

Military Police Complaints Commission

OPENING REMARKS OF CHAIR, PETER TINSLEY, AFGHANISTAN PUBLIC INTEREST HEARINGS PROCEDURAL OVERVIEW

Held on Thursday, December 4, 2008

MPCC-2007-006, MPCC-2008-024 and MPCC-2008-042

APPEARANCES:

Ms. F. Kristjanson

Mr. N. Marshman

for the Commission

Mr. A. Préfontaine

Ms. E. Richards

for the Attorney General of Canada

Mr. P. Champ

for Amnesty International and
BC Civil Liberties Association

Ms. K. Stein

for Captain Steven Moore

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1
2 --- Upon commencing on Thursday, December 4, 2008,
3 at 10:00 a.m.

4 REGISTRAR: Ladies and Gentlemen:

5 The Chair of the Military Police
6 Complaints Commission, Mr. Peter Tinsley, has
7 convened this Procedural Overview in respect of the
8 Afghanistan Public Interest Hearings held pursuant
9 to section 250.38(1) of the *National Defence Act*,
10 in the matters of Military Police Complaints
11 Commission files 2007-006, 2008-024 and 2008-042.
12 The Chair will now make his opening remarks.

13 Mesdames et messieurs,

14 Le président de la Commission
15 d'examen des plaintes concernant la police
16 militaire, M. Peter Tinsley, a convoqué ce survol
17 des procédures concernant les audiences d'intérêt
18 public sur l'Afghanistan devant être tenues
19 conformément au paragraphe 250.38(1) de la *Loi sur*
20 *la défense nationale*, pour les dossiers de la
21 Commission d'examen des plaintes concernant la
22 police militaire 2007-006, 2008-024 et 2008-042.

23 Le président va maintenant faire
24 ses observations préliminaires.

25 Merci.

1 THE CHAIR: Good morning. My name
2 is Peter Tinsley, and I am the Chair of the
3 Military Police Complaints Commission.

4 I would first like to thank all of
5 you present, for your interest in the work of this
6 Commission.

7 I have convened this Procedural
8 Overview today to advise the parties, and the
9 public, of a number of issues related to the
10 Afghanistan Public Interest Hearings.

11 Those issues include first, the
12 nature of the public hearings, and second,
13 questions of timing.

14 On the very important issue of
15 timing, I will, assisted by Commission counsel,
16 comment on the effect of both the judicial review
17 applications brought by the Attorney General of
18 Canada to prohibit the Commission from proceeding
19 with the hearings and investigations, and as well,
20 section 38 of the *Canada Evidence Act*.

21 Third, I will address a number of
22 procedural issues including preliminary motions,
23 such as applications for standing, the proposed
24 Rules of Procedure, the issues in the hearing, and
25 access to witnesses and documents in the

1 pre-hearing process.

2 I note at the outset that the
3 public interest hearings have been convened to
4 inquire into serious complaints about the transfer
5 by military police of detainees in Afghanistan to
6 the risk of torture, as well as allegations
7 regarding the failure by the military police to
8 investigate potential crimes relating to the
9 transfer to torture. The Commission intends to
10 conduct a thorough inquiry into these allegations.

11 At the same time, I appreciate
12 very much that this may be a difficult experience
13 for those who are directly involved in these
14 proceedings. I want to assure you that all
15 participants in the process will be treated fairly,
16 and with respect.

17 These hearings are public interest
18 hearings, addressing issues of public concern. But
19 fairness will remain an overriding concern
20 throughout the hearings.

21 I will invite Commission counsel
22 and counsel for the parties to make comments during
23 the course of today's proceedings.

24 As this is a Procedural Overview,
25 no evidence will be heard, and no orders will be

1 issued.

2 The proceedings will be recorded,
3 and a transcript will be posted on the Commission's
4 website. It will not, however, be part of the
5 record of the hearings, but will be a transcript
6 solely of the Procedural Overview.

7 At this point, I would like to
8 introduce the Commission's Registrar, Madame
9 Raymonde Cl  roux.

10 The Registrar is responsible for
11 assisting me in the conduct of the hearings. She
12 will communicate with parties on procedural issues
13 associated with the hearings, and she maintains the
14 documents relevant to the hearings.

15 I am also assisted by Commission
16 counsel, to my left, Freya Kristjanson, and two
17 assistant Commission counsel, Nigel Marshman who is
18 here with us today, and Steve Leckie who is not.

19 I would now ask other counsel who
20 may be present to introduce themselves, and
21 identify the parties whom you represent.

22 Mr. Pr  fontaine?

23 MR. PR  FONTAINE: Alain
24 Pr  fontaine from the Department of Justice. I am
25 assisted by Elizabeth Richards, and we represent

1 the subjects.

2 MR. CHAMP: Mr. Chair, my name is
3 Paul Champ, and I am here on behalf of the
4 complainants, Amnesty International Canada and the
5 British Columbia Civil Liberties Association.

6 THE CHAIR: Thank you, counsel.

7 I would like to clarify that under
8 the *National Defence Act* and this Commission's
9 Rules of Procedure, that the complainants and the
10 subjects of the complaint are parties to this
11 public interest hearing process.

12 Other persons may apply for
13 intervener status, in accordance with the Rules of
14 Procedure which I will turn to later in my remarks.
15 However, at the present time, only the complainants
16 and the subjects are parties to these proceedings.

17 Turning now to matters of
18 substance.

19 First, I would like to give you
20 some brief background on the military police, the
21 Military Police Complaints Commission, and the
22 Afghanistan Public Interest Hearings.

23 The Canadian Forces military
24 police are the seventh largest police force in
25 Canada, enforcing civil, military and international

1 law. What makes the military police particularly
2 unique is they are both police and members of the
3 Canadian Forces.

4 Military police members discharge
5 their policing duties anywhere in the world that
6 the Canadian Forces serve. They are the only
7 Canadian police force mandated to conduct policing
8 duties in a deployed theatre of military
9 operations.

10 On the other hand, similar to
11 other civilian oversight agencies in Canada, the
12 Complaints Commission is an independent oversight
13 body for the military police.

14 This Commission was established
15 following the Somalia Inquiry, which inquired into
16 the conduct of Canadian Forces deployed on a
17 peace-making operation in Somalia in the early
18 1990s.

19 During that deployment, members of
20 the Canadian Forces tortured and killed a Somali
21 teenager held in Canadian custody.

22 The Somalia Inquiry made a series
23 of recommendations about the oversight of military
24 policing, as did a subsequent Special Advisory
25 Group.

