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Annual Report 2002

MEETING THE CHALLENGE OF CHANGE

In Memory of Thomas G. Flanagan S.C.

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A Tribute to Thomas G. Flanagan, S.C.



Thomas G. Flanagan, S.C.
June 30, 1928 – November 18, 2002

For all of us at the Military Police Complaints Commission, the year 2002 was marked with sadness by the sudden death of Commission member Thomas G. Flanagan, S.C., in November.

Mr. Flanagan was named a part-time member of the Military Police Complaints Commission in July of 1999, and his contributions in the months leading up to the formal coming into force of the Commission's mandate in December of that year were truly exceptional. Mr. Flanagan's unfailing good humour, always welcome, was a special gift to us in those sometimes trying early days. That the agency was as effective as it was from the very beginning of its mandate is very much a reflection of the wisdom, dedication and distinction with which he served the Commission.

Thomas G. Flanagan, S.C., was born, raised and educated in Ottawa. He joined the Ottawa Police Service in 1951, retiring from active duty as Chief of Police in March 1993. He was twice decorated for bravery during his career, receiving the Queen's Commendation for Brave Conduct in 1958, and the Star of Courage in 1979. In recognition of his remarkable contributions to the Ottawa Police Services, the City of Ottawa marked his retirement by re-naming the Ottawa Police headquarters the Thomas G. Flanagan Building.

He was a life member of the Canadian and Ontario Associations of Chiefs of Police, an active member of the International Association of Chiefs of Police and a former member of the Board of the Ottawa University Centre of Criminology. In addition to raising four sons and a daughter with his late wife Alma, Mr. Flanagan also found time to co-found Operation Go Home, which has grown into a national social service organization dedicated to re-uniting runaway teenagers with their families. He was a founding member of the Board of Directors of the Ottawa Community Service Order Committee.

Mr. Flanagan's contributions did not end with his retirement. At the request of the Ottawa Police Services Board, Mr. Flanagan was sworn in as a special advisor to the Board, serving in that capacity until December 31, 1993. Mr. Flanagan also acted as special advisor to Beretta USA Corporation on law enforcement and criminal justice, and was an associate with Price Waterhouse Management Consultants.

Throughout his career as a police officer, Mr. Flanagan was known as an outstanding officer and a tenacious investigator, but above all, he is remembered for the respect he held for all citizens, regardless of their station in life.

Mr. Flanagan believed firmly that police should reach out to and work with the community. He was a strong supporter of the benefits of civilian oversight of law enforcement but, at the same time, there could be no more staunch defender of police when he felt his officers were criticised unjustly. It is a mark of his respect and abiding love for police work that three of his five children have followed in his footsteps, and are police officers themselves.

His broad experience in police work was of invaluable benefit to the Military Police Complaints Commission, and we continue to feel the loss of his wise counsel. Much more than a colleague, we miss our very dear friend.

It is with sincere thanks that we respectfully dedicate this Annual Report to the memory of Thomas G. Flanagan, S.C. and to his family,



CHAIRPERSON • PRÉSIDENTE

March 31, 2003

The Honourable John McCallum, P.C., M.P.
Minister of National Defence
National Defence Headquarters
MGen George R. Pearkes Building
Ottawa ON K1A 0K2

Dear Minister:

In accordance with section 250.17(1) of the *National Defence Act*, I am pleased to submit the *Annual Report 2002: Meeting the Challenge of Change*, of the Military Police Complaints Commission for tabling in Parliament.

This Annual Report offers an overview of the Commission's activities for the year, including summaries of a number of cases I believe give a measure of insight and understanding of the role the Commission was created to play.

The year 2002 marks the Commission's third full year in existence, and it has been an eventful one in many areas, marked with challenge and change.

We have begun implementation of the principles of modern comptrollership and have developed a strategic plan for the organization. The Commission's Web site (www.mpcc-cppm.gc.ca) is fully functional, and we have extended our education and outreach program to include the publication of the Commission's first "Special Report," an initiative we intend to continue on an annual basis.

We welcomed three new members to the Commission, Mr. Peter Scheult, Mr. Odilon Emond and Mr. Henry Kostuck. However, as you know, it is with sadness that I must also report the loss of Commission member Mr. Thomas G. Flanagan, S.C., who passed away suddenly in November 2002. Mr. Flanagan was a dedicated colleague and a trusted friend and, as a small measure of thanks for his outstanding contribution and comradeship, we dedicate this Annual Report to his memory.

On behalf of all of us at the Military Police Complaints Commission, I hope you will find this report both interesting and informative.

Yours truly,

A handwritten signature in blue ink that reads "Louise Cobetto".

Louise Cobetto
Chairperson

Message
from the Chairperson
Louise Cobetto



INTRODUCTION

Welcome to the fourth Annual Report of Canada's Military Police Complaints Commission.

In this, our third full year of operation, I am confident in saying the Commission is maturing as an organization, with a strong focus on outcomes. Civilian oversight of law enforcement involves more than investigating complaints and filing reports, and we do not measure our success solely on the number of complaints we have processed in a given year, but also on whether we have succeeded in making the Commission an agent for positive change.

Beyond publishing my findings in a particular case, as Chairperson I am empowered to make recommendations based on those findings.

The purpose of making recommendations is as simple as it is fundamental – with their implementation, it is hoped the situation that gave rise to the complaint in the first instance will not be repeated.

Our recommendations in two cases for example, summarized in this Report, led to specific changes in Military Police policy and procedures for surveillance operations and for dealing with civil matters.

These recommendations reflect our understanding that, although we can look back on 2002 with a sense of accomplishment, many

challenges remain as we pursue our mission and vision to promote the principles of integrity and fairness within the Military Police; to ensure the highest standards of professional conduct among its members, and to discourage any interference with Military Police investigations.

This is the role the Government of Canada intended the Commission to play when it was created on December 1, 1999, and I believe we have made significant accomplishments in this area in 2002.

It is inevitable that there will arise instances of disagreement between the Commission and those vested with the management of the Military Police under Part IV of the *National Defence Act*. This is a normal part of the relationship between any civilian oversight body and the law enforcement agency it oversees, as each develops its understanding of the roles and responsibilities of the other.

In the case of the Military Police Complaints Commission, reaching across this “cultural divide” can be especially challenging, in that we are bringing civilian oversight not only to a law enforcement agency, but to a law enforcement agency that operates within the centuries-old traditions and values of the military.

As the relationship between the Commission and the Canadian Forces Provost Marshal develops and evolves in the years ahead, it will remain incumbent on both to ensure we work together in an atmosphere of trust and understanding toward our shared goal: enhancing the credibility and professionalism of a Military Police service of which all Canadians can be proud.

MONITORING ROLE OF THE COMMISSION

While the *National Defence Act* gives the Military Police Complaints Commission exclusive domain over complaints of interference with Military Police investigations, initial responsibility for the investigation of complaints about the conduct of Military Police belongs to the Canadian Forces Provost Marshal.

In the event a complainant is not satisfied with the Provost Marshal's disposition of the complaint, the complainant can ask the Commission to review the matter.

Beyond this basic power of review, the Act also gives the Commission, in both letter and in spirit, broad powers to oversee and monitor complaint investigations undertaken by the Provost Marshal. Indeed, the Act gives the Commission and its Chairperson, regardless of the outcome of the complaint, a right to oversee the entire procedure for conduct complaints.

Section 250.38 in particular, giving the Chairperson the power to assume the investigation of a complaint being dealt with by the Provost Marshal at any time during the process, makes it clear the Commission is both intended and expected to monitor the Provost Marshal's handling of conduct complaints from the time a complaint is filed.

BRIDGING THE LANGUAGE BARRIER


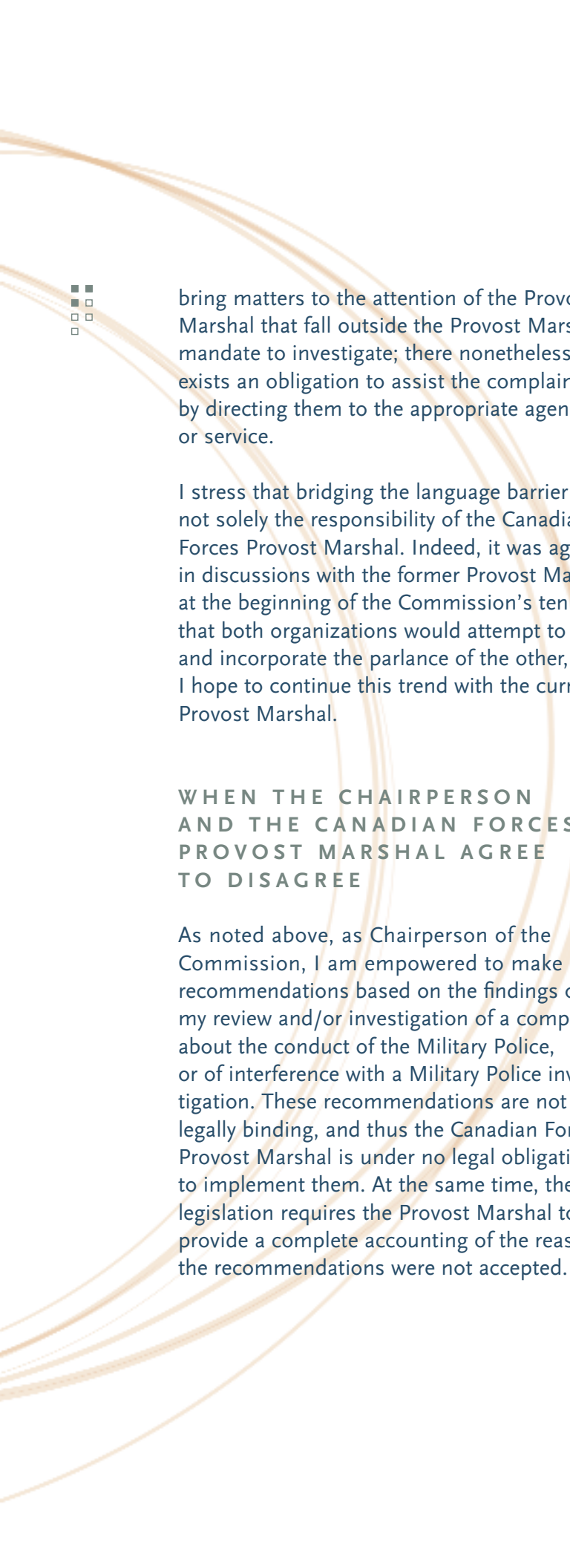
It is normal for any cultural group, from high school students to lawyers, to develop its own linguistic shorthand to facilitate communication within the group. Particular words and phrases can be given different shades of meaning that may not be readily understood, or that may be understood differently by people outside the group.

