



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 the Complainant Regarding the Conduct
of Maj Roland Russell and
CPO2 Dean MacKinnon of a Military Police Unit

File: MPCC 2022-001
Ottawa: December 20, 2023

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I Summary

1. This conduct complaint relates to the handling of a Military Police (MP) unit's investigation of one of its own members.
2. A newly posted Military Police (MP) Officer, X¹, 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 Military Police Unit (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 member who responded to the call drove X and her children home.
3. The commanding officer of the MP Unit elected to proceed with administrative measures instead of service offence charges.
4. Believing the MP Unit leadership sought to cover up the incident and showed favouritism towards X, some members of the MP Unit filed an interference and a conduct complaint against the MP Unit commander and the Unit sergeant major.
5. About three months later, MP members conducted a welfare check on X at her residence, following a report from a neighbour that X's children were playing outside unsupervised, while X was asleep in her home. The responding MP members completed the welfare check and determined that no action was required. However, based on background information provided by the neighbour and by the local child welfare authority, one of the MP members opened an investigation file concerning X for child abandonment and failing to provide the necessities of life her children.

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

6. The MP investigator discussed the case with the regional duty officer for the Canadian Forces National Investigation Service (CFNIS). At that point, the duty officer determined that there was insufficient evidence to warrant CFNIS taking over the investigation.
7. The MP investigator's superior, a Warrant Officer, suggested that the MP investigator take a 'tactical pause' to gather more information before proceeding with certain investigative steps then being contemplated by the investigator. The Warrant Officer further indicated that the investigation, absent CFNIS intervention, should be transferred to the MP Unit's General Investigation Section.
8. However, when the investigator went back to the CFNIS duty officer with additional information regarding X's parenting, the CFNIS decided to take over the investigation.
9. The interventions by the Warrant Officer led to a further interference complaint being filed by members of this MP Unit.
10. Subsequently, the Military Police Complaints Commission (MPCC or Commission) Chair declared a joint public interest investigation into the initial interference and conduct complaint as well as the more recent interference complaint.
11. The complainant, a family member of some of X's children, became aware of the earlier complaints by the MP Unit members through a news media report, and contacted the MPCC to discuss her concerns. This eventually led to the complainant filing the present conduct complaint based on similar allegations to those raised by the relevant MP members regarding the MP Unit leadership's handling of these incidents involving X. The complainant has alleged that the MP Unit leadership did not take adequate law enforcement or disciplinary measures against X, and that they sought to cover up X's alleged misconduct.

12. Following the joint investigation of all of these complaints, the MPCC concluded that both of the allegations in this conduct complaint are not substantiated.

13. Regarding the initial impaired driving incident, the MP Unit commanding officer made a legitimate and good faith decision to impose administrative measures on X, rather than pursue charges. In the case of the later child abandonment investigation, the decision not to lay charges was taken by the CFNIS and not by the MP Unit leadership.

14. The MPCC further determined that there was no attempt at a cover up in favour of X. The appropriate authorities external to the MP Unit, namely, the CFNIS and the office of MP Professional Standards were notified of the initial incident involving X in a timely fashion. While the MP Unit leadership did attempt to dissuade members of the MP Unit from disseminating information about the incident to persons outside the Unit, this was a legitimate effort to respect appropriate channels of communication and to safeguard highly sensitive personal information concerning X which the MP Unit had a duty to protect.

15. In response to the MPCC's Interim report in this matter, the Canadian Forces Provost Marshal (CFPM) noted that, as there are no recommendations in this report, no identifiable action was required on this matter.

II Findings

Finding #1:

The Military Police Complaints Commission finds that the allegation that the MP Unit leadership's law enforcement and disciplinary response to X's actions was inadequate is NOT SUBSTANTIATED.

Finding #2:

The Military Police Complaints Commission finds that the allegation that the MP Unit leadership sought to cover up alleged misconduct by X is NOT SUBSTANTIATED.

III The MPCC Public Interest Investigation Process

16. This complaint was investigated jointly with MPCC public interest files 2021-012, 2021-017 and 2021-026, which are addressed in separate reports.

