



MILITARY POLICE COMPLAINTS COMMISSION

IN THE MATTER OF a conduct complaint under section 250.18 of the *National Defence Act* by Mrs. Sarah Orton (MPCC 2024-037)

RULING ON STANDING OF THE CANADIAN FORCES PROVOST MARSHAL

Overview

1. On September 16, 2025, the Canadian Forces Provost Marshal (CFPM) brought a motion seeking interested party status in this hearing, pursuant to paragraph 250.44(b) of the *National Defence Act* (NDA). By letter of October 6, 2025, since no response to the motion had been received, I ordered that this motion would be heard in writing and that the CFPM had until October 17, 2025, to provide any supplementary evidence and any memorandum of fact and law. We received the memorandum on October 9, 2025.

2. Once a public interest hearing has been declared, the Military Police Complaints Commission (MPCC) must provide a “full and ample opportunity” to participate to the complainant, the person who is the subject of the complaint, and “any other person” who satisfies the MPCC that they “have a substantial and direct interest in the hearing.”¹

3. For the following reasons, the motion is denied. The CFPM has not satisfied me that she has a substantial and direct interest in the hearing. I do find, however, that the CFPM can make a significant contribution or bring a significant perspective to the hearing. As I explain below, I grant the CFPM intervenor status. The nature of the CFPM’s rights to participate in the hearing will be decided after she and the parties to this matter have had the opportunity to make submissions on this point.

The CFPM is not automatically an interested party by virtue of her office

4. The CFPM argues that she has a substantial and direct interest in this hearing by virtue of the responsibilities of her office. She argues that this is because she is the Commander of the Canadian Forces Military Police Group and has responsibility for the establishment of training standards. She further argues that her interest is evident in the fact that the hearing will investigate the conduct of military police members under her

¹ *National Defence Act* (NDA), RSC 1985 c. N-5 at para. 250.44(b).

command, and she “has an interest in ensuring that the Military Police act in accordance with the professional standards outlined in the *Military Police Professional Code of Conduct*.”

5. This argument rests entirely on the duties prescribed to the person holding the office of the CFPM:

Duties and functions

18.4 The Provost Marshal’s responsibilities include
(a) investigations conducted by any unit or other element under his or her command;
(b) the establishment of selection and training standards applicable to candidates for the military police and the ensuring of compliance with those standards;
(c) the establishment of training and professional standards applicable to the military police and the ensuring of compliance with those standards; and
(d) investigations in respect of conduct that is inconsistent with the professional standards applicable to the military police or the *Military Police Professional Code of Conduct*.

Fonctions

18.4 Le grand prévôt est notamment responsable :
a) des enquêtes menées par toute unité ou tout autre élément sous son commandement;
b) de l’établissement des normes de sélection et de formation applicables aux candidats policiers militaires et de l’assurance du respect de ces normes;
c) de l’établissement des normes professionnelles et de formation applicables aux policiers militaires et de l’assurance du respect de ces normes;
d) des enquêtes relatives aux manquements à ces normes professionnelles ou au *Code de déontologie de la police militaire*.

6. I accept that, by virtue of her office, the CFPM has *an interest* in these proceedings. I do not accept, however, that the responsibilities given to the office of the CFPM under section 18.4 of the NDA, establish her *substantial and direct interest* in the hearing. Only those with a substantial and direct interest meet the threshold for interested party status.

7. I have reached this conclusion after careful consideration of the text of the NDA itself, as well as its context and purpose.²

8. Part IV of the NDA sets out a regime to deal (1) with complaints about the conduct of members of the military police in the performance of policing duties and functions and (2) with complaints about interference with military police investigations.

9. In the case of a conduct complaint, the CFPM’s role is specifically prescribed:

Provost Marshal responsible

250.26 (1) The Provost Marshal is responsible for dealing with conduct complaints.

Responsabilité du grand prévôt

250.26 (1) Le grand prévôt est responsable du traitement des plaintes pour inconduite.

² *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 at para. 117–120, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21.

10. A conduct complaint may be referred to the MPCC, in which case the MPCC may investigate any matter relating to it.

Chairperson may investigate

250.32 (2) In conducting a review of a complaint, the Chairperson may investigate any matter relating to the complaint.

Enquête du président

250.32 (2) Il peut, en cours d'examen, enquêter sur toute question concernant la plainte.

11. The MPCC may also cause a public interest investigation into a conduct complaint and may, if warranted, hold a hearing.

Public interest

250.38 (1) 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.

