



Military Police
Complaints Commission
of Canada

Chairperson

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

Présidente

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December 3, 2024

Decision to Conduct a Public Interest Investigation MPCC 2024-047

Overview

On October 29, 2024, the Military Police Complaints Commission (MPCC) received a conduct complaint from Lieutenant-General Steve Whelan (the complainant) concerning the handling of a military police investigation into sexual misconduct, in which he was the subject.

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

Background

The complaint concerns an investigation into sexual misconduct conducted in 2021-2022 by the Canadian Forces National Investigation Service (CFNIS). On July 20, 2022, the military police laid charges against the complainant under section 129 of the *National Defence Act* (*NDA*) (“[a]ny act, conduct, disorder or neglect to the prejudice of good order and discipline”), and a court martial was convened. On October 2, 2023, the charges were withdrawn.

The complainant asserts that the CFNIS investigation was flawed, unprofessional, and incompetent. He cites several examples of substandard practices by CFNIS members, including: inadequately documenting interactions with the alleged victim; showing bias in favour of the alleged victim; failing to ask crucial questions during interviews; improperly handling evidence; failing to adequately investigate potential conflicts of interest with witnesses; failing to interview key witnesses; and failing to properly conduct and disclose the interview of one witness.

The complainant suggests that some shortcomings might have been deliberate due to improper influence from the chain of command and a desire for a specific outcome. He refers to the charges against him as “coerced charges”. He names the Canadian Forces Provost Marshal (CFPM) and his Deputy (DCFPM) amongst the subjects listed in his complaint. He claims that

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

they failed to properly supervise the CFNIS investigation. He also believes that the DCFPM provided him with false information, misrepresenting the facts of his case.

The complainant also submits that “media leaks” occurred in his case, while the investigation was still ongoing. He claims that the CFPM and DCFPM failed to investigate the “leaks” or to order an impact assessment to determine whether they compromised the complainant’s rights. He suggests this alleged failure may indicate complicity in enabling the “media leaks”.

The complainant requests that the MPCC “conduct an independent and thorough review, free from any internal [Canadian Forces] Military Police oversight”. He submits that since the complaint includes allegations against the CFPM and DCFPM, they should not be involved in the review process.

On December 3, 2024, I granted the complainant’s request for an extension of time in filing his complaint.

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.²

The following factors, while not exhaustive, have been identified by the MPCC as relevant to decisions regarding the initiation of public interest investigations:

- The seriousness of the alleged conduct;
- The systemic issues raised in the complaint;
- The involvement of senior officials or military officers;
- 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.

Not all these factors apply in every case. The factors relevant to this complaint are outlined below, providing the rationale for my decision.

Seriousness of the Allegations

The allegations in this complaint are significant. If substantiated, they could amount to a deliberate failure to properly investigate the serious allegation of sexual misconduct, possibly because the investigation was conducted with the objective of reaching a predetermined outcome. Furthermore, allegations of “coerced charges” and intentional “media leaks”

² *NDA*, s. 250.38(1).

undermine the integrity of the investigation and the independence of the military police if they are not addressed.

Sexual misconduct in the military is an important issue that demands rigorous investigations. However, it would be problematic if, in investigating allegations of sexual misconduct, the military police were to become, consciously or unconsciously, tainted by biases against victims or suspects. This complaint raises these concerns in a prominent case. It would be preferable for an external oversight body, like the MPCC, to examine whether the military police were biased in their handling of the allegations against the complainant.

Systemic Implications

On October 28, 2024, the MPCC received a letter from the complainant, through his counsel, requesting “a broad systemic investigation” into “senior officer sexual misconduct investigations.” I responded on November 6, 2024, noting that the MPCC does not have the legislative mandate to conduct a free-standing systemic investigation. However, when applicable, the MPCC considers and addresses systemic issues in the context of the complaints it reviews.

In addition to the systemic issues noted in the October 28, 2024, letter, the complainant states that the charges against him were withdrawn primarily because of “evidence issues [...], underscoring systemic malfeasance and incompetence in the investigative process.” He notes in his complaint that the failures were numerous: from a lack of evidential integrity and diligence to investigative ineptness and bias.

While a free-standing systemic investigation is outside the MPCC’s jurisdiction, the systemic issues noted by the complainant that are directly linked to his complaint are relevant to my analysis. They raise serious questions about systemic failures to correctly and impartially assess the evidence in the investigation, not only at the level of CFNIS but potentially also within the military police more generally.

The systemic issues raised in this complaint are a consideration that favours conducting a public interest investigation.

Involvement of Senior Personnel

The complainant names as subjects the CFPM and the DCFPM, amongst others. He also repeatedly refers to potential connections with the chain of command, thereby alluding to the involvement of other senior officials or military officers. This involvement 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.

Public Interest

The complainant’s case has been widely reported in the media, both regionally and nationally. In addition to the widespread media coverage of the investigation and the withdrawal of the charges, there is also an ongoing civil case that has garnered media attention.

Finally, because of the overall seriousness of this complaint, it is in the public interest to address the concerns it raises in a greater public forum rather than rely on the approach more commonly used to investigate complaints received about military police conduct.

Given these considerations, it is in the public interest that the MPCC conduct an investigation under s. 250.38(1) of the *NDA* rather than transfer the complaint 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 2024-047, an 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 personal information.

Finally, the seriousness of the issues raised in this complaint could warrant public hearings. Declaring a public interest hearing would empower the MPCC to compel witness cooperation and issue subpoenas for documents. However, at this time, I consider it more expeditious and in the public interest to conduct 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 public interest investigation into this complaint.

The MPCC will now begin its investigation of this matter. As the MPCC has not yet received complete disclosure regarding this complaint, it is unable to notify any individuals who may be subjects of its investigation, except for those individuals identified by the complainant. Additional notifications will be made, as appropriate, as disclosure is received from the CFPM's office of Professional Standards.

SIGNED in Ottawa, Ontario, on this 3rd day of December 2024.

Original document signed by:

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