



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 of the *National Defence Act*, of a
Conduct Complaint by Sgt Daniel Mongraw,
Cpl Patrick Bain and Cpl Monty Wheeler
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 2021-017
Ottawa: December 20, 2023

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I Summary of Complaint

1. This is a conduct complaint by members of a Military Police (MP) detachment, who have alleged that members of their detachment chain of command and of the regional detachment of the Canadian Forces National Investigation Service (CFNIS) failed to properly respond to an alleged incident of drunkenness by a member of the MP detachment. Following an investigation, the Military Police Complaints Commission (MPCC) found most of the allegations to be unsubstantiated.
2. On March 10, 2021, X¹, a newly posted MP officer was prevented from driving herself and her three children home from a restaurant by bystanders who believed her to be impaired. Local civilian police were called to the scene and they, in turn, contacted the local MP detachment (where X had been recently posted), who also responded. The civilian police determined that X could not be charged with impaired operation of a motor vehicle. The MP Corporal who responded to the call - one of the complainants, PB - had the vehicle impounded and drove X and her children home.
3. PB submitted his report the following morning recommending charges under the *Code of Service Discipline*. The commanding officer of the MP detachment elected to proceed with administrative measures instead. The complainants have alleged that one of the subjects, a Warrant Officer (WO), wrongly altered the MP investigation file without the consent of PB. Moreover, the complainants perceived that the MP detachment leadership improperly pressured PB to not recommend charges. They further alleged that the detachment leadership sought to cover up the incident involving X by not informing the CFNIS and the office of Professional Standards (PS) of the Canadian Forces Provost Marshal about the incident, and by trying to prevent members of the detachment from notifying the CFNIS or PS. They also alleged that members of the local CFNIS detachment assisted in this cover-up by not taking over the investigation of the incident.

¹ Due to the sensitivity of this matter, the name and location of the MP officer involved have been withheld.

4. Through its investigation, the MPCC determined that, while the subject warrant officer was justified in seeking the removal of certain personal comments from the MP investigation file, his making of the changes unilaterally was contrary to MP existing policy. This allegation is therefore partially substantiated.
5. However, the MP detachment leadership did not pressure the complainant MP Corporal against recommending charges. Moreover, the MP detachment leadership had notified both the CFNIS and the office of PS of the incident involving X in a timely fashion. Furthermore, the complainants were mistaken as to the requirements regarding referral of cases to the CFNIS involving possible offences by MP members. While such cases must be referred to them for an assessment, the CFNIS is not obliged to take over the investigation and may waive their jurisdiction in favour of the originating MP unit, as was done in this case.
6. Regarding the efforts of the subject detachment commander and the subject sergeant major to prevent MP detachment members from sharing information about the incident involving X with CFNIS, the MPCC determined that it was legitimate for the MP detachment leadership to uphold X's privacy interests and also to insist on proper channels of communication with other units. 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.
7. The MPCC recommended that the Canadian Forces Provost Marshal seek changes to the Security and Military Police Information System which would help generate a record of revisions made to file content. It is also recommended that MP Orders be clarified such that the CFNIS would make a notation on a MP investigation file, with brief reasons, when they decide not to take over an investigation.
8. Finally, the MPCC recommended that the Canadian Forces Provost Marshal consider conducting an assessment of the Military Police unit morale and cohesion, to identify any existing issues.

9. In response to the MPCC's report in this case, the Canadian Forces Provost Marshal made several comments regarding the MPCC's findings and recommendations. The MPCC considers that two recommendations were accepted by the Canadian Forces Provost Marshal; however, it considers as not accepted the recommendation that the Canadian Forces Provost Marshal seek to implement changes to the Security and Military Police Information System which will enable the tracking of content changes to investigation files.

II Findings and Recommendations

Finding #1:

The Military Police Complaints Commission finds that the allegation that WO Eves made improper alterations to the investigation file is PARTIALLY SUBSTANTIATED, in that, while the revisions were reasonable in the circumstances, he breached Canadian Forces Military Police Orders by making them directly to the file.

