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## Normative Expectations for Military Police Found in Independent Review Authority Recommendations

Major David Dey

### JCSP 48

#### Master of Defence Studies

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**Normative Expectations for Military Police Found in  
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**Major David Dey**

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**ABSTRACT**

Reforms to the Military Justice System have been sought since the Somalia Affair. The Somalia Inquiry and the three subsequent Independent Review Authorities have been convened and provided recommendations on how to effect the reforms of the Military Justice System. However, there is a gap in the academic study of those recommendations. Focusing on the reforms concerning Military Police, this study conducted a qualitative content analysis to consider the normative expectations of Military Police, whether issues raised in Independent Review Authorities are being addressed, and if the current structure for Military Police should continue given the recommendations. Clear normative expectations were found, as were several repeated expectations. Analysis of these findings suggested a new structure for Military Police is required.

# **GREAT EXPECTATIONS: AN ANALYSIS OF NORMATIVE EXPECTATIONS FOR MILITARY POLICE FOUND IN INDEPENDENT REVIEW AUTHORITY RECOMMENDATIONS**

## **CHAPTER ONE: THE PROBLEM CONCERNING MILITARY POLICING**

### **1.1 Introduction**

Militaries have been responsible for the conduct and discipline of their members throughout history, including the prosecution of alleged criminal offences.<sup>1</sup> The Supreme Court of Canada, in *R. v. Genereux*, supported the constitutionality of having a separate legal system in the Canadian military (known as the Military Justice System (MJS)) in parallel to the civilian criminal justice system.<sup>2</sup> The *Genereux* case questioned the impartial ability of a court-martial to provide a military member's right to fundamental justice through equality before the law. The *Genereux* case confirmed a military member's right to fundamental justice, no different from other citizens. The Court upheld the MJS as constitutional and necessary to address the particular military concerns not present in the civilian system, specifically adequately severe sanctions required for military discipline.

Later, during the deployment to Somalia as part of Operation *Deliverance* in 1993, members of the Canadian Armed Forces (CAF) captured and killed a Somali teenager, Shidane Arone.<sup>3</sup> The subsequent inquiry (known colloquially as “the Somalia Inquiry”) found inherent flaws in investigations by Military Police (MP), the key issues

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<sup>1</sup> Ronald J. Donovan and David V. McElrea, *A History of the Royal Canadian Air Force Police and Security Services*, Book, Whole (Renfrew, Ont: General Store Pub. House, 2008).

<sup>2</sup> *R. v. G  n  reux*, [1992] 1 S.C.R. 259.

<sup>3</sup> Gilles Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* (Ottawa, Ont: Minister of Public Works and Government Services Canada, 1997) Executive Summary.

stemming from the fact MP were directly responsible to CAF commanders and superior officers.<sup>4</sup> There was a perception that the military chain of command (CoC) could influence MP investigations.<sup>5</sup> As a consequence of *Genereux* and the inquiry, the government amended the *National Defence Act* (NDA) with Bill C-25, *An Act To Amend The National Defence Act* in 1997 to address the independence issues in the MJS.<sup>6</sup>

The task of adequately addressing military discipline requirements in the MJS is not simple, and should change with the times. Such change included a stipulation to the changes to the NDA that required regular review and reporting of those and subsequent changes of the MJS.<sup>7</sup> Subsequent Independent Review Authorities (IRA) (all of whom have been Supreme Court Justices), who have made recommendations on improving the MJS, have conducted these reviews.<sup>8</sup> There has been no known academic study of the implementation, or lack thereof, of the recommendations to date. This paper will address this gap in the literature.

This paper will examine how IRA regard Canadian military policing compared to Canadian civilian policing, through the recommendations they have made since the

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<sup>4</sup> Letourneau et al.

<sup>5</sup> Chris Klep and Donna Winslow, “Learning Lessons the Hard Way - Somalia and Srebrenica Compared”, *Small Wars & Insurgencies* 10, no. 2 (1999): 93–137.

<sup>6</sup> Antonio Lamer, *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the Provisions and Operation of Bill C-25, An Act to Amend the National Defence Act and to Make Consequential Amendments to Other Acts, as Required under Section 96 of Statutes of Canada 1998*, c.3 (Ottawa, Ont: Minister of National Defence, 2003).

<sup>7</sup> Minister of National Defence, “Government Bill (House of Commons) C-25 (36-1) - Royal Assent - *An Act to Amend the National Defence Act and to Make Consequential Amendments to Other Acts* - Parliament of Canada”, Pub. L. No. C-25 (1998), <https://www.parl.ca/DocumentViewer/en/36-1/bill/C-25/third-reading/page-187>.

<sup>8</sup> Lamer, *Lamer Report*; Patrick J. LeSage, *Report of the Second Independent Review Authority to The Honourable Peter G. MacKay Minister of National Defence* (Ottawa, Ont: Minister of National Defence, 2011); Morris Fish, *Report of the Third Independent Review Authority to the Minister of National Defence: Pursuant to Subsection 273.601(1) of the National Defence Act, RSC 1985, c N-5* (Ottawa, Ont: Minister of National Defence, 2021). For simplicity’s sake, when referred henceforth as the “IRA”, the term denotes the Somalia Inquiry and all three IRA (Lamer (2003), LeSage (2011), and Fish (2021), as well as their reports) as a whole, whether in process or as reports or people.

Somalia Inquiry. These concepts and definitions are developed through examination of the Reports of the Somalia Inquiry, the three successive IRA, and their recommendations, to amend the relevant legislation and policies—including recommendations not currently implemented. Such recommendations provide a normative understanding of the expectations of MP compared to their contemporary practice.

## 1.2 Need for an Empirical Study of Military Police

The current MP in the CAF originated in 1940.<sup>9</sup> Previous versions of military police were concerned primarily with military discipline rather than acting as a modern police service for the CAF.<sup>10</sup> MP currently provide services to the CAF by way of law enforcement, operational, and security services in Canada and throughout the world, wherever the CAF serves.<sup>11</sup> As an integral part of the MJS, MP have jurisdiction over members of the CAF, as well as Department of National Defence (DND) employees and visitors on DND property.<sup>12</sup> However, while there is a multitude of studies on policing and civilian police, research specific to military policing remains underdeveloped.<sup>13</sup>

This study is academically important due to a continued paucity of literature on military policing within broader changes to the understanding of policing, both generally and specifically in the Canadian context. Recent concerns with military policing

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<sup>9</sup> Canadian Forces Provost Marshal, Canadian Forces Provost Marshal Report - Fiscal Year 2015-2016, 13 December 2018, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/canadian-provost-marshal/canadian-forces-provost-marshal-report-fiscal-year-2015-2016.html>.

<sup>10</sup> Donovan and McElrea, *A History of the Royal Canadian Air Force Police and Security Services*.

<sup>11</sup> Canadian Forces Provost Marshal, *Canadian Forces Provost Marshal Annual Report 2020-2021*, 2021, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/provost-marshal-report-2020-2021.html>.

<sup>12</sup> Canadian Forces Provost Marshal.

<sup>13</sup> David N. Falcone and Beverly A. Smith, "The Army Military Police: A Neglected Policing Model", *Police Quarterly* 3, no. 3 (2000): 247–61; David H Bayley and Clifford D Shearing, *The New Structure of Policing: Description, Conceptualization, and Research Agenda* (U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, 2001), <https://www.ojp.gov/pdffiles1/nij/187083.pdf>.

regarding their competence and independence<sup>14</sup> can assist in creating a wider understanding of democratic policing in Canada, by understanding how military policing is supposed to work, and how it is supposed to be held accountable.

A fundamental change to military policing occurred when the Canadian Forces Provost Marshal (CFPM) assumed command of MP employed in law enforcement roles in 2011. For the first time in the modern era, the CoC for MP reported to this position.<sup>15</sup> This change in command structure created a gap in the academic literature concerning how Canadian military policing is currently supposed to be conducted, what makes it unique, and what distinguishes it from other types of policing. The social impacts of military policing, governmental responses, and their normative desirability, require research to understand what is happening in this field. As policing scholars Bayley and Shearing have noted: “Military police operate in a controlled environment with a population subject to a host of disciplinary sanctions not available to the public police. The study of military policing, long-neglected, may provide valuable insights ....”<sup>16</sup> With few exceptions,<sup>17</sup> there has been a lack of study on the normative desirability of military policing. This study will concern itself with creating such an understanding in the Canadian context.

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<sup>14</sup> Lousie Arbour, *Interim Recommendations from Independent External Comprehensive Review Team*, 20 October 2021, <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2021/2021-10-20-letter-to-minister-re-interim-recommendations.pdf>.

<sup>15</sup> Kent Roach, “Police Independence and the Military Police”, *Osgoode Hall Law Journal* 49, no. 1 (2011): 117–49.

<sup>16</sup> Bayley and Shearing, *The New Structure of Policing: Description, Conceptualization, and Research Agenda*, 19.

<sup>17</sup> Jonathan Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, *Manitoba Law Journal* (1966) 41, no. 4 (2018): 27–56.



### 1.3 How military police compare to other police

A normative understanding of the balance of police accountability and military discipline desirable in a democracy is important to obtain. Police and military are regularly placed on the same spectrum, yet are studied as completely separate entities.<sup>18</sup> There may be some logic to treating military police in the same way, as both military and police have legitimate access to the use of force to support liberal democratic states, yet their purposes for using this force are distinctly different.<sup>19</sup> Increasingly and internationally, militaries are becoming more concerned with domestic issues, such as border or drug issues in the United States; conversely, police are concerned with international issues, which is typically a military domain.<sup>20</sup> Role conflation in such a context is concerning for those who argue the desirability and necessity of separating police and military functions to distinguish between national security and law enforcement issues.<sup>21</sup>

The dual roles of MP (i.e. both military *and* police) highlight the need to have means of dealing with conflict between these roles. Changes since the Somalia Inquiry, such as the CFPM assuming command of the MP, may have contributed to their independence by reducing the perceived influence of the military CoC.<sup>22</sup> At the time, the then-CFPM stated that command strengthened the MJS; he also stated that the top

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<sup>18</sup> see David H. Bayley and Robert Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*, Book, Whole (Boulder: Lynne Rienner Publishers, 2010), 71–72.

<sup>19</sup> Garth den Heyer, “Filling the Security Gap: Military or Police”, *Police Practice & Research* 12, no. 6 (2011): 460–73; Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*; Derek Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”, *Cooperation and Conflict* 39, no. 1 (2004): 45–68.

<sup>20</sup> Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”.

<sup>21</sup> Charles Dunlap, “The Thick Green Line: The Growing Involvement of Military Force in Domestic Law Enforcement”, in *Policing: Key Readings* (Cullompton: Willan, 2005), 786–96.

<sup>22</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 33.

priority of MP “must always remain to support commanders in the conduct of CAF operations.”<sup>23</sup> Such statements create lasting perceptions of conflicting priorities.

Examining military policing can provide an understanding of the balance the MP have achieved between acceptable democratic oversight of their policing mandate, and their contribution to maintaining effective military discipline.

Studying military and police as mutually exclusive entities discounts an entire subset of institutions that are both military and police. Relatively recent academic interest in European gendarmeries has not stimulated much interest in similar North American models of police, such as military police.<sup>24</sup> Moreover, one should not consider gendarmerie or military police simply as militarised versions of police, as the status and structure of military police have distinct differences from a purely civilian police force.<sup>25</sup> Military police warrant study specifically due to their performance of policing functions as well as military functions. As such, this paper will be normatively concerned with expanding the knowledge of the balance military police strike in the Canadian context.

A key question to address is the duality of military policing: how MP can be a democratic police service whilst being responsible to a CoC in a total institution. With the primacy of protecting Canada with military capability,<sup>26</sup> the military culture<sup>27</sup> places a

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<sup>23</sup> Canadian Forces Provost Marshal, *Canadian Forces Provost Marshal Annual Report - 2010*, 10 January 2014, <http://www.forces.gc.ca/en/about-reports-pubs-cfpm-annual-reports/2010-cfpm-annual-report.page>.

<sup>24</sup> e.g. Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”; Falcone and Smith, “The Army Military Police: A Neglected Policing Model”. Gendarmerie will be defined in chapter 2.

<sup>25</sup> Pierre Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, *International Journal of Police Science & Management* 10, no. 4 (2008): 460.

<sup>26</sup> Canada and Department of National Defence, *Strong, Secure, Engaged - Canada's Defence Policy*, 2017, 60, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/transition-materials/mnd-transition-material-2021-dnd/tab7-defence-policy-sse.html>.

<sup>27</sup> Allan English, *Understanding Military Culture : A Canadian Perspective* (Montreal: McGill-Queen's University Press, 2004). Military culture expert Dr. Allan English considers culture to be the behaviours

high value on obedience, and disobedience can have drastic consequences.<sup>28</sup> Further, as noted in Roach before the changes to the *NDA* in 2013, the recent issues surrounding the previous Vice Chief of Defence Staff (VCDS)<sup>29</sup> and allegations surrounding a recently retired Chief of Defence Staff (CDS)<sup>30</sup> have raised concerns about MP independence.<sup>31</sup> As the *NDA* states that the VCDS can direct MP investigation, and even keep secret such direction,<sup>32</sup> such concerns have increased regarding the influence the CoC has over the MP.<sup>33</sup> Studies have not developed or examined how Canadian MP are held democratically accountable, especially concerning the culture within which they work.

While there are studies suggesting when and how democratic oversight of ordinary police is appropriate,<sup>34</sup> a frequently suggested model for improved oversight is a civilian-led policing board.<sup>35</sup> None of these studies suggest how to oversee a police

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derived from attitudes, which are the sum of the values and beliefs held. As an added layer to culture, English expands on “organisational culture” as serving several functions. These, he notes, include constraining functions that shape behaviours, providing meaning to interpretations of events, organisational value reinforcement, and an identification process that ties the person’s identity to that of the organisation. This last function, English noted, creates an inherent and motivating value to the work, if the member internalises the identity.

<sup>28</sup> cf. Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 45. and Schafer, 1997.

<sup>29</sup> Amanda Connolly, “Canadian Military’s Second-in-Command Resigns Role after Golfing with Vance”, 24 June 2021, <https://globalnews.ca/news/7948266/canadian-forces-mike-rouleau-golfing-vance/>. Specifically, the VCDS in question was Lieutenant General Michael Rouleau.

<sup>30</sup> Department of National Defence, “Obstruction of Justice Charge Laid Against Retired General Jonathan Vance”, 15 July 2021, <https://www.canada.ca/en/departement-national-defence/news/2021/07/obstruction-of-justice-charge-laid-against-retired-general-jonathan-vance.html>.

<sup>31</sup> The Canadian Press Staff, “Gen. Jonathan Vance Obstruction of Justice Case Headed for Trial in May 2023”, Global News, 29 October 2021, <https://globalnews.ca/news/8335095/canadian-forces-sexual-misconduct-jonathan-vance-trial/>; The Canadian Press Staff, “Military Police Chief Defends Independence: Vance Allegedly Said He “owned” Force”, 11 May 2021, <https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>.

<sup>32</sup> National Defence Act (2019), <https://laws-lois.justice.gc.ca/eng/acts/N-5/index.html> Section 18.3.

<sup>33</sup> Connolly, “Canadian Military’s Second-in-Command Resigns Role after Golfing with Vance”.

<sup>34</sup> Kempe Ronald Hope, “Civilian Oversight for Democratic Policing and Its Challenges: Overcoming Obstacles for Improved Police Accountability”, *Journal of Applied Security Research* 16, no. 4 (2021): 423–55.

<sup>35</sup> e.g. Michael Kempa and Clifford D Shearing, “Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland”, *Transformation: Critical Perspectives on Southern Africa* 29 (2002): 25–54; Andrew Halpenny, “The Governance of Military Police in Canada”, *Osgoode Hall Law Journal* (1960) 48, no. 1 (2010): 1–53.

agency in a military context. Unlike civilian police, the MP do not have a police board that governs their activities,<sup>36</sup> but report instead directly to the VCDS.<sup>37</sup> Being under the CoC may be akin to the mayor of a city having direct influence over the chief of police. These concerns are raised in the subsequent reviews of the changes to the MJS, but a consolidated understanding of the impacts or summation of those changes does not exist. Thus, study is required to understand how the governance and accountability of MP in Canada are being shaped.

The study of the Canadian MP will provide an updated conception of how MP are employed in a Canadian context. Most existing literature on military policing centres on the experience of non-Western states, such as in Indonesia or Brazil, where military police act as a public police agency with law enforcement functions over military *and* large civilian populations, which is not the situation in Canada.<sup>38</sup> Furthermore, problems that have arisen due to the integration of military and civilian policing mandates under a military organization in Indonesia has led to calls for a separation of these duties,<sup>39</sup> as in Canada. Other nations have military policing models that may be similar to the Canadian context, such as gendarmerie. Such models may provide insight into how others have integrated the dual roles of military and police.

#### **1.4 Favourable conditions for the study of military policing**

Recently, due to the scandals that have permeated to the top of the CAF, reform of the MJS has become a public concern, and military policing has been central to that

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<sup>36</sup> Halpenny, “The Governance of Military Police in Canada”.

<sup>37</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”.

<sup>38</sup> e.g. Adrianus Meliala, “Police as Military: Indonesia’s Experience”, *Policing : An International Journal of Police Strategies & Management* 24, no. 3 (2001): 420–32; Jorge Zaverucha, “Fragile Democracy and the Militarization of Public Safety in Brazil”, *Latin American Perspectives* 27, no. 3 (2000): 8–31.

<sup>39</sup> Meliala, “Police as Military: Indonesia’s Experience”.

concern.<sup>40</sup> The Canadian government's efforts have been criticised by the Chair of the Military Police Complaints Commission (MPCC),<sup>41</sup> members of parliament,<sup>42</sup> and the media.<sup>43</sup> The Chair of the MPCC has repeatedly taken issue with certain amendments to the NDA they viewed as inconsistent with steps towards greater independence for MP.<sup>44</sup> Further, changes made by the newly appointed Minister of National Defence (MND), Anita Anand, suggest that what the public desires MP to do, and not do, remains a current concern.<sup>45</sup> No study addresses these current concerns.

The issues stated above are practical and timely as they are currently before the Canadian public with the recent release of the *Report of the Third Independent Review Authority* (3IRA) by Justice Fish.<sup>46</sup> The independent reviews of the NDA and MJS made recommendations for amendments to the MJS subsequent to the Somalia Inquiry and as a result of Bill C-25, *An Act to amend the National Defence Act*, which passed in 1998.<sup>47</sup>

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<sup>40</sup> Lee Berthiaume, "Urgent Reforms Needed to Military Justice System to Protect Misconduct Victims: Fish", CTVNews, 20 June 2021, <https://www.ctvnews.ca/canada/urgent-reforms-needed-to-military-justice-system-to-protect-misconduct-victims-fish-1.5478248>.

<sup>41</sup> The Canadian Press Staff, "Watchdog Warns Bill C-15 Curbs Military Police Freedoms", CBC, 9 February 2013, <https://www.cbc.ca/news/politics/watchdog-warns-bill-c-15-curbs-military-police-freedoms-1.1405346>.

<sup>42</sup> Lee Berthiaume, "Defence Minister Says Military Sexual Misconduct Cases Will Be Handled by Civilians", CTVNews, 4 November 2021, <https://www.ctvnews.ca/politics/defence-minister-says-military-sexual-misconduct-cases-will-be-handled-by-civilians-1.5652020>.

<sup>43</sup> e.g. Postmedia News, "EDITORIAL: Enough Studies, Fix Military Justice", torontosun, accessed 29 April 2022, <https://torontosun.com/opinion/editorials/editorial-enough-studies-fix-military-justice>.

<sup>44</sup> The Canadian Press Staff, "Watchdog Warns Bill C-15 Curbs Military Police Freedoms"; Glenn M. Stannard, "Brief of the MPCC Regarding Bill C-15 - MPCC", 30 May 2013, <https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2013-05-27-eng.aspx>; Glenn M. Stannard, "Brief of the MPCC Regarding Bill C-15 - MPCC", 13 2012, <https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2011-10-26-eng.aspx>.

<sup>45</sup> Berthiaume, "Defence Minister Says Military Sexual Misconduct Cases Will Be Handled by Civilians"; Canadian Forces Provost Marshal, *Message from the Canadian Forces Provost Marshal Regarding the Transfer of Jurisdiction for Sexual Assault and Other Criminal Offences of a Sexual Nature*, 24 March 2022, <https://www.canada.ca/en/department-national-defence/maple-leaf/defence/2022/03/message-provost-marshall-transfer-jurisdiction.html>.

<sup>46</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

<sup>47</sup> Bill C-25: An Act to Amend the National Defence Act (C25e), accessed 15 November 2021, <https://publications.gc.ca/Collection-R/LoPBdP/LS/361/c25-e.htm>.

Bill C-25 required a review of the amendments it contained every five years.<sup>48</sup> Amongst other changes to the MJS legal branch and Judge Advocate General's service, Bill C-25 also established the MPCC as a civilian oversight body of both military policing conduct and any interference with MP investigations.<sup>49</sup> While the 3IRA addresses a report that is almost twenty-five years old, it is addressing concerns that have more recently become known as a result of allegations of sexual misconduct in the military, and the military's ability to deal with them. Recent legislative changes in 2013 aimed to make the MJS more consistent with the civilian justice system and the *Criminal Code* while accounting for the MJS's need to retain military discipline.<sup>50</sup> Despite intending to provide increased independence and impartiality in the MJS, many issues are now being brought to light about a remaining lack of independence in the MJS, and MP in particular.

Specifically relevant to MP, the changes in 2013 defined a role for the CFPM and set minimum training and experience requirements for individuals filling the role of CFPM.<sup>51</sup> In addition, the provisions limited the length of service of a CFPM to four years, though reappointment is possible, while also providing some protection by making the early removal of a CFPM subject to an inquiry.<sup>52</sup> Roach suggests that these protections are more than those enjoyed by the Commissioner of the Royal Canadian Mounted Police (RCMP) or other commensurate police chiefs, and provide a measure of

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<sup>48</sup> Bill C-25: An Act to Amend the National Defence Act (C25e), Pub. L. No. C-25, accessed 15 November 2021, <https://publications.gc.ca/Collection-R/LoPBdP/LS/361/c25-e.htm>.

<sup>49</sup> Bill C-25: An Act to amend the National Defence Act (C25e).

<sup>50</sup> Government Bill (House of Commons) C-15 (41-1) - Royal Assent - Strengthening Military Justice in the Defence of Canada Act - Parliament of Canada, Pub. L. No. C-15 (2013), <https://www.parl.ca/DocumentViewer/en/41-1/bill/C-15/royal-assent>.

<sup>51</sup> Government Bill (House of Commons) C-15 (41-1) - Royal Assent - Strengthening Military Justice in the Defence of Canada Act - Parliament of Canada.

<sup>52</sup> National Defence Act.

independence from the military CoC.<sup>53</sup> Such provisions would suggest that MP independence is in good stead.

A more contentious clause in the 2013 changes established who may give direction to the CFPM regarding investigations. The change is contentious as the VCDS, the second-highest member of the CAF, can provide general direction to the CFPM on policing in general (*NDA* Sec 18.5 (2)), as well as particular investigations (*NDA* Sec 18.5 (3)).<sup>54</sup> The CFPM may cause this direction to be made public, or keep it confidential if they feel it would not be in the interests of the administration of justice. This clause is contentious, as the public cannot know with certainty if it has ever been employed. Further, unprecedented investigations involving either the VCDS or the CDS have occurred since the changes in 2013. Many media articles in the last year now frequently suggest a perception that MP are insufficiently independent.<sup>55</sup>

As the command relationship of the CAF and MP is currently back in debate in parliament and the media, it is timely to conduct research into the normative expectations of MP in Canada. First, this paper will describe Canada's conception of military policing in legislation and regulations, including the recommendations for accountability and changes to MP stemming from the Somalia Inquiry. Then a normative evaluation of the adequacy of these frameworks for military policing will be made using the standards found in the literature concerning democratic policing in Western Society. By

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<sup>53</sup> Roach, "Police Independence and the Military Police".

<sup>54</sup> National Defence Act Section 18.

<sup>55</sup> The Canadian Press Staff, "Military Police Chief Defends Independence; Vance Allegedly Said He "owned" Force"; Amanda Connolly, "Military Police Watchdog Probing Whether Investigators Altered Report, Interfered in Case", Global News, 24 September 2021, <https://globalnews.ca/news/8218141/military-police-investigation-alleged-interference/>.

understanding the public conception of MP, a normative understanding can then be achieved.