This type of language barrier can present special difficulties for civilians who come in contact with the military. Beyond a forest of acronyms, other terms have come to be defined somewhat differently in military usage. As an example, one term to which the Commission has paid special attention this past year is "duty to assist."

In the Canadian Forces, "duty to assist" is understood in the context of a military duty, and the circumstances in which a member of the Military Police has a duty to assist are clearly defined. The Commission, on the other hand, sees "duty to assist" in civilian terms; that is, as the much broader moral and legal obligation members of any police service have to assist a citizen in difficulty. To enhance their credibility with the Canadian public, I believe Military Police members should undertake their duty to assist on civilian terms.

As examples, witnesses in some investigations can be subject to significant stress. Military police need to be aware of this, and recognize they have a duty to assist. A duty to assist also exists in helping a civilian complainant understand military language and procedures, in order for their complaint to be investigated fully and fairly. This concept extends as well to instances in which a complainant may





bring matters to the attention of the Provost Marshal that fall outside the Provost Marshal's mandate to investigate; there nonetheless exists an obligation to assist the complainant by directing them to the appropriate agency or service.

I stress that bridging the language barrier is not solely the responsibility of the Canadian Forces Provost Marshal. Indeed, it was agreed in discussions with the former Provost Marshal at the beginning of the Commission's tenure that both organizations would attempt to learn and incorporate the parlance of the other, and I hope to continue this trend with the current Provost Marshal.

WHEN THE CHAIRPERSON AND THE CANADIAN FORCES PROVOST MARSHAL AGREE TO DISAGREE

As noted above, as Chairperson of the Commission, I am empowered to make recommendations based on the findings of my review and/or investigation of a complaint about the conduct of the Military Police, or of interference with a Military Police investigation. These recommendations are not legally binding, and thus the Canadian Forces Provost Marshal is under no legal obligation to implement them. At the same time, the legislation requires the Provost Marshal to provide a complete accounting of the reasons the recommendations were not accepted.

In this Report, you will find examples of instances where recommendations made by the Commission were not implemented. I look forward to an ongoing dialogue with the Provost Marshal as we work toward resolving these outstanding issues in a manner that is satisfactory to both the Provost Marshal and the Commission.

This dialogue notwithstanding, the legislation does envision instances where the Chairperson and the Provost Marshal will not be able to resolve specific concerns. The Chairperson can choose to bring particular areas of concern to the attention of the Minister of National Defence by including recommendations in the Commission's Annual Report, as noted in section 250.17(1) of the *National Defence Act*.

THE DUTY TO ACT EXPEDITIOUSLY

Section 250.14 of the *National Defence Act* makes clear the Commission's duty to act expeditiously in all matters that come before it. As Chairperson, I am determined that the Commission fulfill this duty.

I also look forward to continuing to work with the Provost Marshal to determine how the process can move more quickly, without damaging its integrity. After completing a review of a conduct complaint, for example, the Chairperson prepares an interim report of the findings and any recommendations stemming from the review of the complaint. The interim report is submitted to the Minister of National Defence, the Chief of the Defence Staff and the Provost Marshal.

In most instances, the interim report is reviewed by the Provost Marshal, who advises the Chairperson of any action that has, will or will not be taken with respect to the findings and recommendations in the interim report. After considering this “Notice of Action” from the Provost Marshal, the Chairperson issues a final report. I believe both our organizations must make a renewed effort to ensure the lapse of time between the filing of a complaint and the submission of a final report does not become inordinately or unnecessarily long.

COMPLAINTS OF INTERFERENCE

It is essential that members of the Military Police are able to carry out their functions as police officers independently and objectively. Because they are also members of the military, they must respect orders from their superiors, whether they are members of the Military Police or not. Needless to say, this dual role can place members of the Military Police in delicate situations, and impose difficult decisions on them.

The Government of Canada recognized this in amending the *National Defence Act* in 1998. Under section 250.19 of the Act, Military Police members may submit complaints to the Commission when they believe a member of the Canadian Forces or a senior official of the Department of National Defence has interfered or attempted to interfere with their investigations.

As noted earlier in this Report, Part IV of the Act gives the Military Police Complaints Commission exclusive jurisdiction over this type of complaint; however, in comparison to the number of conduct complaints, the

Commission receives very few complaints of interference each year.

I have observed that members of the Military Police and the Canadian Forces are not fully aware of this avenue of recourse and the principles behind it. Further, I continue to be concerned about potential reluctance on the part of members of the Military Police to file this type of complaint.

In December of 2002, the Commission released a Special Report, *Interference with Military Police Investigations: What is it about?* dealing with interference complaints in the hope of raising awareness of the concept of interference and the issues surrounding it.

As a further step, I intend to propose amendments to the *National Defence Act* during the next legislative review that would offer protection for members of the Military Police who may file complaints of interference.

FIVE-YEAR REVIEW OF THE NATIONAL DEFENCE ACT

As required by legislation, the Minister of National Defence will strike a Committee to undertake the mandatory five-year review of the *National Defence Act* in 2003. A wide variety of stakeholders is expected to make presentations to the Committee, including the Canadian Bar Association and the Canadian Forces. The Military Police Complaints Commission is actively preparing for the review, as well as gathering recommendations and suggestions for the Committee.





STRATEGIC PLAN OF THE CANADIAN FORCES PROVOST MARSHAL

In December of 2001, the Canadian Forces Provost Marshal introduced *Serving You – the Canadian Forces Military Police Strategic Plan 2002-2006*.

The Military Police Complaints Commission applauds this effort on the part of the Provost Marshal, and the commitment to excellence and professionalism within the Canadian Forces Military Police it represents.

As Chairperson of the Commission, I offer my unqualified support to the goals and vision outlined in the Strategic Plan, and look forward to working with the Provost Marshal as the Canadian Forces Military Police pursue these goals, and strive to realize their vision.

EDUCATION AND OUTREACH PROGRAM

Raising awareness of the Commission's roles and responsibilities within the Canadian Forces and with Canadians in general remains an ongoing priority.

During 2002, representatives of the Commission visited Military Police detachments in Borden, Gander, Goose Bay, Cold Lake and Trenton. Presentations were given about the Commission, and meetings were held with members of the Canadian Forces and the Military Police. As in past visits of this kind, we were again impressed by the warm and accommodating welcome given to the Commission, and by the frank and open quality of the discussions with members of the Canadian Forces. I believe personal contacts

of this nature are invaluable in bringing the Commission closer to its primary clients, and these visits will continue in the years ahead.

As part of our own education, members of the Commission are actively involved in national and international bodies concerned with civilian oversight of law enforcement, including the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE), and the International Association for Civilian Oversight of Law Enforcement (IACOLE). In September of this year, the late Mr. Thomas G. Flanagan, S.C., made a very well-received presentation to the CACOLE annual conference in St. John's, Newfoundland.

Also worthy of note in this area is the Commission's Web site, which became operational in April 2002 at www.mpcc-cppm.gc.ca. The Web site brings accessibility to information about the Commission, its activities and the complaint process to a new level, and I am confident its usefulness as a tool for outreach will continue to grow in the years ahead.

SPECIAL REPORTS

The December 2002 Special Report, *Interference with Military Police Investigations: What is it about?* was the first report of this type from the Commission. These reports can play an important role in raising awareness both of the Commission and of particular issues related to civilian oversight, especially as it concerns the Canadian Forces Military Police. It is my intention to publish special reports on subjects of interest to our clientele on an annual basis.

CORPORATE SUPPORT

I am pleased to report a number of significant corporate accomplishments made by the Military Police Complaints Commission during 2002, not least of which was the development of a Strategic Plan for the organization.

In keeping with overall Government of Canada policy initiatives, the principles of modern comptrollership have been introduced, including delegation of authority, integrated financial reporting aligned with operational activities and accrual accounting. We have completed a capacity assessment of the Commission, and in the coming year, will be developing action plans to enhance our management capabilities in this area.

As a small agency, the Military Police Complaints Commission is especially sensitive to the importance of organizational stability. Now that recruitment is no longer a primary focus of our human resources activities, the Commission is able to devote more attention to employee well-being and organizational learning. Staff of the Commission completed the Public Service-wide employee survey in 2002, with a participation rate of almost 80 per cent.

As Chairperson, I am eager to provide a workplace that is both challenging and rewarding, and to develop and maintain positive, productive relationships with Commission employees and the unions that represent them. This past year, for example, saw the establishment of the Commission's Union-Management Consultative Committee.

In order to use its financial and human resources as effectively as possible, the Commission has been actively seeking out partnerships with other Government of Canada departments and agencies. As a result of these initiatives, the Commission now receives integrated human resources services through the Shared Human Resources Services offered by Public Works and Government Services Canada (PWGSC).

Through its partnership with the Government Telecommunications and Informatics Services at PWGSC, the Commission is working to ensure its information management and information technology practices comply with Government of Canada policies and standards, particularly in relation to the Government On-Line initiative. In this area, the Military Police Complaints Commission is among the first Government of Canada departments and agencies to implement the use of "Public Key Infrastructure (PKI)" to address security concerns associated with electronic communication.

ACKNOWLEDGMENTS

As Chairperson of the Military Police Complaints Commission, I am indebted to many for the accomplishments I am able to report on behalf of the Commission in this Annual Report.

The Commission is not a large organization, but it is fortunate to have staff who carry on a challenging task with dedication, professionalism, and good humour.





We were pleased to welcome three new members to the Commission this year. The Government of Canada announced the appointment of Mr. Peter Seheult as a part-time member of the Commission in May. A graduate of the University of New Brunswick law school, Mr. Seheult is a past Chairman of the New Brunswick Police Commission.