17. Initial disclosure from the Canadian Forces Provost Marshal for all files related to this public interest investigation was received by the MPCC on May 8, 2021. The final item of disclosure was received on April 20, 2022. Twenty-five witnesses were interviewed between January 20, 2022 and March 25, 2022. One of the witnesses was re-interviewed on September 6, 2022.

18. In assessing the various allegations comprising this complaint, the MPCC applies the civil law standard of proof on a balance of probabilities – that is, 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

19. In the January 18, 2022, with the MPCC Registry Officer, the complainant expanded on her complaint. The information was put into a note to file, which reads in part as follows:

During a conversation with the Commission, [the Complainant] explained that she was concerned that [X's children] were returned to X, and she was worried that X was drinking again. She stated that the Military Police have not handled the custody matter properly and that they were covering for X by transferring her from _____ to _____. [The Complainant] further indicated that [Children's Aid Society (CAS)] is now engaged and that initially, they were not, because there were no charges and because the MP's insisted that the [Military Family Resource Centre (MFRC)] was handling the situation. [The Complainant] took issue with the length of time for charges to be laid against X [...] and wanted to know why the children were returned to the mother. [The Complainant] indicated that she does not trust the MPs and they are covering up for her [...]

20. The MPCC understands the complainant’s specific allegations to be as follows:

Allegation #1: That the law enforcement and disciplinary response to X’s actions by Maj Russell and CPO2 MacKinnon were inadequate.

Allegation #2: That the Military Police Unit leadership – the Commanding Officer, Maj Roland Russell, and the Sergeant-Major, CPO2 Dean MacKinnon – sought to cover up X’s misconduct.

21. The complainant’s concerns regarding custody of the children and X’s transfer from Canadian Forces Base Borden are beyond the scope of this report. The Military Police are not responsible for determining custody of children, and the decision to transfer X is an act of administration and not a policing duty or function which can be the subject of a conduct complaint under the *National Defence Act* (NDA) Part IV.

V Factual Background to Complaint

Name of person involved in file	Relationship to file
X	Military Police Officer involved in the underlying incidents whose handling are the basis of this complaint.
Family Member	Complainant
Cpl Patrick Bain ²	MP Member
Sgt Daniel Mongraw	MP Member
Cpl Monty Wheeler	MP Member
Maj Roland Russell	MP Officer/Subject
CPO2 Dean MacKinnon	MP Member/Subject
WO Jeffrey Eves	MP Member
Capt Evan Foster	Officer Commanding regional CFNIS Detachment
Maj Shreve	CF MP Group National Duty Officer on the night of the underlying incident.
Maj Yue-Devoe	MP Officer in charge of CF MP Group Professional Standards.

² All ranks in this report are those of the individuals at the time of the incident.

22. On March 10, 2021, X, a newly posted Military Police officer was involved in an incident where she attempted to drive her and her children home from a restaurant while she was apparently impaired. She was prevented by bystanders from getting into her vehicle. 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. Cpl Patrick Bain attended the scene. 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. Cpl Bain ended up driving X and her children home.

23. Cpl Bain was directed by his superior, Warrant Officer (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)).

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

25. Believing that the MP Unit leadership had tried to cover up the March 10, 2021 incident involving X, and had given her preferential treatment by not charging her, a joint conduct and interference complaint regarding the handling of this incident was filed with the MPCC on April 30, 2021 (MPCC 2021-012 and 2021-017). These complaints were made by Cpls Bain and Wheeler and by Sgt Mongraw.

26. On June 12, 2021, Cpl Wheeler and Sgt Mongraw conducted a welfare check on X at her residence. X’s neighbour had contacted the MP Unit because she had noticed that X’s young children were playing outside unsupervised while X was asleep inside her house. The neighbour and her husband had some difficulty waking X up and noted that she seemed disoriented. X was known to have a problem with alcohol and had just recently completed a rehabilitation program.