Knowing the expectations of behaviour and actions that the Canadian public has deemed appropriate or desirable for police creates a normative understanding. Such actions and behaviour are not necessarily codified as rules, and are considered “norms.”<sup>56</sup> Behaviours that adhere to these norms are considered normative. Thus, this paper is examining how the MP conform to notions of policing in legislation, and expectations of what duties they should perform as recommended by the Independent Reviews subsequent to the Somalia Inquiry.

Identifying how well MP observe policing norms, as established in the literature and as expressed by the Independent reviews, makes it possible to consider how MP ought to be governed. Such consideration includes the accountability of MP and desired governance structures required to enable MP to act *qua* police.

A normative understanding is made through examining the balance Canadian military policing has struck between the competing aims of military objectives, order maintenance, and law enforcement, specifically while operating under the rule of law in a democratic society *and* a military CoC. A qualitative content analysis of key documents recommending legislative governance of MP will enable consideration of the appropriateness of this balance in terms of their mandate, political freedom, and oversight provided for their activities. The outcome will be an improved understanding of the normative deficiencies of MP. Identifying normative deficiencies permits for a

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<sup>56</sup> Gordon Marshall, ed., *Oxford Dictionary of Sociology* (Oxford, NY: Oxford University Press, 1998), 453.



discussion on what would correct these deficiencies as well as propose areas for further study of this important model of policing.

The second chapter focuses on a review of the literature regarding policing trends with a focus on military policing. Chapter two also will develop the normative discussion concerning the essential, desirable, unnecessary, and potentially harmful characteristics in systems for democratic policing control. International, Western examples will be explored as exemplars of how military policing is represented in the literature. The chapter will conclude with research questions grounded in the literature.

Chapter three will be concerned with describing the general methodology and specific method employed in this research. The research is a qualitative content analysis reviewing the recommendations of the Somalia Inquiry, and the subsequent three IRA, that concern military policing. Discussion regarding the sampling of these documents is explained in detail. The chapter considers how to conduct a qualitative analysis from a post-positivist perspective. The chapter ends with a discussion on the ethics of studying a topic so close to the author.

The fourth chapter will present the findings of the content analysis of the recommendations of the Somalia Inquiry, and the subsequent three IRA. The degree to which the MP resemble other forms of alternative police, namely gendarmerie as well as civilian police model will be detailed through an examination of the recommendations and their implementation—or lack thereof. The chapter will articulate any normative gaps in the current conception of accountability in the data that threaten the democratic nature of military policing.

Chapter five offers a discussion on the content and analysis of the recommendations of the Somalia Inquiry and the subsequent three IRA. Leveraging the literature reviewed in chapter two, an analysis of the data will speak to descriptions of the conceptions of military policing in the recommendations, and their normative desirability vis-à-vis the rule of law. An examination of the implications of both the implemented and the unimplemented recommendations will also occur. This chapter will note how the data addresses the MP mandate, independence, and political freedom.

Chapter six will reflect on the potential significance of this project and consider future directions for research grounded in the strengths and weaknesses of the current study. Additionally, the chapter will provide consideration of legislative and policy implications for military policing.

## CHAPTER TWO: MILITARY POLICE IN THE LITERATURE

This chapter will look at the literature relevant to the study of military policing. It will first consider the trends in policing, including the definition of police. Then it will look at the convergence of military and police, first as separate entities, and then as they converge into one entity. Next, this chapter will examine the few academic studies of MP in the Canadian context. Subsequently, the chapter looks at the trends in accountability in policing, as a precursor to how accountability for military policing has occurred. Finally, it will look at how the narrative of the Somalia Inquiry, the first, second, and third IRA<sup>57</sup> addressed MP. These examinations will culminate in the research questions for this project regarding what these recommendations say military policing in Canada should become, the persistent issues spurring such recommendations, and whether such recommendations support the viability of military policing as it is today in Canada.

### 2.1 Trends in policing

It is difficult to find a singular uncontested definition of what police are in a Western context or a definition of police practices.<sup>58</sup> Police are often defined (or conceived) by their function and by their ability to use force.<sup>59</sup> An oft-cited reference suggests that police are responsible for intervention in situations that should not be

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<sup>57</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*; Lamer, *Lamer Report*; LeSage, *Second Independent Review Authority*; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

<sup>58</sup> David H. Bayley, "Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies", *Crime and Justice (Chicago, Ill.)* 1, no. Journal Article (1979): 139; Bayley and Shearing, "The New Structure of Policing: Description, Conceptualization, and Research Agenda", 3; Carl B. Klockars, *The Idea of Police* (London: Sage, 1985); David Dixon, "The Legal Regulation of Policing.", in *Policing Key Readings* (Cullompton: Willan, 1997), 661.

<sup>59</sup> Bayley, "Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies", 112–13.

occurring, and require an immediate reaction.<sup>60</sup> Others suggest that such a definition permits immediate action to address issues regardless of the legality.<sup>61</sup> Competing definitions of police are based on their state mandate to use coercive force within that state to enforce laws.<sup>62</sup> The public, in general, defines the mandate of police.<sup>63</sup> Many suggest that the service and powers of police should come from a source document that authorises them to act.<sup>64</sup> This paper considers police as a sum of all of these concepts.

To effectively compare military policing to civilian policing, essential to understand the normative view of MP, one must consider what police are believed to do. The majority of police perform order-maintenance roles, and the distribution and types of police work are similar around the world.<sup>65</sup> Although policing duties have long been known to focus generally on order-maintenance, police actively present themselves primarily as a law enforcement organisation.<sup>66</sup> In Canada, expectations of police are set out in protocols found in legislation or other forms of documentation, such as regulations.<sup>67</sup> One can interpret how a police agency presents itself by interpreting laws and other formal rules and procedures for police and observing the behaviour of those

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<sup>60</sup> Egon Bittner, "Florence Nightingale in Pursuit of Willie Sutton: A Theory of Police.", in *Policing: Key Readings* (Cullompton: Willan, 1990), 161.

<sup>61</sup> Klockars, *The Idea of Police*.

<sup>62</sup> Klockars, 12.

<sup>63</sup> Peter K. Manning, "The Police: Mandate, Strategies, and Appearances", in *Policing: Key Readings* (Willan, 2005), 196.

<sup>64</sup> Bittner, "Florence Nightingale in Pursuit of Willie Sutton: A Theory of Police.", 153; See also Gobinet, "The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?", 458.

<sup>65</sup> David H. Bayley, "What Do Police Do?", in *Policing: Key Readings* (Cullompton: Willan, 1994), 142.

<sup>66</sup> Richard V. Ericson, "The Police as Reproducers of Order.", in *Policing: Key Readings* (Cullompton: Willan, 1982), 217; William Westley, "Responsibilities of Police.", in *Policing: Key Readings* (Cullompton: Willan, 1970), 137–40.

<sup>67</sup> e.g. "Ontario Regulation 3/99 -Adequacy and Effectiveness of Police Services." (2014), <https://www.ontario.ca/laws/view>.

police.<sup>68</sup> Such protocols provide the expected activities and practices of the police agencies under study.<sup>69</sup>

## 2.2 The militarization debate

Having considered how police and military police are defined in the Western and Canadian contexts respectively, discussion will now turn to how the dual aspects of military and policing interrelate and influence each other. The prevailing conception of policing focuses on the prevention and detection of crime. This original concept of policing being concerned with maintaining order has changed to skills-based law enforcement.<sup>70</sup> The similarities between policing and military techniques are frequently being compared and have become a source of debate, as discussed below.

Multiple studies compare the similarities between the military and police, as well as the influence they exert upon each other.<sup>71</sup> Some authors are suggesting a convergence is occurring between military and police roles.<sup>72</sup> Some note that the separation of security provision by internal and external agencies is a recent phenomenon, and documents how police increasingly adopt external security functions,

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<sup>68</sup> Richard V. Ericson, "Rules in Policing: Five Perspectives", *Theoretical Criminology* 11, no. 3 (2007): 378.

<sup>69</sup> Department of National Defence, *Queen's Regulations and Orders* (QR&O) (2014), <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders.html>; Department of National Defence, *Defence Administrative Orders and Directives* (2013), <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives.html>. For the Canadian military police, these rules are publicly available in the *NDA*, the Queen's Regulations and Orders for the Canadian Forces (QR&O), and (to a lesser extent) the Defence Administrative Orders and Directives (DAOD).<sup>69</sup> QR&O Chapter 22 states Appendix 7.1 of the QR&O contains Military Police Professional Code of Conduct, which lays out the prohibitions on behaviour.

<sup>70</sup> Mark Neocleous, "Policing and Pin-Making: Adam Smith, Police and the State of Prosperity", *Policing & Society* 8, no. 4 (1998): 431–32; Ericson, "The Police as Reproducers of Order."

<sup>71</sup> cf. Lutterbeck, "Between Police and Military: The New Security Agenda and the Rise of Gendarmeries"; Dunlap, "The Thick Green Line: The Growing Involvement of Military Force in Domestic Law Enforcement"; Didier Bigo, "Internal and External Aspects of Security.", *European Security* 15, no. 4 (2006): 385–404.

<sup>72</sup> Tomas Weiss, "The Blurring Border between the Police and the Military: A Debate without Foundations.", *Cooperation and Conflict* 46, no. 3 (2011): 396–405.

whereas the militaries are becoming more involved in domestic security.<sup>73</sup> Weiss calls for further study of police models that blend military with policing, such as gendarmerie, and for the study of the definitional differences between military and police.<sup>74</sup> Weiss suggests study will demonstrate whether police and military are converging, which would advance the broader debate on current internal and external security practices.<sup>75</sup>

Looking at how military and police are converging in the West allows for an understanding of the relative desirability of this convergence, especially as this paper is concerned with an entity that represents both. A few studies call for differentiation between the roles;<sup>76</sup> multiple studies are more concerned with the similarities between police and military personnel.<sup>77</sup> Multiple studies have looked at the mental health effects at the convergence, with some suggesting that there is a correlation or convergence, and others suggesting there is not.<sup>78</sup> Some studies consider military professionalism an asset to incorporate into policing, finding such traits supports rather than inhibits using the least amount of force required.<sup>79</sup> Studies suggest that the professional and adaptive leadership styles found in the military model of leadership would be beneficial to policing, precisely because of the similarities between military and police goals, public

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<sup>73</sup> Lutterbeck, "Between Police and Military: The New Security Agenda and the Rise of Gendarmeries".

<sup>74</sup> e.g. Weiss, "The Blurring Border between the Police and the Military: A Debate without Foundations."

<sup>75</sup> Weiss.

<sup>76</sup> Weiss.

<sup>77</sup> e.g. George T. Patterson, "Predicting the Effects of Military Service Experience on Stressful Occupational Events in Police Officers.", *Policing: An International Journal of Police Strategies and Management* 25, no. 3 (2002): 602–18; Don Ivie and Brett Garland, "Stress and Burnout in Policing: Does Military Experience Matter?", *Policing: An International Journal of Police Strategies & Management* 34, no. 1 (2011): 49–66; Thomas J. Cowper, "The Myth of the "Military Model" of Leadership in Law Enforcement", *Police Quarterly* 3, no. 3 (2000): 228–46; Dunlap, "The Thick Green Line: The Growing Involvement of Military Force in Domestic Law Enforcement".

<sup>78</sup> Patterson, "Predicting the Effects of Military Service Experience on Stressful Occupational Events in Police Officers."; cf. Ivie and Garland, "Stress and Burnout in Policing: Does Military Experience Matter?"

<sup>79</sup> e.g. Charles C. Moskos, "UN Peacekeepers: The Constabulary Ethic and Military Professionalism", *Armed Forces and Society* 1, no. 4 (1975): 388–401.

service, and use of force.<sup>80</sup> Others suggest convergence comes from changes in law enforcement discourse to be more militarized (i.e. war on drugs or terror), which influences the increasing militarization of the police.<sup>81</sup> These are suggestive of a general conceptual conflation of military and police. Yet, all are careful to state that, while there are conceptual similarities between police and the military, the two should remain separate.

This conceptual conflation is further supported by the military partaking in what once were considered police roles. Such activities include military participation in domestic law enforcement activities, particularly in stabilisation operations or counter-insurgency operations.<sup>82</sup> Predominantly in post-conflict situations, “Military involvement in law enforcement (broadly defined) has become a key feature of operational planning and execution.”<sup>83</sup> Equally, there is the contention that civilian police should partake in such military operations in a post-conflict zone, as they are considered a better option than military forces for establishing democracy and rule of law.<sup>84</sup> The formation of police initially was intended to reduce the use of the military for policing duties.<sup>85</sup> However, studies suggest civilian police are becoming more military-like in methods and equipment, and the only real difference remaining is the official military status and

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<sup>80</sup> Cowper, “The Myth of the “Military Model” of Leadership in Law Enforcement”.

<sup>81</sup> Donald J. Campbell and Kathleen M. Campbell, “Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States”, *Armed Forces and Society* 36, no. 2 (2010): 327–50.

<sup>82</sup> Dale Stephens, “Military Involvement in Law Enforcement”, *International Review of the Red Cross* (2005) 92, no. 878 (2010): 453–68.

<sup>83</sup> Stephens, 453.

<sup>84</sup> den Heyer, “Filling the Security Gap: Military or Police”.

<sup>85</sup> David H. Bayley, *Patterns of Policing* (New Brunswick, NJ: Rutgers University Press, 1985), 43.

culture.<sup>86</sup> As such, one can conclude that there is at least a conceptual convergence of military and police.

Such convergence of activities and roles of police and militaries may give rise to agencies that combine the two.<sup>87</sup> David Bayley and Robert Perito examined policing in conflict zones and recommend that (despite the conceptual conflation) the military and police each bring a particular skill-set and the roles of the two should not be confused.<sup>88</sup> Alternatively, Bayley and Perito propose employing each in roles that play to their strengths: the military protects against enemy forces while the police re-establish law and order.<sup>89</sup> Bayley later emphasises the need for separation of military and police functions in conflict zones, and police should not try to become too close to the military as they serve different purposes.<sup>90</sup> Ironically, in attempting to differentiate police and military functions, suggesting that military and police can both operate in counter-insurgency or post-conflict zones places them on the same continuum and supports the conceptual convergence of the two. Using civilian police in international conflict zones plainly demonstrates the increasing employment of police in areas formerly reserved for the military.

There may be significant implications with the convergence of military and policing roles, including possible threats to civil liberties or rights that stem from a

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<sup>86</sup> Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, 457. For cultural differences, consider reading Janet Chan, “Changing Police Culture”, in *Policing: Key Readings* (Cullompton: Willan, 2005), 338–63 for police culture; English, *Understanding Military Culture: A Canadian Perspective* regarding military culture.

<sup>87</sup> Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”.

<sup>88</sup> Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*.

<sup>89</sup> Bayley and Perito.

<sup>90</sup> David H. Bayley, “The Police in War”, *African Security Review* 20, no. 4 (2011): 5–10.



militarization of the police.<sup>91</sup> Considering the coercive nature of police powers, specifically in a total institution like the military, individual rights should be an utmost concern for military police.<sup>92</sup>

### **2.3 Trends in military policing**

Relatively few studies examine military policing in the Western context, and those studies primarily are concerned with forces abroad and almost no studies describe military policing in the Canadian context. While this paper is concerned with how military policing fits normatively in the Canadian context, it is instructive to consider as well how the literature treats military policing in the Western context. Such studies can provide some of the context missing from the study in the Canadian case. Since different countries conduct military policing in fundamentally different ways, a study of the Canadian MP will provide a unique perspective.

The desirability of linking police and military functions in one organisation has generated debate. Writ-large, the police and military are qualitatively different, each having unique capabilities and advantages.<sup>93</sup> However, this argument concerns mainly the whole military compared to entire policing organisations, not entities that are inherently both. Proponents suggest military policing models signify a ‘functional’ or ‘rational’ adaption to the increasingly transnational threats by policing institutions.<sup>94</sup> Such an adaption would indicate a balance of military and police in their approach.

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<sup>91</sup> Campbell and Campbell, “Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States”.

<sup>92</sup> Robert Dillon, “Putting the Police Back into the Military Police”, ADA553025 (U.S. Army War College, 23 March 2011).

<sup>93</sup> Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*, 163.

<sup>94</sup> Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”, 249.

However, detractors suggest the nature of military police tactics is harsher, more military than civilian.<sup>95</sup> None of these studies refers to military policing models in Canada.

Abroad, in countries such as Indonesia and Brazil,<sup>96</sup> military police perform functions reserved for civilian police in Canada. These forces have their own unique problems such as inadequate policing skills, an imbalance between military and police mandates, as well as corrupted relations between citizens (e.g. Indonesia) and the police.<sup>97</sup> The ineffectiveness and undesirable actions of Indonesian military police forces led to calls to return policing to a civilian organization.<sup>98</sup> Brazilian Military Police, rather than their civil police, are responsible for crime control and interact more with the public than their civil police do, albeit with high rates of brutality.<sup>99</sup> Studies into non-Western military police with civilian mandates are clearly different from those in Canada, as the military police appear to have a limited civilian policing role.<sup>100</sup> As such, they are not in consideration for comparison.

Conversely, an important closely related phenomenon are Gendarmerie (e.g. French National Gendarmerie, Italian Carabinieri), though they are not nominally military police. Military responsibility for policing is considered the domain of non-democratic countries in the research, and as such, Gendarmerie and military police are not usually considered with the same status in policing studies despite their policing roles

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<sup>95</sup> den Heyer, "Filling the Security Gap: Military or Police".

<sup>96</sup> Meliala, "Police as Military: Indonesia's Experience".

<sup>97</sup> Meliala; Nicolas Sinaga and SH, "Authority of Military Police of the Indonesian Air Force in Handling National Airspace Boundaries", *Central European Journal of International & Security Studies* 12, no. 4 (2018).

<sup>98</sup> Meliala, "Police as Military: Indonesia's Experience".

<sup>99</sup> Indu Pandey, "Vigils on Two Continents: A Comparative Analysis of Police Brutality in Brazil and the United States", *Harvard International Review* 41, no. 4 (2020): 23–24.

<sup>100</sup> Halpenny, "The Governance of Military Police in Canada".

or mandates.<sup>101</sup> While they do police the military, Gendarmeries are not always part of the armed forces and some consider them better defined as police forces with some characteristics and capabilities of the military.<sup>102</sup> Gendarmerie work in a system of security providers focusing on national and international threats.<sup>103</sup> Some gendarmerie officials contend that they are more suited for policing in conflict zones than military or police,<sup>104</sup> but this is a contested opinion.<sup>105</sup> Such arguments are oversimplifying the problem, given that gendarmeries are not inherently incompatible with democratic policing.<sup>106</sup> So long as police organisations have a clear constitutional mandate, independence from political interference, and independent institutionalised oversight, gendarmerie (or any police) are democratically employed.<sup>107</sup> Thus, the similarity of the dual police and military mandates of Gendarmeries creates a useful comparison for Canadian MP.

In the North American context, most literature focuses on US military police. Some authors note that the American Military Police Corps is similar to the sheriff's model of policing, and has proven innovative in areas such as community policing, in their ability to adopt different models of policing and reward meritorious service.<sup>108</sup> The model also has unique roles such as security services and combat.<sup>109</sup> Emphasising this unique approach, some label the American Military Police Corps as an ancillary police

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<sup>101</sup> Gobinet, "The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?", 460.

<sup>102</sup> Lutterbeck, "Between Police and Military: The New Security Agenda and the Rise of Gendarmeries".

<sup>103</sup> Bigo, "Internal and External Aspects of Security.", 398.

<sup>104</sup> Bigo, 400.

<sup>105</sup> Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*.

<sup>106</sup> Gobinet, "The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?", 459.

<sup>107</sup> Gobinet, 458.

<sup>108</sup> Falcone and Smith, "The Army Military Police: A Neglected Policing Model", 253–57.

<sup>109</sup> Falcone and Smith, 256–57.

force, meaning it only has a special purpose.<sup>110</sup> Furthermore, when considered in the continuum of the military-police spectrum, there is often no differentiation of American Military Police from the rest of the American military.<sup>111</sup> Consequently, there has been a drive to re-emphasise the policing function of American Military Police.<sup>112</sup> None of this literature distinguishes between American and Canadian MP models. Further, the literature is clearly divided on the desirability of organisations with both military and police status.

Canadian MP is considered an obscure subject for study,<sup>113</sup> with only three key or relevant studies published in academic journals. All three focus on MP independence as the central problem.<sup>114</sup> It is interesting to note that all three studies are published in law journals, rather than policing ones. This may suggest that study of MP is of more relevance for the legal concerns than the contribution to policing, or as an alternative policing model.

Andrew Halpenny conducted the first study, with a historical and legal examination regarding the MP CoC.<sup>115</sup> At the time, local base commanders commanded MP, and Halpenny concluded that aligning the MP with other Canadian policing standards required two changes. The first change was to restructure the CoC to place MP under the command of the CFPM; the second was to institute a police services board to

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<sup>110</sup> David H. Bayley, “Comparative Organization of the Police in English-Speaking Countries”, *Crime and Justice* (Chicago, Ill.) 15, no. Journal Article (1992): 509–45.

<sup>111</sup> E.g. Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*.

<sup>112</sup> Dillon, “Putting the Police Back into the Military Police”.

<sup>113</sup> Roach, “Police Independence and the Military Police”, 148.

<sup>114</sup> Halpenny, “The Governance of Military Police in Canada”; Roach, “Police Independence and the Military Police”; Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”.

<sup>115</sup> Halpenny, “The Governance of Military Police in Canada”.

oversee the policing function (as exists in most police services).<sup>116</sup> Since his writing, the CFPM assumed full command of MP in 2011, but a board has not.<sup>117</sup> Halpenny concludes that the MP have made progress towards a more independent policing model but still require further independence.<sup>118</sup>

The second key study was conducted immediately prior to the passing of Bill C-15.<sup>119</sup> As the MPCC reviewed Bill C-15's proposed changes they commissioned Law Professor Kent Roach to independently examine the sections concerning MP independence.<sup>120</sup> Roach contended that changes made subsequent to the Somalia Affair (such as the relationship between MP and the CoC) had increased the independence of MP, but these efforts could be undone by Bill C-15 which empowered the VCDS to direct MP investigations.<sup>121</sup> This second study into the independence of military policing was later published in an academic law journal.<sup>122</sup> Roach focussed on the legal precedents for policing independence and the consequence of the proposed changes, and recommended not adopting the changes that would allow the VCDS to interfere in police investigations, rather than on what protections regulations or legislation provide or should provide.<sup>123</sup>

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<sup>116</sup> Halpenny, 50. While Halpenny did outline a structure for national, regional and local boards, he noted that the specific make-up and duties were beyond the scope of his writing.

<sup>117</sup> Roach, "Police Independence and the Military Police", 140 and 142.

<sup>118</sup> Halpenny, "The Governance of Military Police in Canada", 47. This is explored further below in the discussion on the normative desirability of these changes.

<sup>119</sup> Roach, "Police Independence and the Military Police".

<sup>120</sup> Military Police Complaints Commission, *Brief of the MPCC Regarding Bill C-15 - MPCC*, Brief of the MPCC regarding Bill C-15, 30 May 2013, <https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2013-05-27-eng.aspx>. Bill C-15 is "An Act to amend the National Defence Act and to make consequential amendments to other Acts", which has passed second reading in the Senate of Canada as of 21 May 2013.

<sup>121</sup> Roach, "Police Independence and the Military Police".

<sup>122</sup> Roach.

<sup>123</sup> Roach, 137.

Crown Attorney Jonathan Avey published the final relevant Canadian MP study 2018.<sup>124</sup> This study leveraged court cases to demonstrate how MP independence is played out at the incident level to demonstrate the uncertainties that exist in the CoC regarding the dual roles of MP *qua* soldiers and police. However, the conclusion noted that MP independence is generally accepted (even by the courts), but needs to be protected by legislation.<sup>125</sup> The study highlighted the need for the repeal of the sections regarding VCDS interference, as they create the perception of undermining MP independence and that military interests supersede those of justice in the military.<sup>126</sup>

Regarding the functions of MP, the literature discusses the topic generally, but does not develop what those functions are. Roach primarily discusses the common law aspects defining MP ability to enforce laws.<sup>127</sup> Halpenny speaks to the order-maintenance (disciplinary) role of MP, similar to the role civilian policing play,<sup>128</sup> but this lacks empirical support in the literature.<sup>129</sup> Halpenny suggests that the order maintenance role is one way that MP serve and support the military CoC, with a military discipline focus.<sup>130</sup> A gap remains in understanding what the legislation and regulations mandate as the role and expectations of MP, both militarily and in law enforcement. Knowing the legislative balance between soldiering and policing is empirically important; it will also better enable a better understanding of MP within the broader concept of policing.

