

Registration
SOR/2002-241 17 June, 2002

NATIONAL DEFENCE ACT

Rules of Procedure for Hearings Before the Military Police Complaints Commission

The Chairperson of the Military Police Complaints Commission, pursuant to section 250.15^a of the *National Defence Act*, hereby makes the annexed *Rules of Procedure for Hearings Before the Military Police Complaints Commission*.

Ottawa, Ontario, June 14, 2002

**RULES OF PROCEDURE FOR HEARINGS BEFORE THE MILITARY POLICE
COMPLAINTS COMMISSION**

INTERPRETATION

1. The following definitions apply in these Rules.

"Act" means the *National Defence Act*. (*Loi*)

"Complaints Commission" means the Military Police Complaints Commission established by subsection 250.1(1) of the *National Defence Act*. (*Commission*)

"document" means any information, regardless of its form, and includes, without limiting the generality of the foregoing, any correspondence, note, book, plan, map, drawing, photograph, film, microfiche, tape or computerized or sound recording, or any reproduction of that information. (*document*)

"intervenor" means a person who is authorized by the Complaints Commission to intervene at a hearing. (*intervenant*)

"party" means a complainant, a person who is the subject of a complaint or an intervenor. (*partie*)

APPLICATION

2. These Rules apply to hearings conducted under section 250.38 of the Act in the context of a conduct complaint or an interference complaint.

SUSPENSION OF RULES AND CHANGE OF TIME LIMITS

3. The Complaints Commission may, at the written request of a party or on its own initiative, suspend in whole or in part any of these Rules and extend or abridge a time limit in which an act is to be done and shall inform the parties of any such decision.

^a S.C. 1998, c. 35, s. 82

HOLIDAYS

4. If a time limit set out under these Rules falls on a Saturday or on a Sunday or other holiday as defined in the *Interpretation Act*, the time limit is extended to the next working day.

NON-COMPLIANCE WITH RULES OR ORDERS OF THE COMPLAINTS COMMISSION

5. If a party has not complied with these Rules or any order of the Complaints Commission, the Complaints Commission may stay the proceeding in whole or in part until the Rules or order have been complied with or take any other step that the Complaints Commission considers fair and reasonable.

RULINGS ON PROCEDURE

6. If a question that is not provided for in these Rules arises in the course of a proceeding, the Complaints Commission may take the steps it deems necessary to deal with the question informally and expeditiously under section 250.14 of the Act.

QUESTIONS TO BE DETERMINED

7. At any time during a proceeding, the Complaints Commission may determine any question with respect to jurisdiction or practice and procedure. The Complaints Commission may stay the proceeding in whole or in part until after the question is determined.

8. At any time during a proceeding, the Complaints Commission may, in accordance with the *Federal Court Act*, refer any question of law, of jurisdiction or of practice and procedure to the Federal Court—Trial Division. The Complaints Commission may stay the proceeding in whole or in part until after the question is determined.

CONSOLIDATION OR SEVERANCE OF COMPLAINTS

9. The Complaints Commission may, at the written request of a party or on its own initiative, order that a single hearing deal with a number of complaints or that separate hearings be held.

COUNSEL

10. The responsibilities of counsel appointed or engaged by the Complaints Commission under section 250.13 of the Act to assist it in its work include, unless the Complaints Commission decides otherwise, the following:

- (a) to advise the parties on the procedure of the hearing;
- (b) to examine all witnesses in accordance with section 37; and

(c) to provide, when the Complaints Commission determines it necessary, the Complaints Commission with a summary of the evidence presented at the hearing and a summary of the law.

CHANGE OF ADDRESS OR NUMBERS

11. A party shall, without delay, advise the Complaints Commission and the other parties in writing of any change of address, telephone number, facsimile number or electronic mail address.

DOCUMENTS

12. Any document that a party wishes to submit in respect of a hearing shall, at least 14 days before the hearing, be filed with the Complaints Commission and served on all parties to the hearing.

SERVICE OF DOCUMENTS

13. (1) Any document other than a summons shall be served by
(a) personal service;
(b) registered mail or courier, with an acknowledgment of receipt; or
(c) facsimile transmission or electronic mail, with proof of transmission.

