

MILITARY POLICE
C O M P L A I N T S
C O M M I S S I O N



COMMISSION D'EXAMEN
DES PLAINTES CONCERNANT
LA POLICE MILITAIRE

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M O V I N G F O R W A R D W I T H C O M M I T M E N T

There is established a commission, called the Military Police Complaints Commission....

National Defence Act, section 250.1(1)

MISSION

To promote the principles of integrity and fairness and to build a climate of confidence within the Department of National Defence, the Canadian Forces and the Canadian public, regarding the military police.

VISION

To promote and to ensure the highest standards of conduct of military police in the performance of policing duties, and to discourage improper interference in any military police investigation.

VALUES

- Ethics and professionalism
- Integrity and transparency
- Independence
- Individual respect
- Open and effective communications



March 31, 2004

The Honourable David Pratt, 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 for tabling in Parliament the Military Police Complaints Commission Annual Report for 2003, entitled "Moving Forward with Commitment."

The year 2003 has been another eventful 12 months for the Complaints Commission, highlighted by the five-year independent review of the *National Defence Act* conducted by the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada.

The Annual Report offers an overview of the Complaints Commission's activities for the year, including summaries of the reviews and investigation of complaints concluded during the year. In addition, Minister, I would respectfully draw your attention to the three recommendations included in Part III of the Annual Report. This is the first time that the Complaints Commission has felt it necessary to make recommendations.

On behalf the Military Police Complaints Commission's team, 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



MOVING FORWARD WITH COMMITMENT

THE MILITARY POLICE COMPLAINTS COMMISSION

The Military Police Complaints Commission is an independent, civilian agency established to examine complaints about the conduct of Military Police members in the exercise of policing duties or functions. Owing to the unique circumstances of Military Police members, who serve as police officers as well as members of the Canadian Forces, the Complaints Commission is also empowered to investigate complaints of interference. Any member of the Military Police who conducts or supervises an investigation, and who believes another member of the Canadian Forces or an official within the Department of National Defence has interfered or attempted to interfere with their police investigations, may file an interference complaint.

Although civilian oversight of law enforcement has become increasingly common over the past twenty years, when the Complaints Commission was established by the Parliament of Canada in December of 1999, it became one of the world's first, if not the first civilian body dedicated to the oversight of a military police service.

It should not be surprising that civilian oversight of law enforcement has become commonplace. Canadians expect those upon whom they bestow power to use it responsibly, and to be accountable for their use of such power. This accountability is fundamental to maintaining confidence in and respect for the institutions that bind us as a nation. Recognizing this, Canada has developed mechanisms to ensure those who wield power on our behalf are not only accountable, but seen to be accountable.

Canadians expect those upon whom they bestow power to use it responsibly, and to be accountable for their use of such power. This accountability is fundamental to maintaining confidence in and respect for the institutions that bind us as a nation.

This is particularly true of our police, to whom we have entrusted very special and significant powers – the power of arrest and detention, for example; even the power to use lethal force against citizens. With such exceptional powers come exceptional responsibility, and an equally exceptional degree of accountability.

Canadians understand the importance to society of police services that enjoy widespread trust and respect, and we are fortunate to be served by professional and well-managed police services that have earned our confidence. It is in the interest of maintaining this trust that Canadians insist any allegation of police misconduct be investigated thoroughly, and through a process of independent, civilian oversight that allows them to have confidence in the fairness of the result.

The Government of Canada created the Military Police Complaints Commission to provide Canadians with the assurance that allegations of misconduct against Canadian Forces Military Police are investigated fully and fairly, and that Military Police are independent in the performance of their policing duties and functions, free from interference from the chain of command.

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P A R T I

MESSAGE FROM THE CHAIRPERSON

Message from the Chairperson



Louise Cobetto

INTRODUCTION

It is my pleasure to present the fifth Annual Report of Canada's Military Police Complaints Commission.

The *National Defence Act* requires that the Chairperson submit a report of the Complaints Commission's activities to the Minister of National Defence on an annual basis, including any recommendations. This year, for the first time, I am making a number of recommendations to the Minister with this Annual Report.

These recommendations are intended to address some of the issues I believe impede the effectiveness of the Complaints Commission in providing the type of civilian oversight of law enforcement the people of Canada and other countries have come to expect. In some instances, these issues also act as an impediment to the most efficient use of the Complaints Commission's human and financial resources.

While the Complaints Commission was viewed, quite rightly, as breaking new ground when it became one of the first civilian overseers of military police services in the world, the fact is that even at the time of its creation, the Complaints Commission lacked powers that were already common for civilian overseers both within Canada and elsewhere.

This is not to say the Complaints Commission is not functioning as an agent for positive change within Canada's military justice system. In the 12 months covered by this report, I am pleased to note the Canadian Forces Provost Marshal accepted the majority of the recommendations made by the Chairperson during 2003. This is not unusual. Since the Complaints Commission began operations in December of 1999, some 90 per cent of the Chairperson's recommendations have been accepted.

At all times, the Complaints Commission attempts to be proactive in formulating its recommendations, addressing not only the conduct of the individual or individuals who may be the subject of the complaint, but also looking at systemic issues that may have played a role. By proposing changes to systems or procedures, it is hoped the situation that gave rise to the complaint in the first instance will not recur.

The Complaints Commission attempts to be proactive in formulating its recommendations, addressing not only the conduct of the individual or individuals who may be the subject of the complaint, but also looking at systemic issues that may have played a role.

In the past, recommendations of this type have led directly to specific improvements in military police training, policy and procedures. This past year, for example, recommendations stemming from our reviews and investigations contributed to an important clarification of the procedures related to the laying of a charge by Military Police.

The Complaints Commission was pleased during 2003 to have the opportunity to make a submission to the five-year review of the *National Defence Act* by the Independent Review Authority under the leadership of the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada. Although not all of the 17 proposals (see Annex I) put forward by the Complaints Commission were accepted, the report of the Independent Review Authority was most emphatic in recognizing the importance of the oversight function fulfilled by the Complaints Commission.

I am pleased also to report that, at the end of the 2002-2003 fiscal year, the Complaints Commission was able to return to the federal treasury a significant portion of the funds allocated for the year by Parliament. Indeed, over the four fiscal years since its inception in 1999, the Complaints Commission has returned some \$1.7 million to the Government, underspending its allocation by an average of well over 10 per cent over the entire period (see Annex D).

From the beginning, the goal of the Complaints Commission has been to provide effective civilian oversight of Canadian Forces Military Police, as intended by Parliament, and to do so in an efficient manner, with appropriate respect for the funds entrusted to it by the people of Canada. During 2003, I am confident in saying that, within the limits of the powers afforded by statute, the Complaints Commission continued to grow in its effectiveness as a civilian overseer, and as a manager of the resources allocated to it by the Parliament of Canada.

The accomplishments of the past year are, however, offset by a number of ongoing issues that remain unresolved. These issues not only hamper the effectiveness of the Complaints Commission, they often act as an obstacle to the relationship between the Complaints Commission and the Canadian Forces Provost Marshal. I do not believe it is possible to over-emphasize the importance of this relationship to fulfilling the intent of Parliament in enacting Part IV of the *National Defence Act*, which sets out the process for dealing with complaints about the conduct of military police, and for complaints of interference with Military Police investigations.

It is only natural that the relationship between a civilian oversight body and the police service it oversees will be somewhat adversarial at times. It is essential that both sides accept that there will be disagreements from time-to-time, and not allow these disagreements to distract from the responsibility both have to carry out the wishes of Parliament as embodied in the legislation. Having been Chairperson of the Complaints Commission since its inception just over four years ago, I must express my concern that the relationship between the Complaints Commission and the Canadian Forces Provost Marshal, while professional and courteous, is not yet as productive as I believe it can and should be.

The relationship between a civilian oversight body and the police service it oversees will be somewhat adversarial at times. It is essential that both sides accept that there will be disagreements.

In announcing the creation of the Complaints Commission, the Government of Canada stated that the Complaints Commission “will ensure that individuals who have... complaints, and individuals against whom allegations are made, are treated in a fair, objective and impartial manner.” In other words, it is the duty of the Complaints Commission to bring transparency to the complaints process. To do so in an effective and efficient manner, the Complaints Commission relies heavily on the cooperation of the Canadian Forces Provost Marshal.

I find it troubling that, in my opinion, the Complaints Commission and the Provost Marshal disagree too often on the appropriate degree of openness and transparency in particular situations, some of which are discussed in greater detail below. While I am pleased to report a modicum of progress toward resolving some of these matters over the past year, I must also confess to being disappointed by a lack of progress in other respects.

I find it troubling that, in my opinion, the Complaints Commission and the Provost Marshal disagree too often on the appropriate degree of openness and transparency in particular situations.

I note that in my introductory remarks to the last Annual Report, I described the Complaints Commission as “maturing as an organization.” I believe I can say that this year, in which progress in some areas was offset by frustration in others, has been a test of that maturity. I can say also that the Complaints Commission emerges from this challenging year with a renewed sense of purpose and commitment to its mission.

TOWARD A MORE EFFECTIVE COMPLAINTS COMMISSION

In broad terms, to provide effective oversight and to carry out thorough reviews and investigations of complaints, bodies such as the Complaints Commission require access to all allegations of police misconduct, access to all relevant information held by police about complaints, and the ability to compel witnesses to cooperate with its investigations. Quite simply, the Complaints Commission, or indeed any oversight body, will be limited in its oversight ability if it does not have access to all the information relevant to the actions and decisions it is called upon to review.

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I can report some measure of progress in terms of increasing access to relevant information in 2003 but, in general, there has been very little forward movement on these issues, whether through our discussions with the Canadian Forces Provost Marshal, or by way of our proposals to the five-year review of the *National Defence Act*.

SOLICITOR-CLIENT PRIVILEGE

One development this past year that may lead to an enhancement of the Complaints Commission's capacity to carry out more effective and thorough reviews and investigations concerns the issue of solicitor-client privilege.

In order to conduct a complete investigation of military police conduct and make a meaningful assessment, it is logical that the Complaints Commission be able to review the legal advice on which a Military Police member purports to rely for his or her conduct in a particular case. For example, in a complaint dealing with illegal search or arrest, or the improper laying of a charge, it is necessary to know what legal advice was given to the Military Police member. The information the Military Police member provided to the lawyer who gave the advice could be crucial to the investigation as well.

It is the mandate of the Complaints Commission to review Canadian Forces Provost Marshal investigations into military police conduct and, when it is in the public interest, to take over such investigations. The Complaints Commission ought to have access to the same information and evidence as the Provost Marshal – who would certainly be entitled to review the legal advice received by Military Police members.

I wish to stress that the Complaints Commission respects and values the confidentiality of the solicitor-client relationship. We readily acknowledge that legal advice provided by members of the Canadian Forces Judge Advocate General's Office to Military Police in the discharge of their duties is covered by solicitor-client privilege.

Nonetheless, the Complaints Commission maintains that this privilege must not prevent the Complaints Commission from being able to properly discharge its monitoring and oversight responsibilities.

I should note that, in the civilian world, it is not unusual for police services to waive their solicitor-client privilege in order for an oversight body to access the appropriate information; however, unlike a civilian policy agency that consults a Crown prosecutor, for military police, the privilege in any legal opinion sought from military prosecutors belongs not to the Military Police, but to the Minister of National Defence. This situation lends substantial complexity to the process of waiving solicitor-client privilege.

Further, while I am in no way suggesting the Minister of National Defence is directing investigations by the Military Police, I do wish to emphasize that public perception of the independence of a police service is crucial to fostering confidence and trust. I remain concerned that this situation is damaging to the perception of Military Police as fully independent in the performance of their policing function.

Public perception of the independence of a police service is crucial to fostering confidence and trust.

I am pleased to report that, as a result of discussions with the Canadian Forces Provost Marshal, the Judge Advocate General and the Chief of Defence Staff during 2003, there may be an opportunity to move this issue forward in the months ahead. One proposed solution would involve discussions with the Minister and would ensure that the decision to waive solicitor-client privilege rests with the Provost Marshal.

INFORMAL RESOLUTION OF COMPLAINTS

To be efficient the process requires that both the Complaints Commission and the Canadian Forces Provost Marshal strive to deal with complaints as informally and expeditiously as the circumstances and considerations of fairness permit.

Once a conduct complaint has been resolved informally, the Provost Marshal is required to notify the Complaints Commission. To ensure the transparency of the process and fairness to both sides, as well as to make certain systemic issues are not ignored, the Complaints Commission must have access to information about the initial complaint as well as the terms of the informal resolution.

I am happy to report that after some months of discussion, the Complaints Commission and the Provost Marshal have reached an agreement under which the Complaints Commission will have access to the information it needs to judge whether the informal resolution of a particular complaint is fair and appropriate, while still respecting the confidentiality desired by the parties involved.

MONITORING OF INVESTIGATIONS DONE BY THE CANADIAN FORCES PROVOST MARSHAL

Section 250.38 of the *National Defence Act* gives the Chairperson of the Complaints Commission the power, if she deems it to be in the public interest, to cause the Complaints Commission to take responsibility for the investigation of a complaint from the Provost Marshal at any time during the process.

If the Chairperson is to decide whether an investigation of a particular complaint is in the public interest, it follows that the Complaints Commission will require timely access to as much information as possible about the complaint and the investigation being pursued by the Provost Marshal.