Intérêt public

250.38 (1) S'il l'estime préférable dans l'intérêt public, le président peut, à tout moment en cours d'examen d'une plainte pour inconduite ou d'une plainte pour ingérence, faire tenir une enquête par la Commission et, si les circonstances le justifient, convoquer une audience pour enquêter sur cette plainte.

12. Section 250.44 of the NDA sets out who is a party to the hearing:

Rights of persons interested

250.44 The Complaints Commission shall afford a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the hearing to

(a) the complainant and the person who is the subject of the complaint, if they wish to appear; and

(b) any other person who satisfies the Complaints Commission that the person has a substantial and direct interest in the hearing.

Droits des intéressés

250.44 Le plaignant, la personne qui fait l'objet de la plainte et toute autre personne qui convainc la Commission qu'elle a un intérêt direct et réel dans celle-ci doivent avoir toute latitude de présenter des éléments de preuve à l'audience, d'y contre-interroger les témoins et d'y faire des observations, en personne ou par l'intermédiaire d'un avocat.

13. Only the complainant and the person who is the subject of the complaint are automatically, or *de facto*, considered an interested person under this section. Any other interested person must satisfy the MPCC that the person has a substantial and direct interest in the hearing.

14. The application of the relevant principles of statutory interpretation supports the conclusion that had Parliament intended the CFPM to be considered a party to all hearings, it would have had to do so in express language.³

15. Parliament knew the CFPM is the commander of members of the military police involved in policing duties, as described in section 18.4 of the NDA, and did not include

³ See R. Sullivan, *The Construction of Statutes*, (7th ed. 2022, p. 222-3).

the CFPM as a party in paragraph 250.44(a) of the NDA. The role of the CFPM within the complaints process is prescribed in detail in Part IV of the NDA, including her role in investigating and reporting on complaints, disclosure obligations towards the MPCC, the right to receive information from the MPCC, and the right to respond to the MPCC's recommendations. The CFPM has a voice in each complaint – she determines complaints at the first instance and speaks through her reasons. In this case, as the then Deputy CFPM, she chose to close the complaint without investigating it.

16. It is a well-established principle that Parliament is presumed to be coherent. Parliament did not intend the CFPM to be automatically considered a party to a hearing without first satisfying the MPCC that she has a “substantial and direct interest in the hearing,” since this is what the NDA requires. Put another way,

[39] [t]he maxim of interpretation *expressio unius est exclusio alterius* (“to express one thing is to exclude another”) is also of particular relevance here. An inference of implied exclusion may be drawn where there is an expectation that “if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly” (Sullivan, at § 8.09[1]; see *R. v. Wolfe*, [2024 SCC 34](#), at para. [25](#); *Canada v. Loblaw Financial Holdings Inc.*, [2021 SCC 51](#), [2021] 3 S.C.R. 687, at para. [59](#); *Copthorne Holdings Ltd. v. Canada*, [2011 SCC 63](#), [2011] 3 S.C.R. 721, at para. [108](#)).⁴

17. There are other regimes that prescribe that a first-instance decision-maker has full participatory rights in a second-instance process. For example, at both the Immigration Appeal Division and the Social Security Tribunal, the first instance decision-makers are defined in the applicable rules as parties.⁵ This is not the structure of Part IV of the NDA.

18. Therefore, the general duties and functions of the CFPM, as described in section 18.4 of the NDA, do not justify on their own a “substantial and direct interest in the hearing.” The CFPM would have to demonstrate, on a case-by-case basis, her “substantial and direct interest” in the hearing.

19. It would be illogical to conclude that Parliament's intention was that the CFPM ought to be required to apply to become an interested party if the test of “substantial and direct interest” was met in each case based only on the fact that the CFPM is the commander of members of the military police and has the duties inherent in that position.

⁴ *Kosicki v. Toronto (City)*, 2025 SCC 28 at para. 39.

⁵ See *Immigration Appeal Division Rules*, 2022 (SOR/2022-277) at s. 1 and *Social Security Tribunal Rules of Procedure*, 2022 (SOR/2022-256) at s. 5.

A substantial and direct interest is a case-specific inquiry

20. Having found that the CFPM is not, because of her responsibilities, an interested party in all hearings before the MPCC, it follows that this is a fact- and case-specific question.

