



Military Police  
Complaints Commission  
of Canada

Chairperson

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

Président(e)

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March 23, 2022

Distribution List

**Our File: MPCC 2022-001**  
**Decision to Conduct a Public Interest Investigation**

## Overview

This Military Police (MP) conduct complaint was received by the Military Police Complaints Commission (MPCC) on January 7, 2022. Part of the complaint relates to the handling of misconduct allegations against an MP officer (MPO), by members of the MPO's MP unit (MPU) leadership. In essence, the complainant alleges that the MPU leadership (specifically, the MPU Commanding Officer (CO) and sergeant-major (SM)) gave preferential treatment to the MPO. The misconduct in question related to the abuse of alcohol by the MPO to the detriment of the MPO's provision of childcare. The complainant in this complaint is a relative of the children in question.

This conduct complaint raises similar concerns with the handling of the MPO's conduct by this MPU leadership as those raised in files MPCC# 2021-012, 2021-017 and 2021-026, which became the basis of a MPCC Public Interest Investigation (PII) under s. 250.38 of the *National Defence Act* (NDA) by decision letter of the MPCC Chairperson dated August 3, 2021. Given the similarity of the issues and subjects of this latest complaint to these earlier complaints, the MPCC Interim Chairperson has determined, pursuant to NDA s. 250.38(1), that the present complaint should also form part of the present PII regarding these NDA Part IV complaints.

## Background

### *Attempted Impaired Driving Incident*

On March 10, 2021, a newly posted MPO was prevented from driving home with the MPO's young children after a meal at a restaurant where other patrons suspected the MPO of being intoxicated.

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The local police initially responded to this situation at the restaurant parking lot. Since the person at the centre of this incident was an MP member, the local police service contacted the local MPU, which resulted in the dispatch to the scene of MP A. The local police officer handed that matter over to MP A, noting that the scenario did not appear to fall within the scope of the criminal offence of having “care and control” of a vehicle while impaired (*Criminal Code*, s. 320.14, read with s. 320.11).

After several unsuccessful attempts, the MPO blew a “fail” on a voluntary alcohol-screening device test administered by MP A who drove the MPO and the children home.

The MP members assigned to the file (MP General Occurrence file (GO) # 2021-5616) were directed to have the file completed as much as possible by the end of their shift. The lead investigator recommended the following NDA (Part III: Code of Service Discipline) charges: Drunkenness (s. 97(2)(b)); and Conduct to the Prejudice of Good Order and Discipline (s. 129(3)).

The MPU leadership (the MPU commander and the unit sergeant-major) determined that charges would not be laid, and that the matter would be dealt with administratively.

### *Child Welfare Investigation*

Due to a complaint from a neighbour, on June 12, 2021, MPs B and C conducted a welfare check at the home of the MPO. The neighbour noted that the MPO’s three children, all under the age of seven, had been left outside unattended for an extended period of time. The neighbour reported that both ■■■ and the children tried to wake the MPO up, but without success. The MPO eventually woke up when told by the neighbour’s husband that the MPs were on their way.

MPs B and C arrived to find the MPO herding the 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. As such, they did not think there was sufficient justification to remove the children from the MPO’s care. The MPs observed that the MPO seemed hungover. For the purposes of this welfare check, MP B opened MP investigation file General Occurrence (GO) # 2021-15702.

After the welfare check, the MPs contacted the neighbour who advised that the MPO seemed intoxicated that morning, and that ■■■ had just completed a rehabilitation program a few days before. The MPO’s parents looked after the children while ■■■ was away for the program. However, the parents had just left that morning when the neighbour contacted the MPs. The MPs reported the incident to the local Child and Family Services authority (CFS), 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 the MPO and the MPO’s children three times daily. MP B opened another MP file, GO# 2021-15730, to deal with ongoing child welfare concerns involving the MPO.

MPs B and C also reported the matter to the regional CFNIS detachment, however the latter declined jurisdiction because they did not consider it to be sufficiently serious to trigger CFNIS jurisdiction, and also because the MPO was technically no longer an MP at that point (the MPO’s MP credentials having been suspended).