Two part-time members were appointed to the Commission in December: Mr. Odilon Emond, of Lac Mégantic, Quebec, and Mr. Henry Kostuck of Orleans, Ontario. Both Mr. Emond and Mr. Kostuck come to the Commission after enjoying long and successful careers in police services.

Sadly, the year was also marked by the loss of Mr. Thomas G. Flanagan, S.C., who passed away suddenly in November of 2002. Mr. Flanagan was an invaluable member of the Commission from its inception in 1999. His support, expertise and comradeship are deeply missed.

Louise Cobetto
Chairperson
Military Police Complaints Commission

The Complaints Process



Part 1



INTRODUCTION

The Military Police Complaints Commission has exclusive responsibility for reviews of conduct complaints and for dealing with complaints of interference. It is also responsible for monitoring how the Canadian Forces Provost Marshal deals with conduct complaints.

Anyone not satisfied with the Provost Marshal's disposition of their complaint about the conduct of Military Police members can ask the Commission to review the matter.

Further, the Commission Chairperson may at any time in the public interest, cause the Commission to investigate either a conduct complaint or an interference complaint.

Anyone, whether a civilian or a member of the military, and whether they were affected personally, may complain about the conduct of Military Police members in the performance of their "policing duties or functions" (see *Annex F*).

FILING A COMPLAINT

Both conduct and interference complaints can be filed orally or in writing, to the Chairperson of the Commission, the Provost Marshal or the Judge Advocate General. In addition, a conduct complaint may be filed with any member of the Military Police.

Under the legislation, complaints are to be acknowledged as soon as practicable after they are received. The person who is the subject of the complaint is also to be given written notice of the substance of the complaint as soon as practicable, except in cases where the Provost

Marshal or the Chairperson believes that such notice could adversely affect or hinder their respective investigations.

INFORMAL RESOLUTION

The legislation encourages the Provost Marshal to attempt, if appropriate and consistent with the regulations, and with the consent of both sides, to resolve conduct complaints in an informal manner.

If a complaint is resolved informally, the Provost Marshal is nonetheless required to prepare a written report of the details, to be signed by both sides, and notify the Chairperson of the resolution of the complaint.

TIME LIMITS

Normally, a complaint must be filed within one year of the incident in question. However, at the request of the complainant, the Chairperson can decide if it is reasonable in the circumstances to extend the time limit.

A second time limitation applies to complaints about incidents that occurred before the Commission's mandate came into force on December 1, 1999. Complaints about incidents before that date should be directed to the Canadian Forces Provost Marshal, who will deal with them according to the procedures in effect prior to the existence of the Commission.

CHAIRPERSON'S REVIEW OF THE COMPLAINT

After completing the investigation of a conduct complaint, the Provost Marshal must provide a written report to both sides summarizing the complaint, setting out the findings of the investigation, and any action that will or will not be taken as a result of the investigation. The Provost Marshal's delegate, the Deputy Provost Marshal Professional Standards, usually writes these reports. This written report must also include notice of the complainant's right to ask the Commission to review the matter.

If a complainant is not satisfied with the disposition of the complaint, he or she can ask the Commission to review the matter.

This provision for review by the Commission also applies to conduct complaints that may be dismissed by the Provost Marshal on the grounds the complaint is "frivolous, vexatious, or made in bad faith," or that the complaint would be dealt with more appropriately under another legislated procedure.

INTERFERENCE COMPLAINTS

Military Police who conduct or supervise an investigation, or who have done so, can complain to the Commission about interference with their investigations by any Canadian Forces member of any rank, or by officials of the Department of National Defence.

An interference complaint may include abuse of authority and intimidation.

INVESTIGATIONS IN THE PUBLIC INTEREST

The Commission's Chairperson may, at any time, cause the Commission to conduct an investigation, and, if warranted, hold a hearing on a complaint, even in cases where the complainant has withdrawn the complaint.

If it is a conduct complaint, this decision by the Chairperson relieves the Provost Marshal of the obligation to deal with the complaint.

In 2002, the Commission published the *Guide Governing Public Interest Investigations conducted by the Military Police Complaints Commission* to assist anyone involved in such an investigation to better understand their role. (see *Annex H*)

HEARINGS

The Commission has substantial powers in the conduct of hearings, including administering oaths, compelling witnesses to give evidence under oath and to produce documents.

The Commission is also empowered to receive evidence and information, whether admissible in a court of law or not, subject to certain restrictions in the *National Defence Act*.

Normally, hearings will be open to the public, although exceptions can be made when factors such as the administration of justice and national security are a concern.

Any person who appears before the Commission can choose to be represented by legal counsel at a hearing.





Procedures to be followed by all persons involved in a hearing before the Commission are set out in the *Rules of Procedure for Hearings Before the Military Police Complaints Commission*, S.O.R./02-241, which came into force in June 2002 (see *Annex G*).

REPORTS

Every request for review submitted to the Chairperson and each public interest investigation or hearing leads to two reports – Interim and final.

Interim Report

The interim report states the Chairperson's findings and recommendations or, if a hearing has been held, those of the Commission.

Normally, the interim report is submitted to the Minister of National Defence, the Chief of the Defence Staff or the Deputy Minister, depending on whether the complaint concerns a member of the military or a senior official in the Department, the Provost Marshal and the Judge Advocate General.

In the case of an interference complaint, the interim report is usually reviewed by the Chief of the Defence Staff, and for conduct complaints, the Provost Marshal, except in cases where they are the subject of the complaint, or are precluded from doing so for other reasons, for example, the principles of fairness and natural justice. In any event, the person who reviews the interim report must respond to the Chairperson and the Minister with a 'Notice of Action,' outlining any action that has been taken or will be taken with respect to the complaint.

While not binding, if there is a refusal to act on any of the Chairperson's findings or recommendations, the Notice of Action must provide an explanation for not acting.

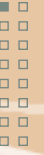
Final Report

After considering the official written response to the interim report, the Chairperson prepares a final report of findings and recommendations.

Copies of the final report are given to:

- the Minister of National Defence;
- the Deputy Minister of National Defence;
- the Chief of the Defence Staff;
- the Judge Advocate General;
- the Provost Marshal;
- the complainant;
- the person who is the subject of the complaint; and
- all persons who have satisfied the Commission that they have a substantial and direct interest in the complaint.

Operations



Part 2



INTRODUCTION

The Military Police Complaints Commission is a civilian oversight body with respect to any conduct complaint as defined in Part IV of the *National Defence Act*. The letter, as well as the spirit, of the Act provides for a broad monitoring power over conduct complaints.

The Act contains a number of provisions allowing the Complaints Commission to closely monitor every step in the handling of conduct complaints by the Provost Marshal and to intervene as required.

One such provision is section 250.25 which states: “The Provost Marshal shall establish and maintain a record of all complaints received under this Division and, on request, make available any information contained in that record to the Complaints Commission.” Section 250.25 is of general scope and concerns the content of the record regardless of the outcome of the complaint.

The Military Police Complaints Commission responded to numerous enquiries during 2002. Excluding general requests for information, and matters determined to be outside the Commission’s mandate, these enquiries can be placed into one of five categories: conduct complaints; requests for review; interference complaints; investigations in the public interest and withdrawal of complaints.

According to section 250.2 of the *National Defence Act*, complaints cannot be made more than one year after the event giving rise to the complaint; however, this same section of the Act allows the Chairperson to extend this time limit at the request of the complainant, and if it is reasonable in the circumstances. The Chairperson exercised this discretion on two occasions during 2002.

A full summary of the number and type of complaints received and their disposition is provided in *Annex E* to the Annual Report.

CHAIRPERSON’S FINDINGS AND RECOMMENDATIONS

Whether it is a review of a conduct complaint, the investigation of an interference complaint or an investigation or hearing in the public interest, the process concludes with the issuing of a final report by the Chairperson. The final report sets out the findings of the review, hearing or investigation, the Chairperson’s recommendations and the response to those recommendations contained in the Notice of Action from the appropriate authority. The final report also reflects any modifications to the findings and recommendations included in the interim report as a result of the Chairperson’s consideration of the Notice of Action. In the case of a conduct complaint, that authority is most often the Canadian Forces Provost Marshal; for an interference complaint, the Chief of the Defence Staff usually prepares the Notice of Action.

In summarizing the findings of the reviews and investigations conducted during 2002, there are a number of issues regarding the processing of complaints to which special attention should be drawn.

The importance of the initial contact with the complainant cannot be overstated. It is essential that appropriate assistance be provided to the complainant to help them state their complaint clearly and accurately. If not prepared by the complainant, a written copy of the formal complaint should be given to the complainant, and it should be discussed with him or her to ensure its accuracy. Complainants should also be advised of the next steps in the process, and given an overview of what they can expect as the complaint process moves forward.

The Commission also notes cases where Professional Standards has relied on results of an investigation conducted by the Canadian Forces National Investigation Service (CFNIS) to determine whether a complaint about the conduct of a Military Police member was well-founded. The CFNIS is responsible for investigating any criminal or service offence.

Professional Standards investigations into Military Police conduct is usually held in abeyance until any criminal investigation that may be related to the incident has been completed. This procedure does not, however, intend that a criminal investigation should be used as a replacement for a Professional Standards investigation. A finding of “no criminal wrongdoing” is not necessarily the same as a finding of “no police misconduct.”

The CFNIS and Professional Standards have different mandates, and their services should be deployed accordingly.

Interference with Military Police investigations is an ongoing concern; indeed, the need to protect the independence of their investigations was a primary factor in the creation of the Military Police Complaints Commission, and its unique mandate to receive and investigate complaints of interference from Military Police members.

In 2002, it was suggested that there could be circumstances where a case can be made for “appropriate interference” with a Military Police investigation. This is a most dangerous idea, and simply entertaining the notion that an intervention by the Chain of Command is appropriate in any circumstances calls the independence of the Canadian Forces Military Police into question.

While section 250.19 (1) of the *National Defence Act* states that a member of the Military Police may complain if a member of the Canadian Forces or a senior official of the Defence Department has “improperly interfered” with an investigation, as Chairperson, I disagree most strongly with any suggestion that this wording is intended to infer the existence of “proper” interference.





