

EVERGREEN MATRIX OF MPCC PROPOSALS FOR LEGISLATIVE REFORM

Recommendations made by Justice Fish

Recommendations	Rationale	Similar oversight mechanisms
<p>Authority of Vice Chief of the Defence Staff (VCDS) to issue instructions to the Canadian Forces Provost Marshal (CFPM)</p> <p>#15: Subsections 18.5(3) to 18.5(5) of the <i>National Defence Act</i> should be repealed. For greater clarity, section 18.5 of the <i>National Defence Act</i> should be amended to provide that the general supervision and authority of the Vice Chief of the Defence Staff (or of the Minister of National Defence if Recommendation #13 is implemented) to issue general instructions or guidelines do not include a power to give directions regarding specific law enforcement decisions in individual cases.</p>	<ul style="list-style-type: none"> • Common law requires that police, when conducting investigations, must be free from governmental direction (<i>R. v. Campbell & Shirose</i> 1999 CanLII 676 (SCC)). • This amendment is necessary to safeguard Military Police (MP) investigative independence by removing authority of VCDS to direct the CFPM in respect of specific investigations. • This amendment would restore the original position and status of the CFPM at the time of the enactment of Bill C-25 in 1998 (i.e., prior to Bill C-15 in 2013). 	<p>This issue does not arise with other police services, as there is no comparable legislative authority to direct specific police investigations with respect to any other police service.</p>
<p>Standing to make interference complaints</p> <p>#16: Subsection 250.19(1) of the <i>National Defence Act</i> 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.</p>	<ul style="list-style-type: none"> • Necessary to clarify that interference includes an improper interference with any policing duty and function. • The current wording of the <i>National Defence Act</i> (NDA) could give the impression that interference with any MP activity other than the conduct of an investigation (e.g., conduct of an arrest or a search and seizure) would be acceptable. • Also, the current provision prevents the MPCC from investigating improper interference allegations reported by persons who are not members of the MP, such as victims of a crime or members of the MP who are not the investigators or supervisors on the matter at hand. 	<p>The interference complaint is unique to the Military Police.</p>

	<ul style="list-style-type: none"> • Another problem of the current regime is that it relies solely on the willingness of MP investigators or supervisors to report interference —a willingness that may vary depending on, among other things, their own tolerance for interference or fears of reprisal, as expressed by some members during our engagement sessions. • Essential that the interference complaints scheme be expanded to fully protect the independence and integrity of members of the MP in all policing duties and functions. 	
<p>Consultation prior to tabling legislation</p> <p>#75: There should be regular consultation between the Military Police Complaints Commission and key actors within the Department of National Defence and the Canadian Armed Forces prior to the tabling of legislation or the promulgation of regulations or policy changes affecting the Military Police Complaints Commission or Part IV of the <i>National Defence Act</i>.</p>	<ul style="list-style-type: none"> • The MPCC should be at the table when changes affecting its mandate are discussed as it has an expertise in the civilian oversight of military policing. Such consultation is in keeping with Government of Canada recognition of the value of broad and transparent consultation and engagement with Canadians and experts in the development of policy, regulation, and legislation. • While the NDA was amended a few times since 1998, the MPCC was never consulted on these legislative reforms. Therefore, the MPCC never had an opportunity to propose changes to improve the MP oversight scheme, or at minimum to keep pace with developments in police oversight, particularly with the legislative amendments to the <i>Royal Canadian Mounted Police Act</i> (RCMP Act) that have significantly expanded the powers of the other civilian police oversight body under federal jurisdiction (the RCMP Commission). • Doing so would have prevented the situation we are in, where the MPCC is one of the weakest, civilian police oversight bodies in Canada. • The MPCC has not been officially informed of any potential legislative changes affecting its mandate or their timing, despite repeated requests. However, the MPCC has been asked to comment on a position paper regarding Justice Fish Recommendation 16 and provided its submission to the OJAG on March 31, 2023. 	N/A