(2) A summons shall be served by
(a) personal service; or
(b) registered mail or courier, with an acknowledgment of receipt.

(3) If service cannot be made in accordance with subsection (1) or (2), service shall be made by the publication of a notice, twice in seven days in a daily newspaper circulated in the place of the latest known residence of the person being served. The notice shall set out the contents of the document to be served and state that the document is filed with the Complaints Commission.

14. Personal service is effected
(a) in the case of minor who is less than 16 years of age, by leaving a copy of the document with the minor's father, mother or other person who is legally responsible for the minor;
(b) in the case of a minor who is at least 16 years of age, by leaving a copy of the document with the minor and, if the minor resides with their father, mother or other person who is legally responsible for them, by leaving another copy of the document with the father, the mother or that other person; and
(c) in the case of any other person, by leaving a copy of the document with the person being served or with an authorized representative of the person or with another person who appears to be at least 18 years of age and who
(i) resides at the same residence as the person being served, or
(ii) is employed at the same place of employment as the person being served.

15. A document is considered to have been served

(a) in the case of personal service, on the day on which it is left with the person being served or the person authorized to accept service on their behalf;

(b) in the case of registered mail or courier, on the date that appears on the acknowledgement of receipt;

(c) in the case of service by facsimile transmission or electronic mail, on the date that appears on the proof of transmission; and

(d) in the case of service by newspaper publication, on the day after the second day on which the notice was last published.

16. A person who serves a document on another person shall, as proof of service, file with the Complaints Commission an affidavit together with any documentation that indicates the method of service.

FILING OF DOCUMENTS

17. A document shall be filed in one of the following ways:

(a) by handing the document and two copies of it to the registrar of the Complaints Commission;

(b) by sending the document and two copies of it to the registrar of the Complaints Commission by ordinary mail, registered mail or courier; or

(c) by sending a copy of the document to the registrar of the Complaints Commission by facsimile transmission or electronic mail.

18. The day on which a document is filed with the Complaints Commission is the day on which the document is received by the Complaints Commission, except that a document received after five o'clock in the afternoon on a business day is deemed to be filed on the next business day.

PRODUCTION OF DOCUMENTS, THINGS OR INFORMATION

19. (1) A party may request, in writing, within 14 days after receiving the notice of hearing, another party to

(a) produce any document or thing that is under the other party's control; or

(b) provide in writing any information that is under the other party's control.

(2) In the case of a request for information, each item of information that is requested shall be numbered consecutively.

(3) The request shall be served on the party to whom the request is addressed and a copy shall be served on the other parties and filed with the Complaints Commission.

20. A party who receives a request for production shall, within seven days after receiving the request,

- (a) in the case of a party who agrees to comply with the request, serve a copy of the document or information on the other parties and file a copy of it with the Complaints Commission and, in the case of a thing, allow the other parties access to it;
- (b) in the case of a party who is unable to comply with the request within the required time, serve on the other parties and file with the Complaints Commission written reasons for the inability to comply and indicate the additional time required to comply;
- or
- (c) in the case of a party who is unable or refuses to comply with the request, serve on the other parties and file with the Complaints Commission written reasons for the inability or the refusal to comply.

21. The Complaints Commission may, at the request of the party who made the request under section 19 or on its own initiative, order the production of the requested document, thing or information that the Complaints Commission considers necessary to the full investigation and consideration of matters before it.

22. A party who fails to comply with a request for production and who has not been the subject of an order of the Complaints Commission under section 21 may not put the document, thing or information in evidence unless authorized by the Complaints Commission.

23. A party whose request for production under section 19 has not been complied with may, with the authorization of the Complaints Commission, introduce secondary evidence of the document, thing or information.

INTERVENTION

24. (1) A person who intends to satisfy the Complaints Commission that the person has a substantial and direct interest in a hearing shall file with the Complaints Commission, within 14 days after the day on which the notice of hearing is issued,

- (a) a notice of motion to intervene, dated and signed by the person making the motion or that person's counsel;
- (b) an affidavit, and any supporting documents, setting out the facts on which the motion is based.