The framers of the legislation anticipated this need for information: Section 250.25 of the Act states that, “The Provost Marshal shall establish and maintain a record of all complaints received...and, on request, make available any information contained in that record to the Complaints Commission.”

However, the Provost Marshal interprets these sections of the Act more narrowly than does the Complaints Commission, particularly in regard to what constitutes a “record of a complaint.”

During 2003, the Complaints Commission made repeated attempts to obtain access to detailed information about the Provost Marshal’s investigations into two conduct complaints. Notwithstanding a prior agreement to provide materials, it was only after the Complaints Commission filed an Application with the Federal Court of Canada to obtain the necessary information that the Provost Marshal provided the information contained in the two investigation files. While I am relieved we have been saved the time and expense of pursuing the case through the Court, I am concerned that the door remains open to further disagreements of this nature between the Complaints Commission and the Provost Marshal.

I am concerned that the door remains open to further disagreements of this nature between the Complaints Commission and the Provost Marshal.

There is no question this situation impedes the effectiveness of the Complaints Commission’s ability to make appropriate decisions and to act in the public interest. I was disappointed that, in its report to the Minister of National Defence, the Independent Review Authority recommended that the “record” of a complaint be defined as containing only the most basic information about a complaint and its process and not about its investigation. This interpretation would diminish the effectiveness of efficient oversight of police conduct.

It is worth noting that an explicit power to monitor police investigations of conduct complaints and/or access all relevant information is quickly becoming a standard feature of civilian oversight of law enforcement in Canada and around the world. Among others, civilian overseers in British Columbia and Saskatchewan have this power in Canada. Other countries that provide explicit monitoring powers to civilian overseers of law enforcement include the United Kingdom.

POLICING DUTIES OR FUNCTIONS

In Part IV of the *National Defence Act*, it is stated that any person may complain about the conduct of a member of the Military Police in the performance of any of the policing duties or functions prescribed in the regulations. The *Complaints About the Conduct of Members of the Military Police Regulations* (Annex H) state that these duties or functions include such things as the conduct of an investigation, the handling of evidence, and responding to a complaint.

The Complaints Commission is thus of the opinion that when the Provost Marshal or her delegates handle complaints under Part IV of the Act, they are performing policing duties or functions. In making specific allowance for complaints against the Provost Marshal, subsection 250.26(2) of the Act supports the position of the Complaints Commission. I am confident this interpretation is consistent with the definitions in the regulations, with the overall scheme of the Act and with the principles of civilian oversight in general.

The concern is that if the Provost Marshal, as allowed by the legislation, rejects a complaint on the grounds it does not concern the conduct of Military Police in the performance of a policing duty or function, the Complaints Commission may never hear of the complaint in the first instance. This means that the Chairperson may be unable to cause the Complaints Commission to hold a public interest investigation should she disagree with the Provost Marshal's refusal to investigate the complaint and her decision that it is not a policing duty.

For example, the Canadian Forces Provost Marshal's Annual Report for 2002 describes a complaint that was resolved informally. The Complaints Commission had not been informed of the existence of this complaint, and when the Complaints Commission requested details of the terms of the informal resolution as per the agreement mentioned previously, it was advised that the file in question did not deal with a policing duty or function, was thus handled via an internal investigation and further, the Provost Marshal refused to provide any details of the case to the Complaints Commission. In these circumstances, it is impossible for the Complaints Commission to determine whether the complaint was classified properly, or resolved appropriately. Errors of this kind have occurred in the past.

In the report of the Independent Review Authority of the *National Defence Act*, the Right Honourable Antonio Lamer writes that he is inclined to believe the Provost Marshal is indeed performing a policing duty or function when handling a conduct complaint. The Independent Review Authority offers two recommendations that, if implemented, will define the role of the Provost Marshal, and provide greater clarity with respect to the policing duties or functions prescribed in the regulations.

Stated most simply, as long as the Complaints Commission and the Canadian Forces Provost Marshal do not interpret policing duty or function in the same way, some complaints will not be processed under the Part IV legislative scheme, and parties will be deprived of the legal rights they are granted by Part IV of the *National Defence Act*, including the right to request a review by an independent civilian oversight agency.

As long as the Complaints Commission and the Canadian Forces Provost Marshal do not interpret policing duty or function in the same way, parties will be deprived of legal rights.

INTERNAL CLASSIFICATION OF COMPLAINTS

Another of the recommendations of the Independent Review Authority may help to address the Complaints Commission's concerns surrounding the need to bring greater transparency to the process by which the Provost Marshal determines whether an allegation of misconduct is brought forward as a formal complaint, and thus subject to the process set out in Part IV of the Act, or is dealt with as an "internal" matter.

Having noted a disparity between the number of conduct cases reported by the Provost Marshal and that reported by the Complaints Commission, the Independent Review Authority recommended the Provost Marshal develop a framework for making the distinction between instances of reported misconduct that are covered by Part IV of the Act, and thus subject to civilian oversight, and those that are not. The Complaints Commission looks forward to working with the Provost Marshal in the development of this important document.

In May of 2003, this issue was addressed during a symposium in Wakefield, Quebec between the Provost Marshal, the Chairperson, their respective teams, and representatives from the Judge Advocate General and the Vice Chief of the Defence Staff. At the time it was agreed that the Complaints Commission Director of Operations and the Deputy Provost Marshal, Professional Standards would get together to review a sampling of police misconduct files that had been designated as "internal." The point conveyed to the Director of Operations was that, for the most part, files classified as "internal" were instances of military police misconduct that had surfaced either through the chain of command or as a result of audits or criminal investigations and not as a result of a "formal" complaint.

For example, an allegation of police misconduct in the performance of a policing duty or function against a Military Police member may be brought to the attention of the Provost Marshal by word of mouth or through various other reporting channels, such as through the chain of command. For whatever reason, the person reporting the possible misconduct has not made an explicit decision to avail himself or herself of Part IV of the Act by making a formal complaint. In some cases, the Provost Marshal has chosen to put these allegations into a formal complaint; in others, the allegations have been dealt with internally. In the latter case, apart from a whistleblower, it is unlikely the Complaints Commission would ever become aware of the allegations, let alone their disposition; neither would the Complaints Commission be able to determine whether a particular complaint should be dealt with most appropriately via the Part IV process.

If the principles of civilian oversight are to be respected, it is essential that the process by which this determination is made be coherent and transparent. It is the Chairperson's view that all allegations of police misconduct, regardless of origin, should be subject to civilian oversight. We look forward to the Provost Marshal's efforts towards implementing the recommendation from the Independent Review Authority to produce a framework clarifying this issue.

If the principles of civilian oversight are to be respected, it is essential that the process by which this determination is made be coherent and transparent. It is the Chairperson's view that all allegations of police misconduct, regardless of origin, should be subject to civilian oversight.

EXPANDED POWER OF SUBPOENA

The Complaints Commission believes its powers to compel testimony and the production of documents and other evidence – powers that apply only when it calls a public hearing – should be expanded to include investigations in the public interest.

To date, the Complaints Commission has conducted three joint public interest investigations involving a total of six complaints. At times, we have encountered great difficulty with witnesses – most often, members of the Military Police – declining to be interviewed by Commission Members as part of our investigation. While no witness or subject-member can be faulted for exercising their right not to appear, their main concern in doing so appears to be that they have no protection against the future use of their statement.

In its submission to the Independent Review Authority, the Complaints Commission proposed that it be given the power to compel witnesses to cooperate with public interest investigations – not only hearings – and, at the same time, afford the appropriate protections to witnesses.

In the view of the Complaints Commission, it should not be necessary to go to the added expense associated with a formal public hearing merely to conduct a proper investigation. If nothing else, sound financial management dictates such a threshold. It is worth remembering, as evidenced in section 250.14 of the *National Defence Act*, that Parliament intended the Complaints Commission to function as expeditiously and informally as possible; with the power of subpoena as described, the Complaints Commission would be able to more fully comply with that intent.

It should not be necessary to go to the added expense associated with a formal public hearing merely to conduct a proper investigation.

It is interesting to note that the Independent Review Authority recommended the Canadian Forces Grievance Board be given the power of subpoena for investigations. In the interest of both effectiveness and efficiency, I believe the Military Police Complaints Commission should have this same power (see Recommendation 1).

NUMBER OF COMPLAINTS

I should draw the reader's attention to the number of complaints being submitted by or about military police. In 2003, the Complaints Commission monitored 36 conduct complaints, barely half the number monitored in each of the three previous years.

The Complaints Commission has received only four complaints of interference with a Military Police investigation since its inception, and none in 2003.

There are a number of potential explanations for these numbers – the drop in conduct complaints, for example, could simply be a natural fluctuation – but it is most likely a combination of factors.

First, of course, we must consider the impact of the 1998 revisions to the *National Defence Act*, including the creation of the Military Police Complaints Commission and the *Military Police Code of Conduct*. Mere awareness of the existence of external civilian oversight, or of the possibility of an interference complaint, may well be having a salutary effect on behaviour, either directly or indirectly.

A second factor, discussed in greater detail above, may be that some complaints are being incorrectly screened out of the Part IV process as being purely “internal” matters, or as not pertaining to policing duties and functions. Adding greater transparency to the process by which these determinations are made would permit a more accurate assessment of the impact of this factor on the number of complaints received by the Complaints Commission.

A third part of the explanation, particularly for the low number of interference complaints, could be fear of reprisal on the part of military police. This has been borne out in meetings between the Complaints Commission and Military Police members, some of whom have stated that they would “never” file an interference complaint because they feel they have no protection in the legislation.

This is most distressing. Concern over interference with Military Police investigations was a primary consideration in the creation of the Complaints Commission. For the complaint process to work, Military Police members must be protected against reprisals. Both feared and actual reprisals can suppress legitimate interference and conduct complaints alike.

For the complaint process to work, Military Police members must be protected against reprisals.

The Complaints Commission brought this situation to the attention of the Independent Review Authority of the *National Defence Act*, and I am pleased that providing explicit protection against reprisal for those who file complaints was among its recommendations.

Complainants acting in good faith must have protection in the legislation; however, given the evidence that a lack of protection may already be stifling legitimate complaints, I believe this matter can and should be addressed immediately through the issuing of appropriate orders and instructions to all members of the Canadian Forces and officials of the Department of National Defence. (see Recommendation 2).

Finally, the impact of a fourth factor on the number of requests for reviews must be considered: more and more often, allegations of military police misconduct are being substantiated by the investigations of the Canadian Forces Provost Marshal. It follows that more complainants are satisfied with the disposition of their complaint, and are not requesting reviews by the Complaints Commission, while Military Police members who are the subject of a complaint have no right to request a review.

FAIRNESS

Currently, only the person who filed the complaint can request a review by the Complaints Commission. If the person who was the subject of the complaint is not satisfied with the outcome of the Provost Marshal’s investigation, that person must file a complaint of their own, and the process begins anew. Clearly, it would be more expeditious to permit the Complaints Commission to deal with that person’s objections by way of a review than to start a new investigation. However, even this option is unavailable to subject members according to the Provost Marshal’s interpretation of the legislation, which would exempt her from review when she herself acts under Part IV of the *National Defence Act*.

In the interest of both fairness and efficiency, the Complaints Commission recommended to the Independent Review Authority that both sides have a right to request a review of the Canadian Forces Provost Marshal's handling of a complaint about the conduct of military police.

I am pleased to note that the Independent Review Authority endorsed this recommendation, and I hope that this recommendation will be implemented with a view to bringing additional fairness and balance to the complaints process.

CONCERNS RAISED BY MILITARY POLICE

The ultimate focus of the Complaints Commission's activities is helping military police be as effective and as professional as possible in their policing duties and functions. In pursuing that goal, it is important that the Complaints Commission maintain regular contact with members of the Military Police to ensure their input toward effective civilian oversight is given the serious consideration it deserves.

As in past years, the Complaints Commission Chairperson or Members and staff visited seven Canadian Forces bases in 2003, meeting with rank-and-file members of the Military Police, as well as authorities in the chain of command of the Canadian Forces (see Outreach, p. 43).

Some of the feedback we receive from military police is cause for concern. In addition to the oft-repeated statement by some, noted earlier, that they would "never" file an interference complaint, military police are expressing a general feeling of vulnerability with regard to the complaints process. Among others, military police feel the process leaves them unfairly exposed to malicious complaints, or that the process may be geared too much toward appeasing complainants, thus avoiding a review by the Complaints Commission, rather than toward fairness to all concerned. Military police have also expressed a desire to be represented by counsel when they are asked to appear before the Complaints Commission or otherwise involved in a Part IV process.

Military police feel the process leaves them unfairly exposed to malicious complaints, or that the process may be geared too much toward appeasing complainants.

We believe that by extending the right of review under Part IV to Military Police members who are the subject of a complaint, and by affording appropriate protections against reprisals to those who in good faith make complaints – especially interference complaints – some of these legitimate concerns will be addressed.

I am very pleased, therefore, that the Independent Review Authority also recognized the seriousness of these concerns. The Independent Review Authority recommends that any Military Police member who may be the subject of a complaint should also possess the right to request a review of the disposition of the complaint, and also that Military Police members who lodge complaints be given explicit protection from reprisal.

