



RULING ON REQUEST FOR EXTENSION OF TIME

Afghanistan Public Interest Hearings pursuant to
Section 250.38(1) of the *National Defence Act*

MPCC 2008-042

IN THE MATTER of a conduct complaint under section 250.18 of the *National Defence Act* by Amnesty International Canada and the British Columbia Civil Liberties Association, on October 14, 2009, Commission counsel sought to file with the Military Police Complaints Commission (the "Commission") a letter sent by counsel for a witness, Mr. Richard Colvin, to counsel for all Parties and to the Commission. It was indicated that the letter contained allegations that the Commission may have been misled by some of the statements made before it by Government counsel. Mr. Préfontaine, counsel for seven of the subjects, and also acting as counsel for the Government in this matter, presented a claim of solicitor-client privilege and argued that the letter could not be filed as a result. The Commission ordered that Mr. Préfontaine be provided an opportunity to present submissions with respect to his claim within seven days, and that all Parties, and counsel for Mr. Colvin, be provided an opportunity to respond. Mr. Préfontaine provided his submissions on October 21, 2009. On October 22, 2009, the Commission advised the Parties, and counsel for Mr. Colvin, that submissions responding to Mr. Préfontaine's submissions were expected by October 28, 2009. Counsel for Mr. Colvin, Ms. Bokenfohr, presented a request on October 26, 2009, for an extension of time of 30 days to provide submissions on behalf of Mr. Colvin in response to Mr. Préfontaine's submissions, and undertook to report back to the Commission on or before November 25, 2009, about Mr. Colvin's situation and the ability of his counsel to respond to Mr. Préfontaine's submissions;

WHEREAS the Parties before this Commission were provided an opportunity to respond to Mr. Colvin's request, and were advised that their submissions in response to Mr. Préfontaine's submissions would not be expected before November 4, 2009, in order to allow the Commission and the Parties sufficient time to address the request;

WHEREAS the Parties before this Commission have not opposed the request, and one of the subjects of the complaint, Capt. (N.) Moore, has indicated through his counsel that he supports the request, while the complainants have consented to the request;

WHEREAS according to the letter presented by Ms. Bokenfohr in support of the request, there appears to be a dispute between Mr. Colvin and the Government about the payment of his legal fees, with the Government currently refusing to provide funding for any of the legal fees incurred or to be incurred in this matter unless confidential details about the exact steps taken by his counsel to date are provided to the Department of Justice;

WHEREAS Mr. Colvin requires access to counsel in order for the necessary legal research to be performed and submissions to be provided on his behalf, but the current dispute with Government prevents him from being able to obtain the necessary legal services at the present time;

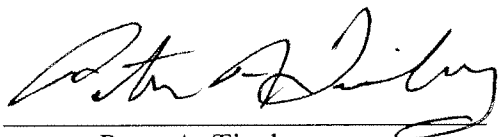
WHEREAS it is important for the Commission to receive submissions from Mr. Colvin about the serious legal, factual, and jurisdictional issues raised by Mr. Préfontaine's claim of solicitor-client privilege, since the claim relates to a letter from Mr. Colvin's counsel referring to earlier correspondence transmitted by the Department of Justice to Mr. Colvin;

WHEREAS counsel for Mr. Colvin has indicated that she is taking steps to resolve the matter with DFAIT and through her Law Society, and is prepared to pursue alternative means of redress if these steps are not successful;

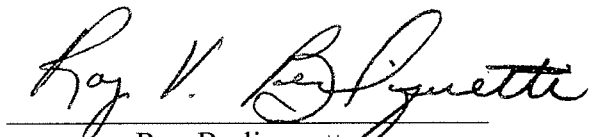
IT IS HEREBY ORDERED that the request for an extension of time for Mr. Colvin to provide submissions in response to Mr. Préfontaine's submissions is granted. Mr. Colvin's counsel will report back to the Commission as soon as possible, but no later than November 25, 2009, on Mr. Colvin's ability to provide the submissions, at which time a new timeline for receipt of the submissions will be set.

In the interim, submissions from the Parties in response to Mr. Préfontaine's submissions continue to be expected by November 4, 2009.

DATED at Ottawa, Ontario this 2nd day of November, 2009.



Peter A. Tinsley
Chairperson



Roy Berlinquette
Commission Member