



Military Police
Complaints Commission
of Canada

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

Président

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Distribution List

**Our File: MPCC-2021-012, 2021-017 & 2021-026
Decision to Conduct a Public Interest Investigation**

In accordance with subsection 250.38 of the *National Defence Act* (NDA), I have considered whether it is in the public interest to cause the Military Police Complaints Commission of Canada (MPCC or Commission) to conduct a Public Interest Investigation (PII) into these complaints. This decision sets out the reasons for my conclusion that a PII is advisable in these cases.

At issue are three related complaints: two interference (MPCC 2021-012 & 2021-026) and one conduct (MPCC 2021-017). Both the 2021-012 and 2021-017 complaints are derived from the same facts, comprise the same allegations, and pertain to the same Military Police (MP) investigation: General Occurrence (GO) file #2021-5616. A further interference complaint – MPCC 2021-026 – relates to a different MP investigation (GO #2021-15730). However, this MP investigation file involves the same subject as GO #2021-5616, and the complainants in this latest MPCC complaint are also complainants for two earlier complaints to the MPCC. Given these common elements, the three complaints described above are being addressed jointly for the present.

Due to serious and credible concerns about possible reprisals, the MPCC is not using the names of the complainants in its correspondence on these files. However, the MPCC notes that the complainants have the necessary standing to make their respective complaints.

A review of the three complaints identifies a total of six subjects at this time.

The fact that someone has been identified as a subject of the complaint does not mean that the Commission has concluded or has reason to believe that there were deficiencies in their conduct. Being identified as a subject is designed to ensure that those whose actions have been called into question receive the appropriate procedural rights.

Canada

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The Commission will only make findings and recommendations regarding the merits of the complaints in its Final Report, after conducting a thorough and fair investigation, allowing all parties to provide information and explanations regarding the events and actions at issue in these complaints. The subjects of the complaint identified by the Commission will be notified of the complaint and of my decision to cause the Commission to conduct a PII.

Factual Background

MPCC 2021-012 & 2021-017

On March 10, 2021, ■, a newly appointed MP Operations (Ops) Officer at a local Canadian Forces Base (CFB) MP Detachment (Det) was caught trying to drive ■■■■■ and ■■■ three children home from a restaurant while ■■■ was impaired.

Other patrons at the restaurant, followed up by the local Police Service and a CFB MP member, intervened to prevent this. ■ had loaded ■■■ children into the car but was prevented from getting into the driver's seat. According to the complaint, ■■■ keys were in the ignition, and ■■■ stated that ■■■ intended to drive ■■■■■ and ■■■ children home.

According to the complaint, the local Police left the MPs to deal with the case, as a professional courtesy. According to the MP investigation file, General Occurrence (GO) file, the local police had determined that the elements for a charge of having care and control of a vehicle while impaired, pursuant to section 320.14 of the *Criminal Code* were not present.

After several unsuccessful attempts, ■ blew a "fail" on a voluntary alcohol-screening device (ASD) test. The responding MP drove ■ and ■■■ children home. The local Police provided a statement to the MP on the incident.

The assigned MP members were directed to have the file completed as much as possible by the end of shift. The lead investigator recommended the following NDA charges: Drunkenness (s. 97(2)(b)) and Conduct to the Prejudice of Good Order and Discipline (s. 129(3)).

The following morning, the lead investigator was directed to remove all personal opinion from his (GO file) narrative, and it was noted that the investigator's narrative and "will-say" statement had been altered.

It is further alleged that, on a number of occasions in the days following the event, the investigator was summoned before the MP Detachment commanding officer (CO) and the Detachment sergeant-major (SM) and informed that there would be no charges under the NDA, and that the matter would be dealt with administratively.

The investigator was also informed that, if the foregoing decision was disclosed to a third party, the investigator would be severely reprimanded.

The complaint goes on to note that there was no notation on the MP file to indicate that the matter was ever referred to the Canadian Forces National Investigation Service (CFNIS) who has jurisdiction over investigations of offences by MPs in accordance with applicable MP Orders.

Nor was there any indication that the Office of Professional Standards (PS) of the Canadian Forces Provost Marshal (CFPM) was advised. An MP member from the Detachment took it upon themselves to report the incident to CFNIS ■■■.