21. There are, in fact, two ways that a person other than the complainant or a subject might have standing in a hearing before the MPCC:

- a) An *interested party*, as above, is defined by the NDA as a person who satisfies the MPCC that they have a “substantial and direct interest in the hearing.”⁶ An interested party has a full and ample opportunity to present evidence, to cross-examine witnesses and to make representations at the hearing.
- b) The *Rules of Procedure for Hearings Before the Military Police Complaints Commission, 2022*, also give the MPCC the discretion to allow a person to intervene once satisfied that the person can make a significant contribution or bring a significant perspective to the hearing, if the potential benefits of the intervention outweigh any prejudice caused to the parties.⁷ Contrary to the full participatory rights of an interested party, the rights of an intervenor may be limited, such as to the obligation to produce documents, to a particular issue, or to the right to make written submissions only.⁸

22. Only those with a substantial and direct interest have full participatory rights. This is in keeping with section 250.14 of the NDA that provides that the MPCC must “deal with all matters before it as informally and expeditiously as the circumstances and the considerations of fairness permit.”

23. I have considered jurisprudence on the meaning of a “substantial and direct” interest. The “substantial and direct interest” test is applied in a great many federal and provincial inquiries. As stated by Justice O’Connor in his *Ruling on Standing in the Arar Inquiry*:

It is neither possible nor desirable to set out a comprehensive list of the types of interests that will come within this test for public inquiries. In each case, a commissioner conducting a public inquiry will have to consider a number of factors including his or her mandate, the nature of that aspect of the public inquiry for which standing is sought, the type of interest asserted by the applicant, and the connection of the particular applicant to the Inquiry’s mandate.⁹

⁶ NDA at s. 250.44(b).

⁷ *Rules of Procedure for Hearings Before the Military Police Complaints Commission, 2022* (SOR/2022-9) (Rules) at s. 44.

⁸ Rules at s. 49.

⁹ Commissioner Dennis O’Connor, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, [*Ruling on Standing and Funding*](#) (May 4, 2004), at p. 6.

24. As did Justice O'Connor in the Arar Inquiry, I too agree with the reasoning of Justice Campbell in *Range Representative on Administrative Segregation Kingston Penitentiary*:

Mere concern about issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner.¹⁰

25. More recently, courts have held that the wording “substantial and direct” is a high bar and one that is directly tied to the context and purpose of the proceedings in which it is applied.¹¹

26. Since, as I have explained above, the CFPM is not automatically an interested party in all hearings before the MPCC, it follows that her responsibilities as assigned in the NDA do not meet the definition of a substantial and direct, however deep and genuine they surely are.

27. I also considered how “interested party” has been defined in jurisprudence. While there are common themes, the application of jurisprudence from one context to another must be done with caution. At the Canadian Human Rights Tribunal, for example, the status of intervenor is not distinct from that of an interested party. Unlike in the MPCC context, the interested party’s rights to participate may be subject to various discretionary limitations depending on the case.¹²

28. Public inquiries depend on their terms of reference for their authority. The Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions, for example, had the discretion to determine the nature of participation for those with a “substantial and direct” interest, unlike in the MPCC context, where those who meet this threshold have full and ample rights.¹³

29. In addition to the responsibilities assigned to her under s. 18.4 of the NDA, the CFPM also argues that she has a substantial and direct interest because she “may be able to provide evidence and context for the police professional standards relevant” to the hearing, that she can “meaningfully assist the MPCC to ensure its hearing is complete and accurate,” and provide a systemic perspective that individual military police subjects cannot. She argues that without interested party status, she will be unable to present

¹⁰ *Range Representative on Administrative Segregation Kingston Penitentiary v. Ontario (Regional Coroner)*, [1989] O.J. No. 1003, 38 Admin. L.R. 141 (Div. Ct.) at p. 13 (O.J.)

¹¹ *Burnstick (Re)*, 2024 ABCJ 49 at para 22-33 and *Montgrand (Re)*, 2024 ABCJ 175 at para 15 and 23.

¹² *Canadian Human Rights Tribunal Rules of Procedure*, 2021 (SOR/2021-137) at s. 27 and s. 48.3.

¹³ See *Terms of Reference: Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Processes*, accessed at [Terms of reference - Government of Canada launches public inquiry into foreign interference - Democratic Institutions - Canada.ca](https://www.canada.ca/en/government/public/terrorism/terrorism-investigation/public-inquiry-into-foreign-interference-democratic-institutions-2021.html).

additional evidence or provide submissions which risks “the accuracy and adequateness of the hearing.”

30. In weighing these arguments, I was informed by previous MPCC decisions. In MPCC File No. 2005-024, the Attorney General of Canada (AGC) applied for standing for a great number of positions, including the Minister of National Defence, the Chief of Defence Staff, the Judge Advocate General, and the Canadian Forces Provost Marshal. In support of the motion, the arguments advanced were similar as in this case. The AGC argued that his clients could assist in ensuring that the MPCC “had all relevant facts, information and considerations upon which to make informed recommendations.”