1 The Special Advisory Group,
2 chaired by the late Rt. Hon. Brian Dickson, former
3 Chief Justice of the Supreme Court of Canada,
4 stated that, and I quote:

5 "Independent oversight is
6 especially important for the
7 military police, and in this
8 regard, civilian oversight of
9 police forces is particularly
10 instructive. If an
11 individual citizen complains
12 to a civilian police force
13 about improper conduct of its
14 personnel, there is an
15 expectation of, and a right
16 to, a response. The
17 situation should be no
18 different in the military
19 context."

20 Accordingly, this Commission
21 provides independent oversight of the military
22 police. The goal of independent oversight of the
23 military police is three-fold.

24 First, to provide an assurance of
25 conformity with the laws and standards of propriety

1 in the exercise of policing duties and functions;

2 Second, to foster accountability
3 of the military police force to Government, both
4 through the Chief of the Defence Staff and the
5 Minister of National Defence.

6 Third, to facilitate public trust
7 and confidence in the actions of members of the
8 military police.

9 This Commission impartially and
10 fairly inquires into complaints brought before it,
11 in order to ensure public confidence and respect
12 for the military police, and accountability for
13 their actions.

14 In so doing, this Commission is a
15 foundation-piece for the rule of law in the context
16 of military operations.

17 This Commission may receive
18 complaints regarding the conduct of members of the
19 military police relating to policing duties and
20 functions, conduct investigations or public
21 hearings, and render a report with findings and
22 recommendations.

23 However, this Commission has no
24 disciplinary powers, and no ability to make binding
25 determinations of civil or criminal liability.

1 Rather, following an investigation
2 or hearing, the Commission makes a report to the
3 key decision-makers in the Canadian Forces and
4 Department of National Defence, including the Chief
5 of the Defence Staff and the Minister of National
6 Defence.

7 This is very similar to the powers
8 of public inquiries, which like this Commission
9 have the power to make a report, with findings and
10 recommendations.

11 One significant difference, in
12 respect of this Commission, is that any report made
13 by this Commission is first provided as an interim
14 report to the Chief of the Defence Staff and the
15 Minister of National Defence.

16 The Chief of the Defence Staff has
17 the opportunity to review any recommendations
18 proposed by this Commission. The Chief of the
19 Defence Staff must then notify the Commission of
20 any action that has been taken, or will be taken,
21 with respect to the interim report.

22 If the Chief of the Defence Staff
23 chooses not to implement this Commission's
24 recommendations, then under the *National Defence*
25 *Act*, he is obliged to provide the Commission with

1 notice of his reasons for not acting on those
2 findings and recommendations.

3 It is only after notice of the
4 Government's response that the Commission provides
5 a final report to, amongst others, the Minister,
6 the Chief of the Defence Staff, the Judge Advocate
7 General, the complainants, and the subjects of the
8 complaint. The Commission will also release the
9 final report publicly.

10 This brings me to the Afghanistan
11 Public Interest Hearings.

12 The Commission received complaints
13 from Amnesty International and the British Columbia
14 Civil Liberties Association in February 2007 and
15 June 2008.

16 The complainants allege that
17 members of the military police transferred
18 detainees to Afghan authorities, where they would
19 face the risk of torture. The complainants also
20 allege that the military police failed to
21 investigate crimes or potential crimes committed by
22 senior officers, in that they may have been aware
23 that Canadian Forces detainees were likely to be
24 tortured by Afghan authorities.

25 It is important for me to

1 emphasize that there are no allegations that any
2 members of the Canadian Forces tortured detainees
3 in Afghanistan.

4 The complaints relate solely to
5 the transfer of detainees by Canadian military
6 police to the alleged risk of torture in Afghan
7 prisons, and the alleged failure to investigate the
8 consequences of transfer to torture.

9 These are nonetheless serious
10 allegations.

11 I have determined that the
12 Commission has jurisdiction over these allegations,
13 as they relate to the policing duties and functions
14 of members of the military police.

15 I have further exercised my
16 statutory discretion to cause public hearings into
17 these allegations.

18 This last decision was not taken
19 lightly. Indeed, this will be only the second
20 public hearing in this Commission's history.

21 However, given the Commission's
22 difficulties in obtaining access to certain
23 documents from the Government, amongst other
24 factors, I determined that the public hearings were
25 required. It is only in a public hearing that the

1 Commission has the legal power to summons witnesses
2 and documents.

3 I turn now to the question of the
4 effect of the ongoing judicial review proceedings
5 on the public hearings.

6 The Attorney General has commenced
7 two judicial review applications before the Federal
8 Court, seeking to prohibit this Commission from
9 proceeding with the public hearings, and in fact,
10 with any investigations whatsoever.

11 The judicial review applications
12 have been brought in relation to the March 12 and
13 September 30 decisions to convene these public
14 hearings.

15 The Attorney General takes the
16 position that this Commission lacks jurisdiction
17 over the complaints. It must be understood that
18 the Commission is not presently a party to those
19 Federal Court judicial review proceedings.

20 Only Amnesty International and the
21 B.C. Civil Liberties Association, and the Attorney
22 General of Canada are presently parties to the
23 Federal Court proceedings. The Federal Court has
24 not yet heard argument in those judicial review
25 applications, and the court dates have not yet been

1 scheduled.

2 It is important to realize that
3 the Federal Court judicial review applications are
4 on a different track, so to speak, than the
5 Afghanistan Public Interest Hearings.

6 At the present time, no
7 application has been made to me to stay the
8 Afghanistan Public Interest Hearings, and no stay
9 of proceedings has, to my knowledge, been issued by
10 the Federal Court.

11 As a result, having determined
12 that this Commission has jurisdiction over the
13 complaints, it is my intent to proceed with the
14 public interest hearings. It is, in my view,
15 essential to do so.

16 The deployment in Afghanistan is
17 scheduled to continue until 2011.

18 Accordingly, a timely examination
19 of these issues is critical to the practices of our
20 military police, and the confidence of Canadians in
21 the process. These are issues of great public
22 interest, and this Commission has a mandate to
23 respond to complaints made about the conduct of the
24 military police.

25 This brings me to what I regard as

1 the most significant challenge associated with
2 these public hearings, and that is how we deal with
3 national defence and national security information,
4 subject to section 38 of the *Canada Evidence Act*.

5 Section 38 of the *Canada Evidence*
6 *Act* protects sensitive and potentially injurious
7 information from public disclosure. The type of
8 information that may be protected includes
9 information relating to international relations,
10 national defence, or national security.

11 This Commission is bound by law to
12 ensure that such sensitive or potentially injurious
13 information is not released publicly.

14 Indeed, given the ongoing
15 deployment of our troops in Afghanistan, it is
16 critical that sensitive or potentially injurious
17 information not be compromised as a result of these
18 hearings.