Finding #2:

The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly pressured 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 failed to refer the investigation of the incident involving X to the CFNIS is NOT SUBSTANTIATED.

Finding #4:

The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon failed to notify the office of Professional Standards of the Canadian Forces Provost Marshal about the incident involving X is NOT SUBSTANTIATED.

Finding #5:

The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly pressured MP members not to report the incident involving X to persons outside the unit, is NOT SUBSTANTIATED. The Military Police Complaints Commission makes no finding regarding the allegation that CPO2 MacKinnon improperly sought to determine who reported the incident to the Canadian Forces National Investigation Service.

Finding #6:

The Military Police Complaints Commission finds that the allegation that Capt Foster and WO Evershed of CFNIS failed to investigate the incident involving X is NOT SUBSTANTIATED.

Recommendation #1:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal seek to implement changes to the Security and Military Police Information System which will enable the tracking of content changes to investigation files. (Not Accepted)

Recommendation #2:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal require that the Canadian Forces National Investigation Service make appropriate notations on investigation files in the Security and Military Police Information System where they have decided not to take over an investigation, including brief reasons for that decision. (Accepted)

Recommendation #3:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal consider conducting an assessment of the MP Detachment to identify any ongoing issues with that unit's morale and cohesion. (Accepted)

III The MPCC Public Interest Investigation Process

10. A joint interference and conduct complaint was received by the MPCC on April 30, 2021. A separate file – MPCC 2021-012 - was opened to deal with the interference complaint, which is addressed in a separate report.

11. Initial disclosure from the office of the CFPM was obtained and reviewed. On August 3, 2021, the MPCC Chairperson called a public interest investigation into this complaint and the related interference complaint, MPCC 2021-012. The complaint raised concerns about a possible blatant attempt by an MP unit leadership to show favouritism to a higher-ranking military police member and to cover-up this fact. Also, calling a public interest investigation enabled the MPCC to jointly investigate these two complaints at the same time.

12. Twenty-five witness interviews were conducted between January 20, 2022 and March 25, 2022. The final item of disclosure was received from the CFPM's office on April 20, 2022. One of the witnesses was re-interviewed on September 6, 2022.

13. In assessing the various allegations comprising this complaint, the MPCC applies the civil law standard of proof on a balance of probabilities – that it is more likely than not that the alleged act or omission occurred and that the allegation is true or accurate. This is the same standard of proof used in all proceedings that are not penal, or criminal, in nature.

IV The Conduct Complaint

14. As the MPCC received a joint conduct and interference complaint, two separate complaint files were opened: this report addresses the conduct complaint; and the related interference complaint is dealt with in a separate file (file # MPCC 2021-012). For the purposes of both this conduct complaint and the related interference complaint, the following allegations have been identified.

a. With respect to WO Eves:

Allegation #1: Improper changes to the General Occurrence 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 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 CFNIS to investigate the incident.

V Factual Background to Complaint

Name of person involved in file	Relationship to file
X	MP Officer involved in the underlying incident
Cpl Patrick Bain	MP Member/Complainant
Sgt Daniel Mongraw	MP Member/Complainant
Cpl Monty Wheeler	MP Member/Complainant
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 CO of CFNIS
Maj Yue-Devoe	MP Officer in charge of CF MP Group Professional Standards

15. 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 arrived on the scene. When they learned that X was a Military Police member, they contacted the local MP detachment. One of the complainants in this matter, Cpl Bain, attended the scene.

16. X is alleged to have indicated to local 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 them.

17. 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.

18. The civilian police provided a statement to the MP member on the incident. 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 was not met.

19. Cpl Bain was directed by WO Jeffery Eves to have the investigation file completed in as much detail as possible, by the end of Cpl Bain’s 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)).

20. The following morning, Cpl Bain received a text message from WO Eves directing him to remove his personal opinion from the Military Police investigation file narrative. The file was subsequently modified by WO Eves.

