

Clause by clause analysis of *An Act respecting the Independent Complaints Commission for the Military Police*

Long title

The long title sets out the scope of the bill.

The Act continues the Military Police Complaints Commission (Commission) in a distinct law from the [*National Defence Act*](#) (NDA) in order to enhance the Commission's appearance of independence. This highlights the fact that the Commission, as an independent civilian oversight body, is separate from the Canadian Forces and the Department of National Defence. It also incorporates the Commission's mandate in a statute other than the one governing the overseen body, in this case, the military police. This approach is in line with the systems that exist for other police oversight bodies in Canada, such as the Public Complaints and Review Commission, established under the [*Public Complaints and Review Commission Act*](#) (PCRCA).

Preamble

The preamble sets out Parliament's intentions in enacting this Act.

It stresses the importance of ensuring public confidence in civilian police oversight systems in Canada. It also sets out Parliament's intention in enacting a stand-alone statute for the Commission, which is to ensure the Commission's independence from the military hierarchy and to emphasize its role as an administrative tribunal to allow it to carry out its mandate as an independent civilian oversight body for the military police.

The government's intention to take steps to move forward on enhanced civilian oversight of law enforcement agencies was announced on September 23, 2020, in the Speech from the Throne to open the second session of the 43rd Parliament.

Heading – Short Title

Section 1 – Short Title

Section 1 provides the short title for the Act.

The short title uses the Commission's new name, the Independent Complaints Commission for the Military Police.

Heading – Interpretation

Subsection 2(1) – Definitions

Subsection 2(1) provides the definitions to be used in interpreting the Act.

The definitions are essentially the same as those set out in sections 2 and 250 of the NDA.

The English version of the Act uses the defined term **Commission** rather than **Complaints Commission**. This is similar to what is done in the French version and is unambiguous.

The term **member of the Canadian Forces** is used to bring the terms **officer** and **non-commissioned member** under the same definition. The term **member** is gender-neutral and ensures a balanced representation of gender diversity in the statute since it can refer to women, men and non-binary people.

Subsection 2(2) – Policing duties and functions

Subsection 2(2) clarifies the meaning of **policing duties and functions** for purposes of this Act.

The definition of **policing duties and functions** is moved from subsection 2(1) of the *Complaints About the Conduct of Members of the Military Police Regulations* to the Act and is amended to reflect Additional Military Police Complaints Commission (MPCC or the Commission) Recommendation No. 4.

Additional MPCC Recommendation No. 4: Presently, the scope of the MP complaints process (and the scope of the MPCC's mandate) is set out in a regulation made under the NDA. The MPCC proposes to incorporate those regulatory provisions directly into Part IV of the NDA.

Including the scope of the Commission's jurisdiction in the Act addresses the Commission's concern about protecting the Commission's independence and the scope of its mandate. The Commission has noted that the fact that policing duties and functions can be prescribed in regulations effectively limits the scope of Part IV of the NDA and thereby the scope of the Commission's mandate. Moreover, it is unusual for an oversight body to have its jurisdiction defined in subordinate legislation, where it could be altered without parliamentary consultation or approval.

The proposed definition of **policing duties and functions** describes what policing duties and functions are generally and gives examples of these duties and functions. The examples are taken from the Regulations, except for the conduct of patrols, which is new. The Act defines policing duties and functions, and there is no regulatory authority to define this expression. Since the Act is a stand-alone statute, any regulations made under the NDA to define policing duties and functions would not apply to the Act.

The Commission recognizes the importance of ensuring that the Act applies to members of the military police acting as military police officers and not as soldiers. The Act does not, however, adopt the clarification in subsection 2(2) of the *Complaints About the Conduct of Members of the Military Police Regulations* regarding what policing duties and functions are. The Commission is of the opinion that the current wording of the Regulations does not provide any clarification, as the phrase "military custom or practice" is vague and somewhat of a catch-all. The Commission finds that it is clear from the wording of the Act that the Act applies solely to members of the military police performing policing duties or functions and that no further clarification is needed.

The proposed definition adds the idea of "appearing to act" to include situations where members of the military police are not in uniform or not actually on duty but are conducting themselves as if they are. The wording is based on section 50 of the NDA.

Finally, the French version uses the phrase ***membre de la police militaire*** rather than ***policier militaire*** to ensure a balanced representation of gender diversity in the statute. The term ***member*** is gender-neutral and can refer to women, men and non-binary people.

Subsection 2(3) - Investigation

Subsection 2(3) clarifies that an investigation conducted under this Act is a policing duty or function.

The purpose of this is to clarify that conduct investigations conducted by people who are not members of the military police but who are assigned to Professional Standards and are acting under the authority of the Canadian Forces Provost Marshal (CFPM) are investigations covered by the definition of ***policing duties and functions***. This clarification does not broaden the Commission's mandate as the responsibility to investigate has always belonged, and continues to belong, to the CFPM. In fact, because conduct investigations are conducted by the CFPM by operation of section 27, any conduct investigation conducted by a person who is not a member of the military police but who is performing their duties and functions under the authority of the CFPM is covered by this Act since the investigation is being conducted by the CFPM. Consequently, any conduct investigation conducted by an employee of Professional Standards who is not a member of the military police is an investigation of the CFPM.

Heading – Independent Complaints Commission for the Military Police

Heading – Organization

Subsection 3(1) – Commission continued

Subsection 3(1) continues the Commission under its new name, the Independent Complaints Commission for the Military Police.

This provision is necessary because the Commission is no longer established under the NDA, but a stand-alone statute, even if the organization itself remains unchanged. The Commission’s new name highlights that the Commission is separate from the military police and independent of the Canadian Forces.

Subsection 3(2) – Composition

Subsection 3(2) provides that the Commission consists of a Chairperson and not more than four other members to be appointed by the Governor in Council.

The provision essentially adopts the rule set out in subsection 250.1(1) of the NDA.

Subsection 3(3) – Full- or part-time

Subsection 3(3) provides that each member holds office as a full-time or a part-time member.

The provision adopts the rule set out in subsection 250.1(2) of the NDA.

Subsection 3(4) – Tenure of office and removal

Subsection 3(4) provides that each member holds office during good behaviour for a term not exceeding five years. Members may be removed by the Governor in Council.

The provision adopts the rule set out in subsection 250.1(3) of the NDA.

Subsection 3(5) – Re-appointment

Subsection 3(5) provides that members are eligible to be re-appointed on the expiration of a first or subsequent term of office.

The provision adopts the rule set out in subsection 250.1(4) of the NDA.

Subsection 3(6) – Completion of ongoing matters

Subsection 3(6) authorizes a member who ceases to be a member while a matter is pending before them to continue holding office until the matter is completed.

The provision bases its wording on subsection 45(6) of the *Department of Employment and Social Development Act*, which applies to the work of the Social Security Tribunal, and implements Additional MPCC Recommendation No. 5.

Additional MPCC Recommendation No. 5: The MPCC proposes that the terms of Commission Members be extendable, at the discretion of the Chairperson, in respect of complaint files pending before them at the time of the expiration of their terms.

Even though, in the Report of the Third Independent Review Authority pursuant to the *National Defence Act* (hereafter the “Honourable Morris J. Fish’s Report”), the Honourable Morris J. Fish was silent on this issue, the proposal was endorsed by the previous two independent review authorities. The Commission still believes that it would be more efficient and fairer for the parties to allow members to complete the matters pending before them even when they cease holding office.

Subsection 3(7) – Duties of full-time members

Under subsection 3(7), full-time members must devote the whole of their time to the performance of their duties under this Act.

The provision adopts the rule set out in subsection 250.1(5) of the NDA.

Subsection 3(8) – Conflict of interest — part-time members

Under subsection 3(8), part-time members may not accept or hold any office or employment during their term of office that is inconsistent with their duties under this Act.

The provision adopts the rule set out in subsection 250.1(6) of the NDA.

Subsection 3(9) – Eligibility

Under subsection 3(9), a member of the Canadian Forces or an employee of the Department of National Defence may not be appointed as a member of the Commission.

The provision adopts the rule set out in subsection 250.1(7) of the NDA.