<p>Documentary Disclosure Requirements</p> <p>#76: The <i>National Defence Act</i> 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.</p> <p>With respect to information which involves a claim of solicitor-client privilege, this recommendation is subject to the outcome of the discussions referred to in Recommendation #79.</p>	<ul style="list-style-type: none"> • There is no explicit statutory right to information in respect of an interference complaint or a public interest investigation. The MPCC has had to rely on the goodwill of Professional Standards (PS) for disclosure for these proceedings and the process has been time consuming and not always fruitful. • The MPCC also often requires access to relevant MP files when making decisions on extensions of time to file complaints and on whether to invoke the Chairperson’s public interest jurisdiction. • The MPCC has encountered increasing resistance to its requests for relevant information from the CFPM (recently in MPCC files # 2023-006, 2022-025A&B and 2016-027). • The MPCC cannot easily access the information needed to perform its reviews and investigations which reduces its effectiveness—and relevance—as an oversight body. • A clear and general right of access to relevant information—where the MPCC is the arbiter of relevance—is necessary to ensure the effective fulfillment of the MPCC’s oversight mandate. • It should not be for the overseen police service to decide what information is relevant to a decision which the oversight body is mandated to make—a principle which was recognized in respect of the MPCC by the Federal Court of Canada in <i>Garrick et al v. Amnesty International Canada</i>, 2011 FC 1099 (CanLII), at para 97: “at the end of the day, one principle must stand: it is for the Commission, not for the government, to determine ultimately what documents are relevant to its inquiry. If it were, otherwise, the Commission would be at the mercy of the body it is supposed to investigate. This was clearly not the intent of Parliament.” (De Montigny J.) • The disclosure obligation should explicitly apply to the broader CAF and the Department of National Defence since they do not consider themselves bound by the CFPM's disclosure obligation under NDA s. 250.31(2). One consequence 	<p>The RCMP Commission is entitled to “any information under the control, or in the possession, of the Force that the Commission considers is relevant to the exercise of the Commission’s powers, or the performance of the Commission’s duties under this Act.” (<i>Royal Canadian Mounted Police Act</i>, (RCMP Act), s. 45.39.)</p> <p>The RCMP Act includes a stipulation that the RCMP Commission is the one who determines the relevance of information sought.</p> <p>s. 45.65 (1): The Commission may, in relation to a complaint before it,</p> <p>(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses before the Commission and compel them to give oral or written evidence on oath and to produce any documents and things that the Commission considers relevant for the full investigation, hearing and consideration of the complaint;</p>
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is that some MP information or records relevant to a complaint are not under the direct control of the CFPM, although in its possession. As a result, the CFPM sometimes refuses to disclose non-privileged information to the MPCC, even though it is stored on workplace computing devices or networks and easily retrievable.

- Other records which should be under the control of the CFPM are not, simply because an individual (deliberately or inadvertently) failed to copy the information into an MP file. This can allow subjects of complaints to escape the oversight mechanism of the MPCC as such information is on DND servers but not under the CFPM's control. (Discussed further at Justice Fish Recommendation 80 below.)
- Implementing this recommendation would also partially respond to MPCC recommendation 12 in MPCC public interest file # 2015-005 (Anonymous), which calls on the Minister to support NDA amendments which would give the MPCC similar powers to access information to those conferred on the RCMP Commission. A response to this recommendation from the Minister in this case remains outstanding.
- In a June 2, 2023, letter regarding MPCC public interest file # 2023-006 (Fortin), the Deputy CFPM indicated the CFPM's office conducted an assessment and concluded that the CFPM has no "legislative requirement" to disclose information when the MPCC is investigating a public interest investigation. In the case cited above, the CFPM did disclose the requested information on a voluntary basis.
- The MPCC cannot reconcile the aim of Part IV of the NDA- promoting transparency and public accountability of the Military Police - and the interpretation that disclosure obligations are removed once a public interest investigation is declared.