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<sup>124</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”.

<sup>125</sup> Avey, 55.

<sup>126</sup> Avey, 55–56.

<sup>127</sup> Roach, “Police Independence and the Military Police”.

<sup>128</sup> Manning, “The Police: Mandate, Strategies, and Appearances”, 199.

<sup>129</sup> Halpenny, “The Governance of Military Police in Canada”, 50.

<sup>130</sup> Halpenny, 4.

## 2.4 Trends in accountability

It is instructive to consider how accountability for policing is addressed in places it is perceived to be insufficient, such as the mistrust that currently exists in Canadian MP.<sup>131</sup> Adopting a local policing board that creates greater accountability to the community represents a fundamental change to methods of policing governance, as was seen in the early part of this century in South Africa and Northern Ireland.<sup>132</sup> How police are held accountable varies from nation to nation.<sup>133</sup> Studies have found that when external agencies investigate misconduct and corruption, the process gains legitimacy and avoids issues of mistrust that develop when police internally conduct investigations.<sup>134</sup> The creation of a policing board for MP was one of the recommendations made by Halpenny in his consideration of their accountability.<sup>135</sup>

Employing external oversight boards to keep police accountable for their actions is a widely studied phenomenon, especially when a new accountability structure is set up or recommended.<sup>136</sup> The recent Northern Irish example emphasises its concepts of policing boards, functional budgets, and notions of operational responsibility.<sup>137</sup> While

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<sup>131</sup> Canadian Forces Provost Marshal, “Message from the Canadian Forces Provost Marshal Regarding the Transfer of Jurisdiction for Sexual Assault and Other Criminal Offences of a Sexual Nature”; Arbour, *Interim Recommendations from Independent External Comprehensive Review Team*, 20 October 2021.

<sup>132</sup> Kempa and Shearing, “Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland”.

<sup>133</sup> Bayley, “Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies”.

<sup>134</sup> Allan Y. Jiao, “Controlling Corruption and Misconduct: A Comparative Examination of Police Practices in Hong Kong and New York”, *Asian Journal of Criminology* 5, no. 1 (2010 2009): 27–44.

<sup>135</sup> Halpenny, “The Governance of Military Police in Canada”, 53.

<sup>136</sup> Kempa and Shearing, “Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland”; Bayley, “Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies”.

<sup>137</sup> Clifford Shearing, “A New Beginning” for Policing”, *Journal of Law and Society* 27, no. 3 (2000): 386–93.

such approaches in Northern Ireland are initially showing measured success,<sup>138</sup> they are problematic in such a contentious environment.<sup>139</sup> The successes found in Northern Ireland are specific to the individual dynamics of its context, and these dynamics may not exist in other locations, which would hinder replicating the Northern Irish successes.<sup>140</sup>

Canadian MP are both subject to and accountable to the military CoC, rather than directly to the community in which they work.<sup>141</sup> Therefore, MP do not have (but could benefit from) the protection from interference and the accountability to the community a police services board provides.<sup>142</sup> Differences in issues of accountability in the military notwithstanding, the absence of an institution (such as a police services board) to mitigate political or CoC influences raises questions concerning accountability.<sup>143</sup> While some feel that such a board could insulate the MND and CDS further from accountability,<sup>144</sup> the use of such a board bears consideration as insulation to the powers granted to the VCDS to direct MP investigations.

A modest civilian involvement in police accountability frameworks can improve the processes for complaint reviews, and increase community confidence in the complaint reviews.<sup>145</sup> An acceptable system of police accountability requires strong internal,

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<sup>138</sup> Kempa and Shearing, “Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland”.

<sup>139</sup> John Wilson and Karyn Stapleton, “The Discourse of Resistance: Social Change and Policing in Northern Ireland”, *Language in Society* 36, no. 3 (2007): 393–425.

<sup>140</sup> Graham Ellison and Conor O’Reilly, “From Empire to Iraq and the “War on Terror”: The Transplantation and Commodification of the (Northern) Irish Policing Experience”, *Police Quarterly* 11, no. 4 (2008): 395–426.

<sup>141</sup> Halpenny, “The Governance of Military Police in Canada”, 9.

<sup>142</sup> Halpenny, 50–52.

<sup>143</sup> Halpenny, 52.

<sup>144</sup> Roach, “Police Independence and the Military Police”, 143.

<sup>145</sup> Christopher D. O’Connor, “Citizen Attitudes toward the Police in Canada”, *Policing: An International Journal of Police Strategies & Management* 31, no. 4 (2008): 578–95.



governmental, and societal controls.<sup>146</sup> One can consider that such controls are the point of IRA, to ensure that the MJS addresses complaints with the system.

Consideration of the influences and safeguards exerted on MP, who are subject to a CoC with power over the police and community, is necessary. Despite the expected political neutrality of police, politics are known to influence policing in several ways.<sup>147</sup> Manning found that civilian policing budgets, staffing, and administration are politically controlled.<sup>148</sup> Such vulnerabilities to influence in the civilian police lead to the question of what influence the military CoC has over military policing.

As perceptions persist that police and military are parts of the same continuum,<sup>149</sup> comparisons of police and military accountability may be inevitable. The two organisations have similarities regarding member misconduct, with similar working environments, though they have significantly different *raison d'être*.<sup>150</sup> However, role convergence between police and military has significant implications, such as more repressive governing resulting from police adopting military attitudes and orientations that threaten civil liberties and rights.<sup>151</sup> Others suggest that civil liberties are more threatened by the deployment of the military against defined domestic threats, contrary to liberal democratic values and detrimental to the military's operational capability.<sup>152</sup> A

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<sup>146</sup> Christopher Stone, "Tracing Police Accountability in Theory and Practice: From Philadelphia to Abuja and Sao Paulo", *Theoretical Criminology* 11, no. 2 (2007): 256.

<sup>147</sup> Manning, "The Police: Mandate, Strategies, and Appearances", 200–201.

<sup>148</sup> Manning, "The Police: Mandate, Strategies, and Appearances".

<sup>149</sup> e.g. Bayley and Perito, *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*.

<sup>150</sup> Elizabeth L. Hillman, "Front and Center: Sexual Violence in U.S. Military Law", *Politics & Society* 37, no. 1 (2009): 101–29; see also Collins 2004.

<sup>151</sup> Campbell and Campbell, "Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States"; Cowper, "The Myth of the "Military Model" of Leadership in Law Enforcement".

<sup>152</sup> Dunlap, "The Thick Green Line: The Growing Involvement of Military Force in Domestic Law Enforcement".

third view argues that restoration and maintenance of order are central military missions (even if law enforcement is not) which can, when legitimated and validated through legislative restraints, create constructive roles for military services.<sup>153</sup> Dillon asserts that American Military Police need to emphasise their policing aspect to provide professional and democratically responsible police services.<sup>154</sup> Roach supports this view, noting that the rule of law suffers if MP have a higher duty toward the CoC than towards impartial investigation.<sup>155</sup> Others say study is required to understand the distinctions between military and police, including their legislative functions and structures.<sup>156</sup> Thus, an empirical understanding of how MP are accountable is required. This understanding should address the competing aims of the MP to accountably uphold the rule of law while supporting a military CoC.

## **2.5 The Military Police and the Somalia Inquiry**

Having discussed the nature of what police are, the convergences of the military and police, similar entities that have similar dual roles and accountability to the role of the MP in the Canadian context, the discussion now turns to the legislatively mandated authorities that have been tasked with the consideration of military policing.

Regarding public expectations of MP, the main sources are found in reports resulting from the Somalia Inquiry.<sup>157</sup> A former Justice of the Supreme Court of Canada headed each of these reports, lending their objective credibility to their consideration of

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<sup>153</sup> Stephens, "Military Involvement in Law Enforcement".

<sup>154</sup> Dillon, "Putting the Police Back into the Military Police".

<sup>155</sup> Roach, "Police Independence and the Military Police".

<sup>156</sup> Weiss, "The Blurring Border between the Police and the Military: A Debate without Foundations."

<sup>157</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*; Lamer, *Lamer Report*; LeSage, *Second Independent Review Authority*; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

the topic. The first report was that of the Somalia Inquiry itself, headed by Justice Letourneau. The changes to the *NDA* brought by Bill C-25 established the need for an Independent Review Authority to review the changes made to the MJS, writ large, by Bill C-25 every subsequent five years.<sup>158</sup> Justices Lamer, LeSage, and Fish respectively issued the reports of these independent reviews.<sup>159</sup>

The Somalia Inquiry was an extensive review of the MJS, the first of its kind,<sup>160</sup> and examined MP as a part thereof. It was a discursive space to define and reassert certain social values such as accountability and MP.<sup>161</sup> The Inquiry found MP lacking in several key areas of independence, as MP were within the CAF CoC, their dual roles as soldiers and police, as well as a reluctance from the CoC to provide adequate resources for investigations.<sup>162</sup>

One could consider the External Review Authority (ERA) review conducted by former Justice Marie Deschamps as well, but this review differs in a couple of substantive ways that merit excluding it from this study. Primarily, it was explicitly limited in its scope from examining the conduct of MP in their policing function: the ERA “shall not review... conduct of military police that may be the subject of a

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<sup>158</sup> Minister of National Defence, Government Bill (House of Commons) C-25 (36-1) - Royal Assent - An Act to amend the National Defence Act and to make consequential amendments to other Acts - Parliament of Canada Note that NDA Sec 276.601 (2) and (3) provide currently for a review to be caused every seven years.

<sup>159</sup> Lamer, *Lamer Report*; LeSage, *Second Independent Review Authority*; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

<sup>160</sup> Janis Goldie, “Morals, Process and Political Scandals: The Discursive Role of the Royal Commission in the Somalia Affair in Canada”, *The International Journal of Speech, Language and the Law* 17, no. 1 (2010): 158.

<sup>161</sup> Goldie, 159.

<sup>162</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* Executive Summary (not numbered, 35th page).

complaint under Part IV of the [NDA].”<sup>163</sup> These functions are explicitly the policing functions, and as such Justice Deschamps’ review examined CAF policies and procedures of the CAF vis-à-vis a specific topic (sexual misconduct) rather than what is expected of MP *qua* police. Such a review does not address the breadth of concerns identified in the Somalia Inquiry, or the intent of Bill C-25. Additionally, the ERA made no recommendations directly concerning MP to implement, other than allowing victims to request a civilian authority to investigate sexual assault complaints (which there was no prohibition upon previously).

Some consider the Somalia Inquiry and Bill C-25 as changes forced upon the military.<sup>164</sup> Those accounts suggest that the intended changes were meant to be stalled into obscurity, and thereby circumvent the need to change.<sup>165</sup> Discussion will now turn to how the reports contextualized such changes.

The Somalia Inquiry report was expansive on the role of the MP in the events after the unlawful killing of Shidane Arone, dedicating most of Chapter 40 of its report to military policing. The report took specific issue with the independence of the MP, noting that they were subject to influence as they were part of the CoC.<sup>166</sup> This locus of MP within the CoC coupled with a “soldier first” mentality created (at the least) a negative perception that MP were susceptible to interference through command influence.<sup>167</sup> This influence delayed the deployment of MP in the investigation of the Somalia Affair, and

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<sup>163</sup> Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, 2015, 4.

<sup>164</sup> David J. Bercuson, “Up From The Ashes: The Re-Professionalization Of The Canadian Forces After The Somalia Affair”, *Canadian Military Journal (Ottawa)* 9, no. 3 (2009): 31.

<sup>165</sup> Bercuson.

<sup>166</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1285.

<sup>167</sup> Letourneau et al., 1270.

thus negatively influenced the results of the investigation.<sup>168</sup> The report noted that even if there was no intent from the CoC to subvert justice, the power over MP to limit investigations creates the perception, even if not used, that the CoC control or interferes in investigations.<sup>169</sup> In other words, the very fact that MP are part of the CoC subverts the perception that justice is done and seen to be done.

In addition, the Somalia Inquiry report noted several systemic issues with the MP into the events in Somalia: too few MP deployed, without appropriate training to the circumstances, lack of timeliness coupled with strict timelines influencing the quality of the investigations.<sup>170</sup> However, despite these limitations, the report noted that MP did their best to conduct a professional investigation.<sup>171</sup>

After receiving the Somalia Inquiry report, Parliament passed Bill C-25 enacting changes to the MJS and the MP.<sup>172</sup> As noted above these changes precipitated the *First Independent Review by the Right Honourable Antonio Lamer* (the Lamer Report, as it is subsequently referred)<sup>173</sup> in 2003, years after the Letourneau report, and 5 years after the passage of Bill C-25.<sup>174</sup> The Lamer report reviewed the role and accountability of the CFPM in agreement with the VCDS regarding interference, which was vulnerable to change as it was not protected in legislation, and needed public transparency on the

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<sup>168</sup> Letourneau et al., 1270–71.

<sup>169</sup> Letourneau et al., 1272.

<sup>170</sup> Letourneau et al., 1285.

<sup>171</sup> Letourneau et al., 1285.

<sup>172</sup> Minister of National Defence, Government Bill (House of Commons) C-25 (36-1) - Royal Assent - An Act to amend the National Defence Act and to make consequential amendments to other Acts - Parliament of Canada.

<sup>173</sup> LeSage, *Second Independent Review Authority*; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

<sup>174</sup> Lamer, *Lamer Report*, (2). Foreword.

activities of the CFPM (through MP) with a publicly available annual report.<sup>175</sup> The Lamer report then turned to MP roles and functions.

The report noted that a technical reporting chain still existed, rather than a direct CoC, between the CFPM and MP.<sup>176</sup> Such a technical chain was “required because of the dual role played by MP given that they are soldiers first, peace officers second and subject to the regular CoC when not performing police duties or functions.”<sup>177</sup> This indicates that no change had occurred and the above-noted concerns of the Somalia Inquiry vis-à-vis the MP being in the CoC had not been resolved, and the perception of being a soldier first was not noted as an issue by Justice Lamer despite it being repeatedly framed as such by Justice Letourneau. The Lamer Report noted an issue with defining what precisely constitutes a “policing duty or function”, or subject to review by the MPCC, calling the definitions found in regulations “overbroad.”<sup>178</sup> In other words, without problematizing the dual role of MP, even Justice Lamer had some difficulty attempting to clarify when MP, precisely the CFPM, are acting as a police officer and when they are acting as a soldier.

Considering the accountability of MP, Justice Lamer noted that the resourcing of the MPCC was of concern, noting the low caseload. The report emphasised the importance of independent oversight the MPCC provides military policing.<sup>179</sup> He then discusses the need for cooperation, rather than protectionism, in the judicious use of the powers of the MPCC, suggesting that a healthy tension between the MPCC and MP will

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<sup>175</sup> Lamer, 74–75.

<sup>176</sup> Lamer, 76.

<sup>177</sup> Lamer, 76.

<sup>178</sup> Lamer, 76.

<sup>179</sup> Lamer, 77–78.

exist.<sup>180</sup> In this effort, Justice Lamer noted the need to understand the types and disposition of the complaints to understand the issues regarding MP. However, Justice Lamer then discussed the need for the complaint system for MP to work better for the participants. Suggested improvements included informal complaint mechanisms, timely resolution of complaints that includes a formal record of the resolution, and a complaint mechanism for the CFPM prior to going to the MPCC.<sup>181</sup>

As such, the Lamer Report narrative looked at many of the issues noted above in the literature, such as clarifying the dual roles and the need to enshrine independence, and was written in a fact-recommendation manner. Unlike the Somalia Inquiry report, the Lamer Report puts little text to anything that does not lead directly into a recommendation. This may be due to the differing natures of the reports, but seems to pale in direct comparison.

The report of the Second Independent Review (which self-refers as “SIRA”), namely Justice LeSage, was issued in December 2011, eight years after the Lamer Report. SIRA noted several attempts to amend the *NDA* since the Lamer Report that failed due to the dissolution of parliament, with no recommendations of the Lamer Report enacted at the time of publishing.<sup>182</sup> Similar in length to the Lamer Report, the SIRA notes that it will not necessarily refer to the comments made by the Lamer Report, but that is not to be “interpreted as lack of support for those recommendations.”<sup>183</sup> Indeed,

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<sup>180</sup> Lamer, 80.

<sup>181</sup> Lamer, 82–84.

<sup>182</sup> LeSage, *Second Independent Review Authority*, 6.

<sup>183</sup> LeSage, 7.

SIRA made many lengthy references to the previous reports, deferring to them and quoting them at length.<sup>184</sup>

Regarding MP, SIRA spent much effort commenting on the need for closer relationships and alignment of MP to their civilian counterparts. One example focuses on the need for MP training, specifically training that will increase interaction with their civilian counterparts.<sup>185</sup> Another example is the need to continue to disclose any misconduct records of any MP involved in a particular investigation to an accused, just as any other police service must do, following the decision at *R. v. McNeil*.<sup>186</sup> Concerning the jurisdiction of MP, SIRA noted that it is not as straightforward as it is for civilian police, due to the interrelation of the *NDA* with regulations and other laws (such as the Criminal Code).<sup>187</sup> SIRA clearly states that “there are no simple answers” to this issue, but encouraged further cooperation with civilian counterparts.<sup>188</sup>

Continuing with the theme of jurisdiction, SIRA notes that MP are not included in provincial legislation as “police officers”, which limits the MP response to such issues as mental health incidents in comparison to the civilian system.<sup>189</sup> However, rectifying this issue is in the purview of the provinces, it cannot be rectified easily, and will take a significant commitment from all parties.<sup>190</sup>

Along the same vein, SIRA raised concern with “over investigating” of complaints by MP, noting the vast majority of cases where charges are laid were disposed

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<sup>184</sup> LeSage, 10–11.

<sup>185</sup> LeSage, 14.

<sup>186</sup> *R. v. McNeil*, [2009] 1 S.C.R. 66. This case stipulated that if the records of misconduct of the investigating police officer may be of relevance to the defence of the accused, it must be disclosed.

<sup>187</sup> LeSage, *Second Independent Review Authority*, 16.

<sup>188</sup> LeSage, 17.

<sup>189</sup> LeSage, 17.

<sup>190</sup> LeSage, 17.



of through a summary trial.<sup>191</sup> Justice LeSage noted the need for a correlation between the offence under investigation and the length and depth of the investigation, to achieve a balance between speed and severity of the offence.<sup>192</sup> This commentary seems at odds with the criticisms of the Somalia Inquiry, concerning timelines imposed on MP and the relative lack of thoroughness of the investigation.<sup>193</sup>

The SIRA proceeds to consider that charge-laying authorities should have the discretion to lay charges after obtaining legal advice, noting that this is the case in other jurisdictions (often where the charge-laying authority is the police).<sup>194</sup> However, it is interesting to note that the SIRA does not include the Canadian Forces National Investigation Service (CFNIS) as a charge-laying authority.<sup>195</sup> This is odd as the CFNIS was created as a result of the Somalia Inquiry.<sup>196</sup>

Unlike their civilian counterparts, the CFPM is also responsible for the long-term post-conviction custody of offenders in the MJS.<sup>197</sup> However, while SIRA notes the need for the CFPM to collaborate with other military organisations to ensure the reintegration of offenders (post-custody), SIRA does not note any issues with MP being responsible for

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<sup>191</sup> LeSage, 15.

<sup>192</sup> LeSage, 15.

<sup>193</sup> e.g. Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1271.

<sup>194</sup> LeSage, *Second Independent Review Authority*, 20–21.

<sup>195</sup> Department of National Defence, “Relationship with Canadian Forces National Investigation Service”, 27 March 2013, <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/relationship-with-canadian-forces-national-investigation-service.html> The CFNIS, unlike other military police units, has responsibility for both the investigation of alleged offences and the laying of charges. Other military police units cannot lay charges, and must refer the matter back to a charge-laying authority.

<sup>196</sup> Canadian Forces Provost Marshal, *CFNIS Annual Report 2007*, Annual (Ottawa, 2007), 5, <https://www.cbc.ca/fifth/shadowsofdoubt/documents/07cfnisAR.pdf>.

<sup>197</sup> Tim Dunne, “Military Police Costly, Redundant in This Day and Age”, accessed 7 December 2021, <https://www.saltwire.com/nova-scotia/opinion/tim-dunne-military-police-costly-redundant-in-this-day-and-age-403817/>.

the investigation and custody of offenders, which appears to be an abnormal task for a police service.<sup>198</sup>

Finally, the 3IRA report was completed last year.<sup>199</sup> This report comes almost 10 years after the SIRA, which is non-compliant with the *NDA*,<sup>200</sup> suggesting a low importance placed on the need for such a review. One could consider the recent problems of the military as an impetus for the review.<sup>201</sup> The 3IRA is much more expansive than the SIRA or the Lamer report, over double their combined page totals at approximately 400 pages.

It is interesting to note that the 3IRA almost immediately states the need for increased MP independence. In introducing the MP, their important role is highlighted, as is their dual responsibility, and the constitutional principle of policing independence.<sup>202</sup> This is followed by recognising that the separation of the MP from most of the CoC in 2011 (they now mostly fall under the CFPM for policing functions), are still subject to the CoC for other functions, and that their independence can be strengthened.<sup>203</sup> The appointment, reporting structure, name, and rank for the CFPM are immediately highlighted as possible first steps.<sup>204</sup> Further, Justice Fish explicitly supports the recommendations made by Roach regarding the vulnerability *NDA* sections 18.5(3) to 18.5(5) pose for MP independence.<sup>205</sup>

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<sup>198</sup> LeSage, *Second Independent Review Authority*, 51–52; Dunne, “Military Police Costly, Redundant in This Day and Age”.

<sup>199</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*.

<sup>200</sup> National Defence Act Section 273.601.

<sup>201</sup> Lee Berthiaume, “Ottawa Launches Independent Review of Canada’s Beleaguered Military-Justice System”, *The Canadian Press*, 2020.

<sup>202</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 44–45.

<sup>203</sup> Fish, 44–45.

<sup>204</sup> Fish, 45–46.

<sup>205</sup> Fish, 47–49.

The 3IRA also considers the issue of removing concurrent jurisdiction.<sup>206</sup> This issue is of concern to MP, as noted above in the SIRA, as its removal would relegate them to solely enforcing military laws. However, due to such concerns coupled with the impact on independence, Justice Fish explicitly stated that he could not recommend removing the concurrent jurisdiction.<sup>207</sup> Currently, there is a stated primacy of the MJS for all cases where an MP investigation is initiated,<sup>208</sup> but such decisions are insufficiently clear or transparent.<sup>209</sup> In many regards, such as transparency, search warrants for disciplinary investigations, arrest powers (especially without a warrant), pre-trial custody and release, *habeas corpus*,<sup>210</sup> non-CFNIS MP laying charges, obtaining pre-charge advice, victims' rights, aligning the MPCC to the Civilian Review Complaints Commission (CRCC), are all discussed in terms of greater similarity to the civilian justice system.<sup>211</sup>

One of the key criticisms that the 3IRA made was concerning the recommendations of the previous reports.<sup>212</sup> Specifically, Justice Fish was concerned that there was no tracking or record on which recommendations of previous reports were accepted or not; and, of those that were accepted, what progress has been made in implementing the recommendations.<sup>213</sup> This lack of records or tracking denies the Canadian public the ability to see the seriousness and vigour with which the CAF takes

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<sup>206</sup> Fish, 49–55 Concurrent jurisdiction is where an offence could be tried in either the civilian justice system or the MJS.

<sup>207</sup> Fish, 55.

<sup>208</sup> Fish, 57–59.

<sup>209</sup> Fish, 62.

<sup>210</sup> The ability to see a judge to determine the validity of pre-trial custody in common law.

<sup>211</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence* Chapters 1–3.

<sup>212</sup> Namely the Letourneau (1997), Lamer (2003), LeSage (2011), and Fish (2021) reports

<sup>213</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 193.

said recommendations. It also prohibits measurement of the effectiveness of those recommendations in improving the MJS. As such, one is unable to understand what, in general, those recommendations are saying that should be changed—that is to say the normative desirability of those changes.