(2) A notice of motion to intervene shall set out

- (a) the style of cause of the proceeding in which the moving person seeks to intervene;
- (b) the name and address of the moving person or the moving person's counsel;
- (c) a concise statement of the nature of the moving person's interest in the hearing;
- (d) a statement of the reasons why the intervention is necessary; and
- (e) the official language the moving person intends to use during the motion.

(3) The person seeking the authorization to intervene shall serve a copy of the notice of motion to intervene and the affidavit and any supporting documentation on the parties without delay after the documents are filed with the Complaints Commission.

25. A party who has been served with a copy of the notice of motion to intervene may, within seven days after the service, file with the Complaints Commission and serve on the other parties and the person seeking the authorization to intervene a response to the motion, dealing with the matters raised in the motion and stating whether the party intends to oppose the motion and, if so, on what grounds.

26. The Complaints Commission shall serve on the person seeking the authorization to intervene and the parties its decision with respect to a motion to intervene.

27. If a motion to intervene is granted, the parties shall serve on the intervenor a copy of each of the documents filed by them before the granting of the motion.

28. The Complaints Commission shall serve on the intervenor a written notice specifying the date, time and place of the hearing.

PRELIMINARY MOTIONS

29. Any party may, in writing at least 14 days before the date scheduled for the hearing, submit any preliminary issues or questions to the Complaints Commission by way of notice of motion. The Complaints Commission may hear oral arguments from the parties if the Complaints Commission determines it necessary.

PRE-HEARING CONFERENCE

30. The Complaints Commission may order that the parties appear before the Complaints Commission or one of its members, before the hearing, to consider

- (a) the clarification and simplification of issues;
- (b) the admission of particular facts or information;
- (c) the procedure relating to
 - (i) requests for and the exchange of documents, things or information,
 - (ii) any preliminary motions, or
 - (iii) the hearing;
- (d) whether the hearing should be held in private in whole or in part; or
- (e) any other matter related to the conduct of the hearing.

31. The Complaints Commission shall keep minutes of the pre-hearing conference, including any decisions made or agreements reached, and shall deliver a copy of the minutes to the parties.

32. All decisions made or agreements reached at the pre-hearing conference bind the parties during the hearing.

SUMMONS

33. (1) The Complaints Commission may, at the request of a party made at least 14 days before the witness is required to appear or on its own initiative, in accordance with

section 250.41 of the Act, summon a witness and compel them to testify and to produce documents or things under their control that the Complaints Commission considers necessary to the full investigation and consideration of matters before it.

- (2) The request for a summons shall include
 - (a) the name and address of the witness;
 - (b) the witness's chosen official language; and
 - (c) a summary of the reasons why the witness should be summoned.

(3) If the Complaints Commission decides to summon a witness, the summons shall be substantially in the form set out in Schedule 1, sealed with the Complaints Commission's seal and served by the Complaints Commission on the witness.

EXPERT WITNESSES

34. A copy of an expert witness's report shall, at least 14 days before the expert witness's appearance, be filed with the Complaints Commission and served on the other parties. The report shall be signed by the expert witness and shall

- (a) include the name, address, title and qualifications of the expert witness; and
- (b) contain a brief summary of the substance of the expert witness's proposed testimony, including their observations, test results if applicable, conclusions and, in the case of a physician, a diagnosis and prognosis.

TESTIMONY

35. All testimony before the Complaints Commission shall be given under oath or solemn affirmation.

EXCLUSION OF WITNESSES

36. (1) The Complaints Commission may, at the request of a party or on its own initiative, order that witnesses be excluded from the hearing until they are called to testify.

(2) No person shall communicate to a witness who has been excluded from the hearing any evidence or testimony that is given during the course of a hearing until after the witness has testified.

EXAMINING WITNESSES

37. (1) Unless the Complaints Commission orders otherwise, the examination of the witnesses shall be as follows:

- (a) examination by the counsel for the Complaints Commission;
- (b) cross-examination by the parties; and
- (c) as required, re-examination by the counsel for the Complaints Commission.

