



## MILITARY POLICE COMPLAINTS COMMISSION

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

### REASONS FOR ORDER TO PROCEED *IN CAMERA*

At the resumption of the Commission's public interest hearings on April 6, 2010, counsel from the Department of Justice made an oral request pursuant to section 250.42 of the *National Defence Act*, and Rule S14 of the *Afghanistan Public Interest Hearing Rules*, for an Order that certain evidence from non-subjects be received *in camera*. The Order requested by counsel was that the hearings conducted on April 6, 2010 and April 7, 2010, be conducted in private to protect certain specified security interests.

After hearing the representations made by counsel for all parties, the Commission granted the request that the hearings on April 6<sup>th</sup> and 7<sup>th</sup> proceed *in camera*. In so doing, the Commission was satisfied that the statutory requirements for proceeding *in camera* were met.

Parliament has enacted section 250.42 of the *National Defence Act*, which provides as follows:

**250.42** A hearing is to be held in public, except that the Complaints Commission may order the hearing or any part of the hearing to be held in private if it is of the opinion that during the course of the hearing any of the following information will likely be disclosed:

- (a) information that, if disclosed, could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;
- (b) information that, if disclosed, could reasonably be expected to be injurious to the administration of justice, including law enforcement; and
- (c) information affecting a person's privacy or security interest, if that interest outweighs the public's interest in the information.

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Rules S14 and S15 of the *Afghanistan Public Interest Hearing Rules* accordingly provide:

**S14(1)** A person may request the Complaints Commission to hold a part of the hearing in private if he or she believes that any information described in paragraphs 250.42(a), (b) or (c) of the *National Defence Act* will likely be disclosed. ...

**S15(1)** The Complaints Commission shall convene in private to consider a request under section S14, and may convene periodically for this purpose.

Parliament has thus directed, in the *National Defence Act*, that in the course of the Commission's public hearings some information will likely be disclosed that would reasonably prove injurious to Canada's defence and security interests, the enforcement of Canada's laws, or to a person's privacy and security interests, if it were made public. In such cases, a request may be made that the information be received *in camera* to protect the interests that Parliament has deemed to be of overriding importance.

The above provisions generally reflect accepted common law principles and procedures under which Courts may be asked to hear evidence, in private, as to why substantial reasons exist for keeping certain information confidential notwithstanding the "open court" principle: see e.g., *Named Person and Attorney General of Canada on behalf of the Requesting State v. Vancouver Sun et al.*, [2007] 3 S.C.R. 252.

In the circumstances of this case, counsel for the Department of Justice relied on all three subsections of section 250.42 of the *National Defence Act* to submit that the hearings in question should be conducted *in camera*. In assessing counsel's request, the Commission applied the test and principles established by Parliament in section 250.42 of the *National Defence Act*, and was satisfied on the facts that the requirements of section 250.42 were met. The Commission accordingly issued a verbal Order, from the bench, directing that the proceedings on April 6<sup>th</sup> and 7<sup>th</sup> would be conducted *in camera*. The hearings immediately resumed thereafter.

In arriving at its decision, the Commission also took into account the public nature of the hearings, and the principle that any derogation from the public nature of its hearings must be minimal. Factors that the Commission took into account included:

- No party opposed the request.
- Granting the request was considered by the parties to be the most expeditious way to allow the hearings to continue without delay in accordance with section 250.14 of the *National Defence Act*.
- The unredacted transcripts of the evidence in question would be made public.
- The Commission's reasons for proceeding *in camera* would be made public.

For the sake of clarity, the Commission's Order to proceed *in camera* applies only to the evidence being received on April 6 and 7, 2010. To date, no other request to proceed *in camera* has been presented. If such a request were subsequently presented, then it would be considered on its own merits.



Glenn Stannard  
Acting Chair

April 6/2010



Roy Berlinquette  
Commission Member

April 6<sup>th</sup>, 2010