27. Cpl Wheeler and Sgt Mongraw completed the welfare check on X, and no action against X was taken. X's children were not deemed to be in any imminent danger. However, a new MP investigation file was opened regarding X related to possible child abandonment and failure to provide the necessities of life for a child, based on information provided by the neighbour who instigated the welfare check.
28. Cpl Wheeler briefed the regional duty officer of the Canadian Forces National Investigation Service (CFNIS), however, the latter declined to take the case for investigation at that time.
29. Cpl Wheeler developed a plan which called for production orders to obtain records from the Ministry of Child and Family Development (MCFD) and security video from area liquor stores. On June 14, 2021, MP Warrant Officer (WO) Jeffrey Eves first reviewed the MP investigation file. He then sent an email suggesting a "tactical pause" in the investigation of X for child abandonment and failure to provide the necessities of life. WO Eves subsequently indicated, in a phone call with Sgt Mongraw (Cpl Wheeler's supervisor), his intention that the investigation be transferred to the General Investigation Section of the MP Unit.
30. In the meantime, Cpl Wheeler continued to gather information regarding X's behaviour as a parent, both from her neighbours and from MCFD staff. The further information gathered by Cpl Wheeler led CFNIS to revisit its earlier decision and to take jurisdiction over the child abandonment investigation. Ultimately, no charges were laid against X.
31. On July 14, 2021, Cpl Wheeler submitted an interference complaint (MPCC 2021-026). Sgt Mongraw subsequently joined as a co-complainant. Cpl Wheeler and Sgt Mongraw alleged interference on the part of WO Eves for suggesting a "tactical pause" in the investigation of X and the transfer of the investigation to the General Investigation Section of the MP Unit.
32. On August 3, 2021, the Chair of the MPCC issued a decision to have a public interest investigation (PII) into allegations brought forth in MPCC files 2021-012,

2021-017 and 2021-026. That decision was subsequently made public on the MPCC website.

33. On September 24, 2021, Global News reported on this matter in a story entitled, “Military police watchdog probing whether investigators altered report, interfered in case”. The Complainant, who is a family member of some of X’s children, saw this news story and she was troubled by what she heard in the report. She contacted the MPCC, and ultimately filed a conduct complaint in January 2022.

34. On March 23, 2022, the Complainant’s complaint was designated as a public interest investigation and joined with the existing investigation regarding MPCC 2021-012, 2021-017 and 2021-026. As this present complaint overlaps the previous complaints, and was investigated jointly with the earlier complaints, the same evidence will be considered in addressing this complaint.

VI Evidence, Analysis and Findings

6.1 Allegation #1: Inadequate Law Enforcement or Disciplinary Response to X’s Conduct

35. In MPCC 2021-012 and 2021-017, it was alleged that the MP Unit leadership pressured Cpl Bain to not recommend charges under the *Code of Service Discipline*.

36. Yet, on interview with MPCC investigators, Cpl Bain claimed that he had no recollection of being told that he could not recommend charges.

37. Nor was there any subsequent attempt to have the charge recommendations removed from the Military Police investigation file. Cpl Bain’s last entry on the file for the shift was at 05:04 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 in his MPCC interview, 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*.

38. In a written decision of March 29, 2021, Maj Russell elected not to lay charges, but instead to impose administrative measures on X. This decision letter carefully considered the aggravating and mitigating circumstances in reaching its conclusion, and Maj Russell's decision was taken with the benefit of legal advice.

39. The administrative measures imposed took the form of a recorded warning with a six-month monitoring period. X was also removed from her position with the MP Unit and ordered to report to medical services of the Canadian Armed Forces for assessment. Maj Russell also left open the possibility of further action by the CFPM's office of Professional Standards, including suspension of X's Military Police credentials.

40. There is no evidence to indicate that Maj Russell acted unreasonably or in bad faith where he exercised his command discretion in favour of imposing administrative measures instead of laying charges.