21. 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.

22. On March 12, 2021 at 1328 hrs, the Military Police investigation file (General Occurrence (GO) 2021-5616) was released by WO Eves to the area Assistant Judge Advocate General (AJAG) for pre-charge advice. The AJAG’s pre-charge advice was received by Maj Russell on March 17, 2021.

23. According to the complaint, the MP file did not indicate that the Canadian Forces National Investigation Service (CFNIS) (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, one of the

complainants, Cpl Monty Wheeler, reported the incident to the regional office of the CFNIS. Subsequently, CPO2 MacKinnon, started calling in each detachment member to find out who had done this.

24. Ultimately, CPO2 MacKinnon talked 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 or consulted, 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.

25. CPO2 MacKinnon further indicated that the AJAG had declined to recommend charges due to mistakes by Cpl Bain, 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.

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

27. A joint conduct and interference complaint form was received by the MPCC on April 30, 2021. The complaint was drafted by Cpl Wheeler, and adopted by Cpl Bain and Sgt Mongraw.

Consideration of the Canadian Forces Provost Marshal's Notice of Action

28. 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 NDA, the Interim Report was issued on August 8, 2023 and was transmitted to the CFPM, the Chief of the Defence Staff and the Minister of National Defence.

29. In accordance with section 250.51 of the NDA, the CFPM 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 November 20, 2023, the MPCC received the CFPM's notice of action in response to the MPCC's Interim Report.

30. In his notice of action, the Canadian Forces Provost Marshal (CFPM) made several comments regarding the MPCC's findings and recommendations. The MPCC considers that two recommendations were accepted by the CFPM; however, it considers as not accepted the recommendation that the Canadian Forces Provost Marshal seek to implement changes to the Security and Military Police Information System which will enable the tracking of content changes to investigation files.

31. This Final Report is issued in conformity with subsection 250.53(1) of the NDA.

VI Evidence, Analysis, Findings and Recommendations

6.1 Allegation #1: Improper Changes to the General Occurrence File

32. The complaint alleges: "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."

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

So then when I arrived on – for my first day shift (March 16th) 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.

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

35. 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 Cpl 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.

36. Maj Russell supported the evidence of WO Eves.

37. 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 by whom, the content of the changes cannot be confirmed.

38. According to case notes, 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 MP investigation file, including where Cpl Bain wrote that the civilian police officers had described her as being "extremely intoxicated".

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

40. 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 [Military Police investigation file] 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.

41. 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.

42. In this case, the motivation behind the changes made by WO Eves to the MP investigation 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 by him 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 investigation file which sought to downplay the degree of X's apparent intoxication or the seriousness of the event. Rather, WO Eves simply sought to have removed certain personal comments by Cpl Bain about how he felt about the incident. Moreover, WO Eves had initially attempted to effect the required changes through the author of the file entry – only making them directly after Cpl Bain had failed to do so.

43. Nevertheless, the direction provided in CF MP Order 2-500, paragraph 19, is clear that supervisors are not to make such changes directly to 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]).

44. WO Eves clearly made reasonable changes to the file which he was entitled to do. However, he did so in a way which was contrary to established procedures within MP Orders. While WO Eve's actions in this connection were inappropriate, we find they were not motivated by a desire to cover up or downplay X's conduct or to misrepresent the

evidence. In these circumstances, the MPCC finds the allegation to be partially substantiated.

Finding #1:

The Military Police Complaints Commission finds that the allegation that WO Eves made improper alterations to the investigation file is PARTIALLY SUBSTANTIATED, in that, while the revisions were reasonable in the circumstances, he breached Canadian Forces Military Police Orders by making them directly to the file.

- *In the notice of action, the CFPM stated the following: “No identifiable action required.”*

Recommendation #1:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal seek to implement changes to the Security and Military Police Information System which will enable the tracking of the content of changes made to investigation files.