Subsection 3(10) – Remuneration

Under subsection 3(10), members are entitled to be paid for their services the remuneration and allowances fixed by the Governor in Council.

The provision adopts the rule set out in subsection 250.1(8) of the NDA.

Subsection 3(11) – Travel and living expenses

Under subsection 3(11), members are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties. There are different rules for full- and part-time members.

The provision adopts the rule set out in subsection 250.1(9) of the NDA.

Subsection 3(12) – Application of *Public Service Superannuation Act*

Under subsection 3(12), full-time members are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

The provision ensures that part-time members are not deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*. This clarification reflects the current status of part-time members, and the provision bases its wording on subsection 4(5) of the PCRCA.

Subsection 3(13) – Status of members

Under subsection 3(13), members are deemed to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

The provision adopts the rule set out in subsection 250.1(10) of the NDA and has been adapted to the stipulation in subsection 3(12) that only full-time members are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

Subsection 3(14) – Oath of office

Under subsection 3(14), every member must take an oath of office before commencing the duties of office.

The provision adopts the rule set out in subsection 250.1(11) of the NDA.

Subsection 4(1) – Chief executive officer

Subsection 4(1) provides that the Chairperson is the chief executive officer of the Commission and has supervision over and direction of its work and staff.

The provision adopts the rule set out in subsection 250.11(1) of the NDA.

Subsection 4(2) – Absence or incapacity

Subsection 4(2) allows the Minister to authorize any member of the Commission to exercise the powers and perform the duties and functions of the Chairperson in the event of the absence or incapacity of the Chairperson.

The provision adopts the rule set out in subsection 250.11(2) of the NDA.

Subsection 4(3) – Delegation

Subsection 4(3) allows the Chairperson to delegate to a member of the Commission any of the Chairperson's powers, duties or functions under this Act, except the power to delegate and the duty to submit a report under subsection 13(1).

This provision adopts the rule set out in subsection 250.11(3) of the NDA.

Section 5 – Head Office

Section 5 provides that the head office of the Commission must be at the place in Canada designated by the Governor in Council.

This provision adopts the rule set out in section 250.12 of the NDA.

Subsection 6(1) – Staff

Under subsection 6(1), Commission employees are to be appointed in accordance with the *Public Service Employment Act*.

The provision adopts the rule set out in subsection 250.13(1) of the NDA.

Subsection 6(2) – Experts

Subsection 6(2) allows the Commission to temporarily engage the services of counsel and other persons having technical or specialized knowledge to assist the Commission in its work. It allows the Commission to fix and pay their remuneration and expenses.

The provision adopts the rule set out in subsection 250.13(2) of the NDA.

Heading – Powers, Duties and Functions

This new heading contains the provisions relating to the Commission’s mandate.

Section 7 – Powers, duties and functions of Commission

Section 7 describes the Commission’s mandate.

The provision is similar to section 7 of the PCRCA.

Section 8 – Duty to act informally and expeditiously

Under section 8, the Commission must deal with matters before it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

The provision essentially adopts the rule set out in section 250.14 of the NDA. Its wording is based on section 109 of the *Accessible Canada Act*, which indicates that the Commission must also take natural justice into account when dealing with a complaint.

Section 9 – Education and information

Section 9 allows the Commission to implement education and information programs to make its mandate better known to the public.

The provision is similar to section 9 of the PCRCA.

Section 10 – Rules

Section 10 allows the Chairperson to make rules regarding the Commission's work.

The provision adopts the rule set out in section 250.15 of the NDA.

Subsection 11(1) – Protection

Subsection 11(1) grants the members or employees of the Commission immunity from criminal, civil or administrative actions or proceedings for anything done in good faith in the performance of any duty or function under this Act.

The provision adopts the rule set out in section 250.16 of the NDA, but adds immunity from administrative actions or proceedings. This addition is based on section 11 of the PCRCA.

Subsection 11(2) – No summons

Subsection 11(2) ensures that a member or employee of the Commission may not be summoned.

The provision is similar to subsection 11(2) of the PCRCA.

Heading – Reporting

Section 12 - Special reports

Section 12 allows the Commission to prepare special reports concerning any matter that relates to its mandate.

The provision is based on section 12 of the PCRCA.

Section 13 - Annual Report

Under section 13, the Commission's Chairperson must submit an annual report at the end of each fiscal year, and the Minister must lay the report before each House of Parliament.

The provision essentially adopts the rule set out in section 250.17 of the NDA, except that the report is for the fiscal year and not the calendar year.

This change facilitates the preparation of the Commission's annual report as it is for the same period as other reports required under other federal statutes or administrative directives.

Heading – Information provisions

This heading contains information provisions.

The provisions are intended to rectify the gaps in the NDA regime regarding access by the Commission to information necessary for the exercise of its powers and the performance of its duties and functions. The few provisions in the NDA regarding the Commission's right to obtain information to carry out its oversight mandate have been inadequate and outdated compared with other oversight bodies with similar mandates to that of the Commission. Presently, the only instances where the Commission has a statutory right to obtain information under the NDA are when a review of a conduct complaint is requested (subsection 250.31(2) of the NDA). This right has been given a narrow interpretation by the CFPM. To access information, the Commission may also exercise its power to summon in the context of public interest hearings (subsection 250.41(1) of the NDA). This gap has been filled through not only these provisions of general application, but also special provisions, such as subsections 35(2) and 36(3) to (5), section 41 and subsection 44(1).

These provisions also entitle the Commission to have access to any information it considers necessary for the exercise of its powers and the performance of its duties and functions, including information subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege that is under the control, or in the possession, of the Department of National Defence or of the Canadian Forces. The Commission is also added to the schedule to the [Canada Evidence Act](#) and Schedule II to the [Privacy Regulations](#) (see section 76).

These provisions implement recommendations #76, 78, 79 and 80 of the Honourable Morris J. Fish's Report.

Subsection 14(1) – Right of access

Subsection 14(1) authorizes the Commission to have access to any information under the control, or in the possession, of the Department of National Defence or of the Canadian Forces. To have access, the Commission must consider the information relevant to the exercise of its powers, or the performance of its duties and functions.

This provision is based on subsection 16(1) of the PCRCA and implements recommendation #76 of the Honourable Morris J. Fish's Report.

Recommendation #76. The National Defence Act should be amended to require the Canadian Forces Provost Marshal, the Canadian Armed Forces and the Department of National Defence to disclose to the Military Police Complaints Commission any information under their control or in their possession which the Military Police Complaints Commission considers relevant to the performance of its mandate.

The explicit inclusion of the right of access to information in the Act addresses a number of the Commission's concerns. An oversight body such as the Commission should not have to rely on the goodwill of the overseen body to access information relevant to the exercise of its powers, or the performance of its duties and functions.

The fact that the Act entitles the Commission to have access to any information under the control, or in the possession, of the Department of National Defence or of the Canadian Forces and that it allows the Commission to determine whether information is relevant should make the process more efficient and provide greater certainty in respect of the Commission's right of access. Including the Commission's right of access in general provisions highlights that this right of access applies to all types of complaints and at all stages of the Commission's complaint process, including when it is performing an initial examination of a complaint, a review of a conduct complaint or request for an extension of time, or determining whether to launch a public interest investigation.

Subsection 14(2) – Privileged information

Subsection 14(2) authorizes the Commission to have access to information subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege that is under the control, or in the possession, of the Department of National Defence or of the Canadian Forces. To have access to such privileged information, the Commission must, in addition to considering it relevant to the exercise of its powers, or the performance of its duties and functions, consider it necessary to an investigation or a review under this Act. Sections 17 to 19 provide for safeguards.

Subsection 14(2) is based on section 17 of the PCRCA, more specifically, paragraph 17(2)(a), and implements recommendation #79 of the Honourable Morris J. Fish's Report.

Recommendation #79. There should be discussions between the Military Police Complaints Commission, the Canadian Forces Provost Marshal, the Judge Advocate General and the Director of Military Prosecutions with a view to reaching agreement on the circumstances when the Military Police Complaints Commission should be given access to solicitor-client privileged information, with appropriate limits and safeguards to avoid waiver of the privilege. The discussions should examine options for consequential amendments to the National Defence Act. Due consideration should be given to other regimes that compel the disclosure of solicitor-client privileged information and to the safeguards they contain. Outside experts should be engaged in the discussions.

