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Dear Mr. Tinsley:

RE: Failure of Military Police to investigate possible incidents of detainee abuse by Canadian Forces, Afghanistan

It has come to my attention in the review of documents disclosed by the Department of National Defence pursuant to the *Access to Information Act* that a person who was taken captive by the Canadian Forces appears to have been beaten while detained and interrogated by them, and that Military Police (MPs) failed to exercise due diligence to investigate. The allegations are detailed in this letter, with references to documents in the ATI file by page number.

FACTUAL BACKGROUND:

The complaint relates to 3 unidentified men detained by CF personnel on or around April 6, 2006 in Afghanistan. While I request an investigation of the circumstances surrounding all 3 men, I place particular emphasis on one man, who was detained by CF personnel in the vicinity of Dukah, Afghanistan. This complaint opens with background on that man, and later discusses the other 2 men.

On 6 April 2006, a CF contingent in Dukah spotted a man observing their position. CF soldiers took that man into custody. However, he soon escaped. As a Witness Statement written by a soldier at the scene (ZAP #8288) reads, shortly after being arrested the detainee "stood up and jumped off the hill [the CF] were occupying and ran into the town of [name deleted]. He was chased but could not be found."¹

The following day (7 April) this escaped detainee was spotted again, and CF personnel were sent again to arrest him. This was done successfully. Two soldiers, ZAP #8288 and #8046, wrote Witness Statements of the failed 6 April detention and escape, and the successful 7 April re-detention.²

Of great importance to note in both the Witness Statements of #8288 and #8046 is that nowhere is it mentioned or suggested that the detainee was in anything other than healthy condition.

Further, the detainee was not sent to medical care when he was detained or re-detained, as CF procedures would require if he were injured. One actually surmises that the detainee's general health was outstanding, since he successfully escaped from CF custody, fled on foot, and evaded the soldiers' chase.

The detainee was interrogated. According to the Witness Statement of ZAP #8046, "basic questioning during the handover was done by ZAP #8160 and it is to be noted that [the detainee] was non compliant with the questioning and claimed ignorance during the process".³ Absolutely nothing else is known about the interrogation performed by ZAP #8160, except that the detainee was "non compliant" and "claimed ignorance".

When ZAP #8160 was done interrogating the detainee, later that day he transferred him to the custody of military police at Kandahar Airfield. This transfer appears (but see the caveat in the next paragraph) to be documented in a "Detainee Transfer Record" dated 7 April.⁴ Careful examination of this document establishes the following:

- (i) The person's place and date of capture is "Dukah" on 7 April 2006;
- (ii) the individual transferring the detainee is "8160", who is the aforesaid interrogator;
- (iii) the unit accepting the detainee is "GS MP PC", which is presumably a reference to Military Police, and;
- (iv) the place of transfer is "KAF", which is the Kandahar Airfield. Of great importance to note on this Detainee Transfer Record is that the detainee is described as "Injured".

The match with the person described above and in the Witness Statements of #8288 and #8046 appears exact. However, I admit there is the possibility of ambiguity and error, which is due to DND's refusal to disclose the names or other identifying information of detainees to me under the *ATI Act*. Without such information, one has to make best guesses about which documents are related to other documents in the ATI file, which is possible by matching up information on the detainee's date and place of his capture, or tracing the chain of custody in Witness Statements and Detainee Transfer Records, as I have done here.

Such inferences can suggest a hypothesis, but are not infallible—and this is exactly why, in the face of DND's unreasonable refusal to disclose more information, there needs to be an investigation by the MPCC. With the caveat, I offer the following facts and hypotheses.

On 7 April, the interrogator, ZAP #8160, transferred 3 detainees to colleagues at the Kandahar Airfield. Close inspection of the Detainee Transfer Records shows that of the 3 men who #8160 transferred, 2 were "Fit" at the time of transfer, and 1 was "Injured".⁵ Focussing for the moment on only the "Injured" man (I consider the other 2 men later) we see from the Detainee Transfer Record that he was detained in Dukah proper. The other 2 men were detained elsewhere (in "Eran/Zardalo", and "Eran (Doki) Dukha"). .

Thus there is an apparent link between the man whose case is described above—the man who appeared healthy on being detained in Dukah, and who was “non compliant” and “claimed ignorance” during interrogation—and the fact that he became “Injured” somehow on the way to Kandahar Airfield while in the care of the interrogator, #8160. (This is a link the MPCC should attempt to confirm, with the benefit of names that DND has refused to disclose to me.)