- *In the notice of action, the CFPM stated the following: “Recommendation is noted, however will not be actioned due to the following: The changes to tracking/collecting data referred to by the MPCC is a capability not currently contained within the programming of the SAMPIS software. CF MP Gp would have to make a special request for customization of the future product from VERSATERM, which would require time to develop, test and build into the future software. If this is even possible, the costs would be unknown, difficult to predict and prohibitive.”*
- *The MPCC considers this recommendation as not accepted. The CFPM indicated that the CF MP Group lacks the computer software capacity to introduce the recommended feature.*

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

45. The complaint 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.

46. Yet, when interviewed by MPCC investigators, Cpl Bain claimed, in contrast with the complaint, that he had no recollection of being told that he could not recommend charges. Moreover, in their interviews, both Maj Russell and CPO2 MacKinnon indicated they did not meet with Cpl Bain prior to the MP investigation file being submitted with the recommendation to charge X.

47. Nor was there any subsequent attempt to have the charge recommendations removed from the MP investigation file. Cpl Bain's last entry on the file for the shift was at 0504 hrs on March 11, 2021, the morning after the incident. This was just before Maj Russell met with Cpl Bain and Sgt Mongraw to discuss the file. According to Maj Russell MPCC interview, rather than telling Cpl Bain not to recommend charges, he 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*.

48. This allegation is not consistent with the preponderance of the evidence to the contrary.

Finding #2:

The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly pressured Cpl Bain to not recommend service offence charges is NOT SUBSTANTIATED.

- *In the notice of action, the CFPM stated the following: “No identifiable action required.”*

6.3 Allegation #3: Failure to Refer Investigation to the Canadian Forces National Investigation Service

49. The complaint alleges that Maj Russell and CPO2 MacKinnon sought to prevent the CFNIS from becoming aware of the March 10, 2021 incident.

50. The evidence indicates that the CFNIS was in fact notified of the incident involving X on the night that it occurred.

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

52. Later that evening, at 2200 hrs, WO Eves submitted a Commander's Critical Information Requirement (CCIR) on the incident, 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, which was posted to the MP investigation file, 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.

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

54. In his interview with the MPCC investigators, Cpl Wheeler indicated 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). Therefore, 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 file that CFNIS had taken over the investigation, which he

understood to be a requirement where a Military Police is the subject of a criminal or service offence investigation.

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

56. Therefore, on a balance of probabilities we find that CFNIS and other key stakeholders were notified in a timely manner about this incident involving X, and that Sgt Mongraw and Cpl Wheeler were aware of this notification.

57. In regard to this allegation, the complainants misunderstood the requirements for CFNIS involvement in situations of MP member 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.

58. 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 the CFNIS to take over the investigation in all cases. As paragraph 13 of CF MP Order 2-381 notes:

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.

59. According to the MP file, 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, Maj Périard:

FYSA. I will review file in the morning. Received verbal brief from [the MP detachment MP Duty Officer, i.e., WO Eves] prior to [Commander's Critical Information Requirement 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.

60. 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 he did not make a notation on the MP investigation file to show 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 failed to refer the investigation of the incident involving X to the Canadian Forces National Investigation Service is NOT SUBSTANTIATED.

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

61. The CF MP Orders already require that steps taken in the assessment of the investigative requirements of a case be documented on the MP investigation file (GO) in SAMPIS (CF MP Order 2-340.1, paragraph 10). They also require that the CFNIS regional duty officer record in the file a decision to take over an investigation (CF MP Order 2-381.2, paragraph 3d). However, the Orders do not appear to explicitly require CFNIS duty officers to document decisions to not take over an investigation.

Recommendation #2:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal require that the Canadian Forces National Investigation Service make appropriate notations on investigation files in the Security and Military Police Information System where they have decided to not take over an investigation, including brief reasons for that decision.