MPs B and C 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 MPO's incapacity, due to chronic alcohol abuse, to properly attend to the children's needs.

Upon returning for work on June 14, 2021, MP B was advised by the warrant officer in charge of police operations (Pol Ops WO) that the MPU chain of command had discussed the case and concluded there was no offence. He was further advised by the Pol Ops WO to take a "tactical pause" from the investigation. The Pol Ops WO subsequently indicated to MP B that it was intended to take the investigation away from the Patrols Section and transferred to the General Investigations Section.

However, in response, MP B indicated that he had reasonable grounds for the following *Criminal Code* charges: Failure to Provide the Necessaries of Life (s. 215(2)(a) and Child Abandonment (s. 218). In an email sent via MP C (MP B's supervisor), MP B refused to pause the investigation, citing a number of facts obtained from his interview with the MPO's neighbour which, in MP B's consideration, pointed to the seriousness of the situation. MP B further indicated that he would only stop the investigation if the CFNIS took over the investigation.

The local CFNIS detachment 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 the MPO's neighbours. Shortly after this occurred, it was learned that the MPO was found to be intoxicated and the children were removed from the MPO's care.

### **The Complaint**

The present conduct complaint is based on the complainant's concerns with the children being in the MPO's custody while the MPO is continuing to abuse alcohol. The complainant is specifically concerned that the MPO's MP chain of command has facilitated or exacerbated this problem by covering up for the MPO by not charging the MPO for the misconduct and by facilitating the MPO's recent posting to the MPU from a different region.

It must be noted that certain aspects of the present complaint cannot be addressed as an MP conduct complaint under NDA Part IV.

In the first place, the MPs do not have direct control over child-custody arrangements. This is an issue for the courts and for local child welfare authorities (CFS). They could, however, have an indirect impact. By deciding not to lay charges – which is a police matter<sup>1</sup> – the chances of triggering intervention of child welfare authorities may have been diminished or delayed. The complainant in this matter has also argued that the MPU leadership more directly sought to prevent or forestall intervention by the CFS by maintaining to the latter that the local military base child and family services bureau (MFRC) was engaged and providing adequate support.

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<sup>1</sup> See: NDA s. 250.18(1) and the *Complaints About the Conduct of Members of the Military Police Regulations*, s. 2(1)(e) ("the laying of a charge"); and s. 2(1)(g) ("the enforcement of laws").

Secondly, while the MP chain of command may indeed be involved in the posting of its members, these and other employment decisions are considered to be administrative activities, rather than “policing duties or functions”, and therefore cannot form the basis of a conduct complaint under NDA s. 250.18(1) and the *Complaints About the Conduct of Members of the Military Police Regulations* (Regulations), s. 2(2).

Finally, the complainant sought to name the MPO as a subject of ■■■ complaint. However, the conduct of the MPO with which the complainant has taken issue is entirely private or personal in nature, rather than official MP policing activity. As such, in so far as the present conduct complaint is directed at the conduct of the MPO, this aspect of the complaint falls outside the definition of “policing duties or functions” in NDA s. 250.18(1) and s. 2 of the Regulations.

Based on my interpretation and understanding of the complaint, I would characterize the allegations (which, admittedly, overlap to some extent) as follows:

- 1) The subject MPs (the CO and SM of the MPU), attempted to cover up the MPO’s conduct;
- 2) The subject MPs’ law enforcement or disciplinary response to the incidents involving the MPO were inadequate; and
- 3) The subject MPs wrongly failed to charge the MPO.

The MPU CO and SM, at the time of the events in question, are considered subjects of this complaint.

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.

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.

