

MILITARY POLICE  
COMPLAINTS  
COMMISSION



COMMISSION D'EXAMEN  
DES PLAINTES CONCERNANT  
LA POLICE MILITAIRE

## **Military Police Complaints Commission**

*National Defence Act – Part IV*

Section 250.53

### **CHAIRPERSON'S FINAL REPORT**

Following a Public Interest Investigation

Pursuant to Subsection 250.38(1) of the *National Defence Act*

With Respect to the Complaints of

Lieutenant-Colonel Tony Battista

and

Major Gordon D. Wight

Files: MPCC 2001-003

MPCC 2000-055

Ottawa, December 12, 2002

Louise Cobetto

Chairperson

**CAVEAT**

*Portions of this document have been  
edited pursuant to the Privacy Act*

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- Annex B: Response letter from the Chief of the Defence Staff to the Chairperson dated July 25, 2002
- Annex C: Letter from the Chief of the Defence Staff to the Chairperson dated October 8, 2002
- Annex D: Notice of Action from the Canadian Forces Provost Marshal dated October 8, 2002

# Acronyms

BGen	Brigadier-General
CAD	Canadian Air Division
CDS	Chief of the Defence Staff
CF	Canadian Forces
CFAO	Canadian Forces Administrative Order
CFB	Canadian Forces Base
CFNIS	Canadian Forces National Investigation Service
CFPM	Canadian Forces Provost Marshal
CFSIS	Canadian Forces School of Intelligence and Security
Col	Colonel
CWO	Chief Warrant Officer
DDMP	Deputy Director of Military Prosecutions
DMP	Director of Military Prosecutions
DND	Department of National Defence
DPM	Deputy Provost Marshal
DPM/PS	Deputy Provost Marshal, Professional Standards
FAA	<i>Financial Administration Act</i>
Insp	Inspector
IS	Investigation Support
JAG	Judge Advocate General
LCol	Lieutenant-Colonel
Maj	Major
MP	Military Police

MPCC	Military Police Complaints Commission
MPPCC	<i>Military Police Professional Code of Conduct</i>
MPCRB	Military Police Credentials Review Board
NDA	<i>National Defence Act</i>
NDHQ	National Defence Headquarters
QR&O	<i>Queen's Regulations and Orders for the Canadian Forces</i>
RMP	Regional Military Prosecutor
SAMP	Security and Military Police
SID	Sensitive Investigations Detachment (of the Canadian Forces National Investigation Service)
SOP	Standard Operating Procedures
TD	Temporary Duty
VCDS	Vice Chief of the Defence Staff
WComd	Wing Commander
WO	Warrant Officer

## Chronology of Events

### 2000

- (Wed.) January 26 Lieutenant-Colonel Battista receives message reporting the death of [REDACTED].
- (Thurs.) January 27 Lieutenant-Colonel Battista meets with his supervisor, Brigadier-General Lucas, obtains permission to attend [REDACTED]'s funeral, and to visit with his (Lieutenant-Colonel Battista's) family at Canadian Forces Base Borden.
- (Fri.) January 28 Brigadier-General Lucas approves Temporary Duty travel by Lieutenant-Colonel Battista; Lieutenant-Colonel Battista approves Temporary Duty travel by Major Wight, then takes flight from Winnipeg to Toronto to spend the weekend with his family prior to attending the Monday funeral.
- (Sun.) January 30 Major Wight takes flight from Winnipeg to Toronto to attend the Monday funeral.
- (Mon.) January 31 Lieutenant-Colonel Battista and Major Wight attend funeral in Hamilton, Ontario.
- (Tue.) February 1 Lieutenant-Colonel Battista and Major Wight work together at CFB Borden while awaiting their return flight to Winnipeg on Wednesday, February 2.
- (Wed.) February 2 Lieutenant-Colonel Battista and Major Wight return to Winnipeg.
- (Thurs.) February 3 Lieutenant-Colonel Battista and Major Wight submit their travel claims; Lieutenant-Colonel Battista's claim states "no cost".
- (Fri.) February 4 Chief Warrant Officer Galway tells Master Warrant Officer Verreault of his concerns about the purpose for travel stated on the Temporary Duty approval memorandum submitted by Lieutenant-Colonel Battista; also expresses his concern about the propriety of Lieutenant-Colonel Battista's "no cost" claim.
- (Wed.) February 9 Lieutenant-Colonel Battista discusses the travel to the [REDACTED] funeral and his "no cost" claim with Master Warrant Officer Verreault.
- (Thurs.) February 10 Master Warrant Officer Verreault contacts Chief Warrant Officer Galway and meets him to discuss the former's February 9<sup>th</sup> conversation with Lieutenant-Colonel Battista.

