



Military Police
Complaints Commission
of Canada

Commission d'examen des plaintes
concernant la police militaire
du Canada

Chairperson

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August 1, 2023

The Honourable Bill Blair, P.C., C.O.M., M.P.
Minister of National Defence
101 Colonel By rive
Ottawa, Ontario
K1A 0K2

Re: Legislative Reform Proposals to Enhance Civilian Oversight of the Military Police

Dear Minister Blair:

I am writing to you to recommend enhancing the independent civilian oversight of the Military Police by amending the *National Defence Act* (the Act) to implement the recommendations pertaining to the Military Police Complaints Commission (MPCC) from the Third Independent Review of the *National Defence Act*. Furthermore, I would like to provide you with a few additional considerations to further strengthen the civilian oversight regime.

An earlier version of this letter and attached matrix document were sent to your predecessor just prior to your appointment as Minister of National Defence.

Background

As you know, Justice Fish's report was issued in April 2021 and includes several key recommendations to strengthen the MPCC's mandate. In June of the same year — now more than two years ago —, the Department of National Defence and the Canadian Armed Forces accepted in principle Justice Fish's recommendations and signaled their intention to implement them as quickly and effectively as possible.

Since the creation of the MPCC in 1998, there have been no significant changes to improve independent civilian oversight of the Military Police, despite having had two past Independent Reviews of the Act. As a result, the MPCC now lags far behind the other police oversight mechanisms in Canada and in particular the federal police oversight body on which it was originally modelled, the Civilian Review and Complaints Commission (RCMP Commission) for the Royal Canadian Mounted Police. The gaps between the two federal civilian oversight regimes are most troubling in terms of the MPCC's lack of powers to access information required to investigate complaints.

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The RCMP Commission's oversight regime was significantly strengthened in 2013 and will be further modernized once Bill C-20 is enacted by Parliament. Given that the MPCC and RCMP Commission have similar mandates, with similar complaint processes, there is no machinery of government or other reason to have different accountability frameworks for the two federal police services.

Legislative Proposals

In order to assist with this process and for ease of summarizing the recommendations, I am enclosing a matrix setting out the background and rationale for each of Justice Fish's recommendations and our proposed legislative changes.

Justice Fish Recommendations

While the MPCC has yet to be formally informed of potential amendments to the Act, we understand that there are discussions to implement Justice Fish's recommendations regarding the independence of the Canadian Forces Provost Marshal (CFPM). Providing the CFPM with more independence, including directly reporting to you, is a small change with important consequences. In my view, more powers and independence for the Military Police should be accompanied with the equivalent level of independent civilian accountability. Providing more independence to the CFPM without the corollary accountability will further weaken the independent civilian oversight of the military police.

It is critical that the Act be amended now to strengthen the MPCC's mandate, and in particular to ensure the MPCC has access to information needed to investigate complaints.

Oversight of law enforcement is vital to police legitimacy and effectiveness. However, that legitimacy and effectiveness are eroded when the civilian police oversight body cannot easily access the information needed to perform its review and oversight roles. For example, there is no explicit statutory right for the MPCC to obtain information in respect of an interference complaint or when it launches a public interest investigation. As a result, the Military Police believes that it does not have a legal obligation to disclose information to the MPCC in these instances.

As a result, the MPCC has relied on the goodwill of the Military Police for disclosure for these proceedings, which is time consuming and not always fruitful. As the Federal Court stated in *Garrick v. Amnesty International Canada*: "If the Commission does not have full access to relevant documents, which are the lifeblood of an inquiry, there cannot be a full and independent investigation". (2011 FC 1099, para. 96)

Additional proposals

In addition to the implementation of the Fish Report recommendations concerning military policing and the MPCC, I wish to put forward for consideration a few additional proposals. Some are consequential to Justice Fish's recommendations, while others stem from recent developments. One such proposal is to clarify in the Act that the CFPM must suspend or not commence an investigation when the MPCC declares a public interest investigation, to prevent overlapping investigations. These enhancements to the MPCC's oversight powers are in line with one of the priorities set out in the 2020 Speech from the Throne to enhance civilian oversight of law enforcement agencies and the commitment to modernize the military justice system included in your mandate letter.

At a time when public confidence in policing is at the forefront of public discourse, strong accountability mechanisms are critical to maintaining public trust in policing. Implementing Justice Fish's recommendations and our additional proposals will strengthen the accountability framework for the Military Police. It will also demonstrate to Canadians that all federal law enforcement officers in our country, including those who wear military uniforms, will be held to account for their conduct by an oversight mechanism that has the legislative means to effectively do so.

Thank you for your consideration. I look forward to discussing this matter further with you.

Best regards,

Original signed by:

Me Tammy Tremblay, MSM, CD, LL.M
Chairperson

c.c. Minister of Justice, The Honourable Arif Virani, P.C., K.C., M.P.