



Military Police  
Complaints Commission  
of Canada

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

Chairperson

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November 4, 2015

## Distribution List

**Our file: MPCC 2015-005 (Anonymous)**

In accordance with subsection 250.38(3) of the *National Defence Act* (NDA), this letter serves as notice of my decision to cause the Military Police Complaints Commission (MPCC) to conduct a Public Interest Investigation into this complaint.

## The Complaint

The complaint was made in a one-page typewritten letter dated January 9, 2015. It was received by mail in an envelope postmarked February 10, 2015, sent from the Sheraton Gateway Hotel which is located within Pearson International Airport in Toronto, ON. The letter is addressed to the MPCC, and the subject lines indicate it is a complaint relating to the assault of detainees by the Military Police (MP) in Afghanistan in 2010-2011. The letter is unsigned and contains no contact or identifying information about the complainant.

The complainant alleges that between December 2010 and January 2011 the Commanding Officer of the Joint Task Force Afghanistan Military Police Company (JTF-Afg MP Coy), Task Force 3-10, stationed at Kandahar Airfield, Afghanistan, ran exercises in unoccupied detention cells neighbouring cells containing detainees, in order to “terrorize” the detainees. The complainant further alleges that at one point, at least one exercise was conducted in cells occupied by detainees. According to the complaint, MP members were said to have entered the cells in the middle of the night, carrying weapons and other police equipment, and to have pressed detainees against the wall and on the floor and applied arm locks. The complainant alleges the tension was so high after the previous two months that several detainees defecated and urinated on the spot.

The complaint letter goes on to allege the Canadian Forces National Investigation Service (CFNIS) conducted an investigation in order to bring serious charges against the MP

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Commanding Officer but did not lay any charges. Instead, charges were allegedly provided to the Canadian Armed Forces (CAF) Task Force Commander who, according to the complainant, ignored them.

Finally, the complainant alleges that in October 2012, a lieutenant-colonel in the MP chain of command was tasked to conduct an investigation into the events; however, despite these various investigations, no court martial or charges resulted. The letter provides the ranks and surnames of five “reference persons”.

I interpret this complaint as raising concerns about the conduct of any MP members involved in ordering and/or conducting the exercises, and also of those MP members responsible for the investigation of the matter and the decision not to lay charges or take any other action following the CFNIS investigation in 2011 and the subsequent investigation in 2012.

In conformity with NDA section 250.21(2)(c)(i), the MPCC notified the Canadian Forces Provost Marshal (CFPM) of the complaint on February 27, 2015, and requested additional information about the matters raised in the complaint. The Deputy Commander, Canadian Forces Military Police Group, confirmed on March 11, 2015, that the CFNIS investigated an incident relating to an exercise conducted at the Detainee Transfer Facility in Kandahar in January 2011. The Deputy Commander indicated the investigation was concluded in April 2011, no charges were laid and the matter was referred to the CAF Task Force Commander for appropriate action. The Deputy Commander further confirmed that a Lieutenant-Colonel in the MP Chain of Command conducted an investigation into the matter in 2012.

The MPCC also attempted to contact the five reference persons listed in the complaint letter, as well as two other individuals to whom the MPCC was referred by those persons. The information received from these individuals confirmed that an incident did occur at the Detainee Transfer Facility in Kandahar in the time period alleged and raised several additional questions as discussed later in this decision.

Because these events occurred more than one year before the complaint was made it was necessary for the Chairperson of the MPCC to determine whether to grant an extension of time pursuant to section 250.2 of the NDA. A decision granting an extension of time, with reasons attached, was issued by the Interim Chairperson on September 21, 2015.

### **Should the MPCC Conduct a Public Interest Investigation?**

In his September 21, 2015, decision, the Interim Chairperson pointed out a number of reasons why this complaint raises issues of interest to the public such that an extension of time was warranted. I agree with the assessment that this complaint raises issues of interest to the public.

In light of the factors detailed in the Interim Chairperson's decision, as well as a number of further factors discussed in the reasons that follow, I have now decided to exercise my discretion as Chairperson to cause the Commission to conduct a Public Interest Investigation (PII) into this matter.