19 The Commission fully understands
20 the importance of protecting such information. The
21 danger is in overreaching, in seeking to prevent
22 disclosure of information that legitimately belongs
23 in, and can be placed in, the public domain.

24 In a healthy democracy like
25 Canada, it is essential that a statutory oversight

1 body, such as this Commission, be able to fully
2 address the allegations raised by these complaints,
3 in order to restore and maintain public confidence
4 and improve the operations of our military police.

5 Both the Arar Inquiry and the Air
6 India Inquiry have dealt with section 38 and
7 national security information.

8 These inquiries have been able to
9 address significant issues in public, contributing
10 to our national debate on civil liberties, the
11 obligations of Government, the public's right to
12 know, and national security in the 21st century.

13 This Commission now faces similar
14 challenges relating to national defence
15 information.

16 However, the Commission is of the
17 view that, with the cooperation of the Attorney
18 General of Canada, this Commission will be able to
19 balance these crucial competing interests in order
20 to fully examine the allegations relating to
21 transfer to the risk of torture, and make findings
22 of fact and recommendations to improve military
23 police operations and policies, if and as required.

24 All of that said, one of the very
25 significant issues associated with section 38 of

1 the *Canada Evidence Act* is a potential for delay in
2 these proceedings.

3 The law requires that the Attorney
4 General of Canada must be notified of the potential
5 for disclosure of sensitive or potentially
6 injurious information. Under the *Canada Evidence*
7 *Act*, a potential "disclosure" of information
8 includes public witness testimony, as well as the
9 filing of documents at a public hearing.

10 Indeed, I have been informed by my
11 counsel that a section 38 *Canada Evidence Act*
12 notice has been issued over all of the documents,
13 which the Commission obtained from the Department
14 of National Defence to date, in the course of the
15 Commission's ongoing public interest investigation.

16 I have directed my counsel to meet
17 with lawyers for the Attorney General of Canada to
18 discuss how to resolve these issues, and my counsel
19 has been in such discussions for some time.

20 I am going to take this
21 opportunity to ask Commission counsel to explain,
22 for the benefit of those present, her view on the
23 effect of this section 38 notice which has been
24 issued to the Commission on the proposed public
25 hearings.

1 Ms. Kristjanson?

2 MS. KRISTJANSON: Mr. Chair, there
3 are a number of significant issues affecting both
4 the timing and content of public hearings.

5 Section 38 issues can have a very
6 significant effect on timing. The Commission's
7 experience with preparing the Federal Court records
8 for the two judicial review proceedings is an
9 example of this.

10 Once the Attorney General of
11 Canada commenced each of the judicial review
12 applications, the Commission received notices
13 requiring it to file the Record of Decision with
14 the Federal Court.

15 The Record of Decision is,
16 essentially, those documents that the Chair
17 considered in deciding that this Commission had
18 jurisdiction to inquire into the Afghanistan
19 detainee complaints.

20 The public portions of the
21 Commission's Record of Decision have been filed
22 with the Federal Court.

23 However, some of the material
24 contained in the Commission's Federal Court Record
25 of Decision is subject to a section 38 notice.

1 The materials which are part of
2 the Federal Court record were first provided to the
3 Government on September 11, 2008, then went to the
4 National Security Group within the Department of
5 Justice on October 6, 2008. Additional materials
6 were sent on October 30, 2008.

7 These section 38 issues are still
8 under consideration by the Attorney General of
9 Canada. It has taken the Government, as a whole,
10 nearly three months to review the initial Record of
11 Decision, and the Attorney General still has not
12 released his decision. Counsel for the Attorney
13 General of Canada has been unable to tell us when
14 that decision will be made.

15 I must emphasize that the Federal
16 Court Record of Decision involves a very small
17 number of records, in comparison with the
18 Afghanistan Public Interest Hearings.

19 We hope to establish a process
20 with the Government to facilitate a speedy section
21 38 review process.

22 If we cannot reach a mutually
23 agreeable process, then the delay in the hearings
24 will be extreme and unpredictable.

25 In general, the effect of a

1 section 38 notice is that information cannot be
2 introduced in a public forum. It is a complete
3 prohibition.

4 One possibility is that documents
5 may be redacted to remove sensitive and potentially
6 injurious information before being introduced in
7 public. However, such an evidently reasonable
8 approach calls for a collaborative effort.

9 I have discussed the process for
10 redaction with counsel for the Government, but it
11 is that type of process which has taken so long in
12 the Federal Court proceedings.

13 There is also the much more costly
14 and time-consuming potential to apply to Federal
15 Court for a determination of whether the
16 information sought to be withheld would indeed be
17 injurious to international relations, national
18 defence or national security, and whether its
19 release should be authorized by a Federal Court
20 Judge.

21 That is, if the Government
22 proposes to redact certain information from a
23 document, or prohibit a witness from testifying
24 about certain information, then the Commission
25 could apply to the Federal Court for a ruling on

1 These summaries of background
2 facts and documents would then serve as the
3 foundation evidence for the public hearings. I am
4 of the view that this would be an expeditious
5 manner of proceeding.

6 The issues would be dealt with in
7 a public forum, while not compromising the
8 protection of that information which truly needs to
9 be protected.

10 In the draft Rules, which I have
11 circulated to the parties, we make provision for
12 the use of summaries of background facts and
13 documents. I look forward to receiving comments
14 from counsel for the parties on this proposal.

15 It is important to understand
16 however, that the delay caused by the section 38
17 notice remains unpredictable, and I will continue
18 to seek the assistance of counsel for the Attorney
19 General, in dealing in a responsible, yet also
20 responsive, fashion to the challenges posed by
21 national defence and national security
22 requirements.

23 THE CHAIR: Thank you, Ms.
24 Kristjanson.

25 Given the significant outstanding

1 Commission must be placed on this schedule in order
2 to receive sensitive or potentially injurious
3 national defence and national security information.

4 I should note that this has never
5 been an issue in the past with the Department of
6 National Defence. In the Commission's view, it
7 should not be an issue now, or at all.

8 This is a standing Commission,
9 with a statutory mandate to investigate complaints
10 into certain issues related to the military police.
11 Many departments and agencies may well have
12 possession of documents that are relevant to such
13 investigations.

14 The Arar Policy Review Report
15 quite clearly pointed out the need for review
16 bodies, dealing with national security or
17 classified information, to have access to
18 information which may be held by a variety of
19 departments, since there are a significant number
20 of departments and agencies which may well be
21 involved in issues related to national security,
22 national defence and international relations.

23 It should be quite clear that this
24 Commission is an independent agency, but it is an
25 agency of Government, and it is an advisory body to

1 the Minister of National Defence.