31. Standing was denied to all but the CFPM for two reasons. First, as a policing authority, the CFPM would be responsible for implementing any recommendations or providing an explanation for not doing so. Second, the then-CFPM had a direct, personal connection **to the facts of the case**: before he became the CFPM, he had been the Deputy Provost Marshal National Investigative Service “and in that capacity was the officer in charge of the unit at the time of the events in question” at the hearing. No such personal connection has been argued in this case.

32. MPCC File No. 2005-024 was decided before the current *Rules* were published, and the reasons granted the CFPM “authorization to intervene”. Although the motion was made under NDA s.250.44, the CFPM was granted standing only for the portions of the public interest hearing that were relevant to their particular interest or perspective as the officer in charge at the time of the events in question. Given the distinction is now clarified between interested parties and intervenors, and the fact that the CFPM’s argument hinges upon the duties assigned to her which are not specific to this case, I am unable to conclude that she has a substantial and direct interest in these proceedings.

33. Concerns regarding ensuring a complete tribunal record do not establish this interest either. In all cases, the MPCC asks the CFPM for disclosure of information relevant to its proceedings. The hearings will be public, and any person remains free to propose relevant evidence for admission – a question over which the panel will exercise its discretion.

34. I have also considered that the NDA requires me to deal with all matters before the MPCC as informally and expeditiously as the circumstances and the considerations of fairness permit.¹⁴ I weighed the additional time and complexity that an institutional party such as the CFPM might bring if afforded a full opportunity to cross examine all witnesses and participate in all aspects of the hearing. This weighed against finding that the CFPM has a substantial and direct interest in this case for the reasons argued – these

¹⁴ NDA at s. 250.15.

arguments would require the addition of the CFPM as an interested party in all hearings before the MPCC. As I have already stated, if the Act intended this result, it would say so directly.

The CFPM will make a valuable contribution to the hearing as an Intervenor

35. I do find, however, that the CFPM can bring a significant perspective on the particular facts of this case.

36. In its report in MPCC 2023-010 (signed July 25, 2024), the MPCC made recommendations regarding welfare checks, as follows:

- a) The MPCC recommended that the military police develop a comprehensive national policy regarding welfare checks, addressing when and how checks should occur, warrantless entries and the need to document in their notes the ‘exigent circumstances’, mitigating potential harm to vulnerabilized individuals and the importance of ensuring a trauma-informed approach.
- b) The MPCC recommended that military police, when receiving a request for a welfare check, first review their police records to ascertain any previous interactions with the individual concerned. They should contact the person requesting the welfare check and review available documents before conducting the check, unless urgent circumstances necessitate immediate action for safety. This ensures that military police have all the necessary information to carry out the welfare check, taking into account all relevant factors.

37. The CFPM accepted these recommendations, and her office has worked to implement them. I note, in particular, the recent publication of the Canadian Armed Forces Military Police Policy Manual, “324 – Welfare Checks.” Since the facts of this case will touch directly on the issue of welfare checks, the MPCC wishes to understand the CFPM’s ongoing work on the issue to ensure its recommendations are timely, helpful, and informed.

38. I therefore grant the CFPM leave to intervene in this hearing. The benefits of the CFPM’s cooperation and participation in the hearing outweigh any prejudice to the parties that might be caused by the intervention.

39. In dealing with this matter as informally and expeditiously as the circumstances and considerations of fairness permit, I am dispensing with the need for a separate motion for leave to intervene. In so doing, I have considered the arguments already presented in this motion as well as the fact that no opposition was presented from the parties.

40. I will provide the CFPM and the parties the opportunity to comment upon the extent and nature of the CFPM's participation. I will weigh any arguments about prejudice to the parties in a subsequent decision on the nature of the intervention rights.

Decision

I DENY the CFPM's motion for interested party status.

I GRANT the CFPM intervenor status. As no responses were received in relation to this motion, I will forgo an exchange of submissions on this issue. All parties as well as the intervenor CFPM have until November 27, 2025, to provide written submissions on the nature and extent of the CFPM's participation in the hearing.

Should the CFPM or the parties disagree with this decision, they may seek judicial review before the [Federal Court](#) under section 18.1 of the *Federal Courts Act*, within 30 days of receiving this order, or within such time as the Court may allow.

DATED at Ottawa, Ontario, this 13th day of November 2025.

Original document signed by:

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