<p>Subpoena Powers</p> <p>#77: The <i>National Defence Act</i> 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.</p> <p>With respect to information which involves a claim of solicitor-client privilege, this recommendation is subject to the outcome of the discussions referred to in Recommendation #79.</p>	<ul style="list-style-type: none"> • The MPCC has no legal authority to compel witnesses to testify, provide evidence or produce documents, outside of a public interest hearing. It is reliant upon the good-will of those with knowledge concerning complaints to cooperate voluntarily. • Given the human and financial resources required, it is not practical for the MPCC to hold a public interest hearing to fill information gaps in a specific file. This would cause unnecessary delay and expense. Nor would it be appropriate considering the Federal Court of Appeal has already held that it is Parliament's intention that public interest hearing mechanisms—such as that under Part IV of the NDA—be used sparingly. (2005 FCA 213 (CanLII), at par. 62) • Without subpoena power, the MPCC has less power than the CFPM to access information, as under the <i>Military Police Professional Code of Conduct</i> there is a duty imposed on members of the MP (other than subjects of complaints) to cooperate with Provost Marshal investigations. An oversight body should not have less access to evidence than the organisation it oversees. 	<p>The RCMP Commission, has been given the authority to summon witnesses in dealing with any complaint before it in any of its processes, not just its hearings (RCMP Act, s. 45.65.)</p> <p>The Military Grievances External Review Committee has a power “to summon and enforce the attendance of witnesses and compel them to give oral or written evidence under oath and to produce any documents and things under their control that it considers necessary to the full investigation and consideration of matters before it.” (NDA, para. 29.21(a))</p> <p>A further example is that, when investigating, the Public Sector Integrity Commissioner has all the powers of a commissioner under Part II of the <i>Inquiries Act</i>.</p>
<p>Access to Sensitive Information</p> <p>#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 <i>Canada Evidence Act</i> as well as the legislative requirements for doing so.</p>	<ul style="list-style-type: none"> • Sections 38 through 38.16 of the <i>Canada Evidence Act</i> (CEA) provide for a special regime of controlling access to “sensitive information” and “potentially injurious information” The rule is that such information will not be disclosed unless specifically authorized by the Attorney General (AG), or unless the AG’s “potentially injurious” determination is challenged successfully in the Federal Court. • Adding the MPCC to the Schedule of Designated Entities to the CEA would allow the MPCC to access such sensitive information to fulfill its oversight mandate, though any further disclosure by the MPCC would be subject to AG agreement or a Federal Court decision. • These CEA restrictions were invoked in the MPCC’s public interest hearing file # 2008-042 related to the treatment of Afghan detainees, which resulted in a 	<p>The RCMP Commission, was added to the CEA Schedule as a Designated Entity in 2013.</p>

	<p>time-consuming and costly legal process which needlessly delayed the hearing itself.</p> <ul style="list-style-type: none"> • Given the policing jurisdiction of the MP, it is easy to think of other scenarios where sensitive international relations or military information would be involved. Both MP and MPCC jurisdiction extend to CAF operations around the world. For instance, an MP investigation of members of the CAF’s special forces units would likely involve sensitive information. • DND/CAF have not provided a rationale as to why the MP should have a different regime to access national security information than the other federal police oversight body, the RCMP Commission. • Implementing this recommendation would also partially respond to MPCC recommendation 12 in MPCC public interest file # 2015-005 (Anonymous) which calls on the Minister to support NDA amendments which would give the MPCC similar powers to access information to those conferred on the RCMP Commission. A response to this recommendation by the Minister in that case remains outstanding. • Justice Fish supported this MPCC proposal, but recommended discussion with relevant stakeholders. Such discussions have taken place for two years but have yielded no results. It is now time to press forward with the necessary amendments to implement MPCC access to these categories of information on the same terms as the RCMP Commission. 	
<p>Access to Solicitor-Client Privileged Information</p> <p>#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</p>	<ul style="list-style-type: none"> • At present, the MPCC is unable to access solicitor-client privileged information from the CFPM, which undermines the value of an independent review of complaints. • This prevents the MPCC from confirming that a member of the MP provided an accurate description of the evidence to a prosecutor, or that the ensuing legal advice was properly considered by the MP member. 	<p>The RCMP Commission has been given wide powers of access to information—including solicitor-client privileged information—to carry out its oversight role. Moreover, these powers extend to the RCMP Commission’s original police complaints mandate—which it shares with the MPCC—as well as its more recently acquired</p>

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.

- Resolving complaints requires a determination of the reasonableness of MPs' actions. Where those actions were influenced by legal advice, it is essential that the MPCC be able to verify what advice was sought and obtained. Otherwise, the ability of the MPCC to get at the truth is compromised.
- This not only diminishes the MPCC's effectiveness as an oversight body, but, as the legal advice obtained by an MP often supports the reasonableness of the MP's actions, denying MPCC access to this information prevents the MPCC from properly assessing the reasonableness of the conduct of a military police member.
- Denying access to such information to the MPCC also results in the MPCC having access to less information than the CFPM in respect of the same complaint.
- Over the years there have been numerous efforts made to try to resolve this issue, but these have not been fruitful.
- In 2013, the RCMP Commission was given a right of access to solicitor-client privileged information where necessary to resolve a complaint.
- In his report Justice Fish states "there is a strong argument to be made that the MPCC should have access to solicitor-client privileged information where it is relevant to the determination of a complaint."
- MPCC access to privileged information would also avoid time-consuming discussion and debate over what information is subject to the privilege. CFPM redactions for privileged information are often overbroad.
- The Office of the Judge Advocate General and the CFPM resist stronger access rights for the MPCC, namely a right of access to solicitor-client information, but we have not been provided to date with any rationale as to why the Military Police would require a weaker oversight system on that front than the RCMP.