Despite discussions to arrive at an agreement on the circumstances in which the Commission should have access to solicitor-client privileged information, the issue

remains unresolved. To exercise its powers, or perform its duties and functions, the Commission must have access to information subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege, such as when the actions of military police members have been influenced by legal advice.

The addition of provisions dealing explicitly with access to information subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege that is under the control, or in the possession, of the Department of National Defence or of the Canadian Forces should enhance the efficiency and fairness of the Commission's process. Finally, these provisions provide greater certainty in respect of the Commission's right of access to such information and the applicable safeguards.

Subsection 14(3) – Duty to comply

Subsection 14(3) provides for the duty to comply with any request for information within 30 days, unless the Commission grants an extension.

This provision is based on subsections 16(2) and 17(5) of the PCRCA.

Subsection 14(4) – Access to records

Subsection 14(4) provides that the Commission's entitlement to access includes the right to examine all or any part of a record and to be given a copy of all or any part of a record.

This provision is based on subsection 16(3) of the PCRCA.

Subsection 14(5) – For greater certainty

Subsection 14(5) specifies that the disclosure to the Commission under this section of any information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege does not constitute a waiver of those privileges or that secrecy.

This provision is based on subsection 17(9) of the PCRCA.

Subsection 14(6) – Application

Subsection 14(6) specifies that section 14 applies despite any other Act of Parliament unless any other Act of Parliament expressly refers to this section.

This provision is based on subsection 17(8) of the PCRCA.

Section 15 – Documents and explanations

Under section 15, the Commission is entitled to receive any documents and explanations that the Commission considers necessary for the exercise of its powers and the performance of its duties and functions.

The provision is based on section 18 of the PCRCA.

Section 16 – Exception

Under section 16, the Commission is not entitled to have access to a confidence of the King's Privy Council for Canada.

This provision is based on paragraph 20(a) of the PCRCA.

Section 17 – Use of privileged information

Under section 17, the Commission may use information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege in respect of a matter under subsection 14(2), that is, an investigation or a review under this Act.

The provision is based on section 21 of the PCRCA.

Subsection 18(1) – Consultation and approval

Under subsection 18(1), if the Commission has access to information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege, a member or an employee of the Commission and any other person acting on its behalf must not distribute any report or other document that contains or discloses the information or any part of it without having first obtained the approval of the person who may claim the privilege or secrecy.

This provision is based on subsection 21(2) of the PCRCA.

Subsection 18(2) – Time limit

Subsection 18(2) grants 30 days to the person referred to in subsection 18(1) who is claiming privilege or secrecy to indicate whether they approve the distribution of a report or other document. The Commission may extend this time limit.

This provision is based on subsection 21(3) of the PCRCA.

Subsection 19(1) – Disclosure by Commission prohibited

Subsection 19(1) prohibits a member or an employee of the Commission and any other person acting on its behalf from providing information that is subject to solicitor-client

privilege or the professional secrecy of advocates and notaries or to litigation privilege to any person, or from allowing any person to have access to information.

This provision is based on subsection 25(1) of the PCRCA.

Subsection 19(2) – Authorized disclosure

Subsection 19(2) allows the Chairperson of the Commission to authorize the disclosure of information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege in three circumstances.

This provision is based on subsection 25(2) of the PCRCA.

Subsection 19(3) – Disclosure of privileged information — proceedings

Under subsection 19(3), a member or an employee of the Commission or other person acting on its behalf must not be required, in connection with any criminal, civil or administrative action or proceeding, to give or produce evidence relating to information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege to which they had access under subsection 14(2).

This provision is based on subsection 25(3) of the PCRCA.

Heading – Investigation and Review of Complaints

Heading – Complaints

This heading contains complaints-related provisions.

The complaints process set out in the Act is distinct from other oversight regimes in Canada in that not all military police duties and functions fall under the Commission’s jurisdiction. The Act preserves the distinction between conduct and interference complaints. The CFPM retains the jurisdiction to deal with conduct complaints at first instance, and the Commission, the jurisdiction to investigate interference complaints. The Chairperson continues to be able to convene public interest investigations into conduct or interference complaints.

The system for making a complaint has been simplified and centralized. Several NDA provisions have been merged because all complaints are now referred to the Commission.

All complaints are made to the Commission. This is partially in line with subsection 33(7) of the PCRCA, which provides that complaints against a member of the Royal Canadian Mounted Police (RCMP) may be made to the Public Complaints and Review Commission or a member or employee of the RCMP.

Subsection 20(1) – Conduct Complaints about military police

Under subsection 20(1), anyone may make a complaint about the conduct of a member of the military police in the performance of any policing duties or functions.

The provision adopts the rule set out in subsection 250.18(1) of the NDA, but excludes the reference to the Governor in Council's power to prescribe policing duties or functions in regulations. Policing duties and functions are defined in subsection 2(2).

Subsection 20(2) – Complainant need not be affected

Under subsection 20(2), a conduct complaint may be made whether or not the complainant is affected by the subject-matter of the complaint.

The provision adopts the rule set out in subsection 250.18(2) of the NDA.

Subsection 21(1) – Interference complaint – Right to make complaint

Under subsection 21(1), a person may make an interference complaint about a member of the Canadian Forces or senior official of the Department of National Defence if they believe on reasonable grounds that that member or senior official has improperly interfered with the performance of any policing duties or functions.

This provision is based on the wording proposed in Bill C-66, *An Act to amend the National Defence Act and other Acts* (44-1), but excludes the reference to the Governor in Council's power to prescribe policing duties or functions in regulations. The duties and functions are defined in subsection 2(2).

This provision implements Recommendation #16 of the Honourable Morris J. Fish's Report.

Recommendation #16. Subsection 250.19(1) of the National Defence Act should be amended to provide that “[a]ny person, including any officer or non-commissioned member, who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with a policing duty or function” may make an interference complaint to the Military Police Complaints Commission.

The proposed wording in Bill C-66 deviates from the wording proposed in Recommendation #16 of the Honourable Morris J. Fish's Report. However, given that the wording in Bill C-66 is the result of a Cabinet decision, the Commission has opted for a similar formulation as the one in Bill C-66.

The Commission has not retained the duty of some persons to make a complaint, as is proposed in Bill C-66. The proposed wording nonetheless preserves the idea that interference complaints cannot be made by just anyone, and it concerns not only investigations but all policing duties and functions.

The Commission's preferred wording for interference complaints is the wording below, which partially adopts Recommendation #16 of the Honourable Morris J. Fish's Report that any person may make an interference complaint.

Interference complaint	Plainte pour ingérence
<p>21(1) Any person, including any officer or non-commissioned member, who believes on reasonable grounds that any officer, non-commissioned member or senior official of the Department has improperly interfered with the performance of any policing duties or functions may make a complaint about that person.</p>	<p>21(1) Quiconque — y compris un officier ou militaire du rang — a des motifs raisonnables de croire qu'un officier ou un militaire du rang ou un cadre supérieur du ministère a entravé l'exercice de toute fonction de nature policière peut déposer une plainte contre celui-ci.</p>

The provision does not use the word **victim** to describe persons who may make a complaint as this word is associated with a certain stigma and can give the impression that the person making a complaint must have felt victimized by the complaint matter. The phrase **a person affected by the performance of the policing duty or function** is broad enough to include victims.

Subsection 21(2) – Improper interference

Subsection 21(2) provides that intimidation and abuse of authority are also considered to be improper interference.

The provision adopts the rule set out in subsection 250.19(2) of the NDA.

Subsection 22(1) – Time limit

Under subsection 22(1), complaints must be made within one year after the event giving rise to the complaint occurred.

The provision adopts the rule set out in subsection 250.2 of the NDA. The proposed wording does not provide for a limitation period for making a complaint, but a time limit.

Subsection 22(2) – Extension of time limit

Under subsection 22(2), the Chairperson may extend the time limit for making a complaint.

