



Military Police
Complaints Commission
of Canada

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

February 6, 2024

MILITARY POLICE COMPLAINTS COMMISSION

IN THE MATTER of a complaint to the Military Police Complaints Commission (MPCC) into allegations that the Canadian Forces Provost Marshal did not implement a ministerial direction to transfer the investigation of criminal offences of a sexual nature to the civilian police

DECISION REGARDING PUBLIC INTEREST INVESTIGATION MPCC 2023-084

Overview

1. On November 23, 2023, the Military Police Complaints Commission (MPCC) received a complaint about the conduct of the Canadian Forces Provost Marshal (CFPM). Specifically, the complainant alleges that the CFPM has breached the *Military Police Professional Code of Conduct* by not implementing the direction of the Minister of National Defence to implement the recommendation of former Supreme Court Justice, Madame Louise Arbour, to transfer the investigation of criminal offences of a sexual nature to the civilian justice system.
2. On January 16, 2024, I decided to launch a public interest investigation into this complaint, for the reasons found in the decision, in annex.
3. On January 23, 2024, the MPCC received new information from the Minister of National Defence stating that neither he, nor his predecessor, had provided direction to the CFPM regarding the transfer of files regarding criminal offences of a sexual nature.
4. After considering all the information before me and in particular, the letter received from the Minister of National Defence, I have determined that there are no grounds for the MPCC to investigate this complaint further, and consequently, there is no longer a basis for a public interest investigation.

The law and relevant policies

5. The *National Defence Act* (NDA or the Act) provides the Chairperson's authority to cause a complaint to be investigated by the MPCC in the public interest:

250.38 (1) 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.

6. The Act outlines the following regarding conduct complaints:

Complaints about military police

250.18 (1) Any person, including any officer or non-commissioned member, may make a complaint under this Division about the conduct of a member of the military police in the performance of any of the policing duties or functions that are prescribed for the purposes of this section in regulations made by the Governor in Council.

Complainant need not be affected

(2) A conduct complaint may be made whether or not the complainant is affected by the subject-matter of the complaint.

7. The relevant section of the *Military Police Professional Code of Conduct* states:

4 No member of the military police shall

(...)

(1) engage in conduct that is likely to discredit the military police or that calls into question the member's ability to carry out their duties in a faithful and impartial manner.

8. The CFPM's Policy Directive "*Military Police Criminal Sexual Offence File Referral Process to the Ontario Provincial Police (OPP)*", as amended in December 2023 states:

3. The Canadian Forces Provost Marshal (CFPM) is committed to the continued implementation of Mme Arbour's interim recommendation. This support will be reflected through the referral of criminal offences of a sexual nature to civilian police agencies of concurrent jurisdiction in a victim-centric, trauma informed approach.

9. The policy then goes on to outline the process for the transfer of the investigation of files regarding criminal offences of a sexual nature to civilian police agencies, noting that it first requires consultation with and agreement from the victim.

4. File Transfer Process—CFNIS [Canadian Forces National Investigation Service]

- a. (...) Should there be files identified for possible transfer to the OPP, the ROs [Regional Officers] are to consult with the victim to determine whether or not they would prefer/agree to have their file transferred to the OPP;

Analysis

10. As noted above, in order for me, as Chairperson, to be able to exercise my authority to deal with a complaint in the public interest, I must first be satisfied that the complaint constitutes a valid conduct or interference complaint according to the legislative framework of Part IV of the NDA which governs the military police complaint processes.

11. The critical issue in this complaint is whether there was direction from the Minister of National Defence to the CFPM to transfer the investigation of criminal offences of a sexual nature to civilian police and if so, whether that direction was followed.