One then inquires then as to the nature of the “Injured” man’s injuries, and whether the two “Fit” men really were fit. The Detainee Transfer Record of the “Injured” man refers to another document, the “TFA MP Temp Detained Person Register”, for specific medical information. This is a shorthand reference for the “Task Force Afghanistan Military Police Temporarily Detained Person Register”. There are 3 such Registers in the ATI file, all dated shortly after midnight (0042 Zulu) on 8 April. Here is what the 3 Registers say about the condition of the 3 men (the numbering of the men is mine, and is arbitrary):

MAN #1: “Minor contusions & abrasions on both upper arms, back & chest”⁶

MAN #2: “R contusions & abrasions on both upper arms back & chest. 2x cherry marks on centre back.”⁷

MAN #3: “Lacerations on L&R eye brows; contusions & swelling of both eyes; lacerations on L cheek; lacerations centre of forehead; abrasions on chin; multiple contusions on both upper arms, back & chest.”⁸

By these accounts, the situation in the Detainee Transfer Records which indicated only 1 man was “Injured” and the other 2 men were “Fit” is untrue. In fact, all 3 men are injured, and their pattern of injuries is striking: All the injuries, on all 3 men, are confined to the upper body; there are no injuries on the lower body. The man with the severest injuries (man #3) has extensive cuts all over his face, and both his eyes are lacerated and swollen.

Taken together, this extraordinary assortment of injuries suggests that the men, and particularly man #3, were beaten.

It is standard procedure that a detainee who is injured should be seen by CF medical personnel and assessed. However, the evidence that DND released to me strongly suggests that the Military Police shortcutted or skipped the usual process of having the 3 men seen by a medic.

There is a standard form when a detainee is taken by the CF known as a “Sick Report”. In my ATI request, DND disclosed to me over a dozen Sick Reports of other men (not the 3 men described here).⁹ In nearly all those examples, the Sick Reports contain handwritten findings on the medical condition of the detainee, and conclude with a declaration that that the detainee is “Fit for Transfer” to Afghan officials, or “Fit for Release”. This appears to be standard operating procedure.

However, for the 3 men whose injuries are described above, the Sick Reports in the file are either mostly blank—no medical findings at all—or are missing from the file. (With the blank

document, one has to assume they pertain to the same 3 men, since they are roughly sequential in page number with all the other documents on the men.)

I contacted the Office of the Access to Information Commissioner about one of the apparently blank Sick Reports.¹⁰ I asked the Commissioner to help me distinguish between two possibilities: (i) whether the medics had filled in that Sick Report with medical findings that were later redacted by DND, or; (ii) whether the medics had never filled in that Sick Report such that it was always blank. The Office of the Access to Information Commissioner assured me in a phone conversation of 24 January 2007 that the second of these is true—the Sick Report contained no medical findings and was always blank, save for the detainee’s identifying information (which DND redacted) and what appears to be the rubber-stamped name of Jonathan Taylor, MD.

Thus the evidence suggests that the Military Police shortcutted procedure and never brought the men for medical examination. This even seems to be true for the man the MPs noted was “Injured”. Alternatively, if the Military Police did bring the men for medical examination, the medical findings of the examination were never written down on a Sick Report. Either way, it is a marked departure from the normal practice, as illustrated by the 13 other detainees for whom DND provided Sick Reports replete with unredacted medical findings.¹¹ (I add that Sick Reports are the minimum documentation one would expect. For many of the detainees in the ATI file, DND provided a variety of other medical forms, including laboratory records, nursing records, dental records, and so on.¹² It is suspicious that the medical information for the 3 men whose injuries are described in this letter is so much sketchier.)

The Military Police also shortcutted their standard procedure to seize and inventory the personal effects of detainees brought to Kandahar Airfield. This is particularly true for the “Injured” man. According to a document entitled “Task Force Afghanistan Military Police Property Seizure Register”, dated 7 April, the personal effects belonging to a detainee (probably the most severely injured man) were “not processed due to [the] medical condition” of the man.¹³ (One surmises that if the man was so unwell that the MPs decided it was not feasible to seize and inventory his personal effects, then the MPs certainly should have obtained medical care for him, which as already explained they seem not to have done.)