The provision adopts the rule set out in section 250.2 of the NDA. The proposed wording corrects a discrepancy in section 250.2 of the NDA, the French version of which does not indicate that an extension must be reasonable in the circumstances. Also, the provision is

similar to other extension provisions in that it is up to the Commission's Chairperson to determine whether a time limit may be extended.

Subsection 23(1) – Complaints

Under subsection 23(1), all conduct and interference complaints may be made, either orally or in writing, to the Commission.

The provision is fundamentally different from subsection 250.21(1) of the NDA because all complaints are made to the Commission. The Commission is the only portal for making conduct or interference complaints. Complaints can therefore no longer be made directly to the Judge Advocate General (JAG), the CFPM or a member of the military police.

This amendment simplifies the complaint-making process and allows the Commission to decide whether or not a complaint may be dealt with under this Act upon receipt. That rule is set out in section 26.

Subsection 23(2) – Complaint made orally

Under subsection 23(2), complaints made orally must be put in writing by the Commission.

The provision adopts the rule set out in subsection 250.21(1) and paragraph 250.21(2)(a) of the NDA.

Subsection 23(3) – No penalty for complaint

Under subsection 23(3), a person may not be penalized for exercising the right to make a complaint.

The provision adopts the rules set out in subsections 250.18(3) and 250.19(3) of the NDA. The provision has been much debated as the wording in the NDA suggests that making a complaint in bad faith could result in consequences for the complainant. It was preserved, however, since it could allow a complainant to argue that no reprisals may be taken against them. Paragraph 29(1)(a) allows the Commission to reject complaints made in bad faith, and section 54 makes certain reprisal measures against complainants an offence. The wording of the French version has been amended to make it consistent with that of subsection 29(4) of the NDA.

Subsection 24(1) – Acknowledgement and notification

Subsection 24(1) requires the Commission to acknowledge the receipt of any complaint and to provide notice of it to the CFPM, the Chief of the Defence Staff (CDS), the JAG and the Deputy Minister, depending on the type of complaint.

The provision adopts the rules set out in paragraphs 250.21(2)(b) and (c) of the NDA. Since all complaints are sent directly to the Commission, the Commission is solely responsible for this role.

Subsection 24(2) – Notice

Under subsection 24(2), the Commission must send a notice to the person who is the subject of the complaint unless, in the Commission’s opinion, to do so might adversely affect or hinder any investigation.

This provision merges sections 250.22 and 250.23 of the NDA. Since all complaints are sent directly to the Commission, it is the Commission’s role to notify the person who is the subject of the complaint.

Heading – Chairperson-initiated Conduct Complaints

Section 25 – Conduct complaints initiated by Chairperson

Section 25 allows the Chairperson of the Commission to make a conduct complaint.

This provision is based on section 36 of the PCRCA and implements Recommendation #83 of the Honourable Morris J. Fish’s Report.

Recommendation #83. The National Defence Act should be amended to make express provision for conduct complaints initiated by the Chairperson of the Military Police Complaints Commission. In the case of such complaints, the provisions of subsections 250.27(1) (informal resolution of complaints) and 250.28(2) (screening out of complaints that are frivolous or vexatious) of the National Defence Act should not apply.

In creating a special regime for governing conduct complaints made by the Chairperson, the implementation of this recommendation addresses some of the Commission’s concerns. The regime enables the Commission to examine wider policy or training issues. It also clarifies certain points: for example, the Chairperson may cause a public interest investigation to be held in respect of a Chairperson-initiated complaint, and the provisions allowing the CFPM to end an investigation or to refuse to investigate do not apply to Chairperson-initiated complaints. Furthermore, when the Chairperson is the complainant, the Chairperson may refuse to resolve a complaint informally.

Heading – Investigation of Complaint

Section 26 – Admissibility of complaint

Under section 26, it is the Commission’s role to decide whether all complaints made are admissible and to inform the interested parties of its admissibility decisions.

This provision implements Recommendation #85 of the Honourable Morris J. Fish’s Report.

Recommendation #85. A working group should be established with representatives from the Military Police Complaints Commission, the Office of the Judge Advocate General and the Canadian Forces Provost Marshal to develop a process for the classification of complaints.

The terms for implementing this recommendation are different but the goal is the same: provide greater certainty in respect of complaint admissibility. A collaborative approach often fails to resolve differences of opinion on whether a complaint is admissible, especially when it relates to policing duties or functions. In giving the Commission the task of determining whether a complaint may be dealt with, admissibility becomes the responsibility of the oversight body and not of the overseen body.

Thanks to this new power, the Commission will be able to determine whether, on its face, a complaint relates to any policing duties or functions.

At the moment, the CFPM decides whether a conduct complaint relates to the conduct of a member of the military police in the performance of any policing duties or functions. This allows the CFPM to reject conduct complaints on the ground that they do not relate to any policing duties or functions. As noted previously in various reports of the Commission, it is anomalous that an overseen body can influence the scope of the mandate of the body tasked with overseeing it.

In practice, when the CFPM is of the opinion that a complaint does not concern policing duties or functions, the CFPM rejects the complaint without informing the complainant of their right to have the Commission review the CFPM’s decision. Also see the remarks regarding paragraph 29(1)(b) on this subject.

The CFPM continues to be able to refuse to investigate or to end an investigation under section 29 if the CFPM is of the opinion that a complaint does not relate to any policing duties or functions. The complainant may submit a request for review of this decision to the Commission.

Finally, the Commission’s new power is subject to the right to apply for judicial review by the Federal Court by anyone not satisfied with a decision of the Commission under subsection 26(1).

Subsections 27(1) and (2) – Investigation by the Provost Marshal – conduct complaint

Subsections 27(1) and (2) provide that conduct complaints are investigated by the CFPM. There are two exceptions to this duty: when the Commission has determined under section 26 that a complaint may not be dealt with or when the Commission has notified the CFPM that it will conduct a public interest investigation under section 40.

If the CFPM has already started investigating a conduct complaint after receiving a notification of it under subsection 24(1), the CFPM must end that investigation. The provision does not prevent the CFPM from investigating or taking action under the authority of an enactment other than this Act.

The provision adopts the rule set out in subsection 250.26(1) of the NDA, but adds the two exceptions.

The exception for public interest investigations is similar to what is provided for in subsection 37(2) of the PCRCA, which also includes a prohibition to investigate in the event of the Commission’s conducting a public interest investigation. This exception also implements Additional MPCC Recommendation No. 2.

Additional MPCC Recommendation No. 2: The MPCC proposes that section 250.38 of the National Defence Act be amended to clarify that the CFPM must suspend or not commence an investigation when the MPCC declares a public interest investigation or hearing under NDA s. 250.38, to prevent overlapping investigations. Such an amendment should preserve the CFPM’s authority, outside of NDA Part IV, to address issues arising from a complaint.

Implementing this recommendation will prevent overlapping investigations and potentially contradictory recommendations. In addition to allowing for a more efficient use of public resources, the implementation of this recommendation clarifies that any investigation by the CFPM must give way to a public interest investigation by the Commission.

Subsection 27(3) – Duties suspended

Subsection 27(3) releases the CFPM from the requirement to investigate a complaint and to report on it if the Commission holds a public interest investigation under section 40.

The provision adopts the rule set out in subsection 250.38(5) of the NDA.

Subsection 27(4) – Complaint about Provost Marshal

Subsection 27(4) stipulates that complaints about the CFPM be dealt with by the CDS.

The provision adopts the rule set out in subsection 250.26(2) of the NDA.

Section 28 – Investigation by the Commission – interference complaint

Under section 28, interference complaints are investigated by the Commission.

The provision adopts the rule set out in subsection 250.34(1) of the NDA.

Subsection 29(1) – Right to refuse or end investigation

Subsection 29(1) sets out the grounds on which the Commission or the CFPM may refuse to investigate or end an investigation.

The provision applies to all complaints and to all stages of the complaints review process. The provision adopts the rules set out in subsections 250.27(4), 250.28(2) and 250.35(2) of the NDA.