national security oversight and proactive review roles. (RCMP Act, ss. 45.4(2))

	<ul style="list-style-type: none"> • The MPCC has, over the last 5 years, repeatedly sought to engage with the OJAG and the CFPM on this issue, both in general terms, and in terms of MPCC access to Crown briefs, and with a view to working out a procedure for ad hoc access on a case-by-case basis. Yet there has been no substantive response to the MPCC's submissions. • Justice Fish supported this MPCC's proposal, but recommended discussion with relevant stakeholders. Such discussions have taken place for two years but have yielded no results. • Implementing this recommendation would address outstanding recommendations to the Minister in MPCC files # 2015-005 (Anonymous), 2016-040 (Beamish) and 2018-035. A response from the Minister remains outstanding for these files. 	
<p>Access to Personal Information Not Under the Control of the Canadian Forces Provost Marshal</p> <p>#80: The Military Police Complaints Commission should be added to the list of designated investigative bodies in Schedule II of the <i>Privacy Regulations</i>.</p>	<ul style="list-style-type: none"> • The MP is not administratively separate from the broader CAF/DND. One consequence of this is that certain relevant MP information and records are beyond the control of the CFPM. As a result, the CFPM may be unable to disclose relevant MP information to the MPCC, even though it may be stored on workplace computer networks or devices. The broader CAF/DND do not consider themselves bound by the CFPM's disclosure obligations under NDA ss. 250.31(2). • In situations where such records have been unsuccessfully sought, the MPCC has been advised that access to such material would have been possible if the MPCC had been an investigative body designated for the purposes of paragraph 8(2)(e) of the <i>Privacy Act</i>. Under that paragraph, personal information may be disclosed to an investigative body specified in the regulations. The investigative bodies able to receive personal information are set out in Schedule II to the <i>Privacy Regulations</i>. • Also, sometimes the MPCC requires relevant information from other federal agencies such as the RCMP. 	N/A

	<ul style="list-style-type: none"> • Pursuing this regulatory change would also address an outstanding recommendation to the Minister in MPCC file # 2016-040 (Beamish). 	
<p>Time Limit for Requesting a Review</p> <p>#81: The <i>National Defence Act</i> 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.</p>	<ul style="list-style-type: none"> • Currently there is no time limit for requesting a review of a conduct complaint following the CFPM’s disposition. • Given the mobility of potential complainants and subjects in the CAF, and their liability to be deployed around the world for months at a time in difficult and dangerous environments, a 90-day time limit to request an MPCC review would be appropriate. 	<p>The RCMP Act imposes a 60-day time limit for requests for review to the RCMP Commission.</p>
<p>Time Limit for Providing a Notice of Action</p> <p>#82: The <i>National Defence Act</i> should be amended to establish a 90-day time limit to produce 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.</p> <p>If Recommendation #13 is implemented and the Canadian Forces Provost Marshal becomes responsible to the Minister of National Defence in the performance of his duties and functions, the Minister and not the Chief of the Defence Staff should issue the notice of action where the Canadian Forces Provost Marshal is the subject of a complaint.</p>	<ul style="list-style-type: none"> • Presently there is no time limit for the issuance of the Notice of Action in response to the MPCC’s Interim Report. • The MPCC is unable to proceed to issuing its Final Report without having first considered the Notice of Action meaning that both complainants and subjects are left in the dark. • The negative consequences of not having a time limit to provide a Notice of Action are: a lack of transparency, a lack of predictability of the complaint process, and no mechanism to ensure timely response to complainants. 	<p>Bill C-20 (which seeks to create a new oversight body for the RCMP and Border Services), clause 64(2) establishes a six-month time limit for providing the RCMP Commission Chairperson with a written response to the Interim Report.</p>