As suggested by Stenning, alternative forms of policing such as military policing can raise questions about their treatment of democratic values (such as liberty, privacy, and equity).<sup>214</sup> Stenning suggests that to responsibly address these concerns, we must understand the powers, accountability, and any shortcomings of alternative policing models, such as MP, so that we may mobilize any benefits that they may offer.<sup>215</sup> The data for examining these shortcomings comes from the recommendations of the reports examining MP as part of the MJS.<sup>216</sup> This exploration will answer the following research questions:

1. Can a normative expectation of military policing be developed from the recommendations found in the Somalia Inquiry report and the three subsequent IRA?
2. Based on the recommendations from the Somalia Inquiry and the three subsequent IRA, are issues relating to MP in Canada being addressed or are issues persisting?
3. Do the recommendations from the Somalia Inquiry and the three subsequent IRA support the current structure of Military Policing in Canada?

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<sup>214</sup> Philip C. Stenning, “Powers and Accountability of Private Police”, *European Journal on Criminal Policy and Research* 8, no. 3 (2000): 347.

<sup>215</sup> Stenning, 347.

<sup>216</sup> Namely the Letourneau (1997), Lamer (2003), LeSage (2011), and Fish (2021) reports.

### CHAPTER THREE: FRAMEWORK FOR A POST-POSITIVIST CONTENT ANALYSIS

To provide an understanding of how IRA regard Canadian MP, this paper examined their written reports' recommendations regarding military policing in the Canadian context. Second, this paper will normatively evaluate the rationalities for accountability and governance of MP in the same documents. To achieve these two aims, a content analysis of the recommendations from a post-positivist standpoint is used.<sup>217</sup> This chapter will consider how post-positivist theory underpins this study, and the considerations that studying one's own profession brings. The chapter will then discuss data selection. Subsequently, discussion turns to the method used and coding considerations.

Positivist approaches consider reality to be knowable and measurable, and are concerned with emulating the physical sciences.<sup>218</sup> The post-positivist approach to research is both inductive and deductive and involves testing theory and practices similar to methods used in the physical sciences.<sup>219</sup> Post-positivist approaches allow concepts to stem from particular research interests, and creating meaning or knowledge is not a neutral act.<sup>220</sup> Further, post-positivist epistemology remains concerned with objective knowledge that forms the basis of scientific knowledge.<sup>221</sup>

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<sup>217</sup> Joel Best, *Images of Issues: Typifying Contemporary Social Problems*, 2nd ed. (New York: Aldine De Gruyter, 1995); Yvonna S. Lincoln and Egon G. Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences", in *The Landscape of Qualitative Research*, ed. Norman K. Denzin and Yvonna S. Lincoln, 2nd ed. (London: Sage Publications, 2003), 253–91.

<sup>218</sup> Corrine Glesne, *Becoming Qualitative Researchers* (Toronto: Pearson, 2010).

<sup>219</sup> Glesne.

<sup>220</sup> Karla A. Henderson, "Post-Positivism and the Pragmatics of Leisure Research", *Leisure Sciences* 33, no. 4 (2011): 343.

<sup>221</sup> Henderson, 342; Lincoln and Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences", 271.

However, strict adherence to a positivist position is an “elusive, unattainable goal”.<sup>222</sup> As objectivity is linked to the Western principle of logical reasoning, it is also a moral ideal that may affect the production of science.<sup>223</sup> Consequently, objectivity in all aspects of science or research is impossible. However, the concept of objectivity is more about the process and as a control of the practice of scientific research.<sup>224</sup> Post-positivist research accepts the desirability of some subjectivity that affects the purity and the accuracy of the research,<sup>225</sup> but adds substance to the research, once it is conceded that it is impossible to remove all biases.<sup>226</sup> This research will adhere to a post-positivist approach, to make empirical meaning from the data.<sup>227</sup>

Studying one’s profession impacts research question framing, where one looks for data, and how one conceives the analysis.<sup>228</sup> As a member of the MP, the author concedes it is impossible to rid himself of all preconceived notions about this subject. However, such motivation and commitment to the topic are acceptable with the correct techniques to research and analyse the data.<sup>229</sup>

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<sup>222</sup> Best, *Images of Issues: Typifying Contemporary Social Problems*, 343.

<sup>223</sup> Israel Scheffler, *Science and Subjectivity*, 2nd ed. (Indianapolis: Hackett Publishing, 1982), 89; Henderson, “Post-Positivism and the Pragmatics of Leisure Research”, 342.

<sup>224</sup> Scheffler, *Science and Subjectivity*.

<sup>225</sup> Vincent E. Faherty, *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services* (Los Angeles: Sage Publications, 2010); Henderson, “Post-Positivism and the Pragmatics of Leisure Research”, 342.

<sup>226</sup> Glesne, *Becoming Qualitative Researchers*; Michael Quinn Patton, *Qualitative Evaluation and Research Methods*, 2nd ed. (Newbury Park: Sage, 1990), 337–38.

<sup>227</sup> Glesne, *Becoming Qualitative Researchers*.

<sup>228</sup> Lincoln and Guba, “Paradigmatic Controversies, Contradictions, and Emerging Confluences”.

<sup>229</sup> Henderson, “Post-Positivism and the Pragmatics of Leisure Research”, 342; Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, 450. The author is a Canadian MP Officer. However, to overcome any accusations of bias, similar to Gobinet, the topics discussed and conclusions that are reached in this study may not be directly in accordance with the goals or viewpoints of his employer. This was done to ensure that the conclusions reached add to the academic study of MP as a concept.

“Insider” knowledge permits greater depth and detail about how Canadian MP operate, and what should be interpreted from the documents under study.<sup>230</sup> Though preconceived notions and assumptions exist, they provide insight into hidden meanings found in the documents evaluated, as well as access to them. A more informed meaning gives a greater understanding of discrete features and connections that outsiders may see as separate.<sup>231</sup>

As this study has almost no pre-existing research to use as a basis for the qualitative work, assistance from previous studies is limited.<sup>232</sup> For that reason, qualitative content analysis is the appropriate method because it allows for either inductive or deductive assessment of a theory, with data that provides a deep and rich meaning.<sup>233</sup>

### **3.1 Selection of data for analysis**

The documents studied are a way to understand how the legal experts think MP should operate. The descriptions of activities, practices, and accountability structures found in recommendations regarding MP will provide a starting point for what currently defines underlying expectations of MP. The reports from the Somalia Inquiry and the IRA are the publicly available documents used to explain the public expectations for MP. Study of these descriptions and expectations will assist in the understanding of MP as a unique concept in policing.

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<sup>230</sup> Lois Weis and Michelle Fine, *Working Method: Research and Social Justice* (New York: Routledge, 2004), 118.

<sup>231</sup> Weis and Fine, 111.

<sup>232</sup> By pre-existing research, the author specifically refers to empirical research on the recommendations from the IRA *vis-à-vis* MP.

<sup>233</sup> Douglas Ezzy, *Qualitative Analysis: Practice and Innovation* (London: Routledge, 2002), 83–85.

The IRA cumulatively have 407 recommendations,<sup>234</sup> with many subsections that elaborate or expand the information on specific cases or actions to take. The IRA are the main documents recommending how the MJS should be, recommending many roles and responsibilities for specific and general members of the CAF, as well as the Code of Service Discipline (CSD).<sup>235</sup> As the IRA make recommendations regarding the MJS, which could be seen as a system of Lay Justice (in that those who are the main practitioners are not legal professionals)<sup>236</sup> in a manner that is understandable to the public as a whole as well as those CAF members practicing it.

To answer key questions about the expectations for military policing, an examination of key government documents is a useful starting point. A study of policing using similar documents has precedents in studies regarding the duties of police,<sup>237</sup> and foundational studies demonstrate police can be understood through source documents of their authorities to act.<sup>238</sup> Such documents are both verifiable and provide content that can inform on the subject, making a content analysis a logical choice to study MP, with the current data.

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<sup>234</sup> Postmedia News, “Look Back: 25 Years Since Somalia Affair Stained Canada’s Reputation”, Toronto Sun, accessed 25 January 2022, <https://torontosun.com/news/national/look-back-25-years-since-scandal-led-to-airborne-regiment-being-disbanded>; Lamer, *Lamer Report*, 76; LeSage, *Second Independent Review Authority*, 80; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 238 Each had different amounts. The Somalia Inquiry had 157 recommendations, Lamer Report had 88, SIRA had 55, and 3IRA had 107.

<sup>235</sup> Department of National Defence, “The Code of Service Discipline and Me”, 27 March 2013, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/military-law/code-of-service-discipline.html>. While not the focus of this study, an explanation of the code of service discipline is required to put into military policing into context. The CSD outlines those to whom the CSD applies, the offences that can be committed, authorizes the detention of personnel, and establishes service tribunals and appeals to the findings of these trials.

<sup>236</sup> see Steve Savage and Diana Bretheric, “Lay Justice or Professional Justice?”, in *Debates in Criminal Justice: Key Themes and Issues*, ed. Tom Ellis and Steve Savage (Abingdon, Oxon: Routledge, 2012), 61–77.

<sup>237</sup> Westley, “Responsibilities of Police.”

<sup>238</sup> Bittner, “Florence Nightingale in Pursuit of Willie Sutton: A Theory of Police.”



The IRA are used by the CAF to represent itself, and MP, internally and externally, making them important for the understanding of this portion of society.<sup>239</sup> Employing a non-probability sampling, known as purposeful sampling, enables the study of how the documents interact, or refer to each other. Purposeful sampling seeks to gain insights into a phenomenon.<sup>240</sup> While the methods of purposeful sampling have many variations,<sup>241</sup> criterion sampling is used in this study. In this method, documents that meet a predetermined important criterion (i.e. IRA recommendations) are reviewed and studied to gain understanding from information-rich sources.<sup>242</sup>

The author's previous knowledge and training identified the IRA for analysis as they best describe to the public how MP are expected to be employed, what they are supposed to achieve, and how they are supposed to relate to the rest of the community. Importance was placed upon data quality, rather than quantity, while ensuring that the sources were information rich.<sup>243</sup>

It is important to note that the IRA do not concern themselves solely with military policing, but also with the conduct and administration of the MJS. For instance, the Lamer Report has 88 recommendations concerned with the whole MJS, not just the policing aspects. Thus, many recommendations of the IRA are not pertinent to this study. This study focuses on the recommendations of the IRA documents pertaining specifically

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<sup>239</sup> Paul Atkinson and Amanda Coffey, "Analysing Documentary Realities", in *Qualitative Research: Theory, Method, and Practice*, ed. David Silverman, 2nd ed. (Thousand Oaks: Sage, 2009).

<sup>240</sup> Anthony J. Onwuegbuzie and Nancy L. Leech, "A Call for Qualitative Power Analyses", *Quality & Quantity* 41, no. 1 (2007): 105–21.

<sup>241</sup> Onwuegbuzie and Leech; Michael Quinn Patton, "Two Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective", *Qualitative Social Work* 1, no. 3 (2002): 261–83; Patton, *Qualitative Evaluation and Research Methods*.

<sup>242</sup> Onwuegbuzie and Leech, "A Call for Qualitative Power Analyses", 114.

<sup>243</sup> Patton, *Qualitative Evaluation and Research Methods*.

to MP. The pertinence to MP comes from the author's extensive participation in this field and as a member of this community.

### 3.2 Qualitative Content Analysis

Qualitative content analysis provides knowledge and understanding of phenomena through the interpretation of textual data's content. By conducting a systematic categorisation process of coding and identifying themes or patterns, understanding is achieved.<sup>244</sup> The researcher discloses the text's meanings, and themes, as well as its cultural and social significance.<sup>245</sup> Content analysis is therefore useful to reflect reality and to look at underlying assumptions of reality. One well-cited summary of the debate regarding content analysis notes it is a flexible method for textual data analysis, made up of a variety of analytic approaches aiming to offer knowledge and understanding of the phenomena they study.<sup>246</sup>

The many methods of content analysis make it dynamic and flexible.<sup>247</sup>

Qualitative content analyses are not constrained by a single epistemic or ontological ideology.<sup>248</sup> Several researchers state that this method can be employed by a variety of ideologies but there is debate on its position.<sup>249</sup> Types of content analysis are "essentially

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<sup>244</sup> Hsiu-Fang Hsieh and Sarah E. Shannon, "Three Approaches to Qualitative Content Analysis", *Qualitative Health Research* 15, no. 9 (2005): 1277–88.

<sup>245</sup> Peter B. Kraska and W. Lawrence Neuman, *Criminal Justice and Criminology Research Methods* (Boston: Allyn & Bacon, 2008).

<sup>246</sup> Hsieh and Shannon, "Three Approaches to Qualitative Content Analysis".

<sup>247</sup> Ian Dey, *Qualitative Data Analysis: A User-Friendly Guide for Social Scientists* (London: Routledge, 1993); Hsieh and Shannon, "Three Approaches to Qualitative Content Analysis"; Mary Dixon-Woods et al., "Synthesising Qualitative and Quantitative Evidence: A Review of Possible Methods", *Journal of Health Services Research & Policy* 10, no. 1 (2005): 45–53.

<sup>248</sup> Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology", *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101.

<sup>249</sup> Onwuegbuzie and Leech, "A Call for Qualitative Power Analyses"; Robert Miller and John D. Brewer, eds., *A to Z of Social Research* (London: Sage Publications, 2003); Braun and Clarke, "Using Thematic Analysis in Psychology"; Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Thousand Oaks: Sage, 2004).

independent of theory and epistemology, and can be applied across a range of theoretical and epistemological approaches.”<sup>250</sup> Variations of content analysis (such as this study) are employable within multiple, if not all, ontological and epistemological positions.<sup>251</sup>

Qualitative content analyses provide a credible, and detailed account of the subject studied, providing thick descriptions focusing on the processes that construe complex social life.<sup>252</sup> Thus, the evaluative criteria are centred on the rigorous application of reliability and validity, to produce credible and plausible information and processes.<sup>253</sup>

This study follows a common approach to content analysis.<sup>254</sup> Commencing by formulating a research question, this approach proceeded with sample selection, category definition, drafting and applying) the coding process, verifying trustworthiness, and analyzing the coding process results. It is important to note that the study will allow important themes to emerge without the presupposition of the importance of those themes.<sup>255</sup> Having addressed the research question and sampling above, discussion will now turn to the coding that will be the basis of the categorization.

### 3.3 Codes and coding

Qualitative content analysis is dependent on its coding for success.<sup>256</sup> Using predetermined codes works with a directed content analysis if the researcher is confident

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<sup>250</sup> Braun and Clarke, “Using Thematic Analysis in Psychology”, 78.

<sup>251</sup> Patton, “Two Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective”, 263.

<sup>252</sup> Ezzy, *Qualitative Analysis: Practice and Innovation*, 54.

<sup>253</sup> Lincoln and Guba, “Paradigmatic Controversies, Contradictions, and Emerging Confluences”; Martyn Hammersley, “Challenging Relativism: The Problem of Assessment Criteria”, *Qualitative Inquiry* 15, no. 1 (2009): 3–29.

<sup>254</sup> Hsieh and Shannon, “Three Approaches to Qualitative Content Analysis”, 1285.

<sup>255</sup> Hsieh and Shannon, 1279–80; Patton, “Two Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective”, 274; Patton, *Qualitative Evaluation and Research Methods*, 41.

<sup>256</sup> Hsieh and Shannon, “Three Approaches to Qualitative Content Analysis”, 1285.

that the initial coding will not bias the identification of relevant text.<sup>257</sup> As the author's extensive professional experience is guiding the identification of the relevant text, the initial coding will not affect the identification of the relevant texts.

Coding is the analytic process of methodically arranging the codes to enable their collapse into more concise meaningful categories and themes, by reducing the data.<sup>258</sup> Coding is the first step in making sense of data, intending to target the data's potential meanings.<sup>259</sup> Coding has many accepted practices, rather than rules,<sup>260</sup> emphasising the explicit social meanings in the categorisations in the text, categories or concepts emerge.<sup>261</sup> This allows comparison to other data in the data set.<sup>262</sup> The coding process aims to find parts of the data that have meaning for the researcher, whether through its revelation, unexpected or striking nature.<sup>263</sup>

To capture all meanings, the units of analysis are revisited with the codes as many times as is required. The units of analysis vary according to the needs of the research and can include words, phrases, sentences, lines of text, or even paragraphs, as long as the

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<sup>257</sup> Hsieh and Shannon, 1282.

<sup>258</sup> Michael Lewis-Beck, Alan Bryman, and Tim Liao, "The SAGE Encyclopedia of Social Science Research Methods", pages 529-529, vol 3 (Thousand Oaks: SAGE Publications, Inc., 2021), <https://sk.sagepub.com/reference/socialscience>; Herbert J. Rubin and Irene S. Rubin, *Qualitative Interviewing: The Art of Hearing Data, 2d Ed*, vol. 20 (London: Sage, 2005), 207; Braun and Clarke, "Using Thematic Analysis in Psychology"; Kraska and Neuman, *Criminal Justice and Criminology Research Methods*.

<sup>259</sup> Kristin G. Esterberg, *Qualitative Methods in Social Research* (Toronto: McGraw Hill, 2002).

<sup>260</sup> Satu Elo and Helvi Kyngäs, "The Qualitative Content Analysis Process", *Journal of Advanced Nursing* 62, no. 1 (2008): 109;111; Hsieh and Shannon, "Three Approaches to Qualitative Content Analysis"; Braun and Clarke, "Using Thematic Analysis in Psychology"; Faherty, *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*.

<sup>261</sup> Miller and Brewer, *A to Z of Social Research*, 44.

<sup>262</sup> Judith Green and Nicki Thorogood, *Qualitative Methods for Health Research* (London: SAGE Publications, 2004), 177.

<sup>263</sup> Faherty, *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*.

unit has or captures a meaning that is understandable on its own.<sup>264</sup> The unit of analysis for this study is the recommendation in the IRA, usually in sentence form. The context for the recommendations, often considered in a list of recommendations, come from the main texts of the IRA.

Flexibility in coding is required to retain the concept that there is no one right answer to coding, that there is likely to be a revision of the codes during the process, and coding is inherently dynamic as it gains new insights by progressing through the data set.<sup>265</sup> Codes are identifiers or labels that convey a meaning about a unit of analysis.<sup>266</sup> Codes must be specific, and fairly narrow, so they are not confused with themes or categories.<sup>267</sup> In qualitative research, codes can and should be predetermined or indigenous to the text.<sup>268</sup> In this case, the codes were developed to ascertain which recommendations pertain to MP rather than the MJS or CAF writ large.

Codes can also refer to manifest or latent meanings, depending on the research.<sup>269</sup> Analysing manifest content refers to the obvious, explicit components of what is said in the text, whereas analysing the latent content refers to the underlying meaning of the text; each of these require interpretation of the text, but to different depths and level of

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<sup>264</sup> Lewis-Beck, Bryman, and Liao, "The SAGE Encyclopedia of Social Science Research Methods"; Elo and Kyngäs, "The Qualitative Content Analysis Process", 109; Faherty, *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*.

<sup>265</sup> Elo and Kyngäs, "The Qualitative Content Analysis Process", 109; Faherty, *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*, 62–64.

<sup>266</sup> Green and Thorogood, *Qualitative Methods for Health Research*; Rubin and Rubin, *Qualitative Interviewing: The Art of Hearing Data, 2d Ed*; Kraska and Neuman, *Criminal Justice and Criminology Research Methods*.

<sup>267</sup> Braun and Clarke, "Using Thematic Analysis in Psychology".

<sup>268</sup> Rubin and Rubin, *Qualitative Interviewing: The Art of Hearing Data, 2d Ed*, 20:209; Miller and Brewer, *A to Z of Social Research*, 45.

<sup>269</sup> U.H. Graneheim and B. Lundman, "Qualitative Content Analysis in Nursing Research: Concepts, Procedures and Measures to Achieve Trustworthiness", *Nurse Education Today* 24, no. 2 (2004): 105–12; Elo and Kyngäs, "The Qualitative Content Analysis Process".

abstraction.<sup>270</sup> Manifest content will be analysed in this study, as it is looking at the expectations of MP, as written by former Supreme Court Justices, for the Canadian public. In doing so, the approach of this research assumes a deliberate selection of words for the documents to limit misinterpretation, and thus the words are manifestly apparent in meaning.<sup>271</sup>

Coding for this research project was done manually, by copying the recommendations into a word-processing document, and arranging the margins to allow for enough space to write.<sup>272</sup> The codes used to search aligned directly to the understanding sought. Thus, words related to the descriptions of functions or accountability of MP were used. These included the terms (and abbreviations of) “police”, “military police”, “security”, “national investigation service”, “peace officer”, “156” (the section of the *NDA* empowering MP), “provost marshal”, “custody”, “investigation”, “evidence”, and “arrest”. Where codes included recommendations that were not aimed at MP, they were considered for their potential indirect implication to MP. This is not a complete list of terms, which is found in the codebook.

Then the process for code categorisation commenced.<sup>273</sup> The codes were sorted (or collapsed) by the labels assigned to them, and searched for similarities in meanings,

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<sup>270</sup> Graneheim and Lundman, “Qualitative Content Analysis in Nursing Research: Concepts, Procedures and Measures to Achieve Trustworthiness”.

<sup>271</sup> The codes used are directly attributed to the understanding being sought. Thus words that are related to the descriptions of rationalities or accountability of MP were used. These included the terms (and abbreviations of) “police”, “military police”, “security”, “national investigation service”, “peace officer”, “156”- the section of the *NDA* empowering MP, “provost marshal”, “custody”, “investigation”, “evidence”, and “arrest”. These terms were associated with auxiliary verbs such as “shall”, “must”, and “will”, which indicate that the action being performed is a military imperative for MP.<sup>271</sup> Further, terms associated with auxiliary verbs such as “may” were examined as these also give insight into the actions that are expected or permitted by MP. This is not a complete list of terms, which can be found in the code book.

<sup>272</sup> Elo and Kyngäs, “The Qualitative Content Analysis Process”, 109; see also Green and Thorogood, *Qualitative Methods for Health Research*; Hsieh and Shannon, “Three Approaches to Qualitative Content Analysis”; Braun and Clarke, “Using Thematic Analysis in Psychology”.

<sup>273</sup> Braun and Clarke, “Using Thematic Analysis in Psychology”, 89.

use of a particular concept, or that compare and differentiate the concepts.<sup>274</sup> During analysis, codes were grouped into potential themes, using a colour scheme, to understand how they converge into themes that encompass the related codes. This process aided in understanding the relationships between codes.<sup>275</sup>

Themes were examined to understand and confirm which were to remain based on the richness of the data supporting the codes.<sup>276</sup> The richness came from reviewing and rereading the coded data to see if a pattern emerged from the increased understanding of the data; then the process was repeated to ensure an accurate representation of the data set. This process recurred until no more meaningful data was found, and the data was accurately mapped.

Finally, the evidence of implementation of the recommendations will depend on the recommendation. Some recommend amending the *NDA*, and the *NDA* will serve as evidence for implementation (or not). The rest will require some externally valid proof that demonstrates the recommendation's implementation. It was expected from the start of this study that 3IRA recommendations will be less likely to be implemented, as there has been less than a year to do so.

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<sup>274</sup> Elo and Kyngäs, "The Qualitative Content Analysis Process", 110; see also Esterberg, *Qualitative Methods in Social Research*; Rubin and Rubin, *Qualitative Interviewing: The Art of Hearing Data*, 2d Ed; Kraska and Neuman, *Criminal Justice and Criminology Research Methods*.

<sup>275</sup> Kraska and Neuman, *Criminal Justice and Criminology Research Methods*, 471; Braun and Clarke, "Using Thematic Analysis in Psychology".

<sup>276</sup> Braun and Clarke, "Using Thematic Analysis in Psychology"; Patton, *Qualitative Evaluation and Research Methods*; Kraska and Neuman, *Criminal Justice and Criminology Research Methods*.

## CHAPTER FOUR: FINDING EXPECTATIONS, REPETITION, AND STRUCTURE

This chapter provides an overview of the findings of the content analysis writ large, then concentrates on findings relevant to each of the research questions. First, it explores themes emerging from recommendations that express a normative expectation of MP; in other words, what MP should be, and how they should function. It then looks at the recommendations that demonstrate evidence of implementation, whether partially, fully, or not at all. Finally, the chapter explores whether the recommendations support the current structure of MP.

