [the MPU] has been notified and they in turn have briefed the Commander of NMP Gp; and

(g) Support: CFNIS [regional office] to review the file.

51. According to a recorded telephone conversation between CF MP Group National Duty Officer, Maj Shreve, and Sgt Mongraw, at 2312 hrs local time, Sgt Mongraw advised he had drafted the CCIR for WO Eves.

52. In his interview with the MPCC investigators, Cpl Wheeler indicated that he was aware of an email concerning the incident being sent that same night by Sgt Mongraw to CFNIS. According to Cpl Wheeler, he saw an email on the file from Sgt Mongraw to WO Eves and WO Evershed (of CFNIS). So in fact, Cpl Wheeler appears to have known early on that the CFNIS had been advised of the incident. However, Cpl Wheeler noted that there was no indication on the file that CFNIS had taken over the investigation, which he understood to be a requirement where a military police member is the subject of a criminal or service offence investigation.

53. Also, on the morning after the incident, March 11, 2021, when Maj Russell met with Sgt Mongraw and Cpl Bain, Maj Russell told them he would be speaking with the CFNIS about the file.

54. Thus, CFNIS, and others, were notified in a timely manner about this incident involving X, and that Sgt Mongraw and Cpl Wheeler were aware of this.

55. In regard to this allegation, the complainants have misunderstood the requirements for CFNIS involvement in situations of military police criminality or serious service misconduct. CF MP Order 2-381, paragraph 7 provides as follows:

7. The CFNIS investigative mandate includes the following:
  - a. right of first refusal for all allegations of serious and/or sensitive offences, except for sexual offences. Investigative responsibility for sexual offences is set out in CF MP Gp Order 2-340;
  - b. the ability to waive investigative responsibility for a serious and/or sensitive offence to a local MP unit when, in the opinion of the CO CFNIS, it would be appropriate to do so;
  - c. when investigative responsibility is waived to a local MP unit, provision of continued support to the investigation through direct assistance or the provision of advice as requested; and
  - d. assumption of responsibility for an investigation already initiated by a local MP unit when it is determined that the offence is of a serious or sensitive nature, or upon the request of the MP chain of command responsible for the investigation.



56. CF MP Orders require that serious or sensitive cases (which include offences committed by military police, per CF MP Order 2-381.1, paragraph 2s) be referred to CFNIS for their consideration. But the CF MP Orders do not require that the CFNIS take over the investigation in all cases. As paragraph 13 of CF MP Order 2-381 states:

13. The mere fact that an allegation falls within the threshold of a serious and/or sensitive offence does not necessarily mean that only CFNIS will conduct the investigation. The CFNIS DO may waive investigative responsibility for a serious or sensitive offence to the reporting local MP unit if, in the opinion of the CFNIS DO, the investigation can be completed successfully at that level.

57. In this case, at 0209 hrs on March 11, 2021, after receiving the call from WO Eves and then a copy of the CCIR regarding the incident, Capt Foster emailed the Deputy Commanding Officer of CFNIS in Ottawa, Maj Périard:

FYSA. I will review file in the morning. Received verbal brief from [MP Unit Duty Officer, i.e., WO Eves] prior to [Commander's Critical Incident Report] being [sent]. Initial advice was that CO MPU could conduct [Unit Disciplinary Investigation] and advise [Professional Standards] for the conduct or have CFNIS investigate if service offence to be pursued (drunkenness). Either way, legal opinion should be sought and discussed in morning.

58. A few hours later, at 0706 hrs, Maj Périard responded simply that "I don't think [CFNIS] needs to be involved in this one. [Unit Disciplinary Investigation] should be [course of action]." In a telephone conversation approximately two days later, Capt Foster confirmed this course of action with Maj Russell, and indicated that CFNIS would not be investigating the matter. In his MPCC interview, Capt Foster indicated that he did not make a notation on the military police investigation file that he had reviewed it, but perhaps he should have.

**Finding #3:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by failing to refer the investigation to the Canadian Force National Investigation Service is NOT SUBSTANTIATED.**

**6.4 Allegation #4: Failure to notify the office of Professional Standards of the Canadian Forces Provost Marshal, of the incident involving X**

59. As noted above, a CCIR was sent to the MP Group Operations Centre in Ottawa at 0100 hrs (Ottawa time) on March 11. This was forwarded to military police Professional Standards (PS) by email from the MP National Duty Officer, Maj Shreve, at 0152 hrs on March 11, 2021. Receipt on behalf of PS was acknowledged by the Deputy Commander CF MP Group in an email sent at 0222 hrs. The next day (March 12, 2021), a new PS file was opened (PS GO #2021-009), and that office followed the matter from that point until its conclusion.