2 The Commission is subject to the
3 Government Security Policy. My staff are public
4 servants, and have all the necessary security
5 clearances.

6 We are fully aware of the need to
7 protect classified information. The Commission
8 will not compromise national defence or national
9 security, in the course of investigating
10 complaints.

11 Nonetheless, in order to provide
12 some additional assurance, in July 2008, I
13 requested from the Minister of National Defence
14 that he add this Commission to the mentioned
15 schedule of designated agencies under the *Canada*
16 *Evidence Act*, to enable the Commission to
17 efficiently obtain information which may be deemed
18 sensitive or potentially injurious under the *Canada*
19 *Evidence Act*.

20 I acknowledge the Minister replied
21 in September, indicating that the matter was under
22 consideration.

23 I wrote to the Minister a second
24 time in November, again requesting that the
25 Commission be added to the *Canada Evidence Act*

1 schedule of designated agencies.

2 At this point, however, the
3 Commission is not on the schedule.

4 My concern is that difficulties in
5 obtaining access to information can undermine the
6 effectiveness of oversight, and public confidence
7 in this Commission as an oversight body.

8 At this time, I am respectfully
9 calling upon the Government, and the Attorney
10 General of Canada, to cooperate with the Commission
11 to find practical solutions to section 38 issues,
12 so that the public hearings can commence in a
13 timely fashion.

14 I have asked my counsel to keep
15 the parties apprised of developments, and whether
16 or not the Government is being cooperative in
17 moving these hearings forward.

18 I would now like to turn to the
19 specifics of the hearings.

20 I would like to commence
21 proceedings on February 16, 2009, in Ottawa.

22 Under the *National Defence Act*, I
23 am required to canvas the proposed date and
24 location with the parties.

25 Accordingly, at this point, I

1 would solicit the views of counsel for the parties
2 as to the suggested date of February 16, 2009, and
3 the venue in Ottawa.

4 Mr. Préfontaine?

5 MR. PRÉFONTAINE: No objection,
6 either to the proposed date or the proposed venue.

7 THE CHAIR: Thank you.

8 Mr. Champ?

9 MR. CHAMP: No objection to the
10 venue, Mr. Chair, no objection to the date.

11 I will advise the Chair there is a
12 very strong possibility that the bodies or the
13 groups may not be represented by counsel at that
14 time.

15 We are trying to come up with
16 different ways to ensure that we can contribute as
17 much as possible, but I have been the counsel for
18 both of these groups on all of these matters for
19 the last couple of years, on a pro bono basis.

20 A multi-week or multi-month
21 hearing is not something that I am able to do, in
22 the circumstances, so the groups will have someone
23 here, and we have confirmed that date, but it may
24 well be that we don't have counsel.

25 THE CHAIR: Thank you Mr. Champ.

1 Again, I will ask my counsel to
2 ensure that the Commission's website is updated, if
3 there are any changes to the start date or
4 location.

5 It's appropriate now to speak
6 about the form that the hearings will take.

7 First, there will be two members
8 of the Commission sitting as a panel to hear the
9 evidence. I will be the Chair. I will be joined
10 by Mr. Roy Berlinquette, a member of this
11 Commission.

12 Mr. Berlinquette retired after 36
13 years of police service with the Royal Canadian
14 Mounted Police, where he served, amongst other
15 positions, as the Deputy Commissioner of the North
16 West Region.

17 Following his career in Canadian
18 public service, he served as a member of the Office
19 of the Oversight Commission on the Reform of the
20 Police Service of Northern Ireland. He brings a
21 wealth of policing, and police oversight
22 experience, to these hearings.

23 In terms of format, the hearings
24 will be very similar to the form of public inquiry
25 hearings, which you may have seen in the Arar or

1 Air India Inquiries.

2 In addition to documents or
3 summaries which may be filed, my counsel will
4 present and examine witnesses on issues relevant to
5 the complaints.

6 Then, parties or interveners, as
7 the case may be, with an interest in a particular
8 area of evidence will be afforded the opportunity
9 of cross-examining those witnesses.

10 They will also have the
11 opportunity to suggest other witnesses to be
12 called.

13 It is proposed that the hearings
14 will be open to the public, except on the rare
15 occasions, as required by the *National Defence Act*,
16 when information must be heard in private.

17 I anticipate that the vast
18 majority of evidence will be heard in public,
19 although parties may apply for private hearings
20 when certain preconditions are met.

21 Those include the need to prevent
22 the disclosure of information that could be
23 injurious to the defence of Canada and its allies,
24 the administration of justice, or personal privacy
25 and security interests, all as set out in the

1 *National Defence Act.*

2 I will note that this is not an
3 adversarial process, but an inquisitorial process.

4 As I have already stated, this
5 Commission does not discipline or make findings of
6 civil or criminal liability. The goal is
7 essentially forward-looking, to make findings of
8 fact and recommendations with respect to the
9 allegations. This may include suggestions relating
10 to broad issues such as training or policy.

11 Again, however, I appreciate that
12 for members of the military police who are subjects
13 or witnesses, these hearings may be a difficult
14 experience. I want to reiterate that all
15 participants in the process will be treated fairly,
16 with respect.

17 I will also expect all
18 participants to respect the process, and the public
19 interest in completing these hearings in a fair,
20 thorough, and expeditious manner.

21 The conduct of the hearings, and
22 any pre-hearing motions, will be governed by the
23 *National Defence Act* and this Commission's Rules of
24 Procedure. The Rules of Procedure are posted on
25 the Commission's website, and my counsel has

1 circulated Supplementary Rules for these particular
2 hearings to the parties for comments. Once the
3 Supplementary Rules are finalized, they will also
4 be posted on the website.

5 I am going to take this
6 opportunity to again ask Commission counsel to
7 briefly review the key provisions of the Rules of
8 Procedure, and perhaps, to indicate why she has
9 circulated Supplementary Rules for these particular
10 hearings.

11 MS. KRISTJANSON: The Rules of
12 Procedure establish the framework for the hearings.
13 They govern issues such as applications for
14 standing, disclosure obligations, how to bring
15 motions, the rules for service, and so on.

16 Of particular interest to the
17 parties and potential interveners are the rules
18 governing pre-hearing motions.

19 All motions are to be brought to
20 the Commission, in writing, at least 14 days in
21 advance of the hearings.

22 This would include a motion to
23 intervene, for example. I encourage all interested
24 persons to bring pre-hearing motions as soon as
25 possible, so as not to delay the proceedings.

1 With respect to the Supplementary
2 Rules, when I reviewed the existing Rules of
3 Procedure, it appeared to me that they were not
4 sufficient to deal with the types of issues
5 expected to arise in the course of the Afghanistan
6 Public Interest Hearings.