TOWARD A MORE EFFICIENT COMPLAINTS COMMISSION

As Chairperson, I am acutely aware of the need and of the singular importance to be accountable for the public funds entrusted to the Complaints Commission by the Parliament of Canada. That is why I am especially pleased, as noted in the introduction, to point out that the Complaints Commission has, in each year of its existence, returned a significant portion of its annual funding allocation to the federal treasury (see Annex D).

During 2003, the Complaints Commission continued to develop its capacity to effectively manage its human and financial resources, and remains committed to meeting the most exacting standards for public sector management.

The Complaints Commission also strives to ensure the complaints process is efficient as well as effective. Our recommendation to the Independent Review Authority that the Complaints Commission's power of subpoena in public interest hearings be extended to include its public interest investigations is a good example. This would allow the Complaints Commission to gather all the evidence needed to complete an investigation, without having to go to the added expense of holding a formal hearing.

As part of its ongoing efforts to implement the principles of modern comptrollership, the Complaints Commission has completed an Internal Audit Action Plan, as well as an action plan for the implementation of Modern Management Practices. A complete Business Plan will be in place for the beginning of the 2004-2005 fiscal year, allowing the Complaints Commission to comply fully with all operational reporting requirements.

The Complaints Commission has completed an Internal Audit Action Plan, as well as an action plan for the implementation of Modern Management Practices.

Midway through the year, in order to better judge the progress to date, the Complaints Commission asked Consulting and Audit Canada to conduct a complete review of its financial systems, policies and records. I am pleased to note that while Consulting and Audit Canada did identify some minor areas where the Complaints Commission could fine tune some of its systems and procedures, the review did not reveal any significant shortcomings.

As the year ended, a second audit, as recommended by the Independent Review Authority, was in progress. This review, which also involves a workload analysis, will help to ensure the Complaints Commission has the most efficient structure and budget while remaining an effective civilian overseer of the Canadian Forces Military Police.

Of course, the key to effectiveness for any organization is the people within it. I am determined to provide employees with a work environment that is pleasant and challenging, that ensures their concerns are heard, and offers opportunities for personal and professional development.

The Complaints Commission management committee has also completed an action plan to address issues in the employee survey undertaken in 2002. Information sessions for all staff, dealing with workplace conflicts and harassment, official languages policy, and values and ethics were presented during the year.

A learning framework has been established, and individual learning plans have been formalized, including a monitoring system to ensure employees are advancing toward their stated goals.



ACKNOWLEDGEMENTS

As Chairperson, I must offer my gratitude and acknowledge the efforts of many for the accomplishments I am able to report on behalf of the Complaints Commission in this Annual Report.

As I have noted earlier, 2003 has been, in some ways, a challenging year for the Complaints Commission. Many have devoted substantial amounts of time, effort and considered thought to our efforts to move the civilian oversight provided by the Complaints Commission to a new level of effectiveness. In some instances, we succeeded; in others, our efforts continue.

Additionally, the Complaints Commission has implemented a number of changes to enhance its efficiency as an organization. That the staff of the Complaints Commission has performed with such dedication and enthusiasm through the inevitable uncertainty brought about by a process of restructuring speaks volumes of their professionalism and personal strength.

I would also like to acknowledge the professionalism of the men and women of the Canadian Forces who have served Canada so well and more particularly, the outstanding men and women of the Military Police.

Throughout this year, the staff of the Complaints Commission has remained focused on our goal: to contribute to the maintenance of consistently high standards of military police conduct in the performance of their policing duties, and to the integrity of Military Police investigations. While circumstances may change, our determination to move forward with our commitment to provide effective, efficient oversight remains constant.



Louise Cobetto
Chairperson
Military Police Complaints Commission



PART II

ACTIVITIES

MONITORING, REVIEW AND INVESTIGATION OF COMPLAINTS

OVERVIEW

The Military Police Complaints Commission was established to provide independent, civilian oversight of the Canadian Forces Military Police. As such, Parliament has provided the Complaints Commission with certain powers to enable it to carry out this mandate, including primary jurisdiction over the investigation of complaints of interference with Military Police investigations.

While the investigation of complaints about the conduct of military police in the performance of their policing duties and functions (These are set out in the *Complaints About the Conduct of Members of the Military Police Regulations*; see Annex H) is the responsibility of the Canadian Forces Provost Marshal, the Complaints Commission has broad powers to monitor the handling of complaints by the Provost Marshal and her delegates.

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This monitoring function is necessary to ensure the transparency of the complaints process (Annex E), and to support the Chairperson's power to cause the Complaints Commission to assume responsibility for the handling of a conduct complaint at any time in the process if she deems this to be in the public interest. This power to assume responsibility for dealing with conduct complaints applies even to cases where a complaint has been withdrawn.

The Provost Marshal is required to notify the Chairperson of the Complaints Commission when a conduct complaint is received and to provide the Chairperson with the results of any subsequent investigation into the complaint. The Provost Marshal is also required to notify the Chairperson when a complaint is resolved informally, and has agreed to provide the Chairperson with information about the complaint and its resolution sufficient to allow the Chairperson to judge whether the terms of the informal resolution are fair and appropriate.

In all cases, including those in which the Provost Marshal determines a conduct complaint does not warrant investigation or would be dealt more appropriately under another Part of the *National Defence Act* or another Act of Parliament, the Provost Marshal must notify the complainant of his or her right to ask the Complaints Commission to review the disposition of their complaint.

The Independent Review Authority for the *National Defence Act* recommends that the subject or subjects of the complaint should also have the right to request that the Provost Marshal's disposition of the complaint be reviewed by the Complaints Commission.

The Complaints Commission welcomes this recommendation, which will increase the fairness and efficiency of the complaints process. Rather than launching their own complaint, this change would allow subject-members who feel aggrieved by conduct complaints made against them, or are dissatisfied with the handling of the complaint and the investigation, to request a review by the Complaints Commission – a more expeditious and cost-effective alternative to the new complaint that would otherwise be required.

During 2003, the Complaints Commission monitored the Provost Marshal's disposition of 34 conduct complaints, and received two requests for reviews of conduct complaints investigated by Professional Standards. No complaints of interference were filed with the Complaints Commission in 2003. In addition, the Chairperson of the Complaints Commission invoked her monitoring power pursuant to Subsection 250.25 of the Act to request all information and materials related to two conduct complaints, one filed in 2001, and the other in 2002. As a result of this process, the Chairperson produced two letters of observation for the Provost Marshal's consideration.

A full summary of the number and type of complaints received and their disposition since the Complaints Commission commenced operations is provided in Annex G to the Annual Report.

CHAIRPERSON'S FINDINGS AND RECOMMENDATIONS

Whether the Complaints Commission is carrying out a review of a conduct complaint, the investigation of an interference complaint, or an investigation or hearing in the public interest, the Chairperson issues two reports.

An Interim Report that includes the findings of the review or investigation and the Chairperson's recommendations is submitted to the appropriate authorities within the Canadian Forces and the Department of National Defence, who are required to respond to the Chairperson with a Notice of Action.

For conduct complaints, the Notice of Action is usually prepared by the Provost Marshal, and for interference complaints, by the Chief of the Defence Staff. In either case, the appropriate authority uses the Notice of Action to advise the Chairperson of 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 findings or recommendations contained in the Interim Report, the refusal to act must be explained in the Notice of Action.

If there is a refusal to act on any of the findings or recommendations contained in the Interim Report, the refusal to act must be explained.

After considering the response offered in the Notice of Action, the Chairperson prepares a Final Report of findings and recommendations. Copies of the Final Report are provided to both the complainant and the subject of the complaint, the Minister and Deputy Minister of National Defence, the Chief of the Defence Staff, the Judge Advocate General, the Canadian Forces Provost Marshal and all persons who have satisfied the Complaints Commission they have a substantial and direct interest in the complaint.

The Chairperson issued four Interim Reports and five Final Reports during 2003. These reports were issued in relation to a Public Interest Investigation, four requests for review and one interference complaint received during the preceding year. In total, the Chairperson issued 420 findings and 114 recommendations as a result of these nine reports. In addition, the Chairperson produced two letters of observation as a result of a request in two conduct complaints files pursuant to section 250.25 of the Act. The Chairperson produced a total of nine observations in these two letters.

CASE SUMMARIES

In summarizing the findings of the reviews and investigations conducted during 2003, it should be noted that a number of the concerns raised in these cases are issues that have come to light in reviews and investigations carried out by the Complaints Commission in previous years.

Perhaps foremost among these recurring concerns is the importance of the initial contact with the complainant. As stated in the Complaints Commission's Annual Report for 2002, "It is essential that appropriate assistance be provided to the complainant to help them state their complaint clearly and accurately. A written copy of the complaint must be given to the complainant, and it should be discussed with them 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."

It is clear from the cases reviewed and investigated that this point requires additional emphasis.

In one case, a conduct complaint filed with Military Police was not acknowledged. When making a subsequent inquiry as to the disposition of the complaint, the complainant was told by military police that the complaint could not be processed because it involved a member of the same Military Police unit. This is contrary to Section 250.21(1) of the *National Defence Act*, which states that, "A conduct complaint or an interference complaint may be made, either orally or in writing, to the Chairperson, the Judge Advocate General or the Provost Marshal. A conduct complaint may also be made to any member of the Military Police."

In another case, a conduct complaint was filed against a Military Police member and an investigation into the complaint concluded without the “complainant” ever knowing that a complaint had been filed on his behalf.

A conduct complaint was filed against a Military Police member and an investigation into the complaint concluded without the “complainant” ever knowing that a complaint had been filed on his behalf.

The Complaints Commission also notes again this year a case where the Canadian Forces Provost Marshal has relied on results of an investigation conducted by the Canadian Forces National Investigation Service to determine whether a complaint about the conduct of a Military Police member was well-founded.

It is accepted practice that a Professional Standards investigation into military police conduct cannot begin until any criminal investigation that may be related to the incident has been completed. This provision does not however, intend that a criminal investigation should be used as a replacement for a Professional Standards investigation. The fact that there has been no criminal wrongdoing does not necessarily mean there has been no police misconduct. As in other professions, police ethics holds members to higher standards of conduct than the criminal law, which applies to everyone.

The Canadian Forces National Investigation Service and the Deputy Provost Marshal Professional Standards have different mandates, and their services should be deployed accordingly.

On a positive note, as mentioned above, a clear trend emerged during the past year that the investigations conducted by the Provost Marshal have more and more often substantiated allegations of police misconduct and supported corrective action without the necessity of a review by the Complaints Commission. This speaks well of the maturity of this police oversight process and the increased rigour that the Deputy Provost Marshal Professional Standards is bringing to the process.

Investigations conducted by the Provost Marshal have more and more often substantiated allegations of police misconduct and supported corrective action without the necessity of a review by the Complaints Commission.

CONDUCT COMPLAINTS – REQUESTS FOR REVIEW

CASE No. 1 – *Perception of bias – duty to assist complainants – reliance on criminal investigation to determine misconduct – Provost Marshal discretion to end investigation*

Facts and Complaint

The complainant, a member of the Canadian Forces, wrote to the Complaints Commission stating that his reputation had been damaged by the actions of the Deputy Provost Marshal, Professional Standards. The complainant stated that although he had not filed a complaint against military police, the Deputy Provost Marshal, Professional Standards nevertheless investigated the supposed complaint and further, found the “complaint” to be unfounded. The complainant also stated that he had been harassed and abused by military police.

Disposition by the Canadian Forces Provost Marshal

Following an investigation of this “complaint”, the Deputy Provost Marshal, Professional Standards concluded that the complainant had indeed lodged a complaint about the conduct of members of the Military Police. The Deputy Provost Marshal, Professional Standards also concluded that, since there was no indication of any improper conduct by military police related to the complaint, no further investigative action would be taken.

Still concerned that a “complaint” he had never made was being rejected as unfounded, the complainant asked the Complaints Commission to review the disposition of the case by the Deputy Provost Marshal, Professional Standards.

Issues, Findings and Recommendations

In reviewing the complaint, the Chairperson noted several areas of concern:

- a) *The Deputy Provost Marshal, Professional Standards dealt with a complaint against herself*

The Chairperson found the Deputy Provost Marshal, Professional Standards was handling a complaint that dealt specifically with statements made in a letter she had signed, and with the report of the investigation into the complaint, which she had written. These and other circumstances indicated the Deputy Provost Marshal, Professional Standards was herself a subject of the complaint, and should not have led the investigation into the complaint, but instead referred the matter to the Canadian Forces Provost Marshal.

b) Assisting potential complainants

The Chairperson found that the complainant in this case had no intention of filing a conduct complaint against military police in the first instance, nor had he asked anyone to file a complaint on his behalf. The Chairperson found that, had personnel with Professional Standards exercised their duty to assist complainants in ensuring their complaints are filed properly and provide an accurate expression of their concerns, it was entirely possible the process would have come to a stop at that point.

c) Incorrect information contained in reports and letters from the Canadian Forces National Investigation Service and the Deputy Provost Marshal, Professional Standards

The Chairperson found that the report of the Canadian Forces National Investigation Service investigation into the conduct of military members involved in this case, as well as Canadian Forces National Investigation Service letters concerning the case, contained incorrect information that this individual had filed a conduct complaint against military police. In relying on the report of the Canadian Forces National Investigation Service investigation to conclude the “complaint” was unfounded, the Deputy Provost Marshal, Professional Standards repeated the error.