41. With regard to the child abandonment investigation commenced by Cpl Wheeler on June 12, 2021, this investigation was taken over by the CFNIS on June 14, 2021. On September 8, 2021, the Officer Commanding the regional CFNIS detachment sent a copy of the CFNIS's investigation report and a covering letter to Maj Russell (and others) indicating that the CFNIS investigation determined that there was insufficient evidence to support charges of child abandonment or failing to provide the necessities of life against X. The CFNIS is independent of the MP Unit, having a separate chain of command. As such, the September 8, 2021 decision not to lay charges against X cannot be attributed to the subjects of this complaint, Maj Russell and CPO2 MacKinnon.

Finding #1:

The Military Police Complaints Commission finds that the allegation that the MP Unit leadership's law enforcement and disciplinary response to X's actions was inadequate is NOT SUBSTANTIATED.

6.2 Allegation #2: MP Unit Leadership sought to Cover Up X's Alleged Misconduct

42. In MPCC complaint files 2021-012 and 2021-017, it is alleged that Maj Russell and CPO2 MacKinnon sought to cover up X's alleged misconduct by failing to notify CFNIS and the office of Professional Standards of the March 10, 2021 incident, and by dissuading MP Unit members from reporting the incident to persons outside of the MP Unit.

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

44. In his interview with MPCC investigators, WO Eves indicated that he made a call to the regional CFNIS officer commanding, Capt Foster, at 20:32 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 in his MPCC interview.

45. Later that evening, at 22:00 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.

46. As indicated above, the 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 the office of Professional Standards by email from the MP National Duty Officer, Maj Shreve, at 01:52 hrs, Ottawa time, on March 11, 2021. Receipt on behalf of Professional Standards was acknowledged by the Deputy Commander CF MP Group in an email sent at 02:22 hrs. The next day (March 12, 2021), a new Professional Standards file was opened, and Professional Standards followed the matter from that point until its conclusion.

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

48. As for the allegation that Maj Russell and CPO2 MacKinnon warned MP Unit members from reporting the incident to persons outside the Unit, two important considerations should be borne in mind.

49. First of all, as noted above, given the fact that CFNIS and Professional Standards had been notified of the incident involving X in a timely fashion, this warning cannot be understood as seeking to conceal the underlying incident involving X. Rather, the MPCC considers this warning as direction that the flow of information from the MP Unit to CFNIS and Professional Standards, or other external actors, follow the appropriate channels of communications, and that the information be directed to the appropriate personnel within those other offices.

50. The warning also represents an effort to highlight the legitimate privacy rights of X, and to remind MP members of the “need-to-know” principle which always applies in respect of the dissemination of sensitive or protected information.

51. As for any alleged lack of transparency within the MP Unit, the March 10, 2021 incident involved highly sensitive personal information regarding 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, and how it would be handled. But such interest or curiosity does not translate into a legitimate need to know.

52. The MP Unit leadership had a duty to prevent unnecessary dissemination of information about the incident in question, and warning Unit members not to disclose such information outside of the Unit was a legitimate means of accomplishing this.

Finding #2:

The Military Police Complaints Commission finds that the allegation that the MP Unit leadership sought to cover up alleged misconduct by X is NOT SUBSTANTIATED.

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

53. 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 28, 2023 and was transmitted to the CFPM, the Chief of the Defence Staff and the Minister of National Defence.

54. 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.

55. In his Notice of Action, the CFPM noted that there were no identifiable actions in relation to the findings made by the MPCC. This Final Report is issued in conformity with subsection 250.53(1) of the NDA.

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

VII Glossary of Terms / Acronyms Used Throughout Report

Capt	Captain
CAS	Children's Aid Society
CCIR	Commander's Critical Information Requirement
CF MP	Canadian Forces Military Police
CFNIS	Canadian Forces National Investigation Service
CFPM	Canadian Forces Provost Marshal
Cpl	Corporal
CPO2	Chief Petty Officer, 2 nd Class
Maj	Major
MCFD	Ministry of Child and Family Development
MFRC	Military Family Resource Centre
MP	Military Police
MPCC or Commission	Military Police Complaints Commission
NDA	<i>National Defence Act</i>
PII	public interest investigation
Sgt	Sergeant
WO	Warrant Officer