7 As a result, on November 26th, I
8 circulated draft Supplementary Rules for these
9 hearings, to the parties for comment.

10 Once these changes are received
11 and considered, I will recommend that the
12 Commission adopt the Supplementary Rules.

13 The proposed changes set out in
14 the Supplementary Rules are designed primarily to
15 address concerns with respect to section 38 of the
16 *Canada Evidence Act*.

17 For example, the present rules
18 require mutual disclosure of all relevant documents
19 to all of the parties.

20 Given the nature of national
21 defence or national security information that might
22 be contained in government documents, this would
23 not be possible, nor would it be desirable.

24 Therefore, the Supplementary Rules
25 suspend the mutual disclosure obligation, and

1 replace this with an obligation to disclose
2 documents to the Commission.

3 Commission counsel will then have
4 a disclosure obligation to provide relevant
5 documents to interested parties.

6 The Supplementary Rules also
7 reflect our intent to proceed expeditiously,
8 allowing Commission counsel to focus the witnesses
9 and evidence on issues relevant to the hearings,
10 while providing parties with procedural fairness
11 and natural justice.

12 The use of summaries of background
13 facts and documents which I have already discussed
14 is an example of this.

15 In addition, the proposed rules
16 create a voir dire like procedure for dealing with
17 information that must be heard in private. This
18 would require the Commission to review the proposed
19 evidence to determine whether the hearing in public
20 would be injurious to the defence of Canada and her
21 allies, to the administration of justice, or to
22 personal privacy and security interests.

23 It is important to recognize that
24 while the *Canada Evidence Act* applies to all
25 documents and information, section 250.42 of the

1 *National Defence Act* applies directly to this
2 Commission, and requires this Commission to
3 independently consider potential injury to those
4 interests.

5 I have circulated the draft
6 Supplementary Rules to the parties, and I have
7 asked them to provide comments to me by
8 December 16, 2008.

9 THE CHAIR: Thank you, counsel.

10 I note that a common criticism of
11 inquiries and administrative hearings, in general,
12 is that they may become unfocussed, too expensive,
13 and even misdirected.

14 From the time that I decided to
15 convene these hearings, I have been very conscious
16 of this consideration.

17 Accordingly, I have asked
18 Commission counsel for her recommendations on how
19 to avoid such a result.

20 In addition to the recommendations
21 with respect to the use of summaries of background
22 facts, and documents, and amendments to the Rules
23 of Procedure, which have been described already,
24 Ms. Kristjanson has also recommended the
25 preparation of an issues list, to guide the conduct

1 of the hearings.

2 I have accepted her recommendation
3 in that regard, and would now like to ask her to
4 report on the development of the draft issues list.

5 MS. KRISTJANSON: Thank you, Mr.
6 Chair.

7 The issues list, a draft issues
8 list, is essentially a roadmap for the hearings, on
9 the basis of information gathered in the
10 investigation and preparation for these hearings.

11 Counsel has identified key issues
12 and areas of evidence relevant to the complaints.
13 That draft list of issues was provided to counsel
14 for the parties, for comment on November 25, 2008.

15 And I acknowledge and thank
16 counsel for Amnesty International and the BC Civil
17 Liberties Association, which provided a response on
18 December 3rd.

19 I understand that the counsel for
20 the subjects will also be providing comments on the
21 draft issues list.

22 I will take these comments into
23 account, and when the issues list is finalized, I
24 will recommend that it be posted on the
25 Commission's website.

1 I have identified 10 major areas
2 to be examined at the hearings, and I would now
3 like to review my proposal, subject of course, to
4 comments that may be made by my friends.

5 First, I propose to commence with
6 evidence regarding the knowledge of the likelihood
7 of torture of prisoners at Afghan prison
8 facilities. This would include knowledge of the
9 likelihood of torture of prisoners within the
10 Canadian government by non-governmental
11 organizations, and humanitarian organizations, and
12 by the media, and how this information was or was
13 not transmitted to members of the military police.

14 Next, I propose to examine the
15 legal framework governing members of the military
16 police in Afghanistan, primarily, the legal
17 obligations of military police members with
18 respect to prisoner custody, the enforcement of
19 laws, and the investigation of alleged crimes,
20 including the transfer of detainees, as alleged, to
21 the risk of torture.

22 This will involve an *examination*
23 *of the Geneva Conventions Act, the Criminal Code,*
24 *the National Defence Act, international law, such*
25 *as the Convention Against Torture, and relevant*

1 military police policies.

2 It will also involve an
3 examination of military policy knowledge of
4 agreements between the Canadian government and the
5 Afghan government, respecting the transfer of
6 detainees by Canadian troops to Afghan authorities.

7 I then propose to examine pre-
8 deployment planning and training regarding prisoner
9 custody and transfer issues, including training
10 respecting the obligations of military police where
11 the risk of torture is an issue.

12 The allegations relate to the
13 deployment of our troops in Kandahar. This will
14 require an examination of the role of MP's, and
15 prisoner custody and transfer on the ground, as
16 well as investigations of alleged torture.

17 In particular, prisoner transfers
18 were suspended for a period of time, and then
19 reinstated. Whether knowledge of the risk of
20 torture in Afghan prisons led to the suspension of
21 transfer, and the information provided to military
22 police at that time, and subsequently, is an
23 element of the proposed inquiry.

24 I propose as well, to examine
25 changes to the arrangements between Canada and

1 Afghanistan, which provided for follow-up of
2 prisoners by DFAIT and Correctional Services
3 Canada.

4 Issues there include whether
5 information about the risk of torture was provided
6 to military police, and whether there were changes
7 to the roles and responsibilities of military
8 police, following these amendments.

9 I also propose to examine the role
10 of the Canadian Forces Provost Marshal, the senior
11 member of the military police and the Task Force
12 Provost Marshals deployed in Afghanistan, with
13 respect to their roles, information and discharge
14 of policing duties and functions.

15 Finally, I propose to examine the
16 duty on MP's to investigate allegations regarding
17 the risk of torture of Canadian prisoners
18 transferred to Afghan custody.

19 Throughout, the goal will be to
20 call evidence to allow this Commission to make
21 findings of fact on the issues raised by the
22 complaints, and to identify areas where
23 recommendations may improve the practices and
24 procedures of the military police.

25 As noted, the draft issues list

1 was provided to counsel for the parties November
2 27th, I believe.

3 I have asked counsel to respond to
4 me, with their comments, by December 16th. Once
5 the list of issues is finalized, it will serve as a
6 guide for Commission counsel in calling witnesses
7 and structuring the hearings.

