



Military Police
Complaints Commission
of Canada

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concernant la police militaire
du Canada

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Distribution List

Our File: MPCC-2020-013 (Registrar) - Decision to Conduct a Public Interest Investigation

1. In accordance with subsection 250.38 of the *National Defence Act*, 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 this complaint. This decision sets out the reasons for my conclusion that a PII is advisable in this case.

The Complaint

2. The conduct complaint was initiated by the Commission on September 10, 2020. The complainant is the Commission itself, as represented by its Registrar. This complaint concerns the conduct of two front-line Military Police members who interviewed witnesses, and determined whether and how to proceed with criminal or other charges. The other three subjects of the complaint are the two supervisors of the two front-line members, responsible for approving their investigation plans and the general direction of their activities in relation to the issues that had been brought to their attention, as well as the Officer Commanding of the Military Police Kingston Detachment.

3. The conduct complaint arises out of the interaction between two students at the Royal Military College of Canada (RMCC). A female Officer Cadet (OCdt) from the RMCC came to the Military Police Kingston Detachment to allege that she was being harassed by a male OCdt. She told the Military Police that she believed the male OCdt suffered from an obvious mental illness and posed a danger to her. In response to her personal safety concerns, it appears based on the available information that the female OCdt was told to seek a “peace bond”.

4. The male OCdt came to the Military Police Kingston Detachment to complain that he had given money to the female OCdt with the expectation that a romantic relationship would develop but this had not happened. The Military Police were able to observe his mental health issues but concluded that he should probably be charged with the offence of soliciting a sexual service. Six days later, the male OCdt attempted suicide. After a second suicide attempt, the male OCdt was put on life support and at last report remains on it.

5. In a subsequent interview with the female OCdt, the Military Police informed her that she should herself answer to a number of criminal charges, including sexual offences. She was not charged, but later made it clear she felt she was being blamed for the situation with the male OCdt. While the Military Police investigator concluded that no criminal acts were clearly identified in the relationship between the two Officer Cadets, the Military Police recommended that the female OCdt be charged, but the Crown declined to prosecute.

6. The actions of the five Military Police members raise the following questions:

- i. Whether the Military Police members who came into contact with a member of the Canadian Armed Forces who was suffering from a mental illness took reasonable steps in the circumstances to address the situation.
- ii. Whether Military Police members who were furnished with an allegation and evidence concerning a situation that appeared to amount to criminal harassment conducted a reasonable investigation into the matter.
- iii. Whether Military Police members who were told by a complainant that she feared for her safety from a man harassing her took reasonable steps in the circumstances.
- iv. Whether the investigation into sexual offences allegedly committed by the female OCdt was reasonably conceived and carried out.
- v. Whether Military Police supervisors provided adequate oversight concerning the mental health and personal safety issues as well as in both the criminal harassment and sexual offences investigations.

Actions taken to investigate and review the complaint

7. The subject-matter of this conduct complaint came to the attention of the Commission by means of an interference complaint. One of the Military Police members in the Kingston Detachment complained that a Military Police investigation into an alleged failure to report an attempted suicide at the RMCC was brought to a halt by a senior officer. The interference complaint is proceeding as a distinct investigation and has been delegated to a part-time Commission Member. The General Occurrence file concerning the alleged interference has been examined. In addition, the General

Occurrence files related to the Military Police investigations concerning the two Officer Cadets have been reviewed.

8. Subsection 250.26(1) of the *National Defence Act* indicates that in the normal course the Canadian Forces Provost Marshal (CFPM) is responsible for investigating conduct complaints at first instance. These investigations are carried out by the Office of Professional Standards. Should a complainant be dissatisfied with the CFPM's disposition of the complaint, they may request a review of that disposition by the Commission. Matters proceed differently when the Chairperson of the Commission calls for a PII. Subsection 250.38(5) of the *National Defence Act* indicates that the Provost Marshal will not be conducting the review at first instance of this conduct complaint. Instead, it is the Commission that will carry out the investigation at first instance.

Considerations Relevant to the Decision to Conduct a Public Interest Investigation

9. The Commission's authority to conduct a PII is anchored in the *National Defence Act* which gives me a very broad discretion to cause the Commission to conduct a Public Interest Investigation.

10. The MPCC Chairperson may decide at any time to conduct a PII into a complaint where it is advisable to do so, as per subsection 250.38(1) of the *National Defence Act*:

If at any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation, and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.