For informal resolutions, it is unnecessary to say that the Commission or the CFPM may refuse to resolve a complaint informally on the grounds set out in paragraphs 29(1)(a) to (d) since the Commission or the CFPM, as applicable, may put an end to an investigation if one of these grounds applies.

It should be noted that section 29 does not apply to complaints made by the Chairperson. The Chairperson may, however, withdraw their complaint at any time, in which case the investigation will be suspended under section 34. In the case of a public interest investigation, the investigation may continue even if the complaint has been withdrawn (subsection 40(2)).

Paragraph 29(1)(a) adopts the rules set out in paragraphs 250.27(4)(a), 250.28(2)(a) and 250.35(2)(a) of the NDA.

Under paragraph 29(1)(b), the Commission or the CFPM may refuse to investigate or end an investigation if the event giving rise to the complaint does not relate to the performance of any policing duties or functions.

The provision does not specify that these duties or functions are performed by a member of the military police. However, because of how the definition of policing duties or functions is worded, these duties and functions can only be performed by a member of the military police. The same reasoning applies to interference complaints dealt with in subsection 21(1).

Under paragraph 29(1)(c), the Commission or the CFPM may refuse to investigate or end an investigation if the complaint was filed by a person who is not directly concerned by the subject matter of the complaint. The provision is based on paragraphs 38(1)(b) and (b.1) of the PCRCA.

Paragraph 29(1)(d) adopts the ground set out in paragraphs 250.28(2)(c) and 250.35(2)(c) of the NDA, but the wording of the French version is based on paragraph 38(1)(e) of the PCRCA.

Paragraphs 250.27(4)(b), 250.28(2)(b) and 250.35(2)(b) of the NDA have not been adopted. No situations were identified where this paragraph could apply in the unique context of the military police, which differs from that of the RCMP. Also, if a complaint could be more appropriately dealt with according to a procedure provided for under any other Act of Parliament, it is quite possible that the complaint does not concern the performance of policing duties or functions, in which case paragraph 29(1)(b) would apply.

Bringing together the various provisions dealing with the same subject provides greater clarity and predictability. It also strengthens the CFPM's accountability for any decision to not commence an investigation or to end an investigation.

Subsection 29(2) – Notice

Under subsection 29(2), the Commission must send a notice with reasons if it decides not to investigate or to end an investigation.

The provision adopts the rule set out in subsection 250.35(3) of the NDA.

Subsection 29(3) – Notice

Under subsection 29(3), the CFPM must send a notice with reasons if the CFPM decides not to investigate or to end an investigation. Complainants who are not satisfied with the CFPM's decision may refer their complaint to the Commission for review.

The provision adopts the rule set out in subsections 250.27(5) and 250.28(3) of the NDA.

This mechanism allows complainants to have decisions of the CFPM to refuse to investigate or to end an investigation reviewed by the Commission under subsection 36(1). This is particularly relevant where the decision claims that the event giving rise to the complaint does not relate to the performance of any policing duties or functions.

Section 30 – Deadline for resolving or disposing of complaint

Under section 30, the CFPM must resolve or dispose of a conduct complaint—other than a complaint that results in an investigation of an alleged criminal or service offence—within one year.

The provision adopts the rule set out in section 250.261 of the NDA, but corrects a discrepancy in the French version. The term ***infraction militaire*** in the French version is replaced by ***infraction d'ordre militaire*** since it is not equivalent to ***service offence***, the term used in the English version.

As in the NDA, there is no time limit for the Commission, which has a general duty to act quickly and informally (see section 8). After some discussion, it was decided not to set a firm time limit for the Commission since it depends on other participants for carrying out its mandate. Imposing applicable time limits on the CFPM for disclosing information required by the Commission is a key element in the Commission's ability to resolve complaints quickly. Moreover, the Commission's current resources are likely to be insufficient if the Commission must act within strict deadlines.

Heading – Informal Resolution of Complaint

Subsection 31(1) – Informal resolution

Subsection 31(1) requires the Commission and the CFPM to attempt to resolve certain complaints informally.

The provision partially adopts the rule set out in subsection 250.27(1) of the NDA. Since the provision also concerns interference complaints, the Commission may also attempt to resolve such complaints informally.

Subsection 31(2) – Restriction – Conduct complaint

Subsection 31(2) sets out types of conduct complaints that may not be resolved informally.

It adopts some of the exclusions set out in section 3 of the *Complaints About the Conduct of Members of the Military Police Regulations* concerning the informal resolution of conduct complaints.

Excessive use of force, the commission of a service or civil offence, policies of the Canadian Forces Military Police (which do not even appear to be policing duties and functions) and the arrest of a person have not been included in the list of exceptions. Only the exceptions of corruption, abuse of authority and conduct that results in serious injury have been retained. The Act adds “death” to the last type (conduct that results in injury).

These amendments are the result of a great deal of debate on whether these exceptions are justified. The Commission has noted that the PCRCA does not provide for any exceptions to the authority to resolve complaints informally and therefore proposes keeping only those exceptions that seem to be in the public interest.

Subsection 31(3) – Statements not admissible

Under subsection 31(3), statements made in the course of attempting to resolve a complaint informally are inadmissible before another jurisdiction.

The provision adopts the rule set out in subsection 250.27(3) of the NDA. Also see paragraph 44(4)(b) regarding statements that are inadmissible before the Commission.

Subsection 31(4) – Agreement to informal resolution in writing

Subsection 31(4) stipulates that the terms of resolutions must be signed in writing and sent to the Commission.

The wording of this provision is based on subsection 43(3) of the PCRCA and explicitly requires the CFPM to provide the terms of resolutions to the Commission. The scope of the provision is broader than subsection 250.27(6) of the NDA.

Heading – Reports on investigation

Subsection 32(1) – Status reports

Under subsection 32(1), the Commission must send a status report to the interested parties within 60 days after receiving or being notified of a complaint and then each 30 days afterwards until the complaint is dealt with. The report describes the status of the complaint.

The provision adopts the rule set out in subsections 250.3(1) and 250.37(1) of the NDA. It should be noted that the status report provision precedes the final report provision.

In interference investigations, the report is now prepared by the Commission rather than the Chairperson of the Commission.

Subsection 32(2) – Six-month report

Subsection 32(2) requires the Commission or the CFPM, as the case may be, to explain why a complaint has not been dealt with within six months.

The provision adopts the rule set out in subsections 250.3(2) and 250.37(2) of the NDA.

Subsection 32(3) – Exception

Under subsection 32(3), no status report is to be sent to the person who is the subject of the complaint if this might adversely affect or hinder an investigation.

The provision adopts the rule set out in subsections 250.3(3) and 250.37(3) of the NDA.

Subsection 33(1) – Report on investigation – Conduct complaint

Under subsection 33(1), the CFPM must send a report on completion of an investigation into a conduct complaint. The report must set out a summary of the complaint, the investigation findings and the reasons for those findings, a summary of any action that has been or will be taken with respect to the disposition of the complaint and the right of the

complainant to refer the complaint to the Commission for review if the complainant is not satisfied with the report.

The provision adopts the rule set out in section 250.29 of the NDA and expressly states that the reasons for the findings must be included in the report.

Subsection 33(2) – Report on investigation – Interference complaint

Under subsection 33(2), the Commission must send a report on completion of an investigation into an interference complaint. The report must set out a summary of the complaint, the investigation findings and the reasons for those findings.

The provision adopts the rule set out in section 250.36 of the NDA and expressly states that the reasons for the findings must be included in the report. The provision also provides that the report is now prepared by the Commission rather than the Chairperson of the Commission.

Heading – Withdrawal of Complaint

Section 34 – Withdrawal

Under section 34, a complainant may withdraw their complaint by sending a written notice to the Commission.

The provision adopts the rule set out in section 250.24 of the NDA, but the notice is now sent to the Commission rather than the Chairperson of the Commission.

Unlike subsection 40(4) of the PCRCA, the provision does not stipulate that an investigation can be continued despite the complaint having been withdrawn. For a public interest investigation, subsection 40(2) provides that such an investigation may continue even if the complaint has been withdrawn. The Chairperson of the Commission may also make a conduct complaint under section 25.