CONDUCT COMPLAINTS – REQUESTS FOR REVIEW

Selected Case Summaries

1. ALLEGED REFUSAL TO INVESTIGATE; OBSTRUCTION OF JUSTICE; NEGLIGENCE OF DUTY; UNPROFESSIONAL BEHAVIOUR

The Commission was asked to review the disposition by Professional Standards of numerous allegations contained in a total of seven conduct complaints lodged by a former member of the Canadian Forces. The complainant had gone to the Military Police with a series of allegations of wrongdoing by Military Police members. Subsequently, he filed a number of conduct complaints, alleging Military Police members had either refused to investigate his allegations, or failed to investigate them properly.

Upon initial review, the Commission determined that two of the complaints fell outside the Commission's mandate, in that they related to incidents that occurred prior to December 1, 1999, before the Commission's mandate came into force.

The Commission reviewed the remaining five complaints, and in her interim report, the Chairperson issued a total of 29 findings and made 6 recommendations, all of which were accepted by the Canadian Forces Provost Marshal.

Of note in this case is the concept of “duty to assist.” The Professional Standards disposed of one complaint on the grounds the Military Police member whose conduct was in question was not performing a policing duty or function, and therefore the complaint against him was not eligible for review. While coming to such a conclusion is permitted by the legislation, the Professional Standards' letter to the complainant referenced the *National Defence Act* and the *Military Police Policies and Technical Procedures Directives* to support the finding.

Citing the entire contents of legislation to support a specific finding is not particularly helpful to complainants trying to understand why their complaints are not being reviewed, and thus is not in keeping with the “duty to assist” that exists for the members of any police service. The Chairperson recommended that Professional Standards' letters to complainants and subjects of complaint quote precise sections of legislation or policy when making specific determinations.

The Canadian Forces Provost Marshal agreed with the Chairperson's recommendations.

2. ALLEGED UNLAWFUL DETENTION; UNPROFESSIONAL CONDUCT

In this case, the complainant made three allegations against a member of the Military Police. Quoting from the *Military Police Complaint Form* submitted by the complainant, the allegations were:

- “Unlawful arrest/detention – was not told details of the offence until asked.”
- “I was told that I was charged with an offence, when I was not charged.”
- “I was issued five tickets because I did not confess to a hit-and-run.”

These allegations were subsequently paraphrased in the tasking instructions to the Professional Standards investigator assigned to the case as:

- Question 1: Was (the complainant) unlawfully arrested?
- Question 2: Was (the complainant) lied to?
- Question 3: Was the issuance of five TVTs (Traffic Violation Tickets) excessive?

Of these questions, only the first partially addresses any of the complainant’s stated concerns. Given this paraphrasing, it is somewhat understandable that the eventual results of the Professional Standards investigation would not be fully satisfactory to the complainant.

Despite these instructions, and much to his credit, the Professional Standards investigator went beyond the specific instructions he had been given, and was able to answer some of the issues raised by the complainant.

Notwithstanding the investigator’s efforts, the final letter from Professional Standards to the complainant explaining the findings of the investigation and the action taken, returned to the incomplete allegations as stated in the tasking instructions.

The Professional Standards’ letter stated that the investigation found the complainant had not been arrested, and thus the complaint of ‘unlawful arrest’ as investigated by Professional Standards was not supported. The Professional Standards investigation did find the complainant had been detained, but does not state whether the detention was unlawful, and thus failed to address the actual complaint of “unlawful arrest/detention.”

The investigation also found the complainant had not been “lied to,” but that issuing five traffic tickets to the complainant was excessive. The letter further advises that as a result of the latter finding, the Military Police member did not act professionally, and that the member’s actions will be brought to the attention of the Chain of Command “for remedial action as deemed necessary.”

The Commission’s review of this complaint again draws attention to the fundamental importance of Military Police discharging their duty to assist. Had the complainant been contacted at the outset to ensure that Professional Standards understood the precise nature of the complaint, it is entirely possible this matter might never have been referred to the Commission for review.





Also worthy of note relative to this case is the statement in the final Professional Standards' letter stating that the Military Police member would be subject to "remedial action as deemed necessary." This rather vague statement is unlikely to satisfy the need of a complainant to see that justice has been served.

In her review of this complaint, the Chairperson found this statement meets neither the spirit nor the intent of section 250.29(c) of the *National Defence Act*, which stipulates the complainant is to be provided with "a summary of any action that has been or will be taken with respect to the disposition of the complaint."

Returning to the original complaint, as stated on the *Military Police Complaint Form*, the Chairperson found the complainant had been detained unlawfully, and that despite believing he had been charged in relation to a hit-and-run, he had not in fact been charged. That said, the Chairperson did not find the Military Police member used the threat of laying charges in an attempt to extract a confession from the complainant.

The Chairperson also found substance to the complainant's belief that he was issued five traffic tickets because he refused to confess to the hit-and-run.

The Canadian Forces Provost Marshal accepted all of the findings and recommendations issued by the Chairperson with regard to the review of this complaint.

3. ALLEGED RECKLESS DRIVING

The complainant requested a review by the Commission of his complaint that members of the Military Police, while conducting a surveillance operation, engaged in reckless driving by going through a red light, passing other vehicles on a solid yellow line, and exceeding the posted speed limit.

In the final letter summarizing the Professional Standards investigation of this complaint, Professional Standards advised that, while the complainant's allegations were supported, the actions of the military police involved were "justified given the circumstances." The letter concluded that the Military Police members "...acted professionally and in accordance with established Military Police Policies..."

The Commission's review of this complaint found that the Military Police members involved did not contravene the Military Police surveillance policy. Nonetheless, the Chairperson also found that this policy is inadequate in that it does not address several key issues, including public safety and the rule of law, and recommended that it be amended to do so.

The Chairperson also found the Military Police members involved contravened many sections of *Standard Operating Procedure 117 – Vehicle Use*, and did not act in accordance with Military Police policies, the law, or the requirements outlined in the *Canadian Forces National Investigation Service Surveillance Training Handbook*.





The Chairperson is pleased to note that the Canadian Forces Provost Marshal accepted all of the recommendations of this review, and that the *Military Police Policies and Technical Procedures Directives* with respect to surveillance have been modified and improved. In the words of the Provost Marshal, “This report has served to improve the professionalism of the Military Police in their conduct of surveillance operations.”

The father-in-law complained that since both he and his daughter-in-law were civilians, the Military Police had no authority to contact him, or involve themselves in any way.

In a report on the complaint, Professional Standards concluded that the Military Police members had acted professionally and in accordance with established Military Police procedures.

4. JURISDICTION OF MILITARY POLICE

A civilian requested a review of the disposition of his complaint against the conduct of Military Police members he believed had exceeded their jurisdiction by contacting him with regard to a dispute with his daughter-in-law over a civil matter.

In reviewing this complaint, the Chairperson found that police would not normally become involved in the enforcement of a separation agreement, unless it was specifically documented in a Court Order that they must do so, or there were some other compelling reason, such as a threat of violence. Neither was present in this case, and the Chairperson found that Military Police had no authority to contact the complainant, or request that he return the documents in question.

The daughter-in-law, a former clerk in the Canadian Forces Reserves, had contacted the Military Police, alleging that her father-in-law was refusing to return her children’s legal documents, and thus was in violation of a civil separation agreement between her and her spouse, a member of the Canadian Forces. The Military Police member contacted the father-in-law to ask him to return the documents. When the man refused to return the documents, Military Police members contacted a member of the Ontario Provincial Police (OPP) with a request that the OPP contact the father-in-law and ask him to return the documents. An OPP officer subsequently contacted the man, and he agreed to surrender the documents in question.

The Canadian Forces Provost Marshal accepted all the findings and recommendations of this review. The Provost Marshal gave priority attention to amending Military Police policies and training with regard to Military Police handling of civil matters, and since October of 2002, policies similar to those in place at other Canadian police services have been part of the *Military Police Policies and Technical Procedures Directives Manual*.

INTERFERENCE COMPLAINTS

It is essential that Military Police are able to carry out their policing duties and functions with complete independence, and freedom from interference with their investigations by the non-Military Police Chain of Command. The Parliament of Canada recognized this with amendments to the *National Defence Act* in 1998. Section 250.19 (1) of the Act states,

“Any member of the Military Police who conducts or supervises a Military Police investigation, or who has done so, and who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with the investigation may make a complaint about that person under this Division.”

The Act gives the Military Police Complaints Commission exclusive jurisdiction over the investigation of interference complaints.

The Commission issued one final report on an interference complaint in 2002.

Case Summary

– Interference Complaint

A Military Police member complained to the Commission that an officer in the Canadian Forces had interfered with two Military Police members engaged “in the lawful performance of their duties.” The complainant was the supervisor of the two Military Police members in question.

Specifically, the complainant alleged that the Canadian Forces officer directed the two Military Police members into his office to explain their actions while they were processing a traffic infraction against a member of the Canadian Forces.

The complainant further alleged that when the Military Police members advised the officer that his actions could be construed as interference, the officer told the Military Police members they were being insubordinate.

As a result of her investigation, the Chairperson found the officer in question interfered with a Military Police investigation, and recommended the officer attend a Military Police familiarization program in order to understand the need for Military Police to operate independently of the Chain of Command.

Of special interest in this case is the response of the Chief of the Defence Staff to one of the Chairperson’s findings, specifically, the finding that no member, officer or official within the Canadian Forces and the Department of National Defence has discretionary authority to interfere with Military Police members when they are conducting police duties.

In his Notice of Action, the Chief of the Defence Staff noted that, “There may be circumstances in which intervention is necessary to ensure commanders are in a position to carry out their command responsibilities.” The Chief of the Defence Staff also pointed out that there may be cases where a superior has an interest, even a duty to intervene if there is an obvious abuse or improper situation occurring. In support of this point, the Chief of the Defence Staff noted that section 250.19 of





the *National Defence Act* refers to “improper” interference, the implication being that the framers of the Act intended that there could be such a thing as “proper” interference.