- *In the notice of action, the CFPM stated the following: “Actions to be taken: MP Policy to be amended to reflect the requirement of CFNIS to annotate within the file when they accept or decline investigative responsibility for a file and the reasons behind that decision.”*
- *The MPCC considers this recommendation as being accepted.*

6.4 Allegation #4: Failure to notify the Office of Professional Standards of the Canadian Forces Provost Marshal of the Incident Involving X

62. As noted above, a CCIR was sent to the MP Group Operations Centre in Ottawa at 22:00 hrs local time on March 11, 2021. This was forwarded to PS by email from the CF MP Group National Duty Officer, Maj Shreve, at 0152 hrs, Ottawa time, 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.

63. 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.

64. The evidence gathered in this investigation demonstrates that 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 failed to notify the office of Professional Standards of the Canadian Forces Provost Marshal, about the incident involving X is NOT SUBSTANTIATED.

- *In the notice of action, the CFPM stated the following: “No identifiable action required.”*

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

65. This allegation relates to two distinct issues.

66. The first issue is Cpl Bain's allegation that he was warned against telling others of the incident or disclosing how Maj Russell and MWO MacKinnon were planning to address the incident: 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" if he were to divulge this information.

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

68. 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.

69. 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 separate offices from being notified of this incident, so as to perpetrate a cover-up of the incident. Rather, this warning is best understood along two requirements. One, ensuring that the flow of information from the Military Police unit to CFNIS and PS, or other external audiences, follow the appropriate channel of communications; the other, confirming that the information be directed to the appropriate personnel within those other offices.

70. Moreover, such a warning can also be understood as highlighting the legitimate privacy rights of X, and a reminder of the general "need-to-know" principle which applies to any sensitive or protected information. The March 10, 2021 incident involved highly sensitive personal information regarding X which, by law, required protection. The incident no doubt also gave rise to an intense interest on the part of other members of

the MP unit to know the incident details, and its outcome. But such interest does not necessarily translate into a legitimate need to know.

71. 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 the case on the part of other members of the unit, let alone persons outside of the unit.

72. As such, the warning to Cpl Bain can be characterized as merely drawing his attention to the applicable privacy restrictions.

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

74. On this point, the complaint to the MPCC 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.

75. This episode can be seen as an effort to uphold and enforce safeguards on the dissemination of highly sensitive personal information and to enforce discipline within the Military Police unit in respect of this matter.

76. Seeking to ensure compliance with privacy and security of information rules governing the dissemination of sensitive information falls within the domain of administration, rather than policing operations. These efforts by CPO2 MacKinnon do not, therefore, constitute the performance of a “policing duty or function” which can be the proper subject of a conduct complaint under NDA s. 250.18(1), as that term is defined in section 2 of the *Complaints Against the Conduct of Members of the Military Police Regulations*. Therefore, the MPCC declines to make a finding in respect of this part of the allegation.

Finding #5:

The Military Police Complaints Commission finds that the allegation that Maj Russell and CPO2 MacKinnon improperly pressured Military Police members not to report the incident involving X to persons outside the unit, is NOT SUBSTANTIATED. The Military Police Complaints Commission makes no finding regarding the allegation that CPO2 MacKinnon improperly sought to determine who reported the incident to the Canadian Forces National Investigation Service.

- *In the notice of action, the CFPM stated the following: “No identifiable action required.”*

6.6 Allegation #6: Failure of the CFNIS to Investigate the Incident

77. The position taken by the complainants is that the CFNIS were obligated to take on the investigation of the March 10, 2021 incident. However, as discussed above in connection with allegation #3, this is not what the 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 MP unit where the latter is considered capable of appropriately dealing with the case.

78. Clearly there was a requirement to report the incident to the CFNIS. As noted above, this 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 relevant MP unit.

79. In his interview with the MPCC investigators, Capt Foster articulated his satisfaction that the incident could be addressed by the MP 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 (impaired operation of a motor vehicle) were not met. On the service discipline side, Capt Foster reasoned that the MPU commanding officer could hold a unit disciplinary investigation and had the authority to either lay NDA charges or take administrative action.