Finally, as noted earlier, shortly after midnight (0042 Zulu) on 8 April, the MPs transferred all 3 men to the Afghan National Police (ANP Kandahar). This transfer is noted in 3 further “Detainee Transfer Records” that show ANP on the receiving end of the transfers.¹⁴ Once again, the MPs record in these documents that one of the men was “Injured”, and that the other two men were “Fit”, though from the description of the men quoted above, it is apparent that all 3 were injured to some extent.¹⁵

This the the most complete narrative I can assemble based on the selected, heavily redacted documents that DND has disclosed to me, and I am aware however that DND is withholding other highly relevant documents on this matter. I am informed by DND staff that there is a frontal photograph of one of the men, and possibly other photographs also. The photograph(s) were withheld from disclosure by DND, ostensibly because of s. 19(1) of the *Access to Information Act*, which is an exemption to protect personal information.¹⁶ I have submitted to

DND that the public interest argues strongly for disclosure, and that disclosure is entirely consistent with s. 19(2)(c) of the *Act* and also ss. 8(2)(m)(i) and s. 8(2)(m)(ii) of the *Privacy Act*. Disclosure of the photograph(s) would be of forensic importance to ascertaining the causes of the injuries that the Military Police noted, and would assist the detainees in obtaining redress if there has been abuse. Yet DND has consistently refused to release the photograph(s), even in an anonymized form, as for example by redacting the eyes.

HYPOTHESES:

As already mentioned, it is impossible for me to reach definite conclusions on these documents, where DND has redacted the detainees' names and other identifying information. The best I can do is make reasoned guesses about the relationships between the documents in the ATI file, to sketch hypotheses for what most likely happened. These hypotheses may be (and hopefully are) wrong. Accordingly, I offer the following as points for MPCC's consideration, and not as accusations.

As regards the CF: My working hypothesis is that the detainee who was arrested on 6 April, who escaped, and who was re-arrested on 7 April, was beaten while in the custody of CF interrogator ZAP #8160. This interpretation is favored because the Detainee Transfer Record of the man whose condition is given as "Injured" definitely relates to a detainee who was arrested in Dukah proper, and who had been in the custody of ZAP #8160 before being transferred to Military Police. The only man matching those criteria is the one described in the Witness Statements of ZAP #8288 and 8046. Those Witness Statements also provide a chain of custody to ZAP #8160, who conducted an interrogation in which the detainee was "non compliant". It is a recognized phenomenon that interrogators may be tempted to beat persons who are "non compliant", and that is particularly true if the person has caused anger, for example by escaping from custody the day before. My working hypothesis also is that there was also systematic roughness among CF which resulted in 2 other men described as "Fit" actually having unexplained injuries (contusions and abrasions) on their upper bodies.

As regards the MPs: My working hypothesis is that the MPs at Kandahar Airfield, aware they possessed 3 injured detainees about whom questions might be asked, acted with unusual speed to get the men permanently off the base and into Afghan custody. To that end, the MPs failed to investigate the cause of the 3 detainees' injuries. MPs shortcutted the standard procedure of bringing the detainees for medical examination or treatment, as this would have resulted in the injuries being noted on a Sick Report or other medical records. MPs also shortcutted the standard procedure of seizing and inventorying the "Injured" detainee's personal effects. In shortcutting both these steps, the MPs failed to preserve evidence of relevance to an investigation into the detainees' injuries, which circumstances clearly warranted.

The names of the MPs involved is not known, as they are normally referred to in the documents by abbreviations which I have not been able to decode (e.g. "KAF GS MP P1", or "9899").¹⁷

I agree that these are not the only viable hypotheses. For example, DND favors an alternative hypothesis of how the “Injured” man became injured: DND contends it occurred during a struggle by CF to subdue a would-be bomb maker that is described in two Witness Statements.¹⁸ DND’s account could well be true—but even if it is, it fails totally to explain how the other 2 detained men acquired their injuries. It also fails to justify the apparent omission of the Military Police to deliver the injured men for medical care. Regardless of DND’s explanation for how the “Injured” man became injured, there remain serious questions relating to the other 2 men, and the conduct of the Military Police.

GROUNDS FOR COMPLAINT:

It is submitted that the above facts may disclose these wrongful acts or omissions by the Military Police:

1. Failure by the MPs to investigate the cause of the injuries suffered by the 3 men;
2. Failure by the MPs to treat humanely the 3 injured men in their custody;
3. Failure by the MPs to exercise due care in safeguarding evidence, and particularly the decision by MPs to transfer the 3 injured men to the Afghan National Police ahead of a forensic medical examination to inquire into the nature of their injuries;
4. Failure by the MPs to seize and inventory the personal effects of at least 1 of the injured men, as is standard practice;
5. Such other wrongful acts or omissions by the MPs in this matter, which are unknown to me because DND censored documents relevant to my information request.