(2) In the absence of an agreement between the parties, the Complaints Commission shall determine the order in which the parties are entitled to cross-examine witnesses.

ADJOURNMENT

38. The Complaints Commission may adjourn a hearing at the request of a party or on its own initiative.

MOTIONS

39. (1) Unless otherwise provided for in these Rules, at any time during the proceedings, a question may be brought before the Complaints Commission by written notice of motion or orally in the course of a hearing.

(2) A notice of motion shall clearly state the facts, the grounds for the motion and the order sought.

(3) A notice of motion in writing shall

(a) be accompanied by an affidavit that sets out the facts on which the motion is based; and

(b) be filed with the Complaints Commission and served on the parties.

(4) After considering any submissions of the parties, the Complaints Commission may render its decision orally or in writing and, if in writing, shall serve a copy of the decision on the parties.

ELECTRONIC COMMUNICATION

40. The Complaints Commission may order that a proceeding be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.

RECORDING

41. The Complaints Commission shall record, by any appropriate means, all testimony and representations made at the hearing.

HEARINGS IN PRIVATE

42. If the Complaints Commission directs that a hearing in whole or in part is to be held in private in accordance with section 250.42 of the Act, the persons who may attend the hearing are

(a) the Complaints Commission personnel who are necessary to assist in the hearing; and

(b) each other person who files a completed declaration and undertaking substantially in the form set out in Schedule 2 and who

- (i) is a party or their counsel,
- (ii) is an expert, counsel or other person whose services have been retained by the Complaints Commission in the course of the hearing and whom the Complaints Commission determines should be present to assist the Complaints Commission in its work, or
- (iii) is designated by the Complaints Commission.

43. Documents filed with the Complaints Commission in the course of a hearing in private shall be kept separate from the public record.

44. The Complaints Commission may authorize the persons described in section 42 to make copies of the records or transcripts of the hearing in private, subject to any conditions imposed by the Complaints Commission.

COMING INTO FORCE

45. These Rules come into force on the day on which they are registered.

SCHEDULE 1
(Subsection 33(3))

SUMMONS TO A WITNESS BEFORE THE MILITARY POLICE COMPLAINTS
COMMISSION

FILE NUMBER:

STYLE OF CAUSE:

NAME OF WITNESS:

ADDRESS:

You are required to attend before the Military Police Complaints Commission at a hearing to be held at (*address*), on the (*day and date*), at (*time*), and so on from day to day until the hearing is concluded or the Commission otherwise orders, to give evidence under oath or solemn affirmation in respect of the hearing.

You are to bring with you and produce at that time and place any relevant documents or other things under your control, including: (*Specify the nature and date of each document or other material and give sufficient details in order to identify them.*)

(*Date*)

(*Signature*)

(*Name*)
Member of the Military Police
Complaints Commission

NOTE:

If you fail to attend and give evidence at the hearing, or to produce the documents or things at the time and place specified, without lawful excuse, you are liable, under section 302 of the *National Defence Act*, to a fine of not more than \$500 or to imprisonment for a term of not more than six months or to both.

A person, other than an officer or non-commissioned member of the Canadian Forces or an officer or employee of the Department of National Defence is entitled, under section 251.2 of the *National Defence Act*, at the discretion of the Military Police Complaints Commission, to receive payment of the same fees and allowances for attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Federal Court.

SCHEDULE 2
(Paragraph 42(b))

DECLARATION AND UNDERTAKING

FILE NUMBER:

STYLE OF CAUSE:

I hereby undertake that

- (a) I will not disclose any information or evidence that I receive during the hearing in private of the Military Police Complaints Commission;
- (b) I will not reproduce in any manner, without the prior written approval of the Military Police Complaints Commission, any records dealing with the information received, evidence taken or submissions made in the hearing in private; and
- (c) at the end of the hearing of the complaint, I will give to the Military Police Complaints Commission
 - (i) all documents provided to me by the Complaints Commission during the hearing in private, and
 - (ii) any notes taken by me with respect to information, evidence or submissions that I received during the hearing in private.

(Date)

(Signature)

(Name)