The only situation the Chairperson can foresee of “proper” interference or intervention, at this point, is the Military Police superior who is properly exercising his supervisory capacity over a Military Police subordinate, for example, in a situation where the Military Police member is abusing his power or has neglected to interview a witness. A clear distinction must be made between a Military Police member properly exercising his supervisory capacity and a non-Military Police superior who attempts to interfere with or intervene in an investigation.

Throughout his Notice of Action, the Chief of the Defence Staff appears to be making a distinction between an “intervention” by Commanders in a Military Police investigation and “interference” with these police investigations. The Chairperson recommends caution in making such a distinction. Any incursion on a police investigation must be very carefully considered. Appropriate instructions given by authorized managers do not constitute an infringement in the conduct of the investigation, but there is a very fine line to be drawn: it is important that these instructions be defined in very precise terms. “Intervention” by the Chain of Command could be perceived as, and may well constitute, “interference” with a police investigation.

The Chairperson stood by her findings, and reaffirmed that the Military Police Complaints Commission will continue to pursue complaints of this nature vigorously.



PUBLIC INTEREST INVESTIGATIONS



Section 250.38 (1) of the *National Defence Act* states that “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.”

In the case of a conduct complaint, the Chairperson’s decision to initiate a public interest investigation relieves the Canadian Forces Provost Marshal of responsibility for the investigation.

The Chairperson’s power to undertake investigations of this type is essential to the integrity of the entire complaints process, ensuring that fairness and transparency are maintained, and are seen to be maintained.

To further enhance fairness and transparency, the Commission published the *Guide Governing Public Interest Investigations conducted by the Military Police Complaints Commission* (see *Annex H*) in December of 2002. The Guide was created to ensure that this type of investigation runs smoothly in order to meet the Commission’s obligation to deal with complaints as informally and expeditiously as the circumstances and fairness permit, in accordance with section 250.14 of the Act.

For the most part, this Guide applies to the Complaints Commission interviewing witnesses as part of a public interest investigation. There may be, when deemed appropriate by the Complaints Commission, a preliminary gathering of facts by an investigator.



The Guide is not enforceable, thus no infraction can or will be sanctioned by the Complaints Commission. It is not intended to be a regulatory instrument, but rather a tool to assist anyone involved in such an investigation to better understand their role and, in doing so, contribute both to the mandate entrusted to the Commission, and to maintaining the transparency of the complaints process. The Commission plans to use the Guide whenever possible.

During 2002, the Chairperson issued a final report on a public interest investigation, which began in 2001. In another case, the Chairperson caused the Commission to conduct a public interest investigation under section 250.38 of the Act. The latter investigation, now in progress, is based on two complaints concerning a single incident that will be investigated jointly.

Case Summary – Public Interest Investigation

ALLEGED IMPROPER, INCOMPLETE,
INACCURATE AND BIASED INVESTIGATION

Background

Two senior officers, both members of the Military Police, filed complaints alleging improper conduct and supervision of a total of three investigations by the CFNIS.

As a result of these investigations, one officer was charged with four offences under the *National Defence Act*. Although only one of the two was charged, based on the findings of the CFNIS investigations, the Deputy Provost Marshal Professional Standards suspended the Military Police credentials of both officers.

The officer facing charges under the Act was found guilty on all four counts by the Court Martial. These convictions were subsequently overturned and verdicts of not guilty were entered on all four of the charges by the Court Martial Appeal Court.

The Military Police credentials of the second officer, who was never charged with an offence, were reinstated, although the Provost Marshal set a number of terms and conditions for the re-instatement.

A Military Police Credentials Review Board also re-instated the credentials of the officer who was charged under the Act. The Provost Marshal directed the re-instatement of this officer's credentials, albeit with conditions, after the officer was convicted by the Court Martial, but before the convictions were overturned by the Court Martial Appeal Court.

Reason for Public Interest Investigation

In filing their complaints about the conduct of the investigations, both officers asserted that they had not been treated fairly or impartially, and perceived a bias on the part of the Provost Marshal. Both complainants noted that since officials in the office of the Provost Marshal had taken decisions based on the results of the CFNIS investigations, i.e., the revocation of their Military Police credentials, a conflict of interest situation existed, and requested that the Commission investigate their complaints.

The Chairperson also noted that one of the officers being investigated, the officer overseeing the CFNIS investigation, and the officer with the authority to suspend Military Police credentials, were all of the same rank. Further complicating the matter, at the time of the investigation, all three were competing for an appointment to the same higher position within the Military Police hierarchy.

The Chairperson agreed that a reasonable apprehension of bias existed, and determined it would be in the public interest to cause the Commission to conduct the investigation into the complaints.

Request for Review of Interim Report
by the Chief of the Defence Staff

Under section 250.49(1) of the *National Defence Act*, the Provost Marshal has the responsibility to review the Chairperson's interim report of a conduct complaint, unless the Provost Marshal is the subject of the complaint. While the Provost Marshal was not the subject of the complaint in this case, for the reasons noted above, the Chairperson believed it would be contrary to both the spirit of the Act as well as the rules of natural justice and fairness for the Provost Marshal to review the interim report in this case. Thus, the Chairperson asked that the Chief of the Defence Staff review the interim report and prepare the Notice of Action for this public interest investigation.

The Chairperson regrets that her request was not accepted by the Chief of the Defence Staff, and that the Notice of Action responding to the findings and recommendations contained in the interim report was prepared by the Provost Marshal, a reviewing authority against which a bias was alleged and acknowledged by the Commission. The Chairperson considered the Notice of Action a crucial step in the complaint process.

Chairperson's findings and Recommendations

As a result of this public interest investigation, the Chairperson made a total of 24 findings and issued 10 recommendations. Some of these findings and recommendations dealt with circumstances specific to the case at hand, while others concerned some much broader issues. The sections following do not detail all of the Chairperson's findings and recommendations, but are intended to acquaint the reader with some of the key issues involved in this case.

A. Canadian Forces National Investigation Services investigation (CFNIS)

The Commission's investigation found erroneous and incomplete information in an investigative report prepared by the CFNIS, and in a related court brief prepared for the Regional Military Prosecutor. Indeed, the Chairperson found that this erroneous and incomplete information may have been responsible for the decision to charge and prosecute the officer.





The Chairperson regrets that the Provost Marshal did not accept this finding, but is pleased to note that in the Notice of Action, the Provost Marshal recognizes the seriousness of this issue, and states that measures will be taken “to reinforce the importance of ensuring the complete accuracy of statements attributed to personnel interviewed in the course of an investigation.”

B. “zero tolerance”

Also of concern to the Chairperson in this case was the application of a “zero tolerance policy” regarding the laying of charges. Zero tolerance means, simply, that if there is evidence to form a reasonable belief that an offence has been committed, a charge must be laid. In essence, such a policy abandons the discretion, inherent to police work, about whether to lay charges.

For the Canadian Forces Military Police, this approach had its origins in the events leading up to the major changes in the military justice system included in amendments to the *National Defence Act* in 1998. In an effort to ensure the system would be seen as above reproach, and that there could be no perception that the Chain of Command was enjoying any favouritism, the Provost Marshal of the time instructed that “zero tolerance, mandatory charge with evidence” was the policy.

The objective – to develop a policy on investigations that will not overlook wrongdoing or be improperly influenced by the Chain of Command – is good, but the strict application of the policy may cause harm. A “zero tolerance” approach may end up sacrificing the innocent in order not to miss the guilty.

While there may be a place in military policing for some restrictions on police discretion, removing it completely can lead to harsh consequences out of proportion to the alleged misconduct. A policy of zero tolerance also short circuits the checks and balances that exist within the system.

For example, the *Queen’s Regulations and Orders* article 107.12 gives a Commanding Officer the authority to decide not to proceed with a charge laid by a member of the Military Police assigned to the CFNIS. In this case, the Commanding Officer did so, providing several reasons, among them, that the matter should have been resolved administratively and internally.

If the CFNIS member believes that the charge should proceed nonetheless, this same section of the *Queen’s Regulations and Orders* allows the CFNIS member to refer the matter to a referral authority, essentially, an authority farther up the Chain of Command. This procedure is detailed in article 109.03 of the *Queen’s Regulations and Orders*.

In this case, the referral authority also recommended against proceeding with the charges, outlining the reasons for this recommendation in a letter, as required, to the Director of Military Prosecutions. The Director of Military Prosecutions did not accept this recommendation, and proceeded to prefer the charges against the officer in question.

The Chairperson recommended that the Canadian Forces Provost Marshal reconsider the “zero tolerance” approach, with the proviso that any change in policy on the use of discretion be accompanied by relevant training on the appropriate exercise of discretion.

While disputing whether “zero tolerance” was ever in fact a stated “policy,” in the Notice of Action, the Canadian Forces Provost Marshal advises that CFNIS investigators are being encouraged to exercise greater discretion in accordance with existing policies and procedures. The Chairperson is also pleased to note, in response to this recommendation, the development of a CFNIS interim policy on discretion, and other new work instruments available to provide guidance to investigators in this area.

C. Investigation of offences by Military Police personnel

The *National Defence Headquarters Police Directive: Revised Military Police Investigation Policy*, distributed in May of 1999, sets out guidelines to be followed for the investigation of offences alleged to have been committed by members of the Military Police.

The investigative continuum set out in *Annex F* to this policy indicates that if the subject of the investigation is a Military Police/CFNIS member and a sensitive offence is involved, the investigation should be conducted jointly by the CFNIS and a civilian police agency, or exclusively by a civilian police agency. A sensitive offence is defined, among other things, as an offence involving a senior officer. Whether outside investigators are actually engaged however, remains at the discretion of the Provost Marshal.

In this case, a Royal Canadian Mounted Police (RCMP) Inspector was assigned to take part in the investigation with the CFNIS, an arrangement that might ordinarily meet the requirements of the policy. In this situation, the Chairperson found that not to be true.

In the first instance, the RCMP Inspector in question was not the lead investigator. Further, he had been seconded to the CFNIS some months earlier and, according to the terms of his secondment, was under the direction, control, supervision and instruction of Military Police management.

In the Notice of Action, the Provost Marshal agreed that the RCMP Inspector could not be considered “outside” the CFNIS.

