

**PROTOCOL BETWEEN THE
MILITARY POLICE COMPLAINTS COMMISSION AND
THE CANADIAN FORCES NATIONAL INVESTIGATION SERVICE
IN RESPECT OF THE CONDUCT OF PARALLEL INVESTIGATIONS OF
AFGHAN DETAINEE MISTREATMENT ALLEGATIONS**

1. Purpose:

1.1 The purpose of this protocol is to provide a framework for the effective coordination of the Public Interest Investigation by the Military Police Complaints Commission (MPCC) and the Criminal/Disciplinary Investigation by the Canadian Forces National Investigation Service (CFNIS) with respect to the allegations of detainee mistreatment arising from the complaint submitted to the MPCC on January 29, 2007 (MPCC file 2007-003).

1.2 More specifically, the goal is to ensure that the MPCC Public Interest Investigation can proceed effectively and efficiently without compromising or impeding the current CFNIS investigation.

1.3 For greater certainty, this protocol in no way constitutes or allows for direction, guidance, influence or input by the MPCC on the CFNIS's criminal/disciplinary investigation.

2. Background:

2.1 The CFNIS, as part of the Military Police (MP), is mandated to enforce the Code of Service Discipline (Code) under the *National Defence Act* (NDA) including the investigation and gathering of information that may relate to an alleged offence under the Code. The CFNIS must act expeditiously and effectively in carrying out their mandate.

2.2 The MPCC is mandated by Part IV of the NDA to provide independent oversight of the conduct of Canadian Forces Military Police. In that connection, the MPCC has a mandate to conduct timely investigations on its own initiative in the public interest.

2.3 As the successful prosecution of a potential offender may be jeopardized if witnesses and/or real evidence are inadvertently compromised by actions taken by any parallel, administrative investigation, the MPCC and the CFNIS recognize the need for communication to ensure that the criminal/disciplinary investigation is not inadvertently compromised.

3. Sharing of Information:

3.1 To enable the MPCC to proceed with its public interest investigation in a timely and efficient manner, the CFNIS shall, subject to paragraphs 3.2, 3.4, 3.5 and 3.6, provide the MPCC with copies of all documents and materials (including photographs, video or audiovisual recordings) obtained in connection with its investigation, as well as tapes of

all interviews conducted during the course of this investigation. This material shall be provided to the MPCC as soon as practicable upon the CFNIS coming into possession of the material.

3.2 Where the CFNIS is of the view that any material referenced in paragraph 3.1 should not be provided to the MPCC, the CFNIS shall advise the MPCC of the nature of the material in question for the purposes of discussions with a view to determining whether the material in question should be exempted from paragraph 3.1 of this protocol.

3.3 For the sole purposes of internal MPCC planning and in order to facilitate its analysis of the material provided under paragraph 3.1, the CFNIS undertakes to provide the MPCC with periodic updates on the progress of its investigation. The CFNIS confirms its intention to continue to pursue its investigation as a priority file.

3.4 The MPCC shall hold all material received from the CFNIS under paragraphs 3.1 and 3.3 in confidence until such time as its disclosure by the MPCC (to the extent that its disclosure by the MPCC is otherwise lawful) is consented to by the CFNIS, or until the conclusion of the CFNIS investigation, whichever occurs soonest.

3.5 The MPCC shall handle and store all material received from the CFNIS under paragraphs 3.1 and 3.3 in accordance with applicable security of information requirements.

3.6 The MPCC undertakes, pursuant to section 8 of the *Access to Information Act*, to transfer any request for disclosure of information received by the MPCC under that Act in respect of material received under paragraph 3.1 or 3.3 of this protocol. In respect of any request for access to personal information under the *Privacy Act*, the MPCC undertakes to defer to the judgment of the CFNIS in the application of any applicable discretionary exemptions to disclosure under that Act.

4. Witness Interviews:

4.1 The MPCC shall not conduct any interviews with witnesses until either the CFNIS investigation is concluded, or the CFNIS consents to the conduct of the particular interview by the MPCC, whichever occurs soonest.

4.2 Should the MPCC become aware of information that appears to contradict the information provided by that witness to the CFNIS, or where any witness provides information relevant to the CFNIS investigation of which the CFNIS is not already aware, the MPCC shall advise the CFNIS as soon as practicable.

5. Primary Contacts and Resolution of Disagreements:

5.1 The contact persons for the MPCC investigation will be Mr. William Lenton, Investigator, and as necessary, Mr. David Goetz, Legal Counsel.

5.2 The contact person for the CFNIS will be LCol W.H. Garrick, Commanding Officer of the CFNIS.

5.3 Any disagreement between the primary contact persons regarding the interpretation or application of this protocol will be referred to the Chair of the MPCC and the CF Provost Marshal.

6. Signatures:

Each organization shall signify its agreement to this protocol by signing and dating it in the places indicated below.

On behalf of the MPCC:

On behalf of the CFPM:

Signature: “Original signed by”

 Julianne C. Dunbar for the
 Chair of the MPCC

Signature: “Original signed by”

 LCol. W.H. Garrick for the
 CFPM

Date: 23 February 2007

Date: 23 February 2007