12. At the time of the issuance of the decision to launch a public interest investigation into this matter, the MPCC considered the following information:

- Madame Arbour’s [Interim recommendations from the Independent External Comprehensive Review of the Department of National Defence \(DND\) and the Canadian Armed Forces \(CAF\)](#) stating that “all sexual assaults and other criminal offences of a sexual nature under the Criminal Code, including historical sexual offences, alleged to have been perpetrated by a CAF member, past or present (“sexual offences”) should be referred to civilian authorities. Consequently, starting immediately, the Canadian Forces Provost Marshal (CFPM) should transfer to civilian police forces all allegations of sexual offences, including allegations currently under investigation by the CFNIS, unless such investigation is near completion. In any event, in all cases charges should be laid in civilian court.” [emphasis added]
- A [message](#) on Twitter (now X) from then-Minister of Defence Anita Anand that she “(...) accepted in full Madame Arbour’s recommendations to move the investigation and prosecution of sexual misconduct cases to the civilian system.”
- The December 2022 Minister of National Defence’s [Report to Parliament on Culture Change Reforms in response to former Supreme Court Justice Arbour’s recommendations](#), at page 8, indicating that the military police was directed to implement Madame Arbour’s recommendations to transfer allegations of criminal offences of a sexual nature to civilian police and that:

Military Police were also directed to conduct a review of any ongoing files into allegations of criminal offences of a sexual nature and, where possible, to transfer those files to [federal, provincial and territorial partners] of concurrent jurisdiction. This action is now complete with files transferred where possible. [emphasis added]

- A public statement [to the media](#) from the current Minister of National Defence, Bill Blair, indicating that the government had not intended for half of the files concerning criminal offences of a sexual nature to remain with the military police.

13. As outlined in more detail in the MPCC's decision (annexed to this decision), on December 12, 2023, prior to launching a public interest investigation, the MPCC enquired with the Minister of National Defence, the CFPM and the Vice-Chief of the Defence Staff, as to whether further directions were provided to the CFPM regarding the transfer of files concerning criminal offences of a sexual nature. This step was taken to verify if there was any additional relevant information that could explain the disparity between the apparent direction cited above, and the conduct of the CFPM in not transferring the investigation of every file regarding criminal offences of a sexual nature to civilian police.

14. On December 21, 2023, the Vice-Chief of Defence Staff responded that she had not issued any direction to the CFPM on this matter. At the time of issuance of the public interest investigation decision, no response had been received from the Minister of National Defence or the CFPM. As such, on January 16, 2024, I directed that this complaint be designated a public interest investigation.

15. On January 23, 2024, I received correspondence from the Minister of National Defence dated January 22, 2024, stating that, in respect to direction issued by himself or his predecessor regarding the transfer of files concerning criminal offences of a sexual nature to civilian police:

Neither I nor my predecessor have issued any such direction to the CFPM. Nor has either of us directed the Chief of the Defence Staff to issue such direction.

16. As a result of this new information, I have further reviewed the grounds for the MPCC to investigate this complaint as well as the considerations for the public interest investigation.

17. The absence of a confirmed direction from the Minister of National Defence negates the necessity to investigate this matter further, as there cannot be found to be a breach of the *Military Police Professional Code of Conduct* and the CFPM cannot be found to have failed to comply with ministerial direction in the absence of such direction. As a result, there cannot be an inherent seriousness that justifies a public interest investigation, and no viable allegations against the CFPM that warrant such measures.

18. I will highlight, however, that, Madame Arbour, in her [Report of the Independent External Comprehensive Review](#), explained at great length why, in her expert opinion, leaving to the victim the burden of deciding where a sexual assault would be investigated was not in the public interest. At page 93 of her report, she concluded as follows:

In my view, requiring the victim's consent before deciding whether to investigate or prosecute a crime in the military or civilian justice system merely puts an unrealistic burden on the victim. It puts victims in an untenable position, requiring them to make a decision about which system is likely to work better for them, with little understanding of the factors at play. They may regret their decision down the road if the trial results in an acquittal and may be left forever wondering, "what if I had chosen the other system" In the end, I do not believe this serves any public interest.

