



Military Police  
Complaints Commission  
of Canada

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

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## VIA EMAIL

December 3, 2024

Lieutenant-General Steve Whelan

### **Our File: MPCC 2024-047** *Request for Extension of Time*

Lieutenant-General Whelan:

The Military Police Complaints Commission (MPCC) received your complaint on October 29, 2024, with additional information provided on November 5, 2024.

Your complaint concerns an investigation conducted in 2021-2022 by the Canadian Forces National Investigation Service (CFNIS) into sexual misconduct, in which you were the subject.

The *National Defence Act*<sup>1</sup> (NDA) requires that complaints be filed within one year of the event prompting them.<sup>2</sup> However, the NDA also empowers me to extend this delay if I determine that it is reasonable, under the circumstances.

I have considered your request for an extension of time, taking into account several factors, including: the MPCC's jurisdiction; the length of the delay and your explanation; the seriousness of the allegations; whether your complaint includes an arguable case; the potential prejudice to the military police subjects; and the best interests of Justice in this case.

For the reasons below, I am granting your request for an extension of time.

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<sup>1</sup> R.S.C., 1985, c. N-5.

<sup>2</sup> NDA at s. 250.2.

*Date of the events giving rise to the complaint*

Your complaint pertains to a CFNIS investigation which began in May 2021 and was concluded in July 2022. On July 20, 2022, the military police laid charges under s. 129 of the NDA against you and a court martial was convened. On October 2, 2023, those charges were withdrawn.

You indicate that the charges against you were withdrawn “before [you] could present a defense, revealing serious issues with both police and judicial proceedings.” This suggests that you anticipated the court martial proceedings would shed additional light on the conduct of the CFNIS investigation and/or the reliability of the evidence against you. I accept that you expected to scrutinize aspects of the investigation during the court martial proceedings, notably through presenting a defense.

You assert that the incident giving rise to your complaint was the withdrawal of the charges on October 2, 2023. While the charges were laid against you in July 2022, the possibility of further investigative activity persisted while the case remained open. Therefore, I agree that the withdrawal of the charges marks the conclusion of the investigation.

Accordingly, you filed your complaint 1 year and 4 weeks after the incident, which exceeds the time limit by 4 weeks.

*The allegations likely fall within the jurisdiction of the MPCC*

The jurisdiction of the MPCC is limited to complaints regarding the conduct of military police members while performing policing duties or functions as prescribed in the *Complaints about the Conduct of Members of the Military Police Regulations*<sup>3</sup> (*Regulations*). Allegations that are not related to policing duties or functions are excluded from the MPCC’s jurisdiction.<sup>4</sup>

Given that your allegations concern the handling of a CFNIS investigation, your complaint likely falls within the jurisdiction of the MPCC.

*Your explanation for the delay is reasonable in the circumstances*

As noted earlier, you initially intended to challenge the CFNIS investigation and its findings through the court martial proceedings. After the conclusion of the court martial, you pursued other available avenues, including by contacting the Minister of National Defence prior to the expiration of the one-year time limit. On June 7, 2024, your lawyer sent a letter on your behalf to the Minister, requesting a review of the CFNIS investigation by an external police force. You indicate that you waited to receive a response from the Minister before filing a complaint with the MPCC “to avoid conflicting requests.” The Minister responded on October 7, 2024, and you filed your MPCC complaint about 3 weeks later.

Your ongoing commitment to addressing your concerns regarding the CFNIS investigation is evident.

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<sup>3</sup> PC 1999-2065 [*Regulations*].

<sup>4</sup> As per subsection 2(2) of the *Regulations*.

Considering these circumstances, I find your explanation reasonable, especially since the delay is only 4 weeks beyond the legislative time limit.

*The allegations are sufficiently serious*

You state that you believe the investigation “was flawed due to either deliberate or negligent actions by the CFNIS, compounded by improper influence from the chain of command.” You allege that CFNIS conducted an unprofessional investigation and may have been “ceding to chain-of-command pressures that resulted in leaks to the media and coerced charges.” You submit that the investigation was compromised and plagued by systemic issues.

Members of the military police are expected to carry out their policing duties in accordance with established policies and best practices. If your allegations are substantiated by evidence, a deficient military police investigation into allegations of sexual misconduct could constitute a serious matter, particularly if it resulted from undue influence by the chain of command. Allegations of “coerced charges” and intentional media leaks are also serious, as they undermine the integrity of the investigation and the independence of the military police.

Therefore, this factor favours granting an extension of time request.

*The complaint includes an arguable case*

When I review requests to extend the time limit for filing a complaint, one of the factors I consider is whether the request or complaint includes an arguable case.<sup>5</sup> An arguable case must be based on alleged conduct deficiencies of military police members while performing their policing duties or functions. In this case, you are alleging deficiencies in the handling of a military police investigation and undue pressure by the chain of command. Thus, an arguable case has been established, favoring the granting an extension of time request.

*Minimal prejudice to the Military Police subjects*

For complaints submitted outside the statutory time limit, there is an inherent assumption of prejudice to the military police subject(s) due to the potential fading of memories and the potential loss of relevant records.

In this case, however, the prejudice is mitigated by the retention of the military police investigation file and the relatively short duration of the delay. Additionally, you initiated civil proceedings in relation to this matter and the ongoing litigation implies that facts and evidence pertinent to the complaint are still being considered and analysed, ensuring that relevant records are preserved.

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<sup>5</sup> See *Lemay v. Canada*, 2017 FCA 155, para 2.

*It is in the best interests of Justice that your complaint be investigated*

When I evaluate the interests of Justice, I consider several factors: whether the complaint includes allegations of serious misconduct; whether there are issues that could undermine public confidence in the military police or the complaints process itself; whether the complaint raises questions regarding the integrity of senior military officials or Department of National Defence personnel; and whether the matters at hand are likely to have a serious impact on military police practices and procedure.

In this instance, you claim that the CFNIS investigation was not only conducted in an unprofessional and incompetent manner but also yielded to improper influence by the chain of command. You name the Canadian Forces Provost Marshal (CFPM) and his Deputy (DCFPM) amongst the subjects listed in your complaint. You note that when you contacted the CFPM in March 2022 requesting an update on the investigation, the DCFPM responded in April 2022 by denying statements made by the CFNIS lead investigator, thereby misrepresenting the facts. You also criticize the CFPM and DCFPM's failure to order an impact assessment in response to alleged media leaks in your case, suggesting it indicates "possible complicity in enabling these leaks". You further allege that the CFPM and the DCFPM failed to properly supervise the CFNIS investigation.

Given the concerns raised in your complaint, and the alleged involvement of senior military officials, it is in the interests of Justice that the allegations be investigated, since the consequence of not doing so could contribute to eroding public confidence in the Military Police.

Considering the seriousness of the allegations included in your complaint and the relatively short delay involved, I believe that the interests of Justice favour granting this request for an extension of time.

Considering all the information available, I have determined that it is reasonable in the circumstances to extend the time limit for filing this complaint.

Your request for an extension of time is granted.

Please note that, while I am granting this extension, I am not making any determination regarding the merits of your complaint.

Sincerely,

*Original document signed by:*

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

c.c.: Chief of the Defence Staff