8 Thank you.

9 THE CHAIR: Thank you, Ms.
10 Kristjanson.

11 I have indicated at the outset
12 that I proposed that this Procedural Overview
13 session involve some degree of dialogue, not just
14 monologue, from the Commission's perspective,
15 giving an opportunity to engage counsel for the
16 parties.

17 There are two significant matters
18 that Commission counsel has spoken to, the issues
19 list and the Supplementary Rules.

20 I appreciate that Mr. Champ has
21 already made some degree of submission, in writing.

22 But preliminary to, the further
23 written submissions of which Commission counsel has
24 spoken of, does either counsel for the parties wish
25 to speak to these matters this morning?

1 MR. PRÉFONTAINE: No thank you.

2 We will be addressing the concerns
3 either bilaterally with Madam Kristjanson, or in
4 writing.

5 THE CHAIR: Thank you, Mr.
6 Préfontaine.

7 Mr. Champ?

8 MR. CHAMP: Yes, Mr. Chair, I
9 would just briefly perhaps summarize what my
10 clients' views are on the draft list of issues, or
11 the approach that's been suggested by the
12 Commission and Commission counsel.

13 We understand from your decision
14 of September 30, 2008, Mr. Chair, that you have
15 determined it would be best to look at these issues
16 at a higher level, or a systemic level.

17 You have, in our view, correctly
18 identified that there is likely a systemic issue or
19 problem here, or potential problem, and that is the
20 approach that you've suggested the Commission
21 should adopt.

22 We would like to say that we agree
23 with that approach for a variety of reasons.

24 First and foremost, practical,
25 we do recognize that a detailed examination of

1 We have raised a few other
2 relevant international legal instruments that we
3 believe should be considered.

4 We have suggested as well, Mr.
5 Chair, that in looking at all of these issues, it
6 may be beneficial if we look at perhaps just one or
7 two, or perhaps as many as three, decisions of
8 transfer, as examples of the rest.

9 And obviously, we would hear some
10 evidence of what has gone before and so forth, as
11 context.

12 Because, in our view, context is
13 in many ways, critical to the types of decisions
14 that were made, both by the military police and
15 also, senior officers within the military, who made
16 the decisions to transfer.

17 In that regard, Mr. Chair, as you
18 noted, our clients have filed two complaints.

19 When we filed our first complaint
20 in February 2007, we had no knowledge of specific
21 detainees who had been transferred by the Canadian
22 Forces, being tortured or abused. We had no
23 specific information.

24 What we did have though, Mr.
25 Chair, was a wealth of public documents and reports

1 by highly credible bodies and organizations, the UN
2 Secretary General, the UN High Commissioner for
3 Human Rights, the United States State Department,
4 the Afghan Independent Human Rights Commission.

5 All of those bodies had found that
6 torture was common and routine in Afghan custody.

7 And our clients as well, Mr.
8 Chair, had been raising this issue with the
9 Government for several years prior to 2007. They
10 have always been concerned about the human rights
11 of individuals who come within the control of the
12 Canadian military.

13 So that was the basis of our first
14 complaint. But the situation has changed, Mr.
15 Chair, which led to our second complaint of
16 June 2008.

17 Of course, the Commission is aware
18 that there is an ongoing Federal Court matter now
19 in the Federal Court of Appeal regarding the
20 application of the *Canadian Charter of Rights and*
21 *Freedoms*. There's two Afghan detainees.

22 In the course of that litigation,
23 Mr. Chair, the Government had changed its policy.

24 In May 2007, they signed a new
25 transfer agreement where they commenced active

1 monitoring of detainees in Afghan custody.

2 My clients welcome that
3 development, Mr. Chair, because prior to that, for
4 one and a half years, the Canadian Forces and the
5 Canadian government had no knowledge of what was
6 happening to detainees following transfer.

7 The situation has changed
8 following that new transfer agreement, however, Mr.
9 Chair, because while the Government and the
10 Canadian Forces has taken the position that the
11 public reports from all those credible bodies do
12 not establish a risk of torture, following May
13 2007, Canadian government officials themselves went
14 into Afghan detention facilities, and interviewed
15 firsthand, former Canadian Forces detainees.

16 And from May 2007 until
17 November 2007, heard some very disturbing accounts,
18 Mr. Chair.

19 Approximately one-quarter to
20 one-third of detainees interviewed did report very
21 terrible forms of torture, Mr. Chair, and that was
22 found by the Federal Court. It had looked at those
23 reports, and had expressed serious concern.

24 Although the Federal Court found
25 that the Charter does not apply, the Judge did

1 express very serious concerns about those issues.

2 Ms. Justice MacTavish found that
3 Canadian government officials had heard eight
4 firsthand complaints of torture. And she said
5 that:

6 "These complaints included
7 allegations that detainees
8 were kicked, beaten with
9 electrical cables, given
10 electrical shocks, cut,
11 burned, shackled, and made to
12 stand for days at a time,
13 with their arms raised over
14 their heads.
15 Moreover, in some cases,
16 prisoners bore physical signs
17 that were consistent with
18 their allegations of abuse.
19 And in addition, Canadian
20 personnel conducting site
21 visits personally observed
22 detainees manifesting signs
23 of mental illness and in at
24 least two cases, reports of
25 the monitoring visits

1 described detainees as
2 appearing traumatized.”

3 So Mr. Chair, the environment from
4 May 2007, at least in terms of the knowledge or
5 information of the Canadian Forces, changed
6 substantially during that period.

7 And as we all know, on November 5,
8 2007, Colonel Juneau, the Acting Commander of Task
9 Force Afghanistan, did make the decision to suspend
10 transfers, another development that my clients
11 welcomed, Mr. Chair, although we did not know about
12 it at the time.

13 And that decision was precipitated
14 by yet another report by a detainee to Canadian
15 government officials that he had been tortured and
16 beaten in Afghan custody.

17 THE CHAIR: Mr. Champ, excuse me--

18 MR. CHAMP: Yes?

19 THE CHAIR: I realize that I
20 opened the door pretty wide here, but I did say
21 that I wasn't going to hear any evidence, or even
22 submissions regarding evidence, this morning.

23 MR. CHAMP: Well, Mr. Chair, I
24 appreciate your concern. I am just about done, but
25 what I am doing is I am trying to situate what we

1 would suggest would make a positive approach.

2 There are different phases of the
3 transfer decisions. So from December 2005, I will
4 get to the point.

5 From December 2005 to May 2007,
6 the Canadian government did not have any direct
7 information, but did have, or at least had access
8 to, public documents.

9 We also know during that period,
10 of course, the Department of Foreign Affairs also
11 had reports where they found that torture was all
12 too common in Afghan custody.