In her report, the Chairperson noted that these are the type of problems that can occur when Professional Standards relies on the results of investigations by the Canadian Forces National Investigation Service to make decisions on the professional conduct of Military Police members.

These are the type of problems that can occur when Professional Standards relies on the results of investigations by the Canadian Forces National Investigation Service.

The mandate of the Canadian Forces National Investigation Service is to investigate allegations of criminal or service offences.

Professional Standards has an equally specific role, and that is to determine whether the conduct of a Military Police member in the performance of a policing duty or function was appropriate and professional, for example, did they perform their policing duties properly; thus, a Professional Standards investigation is much broader in scope and more likely to examine conduct that might not be considered by a Canadian Forces National Investigation Service investigation.

d) The application of subsection 250.28(2)(c) of the National Defence Act – (This section of the Act gives the Canadian Forces Provost Marshal the discretion to refuse to investigate a conduct complaint or to end an investigation if, in the opinion of the Provost Marshal, investigation is not necessary or reasonably practicable.)

In her review, the Chairperson stated her belief that the Canadian Forces Provost Marshal should exercise the authority not to investigate a conduct complaint in only the most clear-cut circumstances. In this case – where the Deputy Provost Marshal, Professional Standards investigated a complaint of which she was a subject, based her decision not to investigate on incorrect information supplied by the Canadian Forces National Investigation Service, and where the Chairperson found evidence that Military Police members may have acted unprofessionally – the Chairperson found those clear-cut circumstances did not exist.

The Chairperson recommended the handling of the case by the Deputy Provost Marshal, Professional Standards be referred to her senior officer, the Canadian Forces Provost Marshal, for a thorough review.

CASE No. 2 – *Duty to assist complainant – military police discretion – Deputy Provost Marshal, Professional Standards required to provide more in-depth explanation and precise references to provisions on which decisions affecting complaints and complainants are based*

Facts and Complaint

In this case, a member of the Canadian Forces complained that military police had not conducted a proper investigation into her allegations that another member of the Canadian Forces had assaulted her, and directed threats and racist remarks toward her in an incident some 11 years earlier.

Disposition by the Canadian Forces Provost Marshal

After reviewing the documentation, the Deputy Provost Marshal, Professional Standards advised the complainant that her complaint would not be investigated. The complainant asked the Complaints Commission to review the case.

Issues, Findings and Recommendations

The issues related to this complaint identified by the Chairperson included:

a) The handling of the conduct complaint by military police

In subsection 250.21(1), the *National Defence Act* allows that a conduct complaint against military police can be filed with a number of authorities, including “any member of the military police.”

The Chairperson considers that, as a locus for receiving complaints under the Act, military police have a duty to ensure complainants’ rights are respected, including informing them of those rights, as well as assisting them in enunciating their complaint if necessary.

Military police have a duty to ensure complainants' rights are respected, including informing them of those rights, as well as assisting them in enunciating their complaint if necessary.

In this case, though the complainant filed a conduct complaint with Military Police, the complaint was not acknowledged, nor was notice of the complaint given to the Canadian Forces Provost Marshal or the Complaints Commission, as required under subsection 250.21(2)(c)(i) of the *National Defence Act*.

b) The military police decision not to investigate the allegations of assault and threatening and racist behaviour

In this case, the complainant had submitted the assault complaint in writing to a senior officer who, in turn, forwarded the complaint to the Canadian Forces National Investigation Service. After reviewing the complaint, and speaking to the complainant by telephone, the Military Police member assigned to the case met with counsel for the Crown and, based on that discussion, decided not to investigate the complaint.

The Chairperson noted that the proper administration of justice in this case required that, as a minimum, the Military Police member should have met with the complainant and taken a formal statement. The Chairperson found that the Military Police member did not keep proper notes of his telephone conversations with the complainant, nor did the member's notes provide sufficient information about his discussions with the counsel for the Crown.

The latter is an important point in this case, as the incident to which the complaint referred is alleged to have happened in the province of Quebec. In Quebec, unlike other provinces, police investigate a complaint and take the results of the investigation to counsel for the Crown, who decides whether charges will be laid. In this case, it appeared the Military Police member went to the Crown for advice on whether to investigate.

The Chairperson found that, while the initial assault complaint was sufficiently detailed to allow the Military Police member assigned to the case to exercise discretion in whether to proceed with an investigation, the member's method of proceeding in this case should not be allowed to become standard police practice.

c) The manner in which the Deputy Provost Marshal, Professional Standards advised the complainant that her conduct complaint would not be investigated

While concluding that the Deputy Provost Marshal, Professional Standards was correct in deciding not to pursue an investigation into the conduct complaint, the Chairperson found the manner in which the Deputy Provost Marshal, Professional Standards advised the complainant that her conduct complaint would not be investigated was not in keeping with the spirit of the *National Defence Act*.

Given the often lengthy and complex nature of such documents, making only general references to statutes, policies and technical directions to explain a decision to a complainant detracts from the transparency of the complaints process. The Chairperson thus recommended that the Deputy Provost Marshal, Professional Standards indicate specifically in all reports the provisions on which decisions affecting complaints are based.

Making only general references to statutes, policies and technical directions to explain a decision to a complainant detracts from the transparency of the complaints process.

CASE No. 3 – *Unprofessional conduct – Provost Marshal discretion not to investigate*

Facts and Complaint

A Military Defence Counsel for the accused in a Court Martial proceeding complained that a Military Police member who signed the Record of Disciplinary Proceedings to be served on the accused had postdated the document by some three-and-a-half weeks.

In the military justice system, a charge is considered to have been laid when it is set down in writing in a Record of Disciplinary Proceedings. In making his conduct complaint against the Military Police member, the complainant noted that the date on which the charge was laid was especially significant in this case, in that he was arguing for a stay of proceedings against the accused based on section 11(b) of the *Canadian Charter of Rights and Freedoms*. This is the section that guarantees an accused the right to be tried within a reasonable time.

The complainant stated that, in postdating the Record of Disciplinary Proceedings, the Military Police member undermined the *Charter* rights of the accused, willfully or negligently made a false statement in an official document, and thus breached the *National Defence Act* and the *Military Police Professional Code of Conduct*.

Disposition by the Canadian Forces Provost Marshal

The Deputy Provost Marshal, Professional Standards forwarded the complaint to the Canadian Forces National Investigation Service for assessment and/or investigation of possible service offences.

After being advised by the Canadian Forces National Investigation Service that the allegations against the Military Police member would not be investigated for possible service offences, the Deputy Provost Marshal, Professional Standards proceeded to have the complaint evaluated by Professional Standards. This evaluation concluded that the subject member had not violated the *Military Police Professional Code of Conduct*, and no further investigation was warranted.

Dissatisfied with the disposition of the complaint by Professional Standards, the complainant requested a review of his complaint by the Complaints Commission.

Issues, Findings and Recommendations

In reviewing this complaint, the Commission Member delegated by the Chairperson addressed a number of questions, which can be summarized as follows:

- a) *In postdating the Record of Disciplinary Proceedings, was the conduct of the Military Police member unprofessional, a breach of the National Defence Act and/or a breach of the Military Police Professional Code of Conduct?*

The Commission Member found that, by postdating the Record of Disciplinary Proceedings, the subject member had acted in a manner that was unprofessional, and that did not constitute best police practices.

The Commission Member also found that the subject member should have been aware of the possible implications of postdating the Record of Disciplinary Proceedings, and while he erred in doing so, he did not have the benefit of clear and detailed procedures to follow. Further, the Commission Member noted there was no indication of the intent necessary to support a finding that the Military Police member willfully or negligently made a false statement on an official document. In his statement, the military member explained that he believed the charge was not considered to have been laid against the accused until the date shown on the Record of Disciplinary Proceedings. He further explained that he postdated the Record of Disciplinary Proceedings to make sure that the charges were, in his words, “fully prepared to be served.”

While the Commission Member declined, on jurisdictional grounds, to make a determination regarding a possible breach of the *National Defence Act*, he did conclude that the subject member’s actions reflected a misunderstanding of the law governing the laying of charges, rather than any intent to deceive. Similarly, as the subject member did not “knowingly misrepresent” or “knowingly falsify” information, the Commission Member found the subject of the complaint was not in violation of the *Military Police Professional Code of Conduct*.

The subject member’s actions reflected a misunderstanding of the law governing the laying of charges, rather than any intent to deceive.

Since this incident, the Canadian Forces Provost Marshal has revised the Military Police *Standard Operating Procedures* to clarify best practices regarding the dating of Record of Disciplinary Proceedings forms. As a result, it is unlikely this particular situation will recur.

b) Did the Military Police member's conduct undermine the Charter rights of the accused?

While the Commission Member observed that the subject member should have been aware of the implications of postdating the Record of Disciplinary Proceedings on the *Charter* rights of the accused, he found that there was no real prejudice to the accused in this case, given that no attempt had been made to conceal the actual date the Record of Disciplinary Proceedings was signed, and that at the hearing on the application for a stay of proceedings under section 11(b) of the *Charter*, the Military Judge ruled that for purposes of calculating the delay, the date the Record of Disciplinary Proceedings was signed would be used.

c) The application of section 250.28(2)(c) of the National Defence Act by the Deputy Provost Marshal, Professional Standards

This is the section of the Act that gives the Canadian Forces Provost Marshal the discretion to decline to investigate or to end the investigation of a conduct complaint when, “having regard for all the circumstances, investigation or further investigation is not necessary or reasonably practicable.”

In the past, the Chairperson has urged the Canadian Forces Provost Marshal to use a high threshold in determining whether to apply this provision, and even then, only in exceptional cases. Given the assessment of the complaint provided by the Canadian Forces National Investigation Service, the evaluation of the complaint by Professional Standards, and the actions of the Provost Marshal to clarify the procedures for dating the Record of Disciplinary Proceedings, the Commission Member determined that, in this case, the higher threshold was met, and the application of section 250.28(2)(c) was appropriate.

CASE No. 4 – *Alleged discrimination by military police – propriety of police informing individuals of potential consequences of their actions – right of individuals to obtain information*

Facts and Complaint

A civilian complained that military police had shown preferential treatment to others involved in an incident by interviewing them first, and making him wait several hours to be interviewed. He also complained that police did not prepare a proper report of the incident, and wanted to know why military police would suggest to both he and his daughter that they could be arrested when he had gone to police to report a crime, and she as the victim of a crime.

The complaint related to a dispute on a Canadian Forces Base involving the complainant, his daughter, and her estranged husband. The incident was witnessed by the complainant's wife, as well as the estranged husband's girlfriend.

All involved arrived at the Military Police detachment shortly afterward to report the incident where, over the course of the next several hours, they were interviewed by military police. The complainant waited some three hours for his turn to be interviewed.

Disposition by the Canadian Forces Provost Marshal

The investigation of the complaint by Professional Standards found that, in essence, the Military Police member involved had made the best of a difficult situation, and concluded that the delay in interviewing the complainant, although regrettable, was unavoidable in the circumstances.

As for advising the complainant and his daughter that they could be arrested, the Professional Standards investigation found that it is proper for a police officer to advise individuals of the potential consequences of their conduct. This investigation also concluded that military police had completed all the appropriate reports on the incident.

Not satisfied with the finding of no misconduct on the part of military police, the complainant asked that his complaint be reviewed by the Complaints Commission.

Issues, Findings and Recommendations

The Commission Member delegated by the Chairperson to review the complaint examined several issues:

- a) *The complainant felt that, by interviewing others involved in the incident before him, the Military Police member discriminated against him*

The Commission Member found that, at the time the complainant and others involved in the incident arrived at the detachment office, the Military Police member who was the subject of the complaint was alone. Sensing the volatility of the situation, he placed the various players in different areas of the detachment offices, and began interviewing those involved one at a time. After he had completed two interviews, two other Military Police members returned to the detachment office from a call, and carried out one of the two interviews that had not yet been completed.

The Commission Member agreed with the conclusion of the Professional Standards investigation: though regrettable, the delay was unavoidable in the circumstances, and there was no evidence the Military Police member had discriminated against the complainant in determining the order in which the interviews were conducted.

- b) *Completion of appropriate reports by Military Police members*

The Commission Member's findings also agreed with the results of the Professional Standards investigation on this issue. Military police completed all the appropriate reports on the incident. As no charges were laid or pending in connection with the incident, there was no requirement to prepare a Military Police Investigation Report.

c) Propriety of military police advising someone that they could be arrested or charged with an offence

In examining this aspect of the complaint, the Commission Member found the jurisprudence on the question reveals police, in that they are responsible for crime prevention, have the right to inform individuals and a duty to ensure they understand the possible consequences of their actions. The Commission Member found that, in relation to the incident in question, it was appropriate for military police to provide this information to the complainant and his daughter, and that doing so did not constitute a threat or intimidation.

Police, in that they are responsible for crime prevention, have the right to inform individuals and a duty to ensure they understand the possible consequences of their actions.

d) Refusal to provide the subject of a recorded interview with a copy of the interview

The Commission Member made an additional finding based on an issue that arose during the review, namely, the Military Police member's refusal to provide the complainant with a copy of his videotaped interview with police.

Although a Military Police member is neither required nor expected to provide an immediate copy of a videotaped interview to the subject of the interview, it is the duty of military police to advise persons of their right to obtain a copy, and to refer them to the appropriate authority.