19. It is difficult to reconcile the recommendations that Madame Arbour expertly stitched together following an in-depth and informed analysis of sexual misconduct in the Canadian Armed Forces, which she laid out in her comprehensive report, with the decision of the CFPM to not transfer every file regarding criminal offences of a sexual nature to civilian police. The wording of the CFPM's policy is particularly concerning given the clear and public support of those recommendations by the Ministers of National Defence. It is puzzling that the CFPM references Madame Arbour's recommendation in his policy, while implementing directions that contradict it.

20. Equally troubling is that the policy outlines what it calls a victim-centric, trauma-informed approach, without the corollary articulation of what this means in this context, or what considerations must be taken into account while applying that victim-centric, trauma-informed approach. Indeed, it is insufficient to simply *state* that such an approach must be taken. It must be accompanied by written considerations that outline *why* and *how* this approach is victim-centred and trauma-informed and paired with appropriate training on those approaches. In my view, in its current iteration, this policy does not meet the victim-centric, trauma-informed threshold, and in fact, just as Madame Arbour cautioned, puts an unfair burden on victims.

21. In the best interest of those victims of criminal offences of a sexual nature, I recommend that the CFPM review his policy with the view of implementing the full transfer of investigations regarding criminal offences of a sexual nature to civilian police, in the true spirit of a meaningful victim-centric, trauma-informed approach. This would go a long way towards enhancing trust in the military police.

Conclusion

22. While the MPCC believes that this complaint raises important issues, in the absence of confirmed ministerial direction to transfer the investigation of files regarding criminal offences of a sexual nature to civilian police, there are no grounds to continue the investigation of this complaint, either as a conduct or an interference complaint under Part IV of the *National Defence Act*.

DATED at Ottawa, Ontario on this 6th day of February 2024

Original signed by:

Me Tammy Tremblay, MSM, CD, LL.M.
Chairperson

ANNEX A
Decision to Conduct a Public
Interest Investigation
MPCC 2023-084



Military Police
Complaints Commission
of Canada

Chairperson

270 Albert Street, 10th Floor
Ottawa, Ontario K1P 5G8

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

Présidente

270, rue Albert, 10^e étage
Ottawa (Ontario) K1P 5G8

January 16, 2024

Decision to Conduct a Public Interest Investigation MPCC 2023-084

Overview

On November 23, 2023, the Military Police Complaints Commission (MPCC) received a complaint about the conduct of the Canadian Forces Provost Marshal (CFPM). Specifically, the complainant alleges that the CFPM has breached the Military Police Professional Code of Conduct by not implementing the direction of both Ministers of National Defence to implement the recommendation of former Supreme Court Justice, Madame Louise Arbour, to transfer the investigations of sexual misconduct cases to the civilian justice system.

For the reasons that follow, I have decided to conduct a public interest investigation into this complaint.¹

Background

In his complaint, the complainant, citing a news story [from November 22, 2023](#), states that the CFPM has contradicted Sec 4(1) of the *Military Police Professional Code of Conduct* by not implementing the directions of the Minister of National Defence to transfer the investigations of sexual misconduct cases to the civilian justice system.

The complainant went on to quote the news story:

“military investigators have retained 120 sexual offence cases since late 2021, [which] contradicts what retired Supreme Court justice Louise Arbour called for in her final report on sexual misconduct in the military. Arbour said all such cases should go to the civilian system, “regardless of any preference expressed by the victim.”

¹ *National Defence Act*, RSC 1985 c N-5 at s. 250. 38 [NDA].

The complainant further noted that when the current Minister of National Defence was asked if the government meant for half of the sexual assault files to remain with military investigators, the same story reported that:

Defence Minister Bill Blair was asked if the government meant for half of the files to remain with military investigators. He said it did not.