D. Solicitor-client privilege

Military Police are required by the *Queen’s Regulations and Orders for the Canadian Forces* to consult with legal counsel from the Office of the Director of Military Prosecutions about the laying of charges. In order to conduct a thorough investigation, the Chairperson of the Military Police Complaints Commission may need to review the legal opinions requested by the Military Police in the process leading up to the laying of charges, as well as the police brief upon which the legal opinions are based.

It is important to note that the Commission is not reviewing the legal opinions themselves; rather, it needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information. The ability of the Commission to monitor the actions of the Military Police is seriously limited if the information that influences those actions is withheld on the grounds of solicitor-client privilege.

When a civilian police agency consults Crown prosecutors, the privilege in any resulting legal opinion belongs to the police. In other words, as the client, the decision to waive solicitor-client privilege rests with the police. In the





Canadian Forces, current administrative procedures do not allow the Provost Marshal the same option. The Provost Marshal advised in her Notice of Action that the decision to waive solicitor-client privilege is made by the Minister of National Defence.

The Chairperson is very concerned with this situation, one that goes to the heart of the independence of the Military Police. It is a well-established principle that police, in the performance of their policing function, are and must remain independent from the Executive Branch of Government.

In expressing this concern, the Chairperson is not expressing the view that the Minister of National Defence is directing investigations by the Military Police. The Chairperson is pointing out that the public perception of the independence of a police service is crucial to fostering confidence and trust in the justice system.

Chairperson's Conclusion

While it is evident much needs to be done in fostering an appreciation for situations that present a real or perceived conflict of interest, or a reasonable apprehension of bias, the Chairperson is pleased with the positive results of the Commission's investigation of these complaints. CNFIS personnel will be provided with enhanced training in the areas of report writing and professional development. They will have continued encouragement, direction and, it is hoped, training in the appropriate use of police discretion.

Note: The complete final report of this public interest investigation is available on the Commission's Web site, at www.mpcc-cppm.gc.ca.

Conclusion ■

Part 3

Looking back, 2002 was in many ways a year of change for the Military Police Complaints Commission, and I believe we have succeeded in meeting the challenges inherent in the process of change, and experienced positive growth as a result.

We implemented a number of new procedures and protocols to enhance our administrative structure, and ensure the Commission meets the standards expected as an agency of the Government of Canada.

We suffered the great loss of our friend and colleague, Mr. Thomas G. Flanagan, S.C., who had been with us since the beginning, but we welcomed three new Members to the Commission, and we enter 2003 with renewed strength and purpose.

The Commission was also an agent for change in 2002, demonstrating the benefits of civilian oversight of law enforcement. As a result of recommendations flowing from investigations conducted by the Commission, *Military Police Policy* was changed to reflect best police practices in dealing with domestic disputes, and in surveillance operations.

Interference with Military Police investigations remains a special concern for the Commission, thus it was appropriate that the first-ever Special Report published by the Commission, this past year, dealt with this very important subject.

In 2003, I am looking forward to the five-year review of the *National Defence Act*. Having worked closely with Part IV of the Act for some three-and-a-half years, I have become familiar both with its strengths, and with areas in which the intent of the legislation can be made stronger still. I will be proposing several changes that I believe will enhance the provisions of the Act and also serve to strengthen the positive and professional working relationship between the Military Police Complaints Commission, the Canadian Forces Provost Marshal and the Chief of the Defence Staff.

The Canadian Forces and the Department of National Defence are objects of great pride for Canadians. These are the men and women who have pledged themselves to safeguard our freedom and our democracy and to defend the cause of peace wherever in the world they may be called to serve. Again in 2002, members of the Canadian Forces made the ultimate sacrifice to this noble cause.

It is with deep and abiding respect for the members of the Canadian Forces that the Military Police Complaints Commission undertakes its role in ensuring they, and all Canadians, are served by a Military Police service that meets the highest standards of professionalism, integrity and independence.

Annex A • Biographies



LOUISE COBETTO
Chairperson

Ms. LOUISE COBETTO has been the Chairperson of the Military Police Complaints Commission since September 1, 1999. Prior to her appointment, Ms. Cobetto was a member of the “Tribunal administratif du Québec” (1998-1999) and a member of the “Tribunal d’appel en matière de protection du territoire agricole” (1994-1998). From 1990 to 1994, Ms. Cobetto occupied the position of Deputy Commissioner in the Office of the Quebec Police Ethics Commissioner, having previously served as the Secretary of the Quebec Police Commission (1988-1990). She was a Special Advisor and Legal Counsel to the Minister of Electoral Reform for the Province of Quebec. In addition, Ms. Cobetto practised law with Martineau Walker (now Fasken Martineau) in Montreal.

A past member of the “Conférence des juges administratifs du Québec”, Ms. Cobetto is a member of the Canadian Bar Association, International Association for Civilian Oversight of Law Enforcement (IACOLE), a member of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) and a member of the Council of Canadian Administrative Tribunals (CCAT).

Ms. Cobetto graduated in 1980 with a degree in law from the University of Montreal, where she received the Deacon Kennedy award for her outstanding academic record. She was admitted to the Quebec Bar in 1981.



PETER SEHEULT
Member

MR. SEHEULT has practised law in Grand Falls, New Brunswick for 23 years, and was a member of the New Brunswick Police Commission from 1995 to 2000, including two years as Chairperson.

As well as serving as Legal Counsel and Director of Legal Education for the New Brunswick School Trustees Association, Mr. Seheult has been a member of many professional committees, including the Council of Canadian Administrative Tribunals, the Council of the Canadian Bar Association, and the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE).

Mr. Seheult holds a Bachelor of Law degree and a Master of Education degree from the University of New Brunswick. He is also trained in mediation, and conducts arbitrations under the Canada Labour Code, and is an Adjudicator in the Small Claims Court of New Brunswick.



ODILON EMOND
Member

MR. EMOND of Lac Mégantic, Quebec, brings the benefit of more than 35 years' experience in police work to the Commission. Mr. Emond joined the Sherbrooke Police Department in 1963, before joining the Royal Canadian Mounted Police (RCMP) in 1975.

Over the course of the next 23 years, Mr. Emond held positions of increasing responsibility, including Head, Police Division with Interpol; Director, Criminal Intelligence Directorate; Director, International Liaison and Protective Operations Directorate, and Assistant Commissioner and Commanding Officer "C" Division (Province of Quebec). Mr. Emond retired from the RCMP in 1998.



HENRY KOSTUCK
Member

MR. KOSTUCK, from Orleans, Ontario, enjoyed an outstanding career with the Ontario Provincial Police (O.P.P.), which he joined in 1956. During his more than 30 years with the O.P.P., Mr. Kostuck served in a number of senior positions, including Chief Superintendent and Head, field Operations Division in Toronto, a position he held until his retirement in 1988.

After his retirement and prior to his appointment to the Military Police Complaints Commission, Mr. Kostuck served as an Investigator and Special Advisor to the Commission for Public Complaints Against the RCMP.

Annex B • Directors of the Commission

EXECUTIVE DIRECTOR

Mr. Robert A. MacDougall has been with the Commission since October of 2000, initially as Director of Operations, and since November of 2001, as Executive Director.

Mr. MacDougall has more than thirty years experience with the Government of Canada, in progressively senior positions in program, finance and human resources management. Mr. MacDougall also brings an extensive background in operations to the Commission, including significant police and security experience gained as a member of the Royal Canadian Mounted Police and with the Canadian Security Intelligence Service. He holds a Master of Business Administration degree from the University of Ottawa's Executive Program.

GENERAL COUNSEL AND DIRECTOR OF LEGAL SERVICES

Ms. Johanne Gauthier was named General Counsel and Director of Legal Services to the Commission in September of 2001.

A member of the Quebec Bar for more than ten years, Ms. Gauthier has substantial expertise and experience in criminal law, administrative law, investigation and police ethics.

Prior to joining the Commission, Ms. Gauthier was a civilian member of the Royal Canadian Mounted Police for over seven years, holding a number of positions of increasing responsibility, including Senior Prosecutor and Manager of Internal Affairs. Immediately preceding her appointment to the Military Police Complaints Commission, Ms. Gauthier served as Legal Counsel to Canada's Commissioner of Official Languages.

Federal representative on the Board of Directors of CACOLE;
Member of Council of Canadian Administrative Tribunal (CCAT);
Member of the Canadian Bar Association, National Military Law Section.