13 So we think those issues can be
14 studied.

15 We know in that period, Mr. Chair,
16 from December 2005 to May 2007, that there was a
17 decision made by the Canadian Forces to stop
18 transferring detainees to two Afghan government
19 authorities, the Afghan National Police and the
20 Afghan National Army.

21 We do not know the reasons for why
22 they stopped making transfers, although from some
23 of the evidence, we have inferred that it was
24 because of some concern about the risks of abuse,
25 although we're not sure.

1 That is one decision, Mr. Chair,
2 that we feel how that decision came about, could
3 perhaps provide some context of how the decision-
4 making process was going on, and what role
5 different decision-makers had from the Provost
6 Marshal to senior military commanders in that
7 decision.

8 Following May 2007, Mr. Chair, we
9 would suggest that the decision of November 5, 2007
10 to suspend transfers itself could be a focus of the
11 inquiry.

12 And in particular, that detainee
13 who was interviewed, when was that detainee
14 transferred, what information did they know, and
15 how did they assess the risk once that detainee had
16 provided his account.

17 Just as an example of the
18 framework, because it's understood that we presume
19 that detainee was transferred following May 2007,
20 and the Canadian Forces was -- we don't know, but
21 potentially Canadian Forces were in possession of
22 these monitoring reports. Again, we don't know
23 that for sure.

24 But we think that whether they
25 were or were not in possession of those reports is

1 a key issue. How were those decisions made, and we
2 think that those decisions, Mr. Chair, could
3 provide some focus to the hearings.

4 We think that they could reflect
5 or illustrate what are some of the systemic
6 problems that, in my clients' perspective, are
7 present here.

8 So that's all we say.

9 We're also alive to the issues of
10 the *Canada Evidence Act*, and although we recognize
11 fully that this is an issue right now between
12 counsel for the Commission and counsel for the
13 Attorney General, we appreciate and respect the
14 national security concerns, and are more than
15 prepared to work collaboratively with both
16 Commission and the Attorney General.

17 We believe we have done so in the
18 Charter litigation as well, although we would note
19 that a considerable amount of information, Mr.
20 Chair, is already in the public domain, had already
21 been obtained through that Charter litigation
22 process, that we believe goes to, you know, to a
23 great extent, establishing a lot of these issues.

24 So, we would hope and urge the
25 Attorney General to be cooperative in that process,

1 because this process is about restoring public
2 confidence and trust in the operations of the
3 Canadian Forces military police.

4 And in our view, the public
5 confidence has been shaken to a certain extent from
6 the information learned over the past year and a
7 half.

8 And it's our view that it would be
9 to the benefit of the public, and with respect to
10 the Canadian Forces to have some more information
11 about how those decisions were made, put into the
12 public domain to the greatest extent possible, so
13 that Canadians can understand a bit more about what
14 happened there.

15 And then have this oversight body
16 take a look at those decisions and that information
17 and in fairness to the subjects, and in fairness to
18 the Canadian Forces, make recommendations to
19 improve those practices.

20 MS KRISTJANSON: Thank you.

21 Mr. Chair, if I might?

22 Thank you very much, Mr. Champ,
23 for the offer to work collaboratively, particularly
24 with respect to the question of how we can call
25 this information in public, given the constraints

1 of section 38.

2 Because I think it takes good will
3 on all parties, to be able to advance it in that
4 manner.

5 And I particularly appreciate that
6 Mr. Champ's clients have raised for discussion,
7 ways to narrow this hearing, i.e. not to have to
8 investigate every detainee transfer, but perhaps
9 selecting some smaller number of decisions that
10 could illustrate the questions that have to be
11 dealt with.

12 And I can assure you that I will
13 follow up with you, and with counsel for the other
14 subjects, to see if we can narrow the scope of
15 this, while still investigating the key issues that
16 are needed to restore confidence in the military
17 police.

18 Mr. Chair, I have just been
19 informed that there is another counsel for a
20 subject here today, and I would ask her to come up
21 and introduce herself.

22 THE CHAIR: Thank you.

23 I am sorry that there was the
24 omission of identifying other counsel earlier.

25 MS STEIN: Yes, there was, Mr.

1 Chair.

2 Good morning, my name Karin Stein,
3 and our office, the office of Carroll & Wallace,
4 has just been notified we have been retained on
5 behalf of Captain Steven Moore of CFPM, and I have
6 been here since the start.

7 Unfortunately, I only found out
8 partway through that we had been retained, so I
9 wanted to introduce myself, and to let you know
10 that we are retained.

11 And that having listened to
12 everything here so far, that we certainly are
13 prepared to assist Commission counsel as best we
14 can. And we are aware of the December 16th
15 deadline with respect to response.

16 At this time, I don't wish to make
17 any other submissions, but just to introduce myself
18 and advise you, sir.

19 THE CHAIR: Thank you for that.

20 I was a little slow in getting
21 your firm's name.

22 MS STEIN: It's Carroll & Wallace.
23 William Carroll will essentially be the Counsel of
24 Record.

25 THE CHAIR: Thank you.

1 I just want to go back for a
2 moment to Mr. Champ, and further, to what
3 Commission counsel has already said.

4 I do thank Mr. Champ for his
5 constructive and thoughtful suggestions, which
6 obviously, are going to be taken under advisement.

7 I may have misunderstood you, Mr.
8 Champ, but in my notetaking at the outset of your
9 remarks, regarding moving to a higher level in your
10 agreement with the Commission's position on that,
11 just for the record, of course, the Commission has
12 identified issues, but not problems at this point.

13 MR. CHAMP: Of course, Mr. Chair.

14 When I was using the word
15 "problems", that was from our perspective.

16 Although we do note that the
17 Federal Court had expressed serious concerns, had
18 said the situation is very troubling, and it's our
19 understanding that you have taken account of the
20 same type of evidence, and that's part of the
21 reason why we're here today.

22 THE CHAIR: Thank you very much.

23 As has been discussed, presented
24 to this point, the issues list was developed by my
25 Commission counsel based on the information

1 received to date, as a result of the on-going
2 public interest investigation.

3 Obviously, also as has been
4 discussed, there is further development of that
5 issues list required, and I expect, in some large
6 part, that process may be driven by information
7 provided in the continuing pre-hearing preparation
8 process.

9 I am going to ask Commission
10 counsel to advise, for the record, as to the
11 current state of affairs, so to speak, in respect
12 of witness access and document disclosure.

13 MS. KRISTJANSON: Thank you, Mr.
14 Chair.

15 Before the first judicial review
16 application was commenced by the Government in
17 April 2008, Commission investigators interviewed 38
18 witnesses. Since that time, however, the
19 Government has not facilitated access to additional
20 witnesses identified by the Commission.