11. While the discretion is broad, I have taken into account the Commission's mandate and past practice when considering whether in a particular case a PII would be advisable in the public interest. When the MPCC conducts a PII, this differs from the regular conduct complaint review process in that the investigation unfolds in a more public manner. The Commission makes the entire Final Report public, along with the details of the information learned during its investigation, as well as the Commission's findings and recommendations about the complaint. The Commission is also able to provide updates to the public as the investigation unfolds.

12. In determining whether to cause the MPCC to conduct a PII, there are several considerations to bear in mind. Foremost among these is the MPCC's mandate to investigate complaints about the conduct of Military Police members and its aim, through its oversight of the complaints process, to promote and ensure the highest standards of conduct for Military Police members and to promote public confidence in the Military Police.

13. The decision of whether the public interest would be served by causing the MPCC to conduct a PII must be made on a case-by-case basis, in the context of each complaint. Nevertheless, it is helpful to examine the considerations taken into account in past decisions to conduct PIIs.

14. Drawing from the MPCC mandate and those past decisions, I consider the relevant public interest considerations to include:

- the nature and seriousness of the questions;
- whether the questions have the potential to affect public confidence in the Military Police or the complaints process;
- whether the questions raise systemic issues related to Military Police processes and policies;
- whether there has been prior public interest in the events manifested by the community;
- whether there is a need for a public and transparent investigation process due to the nature of the questions or other factors;
- whether the complaint involves or raises questions about the integrity of senior military or Department of National Defence officials, including senior Military Police members; and
- whether there are issues of broader public concern or importance.

Relevant Facts

15. In considering whether to cause the Commission to conduct a PII in this case, I note at the outset that I make no assessment in this decision as to the answers to the questions raised in the complaint. Because the Commission has not yet commenced its investigation or conducted witness interviews, I am also limiting the discussion in this decision to the basic facts relevant to determining whether to conduct a PII.

16. An important fact in my decision to conduct a PII in this matter is that there are indications the Military Police learned on a number of occasions that a member of the Canadian Armed Forces (CAF) had serious mental health issues. A member of the Military Police met with the CAF member and seemed to notice that something was wrong. That CAF member subsequently attempted suicide twice and it is unknown whether he will recover from his self-inflicted injuries.

17. A second important fact to consider is the allegation of harassment that was brought before the Military Police. Apparently this harassment was of such a nature that the subject of it became too distraught to attend her classes at the RMCC. The Military Police, however, did not proceed with any prosecution for the offence of criminal harassment. The subject of the harassment was told she could apply for a recognizance under *Criminal Code* section 810 (popularly known as a “peace bond”).

18. A third important fact to consider is that criminal charges were contemplated to be laid against the alleged victim of the harassment. She perceived this as blaming the victim of an offence for its commission. While no charges were ever laid, this appears to have been due to the refusal of a Crown attorney to proceed with them. The charges seem to have been recommended by the Military Police.

Public Interest Considerations Applicable in this Case

19. In deciding whether to call for a PII, I have considered the questions posed in this complaint in light of the following public interest factors:

The Nature and Seriousness of the Questions

20. One of the serious issues that the conduct complaint raises is that of the Military Police response to mental health issues. The complaint refers to an individual said to have serious mental health issues who came into contact with a member of the Military Police. This contact was a fairly extensive interview. Six days after the interview, the subject of the interview attempted suicide.

21. It is important to recall the context within which the Military Police were dealing with suicidal behaviours and mental health issues amongst cadets at the RMCC. The issue of suicide at the RMCC came into the public consciousness in 2016 when three Officer Cadets killed themselves. This prompted the creation of a Board of Inquiry on the issue of suicide at the RMCC which released its report in July 2018, only a few months before the events that prompted this conduct complaint.

22. A PII on this issue would help to determine whether the Military Police were aware of the suicide risk at the RMCC. If they were not, this would raise questions about Military Police policies and procedures in the wake of the July 2018 Board of Inquiry report. One of the goals of that report would have been to call attention to the mental health issues at the RMCC. A PII could examine whether this has resulted in changes in the way the Military Police address such issues.

23. Another serious issue the conduct complaint raises is that of the current legal status of the female OCdt. An examination of the Military Police investigation file notes that an offence of “sexual crimes other” allegedly committed by the female OCdt was “founded.” This is defined to mean that after a police investigation it has been determined that the reported offence did occur or was attempted. A “founded” notation could have lasting negative repercussions for the female OCdt if, for example,

she seeks a security clearance and her record is examined. A PII could examine whether the “founded” notation still exists and if so what the grounds are for having such a notation in the file of the female OCdt.