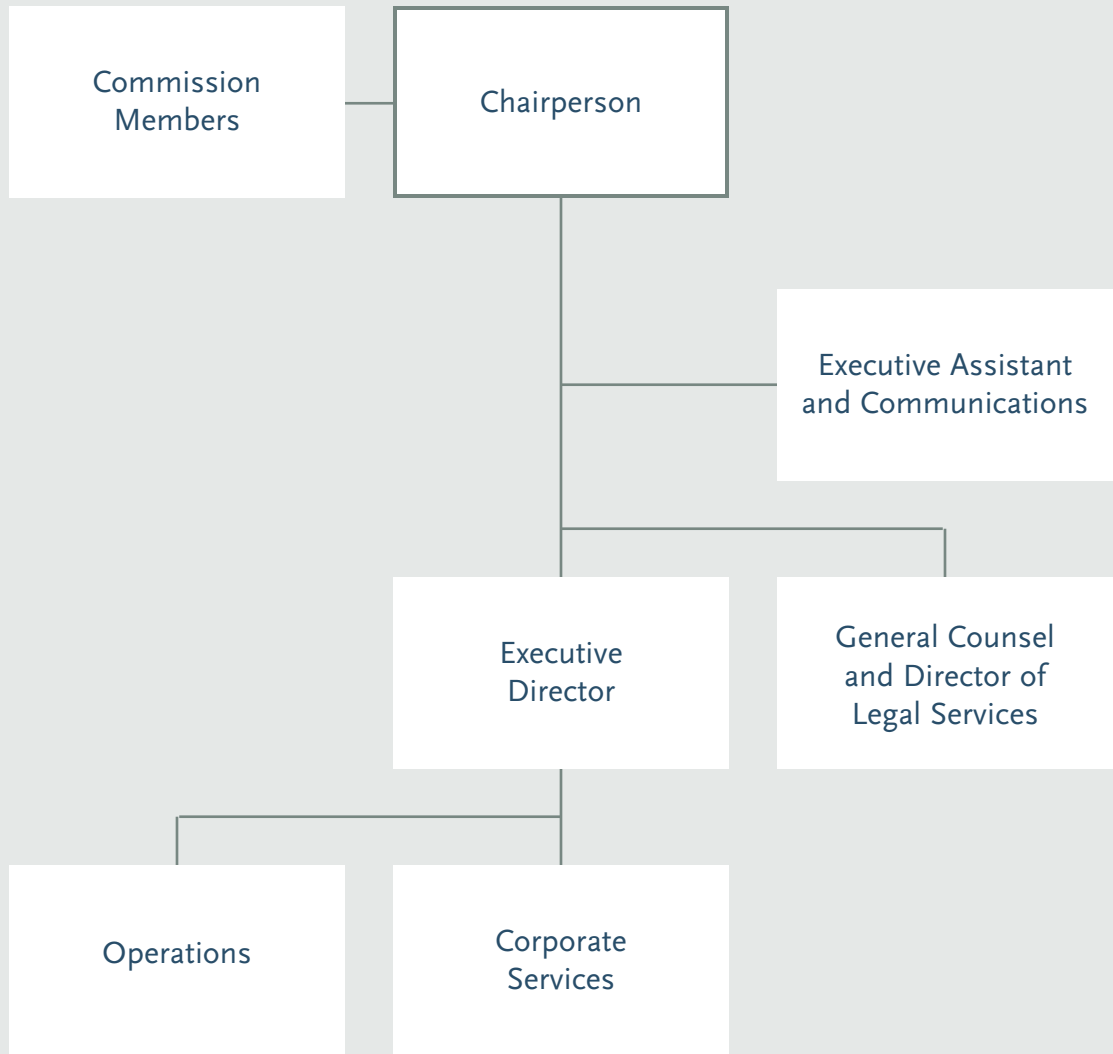
DIRECTOR OF OPERATIONS

Mr. Thomas Pedersen came to the Military Police Complaints Commission as Chief, Complaints Review and Investigations in April of 2001, and was promoted and appointed to the position of Director of Operations in November 2002.

Prior to his work with the Commission, Mr. Pedersen held a number of positions with increasing senior responsibilities in the Canadian Security Intelligence Service, where he served as a specialist in the areas of analysis and investigation beginning in 1992.

Mr. Pedersen obtained his undergraduate degree at McGill University, and also holds a Master's Degree in Education from Harvard University. He is a member of the Council of Canadian Administrative Tribunals (CCAT) and the Canadian Association for the Civilian Oversight of Law Enforcement (CACOLE).

Annex C • Organizational Chart



Annex D • Commission Budget

FINANCIAL STATEMENT

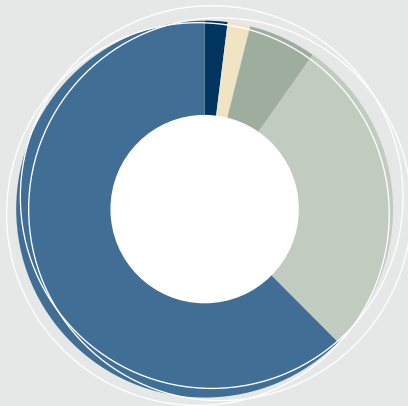
Although this Annual Report focuses on the Commission's activities for the year ending December 31, the following statement reflects the financial information in line with the annual appropriation from Parliament, which lapses on March 31.

Financial information included in the *Departmental Performance Report, Supplementary Estimates A*, the *Report on Plans and Priorities* and in the *Public Accounts of Canada* is consistent with that contained in this financial statement. The planned spending for the fiscal year ending March 31, 2003, is based on management's best estimates and judgements.

MILITARY POLICE COMPLAINTS COMMISSION STATEMENT OF OPERATIONS FOR THE YEAR ENDING MARCH 31

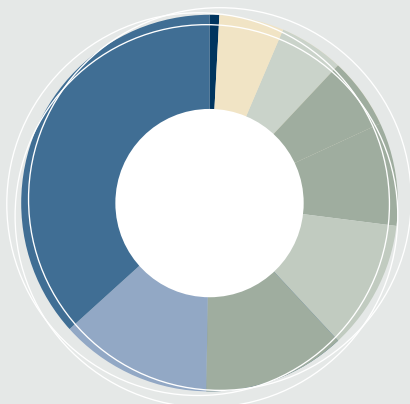
	2002-03 Planned Spending (in dollars)	2001-02 Actual (in dollars)
Salaries, wages and other personnel costs	1,795,000	1,250,468
Contributions to employee benefit plans	359,000	348,000
Sub-total	2,154,000	1,598,468
Other operating expenditures	2,049,650	2,036,490
Total use of appropriation	4,203,650	3,634,958
Add: Cost of services provided by other government departments	136,420	134,000
Total Operating Costs	4,340,070	3,768,958

Annex E • Case Statistics 2002



104 FILES OPEN

- 65 Conduct Complaints (S.250.18(1))
- 2 Interference Complaints (S.250.19(1))
- 6 Request for Review (S.250.31(1))
- 2 Special Power (S.250.38(1))
- 29 General Files Open
(Request for information/Outside Jurisdiction of MPCC)



145 ALLEGATIONS OF MISCONDUCT BY POLICING DUTIES AND FUNCTIONS*

- 53 (a) the conduct of an investigation
- 16 (b) the rendering of assistance to the public
- 9 (c) the execution of a warrant or another judicial process
- 13 (d) the handling of evidence
- 8 (e) the laying of a charge
- 1 (f) attendance at a judicial proceeding
- 19 (g) the enforcement of laws
- 8 (h) responding to a complaint
- 18 (i) the arrest or custody of a person

* Number of allegations will vary for each file; it depends on the incident and the number of Military Police involved.

407 Letters received (247 were from the Deputy Provost Marshal – Professional Standards)
 1055 Letters sent
 15 Interim reports*
 16 Final reports*

* The numbers of interim and final reports are different because three (3) of the final reports had the interim version completed in 2001. Also two (2) interim reports were completed in 2002 but not the final.

Annex F • Complaints about the Conduct of Members of the Military Police Regulations

INTERPRETATION

1. In these Regulations, “Act” means the *National Defence Act*. (Loi)

POLICING DUTIES AND FUNCTIONS

2. (1) For the purpose of subsection 250.18(1) of the Act, any of the following, if performed by a member of the Military Police, are policing duties or functions:
 - (a) the conduct of an investigation;
 - (b) the rendering of assistance to the public;
 - (c) the execution of a warrant or another judicial process;
 - (d) the handling of evidence;
 - (e) the laying of a charge;
 - (f) attendance at a judicial proceeding;
 - (g) the enforcement of laws;
 - (h) responding to a complaint; and
 - (i) the arrest or custody of a person.
- (2) For greater certainty, a duty or function performed by a member of the Military Police that relates to administration, training, or military operations that result from established military custom or practice, is not a policing duty or function.

WHEN NO INFORMAL RESOLUTION

3. Subsection 250.27(1) of the Act does not apply to a conduct complaint of any of the following types:
 - (a) excessive use of force;
 - (b) corruption;
 - (c) the commission of a service of civil offence;
 - (d) policies of the Canadian Forces Military Police;
 - (e) the arrest of a person;
 - (f) perjury;
 - (g) abuse of authority; or
 - (h) conduct that results in injury.

COMING INTO FORCE

4. These Regulations come into force on December 1, 1999.

Annex G • Rules of Procedure for Hearings Before the Military Police Complaints Commission SOR/2002-241

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.

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.

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

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))

SCHEDULE 2
(Paragraph 42(b))

SUMMONS TO A WITNESS BEFORE THE MILITARY
POLICE COMPLAINTS COMMISSION

DECLARATION AND UNDERTAKING

FILE NUMBER:

FILE NUMBER:

STYLE OF CAUSE:

STYLE OF CAUSE:

NAME OF WITNESS:

I hereby undertake that

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.

- (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.

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)

(Date)

(Signature)

(Signature)

(Name)

(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.

Annex H • Guide Governing Public Interest Investigations Conducted by the Military Police Complaints Commission Pursuant to Section 250.38 of the National Defence Act

PREAMBLE

The Guide Governing Public Interest Investigations conducted by the Military Police Complaints Commission was created to ensure that this type of investigation runs smoothly in order to meet the Complaints Commission's obligation to deal with complaints as informally and expeditiously as the circumstances and fairness permit, in accordance with section 250.14 of the *National Defence Act*. It is important to remember that the public interest investigation of the Commission is not a criminal investigation.

In order to maintain transparency, this Guide has been designed as a tool to assist everyone involved in such an investigation to better understand their role and, in doing so, contribute to the mandate entrusted to the Complaints Commission. As this Guide is not enforceable, no infraction can or will be sanctioned by the Complaints Commission. The Complaints Commission simply intends to use the Guide, whenever possible.

For the most part, this Guide applies to the Complaints Commission interviewing witnesses as part of the public interest investigation. There may be, when deemed appropriate by the Complaints Commission, a preliminary gathering of facts by an investigator.

Interpretation

1. The following definitions apply in this Guide.

“Act” means the *National Defence Act*.

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

“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, microform, tape or computerized or sound recording, or any reproduction of that information.

Application

2. This Guide applies to investigations conducted under section 250.38 of the Act in the context of a conduct or an interference complaint.

Suspension of the Guide and Change of Time Limits

3. The Complaints Commission may adjourn an investigation, suspend in whole or in part any application of this Guide and extend or abridge a time limit in which an act is to be done and shall inform the witnesses of any such decision.

Computation of Time

4. If a time limit set out under this Guide 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.

Where a time limit is expressed to begin on a specified day, the time limit does not include that day; however, it includes the final day of the deadline.

Rulings on Procedure

5. If a question that is not provided for in this Guide arises in the course of an investigation, 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.

Consolidation or Severance of Investigations

6. The Chairperson may order that a single investigation deal with a number of complaints or that separate investigations be conducted.

Counsel

7. 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 witnesses on the procedures of the investigation;

(b) to question the witnesses; and

(c) to provide, when the Complaints Commission deems it necessary, the Complaints Commission with a summary of the evidence presented during the investigation and a summary of the law.