21 For example, we have been trying
22 to schedule interviews with 38 additional witnesses
23 since October 16th. I have exchanged a number of
24 letters with counsel for the Attorney General,
25 seeking access.

1 Counsel for the Government asked
2 for a list of questions to be posed to these
3 witnesses. Although this is not normal procedure,
4 in order to obtain access to the proposed
5 witnesses, Commission counsel provided government
6 counsel with a detailed list of areas of
7 questioning, on November 19th.

8 However, the witnesses still have
9 not been produced. I will continue to follow up
10 with government counsel, and will keep you apprised
11 of further delays.

12 I note as well, the Commission
13 counsel will also be requesting interviews, in the
14 future, with a number of witnesses who have already
15 met with investigators.

16 The purpose of these interviews
17 will be to finalize the list of witnesses, and
18 prepare statements of anticipated evidence.

19 We will require the cooperation of
20 the Government in securing access to these
21 witnesses, as well.

22 The final question is the issue of
23 documents.

24 In the initial investigation, the
25 Canadian Forces and Department of National Defence

1 provided the Commission's investigators with over
2 900 documents.

3 However, since the commencement of
4 the first judicial review application in April, the
5 Government has essentially stopped providing the
6 Commission with documents.

7 The last document this Commission
8 received from the Department of National Defence,
9 in relation to the Afghanistan public interest
10 investigation, was on March 7, 2008.

11 The Commission made a request for
12 documents on March 11th, which the Department of
13 National Defence has not responded to. The
14 Commission made a further document request on
15 November 19th, and has similarly had no response.

16 In addition, there are documents
17 in the possession of other departments,
18 Correctional Services Canada and DFAIT, which may
19 be relevant to these hearings. The Government has
20 refused to provide those documents.

21 When the hearing is convened, this
22 Commission will have the power to summons witnesses
23 to attend with relevant documents. Until that
24 point, however, it appears that the Government will
25 not willingly provide those documents to the

1 Commission.

2 MR. PRÉFONTAINE: If I may, Mr.
3 Chairman, since Madam Kristjanson has seen fit to
4 comment?

5 THE CHAIR: I was just going to
6 ask.

7 MR. PRÉFONTAINE: Yes.

8 THE CHAIR: With the body
9 language, I thought you wanted to speak.

10 MR. PRÉFONTAINE: Yes.

11 Obviously, this Commission has no
12 power to compel, save and except when it issues
13 subpoenas.

14 The Government is quite willing to
15 cooperate, but is not willing to compel witnesses
16 to come forward to participate in what is a
17 voluntary interview.

18 The process agreed to called for
19 Commission counsel to tell me who they wanted to
20 speak to, so that I could put the proposition to
21 the witnesses themselves, for their decision.

22 And that is exactly what we have
23 done, and I have relayed to Madam Kristjanson, on a
24 number of occasions, that all of the witnesses who
25 had responded to the request had declined the

1 request for a voluntary interview.

2 So it's not a matter of the
3 Government not cooperating.

4 It's a matter of the Government
5 giving these witnesses the rights that they have,
6 and allowing them to make informed decisions.

7 As for the production of
8 documents, there is obviously an issue as to what
9 is relevant and within the mandate of the
10 Commission, which is presently before the Federal
11 Court.

12 And until that is resolved, there
13 is no reason or requirement to produce documents
14 which fall outside of what the Government considers
15 falls within the mandate of the Commission.

16 Those documents that fall within
17 the parameters of the Commission's jurisdiction are
18 looked at and will be produced, but subject to
19 section 38 of the *Canada Evidence Act*.

20 And quite obviously, the super
21 imposition of these two processes takes time.

22 Thank you.

23 THE CHAIR: Thank you, Mr.
24 Préfontaine.

25 Do other counsel have anything?

1 MR. PRÉFONTAINE: I am sorry.

2 The documents in the possession of
3 the Correctional Services of Canada and DFAIT have
4 been produced, but they have been produced in
5 redacted form.

6 So the statement that they have
7 refused to produce is incorrect.

8 What would be correct to say is
9 that the documents have been produced, but with the
10 redacted information, on the basis of sections 37
11 and 38 of the *Canada Evidence Act*.

12 THE CHAIR: You don't think
13 anything that Ms. Kristjanson said which required a
14 response from Mr. Préfontaine would apply to
15 Captain Moore's counsel? No?

16 MS STEIN: No.

17 THE CHAIR: Thank you.

18 As has just been heard, and I
19 suggest underlined by Commission counsel's
20 statements of the current state of affairs, with
21 respect to the passage of information and access to
22 witnesses, as well as her earlier remarks in
23 respect of section 38 issues, etcetera, and I think
24 all as much underlined, very much underlined by Mr.
25 Préfontaine's most recent submissions, it's clear

1 that serious challenges are being presented to the
2 Commission, in terms of matters of access to
3 witnesses, and the ongoing provision of documents.

4 I would say again, it is
5 essential, in the view of this Commission, that in
6 order for it to be able to conduct public hearings,
7 that Commission counsel receive the utmost of
8 cooperation from the Attorney General of Canada and
9 the Government.

10 In light of these comments from
11 Commission counsel, I call again on the Government
12 to cooperate on the question of witness access and
13 document disclosure, for the efficient, effective
14 and fair process of this inquiry.

15 This, I believe, is particularly
16 important because I wish to, again, advise the
17 parties that I would like to be in a position to
18 commence the hearings on February 16, 2009.

19 I reiterate that these complaints
20 raise serious allegations about the obligations of
21 members of the military police, when transferring
22 prisoners from custody. These allegations relate
23 to the risk of torture of these prisoners, and the
24 obligation of military police to enforce domestic
25 and international law respecting torture.

1 This, in my view, is a dark cloud
2 under which Canadians serving their country should
3 not have to operate.

4 Since the deployment in
5 Afghanistan is scheduled again to continue until
6 2011, a timely examination of these issues is
7 critical to the practices of our military police,
8 and the confidence of Canadians in the process, and
9 the removal of the dark cloud that has been raised.

10 These are issues of great public
11 interest, and this Commission has a mandate to
12 respond to the complaints made about the conduct of
13 the military police, and it will fulfil its
14 mandate.

15 As has been explained, section 38
16 issues relating to national defence, national
17 security and international relations may prove to
18 be stumbling blocks, but I believe that they are
19 not insurmountable. I encourage the Government, my
20 counsel, and the parties, to work together to
21 advance the hearings on February 16, 2009.

22 Thank you.

23 --- Whereupon adjourning at 11:15 a.m.

I HEREBY CERTIFY THAT I have, to the best of my skills and abilities, accurately recorded by Stenomask and transcribed therefrom, the foregoing proceeding.

Marc Bolduc, Stenomask Reporter