- (Thurs.) February 10 Chief Warrant Officer Galway calls Lieutenant-Colonel Dixon to report his suspicion about the Battista and Wight travel claims.
- (Thurs.) February 10 Lieutenant-Colonel Dixon tasks a Canadian Forces National Investigation Service fraud investigation of Lieutenant-Colonel Battista, Major Wight and Brigadier-General Lucas.
- (Mon.) April 3 Canadian Forces National Investigation Service delivers an investigation brief to the Regional Military Prosecutor.
- (Wed.) April 12 Legal opinion about investigation provided to Canadian Forces National Investigation Service.
- (Mon.) April 17 Canadian Forces National Investigation Service submits report exonerating Brigadier-General Lucas and Major Wight, but calling for two charges against Lieutenant-Colonel Battista.
- (Wed.) April 19 Canadian Forces National Investigation Service lay two charges against Lieutenant-Colonel Battista.
- (Thurs.) April 20 Military Police credentials of Lieutenant-Colonel Battista and Major Wight suspended.
- (Wed.) May 17 Formal announcement and call for applications for the position of Canadian Forces Provost Marshal.
- (Mon.) June 26 Interviews held for position of Provost Marshal.
- (Sun.) July 16 Covering letter reporting on further investigations of Lieutenant-Colonel Battista (about other issues) indicates no evidence of criminal or service offences.
- (Wed.) September 27 Lieutenant-Colonel Battista charged with two additional charges under *National Defence Act*.
- (Tue.) October 3 Military Police Credentials Review Board convenes to consider re-instating Military Police credentials of Major Wight; unanimous agreement that there was not clear and convincing evidence to support revocation of credentials.
- (Wed.) October 11 Provost Marshal reinstates Major Wight's credentials with conditions.
- (Tue.) October 24 Major Wight issues first letter of complaint to Military Police Complaints Commission.
- (Wed.) November 15 Major Wight asks Federal Court to review Provost Marshal's decision to impose conditions on return of credentials.
- (Tue.) November 21 Major Wight issues second letter of complaint to Military Police Complaints Commission.



(Thurs.) November 30 Standing Court Martial finds Lieutenant-Colonel Battista guilty on all four charges, sentences him to reprimand.

(Tues.) December 5 Lieutenant-Colonel Battista files notice of appeal to Court Martial Appeal Court of Canada.

**2001**

(Tue.) January 2 Major Wight issues third letter of complaint to Military Police Complaints Commission.

(Thurs.) January 18 Lieutenant-Colonel Battista issues letter of complaint to Military Police Complaints Commission.

(Mon.) October 1 Court Martial Appeal Court allows appeal by Lieutenant-Colonel Battista, sets aside verdicts of guilty, enters verdicts of not guilty on all four (4) charges.

# Executive Summary

## (a) Background

On January 26, 2000, a military police member with the Air Force, [REDACTED], died suddenly at Canadian Forces Base Trenton. Lieutenant-Colonel Tony Battista, the Air Force Provost Marshal, received a telephone message informing him of the death.

The next morning, Lieutenant-Colonel Battista requested, and was granted, permission to attend the funeral by his supervisor, Brigadier-General Steve Lucas. Details of the funeral arrangements were sketchy at this time. [REDACTED] was Hamilton, Ontario. Nevertheless, it was thought that an official function might take place in Trenton. Brigadier-General Lucas suggested that, if possible, Lieutenant-Colonel Battista could deal with other work-related matters in Trenton after attending the funeral.

At this same meeting, Lieutenant-Colonel Battista asked permission from Brigadier-General Lucas to spend the weekend with his family, if this was possible with no additional cost to the Canadian Forces. Lieutenant-Colonel Battista's family resided at Canadian Forces Base Borden, a short distance from Hamilton and a few hours drive away from Trenton. Brigadier-General Lucas gave his approval.

Lieutenant-Colonel Battista asked his administrative assistant, Ms. [REDACTED], to prepare the standard approval memo in his name for Temporary Duty travel to attend the funeral, citing attendance at a funeral as the reason for the Temporary Duty travel. Later that day, the Executive Assistant to Brigadier-General Lucas told Ms. [REDACTED] that Brigadier-General Lucas would not sign the approval memo to attend the funeral. Lieutenant-Colonel Battista then instructed her to state "Command and Control, Security Review" as the reason for travel. There was no longer any specific mention of attendance at the funeral on the Temporary Duty approval form. Brigadier-General Lucas approved this memo.

Ms. [REDACTED], on her own initiative and to be consistent with Lieutenant-Colonel Battista's claim, placed the same reason for travel on Major Gordon Wight's Temporary Duty approval memo. Lieutenant-Colonel Battista signed the memo approving Major Wight's Temporary Duty travel.