While not a quantitative analysis, it is important to consider the proportion of the recommendations that pertain to this study, as they indicate a qualitative importance of MP in the MJS. Table 1 contains a tally of the recommendations. Considering the dataset as a whole, the examination of IRA recommendations discovered references to MP, roles, activities, organisations or functions, found 23 of 157 recommendations of the Somalia Inquiry pertained to MP,<sup>277</sup> 17 of 88 in the Lamer Report,<sup>278</sup> 16 of 55 in the SIRA report,<sup>279</sup> and 44 of 107 3IRA recommendations.<sup>280</sup> The increasing trend in normative recommendations indicates a greater concern with what MP should be doing. This will be explored further below, but such an increase is suggestive of the need for reform in MP, given the increasing relative prominence they have in reviews of an entire justice system. The sheer volume of both the total number of recommendations and the

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<sup>277</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1469–99.

<sup>278</sup> Lamer, *Lamer Report*, 112–21.

<sup>279</sup> LeSage, *Second Independent Review Authority*, 76–80.

<sup>280</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 217–38.



number of MP-related recommendations is suggestive of the depth with which they carried out their reviews.

**Table 1: Number of Recommendations by IRA**

|                        | Total Number of Recommendations | Number of MP-Related Recommendations | Percentage of MP Related Recommendations |
|------------------------|---------------------------------|--------------------------------------|--|
| Somalia Inquiry (1997) | 157                             | 23                                   | 15%                                      |
| Lamer Report (2003)    | 88                              | 17                                   | 19%                                      |
| SIRA (2011)            | 55                              | 16                                   | 29%                                      |
| 3IRA (2021)            | 107                             | 44                                   | 41%                                      |
| Total                  | 407                             | 100                                  | 25%                                      |

#### 4.1 Normative expectations

The first research question pertains to whether there is a normative expectation of MP expressed in the IRA recommendations. This question is addressed by looking at the recommendations that express what MP should do; not as individual tasks, but rather how MP should generally function. Several themes emerged from the data regarding the expectations of MP:

- the structural aspects of MP (including legislative directions);
- independence (often linked to abuse of authority);
- the ‘civilianisation’ of MP and the MJS; and
- oversight of MP.

This section will first give an overview of the data regarding normative expectations, and then will explore the findings by theme.

All of the Somalia Inquiry recommendations pertaining to MP were normative in nature, despite being relatively few compared to the overall number of recommendations in that report. Normative expectations for MP were found in 42 of the 3IRA recommendations, the highest proportion in any of the IRA, whether compared to the total recommendations or MP-related ones. In contrast, there were only 33 MP-related

recommendations from the Lamer Report and SIRA combined. In other words, there are more normative recommendations in both the Somalia and 3IRA reports than in the Lamer and SIRA Reports, and the proportion of MP-related recommendations that are normative is also higher/lower in the same reports.

#### 4.1.1 Structural-legislative Subtheme

The first normative theme that emerged in the findings regarded structural and legislative changes. The Somalia Inquiry report and the 3IRA each had more structure-related recommendations than the Lamer and SIRA had combined. The Lamer and SIRA reports suggestions are much more adjustments to the status quo, with oversight and legislative clarifications. For instance, Lamer suggested clarifying the policing roles and functions for MP and CFPM,<sup>281</sup> or making the expectations explicit, but did not suggest a change to the expectations. SIRA startlingly suggested that the *Military Rules of Evidence* should be replaced by common law rules of evidence.<sup>282</sup> However, this very important recommendation, while having a direct impact on the evidence that is collected (an important police function), did not recommend a change to MP *per se*.

In contrast, both the Somalia Inquiry and 3IRA had more recommendations regarding the structure of MP and the influence the CoC may have on them. As some of these recommendations were fundamentally challenging to the status quo, they bear exploring. It may be instructive to consider these recommendations separately, as they were made almost a quarter of a century apart.

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<sup>281</sup> Lamer, *Lamer Report*, Recommendation #60.

<sup>282</sup> LeSage, *Second Independent Review Authority*, Recommendation #28. “Military Rules of Evidence” (2006), [https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,\\_c.\\_1049/FullText.html](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1049/FullText.html).

Starting with the Somalia Inquiry report, several key recommendations address the structure of MP. The recommendation to create an Inspector General (IG) position influenced many subsequent recommendations, as the IG would have far-reaching powers of oversight, and created the notion of independence of investigation from the CoC. The three IG recommendations that pertain to MP all relate to the abuse of the CoC to prevent investigations.<sup>283</sup> One was specifically concerned with protecting the complainant. It was recommended that the IG look into officer misconduct, such as failure to investigate, and to provide protections for complainants (who were often the victims).<sup>284</sup> Such issues are now part of the *NDA* and Military Police Professional Code of Conduct.<sup>285</sup> These recommendations for structural change were ground-breaking at the time, as there were no prior external military oversight offices, and the Somalia Inquiry had stated that CAF officers could not be trusted to not interfere in investigations, or not seek retribution for allegations made against them.<sup>286</sup>

The next significant structural change from the Somalia Inquiry was to create independence from the CoC for MP.<sup>287</sup> While independence as a theme is further discussed below, the structural changes that these recommendations included creating a new rank system for MP, separate from the rest of the CAF, so MP “are not seen or treated as subordinate to those they are investigating.”<sup>288</sup> Additionally, this recommendation envisioned having the MP reporting directly to the Solicitor General

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<sup>283</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* Recommendations 16.11, 40.2, and 40.36(i).

<sup>284</sup> Letourneau et al., 1470, Recommendation 16.1.

<sup>285</sup> National Defence Act, Section 250.19 and 250.28; “Military Police Professional Code of Conduct”, SOR/2000-14 § (1999), <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2000-14/FullText.html>.

<sup>286</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 29th page Volume 2.

<sup>287</sup> Letourneau et al., 1493, Recommendation 40.6.

<sup>288</sup> Letourneau et al., 1494, Recommendation 40.13.

(now Minister of Public Safety) for investigations. This recommendation is remarkable in that it would have effectively removed the MP from the CoC and creates a new body of CAF members that would directly report to someone outside the military.<sup>289</sup> This new structure, in conjunction with the IG and independent prosecutors, would be the one responsible for handling and prosecuting offences, removing them from the CoC. No other IRA has made such a radical structural suggestion.

The 3IRA also made many structural change recommendations. Many changes to the *NDA* were proposed to codify and protect the role of the CFPM. For instance, the 3IRA recommends making the CFPM a Governor in Council appointment, removing the choice from the CAF CoC.<sup>290</sup> Further, in this case, the CFPM would be responsible to MND as a general officer, rather than VCDS or CDS. Additionally, the 3IRA recommended repealing sections that allowed for specific directions to the CFPM on investigations by anyone. Several legislative change suggestions incorporate victim protection and rights to information, a significant MP responsibility,<sup>291</sup> ensuring parity with the civilian justice protections.<sup>292</sup>

Regarding dealing with charges, the 3IRA recommends changing the structure of the MJS allowing MP to lay charges, and remove the CoC discretion on whether to proceed.<sup>293</sup> Further, it recommended against allowing unit CoC to investigate any sexual misconduct cases, deferring them to MP. These are notable recommendations, as they

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<sup>289</sup> Letourneau et al., 1298.

<sup>290</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 45 Recommendation #13.

<sup>291</sup> Canadian Forces Provost Marshal, *Canadian Forces Provost Marshal Report - Fiscal Year 2019-2020*, 2020, 9, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/cfpm-annual-report-2019-2020.html>.

<sup>292</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 143.

<sup>293</sup> Fish, 96–97, Recommendation #42.

suggest changing the structures for handling of charges and question the impartiality of CO, who historically are responsible for charges.<sup>294</sup> It is also notable as the Somalia Inquiry specifically recommended against allowing MP the ability to charge offenders, owing to a lack of a tradition of MP independence (at the time), and for administrative benefits.<sup>295</sup>

Other structural changes included amending the *NDA* to prioritize the jurisdiction and practices of the civilian justice system. Such changes include deferring to the civilian system in areas of jurisdiction, evidentiary rules, and obtaining warrants.<sup>296</sup> More on these will be discussed under the ‘civilianisation’ theme.

#### 4.1.2 Independence Subtheme

The second significant theme that emerged pertained to the ability of MP to act independently of the CoC, where the CoC could not abuse their position or authority to interfere in investigations. This theme had a couple of subthemes that will be explored. The first is the ability of MP to function independently, free from influence. The second subtheme is regarding the ability of the CoC to interfere in investigations, often through victim or complainant reprisal or abusing their position. These subthemes gave rise to the greater theme regarding the need for MP independence.

Overall, the theme for independence suggests that between the Somalia Inquiry and 3IRA that there was less attention paid to the MP and CoC issues. Almost half (46%) of the MP-related recommendations pertained to the independence theme. This

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<sup>294</sup> Fish, 94–96.

<sup>295</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1301–2, Recommendation 40.23.

<sup>296</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence* Recommendations #20, 21, 30, 37, 55, 65, 68 and 69.

theme is almost evenly split between how MP should function (49% of this theme) and how the process should be protected from the CoC interfering in the process (51%). The function of reporting relationships, considering who should be the ones telling the MP what to do and resource them, was central to the Somalia Inquiry and 3IRA reports. Such recommendations suggest that MP being in the CoC is an inherent problem. Directly challenging the relationship of MP and CoC occurred only in the recommendations of the Somalia Inquiry and 3IRA, whereas the Lamer Report focussed on clarifying the status quo, and SIRA takes no issue with the independence of MP from the CoC.

Concerning protections against CoC interference, the pattern repeats itself, with the Somalia Inquiry (38%) and 3IRA (54%) each having many more recommendations than the other two IRA combined (8%). Half the issues regarding the idea of CoC abusing their position were found in 3IRA and Somalia Inquiry (25% each), with only a recommendation against CO's warrants being preferred to civilian justice warrant in SIRA. The recommendations regarding complainants were concentrated in the Somalia Inquiry report. This concentration suggests that the protections put in place with Part IV of the *NDA* were successful, though the Lamer Report did recommend enshrining protections in the *NDA*. The prevalence of the recommendations regarding victim rights only arises with 3IRA, and chiefly concern affording victims rights and ensuring their agency and independence in the MJS process. This may suggest a conflation of complainant and victim by the Somalia Inquiry.

There was a repeated pattern of great concern for independence in the Somalia Inquiry and 3IRA compared to the other two IRA. While not a quantitative study, the frequency of the pattern regarding independence is remarkable. The data demonstrates a

repeated concern with using the *NDA* to clarify roles, functions, enshrine independence in the office of the CFPM, and have MP operate independently. Making MP independence of the CoC explicitly clear,<sup>297</sup> with the CoC (including the CDS) having no ability to influence the CFPM or investigations,<sup>298</sup> suggests the importance of this theme in the Somalia Inquiry and 3IRA, but not for the Lamer Report or SIRA. While 3IRA recommends repeal of *NDA* sections that were enacted subsequent to SIRA,<sup>299</sup> there were no substantive recommendations from the Lamer Report or SIRA to address MP independence from the CoC. However, the repeated recommendations against CoC involvement in all of the IRA, whether in approving judicial warrants, interference, or to separate them further from prosecution decisions, suggests a distrust of the CoC in the same reports, that behooves a greater independence for MP.

#### 4.1.3 Civilianization Subtheme

Often overlapping with the independence theme was the theme concerning a general civilianization of MP and MJS. To be clear, no recommendation suggested abolishing the Charter-protected MJS, or MP. However, there was an increasingly frequent and common theme in the recommendations to align MP practices, roles, and functions with those of the civilian justice system to address the balance of the dual roles as both police and soldiers. Such recommendations concerned MP roles, obtaining warrants, custody of offenders, victims' rights, and liaison.

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<sup>297</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1493, Recommendation 40.6.

<sup>298</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 45 and 48, Recommendation #13 and #15.

<sup>299</sup> Fish, 48, Recommendation #15.

Essential to this theme is the understanding that there is an expectation that MP act for the military population in the same manner that civilian police act. Through their recommendations, there is a clear expectation that MP are free to investigate service and/or criminal offence allegations free of political (i.e. CoC) interference. As such, the IRA have made several clear recommendations to this end. The Somalia Inquiry recommended, “Military Police be independent of the CoC when investigating major disciplinary and criminal misconduct.”<sup>300</sup> The Lamer Report resulted in legislative changes that created independence acceptable to civilian standards, recommending, “National Defence Act be amended to define the role of the Canadian Forces Provost Marshal and set out the legislative framework governing the relationship between the Canadian Forces Provost Marshal and the Military Police”.<sup>301</sup> The 3IRA recommendation #13, making the CFPM a Governor in Council appointment and removing the CDS ability to remove the CFPM, were explicitly made to make the position akin to the commissioner of the Royal Canadian Mounted Police.<sup>302</sup> Additionally, current MP inability to lay charges is juxtaposed to their civilian counterparts in the lead up to 3IRA recommendation #39 that regulations change “to allow all members of the Military Police to lay charges.”<sup>303</sup> As such, the role and functions of MP are consistently expected to function like their civilian counterparts.

In addition, the data suggests that, while the MJS and MP are still considered valid, the IRA recommended deference to the civilian justice system, where the rules for

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<sup>300</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1296–97, Recommendation 40.6.

<sup>301</sup> Roach, “Police Independence and the Military Police”, 141.

<sup>302</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 45.

<sup>303</sup> Fish, 94-95, Recommendation #39.



MP conduct and actions would be the same as those of civilian police, and the rules for the MJS would also be the same as the civilian justice system. For instance, the *Military Rules of Evidence* are considered distinct by two of the IRA,<sup>304</sup> and are considered inferior as they are no longer current or consistent with law and, as such, “the *Military Rules of Evidence* should be repealed and replaced in the court-martial system by the statutory and common law rules of evidence.”<sup>305</sup> Additionally, considering warrants for search or arrest, the IRA do not recommend eliminating the ability of a CO to issue warrants. However, all of the recommendations regarding warrants suggest using civilian criteria or justice officials. Recommendation #32 of the Lamer Report was the first to recommend that the criteria “mirror... the *Criminal Code*”.<sup>306</sup> The SIRA and 3IRA both recommend not using the unit CO, but would “permit the issuance of commanding officer search warrants only where a warrant cannot be reasonably obtained in a timely manner either from a military judge or from a civilian justice of the peace.”<sup>307</sup> This suggests the MJS method of allowing the CO to issue a warrant is based on times where investigations occur outside of Canada. However, by explicitly recommending that the *NDA* permit military judges to issue such warrants, 3IRA supports the MJS in issuing them. Such recommendations suggest that it is not the justice system or the collectors of evidence that are lacking, but the rules they use should align more with the civilian justice system.

Similarly, the few recommendations on detention or custody, for which MP are responsible, also recommended changing to a more civilian-like structure. Most of the

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<sup>304</sup> Lamer, *Lamer Report*; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations 28 and 55 respectively; *Military Rules of Evidence*.

<sup>305</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 124.

<sup>306</sup> Lamer, *Lamer Report*, 49.

<sup>307</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 85.

recommendations regarding custody and detention consider the length that a person is in custody, with most recommending that the person be brought before a judge without unreasonable delay or be released. Such concepts are enshrined in the civilian system.<sup>308</sup> It is interesting to note that compared to other themes discussed above, the Somalia Inquiry recommendations are relatively silent on custody and detention, suggesting that custody as an issue came into view after the Somalia Inquiry, as part of the review of the MJS writ large. It is also interesting that, while aligning MP and MJS practices towards greater civilianisation, the IRA are all silent on the matter of the MP being the only police service in Canada responsible for post-conviction custody and imprisonment.

Additionally, there are increasing calls for the MJS and MP to treat victims in the same manner as their civilian counterparts. 3IRA recommendation #68 states, in part, “...the *National Defence Act* should be amended to expressly incorporate, in substance, the rights and protections afforded by the *Criminal Code* to victims and to persons accused of sexual offences.”<sup>309</sup> Multiple subsequent recommendations also support ensuring that victims in the MJS are treated with parity to the civilian system. As noted above, providing victims’ access to information are most often an MP responsibility, as they hold the victim services function for investigations.<sup>310</sup> As such, MP are expected to align their victim service function to that which exists in the civilian system.

The examples above are reflective of a tone throughout the IRA, and the recommendations they made. While there is no suggestion of replacing MP with civilian police, there is an expectation that MP adapt their current practices to reflect the practices

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<sup>308</sup> Fish, 90.

<sup>309</sup> Fish, 144.

<sup>310</sup> Canadian Forces Provost Marshal, *Canadian Forces Provost Marshal Report - Fiscal Year 2019-2020*, 9.

in the civilian system. The importance laid on linking the justice systems' practices laced throughout the multiple IRA support Justice Fish's assertion that the MJS, including MP, "conform with evolving social values and contemporary legal norms."<sup>311</sup>

#### 4.1.4 Oversight Subtheme

The largest normative theme is concerning oversight, with 38% (n=38) of the dataset. The oversight subtheme pertains to the need to maintain accountability in policing,<sup>312</sup> as well as provide some protection for MP from the CoC. The oversight theme does not include the actual CoC for MP or their reporting structures.

The oversight theme changed over the course of the IRA, beginning with recommendations for an IG for the whole CAF in the Somalia Inquiry report to generally making amendments regarding powers and resources for the MPCC from the Lamer Report onwards. A trend of increased oversight recommendations over time suggests that oversight issues also increased. The overarching concern in those recommendations is regarding the ability of MPCC to have access and resources in investigations. Concerns regarding adequate resources dominated (about a fifth) of the oversight recommendations. In this context, resources included personnel, time, and training; note that no specific reference to funding occurred.

There were many recommendations regarding MPCC access to solicitor-client privileged legal advice.<sup>313</sup> This suggests there were contentions between the MP and MPCC that were aired for resolution stemming from MPCC investigations. While the

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<sup>311</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, i.

<sup>312</sup> Kempa and Shearing, "Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland", 41–42; Bayley, "Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies", 130–31.

<sup>313</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #76, #77, and #79.

MPCC was successful in obtaining these recommendations there were no subsequent recommendations about the quality of the MPCC outcomes/findings or their power to enforce change. This suggests an acceptance of the MPCC's oversight capability with little need for refinement in their process.

Oversight recommendations changed over time, from implementing an independent civilian oversight over the military (i.e. IG) to adjusting the current MP oversight. The Lamer report had the largest proportion (one-third) of recommendations concerning MPCC and oversight. These recommendations concerned protecting how the MPCC works, such as business planning, enshrining protections for complainants, and methods to procure documentation from the CPMF.<sup>314</sup> SIRA had fewer concerns with oversight proportionally and overall; such a decline suggests a decreased concern with the oversight operations, until 3IRA. In the 3IRA, there is a noted increase again, but none of the recommendations call into question fundamental issues with the MPCC. As such, the oversight function appears to be achieving its overall expected functions, and the more recent recommendations suggest simple intent to improve the quality of the process.

#### **4.2 Implementation of Recommendations**

The second research question pertains to whether there is evidence that the recommendations are implemented (completely, partially, or not implemented). The underlying rationality is that IRA may set out normative expectations, but recommendations are useless if not implemented. When considering implementation, the recommendations were researched according to the type of change that was suggested by

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<sup>314</sup> Lamer, *Lamer Report*, 118-119, Recommendations #61-65, and #70.

the IRA. For instance, if a recommendation was made to amend a section of the *NDA*, the *NDA* was consulted to see if that section had been subsequently amended and contained the change. While some evidence of *NDA* change is clear, in other cases only evidence of partial implementation can be found. The exact wording of the recommendation can play a role in evaluating if it was partially implemented; for example, if the recommendation contained double-barrelled wording. For example, the Lamer Report recommended:

...that the National Defence Act be amended to define the role of the Canadian Forces Provost Marshal and set out the legislative framework governing the relationship between the Canadian Forces Provost Marshal and the military police, including the National Investigation Service.<sup>315</sup>

The research indicated that there was a change to the *NDA* in 2013 to include the relationship between the CFPM and MP, but the change made does not explicitly refer to the CFNIS and is thus considered partially implemented for this study. The absence of clear evidence of at least partial implementation deemed the recommendation not implemented. Finally, some recommendations seem to recur, due to ambiguous language or a lack of earlier implementation. These findings will be explored in the rest of this section in order of implemented, partially implemented, and not implemented.

The small number of fully implemented Somalia Inquiry recommendations concerning MP independence demonstrate the limited extent the recommendations were accepted. The most fully implemented recommendations concerned increased MP capability to initiate investigations and resourcing.<sup>316</sup> Subsequent reviews and audits state clearly that improvements to MP training, resourcing, and ability to accept

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<sup>315</sup> Lamer, 75, Recommendation 58.

<sup>316</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* Recommendations 40.3, 40.7, 40.12, and 40.16.

complaints from CAF members or civilians were in evidence.<sup>317</sup> Additionally, control measures for the MP are in evidence, such as implementing a code of conduct.<sup>318</sup> These fully implemented measures required limited structural change to the MP rather than comprehensive change within CAF.

Fully implemented Lamer Report recommendations are fewer and almost exclusively focus on MPCC conduct complaints processes. The strongest of the implemented recommendations was the explicit legislated protection for persons making complaints to the MPCC in good faith.<sup>319</sup> The one recommendation requiring action by CFPM was to legislate the practice of an annual report.<sup>320</sup> These suggest a willingness to address external oversight concerns.

The sole fully implemented SIRA recommendation was a one-month time limit to “straightforward cases,” to address concerns of MP “over investigating.”<sup>321</sup> This suggests a dispute over the diligence MP had in the conduct of their duties. Subsequent audits of MP services led to the cancellation of this implementation, replacing it with performance metrics monitoring the length of investigation inactivity.<sup>322</sup> The recommendation is considered fully implemented, as it was only repealed after another

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<sup>317</sup> Assistant Deputy Minister (Review Services), *Evaluation of Military Police Services*, audit (Ottawa, Ont: Department of National Defence, June 2018), 12/26, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/audit-evaluation/evaluation-military-police-services-2018.html>; Assistant Deputy Minister (Review Services), *Evaluation of Military Police Services*, audit (Ottawa, Ont: Department of National Defence, December 2013), iv/v, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/audit-evaluation/evaluation-military-police-services.html> ADM (RS) noted in 2013 MP training meets the general needs. In 2019, they noted that MP have sufficient personnel available and physical resources.

<sup>318</sup> Military Police Professional Code of Conduct; Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1494, Recommendation 40.14.

<sup>319</sup> Lamer, *Lamer Report*, 75, Recommendation 63.

<sup>320</sup> Lamer, 75, Recommendation 59.

<sup>321</sup> LeSage, *Second Independent Review Authority*, 14.

<sup>322</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 84.

external body noted issues in meeting the time limit suggesting it was not feasible in practice. This suggests that there is some ambiguity in the interpretation of what is considered ‘straightforward’. Additionally, it may suggest that, despite the above suggestion that MP are adequately resourced, they may need additional personnel to address caseload per member.

Many recommendations from the IRA have since been partially enacted with Bill C-25 or Bill C-15.<sup>323</sup> For instance, instead of an IG who reports directly to parliament on all aspects of the MJS,<sup>324</sup> Bill C-25 created the MPCC to look only into complaints about MP and allegations that the CoC inappropriately interfered in investigations through the MND. Thus, while the need for oversight to ensure MP independence exists, the only power the MPCC has is to write a report to senior department officials, who decide whether to act.<sup>325</sup> Accordingly, no structural changes to the MJS were required, and senior military officers are not externally held to account.

Another partially implemented Somalia Inquiry recommendation was “40.10 The Director of Military Police should oversee all Military Police investigations of major disciplinary and criminal misconduct and report on these matters to the Solicitor General of Canada.”<sup>326</sup> The CFPM is now responsible for all MP investigations,<sup>327</sup> but is responsible to the VCDS, who is within the CoC. This suggests that the CAF was willing

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<sup>323</sup> Minister of National Defence, Government Bill (House of Commons) C-25 (36-1) - Royal Assent - An Act to amend the National Defence Act and to make consequential amendments to other Acts - Parliament of Canada; Military Police Complaints Commission, *Brief of the MPCC Regarding Bill C-15 - MPCC*.

<sup>324</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1307.

<sup>325</sup> National Defence Act, Section 250.36.

<sup>326</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1298.

<sup>327</sup> National Defence Act, Section 18.4.

to allow MP to have some control of investigations, as long as they remain subject to the CoC.