<p>Chairperson-Initiated Complaints</p> <p>#83: The <i>National Defence Act</i> 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 <i>National Defence Act</i> should not apply.</p>	<ul style="list-style-type: none"> • An oversight body is better placed to identify systemic problems than individual complainants. As Justice Fish indicates in his report “it is by means of a tribunal-initiated complaint that a wider policy or training issue can best be examined.” • While the authority for the MPCC to initiate complaints already exists in the NDA given that under s. 250.18 “any person” may file a conduct complaint, it should be clear and transparent. • Further, the scope of the Chairperson’s ability to call a public interest investigation is not as clear as it is for some other tribunals, as NDA ss. 250.38(1) can be read as requiring there to be an existing complaint before the Chairperson can call for a public interest investigation. • Because the NDA Part IV complaints process does not explicitly make any accommodation for a Chairperson-initiated complaint, it could be treated like any other complaint, which would be problematic. For instance, the provisions requiring that informal resolution be considered and allowing the CFPM to screen out certain complaints as being inappropriate for the complaints process (respectively, NDA ss. 250.27(1) and 250.28(2)) should not apply to an MPCC Chairperson-initiated complaint. 	<p>The RCMP Commission Chairperson is expressly authorized to initiate complaints (RCMP Act, s. 45.59).</p>
<p>Authority to Remit Conduct Complaint Back to the CFPM for Further Investigation</p> <p>#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</p>	<ul style="list-style-type: none"> • At the review stage, the MPCC “may investigate any matter relating to the complaint.” However, the clear intent of the legislation is that, in the normal case, the MPCC should be able to complete its review of a conduct complaint without conducting a de novo investigation. In practice, however, it regularly occurs that the CFPM’s investigative effort has been constrained by an unduly narrow interpretation of the complaint or of its mandate relative to the complaint. • In situations where the MPCC disagrees with the CFPM’s understanding of the scope of a complaint, or else believes that the CFPM has overlooked relevant information or investigative steps, the MPCC’s only option at present is to fill these gaps itself. 	<p>The RCMP Commission has this option (RCMP Act, s. 45.71(3)(b)).</p>

<p>remit a matter back to the Canadian Forces Provost Marshal for further investigation should be considered.</p>		
<p>Authority to Identify and Classify Complaints</p> <p>#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.</p>	<ul style="list-style-type: none"> • It is not always clear whether a particular communication constitutes a complaint and whether a complaint relates to “policing duties or functions” (or to improper interference). • The NDA is silent on who should classify communications as conduct (or interference) complaints under Part IV of the NDA. • Differences of opinion between the CFPM and the MPCC on the classification of complaints continue to arise, particularly as to what constitutes a “policing duty or function”. While a collaborative approach often resolves the issue, such fundamental matters should not be left to depend on the goodwill of individual incumbents of positions. • Between the oversight body and the overseen police service, it should be the oversight body to determine (subject to Federal Court review) whether a complaint engages the MP complaints process. • Without this authority, complaints received by the CFPM might not be brought to the attention of the MPCC and complainants may not be advised of their right to a review of their complaint by the MPCC. • We recommend amending the NDA to indicate that the MPCC is responsible for identifying and classifying complaints. 	<p>In some other provincial civil police oversight schemes, classification of complaints is the sole responsibility of the oversight body. As such, B.C., Saskatchewan, Ontario and Quebec police oversight agencies all have the authority to identify and classify complaints.</p> <p>BC: <i>Police Act</i>, RSBC 1996, c. 367, s. 82.</p> <p>Saskatchewan: <i>Police Act, 1990</i>, SS 1990-91, c. P-15, s. 43.</p> <p>Ontario: <i>Police Services Act</i>, RSO 1990, c. P-15, s. 59; and <i>Community Safety and Policing Act, 2019</i>, SO 2019, c. 1, s. 157.</p> <p>Quebec: <i>Police Act</i>, CQLR, c. P-13.1, ss. 148 and 149.</p>

Additional MPCC Recommendations (not addressed by Justice Fish)