Subsequently, the SM allegedly started calling in each MP one by one, in an effort to find out who had reported the event to CFNIS ■■■. The SM allegedly threatened those who had put in for their release to be posted out of the geographical area.

The complainants have asked for confidentiality and sensitivity in the handling of these complaints, and also have requested that a public interest investigation (PII) be undertaken by the MPCC with respect to the complaints.

MPCC 2021-026

This complaint concerns alleged interference with a child welfare investigation in respect of ■■■ (GO file #2021-15730).

A welfare check on ■■■ by MP members was made on June 13, 2021, after being contacted by a neighbour who was concerned about apparent neglect of ■■■ children.

It was noted by the neighbour that ■■■ three children, all under the age of seven, had been left outside unattended for an extended period of time. The neighbour reported that both she and the children tried to wake ■■■ up, without success. ■■■ eventually woke up when told by the neighbour's husband that the MPs were on their way.

The MPs arrived to find ■■■ herding ■■■ children indoors. The MPs claim to have noted "subtle signs of neglect" of the children but did not believe at that time that the children were in immediate danger, and so they did not think there was sufficient justification to remove the children from ■■■ care. The MPs observed that ■■■ seemed hungover.

After the welfare check, the MPs contacted the neighbour who advised that ■■■ seemed intoxicated that morning, and that ■■■ had just completed a rehabilitation program a few days before. ■■■ parents looked after the children while ■■■ was away for the program. However, the parents had just left on the morning of the day of the MPs' welfare check. The MPs reported the incident to CFS (Child and Family Services), who advised the MPs that this was not the first time that ■■■ had left the children unattended in this fashion. CFS further advised that they would be doing random checks on ■■■ and ■■■ children three times daily.

The MPs in question also reported the matter to CFNIS ■■■, however they declined jurisdiction because they did not consider it to be sufficiently serious to trigger CFNIS jurisdiction, and also because ■■■ was no longer an MP at this point.

At the end of their shift, it was learned that the MPU's Deputy Commanding Officer (DCO) had contacted ■■■ family to advise them of the welfare check.

The MPs involved in the case continued with the investigation, conducting an interview with the two neighbours. Through this interview, the MPs became apprised of multiple, serious instances of apparent child neglect. These were largely related to ■■■ incapacity, due to chronic alcohol abuse, to properly attend to the children's needs.

Upon returning for work the next day (June 14, 2021), one of the MPs was advised by his chain of command that they had discussed the case and concluded there was no offence. The Police Operations Warrant Officer (Pol Ops WO) who had been the direct subordinate of ■■■, advised the MP to take a "tactical pause" from the investigation. Subsequently, one of the MP members was told by the Pol Ops WO that the investigation would be taken away from the Patrols Section of the MPU and transferred to the General Investigation section.

In the meantime, one of the MPs concerned, in consultation with some of his colleagues, prepared and sent an email replying, via his supervisor, to the Pol Ops WO's direction to take a "tactical pause". In this message, the MP refused to pause the investigation in light of its seriousness and indicated that he would only stop his investigation if the CFNIS took up the investigation.

CFNIS ■■■ ultimately did take over the investigation, when the MP concerned contacted them and requested that they reconsider their earlier decision in light of the information obtained by the MP from ■■■ neighbours. Shortly after this occurred, it was learned that ■■■ was found to be intoxicated and ■■■ children were removed from ■■■ care.

On July 13, 2021, the MP learned that he was the subject of a Unit Disciplinary Investigation (UDI) for insubordination, apparently in connection with the above email. The MP alleges that the UDI is retaliation for his previous MPCC complaint – MPCC 2021-017 (see above). Retaliation or reprisals against complainants under NDA Part IV is expressly prohibited by the Act (NDA ss. 250.18(3) and 250.19(3)).

Considerations Relevant to the Decision to Conduct a Public Interest Investigation

Subsection 250.38(1) of the NDA provides that the MPCC Chairperson can cause the Commission to conduct a PII "[i]f at any time the Chairperson considers it advisable in the public interest". Such legislative language allows the Chair a broad discretion with regard to invoking her public interest (PI) jurisdiction in a given case.