### *The National Defence Act*

In the normal course of a Part IV conduct complaint investigation, the complaint is transmitted to the CFPM in accordance with NDA section 250.26(1). The CFPM, who is the head of the Military Police, is responsible for investigating the complaint in the first instance. The investigation is generally carried out by the Military Police Group Professional Standards (PS) section. Should a complainant be dissatisfied with the CFPM's disposition of the complaint, s/he may request a review of that disposition by the MPCC.

Notwithstanding s. 250.26(1), section 250.38(1) of the NDA provides:

*If at any time the Chairperson considers it advisable in the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.*

When the MPCC conducts a PII under s. 250.38(1), the process for investigating a conduct complaint is different in two fundamental ways. First, it is the Commission rather than the Military Police Group PS section that carries out the investigation. Second, the investigation process unfolds in a more public manner, as the Commission will make public the entire Final Report containing its Findings and Recommendations and is able to provide updates to the public as the investigation unfolds.

In order to decide whether to cause the MPCC to conduct a PII, I must determine whether it is advisable in the public interest to forego the usual investigative process and to order the MPCC to assume the investigation.

### *Public Interest Considerations*

The question of whether it is in the public interest to cause the MPCC to conduct a PII in this matter must be determined with reference to the Commission's mandate to investigate complaints about the conduct of MP members. Through its oversight of the complaints process, the MPCC seeks to promote and ensure the highest standards of conduct for MP members and to promote public confidence in the Military Police.

In deciding to conduct public interest investigations in the past, Commission Chairpersons have considered what would be in the public interest in the context of each complaint.

Drawing from the MPCC's mandate and those past decisions, I consider the relevant public interest considerations to include: the nature and seriousness of the allegations; whether the allegations have the potential to affect public confidence in the Military Police; whether the allegations raise systemic issues related to MP processes and policies; whether there has been prior public interest in the events manifested by the community; whether there is a need for a public and transparent investigation process due to the nature of the allegations or other factors; and whether there is a need for an independent investigation process in order to maintain confidence in the process for the public and/or the complainant.

### **A Public Interest Investigation is Advisable in these Circumstances**

As was the case for the Interim Chairperson's September 21, 2015, decision to extend the time for bringing the complaint, I note at the outset that in my assessment of the public interest in the allegations set out in this complaint, I make no assessment as to the substantive merits of these allegations.

In assessing the public interest in light of the factors listed above, I consider that it is in the public interest for these allegations to be investigated in an open and transparent manner.

I note the seriousness of the allegations and the gravity of the underlying events. The underlying facts alleged regarding the "exercise(s)" involving Afghan detainees point to a potentially serious incident with broad ramifications for the CAF's reputation and for Canada's international relations and ongoing engagement in Afghanistan. As found in the MPCC's past decision to hold the Afghan Public Interest Hearing into a complaint about the failure to investigate decisions to transfer detainees despite an alleged risk of torture, the handling of detainees in theatre raises public interest issues, which can impact public confidence in the MP.

Of particular significance is the allegation that the CFNIS investigators provided their charge recommendations to the CAF Task Force Commander instead of exercising their authority to lay charges. This raises questions of MP independence on a systemic level. Where the independence of the Military Police from the operational CAF chain of command is put in issue, whether through allegations of interference or of an abrogation of responsibility, it becomes a matter of serious concern that may, in itself, warrant a public interest investigation in order to shed light on the process used to decide not to lay charges.

Based on the content of the complaint letter, a major concern for the complainant appears to be his or her perception that the matter was deliberately ignored or even "covered up." The complaint specifically alleges charges were "ignored" and emphasizes there has still not been any court martial or charges to this day, despite the conduct of the CFNIS and subsequent investigations.

The information obtained by the MPCC from some of the individuals contacted as references tends to indicate that there was a perception on the part of some of the members deployed to Kandahar Airfield at the time that some of the decisions made about the investigations and their ultimate outcome were made as a result of orders coming from “Ottawa” and/or because of concerns about the reputation of the MP or CAF in light of the public attention issues involving the treatment of detainees can receive.

The allegation that the Military Police may have been involved in covering-up misconduct on the part of MP or other CAF members is a very grave one that goes to the heart of the MPCC’s mandate to ensure accountability for the MP and to foster public confidence in the availability of a suitable independent mechanism to investigate alleged misconduct.