Recommendations	Rationale	Similar Oversight Mechanisms
<p>Relaxing Evidentiary Restrictions for MPCC Hearings</p> <p>1. The MPCC proposes that Part IV of the <i>National Defence Act</i> be amended such that the evidentiary restrictions in <i>National Defence Act</i> paragraph 250.41(2)(a) be modified with respect to solicitor-client privilege, and that paragraphs 250.41(2)(b) and (d) be repealed.</p>	<ul style="list-style-type: none"> This is linked to Justice Fish Recommendation 79. If MPCC were given access to solicitor-client privilege information, as per Justice Fish Recommendation 79, then paragraph 250.41(2)(a) would also need to be modified with respect to solicitor-client privilege, given that it prohibits the MPCC from receiving such privileged information during a public interest hearing. As for the other two provisions, their intent is to protect witnesses who have been subject to compelled testimony in other proceedings from having this evidence admitted in an MPCC hearing. However, such a blanket prohibition has the potential to exclude relevant information, except through the time-consuming and cumbersome means of calling witnesses. These prohibitions 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 MPCC's ability to uncover the truth. 	<p>There does not appear to be any parallel to the evidentiary restrictions in paragraphs 250.41(2)(b) or (d) in other federal legislation, including in Part VII of the RCMP Act regarding the RCMP Commission's authority to receive evidence at its public interest hearings.</p> <p>The equivalent RCMP Act provision to the prohibition on receiving into evidence any statements made before a board of inquiry or summary, is limited to incriminating information. investigation (RCMP Act, par. 45.45(8)(b))</p>
<p>CFPM to Suspend or not start Investigation of Complaint where MPCC Declares Public Interest</p> <p>2. The MPCC proposes that section 250.38 of the <i>National Defence Act</i> 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 <i>NDA</i> s. 250.38, to prevent overlapping investigations. Such an amendment should preserve the CFPM's</p>	<ul style="list-style-type: none"> Under the NDA the regular process for conduct complaints is one in which the CFPM first investigates. The NDA provides for an exception to this process; namely, when the Chairperson of the MPCC declares a public interest investigation or hearing, for example when complaints involve senior officials, or there is an apparent conflict-of-interest on the part of the CFPM. The language of the NDA should be clarified to ensure it could not be interpreted that the CFPM can investigate when the MPCC decides that an investigation is in the public interest. 	<p>The RCMP Act includes this safeguard (s. 45.6(2)) which reads: "The Force shall not commence or continue an investigation of a complaint if the Commission has notified the Commissioner that it will investigate that complaint or institute a hearing to inquire into that complaint."</p> <p>Note: The RCMP Act was originally worded the same as NDA s. 250.38(5) (i.e., Where the Complaints Commission declared public interest,</p>

<p>authority, outside of NDA Part IV, to address issues arising from a complaint.</p>	<ul style="list-style-type: none"> • This amendment will prevent concurrent overlapping investigations into the same complaint and avoid potentially conflicting outcomes. • This amendment will also respect the MPCC’s determination that it is in the public interest for the MPCC, rather than the CFPM, to investigate a matter. • This amendment will avoid wasting public resources. • In the ongoing Hiestand PII (resulting from the amalgamation of MPCC files # 2022-017 (Shorter), 2022-041 (Hiestand) and 2022-043 (Warsame)), the CFPM has opted to continue with a PS investigation despite the MPCC having launched a PII. Moreover, MPCC is advised that the CFPM believes that the current legislation allows him to do so. 	<p>the RCMP was relieved of its duty to deal with the complaint but was not prohibited from doing so.)</p>
<p>Putting Complaints in Abeyance</p> <p>3. Currently, except in respect of public interest hearings, the Act is silent as to when complaints processes should be held in abeyance in deference to other legal proceedings. It would be appropriate to stipulate when complaints should be put into abeyance.</p>	<ul style="list-style-type: none"> • Such a change would provide clarity and consistency in the use of abeyances. • At present, the MPCC is concerned that the CFPM may be resorting to abeyances too readily, thus creating unnecessary delay. • It would be preferable to specify in the legislation the circumstances warranting an abeyance. This supports accountability and ensures timely oversight. 	<p>The RCMP Act does not formally address abeyances on the part of the RCMP. However, such abeyances do take place in practice vis-à-vis ongoing investigations or other proceedings. The RCMP Act provides for abeyances on the part of the RCMP Commission, as follows:</p> <ul style="list-style-type: none"> a) The complaints process <u>must</u> be put into abeyances where, in the opinion of the CRCC, “<i>continuing it would compromise or seriously hinder an ongoing criminal investigation or proceeding.</i>”; b) Complaints <u>may</u> be put into abeyance where it would otherwise compromise or hinder a civil or administrative proceeding. (RCMP Act, ss. 45.71(1) and (3). <p>Presently, the RCMP Commission must also apply an abeyance where the RCMP Commissioner so requests where the latter believes that the complaint process would hinder an ongoing</p>