Similarly, the Lamer Report suggested amending the *NDA* to define the role of the CFPM vis-à-vis MP (including the CFNIS). However, Bill C-15, the first amendment to the *NDA* after the Lamer report, stopped at defining the role of the CFPM, did not discuss the relationship beyond those under CFPM's direct command, and legislated the VCDS the right to interfere in investigations.<sup>328</sup> The 3IRA later criticised these changes as a significant threat to MP independence.<sup>329</sup> As such, the method of the partial implementation of such recommendations suggests that the CoC continued to seek ways to retain control over MP investigations.

A couple of Lamer Report recommendations partially enacted also concerned oversight by the MPCC regarding the relationship with CFPM. Such recommendations were found to have MP internal policies to meet the recommendation's intent but were not legislated as written. This suggests that, while there was agreement that the issue needed fixing, it was not worthy of *NDA* amendments.

Finally, the only 3IRA recommendations with evidence to support their implementation concerned the adoption of victims' rights. This includes ceasing military jurisdiction over sexual assaults until victims under the *NDA* have the same rights as civilian victims. Transfer of offences of a sexual nature is underway, as of March 2022.<sup>330</sup>

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<sup>328</sup> National Defence Act, Sections 18.5(3) to 18.5(5).

<sup>329</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 47–48.

<sup>330</sup> Canadian Forces Provost Marshal, "Message from the Canadian Forces Provost Marshal Regarding the Transfer of Jurisdiction for Sexual Assault and Other Criminal Offences of a Sexual Nature".



Recommendations lacking evidence are quite suggestive of a reluctance to change the structure of the MJS or MP. No recommendations regarding the CoC for the CFPM to decrease CoC influence on MP and the CFPM have been implemented. The MP do not report to a cabinet minister for policing, nor to the CDS for other matters.<sup>331</sup> Recommendations regarding changing the ranking system of MP, to reduce the appearance of subordination to CoC, were not adopted.<sup>332</sup> Indeed, as mentioned above, legislation was enacted to increase CoC control on MP and investigations.<sup>333</sup> Multiple other recommendations to make the MP- portions of the MJS more like the civilian justice system have no evidence of change.<sup>334</sup> This indicates a clear reluctance on the part of the CoC to make MP or the MJS independent of their control.

The repetition of recommendations in IRA since 1997 clearly suggests that many issues persist, regardless of apparent implementation measures taken. These included:

- Amending the *NDA* to allow the release of persons in custody, or have their case heard by a judge, as soon as possible;<sup>335</sup>
- *The Military Rules of Evidence* remain in effect, instead of the repeal in favour of common law evidence rules;<sup>336</sup>
- Amending the *NDA* to enshrine independence regarding the issuing of warrants, preferably to be issued by civilian justices or judges;<sup>337</sup>
- Increased training for MP, to enable their duties, align them with their civilian counterparts (e.g., laying charges or victim services);<sup>338</sup>

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<sup>331</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1298.

<sup>332</sup> Letourneau et al., 1299.

<sup>333</sup> National Defence Act, Sections 18.5(3)-(5).

<sup>334</sup> Lamer, *Lamer Report*, 49–50, Recommendation 32; LeSage, *Second Independent Review Authority*, 51, Recommendation 34.

<sup>335</sup> Lamer, *Lamer Report*, Recommendation 32; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #36–#38.

<sup>336</sup> LeSage, *Second Independent Review Authority* Recommendation 28; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence* Recommendation #55.

<sup>337</sup> Lamer, *Lamer Report*, Recommendation 32; LeSage, *Second Independent Review Authority*, Recommendation 4; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #30, #32, #34, and #36.

<sup>338</sup> Lamer, *Lamer Report*, Recommendations 40.5, 40.7, 40.15, and 40.16; LeSage, *Second Independent Review Authority*, Recommendation 2; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #39, #66, and #69.

- Enabling complainants and victims, including protection from reprisals;<sup>339</sup>
- Better working relationship between the CFPM and the MPCC;<sup>340</sup>
- Time issues regarding investigations or conduct complaints by the CFPM;<sup>341</sup> and
- Calls for greater legislated independence of MP, whether from the CoC, ability to affect charges.<sup>342</sup>

Disturbingly, the number of repetitions between the Somalia Inquiry and 3IRA suggest a lack of significant progress in the intervening 25 years.

Having considered the findings above, it is important to note that it would be difficult to find supporting evidence for some recommendations, in most cases due to the wording of the recommendation. For example, while MP have been “trained more thoroughly in police investigative techniques,”<sup>343</sup> there were still subsequent calls for additional training suggesting that the recommendation was either too ambiguous (i.e. how much is more thoroughly) or not ambitious enough. Further, it is difficult, now and in the future, to determine if working groups were established, discussions between CFPM and the Judge Advocate General occurred, or various other considerations were

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<sup>339</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendations 16.11, and 40.3; Lamer, *Lamer Report*, Recommendation 66; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #68 and #73.

<sup>340</sup> Lamer, *Lamer Report*, 80; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #82 and #83.

<sup>341</sup> Lamer, *Lamer Report*, Recommendation 66; LeSage, *Second Independent Review Authority*, Recommendation 53; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #17, #29, #32, #34, #35, #81, and #82.

<sup>342</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.6, 40.9, 40.10, 40.11, 40.12, 40.13, and 40.18; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #13, #14, #32, #39.

<sup>343</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1493.

made,<sup>344</sup> without some public record that specifically ties those events to a recommendation.

When looking at the whole dataset, older IRA had more recommendations with some actions taken. For instance, the Somalia Inquiry had the most recommendations at least partially implemented, and 3IRA has the least (with none fully implemented). Such a result is not surprising, as there has been less than a year since its publication, including a federal election, not allowing sufficient time for clear evidence of implementation, especially compared to the 25 years since the Somalia Inquiry.<sup>345</sup>

### **4.3 Support for current Military Policing Structure**

The third research question asks whether the recommendations from the Somalia Inquiry and the three subsequent IRA support the current structure of Military Policing in Canada. Both the Lamer and SIRA reports were issued in relatively quiet times for the MJS. The Somalia Inquiry and 3IRA were conducted during crises of confidence in MP, the CoC, and MJS, as noted in chapter two. The similarities in recommendations suggest that vulnerabilities in the MJS and MP come to the fore when tested. As such, more weight is given to their recommendations regarding the structure for MP.

Given the themes of independence and civilianization found in the dataset, coupled with the repeated calls for separation from CoC, the answer is clear that the data does not support the status quo of MP subordinate to the CoC. The data clearly indicates

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<sup>344</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 18.4; Lamer, *Lamer Report* Recommendation 57, ; LeSage, *Second Independent Review Authority*, Recommendation 35; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendation #21, #29, #73, #79 and #84.

<sup>345</sup> LeSage, *Second Independent Review Authority*, 6. Justice LeSage noted similar issues affected the implementation of the Lamer Report Recommendations.

that there is a normative expectation that MP should operate much more outside the CoC influence than they do.

Recommendations for legislated increased protections for MP are repeatedly made. Notably, such recommendations were found almost exclusively in the Somalia Inquiry and the 3IRA. The recommendations in the Lamer Report supported improving, but retaining and clarifying, the status quo. For instance, the Lamer Report recommends amending the *NDA* to clarify roles and relationships,<sup>346</sup> whereas the Somalia Inquiry and 3IRA each recommend complete separation of the CFPM and MP from the CoC by having them report to a cabinet minister.<sup>347</sup> Further, the 3IRA calls for repeal of the current legislative structure for MP reporting, calling it a “threat”, and quotes the MPCC in stating it is aimed solely at MP duties and investigation of offences.<sup>348</sup> Additionally, the calls for an increasingly civilian structure for military policing suggest the structure MP should move towards.

#### 4.4 Chapter Summary

As a summary of the findings, the recommendations have proposed strong themes of structural-legislative changes for MP, with increased independence and a more civilianised structure. In contrast, while there is a significant consideration for oversight, the recommendations suggest fine-tuning the current oversight structure rather than implementing structural changes. Concerning implementation of the recommendations, military policing seems to have been treated as a necessary evil and, according to the

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<sup>346</sup> Lamer, *Lamer Report*, Recommendation 58.

<sup>347</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.10; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendation #13.

<sup>348</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 47–48.

data, the CoC is unwilling to give up control. The data further suggests that the appearance of implementation is more important than the content of the implementation, ensuring that when a recommendation is adopted, the CoC retains control over MP and MJS independence. As there is an expectation that the MP structure reflects independence and a more civilian structure, including a complete separation from the CoC, the data clearly suggests that there is a need for a new structure for MP.

## CHAPTER FIVE: DISCUSSION

This chapter will briefly discuss the general findings and then address the research questions from chapter two individually.

### 5.1 A Normative Understanding

#### 5.1.1 Structural Change is required

The first research question asks if one can draw a normative expectation of military policing from IRA recommendations. The normative expectations drawn from the IRA reports describe a democratic police service, with dual roles as military and police, expected to have a legislated mandate, independence from influence, and institutional oversight.<sup>349</sup> However, it becomes clear in theme development that MP and the MJS do not meet such expectations.

The first normative theme, the structural-legislative subtheme, illustrates that MP are expected to function and have a structure similar to civilian police. Importantly, the various reports over the decades include multiple recommendations concerning the separation of MP and CoC. While internal changes to MP have occurred to increase MP separation from the CoC, they do not represent the institutional or structural independence that the recommendations or literature calls for.<sup>350</sup> The recommendations and the literature are clear that legislation should protect the desired structure of MP.<sup>351</sup> This recommended structure reflects the second premise of democratic policing, that

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<sup>349</sup> Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, 458.

<sup>350</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 30.

<sup>351</sup> cf. Avey, 55; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 45–48.

community leaders cannot directly influence police.<sup>352</sup> Conceivably, the problems that recently have shaken confidence in the MJS and MP by extension<sup>353</sup> and the military CoC would not have occurred if such changes were implemented.

Similarly, the two in-depth IRA (Somalia and 3IRA) suggest that it is the CoC, rather than MP, that requires more oversight regarding their role in the MJS. They recommend removing powers from the CoC while increasing them in MP.<sup>354</sup> Further, the Somalia Inquiry recommended creating an IG to oversee all complaints about the CAF, acting as an oversight body to prevent abuses by the CoC, rather than MP, in their MJS role.<sup>355</sup> However, the response to the Somalia Inquiry, Bill C-25, only created an ombudsman with no MJS mandate and the MPCC, whose main power is writing a report regarding an MP investigation.<sup>356</sup> Bill C-25 did not implement changes to oversee the CoC's role in the MJS. When comparing implemented structural changes to unimplemented ones, a perception that the MJS issues centred on the MP investigations prevailed, rather than with CoC abuses in their MJS role.<sup>357</sup> This was contrary to the consistent recommendations to increase MP powers structurally while decreasing those of the CoC due to a lack of confidence in the CoC.

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<sup>352</sup> Gobinet, "The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?", 459.

<sup>353</sup> Connolly, "Canadian Military's Second-in-Command Resigns Role after Golfing with Vance"; Connolly, "Military Police Watchdog Probing Whether Investigators Altered Report, Interfered in Case".

<sup>354</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendations 40.2, 40.6, and 40.10; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 96, Recommendation #41.

<sup>355</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1294 and 1311, Recommendations 40.2 and 40.36.

<sup>356</sup> Minister of National Defence, Government Bill (House of Commons) C-25 (36-1) - Royal Assent - An Act to amend the National Defence Act and to make consequential amendments to other Acts - Parliament of Canada.

<sup>357</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, e.g. Recommendations 40.2 and 40.36.

The structural changes to MP that have occurred over the last 20 years are either insufficient or actively detrimental to achieving the normative expectations recommended in the IRA. Structural changes made in 2011, which put MP under the command of the CFPM, have left open the question of MP independence.<sup>358</sup> Worse, those changes were challenged as an unsubstantiated desire to hold influence over MP investigations in parliamentary submissions prior to Bill C-15; Justice Fish later characterised the changes as a direct threat aimed at MP independence.<sup>359</sup> The changes permit the VCDS to provide direction to MP on specific cases, which is inconsistent with the freedom from interference necessary for democratic policing.<sup>360</sup> Thus, despite making internal (and therefore reversible) structural changes, the CoC actively undermined MP independence. The implication is that the CoC is either unclear on what independence truly means, or that they are actively fighting it.

The lack of changes to increase MP independence suggests that the CoC does not want it to change. Interestingly, the CAF has not been held to account for not making the recommended structural changes by either MND or parliament.

#### 5.1.2 The need for independence

There is some overlap between the above structural independence and being perceived as independent. Beyond the structural changes to bring independence, the findings generally show a difference in the various IRA when considering independence as a concept, as structural issues may not be sufficient to have the public believe in the

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<sup>358</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 30; Lee Berthiaume, “Military Police Chief Defends Independence; Vance Allegedly Said He “owned” Force”, <https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>, <https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>.

<sup>359</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 47.

<sup>360</sup> National Defence Act, Section 18.5(3)-(5).



independence of MP. Consider the results when the then-VCDS Michael Rouleau golfed with a former CDS, (Jonathan Vance, who was the subject of an MP investigation at the time. The CFPM has since reportedly admitted that his independence is insufficient from the CoC to investigate the matter and address perceptions of inadequate independence.<sup>361</sup> As such, dealing with independence is more than a structural fix; it is a conception of that independence as well, in thought and action.

How an IRA addressed this difference seems to be whether the IRA was immediately preceded by an event where the public calls the MJS into question. For instance, the depth in length, number, and type of recommendations in both the Somalia Inquiry and 3IRA reports point to a greater concern with MP independence, and the influence of the CoC over MP. Yet recommendations related to independence were notably missing from the Lamer and SIRA reports when public scrutiny of the MJS was not prevalent. Indeed, both reports were prefaced with statements suggesting the MJS was working well when they conducted their reviews,<sup>362</sup> whereas 3IRA is expansively critical of the MJS in its preface, noting concerns of independence, fears of reprisals, and decreased rights.<sup>363</sup> Similar conditions occur in the first pages of the Somalia Inquiry report.<sup>364</sup> These differences lead to the conclusion that the absence of scandal in the intervening years created a perception of a lack of problems, and hence the lack of recommendations between the Somalia Inquiry and 3IRA reports.

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<sup>361</sup> Jacques Gallant, “Publicly, the Head of Canada’s Military Police Said He’d Investigate Any Officer. Privately, He Said That Didn’t Include His Boss”, *The Toronto Star (Online)*, 3 December 2021, <https://go.exlibris.link/SbqdXZSQ>.

<sup>362</sup> Lamer, *Lamer Report*, 2; LeSage, *Second Independent Review Authority*, 13.

<sup>363</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, i–vii.

<sup>364</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 12.

The extent of the independence expected by CAF and the IRA seems to differ, based on changes recommended and wording used. There is an interesting contradiction in different IRA wording suggesting MP independence is limited only to periods when actively investigating offences, but then also states policing independence is not limited to the active investigation of incidents.<sup>365</sup> While earlier IRA wording may allow for some misinterpretation, the overall implication of the data is clear: independence means an organisation that is both practically and visibly external to the control of (or interference from) the CoC.

While internal structure changes may have led to MP independence in practice, as the CFPM has claimed,<sup>366</sup> it is equally important that justice (of which policing is a part) is both done and seen to be done.<sup>367</sup> Tied to the recommended structural changes, the need to appear independent of the CoC has led to multiple calls for MP to report directly to a cabinet minister, rather than another military member (who may later be the subject of an investigation).<sup>368</sup> Such relationships are common in Gendarmerie.<sup>369</sup> For example, in addition to being responsible to their respective Ministries of Defence, the French

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<sup>365</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.6; Lamer, *Lamer Report*, Recommendation 60; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendation #39.

<sup>366</sup> Berthiaume, “Military Police Chief Defends Independence; Vance Allegedly Said He “owned” Force”.

<sup>367</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 43–44; Glenn M. Stannard, “Final Report on the Fynes Public Interest Hearing”, 10 March 2015, <https://www.mpcc-cppm.gc.ca/public-interest-investigations-and-hearings-enquetes-et-audiences-dinteret-public/final-reports-rapports-finals/hearing-audience-2011-004-rapport-final-report-volume-3-eng.aspx#p5> paragraph 107.

<sup>368</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.10; Lamer, *Lamer Report*, Recommendation 59; Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, Recommendations #13 and #15.

<sup>369</sup> Lutterbeck, “Between Police and Military: The New Security Agenda and the Rise of Gendarmeries”, 47–48.

Gendarmerie, the Italian Carabinieri,<sup>370</sup> and the Spanish Guardia Civil,<sup>371</sup> are also responsible to their respective Ministry of the Interior, and are considered democratic police agencies.<sup>372</sup> As such, given the dual nature of MP, consideration could be given to having MP report to the Minister of Public Safety as well as MND, similar to what was suggested by the Somalia Inquiry.<sup>373</sup> Changing the MP reporting relationship creates visible separation from the CoC, leverages existing European examples, and thereby increases both their actual and perceived independence.

Regarding the perception of independence, it is interesting that only the Somalia Inquiry went so far as to suggest that a new MP rank system was required to create separation from the CoC.<sup>374</sup> Comparatively, the 3IRA recommends a specific rank for the CFPM to create deference in their duties but is silent about MP ranks in general.<sup>375</sup> Unlike changing the reporting relationship for MP, legislative changes are not required to change military ranks.<sup>376</sup> Coupled with the change in reporting relationships, changing MP ranks would send a powerfully clear message of their independence from the CoC.

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<sup>370</sup> Lutterbeck, 47–48.

<sup>371</sup> Derek Lutterbeck, “The Paradox of Gendarmeries: Between Expansion, Demilitarization and Dissolution”, *Centre for the Democratic Control of Armed Forces, Geneva*, SSR Papers, SSR Papers, no. 8 (2013): 28, <https://www.ubiquitypress.com/site/books/10.5334/bbs/>.

<sup>372</sup> Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, 458.

<sup>373</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.10.

<sup>374</sup> Letourneau et al., Recommendation 40.13.

<sup>375</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 46, Recommendation #14.

<sup>376</sup> Fish, 47–48, Recommendation #15; James Cudmore, “Return to Old-Style Uniform Insignia Costs Canadian Forces Millions”, CBC, 19 June 2014, <https://www.cbc.ca/news/politics/canadian-forces-return-to-old-style-ranks-insignia-costs-millions-1.2679716>; Department of National Defence, “Minister of National Defence Advisory Panel on Systemic Racism and Discrimination – Final Report – January 2022”, 25 April 2022, <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/mnd-advisory-panel-systemic-racism-discrimination-final-report-jan-2022.html>. Interestingly the MND has suggested in her *Final Report from Minister of National Defence Advisory Panel on Systemic Racism and Discrimination Final Report* has repeated this recommendation to change the MP rank system to alleviate rank differences, making reference to 3IRA, but makes independent recommendations parallel to make MP ranks different than the rest of the CAF.

### 5.1.3 MP Should be more ‘civil’

When considering the civilianisation theme, it must be clarified that the normative expectation expressed by the IRA are not that civilians replace MP, but that the MP should normatively operate as much like civilian police as possible. This includes eliminating differing rules of evidence, deference to civilian jurisdiction, and similarity in training as noted in the findings. The CFPM’s appointment, tenure, and removal conditions are recommended to be similar to those of the civilian counterpart RCMP Commissioner.<sup>377</sup> While the IRA have argued the context of the MJS requires differentiation, the differences should lie in justice outcomes, rather than the justice processes (e.g. policing). In other words: “[t]here is no inherent need for Canadians who happen to be soldiers to be treated differently from those who are not”<sup>378</sup> when dealing in matters of justice. The recommendations are clear that policing is the same, no matter the justice system it supports, and the standard is our current civilian system.

Such civilianisation of policing operations does not eliminate the dual role of MP, but may eliminate the perception of MP being “a soldier first”<sup>379</sup> or of a soldier assigned to policing duties. There is the expectation that, while MP have dual roles as police and soldiers, the police role takes primacy. Regardless, the dual role is inherently problematic. It draws attention and criticism while undermining the perception of independence. The Somalia Inquiry noted, “total independence can never be guaranteed as long as Military Police are members of the [CAF].”<sup>380</sup> Gendarmeries (e.g., Carabinieri

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<sup>377</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 205.

<sup>378</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1289.

<sup>379</sup> Letourneau et al., 1285.

<sup>380</sup> Letourneau et al., 1297.

or the Marechaussee, or the Gendarmes) overcome such negative perceptions as they all operate as separate branches of the armed forces and report directly to ministers rather than the military, while they retain dual status as police and military members. Adopting the recommendations for MP to report to cabinet ministers would be consistent with the gendarmerie structure for democratic military policing and could address many perception issues with the dual role. Further, explicitly linking MP to their gendarmerie counterparts could help explain the dual role.

What is conspicuously absent are recommendations that would enshrine MP as a democratic police service like their civilian counterparts. Most notably absent are recommendations for legislation to govern MP policing services. MP are the only known public police service in the country not acting under dedicated legislation regarding their powers, jurisdiction, and appointment. Legislating a police act for MP similar to those that govern police in the provinces and the RCMP would support the structural changes noted above,<sup>381</sup> institutionalise independence,<sup>382</sup> and align MP with their civilian counterparts. Such legislation would also effectively address the dual roles of MP, similar to their gendarmerie counterparts. From a normative standpoint, the lack of such a recommendation is startling, suggesting MP are not perceived as police. If one expects MP to act like other police, they need to be treated like police, including having the support of legislation mandating their behaviour and separating them from coercive interference.

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<sup>381</sup> c.f. “Police Services Act, R.S.O. 1990, c. P.15” (2014), <https://www.ontario.ca/laws/view>.

<sup>382</sup> Avey, “Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces”, 30.

#### 5.1.4 Oversight is more than reporting

On the last normative theme of oversight, the recommendations were generally limited to improvements to the current process. Justice Lamer noted: “[o]versight is essential to promote confidence in the investigative process and to ensure that both complainants and members of the military police are dealt with impartially and fairly.”<sup>383</sup> For MP, the MPCC represents the institutionalised independent oversight required for democratic policing.<sup>384</sup>

None of the IRA express concern that the MPCC cannot enforce a remedy of the situation (to prevent repetition in non-malicious cases) or that the MPCC’s only power to hold the CoC to account is making recommendations.<sup>385</sup> One Public Interest Hearing held by the MPCC complained about the “non-committal” answers provided when it received and questioned MP willingness to submit to oversight.<sup>386</sup> Despite concerns that such actions could “nullify the process of independent oversight,”<sup>387</sup> the MPCC admitted it had no legislated power to change the situation and had to content itself with complaining in its report.

Further, unlike the civilian system, the *NDA* allows for intentional interference in police investigations to occur without requiring charges of obstruction of justice to be laid. 3IRA observed that the MPCC has no remedial powers to ensure non-interference by the CoC, but simply recommended expanding its powers to compel evidence and

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<sup>383</sup> Lamer, *Lamer Report*, 78.

<sup>384</sup> Gobinet, “The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?”, 458.

<sup>385</sup> Stannard, “Final Report on the Fynes Public Interest Hearing”, paragraph 124.

<sup>386</sup> Stannard. An interesting example is the *Fynes Public Interest Hearing* held by the MPCC, which despite issues with certain CAF procedures, limited its recommendations to actions for the CFPM/MP to take.

<sup>387</sup> Stannard, paragraph 131.

subpoena.<sup>388</sup> Examples exist where the CDS simply disagreed with the MPCC finding and unilaterally deemed the interference by the CoC as ‘proper’.<sup>389</sup> No evidence was found as to a resolution of this disagreement. Thus, a lack of recommendation by IRA to make MPCC findings binding seems to be a gap in the examination.

#### 5.1.5 A normative summary

To summarise the analysis of the findings for the first research question, four themes were identified and analysed. When considered against the criteria for democratic policing, the recommendations truly reflected a normative expectation that MP should be structured and operate with independence from interference, similar to their civilian police counterparts. Gendarmeries’ examples demonstrated the compatibility of dual roles in military policing and democratic policing. There were several structural recommendations made that would bring some of the desired independence to MP, but these have not been implemented thus far, and there is no evidence that they will occur if history is any guide.

Considering the other two key aspects of democratic policing, a legislated mandate and institutionalised independent oversight, the recommendations were found wanting. There was no mention of a new legislated mandate or ‘Military Police Act’ to govern the MP as is the norm for all other police in Canada. Without such legislation, it is difficult to separate MP from the CoC and leaves open the question of their independence, a demonstrably desirable norm. Further, the MPCC oversight body has no way to ensure that its findings of interference are adequately addressed. As such, the

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<sup>388</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 157–58.