One of the primary functions of the Military Police is to uphold the rule of law within the CAF. The CFNIS was set up as an independent MP unit in charge of investigating serious and sensitive incidents. Unlike other MP members, CFNIS members have the authority to lay charges under the Code of Service Discipline without going through the military Chain of Command. The allegations in this complaint, if validated, would raise issues about the CFNIS’ willingness or ability to investigate misconduct by MP or CAF members. The possibility that a lack of independence may exist – leading the CFNIS to make decisions about the laying of charges based on considerations unrelated to policing, such as concerns about the public image of members of the CAF Chain of Command, the CAF as a whole, or a particular mission, or to leave charging decisions in the hands of CAF commanders – would go to the core of military policing and would raise questions about the ability of the CFNIS to perform its important role. The mere perception that the Military Police may lack the necessary independence to investigate its own members or other CAF members and to lay charges where appropriate can have a negative impact on public confidence in the MP. Such serious allegations need to be fully investigated in a transparent process in order to preserve confidence.

While the conduct alleged in this complaint would seriously compromise the independence of the MP in any location, I find this concern particularly important in theatre, where operational pressures are most acutely felt. The public needs to have confidence there are available mechanisms for investigations to be conducted regardless of whether an issue may cause embarrassment to the MP or CAF Chain of Command. This was one of the issues identified in the Somalia Inquiry Report, which in turn was part of the impetus for creating the MPCC.

There are also strong reasons in this case for the investigation of the complaint at first instance to be conducted by an independent body, rather than internally by the Military Police.



The complaint letter and the comments of the individuals identified as “reference persons” reveal a perception that the CFNIS investigation may have been improperly directed by “Ottawa” potentially in order to cover-up wrongdoing by MP or CAF members and that the CFNIS members may have derogated from their authority to lay charges. At its heart this complaint implicates the independence of the CFNIS in the conduct of an investigation and goes to the public’s confidence in the ability of the Military Police to investigate its own members, as well as members of the CAF of all ranks and in any location.

Given these allegations, there would be a serious risk that, at least as a matter of perception and appearances, an internal investigation into this matter by the Military Police PS section would not be viewed as credible or legitimate regardless of how well or thoroughly it may be conducted. It is in the public interest to have these serious allegations investigated by an independent body.

Having the Commission conduct the investigation may increase confidence in the process for the complainant as well as for the public. In this case, the complainant has gone to great lengths to remain anonymous. The steps taken by the complainant, including the mailing of the complaint from an airport hotel, are consistent with the complainant having some fear of the consequences to him- or herself, whether personal or professional, in making a complaint. Both the nature of the allegations and the manner in which the complaint was made tend to imply a lack of confidence on the complainant’s part in the independence of the Military Police when investigating alleged misconduct by CAF members and in the ability of the Military Police to investigate themselves impartially. Under the specific circumstances of this case, only an independent investigation could provide sufficient reassurance to the complainant and to others, so that in the future individuals are not dissuaded from stepping forward to voice their concerns or complaints due to fear of reprisals or lack of confidence in the mechanisms available to investigate such complaints.

Finally, I note that, as evidenced by media reports, there has been recent public interest in the treatment of detainees in Afghanistan by the Military Police. In May 2015, articles were published in the *La Presse* newspaper describing allegations similar to those in this complaint. The matter was discussed in several other publications, notably the *Toronto Star* and the *Journal de Montréal*. This is in addition to the public interest in issues related to the treatment of Afghan detainees that was demonstrated before, during and after the Afghanistan Public Interest Hearing, an interest that continues to this day with the publication of a recent report about these issues. While this factor is not determinative, the fact that allegations similar to those in this complaint have been made public constitutes one more reason why it is important that the findings about these allegations also be available to the public.

Considering the totality of the context and public interest factors, I conclude that the most appropriate way to ensure that this matter is investigated to the satisfaction of the public is to cause the MPCC to conduct the investigation. A Public Interest Investigation will allow the Commission to conduct a thorough investigation in order to shed light on the events and ensure no doubts remain at the end of the complaints process. The subsequent publication of the MPCC's findings and recommendations will help ensure the highest standards of accountability and transparency for the Military Police, thereby contributing to the preservation or perhaps restoration of public confidence.

### **Conclusion**

Given these circumstances I find it advisable in the public interest to cause the MPCC to conduct a Public Interest Investigation into this complaint.

The Commission will now proceed to request disclosure and to examine all relevant materials in the possession of the Military Police. The Commission will then determine the scope of the investigation and identify the subjects of the complaint.



Hilary McCormack  
Chairperson

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