60. Furthermore, in his interview with the MPCC investigators, Maj Russell said he phoned Major Yue-Devoe (officer-in-charge of PS) on the morning of March 11, 2021 and released the file to her.

61. Thus, the perceptions of the complainants notwithstanding, it is quite apparent from the evidence gathered in this investigation that the office of Professional Standards was notified of this occurrence in a timely manner.

**Finding #4:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by failing to notify the Office of Professional Standards of the Canadian Forces Provost Marshal, about the incident is NOT SUBSTANTIATED.**

**6.5 Allegation #5: Pressuring of Military Police Members not to Report the Incident Involving X**

62. This allegation relates to two distinct issues.

63. The first issue is Cpl Bain's allegation that he was warned against telling others of the incident or disclosing how Maj Russell and CPO2 MacKinnon were planning to address the incident: i.e., through administrative measures, rather than under the *Code of Service Discipline*. According to the complaint, Cpl Bain was advised that he would be "severely reprimanded" for doing so.

64. The second issue is the alleged efforts of CPO2 MacKinnon to discover who among the rank-and-file members of the military police detachment had taken it upon themselves to report the incident to CFNIS.

65. The first issue – the warning not to disclose information about the handling of the March 10, 2021 incident – may seem sinister in the absence of context. However, there are two important considerations regarding this allegation.

66. First, as noted above regarding allegations 3 and 4, Maj Russell and CPO2 MacKinnon, did not hide the incident from the CFNIS or from PS. Therefore, this alleged threat to Cpl Bain cannot be understood as seeking to prevent these two offices from being notified of this incident, so as to perpetrate a cover-up of the incident. Rather, this warning is best understood in the circumstances as demanding that the flow of information from the military police unit to CFNIS and PS follow the appropriate channels of communications, and that the information be directed to the appropriate personnel within those offices.

67. Moreover, to the extent that this warning may be seen as applying to the disclosure of information about that file to others generally, such warning can be reasonably understood as highlighting the legitimate privacy rights of X, and a reminder of the general “need-to-know” principle applying to any sensitive or protected information. The March 10, 2021 incident gave rise to significant privacy rights and interests on the part of X which, by law, required protection. Of course, the incident no doubt also gave rise to an intense interest on the part of other members of the military police unit to know the details regarding the incident. But this intense interest did not translate into a legitimate need to know.

68. Obviously, Cpl Bain, as the investigator, was necessarily privy to certain information about the incident, as were members of his chain of command, and especially Maj Russell and CPO2 MacKinnon. The latter were also necessarily aware of the details regarding the disposition of the incident by the unit. But, beyond these individuals, there was little, if any, legitimate entitlement to knowledge of these matters on the part of other members of the unit, let alone persons outside of the unit.

69. As such, the warning to Cpl Bain can be characterized as merely drawing his attention to the applicable privacy restrictions on the dissemination of information about the case, in a context where interest in this information – but not entitlement to knowledge – amongst other members of the unit was exceptionally high.

70. The second issue raised in this allegation concerns the efforts by CPO2 MacKinnon to find out who within the detachment had reported the incident to members of CFNIS without authorization by the detachment leadership.

71. On this point, the complaint reads as follows:

Members at [the MPU] began being canvassed and interrogated by the senior CoC surrounding the low morale. During this period members of the detachment began submitting their release memos in search of other career opportunities/organizations which supported their officers and did not 'sweep things under the rug'. All members who submitted their release wished to be proactive Police Officers; however the MP CoC had failed to provide the opportunity for a healthy, transparent environment.

MPs from all shifts and sections began being directed to the USM's office [CPO2 MacKinnon] for a one-on-one meeting, to be interrogated regarding who had made the complaint to CFNIS. Sgt MONGRAW was informed that the chain was taking 'heat' for the way the investigation was handled. Multiple persons were requested to identify their peers who they believed were 'toxic' or identify the person who had made the complaint to CFNIS. CPO2 MACKINNON had allegedly suggested MPs 'nod' when he went through the list of persons who he believed made the complaint or were 'toxic' so they would not be considered to be 'snitching'. This action by the USM placed peers against each other further reducing morale. Multiple individuals who had submitted their release were being threatened with a posting out of the geographical area regardless of their family situations, if they were to 'pull' their release.

72. While this episode may well have been upsetting to the complainants, this action by CPO2 MacKinnon, does not amount to interference.

73. The activity in question occurred after the military police investigation was completed: the detachment commanding officer having decided on administrative measures rather than charges under the *Code of Service Discipline*; and CFNIS having decided not to take the case. Therefore, this effort to track down who had gone to CFNIS without authorization could not have affected the investigation of the incident involving X. Therefore, whatever the wisdom or propriety of this series of meetings, it cannot be improper interference in a military investigation.

