



Department of Justice
Canada

Civil Litigation Section
Bank of Canada Bldg
East Tower, Room 1133
234 Wellington Street
Ottawa, Ontario
K1A 0H8

Ministère de la Justice
Canada

Contentieux des affaires civiles
Édifice de la Banque du Canada
Pièce 1109, tour est
234, rue Wellington
Ottawa, Ontario
K1A 0H8

Telephone: (613) 946-3815
Fax: (613) 954-1920

Our File Number: 2-368044

February 22, 2008

BY E-MAIL

Julianne C. Dunbar
General Counsel
Military Police Complaints Commission
Office of the General Counsel and Secretary
270 Albert Street, 10th Floor
Ottawa, Ontario
K1P 5G8

Dear Ms. Dunbar:

Re: *Investigations Relating to Afghan Detainees,*
MPCC 2007-003 and MPCC 2007-006
Disclosure of Government Records

I am in receipt of your letters of February 20, 2008 providing the parties to the captioned complaints with a report regarding the status of the Commission's investigations into those complaints. I have also been asked to respond to Mr. Tinsley's letter addressed to the Honourable Peter MacKay.¹

In your letter on the status of the complaint filed by Amnesty International,² you discuss the requests for disclosure of documents made to different departments and agencies of the Government of Canada, and express concern about the disclosure of records from departments and agencies other than the Department of National Defence (DND).

I would like to take this opportunity to reiterate the commitment of the Government of Canada to cooperating with the Commission in the conduct of its investigations. As you know, at this stage of the investigations, the Commission does not have the power to compel the production of documents or

¹ January 28, 2008.

² MPCC 2007-006.

testimony. You acknowledge in your letter³ that if the Commission were to convene a public hearing into the complaints and issue a subpoena, then the Government could invoke ss. 37 and 38 of the *Canada Evidence Act* to prevent the disclosure of sensitive or potentially injurious information. This invites the question of whether the Commission should receive more information informally than it is able to compel by subpoena.

While it is true that DND and, to a lesser extent CSC, has provided the Commission with some sensitive or potentially injurious information on an exceptional basis, they are under no obligation to do so. Rather, their approach is in recognition of how each organization is uniquely situated in relation to this particular matter. DND has a distinct relationship with the Military Police. The same cannot be said for other departments or agencies of the Government of Canada. For instance, CSC has no formal relationship with the Military Police nor did it have contact with them during the period of interest. Rather, CSC plays a role on the ground in Afghanistan by offering correctional training and mentoring to Afghan prison officials.

Indeed, CSC takes issue with the statement that CSC has "*been significantly engaged on the detainee issue throughout the period of interest*".⁴ As CSC has previously explained, its primary role is that of training and mentoring Afghan prison officials. During the period of interest, CSC had no mandate relating to detainees transferred by the Canadian Forces to Afghan authorities. Rather, CSC has been working with Afghan officials towards improving correctional practices in specified Afghan prisons.

To facilitate the Commission's investigations to the fullest extent possible consistent with its mandate, I have been instructed to disclose to the Commission all Government records that it would be entitled to receive if the Commission was conducting a hearing into the complaints and had in fact issued a subpoena. This approach places the Commission in the same position it would enjoy if it were to convene a public hearing into the complaints and in the same position as a superior court.

Based on our experience to date, it would appear that the Government's cooperative approach is working well. I am pleased to note the satisfaction you have expressed with respect to the responses the Commission has received from DND and the Correctional Service of Canada.⁵ The Department of Foreign Affairs has already responded to most of the requests made by the Commission, and will continue to assist the Commission in the manner described above.

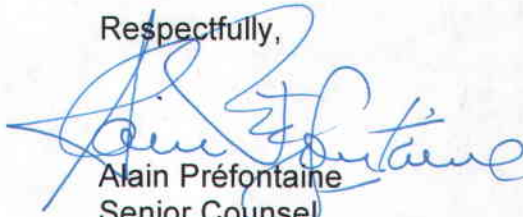
³ Letter to A. Neve (MPCC 2007-006), p. 5.

⁴ Letter to A. Neve (MPCC 2007-006), p. 3, final paragraph.

⁵ For MPCC 2007-003: 2,500 pages of documents, the transcript of 27 interviews conducted by the CF NIS and 23 MPCC interviews; for MPCC 2007-006, 1,300 documents and 38 MPCC interviews.

I look forward to our ongoing cooperation.

Respectfully,



Alain Préfontaine
Senior Counsel
Civil Litigation Section