<sup>389</sup> Military Police Complaints Commission, “Interference Case MPCC-2004-042 Summary” (Ottawa, Ont: MPCC, 25 February 2010), <https://www.mpcc-cppm.gc.ca/case-summaries-resumes-des-dossiers/interference-ingrence/2004-042-eng.aspx>.

issues found in 3IRA, many of which were mentioned in the Somalia Inquiry, will likely persist, and the normative expectations for MP will not be achieved.

## 5.2 Persisting Recommendations

The second research question asked whether issues relating to MP are being addressed or are persisting, based on the recommendations from the Somalia Inquiry and the three subsequent IRA. While there is evidence that some recommendations are being addressed, subsequent IRA that have some almost identical recommendations.

In evaluative fairness, a reading of SIRA shows that many of the recommendations that were not implemented from the Lamer Report were noted as casualties of being put forth in a time of successive minority governments, which made passing legislative reform difficult.<sup>390</sup> However, while the recommendations were 66generally endorsed by SIRA, several persist and bear examination.

The implementation of some of the recommendations (as written) is open to interpretation, and a possible source of repetition. To what extent are MP “trained more thoroughly”, have “greater liaison” with other police services, or what constitutes a “straightforward case” are not specific or measurable.<sup>391</sup> There may be evidence of implementation of these recommendations, but their repetition suggests that the implementation did not meet the expectation of the IRA. Such wording leaves the implementation open to interpretation and complicates efficacy measurement. Explicit

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<sup>390</sup> LeSage, *Second Independent Review Authority*, 6.

<sup>391</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1493, Recommendation 40.7; LeSage, *Second Independent Review Authority*, Recommendations 2 and 3.



explanation of desired outcomes, in measurable terms (i.e. trained to a comparable level as civilian police), may reduce recommendation repetition.

There are a few recommendations that recur but seem to conflict. For instance, the Somalia Inquiry made recommendations to remove limitations imposed on MP investigations by the CoC that resulted in under-investigated incidents, specifically noting the negative impacts a time constraint had on a thorough police investigation.<sup>392</sup> Subsequently, the SIRA recommended a time limit on “straightforward cases” without clarifying what constitutes a straightforward case or who determines if a case is straightforward.<sup>393</sup> Such conflicting recommendations repeat a theme that there is an expectation on the time lengths for investigations. While others may study this expectation, given the recommendations from the IRA, constraints on investigations (or other seemingly conflicting recommendations) should defer to the norms found in the civilian police.

Further, if a recommendation will only be partially implemented or rejected, there should be a requirement to state publicly the extent of implementation, and why it was not fully implemented. Not only would this increase transparency, and possibly credibility, it would also allow subsequent IRA to comment on the adequacy of the response provided.

Regarding recommendations considered under the normative theme about MP structures, it was clear that between the Somalia Inquiry and the 3IRA, most of the key structural recommendations were not implemented but were significant enough for a

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<sup>392</sup> Letourneau et al., *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, Recommendation 40.12.

<sup>393</sup> LeSage, *Second Independent Review Authority*, 15, Recommendation 3.

second IRA to note. Such delays give credence to claims that the CAF is not interested in the structural changes, and will only implement them when forced.<sup>394</sup> This suggests the need for improved accountability for IRA recommendation implementation, perhaps such as reporting to parliament rather than the MND on actions taken.

One recommendation of 3IRA may also prove useful for accountability. Justice Fish noted that the CAF had not sufficiently recorded progress made on previous recommendations and asked for future IRA to be briefed on the progress, with supporting evidence, of the implementation of such.<sup>395</sup> Having a record of what has been accomplished, as well as decisions for implementation should provide the impetus to the CAF to implement what can be implemented.

In the absence of explanation or other evidence, analysis can only consider the implication of the repeated portions. For instance, the repeated recommendations for the CFPM to report directly to a Cabinet Minister have had more than 20 years to be considered and put in place, and have not been, despite eleven amendments to the *NDA* since Bill C-25 received royal assent.<sup>396</sup> There was the opportunity to make this change under Bill C-15, but the CAF chose to fight to include contentious and negative changes that undermine police independence by placing them under stricter control of the CoC.<sup>397</sup> The clear implication is an unwillingness to release the MP from the control of the CoC, despite IRA recommendations. This apparent unwillingness seems to extend to all

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<sup>394</sup> David J. Bercuson, “Up From The Ashes: The Re-Professionalization Of The Canadian Forces After The Somalia Affair”, *Canadian Military Journal* (Ottawa) 9, no. 3 (2009): 31.

<sup>395</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 5. See also Fish, Recommendation #101.

<sup>396</sup> Parliament of Canada, “Search Results for “National Defence Act” - LEGISinfo - Parliament of Canada”, accessed 2 March 2022, <https://www.parl.ca/LegisInfo/en/bills?keywords=%22National%20Defence%20Act%22&parlsession=all&titlesonly=true>.

<sup>397</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, 47–48.

structural changes found in the data further supporting the argument for a forcing mechanism to hold the CAF to account.

Given the frequency of persistent recommendations in the IRA, the interpretation is that if the CAF wanted to change on its own, it would have by now. The lack of action on the recommendations suggests that CAF does not want to correct the persistent issues about MP, or at least it is not a priority for them. As many of these issues pertain to the structure of MP, there is an inference of resistance to changing the structure of MP. Such changes require action on part of the CoC or parliament (whom the CoC advises). The lack of change allows the questions regarding interference to persist and gives credence to the concerns raised in the media that the CoC wants to “own” the MP.<sup>398</sup> Such allegations are in direct contrast to expectations of the democratic separation of policing from community leaders that exist in civilian policing.<sup>399</sup>

A lack of implementation of recommendations also brings into question the purpose of IRA. Further studies may wish to consider how to improve the adoption of IRA recommendations and could consider imposing requirements for change, accountability mechanisms for parliament to hold CAF to account, and/or transparency on implementation decisions. What is clear is that MP are expected to have an explicit

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<sup>398</sup> The Canadian Press Staff, “Military Police Chief Defends Independence; Vance Allegedly Said He “owned” Force”.

<sup>399</sup> CTVNews Edmonton Staff, “Alberta Justice Minister to “step Back” from Duties during Conduct Review after Traffic Ticket: Kenney”, Edmonton, 17 January 2022, <https://edmonton.ctvnews.ca/alberta-justice-minister-to-step-back-from-duties-during-conduct-review-after-traffic-ticket-kenney-1.5743798>; Abby Neufeld, “Ontario Police: How Do They Work and Who Commands Them?”, *CTV News*, 15 February 2022, <https://toronto.ctvnews.ca/mobile/how-do-ontario-police-forces-operate-and-who-commands-them-1.5782297>; Wendy Gillis, “Five Burning Questions on How Police Are Handling the Ottawa “Occupation”“, *The Toronto Star (Online)*, 14 February 2022, sec. News, <https://www.thestar.com/news/canada/2022/02/14/five-burning-questions-on-how-police-are-handling-the-ottawa-occupation.html>.

separation from the CAF CoC. This cannot occur without significant structural and legislative change.

### **5.3 A new structure for Military Police**

The third research question considered if the data supports the current structure of MP. Clearly, based on the normative themes about structure, independence, and civilianisation, the data demonstrates the need for a new structure for MP. The reforms recommended consistently point towards a new structure that functions like the civilian policing structure. Many of the issues that MP currently have stemmed from their structure in the CoC.<sup>400</sup> To be clear—the recommendations do not state, in general, that MP cannot work in the current structure; they simply state that there are improvements required that require structural change. This lack of recommendation for a complete overhaul of the MP structure may stem from IRA interpretation of their mandates. Nevertheless, the preponderance of the recommendations that suggest a significant change to the structure implies changes must occur, and those changes must support the normative expectations that support democratic policing.

If a significant structural change is required, further study is necessary to help determine the outcome of that structure. The evidence from this study strongly suggests MP structure should resemble the basic requirements of democratic policing currently missing for MP. MP should have their mandate made explicit in legislation, preferably reflecting the legislation governing other police services in Canada. The MP should be structured to prevent political or command interference, to both factually be and

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<sup>400</sup> e.g. Berthiaume, “Military Police Chief Defends Independence; Vance Allegedly Said He “owned” Force”; Connolly, “Canadian Military’s Second-in-Command Resigns Role after Golfing with Vance”.

perceived as separated from the CoC. A new structure should implement the recommendations where MP report outside the CoC but could consider recommendations from the literature to have an MP-services board (similar to civilian police) made up of military members to ensure that the MJS needs are met.<sup>401</sup> However, given that such changes have not occurred to date, despite IRA recommendations, such structural changes will require significant willingness to change on part of the CAF. The tone of the response by MND to recent events suggests that this willingness may exist, but that willingness will require a long-term, steadfast commitment to change.

## **5.4 Chapter Summary**

To summarise the chapter, the data enabled response to all three research questions. Firstly, there is a normative expectation that MP function, and are structured like other police forces, specifically to be independent of the CoC. Gendarmerie in countries like France, the Netherlands, and other European countries demonstrate possible methods that could be explored on how this could be achieved. Secondly, the data show that while some recommendations from the IRA are being implemented, the more difficult and structural changes that would grant greater independence to MP persist, despite opportunities to legislate changes. Finally, the IRA set the expectation that the structure of MP changes to function in line with the normative expectations.

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<sup>401</sup> Halpenny, “The Governance of Military Police in Canada”, 50.

## CHAPTER SIX: CONCLUSIONS

This study has been concerned with the normative expectations of MP, whether issues raised in IRA are being addressed and if the current structure for MP should continue given the recommendations. A normative understanding of MP has evidently been expected for more than 25 years. The recommendations from IRA reports set the expectation that MP function similarly (if not exactly) to the way civilian police act in their justice system. The methods of policing should not change, therefore, based on the population policed, though there may be differences unique to the justice system. The fact that MP have dual roles as police and soldiers should not change the manner in which they police. The MJS is *a* justice system, and one that deserves its own police service. Nevertheless, as Justice Fish noted:

...every justice system, military or civilian, must be measured by the independence of its actors, the clarity of its prohibitions, the fairness and transparency of its proceedings, by how it treats offenders and victims, and by its adherence to universal principles of fundamental justice.<sup>402</sup>

The IRA recommendations are clear that the structure of MP needs to change. The current structure does not reflect the expected norms for democratic police or the recommendations of several former Supreme Court justices. Structural changes could go a long way to address IRA concerns regarding the perception of MP independence found in the data. Ensuring that MP, like all other police in Canada, have specific legislation (i.e. a Military Police Act) to govern their duties, responsibilities, and reporting relationships may assist with those structural changes. However, no amount of legislative reforms, institutional

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<sup>402</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, iii.

changes or independent review will have an impact unless public trust in the military is restored and that justice is seen to be done. This will take time. Any structural changes should withstand the test of time and have the willingness to persist with the changes on all sides.

Examination of IRA reports has identified many repeatedly unaddressed recommendations involving MP, such as ensuring their reporting relationship is demonstrably outside the chain of command. Repeated and inadequately addressed recommendations perpetuate the above-highlighted issues and prevent MP from meeting the expectations Canadians have for them to act as police before acting as CAF members. Additionally, unaddressed recommendations lead to an appearance that the IRA are for show rather than change. If the recommended changes are too difficult to enact, they should publicly be addressed as such. Publicly addressing such recommendations also allows for increased accountability, and for the government and subsequent IRA to reconsider what change can be achieved. Not addressing these repeated recommendations does MP, and the MJS by extension, a disservice.

This study has aimed to fill a gap in the literature by providing a coherent examination of the implementation of IRA recommendations, specifically the ones regarding MP. The study of the recommendations suggests, in general, how MP can become a more democratic police service, by creating a mandate in legislation, and demonstrably separating them from the CoC. The importance of this study is to increase the academic literature on a publicly debated and unique type of policing which is underrepresented in the literature. This study illustrates that MP can be normatively desirable to support the MJS.

There are a number of limitations with this study. Firstly, with only a year since the release of 3IRA, the ability to make substantial changes based on its recommendations are limited and are currently underway. Justice Arbour's promising work has affected this paper as changes to MP services occurred near the end of its writing, meaning that a similar future study may demonstrate an increased adoption of IRA recommendations. This study also does not examine causality for repetitions, or why recommendations were not adopted. Further, while minimised to the extent possible, the selection bias that informed this paper may also have had an influence on the results. Further study that includes all IRA recommendations, or repeating the study by a non-MP, could compensate for these limitations and could expand efforts for an evidence-based reform of the MJS.

Further research is also required into how to restructure MP to meet the normative expectations for policing. Such research could include a comparative study of MP to Gendarmerie structures in comparative militaries, or how MP could adopt a more civilian structure while addressing the unique discipline concerns of the MJS. Additionally, as the 3IRA is still relatively recent, time and further study are required to see the full effect it has on MP. Furthermore, the impacts restructuring would have on the MJS, its participants, and service quality should be studied.<sup>403</sup> Such studies would also benefit from data on public opinion of the reforms, and whether they meet public expectations for justice. It will take time and further study to see if 3IRA has a lasting impact on MP,

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<sup>403</sup> Bayley and Shearing, "The New Structure of Policing: Description, Conceptualization, and Research Agenda", 35.



or if DND/CAF allows other factors to interfere again with implementing the recommendations.<sup>404</sup>

The present study highlights areas of concern that should be addressed. Specifically, the repetitive and persistent nature of the concerns (that MP do not reflect the expected norms for a police service) reflects an unwillingness to change. The government should hold DND/CAF to account and ensure that they adopt the recommendations to the extent possible, by actively and publicly pursuing legislative changes to improve MP independence. IRA serve an important function, ensuring the evolution of the MJS and, by extension, MP.<sup>405</sup> Not implementing the recommendations could open questions about the purpose of the IRA, as well as the commitment of the government to improving the MJS. Further, without persistent efforts to adapt MP, they will continue to fail to meet the expected norms for policing and their support to their justice system.

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<sup>404</sup> LeSage, *Second Independent Review Authority*, 6.

<sup>405</sup> Fish, *Report of the Third Independent Review Authority to the Minister of National Defence*, i.

## APPENDIX 1-List of Abbreviations

| <b>Abbreviation</b> | <b>Meaning</b>   |
|---------------------|--|
| CDS                 | Chief of the Defence Staff   |
| CAF                 | Canadian Armed Forces  |
| CRCC                | Civilian Review Complaints Commission  |
| 3IRA                | the Report of the Third Independent Review<br>Authority to the Minister of National<br>Defence |
| CFNIS               | Canadian Forces National Investigation<br>Service  |
| CFPM                | Canadian Forces Provost Marshal  |
| CO                  | Commanding Officer   |
| CoC                 | Chain of Command   |
| CSD                 | Code of Service Discipline   |
| DAOD                | Defence Administrative Orders and<br>Directives  |
| DCAAR               | Defence Controlled Area Access<br>Regulations  |
| DND                 | Department of National Defence   |
| DPM                 | Deputy Provost Marshal   |
| ERA                 | External Review Authority  |
| JAG                 | Judge Advocate General   |
| MJS                 | Military Justice System  |
| MP                  | Military Police  |
| MPCC                | Military Police Complaints Commission  |
| MND                 | Minister of National Defence   |
| MPPTP               | Military Police Policy and Technical<br>Procedures   |
| NDA                 | National Defence Act   |
| OPP                 | Ontario Provincial Police  |
| QR&O                | Queen's Regulations and Orders   |
| RCMP                | Royal Canadian Mounted Police  |
| Sec                 | Section (of the NDA)   |
| US                  | United States (of America)   |
| VCDS                | Vice Chief of the Defence Staff  |
| The Lamer<br>Report | the First Independent Review by the Right<br>Honourable Antonio Lamer                          |
| SIRA                | the Second Independent Review  |

## BIBLIOGRAPHY

- Aiello, Rachel. "Convoy Protest: Trudeau Says Using Force a Call for Police". Accessed 21 February 2022. <https://www.ctvnews.ca/politics/using-force-to-end-protests-is-up-to-police-pm-says-amid-concerns-over-what-s-next-in-ottawa-1.5783768>.
- Arbour, Lousie. "Interim Recommendations from Independent External Comprehensive Review Team", 20 October 2021. <https://www.canada.ca/content/dam/dnd-mdn/documents/reports/2021/2021-10-20-letter-to-minister-re-interim-recommendations.pdf>.
- Assistant Deputy Minister (Review Services). *Evaluation of Military Police Services*. Audit. Ottawa, Ont: Department of National Defence, December 2013. <https://www.canada.ca/en/departement-national-defence/corporate/reports-publications/audit-evaluation/evaluation-military-police-services.html>.
- . *Evaluation of Military Police Services*. Audit. Ottawa, Ont: Department of National Defence, June 2018. <https://www.canada.ca/en/departement-national-defence/corporate/reports-publications/audit-evaluation/evaluation-military-police-services-2018.html>.
- Atkinson, Paul, and Amanda Coffey. "Analysing Documentary Realities". In *Qualitative Research: Theory, Method, and Practice*, edited by David Silverman, 2nd ed. Thousand Oaks: Sage, 2009.
- Avey, Jonathan. "Police Independence vs Military Discipline: Democratic Policing in the Canadian Forces". *Manitoba Law Journal* (1966) 41, no. 4 (2018): 27–56.
- Bacon, Cliff. "Beyond the Scope of Managerialism: Explaining the Organisational Invisibility of Police Work". In *Critical Perspectives on the Management and Organization of Emergency Services*, edited by Paresh Wankhade, Leo McCann, and Peter Murphy, 1st ed., 107–21. Routledge, 2019. <https://go.exlibris.link/g5NHt1G5>.
- Baumann, Peter, and Gisela Cramer. "Power, Soft or Deep? An Attempt at Constructive Criticism". *Las Torres de Lucca* 6, no. 10 (2017): 177–214.
- Bayley, David H. "Comparative Organization of the Police in English-Speaking Countries". *Crime and Justice* (Chicago, Ill.) 15, no. Journal Article (1992): 509–45.
- . *Patterns of Policing*. New Brunswick, NJ: Rutgers University Press, 1985.
- . "Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies". *Crime and Justice* (Chicago, Ill.) 1, no. Journal Article (1979): 109–43.
- . "The Police in War". *African Security Review* 20, no. 4 (2011): 5–10.

- . “What Do Police Do?” In *Policing: Key Readings*, 141–49. Cullompton: Willan, 1994.
- Bayley, David H., and Robert Perito. *The Police in War: Fighting Insurgency, Terrorism, and Violent Crime*. Boulder: Lynne Rienner Publishers, 2010.
- Bayley, David H, and Clifford D Shearing. “The New Structure of Policing: Description, Conceptualization, and Research Agenda”. U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, 2001.  
<https://www.ojp.gov/pdffiles1/nij/187083.pdf>.
- Bercuson, David J. “Up From The Ashes: The Re-Professionalization Of The Canadian Forces After The Somalia Affair”. *Canadian Military Journal (Ottawa)* 9, no. 3 (2009): 31.
- Berthiaume, Lee. “Defence Minister Says Military Sexual Misconduct Cases Will Be Handled by Civilians”. CTVNews, 4 November 2021.  
<https://www.ctvnews.ca/politics/defence-minister-says-military-sexual-misconduct-cases-will-be-handled-by-civilians-1.5652020>.
- . “Military Police Chief Defends Independence; Vance Allegedly Said He “owned” Force”, <https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>.  
<https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>.
- . “Ottawa Launches Independent Review of Canada’s Beleaguered Military-Justice System”. *The Canadian Press*. 2020.
- . “Urgent Reforms Needed to Military Justice System to Protect Misconduct Victims: Fish”. CTVNews, 20 June 2021. <https://www.ctvnews.ca/canada/urgent-reforms-needed-to-military-justice-system-to-protect-misconduct-victims-fish-1.5478248>.
- . ““We’ll Lay Charges as Required”: Military Police Chief Defends Independence in Vance Probe”. *National Post*, 11 May 2021.  
<https://nationalpost.com/news/canada/uncertainty-surrounds-committee-probe-into-vance-allegation-as-clock-ticks-to-summer>.
- Best, Joel. *Images of Issues: Typifying Contemporary Social Problems*. 2nd ed. New York: Aldine De Gruyter, 1995.
- Bigo, Didier. “Internal and External Aspects of Security.’ *European Security* 15, no. 4 (2006): 385–404.
- “Bill C-15 Curbs Military Police Freedoms Set up after Somalia, Watchdog Warns | CTV News”. Accessed 29 April 2022. <https://www.ctvnews.ca/politics/bill-c-15-curbs-military-police-freedoms-set-up-after-somalia-watchdog-warns-1.1149913>.

- Bittner, Egon. "Florence Nightingale in Pursuit of Willie Sutton: A Theory of Police." In *Policing: Key Readings*, 150–72. Cullompton: Willan, 1990.
- Branch, Legislative Services. "Consolidated Federal Laws of Canada, Criminal Code", 16 January 2022. <https://laws.justice.gc.ca/eng/acts/C-46/page-20.html>.
- Brants, Chrisje, Adam Jackson, and Tim J. Wilson. "A Comparative Analysis of Anglo-Dutch Approaches to "Cyber Policing": Checks and Balances Fit for Purpose?" Edited by Chrisje Brants, Derek Johnson, and Tim J. Wilson. *Journal of Criminal Law (Hertford)* 84, no. 5 (2020): 451–73.
- Braun, Virginia, and Victoria Clarke. "Reflecting on Reflexive Thematic Analysis". *Qualitative Research in Sport, Exercise and Health* 11, no. 4 (2019): 589–97.
- . "Using Thematic Analysis in Psychology". *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101.
- Bryett, Keith. "The Policing Dynamic". *Policing : An International Journal of Police Strategies & Management* 22, no. 1 (1999): 30–45.
- Burris, Scott, Michael Kempa, and Clifford Shearing. "Changes in Governance: A Cross-Disciplinary Review of Current Scholarship". *Akron Law Review* 41, no. 1 (2008): 1.
- Cachet, Lex, and Peter Marks. "Police Reform in the Netherlands: A Dance between National Steering and Local Performing". *German Policy Studies/Politikfeldanalyse* 5, no. 2 (2009): 91.
- Campbell, Donald J., and Kathleen M. Campbell. "Police/Military Convergence in the USA as Organisational Mimicry". *Policing & Society* 26, no. 3 (2016): 332–53.
- . "Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States". *Armed Forces and Society* 36, no. 2 (2010): 327–50.
- Campion, Jonas. "Gendarmeries, State Reinforcement and Territorial Control at the Ends of World Wars: Belgium, France and The Netherlands, 1914-50". *European Review of History = Revue Européenne d'histoire* 22, no. 3 (2015): 451–67.
- Canada. Department of National Defence. *Strong, Secure, Engaged - Canada's Defence Policy*, 2017. <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/transition-materials/mnd-transition-material-2021-dnd/tab7-defence-policy-sse.html>.
- Department of National Defence. *Defence Administrative Orders and Directives* (2013). <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/defence-administrative-orders-directives.html>.

- . “Minister of National Defence Advisory Panel on Systemic Racism and Discrimination – Final Report – January 2022”, 25 April 2022.  
<https://www.canada.ca/en/department-national-defence/corporate/reports-publications/mnd-advisory-panel-systemic-racism-discrimination-final-report-jan-2022.html>.
- . “Obstruction of Justice Charge Laid Against Retired General Jonathan Vance”, 15 July 2021. <https://www.canada.ca/en/department-national-defence/news/2021/07/obstruction-of-justice-charge-laid-against-retired-general-jonathan-vance.html>.
- . Queen’s Regulations and Orders (QR&O) (2014).  
<https://www.canada.ca/en/department-national-defence/corporate/policies-standards/queens-regulations-orders.html>.
- . *Relationship with Canadian Forces National Investigation Service*, 27 March 2013. <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/relationship-with-canadian-forces-national-investigation-service.html>.
- . *Strong, Secure, Engaged: Canada’s Defence Policy*. Government of Canada, 2017. <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/transition-materials/mnd-transition-material-2021-dnd/tab7-defence-policy-sse.html>.
- . *The Code of Service Discipline and Me*, 27 March 2013.  
<https://www.canada.ca/en/department-national-defence/corporate/reports-publications/military-law/code-of-service-discipline.html>.
- Canadian Forces Provost Marshal. *Canadian Forces Provost Marshal Annual Report - 2010*, 10 January 2014. <http://www.forces.gc.ca/en/about-reports-pubs-cfpm-annual-reports/2010-cfpm-annual-report.page>.
- . *Canadian Forces Provost Marshal Annual Report 2020-2021*, 2021.  
<https://www.canada.ca/en/department-national-defence/corporate/reports-publications/provost-marshal-report-2020-2021.html>.
- . *Canadian Forces Provost Marshal Report - Fiscal Year 2015-2016*, 13 December 2018. <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/canadian-provost-marshal/canadian-forces-provost-marshal-report-fiscal-year-2015-2016.html>.
- . *Canadian Forces Provost Marshal Report - Fiscal Year 2019-2020*, 2020.  
<https://www.canada.ca/en/department-national-defence/corporate/reports-publications/cfpm-annual-report-2019-2020.html>.
- . *CFNIS Annual Report 2007*. Annual. Ottawa, 2007.  
<https://www.cbc.ca/fifth/shadowsofdoubt/documents/07cfnisAR.pdf>.