Indeed, on November 4, 2021, Minister Anand, announced by message on Twitter (now X) that she “(...) accepted in full Madame Arbour’s recommendations to move the investigation and prosecution of sexual misconduct cases to the civilian system²” This announcement came following preliminary recommendations made by retired Supreme Court Justice Louise Arbour in her Independent External Comprehensive Review. In her [Report to Parliament on Culture Change Reforms](#) dated December 12, 2022, Minister Anand reiterates that she has provided direction to the Canadian Forces to implement Madame Arbour’s recommendations:

Military Police were also directed to conduct a review of any ongoing files into allegations of criminal offences of a sexual nature and, where possible, to transfer those files to [federal, provincial and territorial partners] of concurrent jurisdiction. This action is now complete with files transferred where possible.

While there might be valid reasons why some of these files were not transferred to the civilian justice system, the reason provided to the media by the CFPM’s office for not transferring 77 of these files was that the CFPM was "taking a victim centric approach and due consideration to the wishes of the victims” and that they ensure that they are “(..) able to speak with the victim and ensure that the victim does want to go forward with their investigation by the civilian police.” Indeed, Military Police policy directives available to the MPCC indicate that the preference of victims is considered in the determination of whether a case is transferred to the civilian police. This contradicts the view of Madame Arbour who wrote in her report that requiring victim’s consent before deciding to transfer a file to the civilian justice system puts an “unrealistic burden on the victim”.³

On December 12, 2023, I wrote to the Minister of National Defence and the Vice-Chief of the Defence Staff (to whom the CFPM directly reports), to request copies of any further directions provided to the CFPM or any other relevant information related to the transfer of investigative responsibility for sexual misconduct files from the military police to the civilian police. I took this precautionary step because I wanted to ensure that there was no direction subsequently provided to the CFPM that could explain the disparity between the ministerial direction he was given and the subsequent actions of the military police of not transferring files to the civilian justice system.

² [Anita Anand on X: "I have accepted in full Madame Arbour's recommendations to move the investigation & prosecution of sexual misconduct cases to the civilian system. https://t.co/ZD8Hr6bF9c" / X \(twitter.com\)](#)

³ Louise Arbour, *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, May 20, 2022, at p. 93.

In response to this inquiry, the Vice-Chief of the Defence Staff (VCDS) advised the MPCC that she has not issued any direction to the CFPM on the transfer of sexual misconduct files to civilian police forces. At the time of writing this decision, no response was received from the Minister of National Defence.

On December 12, 2023, I also wrote to the CFPM to request copies of any further direction provided to him or any other relevant information related to the transfer of investigative responsibility for sexual misconduct files from the military police to the civilian police. On December 28, 2023, the Deputy CFPM wrote that “upon receipt of the complaint as well as clarification as to the legislative provision of the *National Defence Act* (NDA),” under which I was requesting information in my December 12, 2023, letter to the CFPM, she would be “better poised to assess” my request. On January 4, 2024, I responded to the Deputy CFPM regarding her request for a copy of the complaint, that the NDA requires notification of the substance of the complaint, which I had done in my December 12, 2023, letter. I explained that considering the nature of the complaint, I was considering whether the complaint is receivable; and if so, whether the complaint should proceed as a regular conduct complaint or a public interest investigation or hearing. I further explained that given our statutory mandate, informally requesting information before launching a formal process was a prudent step to ensure the best use of the resources of our respective organizations. Finally, I pointed out that considering the government’s principles on open government, this information, if it exists, should be publicly available as provided by s. 18.5(2) of the NDA, and therefore no legislative authority was required to share this information with the MPCC. At the time of writing this decision, no response was received from the Office of the CFPM.

Considerations Relevant to a Public Interest Investigation Determination

Under the NDA, I have a broad discretion to decide whether the MPCC should conduct a public interest investigation. The NDA provides that:

250.38 (1) 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.⁴

The following factors, which are not meant to be exhaustive, have been recognized by the MPCC as relevant to decisions on the holding of public interest investigations in respect of complaints:

- The inherent seriousness of the alleged conduct;
- The systemic issues raised in the complaint;
- The involvement of senior officials or military officers;
- The public interest in the issues related to the complaint;
- Process considerations which suggest that it would be more fair, credible, coherent or efficient to deal with the complaint as a public interest case.