Change of Address or Numbers

8. The Complaints Commission asks that each witness advise it, without delay and in writing, of any change of address, telephone number, facsimile number or electronic mail address.

Nature of Investigation

9. (1) The purpose of the investigation is to obtain statements and documentation to enable the Complaints Commission to weigh complainants' allegations as fairly as possible or to allow the Chairperson to write her report or decide, if warranted, to hold a public hearing.

(2) The investigation is neither a public hearing nor a debate. Only persons authorized by the Complaints Commission may attend the investigation.

(3) The Complaints Commission may receive any information that it considers necessary to the full investigation and consideration of matters before it. To this end, the Complaints Commission is not bound by the rules of evidence in civil or criminal proceedings.

Notice of Investigation

10. (1) When the Chairperson decides to cause an investigation to be held by the Complaints Commission, she shall send a written notice of her decision to the complainant, the person who is the subject of the complaint, the Minister, the Chief of the Defence Staff or Deputy Minister, as the case may be, the Judge Advocate General and the Provost Marshal.

(2) No notice shall be sent to the person who is the subject of the complaint if, in the Chairperson's opinion, sending the notice might adversely affect or hinder the conduct of the investigation.

Notification

11. (1) Notification of the investigation is effected by registered mail, courier or facsimile with proof of receipt, or in person.

(2) Notification in person should be effected as follows:

- (a) in the case of a 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 notified or with an authorized representative of the person or to another person who appears to be at least 18 years of age and who

(i) resides at the same residence as the person being notified, or

(ii) is employed at the same place of employment as the person being notified.

Documents

12. The Complaints Commission asks that any document to which a witness wishes to refer in its testimony, or that the Complaints Commission considers necessary for the full investigation and consideration of matters before it, be provided to the Complaints Commission at least seven days before the commencement of the interviews.

Interviews

13. The Complaints Commission may interview any person if it believes that the person has information or documents that the Complaints Commission considers necessary for the full investigation and consideration of matters before it.

14. (1) A person who chooses not to be interviewed, may provide the Complaints Commission with a written statement accompanied by any relevant documentation.

- (2) If a person decides not to be interviewed, the Complaints Commission asks to be advised of this in writing as soon as possible.
15. (1) The Complaints Commission will notify the witness by registered mail, messenger or facsimile twenty days before the interview date:
- (a) of the date and time of his interview;
 - (b) of the location; and
 - (c) of his right to be accompanied by a person of his choice.
- (2) The time limit for notifying a witness may be abridged or extended if the Complaints Commission deems it appropriate.
16. (1) In scheduling witnesses' interviews, the Complaints Commission will attempt to minimize scheduling conflicts with military operational manœuvres or activities.
- (2) The Complaints Commission asks that witnesses involved in military manœuvres or operations that conflict with the dates proposed for their interview notify the Complaints Commission in writing as soon as possible.
17. (1) *The National Defence Act* grants the Commission no power in respect of witnesses called to be interviewed in the context of its public interest investigations nor does it provide any protection for these witnesses against the use of their statement as evidence in the course of a criminal, civil or administrative proceeding. However, the public interest investigation of the Commission is not a criminal investigation
- and a witness who chooses to make a statement is not obliged to answer all questions.
- (2) The Complaints Commission may ask a witness to complete a statement form similar in substance to Schedule 1.
18. To protect the integrity of the investigation, the Complaints Commission asks that witnesses and persons accompanying them do not disclose any part of their interview or statement, and any discussions stemming from their interview to anyone, with the exception of their counsel, should they have retained one.
19. The Complaints Commission may record, by mechanical or any other appropriate means, all testimony made during the investigation.

Coming into Force

20. This Guide applies to all current public interest investigations held pursuant to section 250.38 of the Act.

For further information, please contact Suzan Fraser, Registrar of the Complaints Commission, at (613) 947-5750.

Ottawa, December 11, 2002

Louise Cobetto
Chairperson
Military Police Complaints Commission

Updated March 3rd, 2003

Schedule 1

(Subsection 17(2))

STATEMENT FORM

Name:

Address:

Telephone Number:

Date/Time:

Location of Interview:

I, _____, am conducting an investigation into a
(Investigator's name)
complaint(s) about or by the Military Police pursuant to Part IV of the *National Defence Act*.

I, _____, understand that I am under no obligation to
(Name)
provide a statement. I am aware that my statement may be used in evidence during any procedure under Part IV of the *National Defence Act* or any criminal, civil or administrative proceedings. I further understand that any statement made, or information provided, may be used in whole or in part in reports by the Chairperson or the Complaints Commission, as the case may be, which may be made available to the public or may be accessed under the *Access to Information Act*, subject to the *Privacy Act*.

I wish to give a statement regarding this (these) complaint(s).

I consent to this statement being recorded.

I prefer that my interview be conducted

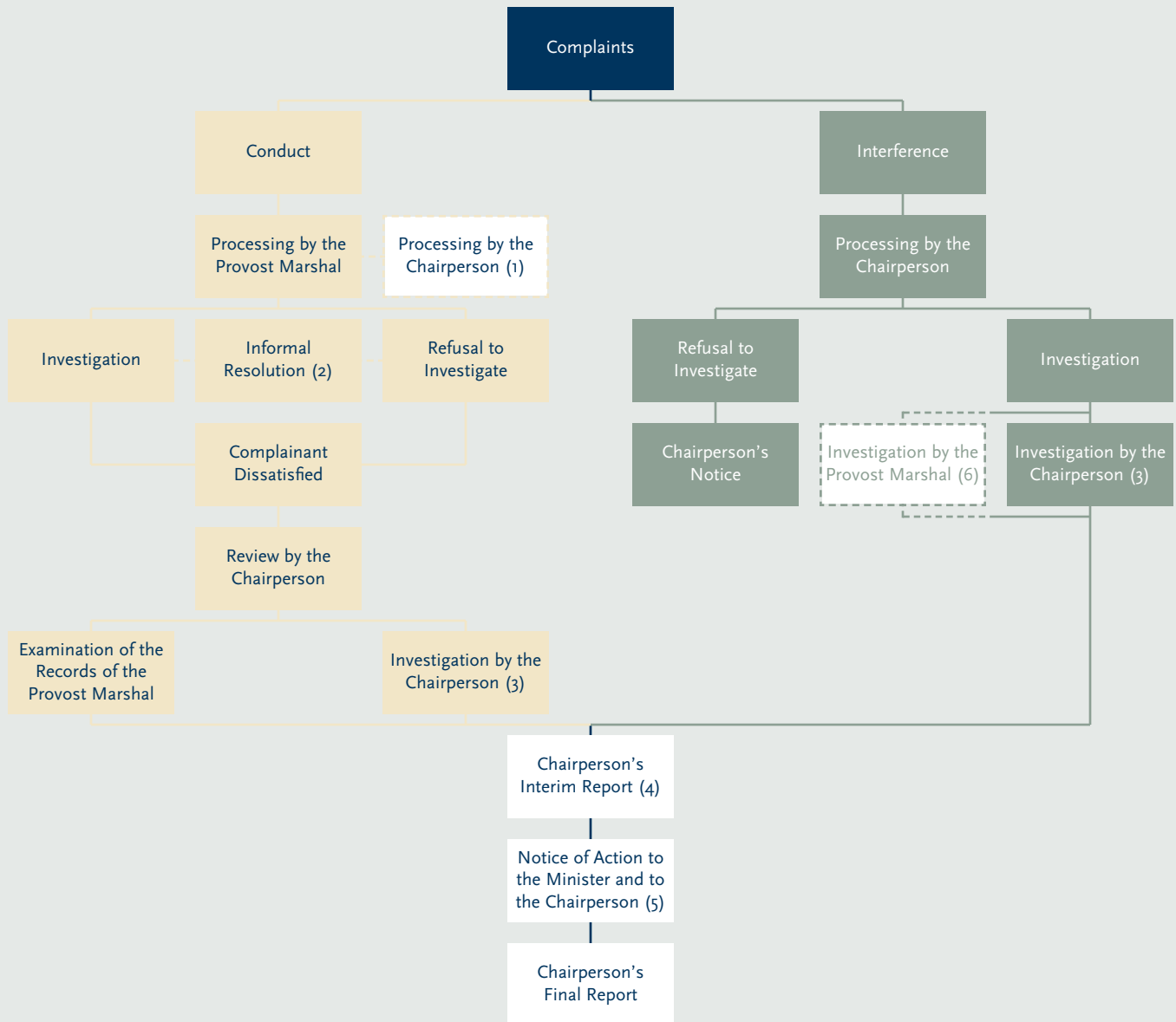
in English in French other, please specify: _____

I acknowledge that I have read and fully understand the foregoing.

Signed by: _____ Date: _____

Witness: _____ Date: _____

Annex I • The Complaints Process



(1) At any time, in the public interest, the Chairperson may take over a complaint and cause the Commission to conduct an investigation (section 250.38).

(2) Does not apply to a conduct complaint of the type specified in regulations of the Governor in Council.

(3) In the public interest, the Chairperson may cause the Commission to conduct an investigation and, if warranted, hold a hearing (section 250.38).

(4) In the case of a hearing, the interim report is prepared by the Commission.

(5) According to the nature of the complaint, the status or the rank of the subject of the complaint, the person who provides the notice could be the Provost Marshal, the Chief of the Defence Staff, the Deputy Minister or the Minister (section 250.49 and 250.5)

(6) Exceptionally, the Chairperson may ask the Provost Marshal to investigate.

Annex J • How to Reach the Commission

There are several ways to reach us at the Military Police Complaints Commission:

Call our information line at **(613) 947-5625**, or toll-free at **1 800 632-0566** and speak to an intake officer.

Send us a fax at **(613) 947-5713**, or toll-free at **1 877 947-5713**.

Write a letter describing your situation and mail it, along with any supporting documents, to:

Military Police Complaints Commission
270 Albert Street
10th Floor
Ottawa, ON K1P 5G8

Visit our office at the above address for a private consultation – *Appointments are recommended.*

e-mail us at: **commission@mpcc-cppm.gc.ca**

Please do not send confidential information via e-mail – we cannot guarantee the security of electronic communications at this time.

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