### **Finding #5:**

**The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly interfered with a Military Police investigation by pressuring Military Police members not to report the incident involving X to persons outside the unit, and by trying to identify who reported the incident to the Canadian Forces National Investigation Service without authorization, is NOT SUBSTANTIATED.**

#### ***6.6 Allegation #6: Failure of the Canadian Forces National Investigation Service (CFNIS) to Investigate the Incident***

74. The position taken by the complainants is that the CFNIS were obligated to take on the investigation of the March 10 incident. However, as discussed above in connection with allegation #3, this is not what the CF MP Orders actually say. Rather, CF MP Orders 2-381, 2-381.1 and 2-381.2 require that certain categories of incidents, including potential offences by military police, be referred to CFNIS for their assessment. But CFNIS has the option (with some exceptions not applicable to this case) to refer the case back to the originating military police unit where the latter is considered capable of appropriately dealing with the case.

75. Clearly there was a requirement to report the incident to the CFNIS, and that was done in a timely manner. CF MP Order 2-381.2 allows the CFNIS duty officer, in this case Capt Foster, the discretion to waive their mandate and remit the matter to the military police unit in question.

76. In his interview with the MPCC investigators, Capt Foster articulated his satisfaction that the incident could be dealt with by the military police detachment. He noted that, at that stage, there was nothing to investigate in terms of possible criminal charges, since the local civilian police of jurisdiction had determined that the elements of the offence of impaired operation of a motor vehicle were not met. On the service discipline side, Capt Foster reasoned that the military police detachment commanding officer could hold a unit disciplinary investigation and had the authority to either lay *National Defence Act* charges or take administrative action.

77. It is apparent from the evidence that Capt Foster considered the various possible courses of action, and the relative suitability of such action being taken by the originating military police unit versus an investigation by CFNIS, before reaching a conclusion not to investigate. Moreover, Capt Foster's superior, Maj Périard – the Deputy CO of CFNIS in Ottawa – agreed with that course of action.

78. There is no evidence to suggest that Capt Foster sought to influence the course of justice in the case, and there was no attempt to try to pressure Maj Russell toward any particular outcome in the case.

79. As Capt Foster was solely responsible for the actions taken by CFNIS in this case, there is no basis to consider any alleged interference on the part of WO Evershed.

**Finding #6:**

**The Military Police Complaints Commission finds that the allegation that Capt Foster and WO Evershed improperly interfered with a Military Police investigation by failing to investigate the incident involving X is NOT SUBSTANTIATED.**

*Consideration of the Chief of Defence Staff's response letter*

80. Having reviewed all information and materials relevant to this complaint, the Commission members then began the preparation of the Interim Report. In accordance with section 250.39 of the Act, the Interim Report was issued on July 18, 2023, and was transmitted to the Minister of National Defence, the Chief of Defence Staff (CDS), the Judge Advocate General, and the CFPM.

81. Pursuant to subsection 250.51(1) of the Act, the CDS is required to notify the Minister and the Chairperson of any action that has been or will be taken with respect to this complaint. On October 26, 2023, the MPCC received the CDS' response letter (dated October 20, 2023) in response to the MPCC's Interim Report.

82. In his response letter, the CDS noted that as there were no recommendations made in this matter, no action is required on the part of the CDS in relation to this complaint.

83. In conformity with subsection 250.53(1) of the Act, the Commission members prepared this Final Report after having considered the CDS' response letter.

Ottawa, November 27, 2023

*Original signed by:*

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Bonita Thornton B.A, LL.B, CD.  
Commission Member

*Original signed by:*

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Ron Kuban, Ph.D., CD.  
Commission Member

## VII Glossary of Terms / Acronyms Used Throughout Report

AJAG	Assistant Judge Advocate General
ASD	Approved screening device
Capt	Captain
CCIR	Commander's Critical Information Requirement
CDS	Chief of the Defence Staff
CF MP	Canadian Forces Military Police
CF MP Gp	Canadian Forces Military Police Group
CFNIS	Canadian Forces National Investigation Service
CFPM	Canadian Forces Provost Marshal
CO	Commanding Officer
CoC	Chain of Command
Cpl	Corporal
CPO2	Chief Petty Officer, 2 <sup>nd</sup> Class
DO	Duty Officer
FYSA	For your situational awareness
GO	General Occurrence
Maj	Major
MP	Military Police
MPCC or Commission	Military Police Complaints Commission
MPU	Military Police Unit
NDA	National Defence Act
NMP	Naval Military Police
OC	Officer Commanding or Officer in charge
PS	Office of Professional Standard
SAMPIS	Security and Military Police Information System
Sgt	Sergeant
The Act	<i>National Defence Act</i>
USM	Unit Sergeant-Major
WO	Warrant Officer