Heading – Records of Complaints

Subsection 35(1) – Duty to establish and maintain

Subsection 35(1) requires the CFPM to establish and maintain a record of all complaints of which the CFPM is notified.

The provision adopts the rule set out in subsection 250.25 of the NDA.

Subsection 35(2) – Making record available

Subsection 35(2) requires the CFPM to make available to the Commission, on request, any information contained in such a record. This duty does not apply to information described

in section 16, that is confidences of the King's Privy Council. In the case of information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege, the Commission must consider the requested information to be relevant and necessary for an investigation or review.

This new provision is similar to subsection 45(2) of the PCRCA.

Heading – Referral of Conduct Complaints to the Commission

Subsection 36(1) – Referral to Commission

Under subsection 36(1), a complainant who is not satisfied with a decision of the CFPM to refuse to investigate or to end an investigation or with a report of the CFPM regarding a conduct complaint may ask the Commission to review the decision or report. The complainant has 90 days to refer their complaint to the Commission.

This provision is based on subsection 250.31(1) of the NDA and implements Recommendation #81 of the Honourable Morris J. Fish's Report.

Recommendation #81. The National Defence Act should be amended to establish a 90-day time limit for requesting a review of a conduct complaint after it has been investigated by the Canadian Forces Provost Marshal.

Even though the recommended time limit for requesting a review of a complaint is 90 days, the Commission finds that 60 days should be sufficient for the vast majority of complainants. Since the Chairperson may extend the time limit, a 60-day time limit would ensure quicker processing of requests for review.

Subsection 36(2) – Extension of time limit

Subsection 36(2) authorizes the Chairperson to extend the time limit for referring a complaint to the Commission for review if the Chairperson is of the opinion that there are good reasons for doing so and that it is not contrary to the public interest.

The provision is similar to other extension provisions in that it is up to the Chairperson to determine whether a time limit may be extended.

Subsections 36(3) and (4) – Information to be provided and Duty to comply

Subsections 36(3) and (4) require the CFPM to provide the Commission with information relevant to the complaint. The CFPM has 30 days to provide the information. On request of the CFPM, the Chairperson may extend this time limit.

This new provision implements Additional MPCC Recommendation No. 6.

Additional MPCC Recommendation No. 6: The MPCC proposes that the CFPM be subject to a statutory or prescribed time limit when discharging its duty to disclose all information relevant to a complaint under paragraph 250.31(2)(b) of the NDA.

Implementing this recommendation will ensure prompt processing of requests. Since the Chairperson may extend this time limit, 30 days is reasonable.

Subsection 36(5) – Decision — Commission

Under subsection 36(5), the Commission is entitled to decide whether information is relevant.

This provision is similar to the rule set out in subsections 14(1) and (2).

Subsection 37(1) – Review by Commission

Subsection 37(1) requires the Commission to review every complaint referred to it under section 36.

The provision adopts the rule set out in subsection 250.32(1) of the NDA, but the review is now performed by the Commission rather than the Chairperson of the Commission. It is based on the model set out in section 57 of the PCRCA.

Subsection 37(2) – Commission satisfied

Subsection 37(2) provides that if the Commission is satisfied with the decision or report, it must prepare and send a report in writing to that effect to the interested parties.

This provision is based on subsection 57(2) of the PCRCA.

Subsection 37(3) – Commission not satisfied

Subsection 37(2) provides that if the Commission is not satisfied with the decision or report or considers that further inquiry is warranted, it has three options.

Under paragraph 37(3)(a), the Commission may prepare and send to the CFPM a report in writing setting out any findings it sees fit with respect to the decision or report and any recommendations it sees fit with respect to the complaint.

Under paragraph 37(3)(b), the Commission may request that the CFPM investigate or further investigate any matter relating to the complaint. In allowing the Commission to ask the CFPM to further investigate **any matter** relating to the complaint, this paragraph differs from paragraph 57(3)(b) of the PCRCA, which provides that the request must relate to the complaint.

Under paragraph 37(3)(c), the Commission may investigate or further investigate **any matter** relating to the complaint. Here, too, the scope of the investigation is broader than what subsection 57(3) of the PCRCA provides for.

Paragraph 37(3)(c) implements Recommendation #84 of the Honourable Morris J. Fish's Report.

Recommendation #84. There should be an early opportunity for discussion between the Military Police Complaints Commission and the Canadian Forces Provost Marshal to agree on problem definition and on solutions regarding the Military Police Complaints Commission's contention that it is regularly obliged to carry out its own investigation to fill in gaps in the Canadian Forces Provost Marshal investigation. The option of providing authority to the Military Police Complaints Commission to remit a matter back to the Canadian Forces Provost Marshal for further investigation should be considered.

Implementing this recommendation resolves any potential disagreements between the Commission and the CFPM when the Commission asks the CFPM to further investigate a matter relating to the review of a conduct complaint.

Subsection 37(4) – Reasons for refusal

Subsection 37(4) requires the CFPM to provide reasons for not consenting to further investigate at the Commission's request.

The provision recognizes that the CFPM may refuse to investigate a matter at the Commission's request.

Subsection 38(1) – Status reports

Under subsection 38(1), a status report must be sent to the interested parties within 60 days after a complaint is referred for a review and then each 30 days afterwards until the review is completed. The report describes the status of the complaint.

The provision adopts the rule set out in subsection 250.33 of the NDA. It should be noted that the status report provision precedes the final report provision. The provision also provides that the report is now prepared by the Commission rather than the Chairperson of the Commission.

Subsection 38(2) – Six-month report

Subsection 38(2) requires the Commission to explain why a review has not been completed within six months.

The provision adopts the rule set out in subsection 250.33(2) of the NDA.

Subsection 38(3) – Exception

Under subsection 38(3), no status report is to be sent to the person who is the subject of the complaint if this might adversely affect or hinder an investigation.

The provision adopts the rule set out in subsection 250.33(3) of the NDA.

Section 39 - Report

Under section 39, the Commission must, on completion of the review, send a report setting out its findings and recommendations.

The provision adopts the rule set out in subsection 250.32(3) of the NDA, but the review is now prepared by the Commission rather than the Chairperson of the Commission.

Heading – Public Interest Investigation by the Commission

Subsection 40(1) – Public interest

Under subsection 40(1), the Chairperson may cause the Commission to hold a public interest investigation if it is advisable in the public interest.

This provision is similar to section 250.38 of the NDA, that is, the investigation should be advisable in the public interest. The provision does not mention hearings because these are now provided for in a different part of the Act. This amendment ensures that the Commission can exercise its powers in any Commission investigation and not only in a public interest hearing. Furthermore, since all complaints are received by the Commission, the provision does not mention complaints of which it is notified.

Subsection 40(2) – Withdrawn complaint

Under subsection 40(2), an investigation can be held in respect of a complaint even if the complaint has been withdrawn. This is not the case for other complaints (section 34). However, there must always be a complaint for the Chairperson to be able to take action. This can include a conduct complaint made by the Chairperson under section 25. Section 25 does not apply to interference complaints.

Subsections 40(3) and (4) – Notice and Exception

Subsections 40(3) and (4) deal with notices to be sent when the Chairperson decides to cause a public interest investigation to be held.

These provisions are similar to subsections 250.38(3) and (4) of the NDA.

It should be noted that there seems to be a discrepancy in subsection 250.38(4) of the NDA in that the English version speaks of a notice while the French version speaks of a report. By using “avis” in French, the proposed wording is based on the English version of subsection 250.38(4) of the NDA.

Subsections 41(1) and (2) - Information to be provided and Duty to comply

Subsections 41(1) and (2) require the CFPM to provide the Commission with information relevant to the complaint. The CFPM has 30 days to provide the information. On request of the CFPM, the Chairperson may extend this time limit.

The provision implements Additional MPCC Recommendation No. 6.

Additional MPCC Recommendation No. 6: The MPCC proposes that the CFPM be subject to a statutory or prescribed time limit when discharging its duty to disclose all information relevant to a complaint under paragraph 250.31(2)(b) of the NDA.