⁴ NDA, s. 250.38(1).

Not all these factors are engaged in all cases. Those relevant to this complaint are addressed below and establish the reasons for this decision.

Seriousness of the Allegations

This complaint suggests that a ministerial direction to transfer investigative responsibility for sexual misconduct files from the military police to civilian police services was not implemented by the CFPM.

This disparity between the ministerial direction provided by Minister Anand on November 4, 2021, the statement of Minister Blair that it was not intended that half of the sexual assault files remain with military investigators, and the approach directed by the CFPM, namely to involve victims in the decision to transfer files to civilian police, calls into question civilian control of military policing. While the rule of law demands that the Military Police, like other police services, exercise independent investigative discretion in individual cases, it is subject to direction, not only under the NDA,⁵ but also as a matter of common law and constitutional principle. A hallmark of our democracy is the principle that the police are accountable to elected officials, and this includes the military police.

This complaint squarely raises this issue. It would be preferable for an external oversight body, like the MPCC, to examine whether the CFPM failed to carry out a ministerial direction to implement the recommendation of Madame Arbour to transfer the investigations of sexual misconduct cases to the civilian justice system.

The Systemic Issues Raised in the Complaint

This complaint raises an issue that is a concern not to a particular file, but to all the files that were not transferred after the ministerial direction. It also raises an issue regarding what it means to be “victim centric” in the context of transferring investigative files to the civilian justice system.

The systemic nature of the complaint favours a public interest investigation by the MPCC.

Involvement of Senior Personnel

As indicated, this complaint relates to alleged conduct on the part of the head of the Military Police. Also, the Deputy CFPM has made public statements on the issue of the transfer of sexual misconduct investigations to civilian authorities. The involvement of senior officials or military officers in a complaint can lead to concerns that a matter will be handled differently on that account, particularly in rank-conscious institutions like the military. This is another consideration which favours investigation by the MPCC.

⁵ NDA, ss. 18(1), 18(2), 18.5(1) and 18.5(2).

Public Interest

The complaint is based on something that was publicly reported in the public domain. More importantly, if founded, the allegation that a legitimate ministerial direction was not followed would be a breach of an important tenet of our democracy, namely that police are accountable to elected officials.

Given these considerations, and in particular the overall seriousness of the complaint, it is in the public interest for the MPCC to initiate an investigation under s. 250.38(1) of the NDA rather than transfer it to the Chief of the Defense Staff to be dealt with in the first instance.

Decision

For these reasons, I designate this conduct complaint, MPCC 2023-084, a MPCC public interest investigation.

By declaring a public interest investigation, I am concurrently deciding that the Final Report in this matter will be made public, subject to the need to protect especially sensitive information. Before making the decision to declare a public interest investigation, I consulted the complainant who indicated that, for personal reasons, he preferred to keep his identity private. Given that: (1) the complainant has confirmed that his complaint is entirely based on the public record, (2) the complainant has no personal knowledge or other relevant information related to the transfer of investigative responsibility for sexual misconduct files from the military police to the civilian police, and; (3) I have not identified any procedural fairness rights of other parties that might require identifying the complainant, I have decided not to name the complainant in this process.

Finally, the seriousness of the issues in this complaint could warrant public hearings. Declaring a public interest hearing gives the MPCC the authority to compel witness cooperation and issue subpoenas for documents. However, at this time, I consider it more expeditious and in the public interest to proceed with a public interest investigation without a hearing. I am prepared to revisit this decision as required by the circumstances, which may include inadequate voluntary cooperation in the ongoing public interest investigation into this complaint.

SIGNED in Ottawa, Ontario, on this 16th day of January 2024.

Original signed by:

Me Tammy Tremblay, MSM, CD, LL.M.
Chairperson