INTERFERENCE COMPLAINT

CASE No. 5 – Alleged interference by Officer Commanding

Facts and Complaint

A Military Police member with the Canadian Forces National Investigation Service complained that the Officer Commanding of a Military Police detachment interfered with a criminal investigation against one of the members of the detachment by revealing undisclosed information.

The investigation into this complaint by the Complaints Commission involved interviews with five witnesses, as well as a review of background documents provided by the Deputy Provost Marshal, Professional Standards.

The investigation showed that, while investigating a complaint of sexual assault against a member of the Military Police, the Canadian Forces National Investigation Service investigator learned an anonymous letter containing other allegations against the Military Police member under investigation had been received at the local Royal Canadian Mounted Police detachment. The anonymous letter was forwarded to the Canadian Forces National Investigation Service investigator.

After determining the allegations in the letter were false, the Canadian Forces National Investigation Service investigator expanded his investigation with a view to identifying the author of the letter, whom the Canadian Forces National Investigation Service investigator believed could be charged with public mischief. The Canadian Forces National Investigation Service investigator was able to identify the person he believed to be responsible for writing the letter, another member of the Military Police and a colleague of the member being investigated for sexual assault.

Subsequently, the Canadian Forces National Investigation Service investigator met with the Officer Commanding the Military Police detachment to brief him on several ongoing investigations. During this briefing, the Canadian Forces National Investigation Service investigator advised the Officer Commanding of the existence of the anonymous letter, but did not provide any additional information on the grounds the letter had been passed to him personally after an official request to the Royal Canadian Mounted Police.

Although he had by now identified the author of the letter, the Canadian Forces National Investigation Service investigator did not share this information with the Officer Commanding. Indeed, he did not inform the Officer Commanding that he was looking for the author of the letter, or that this investigation involved other Military Police members under the supervision of the Officer Commanding.

After the briefing, upset that an anonymous letter alleging misconduct against a Military Police member under his supervision had been sent to the Royal Canadian Mounted Police, and deducing that the letter had been written by someone in his detachment, the Officer Commanding sent an e-mail to all Military Police members under his command demanding that the author of the letter come forward.

The Canadian Forces National Investigation Service investigator complained that the e-mail from the Officer Commanding “interfered with a criminal investigation against one of [the Officer Commanding’s] members by revealing privileged information.”

Issues, Findings and Recommendations

The Chairperson was concerned with one issue in this complaint:

Did the Officer Commanding’s decision to send the e-mail constitute an improper intervention on his part comparable to interference, intimidation or abuse of authority as set out in section 250.19 of the National Defence Act?

The Chairperson found that although the Officer Commanding was aware that the Canadian Forces National Investigation Service investigator was following up on the allegations made in the anonymous letter, he was not informed that the allegations in the letter had already been proven false. The Officer Commanding was also not aware that the Canadian Forces National Investigation Service investigator had now turned his attention to identifying the author of the anonymous letter, and in fact had done so and was close to laying a charge of public mischief.

In an interview with the Complaints Commission investigator, the Officer Commanding stated that, had he known the Canadian Forces National Investigation Service investigator was investigating the origin of the anonymous letter, he would not have sent the e-mail demanding the author of the letter come forward.

After reviewing all of the information, the Chairperson found that, in sending the e-mail, the Officer Commanding did not abuse his authority, intimidate, or improperly intervene in an investigation.

This finding notwithstanding, the Chairperson found also that the Officer Commanding should have erred on the side of caution before disclosing information that could have an impact on an ongoing investigation. The Chairperson thus recommended that, barring an urgent situation that dictates otherwise, administrative concerns related to a criminal investigation should be held in abeyance until the police investigation has been completed.

The Officer Commanding should have erred on the side of caution before disclosing information that could have an impact on an ongoing investigation.

In summation, this interference complaint clearly had its origins in a breakdown in communications between the Canadian Forces National Investigation Service investigator and the Officer Commanding of the Military Police detachment. In her report, the Chairperson noted that the Deputy Provost Marshal, Professional Standards, in a final letter addressing conduct complaints arising from this same incident, raised concern over the reluctance of the Canadian Forces National Investigation Service investigator and the Military Police Officer Commanding to fully cooperate with each other in this matter. The Deputy Provost Marshal, Professional Standards directed that both be counselled in this regard. The Chairperson strongly supported this direction, and recommended the Complaints Commission be notified of the outcome of the counselling.

PUBLIC INTEREST INVESTIGATION

CASE No. 6 – *Numerous serious allegations – core issues in military policing – alleged abuse of authority*

On October 31, 2002, the Chairperson caused the Complaints Commission to initiate a Public Interest Investigation, delegating part-time Commission Members Mr. Peter Seheult and Mr. Odilon Emond, to conduct the investigation.

The Complaints Commission conducted a thorough review of voluminous relevant documentation related to investigations conducted by the Canadian Forces National Investigation Service and the Deputy Provost Marshal Professional Standards. Following the initial request for all information and materials relevant to the complaint, the Complaints Commission found it necessary to submit several more requests for additional disclosure; these materials were received from the offices of the Deputy Provost Marshal Professional Standards or the Canadian Forces Provost Marshal over a period of many months, from May 27, 2002 to March 10, 2003.

The first phase of the Public Interest Investigation, conducted by an investigator from the Complaints Commission, was carried out between September 16, 2002 and February 5, 2003. The second phase of the investigation was conducted by Commission Members between February 12, 2003 and April 8, 2003.

Reason for Public Interest Investigation

The Chairperson's decision to cause a public interest investigation to be held in this case concerning two complaints files was based on a number of factors, including allegations that, if substantiated, could reflect a denial of the complainants' rights, undermining the credibility of the Military Police oversight mechanism:

- a) *The conduct complaints filed against Military Police members involved numerous allegations of a serious nature.*
- b) *Certain elements of the complaints dealt with core issues in military policing, such as the proper role and conduct of military police when carrying out arrests.*
- c) *Superiors were alleged to have abused their authority or attempted to influence or punish complainants for exercising their right to submit a complaint about military police conduct.*

Conduct of the Investigation

Commission Members Peter Sehult and Odilon Emond examined extensive documentation compiled through investigations carried out by the Canadian Forces National Investigation Service and the Deputy Provost Marshal, Professional Standards. These investigations dealt with incidents that led two members of the Canadian Forces to file a number of conduct complaints.

In addition to reviewing this documentation, the Commission Members interviewed 13 witnesses, and investigators of the Complaints Commission interviewed a total of 19 witnesses. Four individuals, all members of the Military Police, exercised their right to refuse to be interviewed by the Commission Members, although one of the four had been interviewed previously by the Complaints Commission investigator.

Four individuals, all members of the Military Police, exercised their right to refuse to be interviewed by the Commission Members.

Upon completing the second phase of their investigation, the Commission Members prepared an Interim Report some 200 pages in length, detailing the results of the investigation and addressing a total of six key issues identified at the outset.

These issues included questions surrounding the propriety and legality of an order to arrest one of the complainants, the propriety and legality of the arrest itself, and whether the subsequent release from arrest of the complainant was proper and lawful. The Commission Members also examined whether Military Police members, through intimidation or other means, attempted to discourage a member of the Canadian Forces from filing a complaint, and whether a complaint from another member of the Canadian Forces was handled properly by the Deputy Provost Marshal, Professional Standards. A final issue considered by the Commission Members in this investigation concerned whether the “internal classification of complaints” by the Canadian Forces Provost Marshal is having the effect of negating the rights of complainants by preventing their complaints from coming under the jurisdiction of Part IV of the *National Defence Act*.

The Commission Members listed 52 findings, and offered 10 recommendations in the Interim Report, completed on October 20, 2003.

Copies of the Interim Report were provided to the Minister, the Chief of Defence Staff, the Judge Advocate General and the Canadian Forces Provost Marshal as required by the *National Defence Act*. The Commission Members now await the Notice of Action which is to be provided by the Provost Marshal. When it is received, the Final Report of this public interest investigation will be prepared and posted on the Complaints Commission Web site at www.mpcc-cppm.gc.ca.

CONDUCT COMPLAINT INVESTIGATIONS MONITORED BY THE COMPLAINTS COMMISSION

As noted in the “overview” at the beginning of Part II of the Annual Report, the Complaints Commission has broad powers to monitor the handling of complaints by the Provost Marshal and her delegates. During 2003, the Chairperson exercised, for the first time since the inception of the Complaints Commission, the full extent of this monitoring power. Unfortunately, notwithstanding a prior agreement to provide materials, it was not until the Complaints Commission made application to the Federal Court of Canada that the Canadian Forces Provost Marshal agreed to provide the Complaints Commission with information on the investigation of two conduct complaints sufficient to allow the Chairperson to make a meaningful determination regarding the appropriateness of the Provost Marshal’s handling of the complaints.

At the completion of the monitoring process of a complaint, the Chairperson does not prepare an Interim or Final Report, or make findings and recommendations; rather, the Chairperson provides her observations on the conduct of the Provost Marshal’s investigation in a letter to the Provost Marshal, with copies to the Minister of National Defence, the Judge Advocate General, the complainant and the subject of the complaint. Copies of the letter may also be provided to other persons with a substantial and direct interest in the case.

As noted in the following two case summaries, by exercising its monitoring power in this way, the Complaints Commission provides the Canadian Forces Provost Marshal with an independent and impartial assessment of her handling of complaints. The Chairperson’s observations can contribute to the Provost Marshal’s own efforts to enhance the professionalism of complaint investigations, as well as draw attention to systemic issues that may be allowing particular types of conduct problems to arise.

By exercising its monitoring power in this way, the Complaints Commission provides the Canadian Forces Provost Marshal with an independent and impartial assessment of her handling of complaints.

CASE No. 7 – Allegations of unlawful search; discreditable conduct

Facts and Complaint

The Deputy Base Provost Marshal of a Canadian Forces Base complained about the conduct of a member of the Military Police platoon within a regiment on the base, alleging that the member had, in the guise of conducting a demonstration of the Ontario Provincial Police Canine drug unit, carried out an unlawful search of a Canadian Forces barracks and other buildings. The complaint stated that this activity had been carried out even though the Military Police member had discussed it with the Military Police detachment on the base some two weeks earlier, and was advised that the canine demonstration could not take place without prior approval from the Base Provost Marshal.

Disposition by the Canadian Forces Provost Marshal

On the grounds that a possible criminal or service offence had been committed, the initial investigation of this complaint was conducted by the Canadian Forces National Investigation Service. Upon the finding by the Canadian Forces National Investigation Service that no such offence had been committed, nor had the Military Police member breached any section of the *National Defence Act*, a Professional Standards investigation was initiated to determine whether the Military Police member had breached the *Military Police Professional Code of Conduct*.

This investigation concluded that the canine demonstration – in that it was confined to public areas of the buildings in question – did not constitute an unlawful search, and that the Military Police member had not breached any section of either the *Military Police Policies and Technical Procedures* or the *Military Police Professional Code of Conduct*.

Nonetheless, given the seriousness of the allegations in the complaint, and the unusual nature of the circumstances that gave rise to the complaint, the Chairperson chose to have the Complaints Commission monitor the Provost Marshal's handling of the complaint.

Chairperson's Observations

While agreeing with the findings of the Canadian Forces National Investigation Service and the Professional Standards investigations, the Chairperson observed that the member of the Military Police platoon within the regiment proceeded with the canine demonstration on the order of his Commanding Officer, despite advice to the contrary from the base Military Police detachment. The section of the *Military Police Policies and Technical Directives* used to determine whether the Military Police platoon member should have followed the order of his Commanding Officer or the advice of the base Military Police detachment is rather ambiguous, and open to interpretation on this point.

The Chairperson noted that the sections of the *Military Police Policies and Technical Directives* that describe the reporting and command structure between Military Police detachments and Military Police platoons should be revised to ensure such confusion does not recur in the future.

Sections of the *Military Police Policies and Technical Directives* that describe the reporting and command structure between Military Police detachments and military police platoons should be revised.

In her letter to the Provost Marshal, the Chairperson also observed the Final Letter of Disposition sent to the complainant and the subject of the complaint by the Deputy Provost Marshal, Professional Standards should have provided more details of the investigative process, as it was difficult to determine from it why the Deputy Provost Marshal, Professional Standards came to certain conclusions. In this regard, the Chairperson also noted that during the time this complaint was monitored, there had been noticeable improvements in the Final Letters provided by the Deputy Provost Marshal, Professional Standards.

CASE No. 8 – *Alleged improper and inappropriate conduct – disclosure of information that could result in physical harm to an individual*

Facts and Complaint

A member of the Canadian Forces Defence Counsel Services complained about the conduct of two members of the Military Police, investigators with the Canadian Forces National Investigation Service. The complaint alleged that, while conducting the pre-trial investigation of a charge of sexual assault against a member of the Canadian Forces, the two investigators assembled some 12 to 15 Canadian Forces members in the hangar of a ship, named the accused, and stated that the alleged sexual assault had homosexual connotations. The investigators asked those assembled that if any of them knew of any other incidents of homosexual conduct involving the accused, they should contact the investigators.

The complainant stated that, at the very least, the two investigators had demonstrated very poor judgement. The complaint also alleged that the investigators had humiliated the accused and further, that the disclosure of this information could have led to physical reprisals against the accused.