80. The evidence indicates that Capt Foster considered the various possible courses of action, and their relative suitability, before reaching a conclusion not to investigate. Moreover, Maj Périard, the Deputy CO of CFNIS, agreed with that course of action.

81. 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.

82. As Capt Foster took charge of the issue on behalf of the relevant CFNIS regional office, WO Evershed bears no responsibility for the decision taken regarding the investigation of the incident involving X.

Finding #6:

The Military Police Complaints Commission finds that the allegation that Capt Foster and WO Evershed of CFNIS failed to investigate the incident involving X is NOT SUBSTANTIATED.

- *In the notice of action, the CFPM stated the following: “No identifiable action required.”*

VII Observations

83. The MPCC investigation of this complaint, reveals significant problems with unit morale and cohesion at this MP detachment. The complainants and other rank-and-file members of the detachment demonstrated mistrust of the unit leadership. In the absence of information – which was withheld for privacy reasons – the complainants and other

frontline members of the detachment believed that X received preferential treatment by the detachment leadership. They readily assumed that the leadership had chosen to conceal the incident from the CFNIS and from CF MP Group Professional Standards, which turned out not to be the case.

84. In a meeting on April 22, 2021, a week before this complaint was filed with the MPCC, Sgt Mongraw told his superiors that he felt that he was being “railroaded”, made the subject of a “witch-hunt”, and was being singled out for blame for “toxicity” within the detachment.

85. In addition to the complainants, the MPCC interviewed six other non-commissioned members of the detachment, plus another one from the CFNIS regional detachment. Nine of these ten Military Police members indicated that they believed that X had received preferential treatment in this matter, while the tenth was uncertain. They stated that had the incident involved a corporal – and especially a male one – the case would not have been handled so leniently. By contrast, all MPs of the rank of warrant officer and above who were interviewed rejected the notion that X received preferential treatment. This stark divergence of perception between these two groups suggests a certain lack of trust in the unit leadership by the rank-and-file members.

86. The distrust went beyond this case. One sergeant not involved with the complaint told the MPCC there was an “us versus them” attitude among the junior ranks toward the unit chain of command. He added that as “the corporals started distrusting everyone [the work environment] became toxic”. For this sergeant, the problem was reflected in the fact that the number of members who applied for voluntary release had “skyrocketed”.

87. While the sergeant believed that many of the more disaffected members have since left the unit, the above information on the state of cohesion and morale within the MP detachment remains concerning.

Recommendation #3:

The Military Police Complaints Commission recommends that the Canadian Forces Provost Marshal consider conducting an assessment of the MP Detachment to identify any ongoing issues with the state of morale and cohesion within the unit.

- *In the notice of action, the CFPM stated the following: “Actions already taken: Since the time of the incidents in question, there has been significant changeover of personnel of all ranks and including new senior leadership. The current state of the unit reflects an effective unit demonstrating the right level of police supervision, accomplished through quality assurance and active supervision of persons involved in policing duties and functions. There is no value in the conduct of a targeted assessment of this unit at this time.”*
- *The MPCC considers this recommendation as being accepted.*

Ottawa, December 20, 2023

Original signed by:

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

Original signed by:

Ron Kuban, Ph.D., CD
Commission Member

VIII Glossary of Terms / Acronyms Used Throughout Report

AJAG	Assistant Judge Advocate General
ASD	Approved screening device
Capt	Captain
CCIR	Commander's Critical Information Requirement
CF MP	Canadian Forces Military Police
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 nd Class
DO	Duty Officer
FYSA	For your situational awareness
GO	General Occurrence
Maj	Major
MP	Military Police
MPCC	Military Police Complaints Commission
MPU	Military Police Unit
MWO	Master Warrant Officer
NDA	<i>National Defence Act</i>
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
UDI	Unit Disciplinary Investigation
USM	Unit Sergeant-Major
WO	Warrant Officer