The Effect of the Questions on Public Confidence in the Military Police

24. One aspect of the complaint that may have an effect on public confidence in the Military Police is the manner in which the female OCdt’s allegation that she was being harassed was treated by the Military Police. She came to the Military Police with information that she claimed showed she was being harassed. A PII could determine the extent of the Military Police investigation into her allegations.

25. The course of action taken by the Military Police may raise questions about public confidence in the Military Police. The female OCdt did what all citizens are encouraged to do, namely go to the police when they believe they are the victim of a criminal offence. She also provided to the police documentary evidence she said was proof of the alleged harassment. The purpose of going to the police in these circumstances is presumably so that the matter can be investigated or some other action taken. If this does not happen, confidence in the value of going to the police can be diminished. A PII could examine what the Military Police response to the allegation of harassment was and whether that response would encourage other victims of crime to bring their complaints to the police.

26. Another issue concerning public confidence in the Military Police is the response of the Military Police to the female OCdt telling them she was afraid of her male colleague. This is also a situation in which citizens are encouraged to go to the police, in this case for their own protection. A PII could examine if any measures were taken by the Military Police to ensure the protection of the female OCdt and whether such measures were needed. As with the response to the allegation of harassment, a PII could look into whether the Military Police response to the female OCdt’s expression of fear would encourage other people fearing for their safety to bring their concerns to the police.

The Systemic Issues Related to Military Police Processes and Policies Raised by the Questions

27. The complaint raises questions about not just one Military Police member but, rather, the actions of a number of front-line Military Police members and their supervisors. In that sense, the questions raise systemic issues related to Military Police processes and policies. A PII could serve to determine what processes and policies are in place and how they are implemented in relation to the themes of mental health and harassment. This inquiry would delve into the issue of how Military Police members are trained to deal with such issues. The investigation could uncover what knowledge the Military Police Kingston Detachment had of such things as the CAF suicide strategy, the *Operation Honour Manual* and the *Military Police Professional Code of Conduct*.

28. The recurring nature of mental health in connection with the Military Police is seen in the fact that the Commission dealt with the issue of suicide in the ranks of the CAF in the Fynes Public Interest Hearing, and with mental health more generally in an anonymous complaint in 2017. That complaint was about new restrictions on Military Police members' exercise of their peace officer authorities when dealing with someone on military property who was experiencing a mental health crisis. Although it was asked to conduct a PII into the matter, the Commission concluded that this was not within the mandate of the Commission because it was about a policy and not about the performance of a "policing duty or function."

29. While the Commission was unable to exercise its authority to conduct a PII in the above-noted anonymous complaint, it found that the complaint raised important issues relative to the conduct of military policing in Canada. While the Commission lacked the legal authority to investigate a complaint about Military Police policies and orders in the abstract, it said that it would "likely have more to say on this issue." In contrast the known facts of this complaint reveal that there could be a valid conduct complaint because the Military Police members involved were conducting an investigation. They were clearly carrying out a "policing duty or function" while dealing with someone having mental health issues. Therefore, this file provides the opportunity to address Military Police policies and procedures concerning the mentally ill that the anonymous complaint did not.

Prior Public Interest in the Events

30. I also note that there has been longstanding public interest in the issue of suicide at the RMCC. Media coverage of the issue of suicide at the RMCC dates back to at least 2003 when the body of an Officer Cadet was found near the college and his death was ruled a suicide. His family continues to press for further investigation into his death. In 2016, three cadets died by suicide. This prompted the leadership of the CAF to call for a Board of Inquiry into the issue of suicide at the college. Following the release of the Board of Inquiry report in July 2018, there was substantial coverage of the issue by a number of national media organizations. News articles have also noted that, despite the CAF suicide prevention strategy unveiled in 2017, the number of suicides in the CAF in 2018 remained comparable to that in 2017.

Issues of Broader Public Concern or Importance

31. The issue of suicide more generally in the CAF has been of sufficient concern to prompt the Directorate of Force Health Protection in the Department of National Defence to produce an annual report on it, the latest of which is the *2019 Report on Suicide Mortality in the Canadian Armed Forces (1995 to 2018)*. The Canadian Armed Forces and Veterans Affairs Canada have produced a *Joint Suicide Prevention Strategy*. There is also a growing concern about mental health issues among the broader public. That concern is addressed in the many resources now available to help deal with these

issues, such as the Government of Canada's portal, Wellness Together Canada. This and other resources respond to a growing recognition of the need to deal openly with mental health issues.