Disposition by the Canadian Forces Provost Marshal

Following an investigation into the complaint by Professional Standards, the Deputy Provost Marshal, Professional Standards concluded that the conduct of the two investigators from the Canadian Forces National Investigation Service was improper, inappropriate, and displayed very poor judgement. The Deputy Provost Marshal, Professional Standards recommended that both investigators be provided with remedial training in order for them to conduct their investigations in the least intrusive manner. The allegations that in disclosing the homosexual nature of the alleged sexual assault in this way the investigators humiliated the accused and could have left him open to physical reprisal were not supported.

After considering the issues involved in this complaint, including the extraordinary manner in which personal information about the accused was disclosed, and the potential for physical harm to the accused as a result, the Chairperson decided to exercise the monitoring power of the Complaints Commission in this case.

Chairperson's Observations

After reviewing the handling of this complaint, the Chairperson observed that the investigation conducted by Professional Standards should not have concluded that the conduct of the two investigators did not humiliate the accused. As the accused would not be interviewed for the Professional Standards investigation, the Chairperson noted there was no way to make an accurate determination in this regard.

The Chairperson observed that the disclosure of the homosexual nature of the alleged sexual assault could have led to physical reprisals against the accused and that this aspect of the complaint was not properly addressed by the Professional Standards investigation. The Chairperson noted that, in response to this allegation, the Professional Standards investigator interviewed two ship's officers. Each was asked whether there would be any concerns for the physical safety of a sailor who does not identify himself as a homosexual but is subsequently discovered to be homosexual.

The Chairperson observed that the disclosure of the homosexual nature of the alleged sexual assault could have led to physical reprisals against the accused and that this aspect of the complaint was not properly addressed by the Professional Standards investigation.

At no time did the Professional Standards investigator ask the ship's officers how other sailors would react to a male accused of sexually assaulting another male, which the Chairperson considered a more pertinent question in the circumstances, and necessary to determining whether such a disclosure could have endangered the individual in question.

As a final observation, the Chairperson noted that, while she found the Professional Standards investigation to be inadequate in some areas, since this particular complaint was filed in the summer of 2001, she had observed distinct improvements in the handling of conduct complaints by the Deputy Provost Marshal, Professional Standards.

OUTREACH

COMMUNICATING WITH OUR CLIENTS

Outreach and communications play an important part in assuring the effectiveness of civilian oversight of law enforcement. This is especially true for the Complaints Commission, which is still a relatively young organization, charged with providing oversight to a large police service, the members of which are deployed across Canada and with Canadian Forces around the world. If members of the Canadian Forces and the public in Canada and elsewhere are not aware of their right to complain about the conduct of military police, or if members of the Military Police are not aware of their right to complain about interference with their investigations, the mandate of the Complaints Commission and the intent of Parliament cannot be fulfilled.

It is important also that this communication flow both ways. Feedback from members of the Canadian Forces, and especially – since the activities of the Complaints Commission can have such a significant impact on them – members of the Canadian Forces Military Police, is very important to the efforts of the Complaints Commission to be as effective as possible.

Feedback from members of the Canadian Forces, and especially members of the Canadian Forces Military Police, is very important to the efforts of the Complaints Commission.

Since the Complaints Commission was established in December, 1999, the Chairperson or Members of the Complaints Commission and staff have visited with Military Police members at Canadian Forces Bases from Nova Scotia to British Columbia on 25 separate occasions, including a visit to military police deployed to Bosnia as part of Canada's contribution to the NATO Stabilization Force.

During 2003, the Complaints Commission Chairperson, Members and staff met with Military Police members in Suffield and Wainwright, Alberta; Comox and Esquimalt in British Columbia; Gagetown, New Brunswick; Greenwood in Nova Scotia, and Kingston, Ontario.

In addition to base visits, the Chairperson addressed and met with military police at the Canadian Forces Military Police Branch Annual Symposium in Cornwall, Ontario, and joined the Special Assistant to the Vice Chief of the Defence Staff, the Canadian Forces Provost Marshal, the Deputy Provost Marshal Professional Standards, and representatives of the Judge Advocate General at a symposium in Wakefield, Quebec.

As well, Military Police members at the Military Police Academy in Borden, Ontario, received two visits from the Complaints Commission.

COMMUNICATING WITH OUR PEERS

While common in Canada and many other countries, civilian oversight of law enforcement is practiced in different ways in different jurisdictions, and like many other forms of public accountability, civilian oversight of law enforcement continues to evolve and grow in its effectiveness.

Maintaining relationships with national and international associations devoted to civilian oversight of law enforcement helps the Complaints Commission keep abreast of research and development in the field, identify best practices for police services, benefit from the experience of others, and for others to benefit from the experience of the Complaints Commission.

The Complaints Commission actively participates in the Canadian Association for the Civilian Oversight of Law Enforcement (CACOLE) and the International Association for the Civilian Oversight of Law Enforcement (IACOLE). The Complaints Commission's General Counsel and Director of Legal Services sits on the Board of Directors of CACOLE, and is also a member of the organization's Research Committee as well as special representative for extra-jurisdictional policing.

The General Counsel and Director of Legal Services is also a member of the Advisory Committee on Access to Justice in both Official Languages before Federal Tribunals. This Committee was created by the Heads of Federal Tribunals, which includes the Chairperson of the Complaints Commission, to examine issues such as the bilingual capability of tribunals and language of decisions.

This year, the Chairperson was again invited to speak to the annual conference of CACOLE in Banff, Alberta, and also delivered an address to the National Military Law Section of the Canadian Bar Association. One of the Complaints Commission's legal counsel is a member of the executive of this section of the Canadian Bar Association. Both speeches are available on the Web site.

SPECIAL REPORT

The Complaints Commission is preparing a Special Report on Informal Resolution. It is hoped the report will be ready for publication and distribution early in the new fiscal year beginning April 1, 2004.

As with the first Special Report from the Complaints Commission, (*Interference with Military Police Investigations: What is it about?*) released in 2002, the upcoming report is intended as an educational tool that will examine various issues surrounding informal resolution of disputes in the context of complaints against police.

The report will outline the relevant definitions, the goals of the police complaint process, and discuss a variety of issues such as the integrity of the informal resolution process, entitlement to assistance, formality of settlements, the use of statements and agreements in informal resolution, and enforcement. The Special Report will serve as a means to outline a summary of best practices in the informal resolution of complaints against the police, as well as provide a platform for the introduction of the Complaints Commission's own framework for informal resolution of complaints.



PART III

CHAIRPERSON'S RECOMMENDATIONS

The recommendations made here are considered by the Chairperson to be the most important to enhancing the effectiveness of the Complaints Commission, and to ensuring the ongoing transparency and fairness of the complaints process. It is a measure of the importance of these issues to the Complaints Commission that this is the first time the Chairperson has chosen to make recommendations to the Minister of National Defence in an Annual Report since the inception of the Complaints Commission.

RECOMMENDATIONS:

POWER TO COMPEL TESTIMONY BEFORE PUBLIC INTEREST INVESTIGATION

To date, the Complaints Commission has conducted three public interest investigations, involving a total of six complaints. On a number of occasions, some witnesses have declined to be interviewed by Commission Members as part of the investigations. The main concern in doing so appears to be that as witnesses, they have no protection against the future use of their statement. Currently, the Complaints Commission can only subpoena a witness – and offer the corresponding protections against the subsequent use of their testimony against them – when it calls a public interest *hearing*.

In the view of the Complaints Commission, it should not be necessary to go to the added expense and delay associated with a formal public hearing merely to conduct a proper investigation. The legislative requirement for the Complaints Commission to act expeditiously and informally, as well as sound financial management, offer a strong argument in favour of providing the Complaints Commission with the power to subpoena witnesses for public interest *investigations* as well as hearings.

Interestingly, the Independent Review Authority for the *National Defence Act* recommended the Canadian Forces Grievance Board be given this same power.

In the interest of both the effectiveness of civilian oversight of military police, and administrative efficiency:

- 1. I recommend that the National Defence Act be amended to provide the Military Police Complaints Commission the power of subpoena relative to investigations conducted in the public interest, and that witnesses who provide evidence to such investigations be granted the appropriate protections in law.***

PROTECTION AGAINST REPRISAL FOR COMPLAINANTS

The Independent Review Authority for the *National Defence Act* accepted the proposal of the Complaints Commission and recommends that the Act be amended “to explicitly state that an officer or non-commissioned member of the Canadian Forces who brings a Part IV complaint in good faith to the Military Police Complaints Commission, the Canadian Forces Provost Marshal, the Judge Advocate General or a member of the Military Police will not be penalized for bringing such complaint.”

Given that the Parliament of Canada created the Military Police Complaints Commission in part to assure the independence of military police in their investigations and that there is evidence from discussions with Military Police members that fear of reprisal may already be suppressing legitimate complaints, in particular complaints of interference:

2. I recommend that, pending amendments to the National Defence Act, immediate steps be taken to offer the protection against reprisal proposed by the Independent Review Authority through the issuance of appropriate orders and instructions to Canadian Forces members and to officials of the Department of National Defence.

EXTENSION TO SUBJECT MEMBERS OF RIGHT TO REQUEST REVIEW

One of the recommendations of the Independent Review Authority for the *National Defence Act* states in part that, “...the complainant or the member of the military police whose conduct was the subject of the complaint would have 60 days within which to request a review...”

Currently, only the complainant has the right to request a review of the disposition of his or her complaint. This has led to the perception on the part of Military Police members that the complaints process is slanted in favour of the complainant. Some feel that the complaints are now substantiated in order to please or appease complainants and avoid a review by the Complaints Commission. That the complaints process is fair, and seen to be fair, is fundamental to its integrity.

In the interest of fairness, both sides – the complainant and the subject of the complaint – should have the right to request a review of the complaint. Such an amendment is consistent with the Report of the Independent Review Authority.

3. I recommend that the National Defence Act be amended to provide that, like complainants, members of the military police whose conduct has been the subject of a complaint have the right to request a review of the complaint by the Complaints Commission.

CHAIRPERSON'S CONCLUSION

In reviewing the year 2003, I can say that it has been a year of change and challenge for the Military Police Complaints Commission.

Internally, we continued to develop and implement the management structures, procedures and protocols and the financial systems that will ensure the Complaints Commission continues to meet the highest standards of operational excellence and financial accountability expected of an agency of the Government of Canada.

Through its reviews and investigations of complaints, its outreach activities, its submission to the Independent Review Authority for the *National Defence Act* and other initiatives, the Complaints Commission continued to demonstrate its determination to carry out the mandate assigned to it by the Parliament of Canada.

While I believe there are elements of the complaints process and the oversight powers of the Complaints Commission that could be amended to enhance its effectiveness, I can nonetheless say with certainty the Complaints Commission has succeeded in bringing a new level of accountability to Canadian Forces Military Police as we continue to work toward a fully fair and transparent system for dealing with complaints against military police, and of interference with Military Police investigations.

At all times, the actions of the Complaints Commission are founded on its commitment to assist military police in being as effective and as professional as possible in the performance of their policing duties and functions. This is essential to maintaining Canadians' confidence in our military police, and in our military justice system.

Canadian Forces Military Police are an integral part of the Canadian Forces, perhaps our nation's most visible and respected public institution. These dedicated, professional men and women are there to serve Canada and Canadians in times of emergency at home, and to put themselves in harm's way as they carry our ideals of peace and justice around the world.

The Military Police Complaints Commission is proud to be associated with the Canadian Forces and Canadian Forces Military Police, and to contribute to the professionalism of the Military Police organization.



Louise Cobetto
Chairperson



A N N E X E S

ANNEX A – Biographies

Louise Cobetto



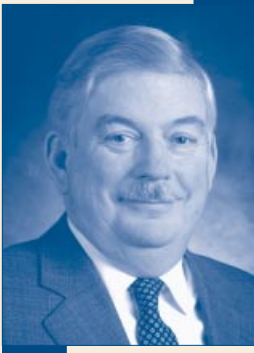
Chairperson

Ms. Louise Cobetto is the first Chairperson of the Military Police Complaints Commission. Prior to her appointment on September 1, 1999, 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 practiced 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 practises law in Grand Falls, New Brunswick. He 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 is 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.

Mr. 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 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 Royal Canadian Mounted Police in 1998.

Mr. Henry Kostuck |



Member

Mr. Kostuck, from Orleans, Ontario, enjoyed an outstanding career with the Ontario Provincial Police, which he joined in 1956. During his more than 30 years with the Ontario Provincial Police, 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 Royal Canadian Mounted Police.

ACTING EXECUTIVE DIRECTOR, GENERAL COUNSEL AND DIRECTOR OF LEGAL SERVICES

Ms. Johanne Gauthier was named General Counsel and Director of Legal Services to the Complaints Commission in September of 2001. As of late October 2003, Ms. Gauthier is also Acting Executive Director of the Complaints Commission.

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 Complaints 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 for the provinces of Quebec and Ontario. Immediately preceding her appointment to the Military Police Complaints Commission, Ms. Gauthier served as Legal Counsel to Canada's Commissioner of Official Languages.

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 Complaints 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).

CHIEF OF STAFF AND SPECIAL ADVISOR TO THE CHAIRPERSON

Mr. Stanley Blythe joined the Complaints Commission as Chief of Staff and Special Advisor to the Chairperson in August of 2003.