### **Considerations Relevant to PII Determination**

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

As broad as this discretion may be, some guidance is available through a purposive reading of the legislation. Examining the PI provisions in the context of the MP complaints process as a whole provides some guidance as to the legislative intent behind it. When one compares the treatment of a complaint – and in particular a conduct complaint – under the PI provisions versus the default process, two key distinctions seem to stand out: 1) the potential to take over the investigation of the complaint from the CFPM; and 2) the potential for the complaint to be addressed by the MPCC in a more public manner. 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 these objectives in mind, the following factors (which are not necessarily exhaustive) have generally been recognized by the MPCC as relevant to decisions in favour of holding a public interest investigation:

- 1) The inherent seriousness of the alleged conduct;
- 2) Systemic implications of the complaint;
- 3) The involvement of senior personnel;
- 4) Public awareness of issues related to the complaint; or
- 5) Process considerations which suggest that it would be more fair, credible, coherent or efficient to deal with the complaint as a public interest case.

Not all of the above factors are at play in all cases. Those relevant to this complaint are discussed below.

#### *Seriousness and Possible Systemic Implications*

If true, the allegations above speak to a deliberate attempt by the leadership of an MP detachment to cover up incidents of misconduct by one of its members, and to afford to that MP special treatment on the basis of the latter's status. Such alleged behaviour strikes at a key element of the rule of law: equality before the law.

#### *Involvement of Senior Personnel*

The suitability of this complaint for PI treatment is also enhanced by the involvement of senior MP personnel at the local level, and the possibility that the MPU leadership's handling of the case reflects a systemic bias, such as, for instance, bias in favour of those of higher rank (the MPO was a senior member of the MPU), or of officers generally.

### *Process Considerations*

Timeliness, efficiency and coherence will be enhanced by dealing with this complaint as a public interest investigation.

As noted above, this conduct complaint raises many of the same concerns which gave rise to MPCC complaint files MPCC 2021-012, MPCC 2021-017 and MPCC 2021-026, which are all presently being addressed jointly by the MPCC by way of a PII. It may be noted that, while the second and third of these files are interference complaints, this does not preclude their overlapping with the present conduct complaint. Where an interference complaint is made against an MP, the impugned conduct forming the basis of the complaint or allegation can generally be expressed as a conduct deficiency in relation to one or more of the “policing duties or functions” listed in s. 2(1) of the Regulations. Additionally, improper interference with an MP investigation is also an MP conduct prohibition in its own right, pursuant to paragraph 4(i) of the *Military Police Professional Code of Conduct*.

There is also overlap among the subjects of these complaints. The subjects in this latest complaint – the CO and SM – are also named as subjects in two of the other files covered by this PII.

This overlap of allegations and subjects means that information can be gathered concurrently, and therefore in a more efficient and timely manner. While the interview phase of the joint PII for MPCC 2021-012, 017, and 026, is nearing completion, the extent of the overlap between these files and the present one – MPCC 2022-001 – is such that a considerable amount of the evidence already gathered will be useful in addressing MPCC 2022-001, and the need for any additional witness interviews to cover this latest complaint will be minimal.

By way of contrast, the use of the default conduct complaint procedure would require an initial investigation or other disposition by PS. Unlike the MPCC, PS would not be in a position to rely on information already gathered, and would therefore be starting from scratch. Still further delay would result if PS were, after taking this new complaint, to determine that their investigation of this complaint would need to be held in abeyance pending the completion of the MPCC’s joint PII into MPCC 2021-012, 017 and 026, or vice-versa.

Another process-based advantage of adding MPCC 2022-001 to the existing MPU PII relates to the coherence of the results. If the former were to be disposed of independently of the latter, and by different decision-makers, the possibility arises of conflicting results.

These process-based reasons – timeliness and coherence of results – thus strongly favour PI designation.

**Decision**

For the foregoing reasons, I hereby designate the present conduct complaint, MPCC 2022-001, as an MPCC Public Interest Investigation (PII), pursuant to NDA s. 250.38(1). I do further hereby join this PII to the ongoing PII proceeding concerning MPCC files 2021-012, 2021-017 and 2021-026, pursuant to the authorities granted to me under NDA s. 250.14 (informal and expeditious) and 250.15 (Chairperson's Rules).

DATED at Ottawa, Ontario, on this 23<sup>rd</sup> day of March 2022

Sincerely,

*Original signed by:*

Bonita Thornton  
Interim Chairperson

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