In weighing possible wrongdoing, your attention is drawn to sections 93 and 124 of the *Code of Service Discipline*:

93. Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

124. Every person who negligently performs a military duty imposed on that person is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty’s service or to less punishment.

Your attention is also drawn to paragraph 6 of the *Arrangement for the Transfer of Detainees between the Canadian Forces and the Ministry of Defence of the Islamic Republic of Afghanistan*:

Detainees who are wounded or sick will be cared for by the Detaining Power at first instance. Sick or wounded detainees will not be transferred as long as their recovery may be endangered by the journey, unless their safety, or the safety of others, imperatively demands it...

Your attention is also drawn to section 269.1 of the *Criminal Code*, which is the criminal prohibition against torture:

“torture” means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

(a) for a purpose including

(i) obtaining from the person or from a third person information or a statement...

Your attention is also drawn generally to the Joint Doctrine Manual of DND on Prisoner of War Handling, Detainees and Interrogation & Tactical Questioning in International Operations.

REMEDY SOUGHT:

The foregoing is submitted as a conduct complaint pursuant to s. 250.18(1) of the *National Defence Act*.

In view of the invariably serious nature of allegations of detainee abuse, the complainant requests that the Chair exercise his discretion pursuant to s. 250.38(1) to initiate an investigation and hearing on this matter in the public interest. This is to be preferred over the alternative procedure of referring the matter to the Provost Marshall for investigation at the first instance, as provided for in s. 250.26(1) of the Act.

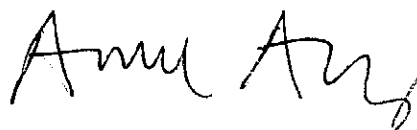
The public interest argues strongly for a s. 250.38(1) investigation and public hearing. It is known from cases of detainee abuse committed by other countries' soldiers (*e.g.* the US forces in Abu Ghraib prison; the British forces in Basra) that the phenomenon of detainee abuse is wont to be perpetrated systematically in units, and not just perpetrated by isolated individuals. It is in Canada's best interest that, to pre-empt systematic abuse and its corrosive effect on public confidence, each credible allegation of detainee abuse be subject to an MPCC-led investigation and public hearing. Holding a public hearing sends an important, across-the-board signal to the Canadian public and the Forces that detainee abuse will not be tolerated. In comparison, referring this matter to the Provost Marshal for an internal investigation does not send such a signal. Public confidence is of the utmost in this matter, which argues for an investigation and public hearing.

Further, should it be discovered in the course of the investigation that CF personnel other than Military Police (*i.e.* personnel who are not within the MPCC's jurisdiction) appear to have

beaten the detainee in question, it is requested that the MPCC refer the matter to the appropriate enforcement authorities.

All of which is respectfully submitted.

Sincerely,



Professor Amir Attaran

¹ In this complaint, documents are referenced by the page number of DND's Access to Information Act disclosure, which are normally located in the lower right hand corner. See page 000351.

² Pages 000351 and 000352.

³ Page 000352.

⁴ Page 000357.

⁵ See 3 Detainee Transfer Records at pages 000322, 000346 and 000357. Note that all 3 records show that "8160" is the transferor, and that "KAF", which is Kandahar Airfield, is the place where the transfer took place. The Injured man is the one written up at page 000357, and detained in Dukah proper.

⁶ Page 000314.

⁷ Page 000337.

⁸ Page 000352.

⁹ See 13 Sick Reports for other detainees, at pages 004, 041, 057, 074, 092, 109, 128, 145, 165, 182, 198, 295, 315.

¹⁰ Page 000353

¹¹ See 13 Sick Reports for other detainees, at pages 004, 041, 057, 074, 092, 109, 128, 145, 165, 182, 198, 295, 315.

¹² These other medical documents are too numerous to list, but are found throughout in the ATI file and are available on request. Without counting, I estimate 25 pages of medical documents.

¹³ Page 000354.

¹⁴ Pages 000321, 000345, and 000356.

¹⁵ Pages 000321 and 000345 and 000356.

¹⁶ Page 000355.

¹⁷ This example is from page 000356

¹⁸ Pages 000361 and 000362.