Mr. Blythe was a member of the Canadian Forces for 31 years, including a number of years with the Judge Advocate General's organization. Following his retirement from the Canadian Forces in 1999, Mr. Blythe was appointed Court Martial Administrator responsible for managing the Office of the Chief Military Judge.

A graduate of the Royal Military College, Mr. Blythe also holds a Bachelor of Laws degree from the University of Alberta and a Master of Laws from the University of Ottawa.

ANNEX B – Executive, Management and Operations Committees of the Complainants Commission

EXECUTIVE COMMITTEE

The senior committee of the Complainants Commission is the Executive Committee. The Chairperson of the Complainants Commission also chairs the Executive Committee, which normally meets once every month. The membership, in addition to the Chairperson, consists of the Executive Director, the Director of Legal Services, the Chief of Staff to the Chairperson and a part-time Member designated by the Chairperson.

The role of the Executive Committee is to consider and decide questions of policy, deal with major corporate matters such as the budget, the Annual Report and audits, and to consider and decide major administrative questions, such as organization and service agreements. The Committee may invite other Complainants Commission staff to brief it on specific agenda items, as required, and may occasionally be addressed by representatives from central agencies, other government departments or the private sector.

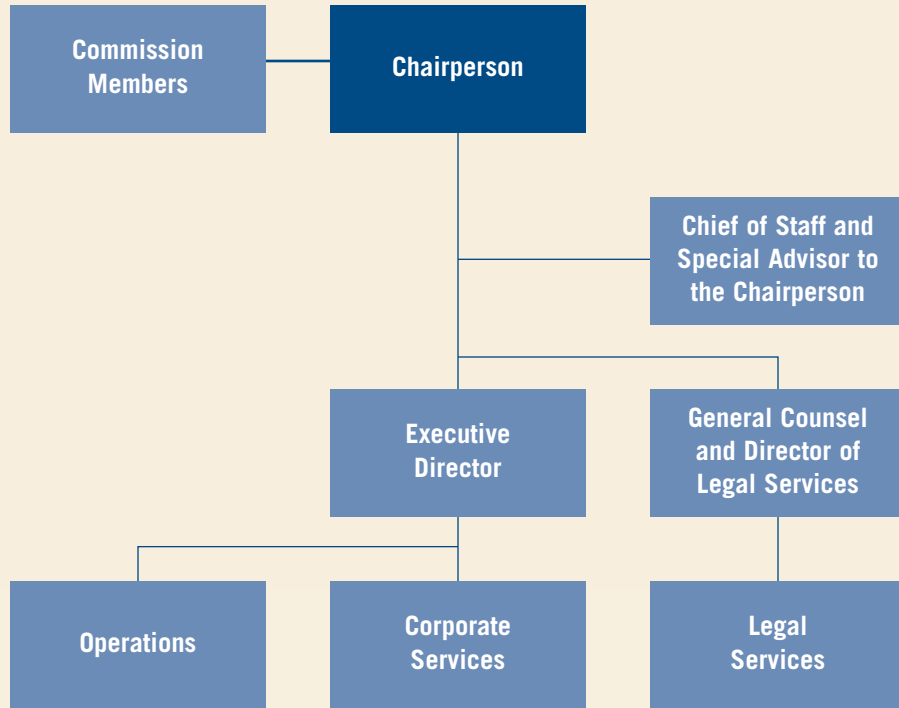
MANAGEMENT COMMITTEE

The Management Committee is chaired by the Executive Director and includes in its membership the Director of Legal Services, the Director of Operations, the Manager of Corporate Services, and the Chief of Staff to the Chairperson. It meets regularly at the call of its Chairperson to deal with matters such as policy implementation, significant decisions having to do with a range of support functions, and matters relating to the operation of the Complainants Commission such as record-keeping, contracting, finance and human resource issues. Other staff and/or consultants may be invited to attend for specific agenda items.

OPERATIONS COMMITTEE

The Operations Committee is chaired by the Complainants Commission Chairperson and Chief Executive Officer. Its membership consists of the Director of Operations, the Director of Legal Services, employees of the Operations and/or Legal Services Directorate, as required and the Chief of Staff to the Chairperson. Members of the Complainants Commission are also members, and other Complainants Commission employees and consultants may attend when invited for specific agenda items. The role of the Committee is to deal with questions of operational policy and procedure, to consider reports and/or recommendations which could create precedents, to discuss legal opinions or advice which could have a significant impact on operations and to generally oversee the case-handling process.

ANNEX C – Organizational Chart



ANNEX D – Financial Summary

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, 2004 is based on management's best estimates and judgements.

Military Police Complaints Commission Statement of Operations For the Year Ending March 31 (in dollars)

	2003-04 Planned Spending	2002-03 Actual
Salaries, wages and other personnel costs	1,925,000	1,655,398
Contributions to employee benefit plans	359,000	332,190
Sub-total	2,284,000	1,987,588
Other operating expenditures	1,867,000	1,654,712
Total use of appropriation	4,151,000	3,642,300
Add: Cost of services provided by other government departments	136,400	142,000
Total Operating Costs	4,287,400	3,784,300

This second table provides a year-by-year comparison of the annual appropriation to the Complaints Commission from Parliament and actual spending by the Complaints Commission since its inception on December 1, 1999:

Fiscal year	Budget Allocation*	Actual Spending*	Variance*
1999-2000	\$ 1,050	885	165
2000-2001	\$ 4,010	3,660	350
2001-2002	\$ 4,176	3,635	541
2002-2003	\$ 4,278	3,642	636

*000's of dollars

Annual increases in the budget allocation are due to collective agreements, other related adjustments and certain funds carried over.



ANNEX E – The Complaint Process

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

Complainants not satisfied with the Provost Marshal's disposition of their complaint about the conduct of military police can ask the Complaints Commission to review the matter.

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

FILING A 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 I).

Both conduct and interference complaints can be filed orally or in writing, to the Chairperson of the Complaints 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 Complaints 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 Complaints 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 this report, which must also include notice of the complainant's right to ask the Complaints Commission to review the matter. If a complainant is not satisfied with the disposition of the complaint, he or she can ask the Complaints Commission to review the matter.

This provision for review by the Complaints 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 Complaints Commission about interference in or obstruction of 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 Complaints 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 jurisdiction to deal with the complaint.

In 2002, the Complaints 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. The Guide is available on the Commission Web site, or by contacting the Commission directly (see Annex J).

HEARINGS

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

The Complaints 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 Complaints 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. The Rules are available on the Complaints Commission Web site, or by contacting the Complaints Commission directly (see Annex J).

REPORTS

Every request for review submitted to the Chairperson, every investigation of an interference complaint 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 Complaints 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.

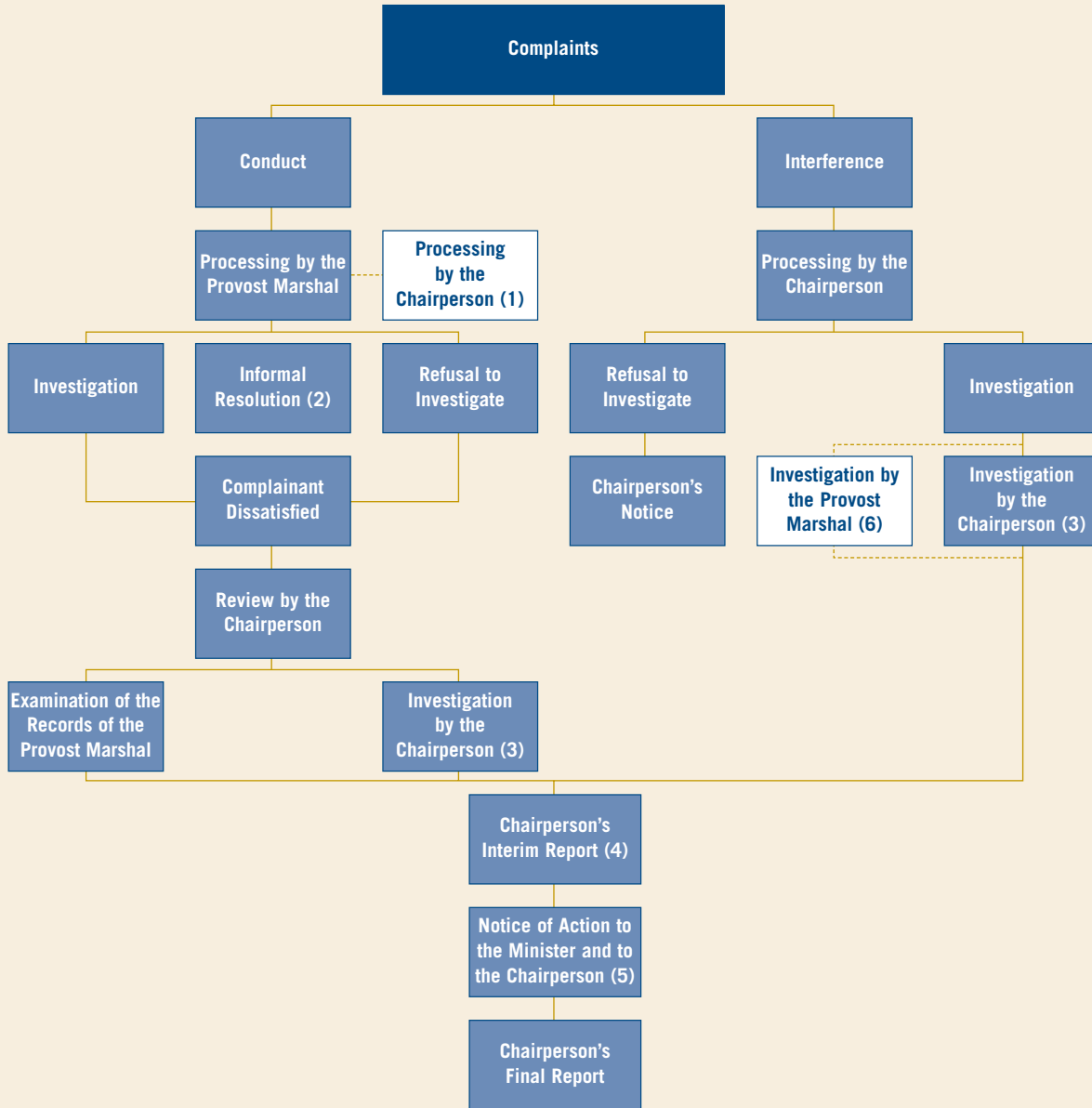
While not binding, if there is a refusal to act on any of the Chairperson's findings or recommendations, the Notice of Action must provide an explanation for not acting.

FINAL REPORT

After considering the official written response to the interim report (Notice of Action), 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.

ANNEX F – The Complaints Process (Chart)



- (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 G – Case Statistics

	2000	2001	2002	2003	TOTAL
Conduct Complaints Monitored	55	64	65	34	218
Number of Interference Complaints	1	1	2	∅	4
Number of Reviews	1	10	6	2	19
Number of s.250.38 Public Interest Investigations/Hearings	2	2	2	∅	6
Number of General Files Open (Request for information / Outside Jurisdiction of MPCC)	23	17	29	28	97
Documentation / Material requested as per s. 250.25				* 2	
Number of Files Open	82	94	104	64	344
Number of Interim Reports	1	5	15	4	25
Number of Final Reports	N/A	3	16	5	24
Number of Findings	N/A	33	180	207	420
Number of Recommendations	N/A	8	60	46	114
Number of Letters of Observations as per s. 250.25				2	2
Number of Observations as per s. 250.25				9	9

*The total for files opened in 2003 does not reflect these two requests, as they were previously opened.

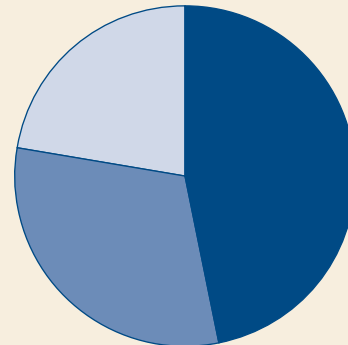
Note: The numbers of complaints are listed in the year they were filed, although they may continue into the next year.

Allegations of Misconduct by policing duties and functions:

(a) the conduct of an investigation:	31
(b) the rendering of assistance to the public:	7
(c) the execution of a warrant or another judicial process:	4
(d) the handling of evidence:	11
(e) the laying of a charge:	9
(f) attendance at a judicial proceeding:	1
(g) the enforcement of laws:	15
(h) responding to a complaint:	8
(i) the arrest or custody of a person:	3
Correspondence received from DPM PS:	483
Correspondence received from Complainant:	52
Correspondence received from others:	105
Letters sent:	869

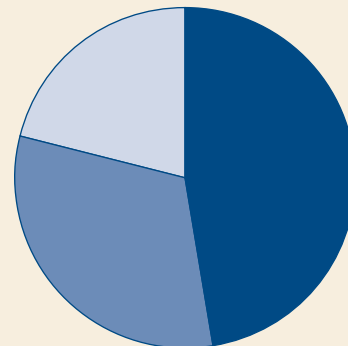
Chairperson's Recommendations 1999-2003

- 88% of the Chairperson's recommendations have been accepted
- 58% of the accepted recommendations have been implemented
- 42% of the accepted recommendations are pending



Chairperson's Recommendations 2003

- 90% of the Chairperson's recommendations have been accepted
- 60% of the accepted recommendations have been implemented
- 40% of the accepted recommendations are pending



ANNEX H – 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 I – Summary of Military Police Complaints Commission Proposals to the Independent Five-Year Review of Amendments to the *National Defence Act*

On November 5, 2003, then-Minister of National Defence, the Honourable John McCallum, tabled in Parliament the Report of the Independent Review Authority, led by former Supreme Court of Canada Chief Justice Antonio Lamer. The Authority was established to conduct the first five-year review of the provisions and operation of amendments made to the *National Defence Act* in 1998.