Implementing this recommendation will ensure prompt processing of requests. Since the Chairperson may extend this time limit, 30 days is reasonable in the vast majority of cases so as not to unduly delay the disposition of complaints by the Commission. The time limit is similar to other time limits usually granted to federal agencies for providing information.

Subsection 41(3) – Decision — Commission

Under subsection 41(3), the Commission is entitled to decide whether information is relevant.

This provision is similar to the rule set out in subsections 14(1) and (2).

Section 42 – Right to refuse or end investigation

Section 42 provides for situations where the Commission may decide to not commence an investigation or that an investigation be ended. The applicable circumstances are enumerated in paragraphs 29(1)(a) to (d). Where applicable, the Commission must give the interested parties notice in writing and explain its decision.

The provision is based on subsections 52(1) and 53(1) of the PCRCA, which provide that the Public Complaints and Review Commission may decide to discontinue a public interest investigation in certain circumstances.

Section 43 - Report on investigation

Under section 43, on completion of an investigation, the Commission must prepare and send a report in writing to the interested parties.

The provision adopts the rule set out in section 250.39 of the NDA, with a few adaptations. Since the Commission carries out the investigation, the report is prepared and sent by the Commission, not by the Chairperson. Moreover, since a report is no longer required after a hearing, the report is now mandatory even if the Commission does institute a hearing.

Heading – Commission’s Powers in Relation to Complaints

Subsection 44(1) – Powers

Subsection 44(1) enumerates the Commission’s powers to compel a person to testify or to produce documents.

The provision adopts the rule set out in subsection 50(1) of the PCRCA, which is similar to the one in subsection 250.41(1) of the NDA, except for the addition of “in the same manner and to the same extent as a superior court of record” in paragraph 44(1)(a) of the Act. The provision adopts the rule set out in paragraph 50(1)(a) of the PCRCA and implements Recommendation #77 of the Honourable Morris J. Fish’s Report. Paragraph 44(1)(d) adopts the wording of paragraph 50(1)(d) of the PCRCA.

The Commission may exercise these powers in relation to every complaint, and the powers are not limited to hearings held in the course of a public interest investigation. They are similar to the powers conferred on the Military Grievances External Review Committee under section 29.21 of the NDA.

Recommendation #77. The National Defence Act should be amended to give the Military Police Complaints Commission the power to summon and enforce the attendance of witnesses before it and compel them to give oral or written evidence on oath. The Military Police Complaints Commission should also have the authority to require any person, regardless of whether that person is called to testify, to produce any documents or things that the Military Police Complaints Commission considers relevant for the full investigation, hearing and consideration of a complaint.

With the implementation of this recommendation, the Commission no longer has to hold a hearing to compel persons to testify or produce documents. For the Commission to have to hold a public interest hearing to access information relevant to the exercise of its powers and the performance of its duties and functions puts unnecessary pressure on its human and financial resources.

Subsection 44(2) – No excuse

Under subsection 44(2), no one can be excused from answering any question or producing any document or thing when compelled to do so by the Commission.

The provision adopts the rule set out in subsection 50(2) of the PCRCA, which is worded differently from subsection 250.45(1) of the NDA.

Subsection 44(3) – Inadmissibility

Subsection 44(3) gives the legal protection that accompanies the duty to testify and to produce documents.

The wording is based on subsection 50(3) of the PCRCA, which is worded differently from subsection 250.45(2) of the NDA. See, for example, the new paragraph (a).

Subsection 44(4) – Restriction

Subsection 44(4) describes the evidence and testimony the Commission may not receive or accept.

The provision merges some of the exceptions provided for in subsection 50(4) of the PCRCA and subsection 250.41(2) of the NDA.

The provision implements Additional MPCC Recommendation No. 1.

Additional MPCC Recommendation No. 1: The MPCC proposes that Part IV of the National Defence Act be amended such that the evidentiary restrictions in National Defence Act paragraph 250.41(2)(a) be modified with respect to solicitor-client privilege, and that paragraphs 250.41(2)(b) and (d) be repealed.

This recommendation arises from the implementation in subsection 14(2) of Recommendation #79 of the Honourable Morris J. Fish's Report. The restrictions that apply to the Commission in respect of the answers and statements it may receive take subsection 14(2) into account. The Commission may receive information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege and could, where necessary, do so *in camera* under section 46.

The restrictions in respect of answers and statements made before a board of inquiry or a court of law have not been adopted in subsection 44(4) because they may result in excluding information relevant for examining a complaint. The Commission is of the opinion that these restrictions are overbroad in that they are not confined to a witness's self-incriminating information. Moreover, the prohibitions apply equally to uncontested factual background matters and to contested issues. To the extent that they even preclude cross-examination on such earlier evidence, these prohibitions reduce the tools available to assess witness reliability and thereby impede the Commission's ability to uncover the truth.

Subsection 44(5) – Witness fees

Under subsection 44(5), fees and allowances are payable to witnesses.

The provision adopts the rule set out in section 251.2 of the NDA.

This power is different from the power to reimburse travel and living expenses if the Commission institutes a hearing (see section 48).

Heading – Hearings

Subsection 45(1) – Hearing

Under subsection 45(1), the Commission may institute a hearing to inquire into an interference complaint, the review of a conduct complaint or a public interest investigation.

The provision is based on subsection 59(1) of the PCRCA and differs from subsection 250.38(1) of the NDA, under which the Commission may only hold a hearing in the course of a public interest investigation. The provision specifies that the hearing may inquire into all or any part of a complaint.

Since a hearing is a form of investigation and not a separate investigation from other investigations into a complaint or a request for review, there is no need to provide for the preparation of a report on completion of the hearing.

Subsection 45(2) – Notice

Subsection 45(2) requires the Chairperson to assign one or more members of the Commission to conduct the hearing and requires the Commission to provide reasons for its decision to institute a hearing and to notify the interested parties of this decision.

The provision essentially adopts the rule set out in subsection 250.4(1) of the NDA.

Subsections 45(3) and (4) – Notice and Convenience to be considered

Subsections 45(3) and (4) set out the Commission’s duty to serve a notice of the details of the hearing on the interested parties and its duty to consider the convenience of those parties.

These provisions are based on subsections 250.43(1) and (2) of the NDA.

Section 46 – Hearings in public

Section 46 stipulates that a hearing to inquire into a complaint must be held in public by default, but sets out the circumstances in which a hearing may be held *in camera* or *ex parte*.

The provision is based on subsection 59(6) of the PCRCA and differs from section 250.42 of the NDA in that it allows for hearings to be held *ex parte* and provides for more circumstances in which hearings can be held *in camera* or *ex parte*.

Allowing the Commission to hold a hearing *ex parte* is necessitated by the addition of the Commission to the schedule to the *Canada Evidence Act*.

Section 47 – Rights of persons interested

Section 47 sets out who may participate in a hearing as well as the circumstances in which a person may be allowed to participate in a hearing.

The provision is based on subsection 50(7) of the PCRCA and is essentially to the same effect as section 250.44 of the NDA, except for the fact that instead of being “afford[ed] a full and ample opportunity” to participate, persons must be “allow[ed] an opportunity” to do so.

Section 48 – Expenses

Under section 48, certain persons can be paid travel and living expenses they may incur in appearing before the Commission.

The provision essentially adopts the rule set out in section 250.46 of the NDA and is similar to subsection 59(11) of the PCRCA.

Section 49 – Delay of hearing

Under section 49, the Commission may not hold a hearing regarding a matter that is the subject of disciplinary or criminal proceedings.

The provision adopts the rule set out in subsection 250.43(3) of the NDA.

Heading – Reports

Subsection 50(1) – Notice of action

Subsection 50(1) gives a person 60 days to respond to the Commission’s recommendations in a report prepared under subsection 33(2) or section 39 or 43. It also allows the Chairperson to extend this time limit.

The provision differs from sections 250.5, 250.51 and 250.52 of the NDA in that it does not specify who has to review the report. The provision highlights the fact that the Commission can address recommendations at several different people in its reports, including the CFPMP and the Minister. It also stipulates that every person to whom a recommendation is made must notify the Commission of any actions that have been or will be taken to implement the recommendation and, if the person does not intend to implement it, the reasons for not doing so.