		<p>criminal investigation or proceeding. (RCMP Act, s. 45.71(2)).</p> <p>However, this authority of the Commissioner would be abolished in Bill C-20 (which seeks to create a new oversight body for the RCMP and Border Services), s. 60.</p> <p>Bill C-20 also stipulates that the RCMP may not commence a complaint investigation where, in its opinion, “<i>doing so would compromise or seriously hinder the investigation or prosecution of any offence.</i>” (s. 37(3))</p>
<p>Entrench “Policing Duties and Functions” Definition in the NDA</p> <p>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.</p>	<ul style="list-style-type: none"> • To entrench the scope of the MPCC’s jurisdiction in the statute better protects MPCC independence and its mandate. • It is highly unusual for a statutory oversight body to have its jurisdiction defined in subordinate legislation, where it could be altered without parliamentary consultation or approval. • A proper regulation is subject to the <i>Regulation Policy</i> and concomitant consultation. 	<p>N/A</p>
<p>Extension of Members’ Terms to Complete Outstanding Files</p> <p>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.</p>	<ul style="list-style-type: none"> • It would be both more efficient and fairer for parties to allow Members to finish their outstanding files on the expiration of their term, with a time limit or while they are waiting for reappointment. • While Justice Fish’s Report was silent on this issue, the proposal was previously endorsed by the past two Independent Review Authorities. 	<p>A precedent at the federal level for such a legislative provision may be found in subsection 8(3) of the <i>Canada Transportation Act</i>, which authorizes the Chair of the Canadian Transportation Agency to allow a Member of that Agency to finish disposing of any matter that was before him or her on the expiry of that member’s term of office.</p>

		<p>Other federal administrative bodies have such provisions, but with time limits on their use: Immigration and Refugee Board: the <i>Immigration and Refugee Protection Act</i>, s. 154 (8 weeks); and the Social Security Tribunal: <i>Department of Employment and Social Development Act</i>, s. 45(6) (12 weeks).</p> <p>Provincially, see <i>Statutory Powers and Procedures Act</i> (Ontario), s. 4.3: 4.3 <i>If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose.</i></p>
<p>Time Limit for CFPM Disclosure</p> <p>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.</p>	<ul style="list-style-type: none"> • This amendment will establish a time limit for the CFPM’s duty to disclose and to ensure that this step does not unduly delay MPCC’S investigations and disposition of complaints. • Related to Justice Fish Recommendation 82 (time limit for Notice of Action). 	<p>Bill C-20 (which seeks to create a new oversight body for the RCMP and Border Services), clause 16(2) provides that “the RCMP or the Agency, as the case may be, must comply with the request within the prescribed time following the day the request is made”.</p>
<p>MPCC to be Advised of Terms of Informal Resolution</p> <p>7. The MPCC proposes that it be notified of the terms of any informal resolutions of conduct complaints.</p>	<ul style="list-style-type: none"> • Under NDA ss. 250.27(6), the CFPM must notify the MPCC of the fact that a complaint has been informally resolved, but the provision is silent about sharing the terms of the resolution. (Though the present practice of the CFPM’s office is to share the terms of such agreements.) • How a complaint was resolved is important because even where individual complainants may be satisfied with a resolution, broader systemic concerns may require further action; and the MPCC’s public interest mandate is not contingent on the complainant’s continued participation in the process (NDA ss. 	<p>The RCMP Commission is expressly required to be provided with a copy of the terms and signified agreement for any informally resolved complaint (RCMP Act, s. 45.56(3)).</p>

	250.38(2) allows the Chairperson to investigate a complaint even if it has been withdrawn).	
<p>MPCC to be Advised on Implementation of Accepted Recommendations</p> <p>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.</p>	<ul style="list-style-type: none"> • The MPCC needs to know if, for whatever reason, an accepted recommendation is not implemented, or is not implemented as proposed and accepted, and why. This is particularly important when the MPCC is considering future recommendations to ensure that its future recommendations are informed and useful. • Accurate information on the implementation of MPCC recommendations is also important to allow for an assessment of the impact of the MPCC on the MP. • It is therefore logical to impose an obligation on the CFPM to provide the MPCC with details of the implementation of the recommendations it has accepted, both in terms of timing and content. 	<p>Bill C-20 (which seeks to create a new oversight body for the RCMP and Border Services), in s. 72, requires the RCMP Commissioner and CBSA President to report annually to the Minister (with a copy to the Commission Chair) on their actions in response to the Commission recommendations.</p>

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