- . *Message from the Canadian Forces Provost Marshal Regarding the Transfer of Jurisdiction for Sexual Assault and Other Criminal Offences of a Sexual Nature*, 24 March 2022. <https://www.canada.ca/en/departement-national-defence/maple-leaf/defence/2022/03/message-provost-marshal-transfer-jurisdiction.html>.
- Capstick, MD. “Defining the Culture: The Canadian Army in the 21st Century”. *Canadian Military Journal (Ottawa)* 4, no. 1 (2003): 47.
- Chan, Janet. “Changing Police Culture”. In *Policing: Key Readings*, 338–63. Cullompton: Willan, 2005.
- Connolly, Amanda. “Canadian Military’s Second-in-Command Resigns Role after Golfing with Vance”, 24 June 2021. <https://globalnews.ca/news/7948266/canadian-forces-mike-rouleau-golfing-vance/>.
- . “Military Police Watchdog Probing Whether Investigators Altered Report, Interfered in Case”. *Global News*, 24 September 2021. <https://globalnews.ca/news/8218141/military-police-investigation-alleged-interference/>.
- Costa, Arthur Trindade Maranhão. “Police Brutality in Brazil: Authoritarian Legacy or Institutional Weakness?” *Latin American Perspectives* 38, no. 5 (2011): 19–32.
- Cowper, Thomas J. “The Myth of the “Military Model” of Leadership in Law Enforcement”. *Police Quarterly* 3, no. 3 (2000): 228–46.
- CTV News Edmonton Staff. “Alberta Justice Minister to “step Back” from Duties during Conduct Review after Traffic Ticket: Kenney”. *Edmonton*, 17 January 2022. <https://edmonton.ctvnews.ca/alberta-justice-minister-to-step-back-from-duties-during-conduct-review-after-traffic-ticket-kenney-1.5743798>.
- Cudmore, James. “Return to Old-Style Uniform Insignia Costs Canadian Forces Millions”. *CBC*, 19 June 2014. <https://www.cbc.ca/news/politics/canadian-forces-return-to-old-style-ranks-insignia-costs-millions-1.2679716>.
- Dansky, Kara. “Local Democratic Oversight of Police Militarization”. *Harvard Law & Policy Review* 10, no. 1 (2016): 59.
- Dedeurwaerdere, Tom. “From Ecological Psychology to Four Varieties of Post-Positivism in Transdisciplinary Science”. *The Environmentalist* 38, no. 1 (2018): 79–83.
- Delaforce, Ruth. “The Expanding Security Gap: Australian Gendarmes and Policing”. *Salus Journal* 7, no. 2 (2019): 20–44.
- den Heyer, Garth. “Filling the Security Gap: Military or Police”. *Police Practice & Research* 12, no. 6 (2011): 460–73.

- Deschamps, Marie. *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, 2015.
- Dey, Ian. *Qualitative Data Analysis: A User-Friendly Guide for Social Scientists*. London: Routledge, 1993.
- Dillon, Robert. "Putting the Police Back into the Military Police". ADA553025. U.S. Army War College, 23 March 2011.
- Dixon, David. "The Legal Regulation of Policing." In *Policing Key Readings*, 639–69. Cullompton: Willan, 1997.
- Dixon-Woods, Mary, Shona Agarwal, David Jones, Bridget Young, and Alex Sutton. "Synthesising Qualitative and Quantitative Evidence: A Review of Possible Methods". *Journal of Health Services Research & Policy* 10, no. 1 (2005): 45–53.
- Donovan, Ronald J., and David V. McElrea. *A History of the Royal Canadian Air Force Police and Security Services*. Renfrew, Ont: General Store Pub. House, 2008.
- Dunlap, Charles. "The Thick Green Line: The Growing Involvement of Military Force in Domestic Law Enforcement". In *Policing: Key Readings*, 786–96. Cullompton: Willan, 2005.
- Dunne, Tim. "Military Police Costly, Redundant in This Day and Age". Accessed 7 December 2021. <https://www.saltwire.com/nova-scotia/opinion/tim-dunne-military-police-costly-redundant-in-this-day-and-age-403817/>.
- Ellison, Graham, and Conor O'Reilly. "From Empire to Iraq and the "War on Terror": The Transplantation and Commodification of the (Northern) Irish Policing Experience". *Police Quarterly* 11, no. 4 (2008): 395–426.
- Elo, Satu, and Helvi Kyngäs. "The Qualitative Content Analysis Process". *Journal of Advanced Nursing* 62, no. 1 (2008): 107–15.
- English, Allan. *Understanding Military Culture : A Canadian Perspective*. Montreal: McGill-Queen's University Press, 2004.
- Ericson, Richard V. "Rules in Policing: Five Perspectives". *Theoretical Criminology* 11, no. 3 (2007): 367–401.
- . "The Police as Reproducers of Order." In *Policing: Key Readings*, 215–46. Cullompton: Willan, 1982.
- Esterberg, Kristin G. *Qualitative Methods in Social Research*. Toronto: McGraw Hill, 2002.
- Ezzy, Douglas. *Qualitative Analysis: Practice and Innovation*. London: Routledge, 2002.
- Faherty, Vincent E. *Wordcraft, Applied Qualitative Data Analysis (QDA): Tools for Public and Voluntary Social Services*. Los Angeles: Sage Publications, 2010.



- Falcone, David N., and Beverly A. Smith. "The Army Military Police: A Neglected Policing Model". *Police Quarterly* 3, no. 3 (2000): 247–61.
- Fish, Morris. *Report of the Third Independent Review Authority to the Minister of National Defence: Pursuant to Subsection 273.601(1) of the National Defence Act, RSC 1985, c N-5*. Ottawa, Ont: Minister of National Defence, 2021.
- Foot, Richard. "Somalia Affair". The Canadian Encyclopedia, 6 September 2019. <https://www.thecanadianencyclopedia.ca/en/article/somalia-affair>.
- Friedland, Martin L. and Commission of Inquiry into the Deployment of Canadian Forces to Somalia. *Controlling Misconduct in the Military: A Study Prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*. Ottawa: The Commission, 1997.
- Gallant, Jacques. "Publicly, the Head of Canada's Military Police Said He'd Investigate Any Officer. Privately, He Said That Didn't Include His Boss". *The Toronto Star (Online)*. 3 December 2021. <https://go.exlibris.link/SbqdXZSQ>.
- Gillis, Wendy. "Five Burning Questions on How Police Are Handling the Ottawa 'Occupation'". *The Toronto Star (Online)*. 14 February 2022, sec. News. <https://www.thestar.com/news/canada/2022/02/14/five-burning-questions-on-how-police-are-handling-the-ottawa-occupation.html>.
- Glesne, Corrine. *Becoming Qualitative Researchers*. Toronto: Pearson, 2010.
- Gobinet, Pierre. "The Gendarmerie Alternative: Is There a Case for the Existence of Police Organisations with Military Status in the Twenty-First Century European Security Apparatus?" *International Journal of Police Science & Management* 10, no. 4 (2008): 448–63.
- Goldie, Janis. "Morals, Process and Political Scandals: The Discursive Role of the Royal Commission in the Somalia Affair in Canada". *The International Journal of Speech, Language and the Law* 17, no. 1 (2010): 157.
- Graneheim, U.H., and B. Lundman. "Qualitative Content Analysis in Nursing Research: Concepts, Procedures and Measures to Achieve Trustworthiness". *Nurse Education Today* 24, no. 2 (2004): 105–12.
- Green, Judith, and Nicki Thorogood. *Qualitative Methods for Health Research*. London: SAGE Publications, 2004.
- Halpenny, Andrew. "The Governance of Military Police in Canada". *Osgoode Hall Law Journal (1960)* 48, no. 1 (2010): 1–53.
- Hammersley, Martyn. "Challenging Relativism: The Problem of Assessment Criteria". *Qualitative Inquiry* 15, no. 1 (2009): 3–29.

- Henderson, Karla A. "Post-Positivism and the Pragmatics of Leisure Research". *Leisure Sciences* 33, no. 4 (2011): 341–46.
- Hesse-Biber, Sharlene Nagy, and Patricia Leavy. *The Practices Of Qualitative Research*. London: Sage, 2006.
- Hillman, Elizabeth L. "Front and Center: Sexual Violence in U.S. Military Law". *Politics & Society* 37, no. 1 (2009): 101–29.
- Hope, Kempe Ronald. "Civilian Oversight for Democratic Policing and Its Challenges: Overcoming Obstacles for Improved Police Accountability". *Journal of Applied Security Research* 16, no. 4 (2021): 423–55.
- Hoque, Zahirul, Sharee Arends, and Rebecca Alexander. "Policing the Police Service: A Case Study of the Rise of "New Public Management" within an Australian Police Service". *Accounting, Auditing & Accountability Journal* 17, no. 1 (2004): 59.
- Hsieh, Hsiu-Fang, and Sarah E. Shannon. "Three Approaches to Qualitative Content Analysis". *Qualitative Health Research* 15, no. 9 (2005): 1277–88.
- Ivie, Don, and Brett Garland. "Stress and Burnout in Policing: Does Military Experience Matter?" *Policing : An International Journal of Police Strategies & Management* 34, no. 1 (2011): 49–66.
- Jefferson, Tony. *The Case Against Paramilitary Policing*. Buckingham: Open University Press, 1990.
- Jiao, Allan Y. "Controlling Corruption and Misconduct: A Comparative Examination of Police Practices in Hong Kong and New York". *Asian Journal of Criminology* 5, no. 1 (2010 2009): 27–44.
- Kempa, Michael. "Academic Engagement of International Policing-Reform Assistance: Putting Foucauldian Genealogy to Practical Use". *Canadian Journal of Criminology and Criminal Justice* 52, no. 3 (2010): 271–83.
- . "The Political Economy of Human Security: A Conceptual Approach to Policing Studies and Reform". In *Droits et Voix / Rights and Voices*, edited by Veronique Strimelle and Françoise Vanhamme. Les Presses de l'Université d'Ottawa | University of Ottawa Press, 2017.
- Kempa, Michael, and Clifford D Shearing. "Microscopic and Macroscopic Responses to Inequalities in the Governance of Security: Respective Experiments in South Africa and Northern Ireland". *Transformation: Critical Perspectives on Southern Africa* 29 (2002): 25–54.
- Kiedrowski, John, Rick Ruddell, and Michael Petrunik. "Police Civilianisation in Canada: A Mixed Methods Investigation". *Policing & Society* 29, no. 2 (2019): 204–22.

- Klep, Chris, and Donna Winslow. "Learning Lessons the Hard Way - Somalia and Srebrenica Compared". *Small Wars & Insurgencies* 10, no. 2 (1999): 93–137.
- Klockars, Carl B. *The Idea of Police*. London: Sage, 1985.
- Kraska, Peter B., and W. Lawrence Neuman. *Criminal Justice and Criminology Research Methods*. Boston: Allyn & Bacon, 2008.
- Krippendorff, Klaus. *Content Analysis : An Introduction to Its Methodology*. Thousand Oaks: Sage, 2004.
- Labuschagne, Adri. "Qualitative Research--Airy Fairy or Fundamental?" *Qualitative Report* 8, no. 1 (2003).
- Lamer, Antonio. *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the Provisions and Operation of Bill C-25, An Act to Amend the National Defence Act and to Make Consequential Amendments to Other Acts, as Required under Section 96 of Statutes of Canada 1998, c.3*. Ottawa, Ont: Minister of National Defence, 2003.
- LeSage, Patrick J. *Report of the Second Independent Review Authority to The Honourable Peter G. MacKay Minister of National Defence*. Ottawa, Ont: Minister of National Defence, 2011.
- Letourneau, Gilles, Peter Desbarats, Robert C. Rutherford, and Commission of Inquiry into the Deployment of Canadian Forces to Somalia. *Dishonoured Legacy: The Lessons of the Somalia Affair, Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*. Ottawa, Ont: Minister of Public Works and Government Services Canada, 1997.
- Lewis-Beck, Michael, Alan Bryman, and Tim Liao. "The SAGE Encyclopedia of Social Science Research Methods". by pages 529-529. Thousand Oaks: SAGE Publications, Inc., 2021. <https://sk.sagepub.com/reference/socialscience>.
- Lim, Preston Jordan. "Parliamentary Debate as a Driver of Military Justice Reform in Canada". *Canadian Journal of Law and Society* 35, no. 3 (2020): 437–54.
- Lincoln, Yvonna S., and Egon G. Guba. "Paradigmatic Controversies, Contradictions, and Emerging Confluences". In *The Landscape of Qualitative Research*, edited by Norman K. Denzin and Yvonna S. Lincoln, 2nd ed., 253–91. London: Sage Publications, 2003.
- Lutterbeck, Derek. "Between Police and Military: The New Security Agenda and the Rise of Gendarmeries". *Cooperation and Conflict* 39, no. 1 (2004): 45–68.
- . *The Paradox of Gendarmeries*. London: Ubiquity Press, 2013.

- Madsen, Chris. "Green Is the New Black: The Royal Canadian Mounted Police and Militarisation of Policing in Canada". *Scandinavian Journal of Military Studies* 3, no. 1 (13 November 2020): 114–31.
- Manning, Peter K. "Policing as Self-Audited Practice". *Police Practice & Research* 10, no. 5–6 (2009): 451–64.
- . "The Police: Mandate, Strategies, and Appearances". In *Policing: Key Readings*, 191–214. Willan, 2005.
- Marshall, Gordon, ed. *Oxford Dictionary of Sociology*. Oxford, NY: Oxford University Press, 1998.
- McCarthy, Amy H. "Erosion of the Rule of Law as a Basis for Command Responsibility under International Humanitarian Law". *Chicago Journal of International Law* 18, no. 2 (2018): 553–93.
- Meliala, Adrianus. "Police as Military: Indonesia's Experience". *Policing : An International Journal of Police Strategies & Management* 24, no. 3 (2001): 420–32.
- Metz, Isabel, and Carol T. Kulik. "Making Public Organizations More Inclusive: A Case Study of the Victoria Police Force". *Human Resource Management* 47, no. 2 (2008): 369–87.
- Military Police Complaints Commission. *Brief of the MPCC Regarding Bill C-15 - MPCC. Brief of the MPCC regarding Bill C-15*, 30 May 2013. <https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2013-05-27-eng.aspx>.
- . *Interference Case MPCC-2004-042 Summary*. Ottawa, Ont: MPCC, 25 February 2010. <https://www.mpcc-cppm.gc.ca/case-summaries-resumes-des-dossiers/interference-ingurence/2004-042-eng.aspx>.
- Military Police Professional Code of Conduct, SOR/2000-14 (1999). <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2000-14/FullText.html>.
- Miller, Robert, and John D. Brewer, eds. *A to Z of Social Research*. London: Sage Publications, 2003.
- Minister of National Defence. Government Bill (House of Commons) C-25 (36-1) - Royal Assent - An Act to amend the National Defence Act and to make consequential amendments to other Acts - Parliament of Canada, Pub. L. No. C-25 (1998). <https://www.parl.ca/DocumentViewer/en/36-1/bill/C-25/third-reading/page-187>.
- . "Minister of National Defence's Response to Interim Recommendations", 3 November 2021. <https://www.canada.ca/en/department-national-defence/campaigns/conduct-and-culture/iecr-interim-recommendations.html>.

- Moskos, Charles C. "UN Peacekeepers: The Constabulary Ethic and Military Professionalism". *Armed Forces and Society* 1, no. 4 (1975): 388–401.
- Neocleous, Mark. "Policing and Pin-Making: Adam Smith, Police and the State of Prosperity". *Policing & Society* 8, no. 4 (1998): 425–49.
- Neufeld, Abby. "Ontario Police: How Do They Work and Who Commands Them?" *CTV News*, 15 February 2022. <https://toronto.ctvnews.ca/mobile/how-do-ontario-police-forces-operate-and-who-commands-them-1.5782297>.
- O'Connor, Christopher D. "Citizen Attitudes toward the Police in Canada". *Policing: An International Journal of Police Strategies & Management* 31, no. 4 (2008): 578–95.
- Onwuegbuzie, Anthony J., and Nancy L. Leech. "A Call for Qualitative Power Analyses". *Quality & Quantity* 41, no. 1 (2007): 105–21.
- Pandey, Indu. "Vigils on Two Continents: A Comparative Analysis of Police Brutality in Brazil and the United States". *Harvard International Review* 41, no. 4 (2020): 20–26.
- Parliament of Canada. "Search Results for "National Defence Act" - LEGISinfo - Parliament of Canada". Accessed 2 March 2022. <https://www.parl.ca/LegisInfo/en/bills?keywords=%22National%20Defence%20Act%22&parlsession=all&titlesonly=true>.
- Patterson, George T. "Predicting the Effects of Military Service Experience on Stressful Occupational Events in Police Officers." *Policing: An International Journal of Police Strategies and Management* 25, no. 3 (2002): 602–18.
- Patton, Michael Quinn. *Qualitative Evaluation and Research Methods*. 2nd ed. Newbury Park: Sage, 1990.
- . "Two Decades of Developments in Qualitative Inquiry: A Personal, Experiential Perspective". *Qualitative Social Work* 1, no. 3 (2002): 261–83.
- Postmedia News. "EDITORIAL: Enough Studies, Fix Military Justice". *torontosun*. Accessed 29 April 2022. <https://torontosun.com/opinion/editorials/editorial-enough-studies-fix-military-justice>.
- . "LOOK BACK: 25 Years since Somalia Affair Stained Canada's Reputation". *Toronto Sun*. Accessed 25 January 2022. <https://torontosun.com/news/national/look-back-25-years-since-scandal-led-to-airborne-regiment-being-disbanded>.
- Pugliese, David. "Creation of Inspector General Position Recommended to DND, but Lawyer Says Watchdog Needs to Be a Civilian". *Ottawa Citizen*, 20 December 2021. <https://ottawacitizen.com/news/national/defence-watch/creation-of-inspector->

general-position-recommended-to-dnd-but-lawyer-says-watchdog-needs-to-be-a-civilian.

Roach, Kent. "Police Independence and the Military Police". *Osgoode Hall Law Journal* 49, no. 1 (2011): 117–49.

Rubin, Herbert J., and Irene S. Rubin. *Qualitative Interviewing: The Art of Hearing Data*, 2d Ed. Vol. 20. London: Sage, 2005.

Savage, Steve, and Diana Bretheric. "Lay Justice or Professional Justice?" In *Debates in Criminal Justice : Key Themes and Issues*, edited by Tom Ellis and Steve Savage, 61–77. Abingdon, Oxon: Routledge, 2012.

Scheffler, Israel. *Science and Subjectivity*. 2nd ed. Indianapolis: Hackett Publishing, 1982.

Shearing, Clifford. "A New Beginning" for Policing". *Journal of Law and Society* 27, no. 3 (2000): 386–93.

Shearing, Clifford, and Philip Stenning. "David Bayley - 1933-2020: A Personal Tribute". *Policing & Society* 30, no. 4 (2020): 479–82.

Sinaga, Nicolas SH. "Authority of Military Police of the Indonesian Air Force in Handling National Airspace Boundaries". *Central European Journal of International & Security Studies* 12, no. 4 (2018).

Smith, Brent L., and Richard M. Ward. "Maladaptive Behaviors among Military Police Personnel and Implications for Administrative Policy." *Journal of Criminal Justice* 14, no. 4 (1986): 307–17.

"Somalia Affair | The Canadian Encyclopedia". Accessed 7 January 2022.  
<https://www.thecanadianencyclopedia.ca/en/article/somalia-affair>.

Stannard, Glenn M. *Brief of the MPCC Regarding Bill C-15 - MPCC*, 13 2012.  
<https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2011-10-26-eng.aspx>.

———. *Brief of the MPCC Regarding Bill C-15 - MPCC*, 30 May 2013.  
<https://www.mpcc-cppm.gc.ca/legislative-issues-questions-legislatives/bill-c15-projet-de-loi-c15/brief-regarding-bill-c15-memoire-concernant-le-projet-de-loi-c15-2013-05-27-eng.aspx>.

———. *Final Report on the Fynes Public Interest Hearing*, 10 March 2015.  
<https://www.mpcc-cppm.gc.ca/public-interest-investigations-and-hearings-enquetes-et-audiences-dinteret-public/final-reports-rapports-finals/hearing-audience-2011-004-rapport-final-report-volume-3-eng.aspx#p5>.

- Stenning, Philip C. "Powers and Accountability of Private Police". *European Journal on Criminal Policy and Research* 8, no. 3 (2000): 325–52.
- Stephens, Dale. "Military Involvement in Law Enforcement". *International Review of the Red Cross* (2005) 92, no. 878 (2010): 453–68.
- Stone, Christopher. "Tracing Police Accountability in Theory and Practice: From Philadelphia to Abuja and Sao Paulo". *Theoretical Criminology* 11, no. 2 (2007): 245–59.
- The Canadian Press Staff. "Gen. Jonathan Vance Obstruction of Justice Case Headed for Trial in May 2023". Global News, 29 October 2021.  
<https://globalnews.ca/news/8335095/canadian-forces-sexual-misconduct-jonathan-vance-trial/>.
- . "Military Police Chief Defends Independence; Vance Allegedly Said He 'owned' Force", 11 May 2021. <https://www.ctvnews.ca/politics/military-police-chief-defends-independence-vance-allegedly-said-he-owned-force-1.5422879>.
- . "Watchdog Warns Bill C-15 Curbs Military Police Freedoms". CBC, 9 February 2013. <https://www.cbc.ca/news/politics/watchdog-warns-bill-c-15-curbs-military-police-freedoms-1.1405346>.
- Waddington, P. A. J. "The Case Against Paramilitary Policing Considered". *British Journal of Criminology* 33, no. 3 (1993): 353–73.
- Ward, Rachel. "Commanding Officers Interfered in Sexual Assault Investigations, Retired Military Police Officer Says". CBC, 11 March 2021.  
<https://www.cbc.ca/news/canada/fifth-estate-military-justice-1.5943931>.
- "Wayback Machine", 1 February 2017.  
<https://web.archive.org/web/20170201233928/http://www.rafpa.com/RAFP%20Factsheet%20Jan12.pdf>.
- Weis, Lois, and Michelle Fine. *Working Method: Research and Social Justice*. New York: Routledge, 2004.
- Weiss, Tomas. "The Blurring Border between the Police and the Military: A Debate without Foundations." *Cooperation and Conflict* 46, no. 3 (2011): 396–405.
- Westley, William. "Responsibilities of Police." In *Policing: Key Readings*, 137–40. Cullompton: Willan, 1970.
- Wilson, John, and Karyn Stapleton. "The Discourse of Resistance: Social Change and Policing in Northern Ireland". *Language in Society* 36, no. 3 (2007): 393–425.
- Winslow, Donna. "Canadian Society and Its Army". *Canadian Military Journal (Ottawa)* 4, no. 4 (2004): 11.

Wright Allen, Samantha. ““Civilianization” of Military Justice System a “Slippery Slope,” Warns Former Judge Advocate General Cathcart”. *The Hill Times*, 13 October 2021, sec. News. <http://www.hilltimes.com/2021/10/13/civilianization-of-military-justice-system-a-slippery-slope-warns-former-judge-advocate-general-cathcart/322673>.

Zaverucha, Jorge. “Fragile Democracy and the Militarization of Public Safety in Brazil”. *Latin American Perspectives* 27, no. 3 (2000): 8–31.