This provision implements Recommendation #82 of the Honourable Morris J. Fish’s Report.

[Excerpt from] Recommendation #82. The National Defence Act should be amended to establish a 90-day time limit for the production of the notice of action, subject to extension by the Chairperson of the Military Police Complaints Commission. In the

absence of a notice of action or application to extend within this time frame, the Military Police Complaints Commission should be authorized to proceed to issue its final report.

Even though the recommended time limit for responding to the Commission's recommendations is 90 days, the Commission finds that 60 days is sufficient. The shorter time limit is in the interest of the affected parties and administrative justice.

Subsection 50(2) – Notice of progress

Under subsection 50(2), the Commission must, every six months, be sent a notice in writing of the progress that has been made towards the implementation of the recommendation.

The provision implements Additional MPCC Recommendation No. 8.

Additional MPCC Recommendation No. 8: The MPCC proposes that the CFPM be required to advise the MPCC on the timing and manner of the implementation of the MPCC's recommendations as accepted by the CFPM.

Implementing this recommendation will allow the Commission to monitor the implementation of accepted recommendations and to properly assess the impact of its recommendations. This new statutory duty also fosters greater transparency in the complaints process.

Section 51 – Final report by Commission

Section 51 requires the Commission to prepare a final report in writing once it has received all of the notices referred to in subsection 50(1). The Commission must send the report, setting out its findings and recommendations, to everyone with an interest in the complaint.

The provision is similar to section 250.53 of the NDA, but the report is now prepared by the Commission rather than the Chairperson.

Section 52 – Return of documents and things

Under section 52, any documents or things produced by a person must be returned after the completion of the final report.

The provision essentially adopts the rule set out in section 250.47 of the NDA and covers all documents and things produced in the course of an investigation, not only those produced in the course of a hearing. Given the wording of section 44, documents and things may be produced at any time, not only for a hearing. The wording is based on section 66 of the PCRCA.

Heading – General

This heading contains general provisions required because the Commission no longer falls under Part IV of the NDA.

Section 53 – Attendance of witnesses, etc.

Section 53 makes certain reporting breaches an offence.

The provision essentially adopts the rule set out in section 118 of the NDA and is similar to section 88 of the PCRCA.

Section 54 – Offences — harassment, obstruction, destroying documents etc.

Section 54 makes it an offence to harass, intimidate or threaten an individual and to destroy, mutilate, alter and falsify a document or thing in the course of a proceeding under this Act.

The provision essentially adopts the rule set out in section 118 of the NDA and is similar to section 89 of the PCRCA.

Section 55 – Offence — failure to comply

Section 55 makes failing to comply with subsection 18(1) an offence.

The provision is new and similar to section 90 of the PCRCA.

Section 56 – Limitation period

Section 56 provides for a two-year limitation period for summary conviction proceedings.

The provision is new and similar to section 92 of the PCRCA.

Section 57 - Independent Review

Section 57 provides for an independent review of the provisions of this Act.

The provision essentially adopts the rule set out in subsection 273.601(1) of the NDA.

Heading – Transitional Provisions

Section 58 – Definitions

Section 58 is a transitional provision that sets out the rules for continuing both the Commission and pending proceedings.

Its provisions are based on section 113 of the PCRCA.

Section 59 – First report

Section 59 is a transitional provision requiring the first annual report prepared after the Act has come into force to cover the fiscal year and any period not covered by the preceding report.

Heading – Consequential Amendments

This heading contains consequential amendments to a number of statutes.

These provisions are required because the Commission no longer falls under Part IV of the NDA.

Heading – Access to Information Act

Sections 60 and 61

The Commission’s former name has been struck out in Schedule I to the [Access to Information Act](#), and the new name has been added.

The amendment is required because of the Commission’s name change.

Heading – Canada Evidence Act

Section 62

Adding the Commission to the schedule to the [Canada Evidence Act](#) will allow the Commission to access sensitive information and potentially injurious information under sections 38 and following of that act.

This addition implements Recommendation #78 of the Honourable Morris J. Fish’s Report.

Recommendation #78. Discussions should be undertaken between the Military Police Complaints Commission, the Department of National Defence, the Canadian Armed Forces, the Privy Council Office and the Department of Justice Canada to examine the merits of adding the Military Police Complaints Commission to the schedule of the Canada Evidence Act as well as the legislative requirements for doing so.

Despite discussions to arrive at an agreement on the circumstances in which the Commission should have access to “sensitive information” within the meaning of the *Canada Evidence Act*, the issue remains unresolved. Given the policing jurisdiction of the military police and the latter’s participation in Canadian Forces operations around the world, there are several scenarios where sensitive international relations or military

information could be involved, as was the case in the [*public interest hearing MPCC file # 2008-042 related to the treatment of Afghan detainees.*](#)

Implementing this recommendation will put the Commission on the same footing as the PCRCA-established Public Complaints and Review Commission and will allow the Commission to fully exercise its powers and perform its duties and functions. Moreover, it will result in a more efficient use of public resources since, without this measure, the Commission has to turn to the Federal Court to obtain such information, meaning more time and money.

Heading – Financial Administration Act

Sections 63 to 68

The Commission’s former name has been struck out in schedules I.1 and IV, and Part III of Schedule VI to the [*Financial Administration Act*](#), and its new name has been added.

The amendment is required because of the Commission’s name change.

Heading – National Defence Act

Section 69

Section 69 makes a consequential amendment to subsection 118(1) of the NDA to strike out the reference to the Commission.

The Commission’s name is struck out from subsection 118(1) because it no longer applies to the Commission given that tribunal-related offences are now set out in sections 53 and 54.

Section 70

Section 70 repeals Part IV of the NDA.

Part IV of the NDA is now covered by this Act.

Section 71

Section 71 makes a consequential amendment to section 251.2 of the NDA to strike out the reference to the Commission.

The Commission’s name is struck out from that section because it no longer applies to the Commission given that witness fees and allowances are now provided for in subsection 44(5) of the Act.

Section 72

Section 72 makes a consequential amendment to subsection 273.601(1) of the NDA to strike out the reference to Part IV of the NDA.

The reference to Part IV of the NDA is struck out from that subsection because it has been repealed. An independent review of the provision of this Act is provided for in section 57.

Section 73

Section 73 makes a consequential amendment to section 302 of the NDA to strike out the reference to Part IV of the NDA.

The Commission's name is struck out from that section because it no longer applies to the Commission given that tribunal-related offences are now set out in sections 53 and 54.

Heading – Privacy Act

Sections 74 and 75

The Commission's former name has been struck out from the schedule to the *Privacy Act*, and the new name has been added.

The amendment is required because of the Commission's name change.

Heading – Privacy Regulations

Section 76

The Commission is added to Schedule II to the *Privacy Regulations*.

NB: Regulations are usually amended by regulations, but sometimes such an amendment can be provided for in a bill.

This addition implements Recommendation #80 of the Honourable Morris J. Fish's Report.

Recommendation #80. The Military Police Complaints Commission should be added to the list of designated investigative bodies in Schedule II of the Privacy Regulations.

Implementing this recommendation will allow the Commission, as an investigative body listed in Schedule II to the *Privacy Regulations*, to have access to the personal information it needs to fully exercise its powers and perform its duties and functions.

It will also rectify one of the gaps in the NDA regime regarding access by the Commission to information necessary for the exercise of its powers and the performance of its duties and functions. The Department of National Defence and the Canadian Forces have interpreted

the CFPM's duty to disclose information under subsection 250.31(2) of the NDA as not applying to them. As a result, the CFPM is sometimes not authorized to disclose certain information to the Commission even though that information is accessible.

Heading – Coming into force

Section 77 – 30th day after royal assent

Section 77 is a new provision. It provides that the Act will come into force on the 30th day after the day on which it receives royal assent.

List of abbreviations

CDS = Chief of the Defence Staff

CFPM = Canadian Forces Provost Marshal

JAG = Judge Advocate General

NDA = *National Defence Act*

PCRCA= *Public Complaints and Review Commission Act* (Bill C-20)

RCMP = Royal Canadian Mounted Police