As broad as this discretion may be, some guidance is available from a purposive reading of the legislation. Examining the PI provisions in the context of the statutory MP complaints process as a whole provides some guidance as to the legislative intent behind the PI authority. There are two salient features which distinguish a PII from their regular treatment of a complaint file, particularly a regular conduct complaint:

- 1) the potential to bypass the CFPM in the process for dealing with a conduct complaint; and
- 2) the potential for the complaint to be addressed by the MPCC in a more public manner (PII final reports are made public by the MPCC; there is also the possibility of calling a public hearing).

One can infer from this that the legislator anticipated that there may be cases where public confidence would be best served by a more independent and transparent procedure.

With this objective in mind, the following factors appear to be most relevant:

- 1) The inherent seriousness of the alleged misconduct;
- 2) The implication of systemic problems in military policing (related, e.g., to policies, training, leadership, etc.);
- 3) Prior public/media attention (or, presumably, the likely prospect of it) regarding the complaint or the surrounding circumstances; or
- 4) Specifically in the case of conduct complaints, factors regarding the parties to the complaint, or its procedural history, which suggest that it might be more fair, credible, purposeful, or otherwise desirable and in the public interest for the complaint to bypass the CFPM and be dealt with by the MPCC directly and immediately.

I will now turn to a consideration of the present complaint in light of the four points described above.

Qualification for Public Interest Treatment

1) Inherent Seriousness

The allegations above speak to a deliberate attempt by the leadership of an MP Det to cover up the misconduct of one of its officers, and to provide that officer with special treatment due to their status. Moreover, in the case of MPCC 2021-012 and 017, while ultimately advised of the underlying incident for those files, the regional CFNIS Detachment allegedly failed to intervene and take control of the investigation of GO #2021-5616, notwithstanding the CFNIS's mandate to investigate all offences by MP members.

It is alleged that the MP Detachment leadership went to considerable lengths to pressure and intimidate its members into cooperating with the alleged cover up.

Such allegations of cover-up and special treatment based on personal status go the heart of public confidence in military policing. As such, this complaint must be considered to be quite serious indeed.

2) *Systemic Issues*

These complaints raise questions about the integrity of the Security and Military Police Information System (SAMPIS), in that it is alleged that substantive changes have been made to an MP investigator's file notes without the knowledge or consent of the author/investigator. Moreover, SAMPIS does not allow for easy tracking of what changes are made and by whom. This problem has surfaced in numerous cases over the years. It is an issue that has the potential to undermine effective oversight of military policing.

3) *Public/Media Attention*

While there does not at this time appear to be any media coverage of these events, in the case of the MPCC 2021-012/017 complaints it is alleged that the incident of March 10, 2021 (GO 2021-5616) is known throughout local law enforcement groups. Thus, this factor of public awareness somewhat favours a public interest designation, though less so than if the story had been picked up by the news media.

4) *Process Considerations*

This consideration relates, in part, to situations where the complaint is about issues of some sensitivity or involving senior members of the chain of command. A complaint may call into question orders and decisions of high-ranking personnel. However, the concerns raised in these complaints are confined to a local base MP Detachment and a regional CFNIS Detachment.

There are, however, other process-based considerations. Timeliness and efficiency strongly favour a public interest designation by the MPCC. Otherwise, it might be necessary for the MPCC to delay its treatment of the interference complaint while the CFPM addressed the conduct complaint in the first instance in accordance with the normal, default procedure. With a PI designation by the MPCC Chairperson, the conduct and interference complaints may be addressed by the MPCC sooner and at the same time. In this connection, it should be remembered that the MPCC is enjoined by section 250.14 of the NDA to act as expeditiously as considerations of fairness permit.

Another benefit of a PI designation is that it avoids the possible situation where different conclusions are reached by the MPCC and the CFPM.

Given the above considerations of timeliness and coherence of results, these process-based factors strongly favour a public interest designation.

Conclusion

Given the circumstances of this case and the above considerations, I have concluded that it is advisable in the public interest to cause the Commission to conduct a Public Interest Investigation into this complaint. The Commission will now notify the subjects identified and will begin its investigation of the matter.

DATED at Ottawa, Ontario, on this 3rd day of August 2021

Original signed by

Hilary C. McCormack
Chairperson

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