32. There has also been a great deal of public interest in and concern about the treatment of women within the ranks of the CAF. The public profile of the treatment of women in the CAF was raised on November 25, 2019 when the Federal Court approved a settlement of class action lawsuits that had alleged sexual harassment, sexual assault or discrimination based on sex, gender, gender identity or sexual orientation (called "sexual misconduct") in connection with military service and/or employment with the Department of National Defence. Commenting on the settlement, the Chief of the Defence Staff said: "We assure you that these stories have made an important and lasting impact on us, and have further strengthened our dedication to change."

33. The CAF has launched Operation Honour in response to the release in March 2015 of former Supreme Court Justice Marie Deschamps' report entitled *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*. This report documented a culture within the military in which women were afraid to report allegations of sexual harassment or assault because they feared for their careers or that they would not be believed by the chain of command. By the terms of Operation Honour, all CAF members are to provide support for and better facilitate services to CAF members affected by harmful and inappropriate sexual behaviour. A PII could probe how the Military Police members named in the complaint responded to an allegation of gender-based harassment in light of the directives set out in Operation Honour.

34. A related Operation Honour issue is the consideration given by the Military Police to bringing charges against the female Officer Cadet. This consideration was perceived by the female OCdt as an example of victim-blaming. The *Operation Honour Manual* defines victim-blaming in the following terms:

A person who wonders how the victim of a crime could have behaved differently or made different choices to avoid what happened can be said to be engaging in some degree of victim-blaming. Questioning what a victim could have done differently in order to prevent a crime from happening can imply that the fault of the crime lies with the victim rather than the perpetrator.

35. The female OCdt wrote to her Military Police interviewer that she felt she was being blamed for the situation with the male OCdt. In her view, this was just the kind of scenario that discourages women from coming forward to report harassment. A PII could examine the legal and factual basis for recommending that the female OCdt be charged.

36. While this factor is not determinative, I consider the fact that some of the questions in this complaint touch on issues of widespread public concern is one more reason why it is important that the investigation and findings about these questions be available to the public through a PII.

37. A PII is a uniquely well-suited process to allow the Commission to strike an appropriate balance between the need for transparency and public accountability, on the one hand, and the need to protect the privacy of individuals who went through some of the events described in the complaint and do not wish to be publicly identified. As such, the Commission will ensure that appropriate measures are taken to protect the privacy of such individuals during the conduct of its PII, while ensuring that principles of openness, fairness and transparency are upheld.

38. Given the public interest considerations present in this case, including the systemic issues raised, the nature and seriousness of the questions, and the risk of potential negative perceptions that may impact on confidence in the Military Police or even discourage potential victims or complainants from coming forward, it is in the public interest that the Commission conduct a PII.

Subjects of the Complaint

39. In reviewing the materials before me, I have determined that there should be five subjects of this conduct complaint. Two were the front-line Military Police members who interviewed witnesses, and determined whether and how to proceed with criminal or other charges. Two other subjects were the supervisors of the two front-line members, responsible for approving their investigation plans and the general direction of their activities in relation to the issues at the RMCC that had been brought to their attention. The fifth subject was the Officer Commanding of the Military Police Kingston Detachment, who bore command responsibility for the actions of the front-line and supervisory members.

40. It is important to emphasize at this stage that being identified as the subject of a complaint should not be interpreted as an indication that the Commission has concluded there were deficiencies in the conduct of the individuals identified. On the contrary, it is only at the conclusion of its investigation that the Commission will be able to determine whether any aspect of the complaint is substantiated and, if so, what responsibility the individual subjects of the complaint bear for any deficiencies.

41. Being the subject of a complaint should not be equated to being an accused person in a criminal case. Rather than being an indication that the Commission has reasons to believe the individuals in question had involvement in inappropriate conduct or that there were deficiencies in their work, being identified as a subject of a complaint means only that the individual was involved in the tasks or the conduct complained about.

42. The Commission will make findings and recommendations about the merits of the questions in this complaint in its Final Report, after conducting a thorough and fair investigation, allowing all parties to provide information and explanations regarding the events and actions taken. 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. Each of the subjects of the complaint will be provided an opportunity, during the Commission's investigation, to participate in interviews with Commission investigators in order to explain their role in conducting and/or supervising the various investigations concerning Officer Cadets at the RMCC.

Conclusion

43. Given the circumstances of this case, 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 20th day of October, 2020

Original signed by

Hilary C. McCormack
Chairperson

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