These changes, the vast majority of which were aimed at the modernization of the military justice system, represented the most significant overhaul of the legislative scheme for Canada's military since the *National Defence Act* was adopted in 1950. Canadians had become well-acquainted with the need for reform of the military justice system through the reports of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, 1995-97, and the Special Advisory Group on Military Justice and Military Police Investigations, 1997.

The Complaints Commission was pleased to have had the opportunity to meet with Chief Justice Lamer and his team to provide its perspectives and input on how the provisions of the legislation dealing with Military Police complaints and oversight set out in Part IV of the Act could be improved. In all, the Complaints Commission made 17 specific proposals:

- 1. THAT a Member whose term has expired be granted the authority to continue to hear and decide a matter notwithstanding the expiry of his/her term (section 250.1).**

The Chairperson and the other Members of the Complaints Commission are appointed by the Governor in Council for fixed terms of up to five years. While Commission Members are eligible for reappointment for further terms, reappointment is optional and so it could happen that a Member's term of office would expire while the Member is in the midst of dealing with a case under Part IV of the Act.

On the surface, this may appear to be a relatively minor issue, but this proposal speaks to the need for efficiency, timeliness, and fairness in the Part IV complaints process, as well as the desirability of avoiding delays associated with the departure of a Member in the middle of an ongoing case. This proposal would also enhance the independence of Complaints Commission Members and the integrity of the Complaints Commission's processes by ensuring that a decision not to reappoint a Member at the expiry of his or her term will not affect the handling of any ongoing cases.

2. THAT the complaints process be public interest driven (section 250.14).

Under the Act, the Complaints Commission has a duty to deal with complaints as expeditiously and informally as the circumstances and considerations of fairness permit. This is certainly as it should be, but the Complaints Commission believes the Act should extend this same obligation to others involved in the complaints process, since the Complaints Commission must await action from others in the Canadian Forces and the Department of National Defence at various stages before it can finish dealing with a complaint.

The Complaints Commission also believes the Act should place an explicit obligation on all involved in administering the complaints process to act in the public interest. Complaints relating to military policing under Part IV of the Act are more than disputes between private individuals. There are broader considerations of the public good at play, and those charged with administering the complaints process must, therefore, always be required to act with an eye to the public interest and to look beyond the immediate interests of the parties to a complaint.

3. THAT the Complaints Commission be provided with an explicit authority to deal with matters before it through an informal resolution process (sections 250.14 and 250.27).

The Complaints Commission believes it should have the same authority to engage in informal dispute resolution of complaints as the Canadian Forces Provost Marshal. Where informal resolution is in the public interest and is otherwise appropriate, the need for efficient and judicious allocation of resources dictates that informal resolution should be an option for any complaint at any stage of the process.

4. THAT the details of the informal resolution of a complaint be provided to the Complaints Commission (sections 250.25 and 250.27(6)).

The Canadian Forces Provost Marshal has the initial responsibility for handling complaints about military police conduct, and will normally take the lead role in investigating and disposing of the complaint. This is sensible, given the expertise and resources of the Office of the Provost Marshal, and its access to the relevant evidence and personnel. At the same time, any potential conflict of interest, or the appearance of one, inherent in the Provost Marshal's handling complaints about personnel who report to her is offset by the Complaints Commission's broad authority to monitor and oversee all stages of the process. Indeed, the credibility of the complaints process depends on transparency between the Canadian Forces Provost Marshal and the Complaints Commission.

To ensure this transparency throughout the complaints process, this same principle should extend to the informal resolution of conduct complaints by the Provost Marshal. While section 250.27 of the Act obliges the Provost Marshal to notify the Complaints Commission of any such resolution, the Provost Marshal interprets this section to mean the Complaints Commission need be informed only that an informal resolution has been reached, and not the actual terms of the resolution.

The Complaints Commission contends this is contrary to the spirit of the Act and frustrates the system of checks and balances devised by Parliament. Complaints about military policing involve more than the interests of the complainant and the subject member. Denying the Complaints Commission access to the details of informal complaint resolutions ignores the public interest and may result in broader systemic or policy problems going unaddressed.

This approach to informal resolution also prevents the Complaints Commission from properly assessing whether to take over the handling of a complaint in the public interest.

The Complaints Commission also needs access to the details of informal resolutions in order to monitor the integrity of the informal resolution process; to ensure the terms of the informal resolution are appropriate to the nature and gravity of the conduct to which the complaint refers, and even whether informal resolution is properly available in a case in accordance with section 250.27(2) of the Act and section 3 of the *Complaints Against the Conduct of Members of the Military Police Regulations*.

5. THAT the Complaints Commission be provided with an explicit authority to conduct investigations on its own initiative for conduct and interference complaints (sections 250.18 and 250.19).

The Complaints Commission believes that it would be in the public interest and provide for greater efficiency if it were given explicit authority to initiate complaint investigations. The Chair of the Royal Canadian Mounted Police Public Complaints Commission has this authority under the *Royal Canadian Mounted Police Act*.

While the Act does give the Complaints Commission a broad monitoring and oversight role, the complaints process is complaint-driven, or rather complainant-driven. The involvement of the Complaints Commission depends on a formal complaint being filed, and, in the case of conduct complaints, the complainant requesting a review of the Provost Marshal's disposition of the matter.

This does not allow for situations where credible information may come to the attention of the Complaints Commission regarding a matter that could be the subject of a conduct or an interference complaint, but for various reasons no complaint or request for review is made (it should be noted here that the Act contains no guarantee of confidentiality in the handling of complaints and no special provision to protect complainants from harassment, reprisals or intimidation). In such situations, the Complaints Commission should be able to investigate or review a matter on its own initiative.

It can also happen that new allegations arise within the context of a review of a conduct complaint. Currently, these allegations must be referred back to the Canadian Forces Provost Marshal to be handled as a new complaint. It would be more efficient if the Complaints Commission could simply handle such allegations during the course of its review of the original complaint.

6. THAT the definition of interference be broadened to include any policing duties and functions, not only an investigation (section 250.19).

Currently, section 250.19 of the Act provides for complaints about interference in “military police investigations”. There are other policing duties and functions of Military Police, the laying of charges, for example, that must also be free from interference in order to protect the integrity of the military justice system.

7. THAT “improper” be removed in the English version of the definition of interference (section 250.19).

The English version of the *National Defence Act* refers to “improper interference” with a military police investigation, while the French version of the Act mentions simply “interference,” without qualification. It may be that extraordinary military circumstances could lead to a situation where an intervention in the conduct of a military police investigation could be seen as legitimate. Nonetheless, the Complaints Commission does not believe the framers of the Act, by using “improper” in the English version of section 250.19 intended to imply that interference with legitimate Military Police operations is ever “proper.”

8. THAT status be granted to “any person” to file an interference complaint (section 250.19).

The *National Defence Act* permits anyone to file a conduct complaint, but only a Military Police member in charge of an investigation, or his or her supervisor, can make an interference complaint. There may be situations where someone higher in the military hierarchy, or even a civilian, is in a better position to make the complaint, or even to be aware of the interference.

9. THAT sections 250.41(1), 250.45(1), 250.46, and 250.47 be amended to add the words “an investigation or” before the words “a hearing”.

The Complaints Commission has the power to compel witness testimony and the production of documents and other evidence if it elects to hold formal hearings in the public interest, but not in the conduct of an investigation in the public interest.

It should not be necessary to go to the added expense associated with formal public hearings simply to obtain the powers needed to conduct a proper investigation into a complaint.

The Complaints Commission is also recommending that the protections available to witnesses in public interest hearings be similarly extended to the investigative stage.

10. THAT the Military Police organization be statutorily established in the *National Defence Act* as an independent institution within the Canadian Forces.

The Military Police exist as a special military occupation within the Canadian Forces. In the Complaint Commission's view, it would be preferable that the Military Police, like the Royal Canadian Mounted Police and other police services, have its own distinct statutory regime. This could enhance the independence of the Military Police by providing for a distinct framework for their organization, management and performance of their functions and duties.

11. THAT section 250.41(2) be amended to allow the Complaints Commission to receive, accept and obtain all information, including legal advice requested and received in the preparation, laying and referral of charges by the Military Police, in all Part IV processes.

The Complaints Commission respects and values the confidentiality of the solicitor-client relationship and readily acknowledges that legal advice by members of the Canadian Forces Judge Advocate General's Office to Military Police in the discharge of their duties is covered by solicitor-client privilege.

Nonetheless, the Complaints Commission maintains that this privilege must not prevent the Complaints Commission from being able to properly discharge its monitoring and oversight responsibilities. In some cases, the Complaints Commission's mandate clearly requires that it review the legal advice on which a Military Police member purports to rely for his or her conduct, such as in the case of an illegal search or arrest, or the improper laying of a charge. In such cases, it will be necessary to know not only what legal advice was given to the Military Police member, but also the information that he or she provided to the lawyer who gave the advice. If the Complaints Commission is to be charged with reviewing Canadian Forces Provost Marshal investigations into military police conduct, or taking over such investigations itself in the public interest, the Complaints Commission ought to have access to the same information and evidence as the Provost Marshal – who would certainly be entitled to review the legal advice received by her Military Police members.

12. THAT an offence under the Code of Service Discipline be created to protect against reprisals, harassment or intimidation, all participants, complainants, subject-members and witnesses in conduct and interference complaints processes.

For the Military Police complaints process to be effective and credible, it is important that there be explicit protection against reprisals and harassment for all participants in the process. Such protections exist in other legislation, such as the *Canadian Human Rights Act*. Serving members of the Canadian Forces, including Military Police members, are particularly vulnerable to reprisals given the nature of military life. It is essential, therefore, that there be clear penal legislation to prohibit and sanction any efforts to harass, intimidate, or take reprisals against a person making a complaint or anyone else who cooperates in the complaint process.

13. THAT all investigations conducted by the Complaints Commission be deemed confidential under Part IV of the Act.

Given the particular vulnerability to reprisals of serving members of the Canadian Forces who would make either conduct or interference complaints under Part IV of the *National Defence Act*, we believe that special and explicit measures must be in place to protect complainants and others involved in the complaint process. While an anti-reprisal provision, as proposed in recommendation 12 above, would be an important step forward, the Complaints Commission believes that preventative measures are equally necessary.

While the Complaints Commission Members and staff are bound by general oaths of confidentiality, an explicit legislative requirement may nonetheless be useful given the applicability of Access to Information and Privacy legislation to the Commission.

14. THAT the cases where the Provost Marshal is precluded from dealing with complaints, such as responding in the Notice of Action, be broadened to include cases where she or her delegates were involved (sections 250.26(2) and 250.49(2)).

For the Military Police complaints process to have true credibility, it must strive at all times to avoid even the appearance of bias in the handling of complaints. The Act already provides for certain responsibilities to be transferred to the Chief of the Defence Staff in cases where the complaint involves the Canadian Forces Provost Marshal. The Complaints Commission believes that the risk of actual or perceived bias may in some cases extend to situations where the complaint involves one of the Provost Marshal's direct subordinates, such as the Deputy Provost Marshal, Professional Standards or the Deputy Provost Marshal, Police.

15. THAT both parties be provided with a right to review (section 250.31(1)).

The Complaints Commission believes that it would be more fair and efficient if the member who is the subject of the complaint, and not only the complainant, had the right to request a review by the Commission. In this way, subject-members who feel aggrieved by conduct complaints made against them, or are dissatisfied with the investigation and handling of the complaint, need not launch their own complaint. In such cases, it would be more expeditious to permit the Complaints Commission to deal with the subject-member's objections by way of a review than to start a new investigation.

16. THAT the Interim Reports also be sent to parties for comments (sections 250.39 and 250.48).

Interim reports by the Complaints Commission on its complaint investigations or reviews are sent to the Minister of National Defence, the Chief of the Defence Staff or the Deputy Minister, the Canadian Forces Provost Marshal and, in the case of interference complaints and public interest cases, the Judge Advocate General. The Complaints Commission believes that, in the interests of fairness and transparency, both the complainant and the subject of the complaint should also receive, and have the opportunity to comment on, the Complaints Commission's interim reports on complaints.

17. THAT the Complaints Commission be provided with an express authority to issue Special Reports.

Apart from its reports on particular complaints and its annual report to the Minister of National Defence, and through the Minister to Parliament, it is useful for the Complaints Commission to be able to publish reports on issues or topics of interest to the military, policing and police-oversight communities. Such special reports can have a proactive effect by clarifying and drawing attention to situations, policies and practices that may generate future complaints.

The Complaints Commission published a special report on the issue of interference with Military Police investigations in 2002. While the Complaints Commission does not believe express statutory authority is an absolute necessity to issuing special reports, it is desirable to underscore the legitimacy and utility of such reports in the Act.

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.

Visit our web site at: **www.mpcc-cppm.gc.ca**