Lieutenant-Colonel Battista and Major Wight attended the funeral in Hamilton, Ontario on Monday, January 31, 2000. They returned to Winnipeg on the first available service flight, Wednesday, February 2, 2000, and submitted their Travel Order and Claim forms the following day, Thursday, February 3, 2000. Lieutenant-Colonel Battista made no claim for reimbursement of any of the costs he incurred during this trip. Major Wight certified Lieutenant-Colonel Battista's claim under section 34 of the *Financial Administration Act*.

On Friday, February 4, 2000, Chief Warrant Officer Frank Galway told Master Warrant Officer Bernie Verreault that he was concerned about the change in the stated purpose of the Temporary Duty travel of Lieutenant-Colonel Battista and Major Wight. Chief Warrant Officer Galway also told Master Warrant Officer Verreault that he had heard that Lieutenant-Colonel Battista had submitted a "no-cost claim." In the past, "no-cost claims" were sometimes associated with questionable practices.

Master Warrant Officer Verreault claimed that during a conversation, on February 9, 2000, Lieutenant-Colonel Battista mentioned the rumours about his (Lieutenant-Colonel Battista's) travel claims. Master Warrant Officer Verreault said that Lieutenant-Colonel Battista told him that he had submitted a "no-cost claim" and indicated that, "if this got out," Brigadier-General Lucas could lose his job. Master Warrant Officer Verreault interpreted the "no-cost claim" statement as an admission by Lieutenant-Colonel Battista that something illegal had happened.

Master Warrant Officer Verreault then contacted Chief Warrant Officer Galway. Chief Warrant Officer Galway instructed Master Warrant Officer Verreault to prepare a written statement with his recollection of the discussion. That same day, February 10, 2000,

Chief Warrant Officer Galway telephoned Lieutenant-Colonel Don Dixon, Deputy Provost Marshal, Canadian Forces National Investigation Service, to report his suspicion of improper activity in the submission of travel claims by Lieutenant-Colonel Battista and Major Wight.

On February 10, Lieutenant-Colonel Dixon tasked the Canadian Forces National Investigation Service Sensitive Investigations Detachment to investigate whether Lieutenant-Colonel Battista and Major Wight had submitted fraudulent travel claims. The Sensitive Investigations Detachment was also tasked to determine if Brigadier-General Lucas had counselled them to submit fraudulent travel claims.

On April 19, 2000, as a result of this investigation, two (2) charges were laid under subsection 125(a) of the *National Defence Act* against Lieutenant-Colonel Battista; one (1) charge that he willfully made a false statement in a document made by him that was required for official purposes, and one (1) charge that he willfully made a false statement in a document signed by him that was required for official purposes. No charges were laid against Major Wight or Brigadier-General Lucas.

On September 27, 2000, Lieutenant-Colonel Battista was served with two (2) additional charges under subsection 125(a) of the *National Defence Act*, arising out of the same investigation, for having willfully made a false statement in a document signed by him that was required for official purposes. During the post-charge screening, it was decided to increase the number of charges. There were now a total of four (4) charges under subsection 125(a) of the *National Defence Act* against Lieutenant-Colonel Battista.

Between November 28<sup>th</sup> and 30<sup>th</sup>, 2000, Lieutenant-Colonel Battista was tried by Standing Court Martial in Winnipeg, Manitoba. On November 30<sup>th</sup>, he was found guilty on all four (4) charges and sentenced to a reprimand. On the advice of counsel, Lieutenant-Colonel Battista filed a Notice of Appeal to the Court Martial Appeal Court of Canada for “unreasonable finding”. On October 1, 2001, the Court Martial Appeal Court allowed the appeal on all four (4) charges, set aside the verdicts of guilty and entered verdicts of not guilty.

Subsequent to the investigation that led to these four (4) charges against Lieutenant-Colonel Battista, the Canadian Forces National Investigation Service Sensitive Investigations Detachment initiated a second investigation, unrelated to the first incident, aimed at Lieutenant-Colonel Battista, but involving Major Wight and Chief Warrant Officer Galway. The allegations were that Lieutenant-Colonel Battista submitted fraudulent travel claims during his tenure at A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba.

In addition, Major Wight and Chief Warrant Officer Frank Galway were investigated relative to their responsibilities for approving payment of Lieutenant-Colonel Battista's claims as *Financial Administration Act*, section 34, signing authorities. This investigation was undertaken between February 29, 2000 and June 29, 2000 with the investigation report finalized on July 11, 2000. It concluded that there was insufficient evidence to proceed with service offence charges against Lieutenant-Colonel Battista, Major Wight or Chief Warrant Officer Galway.

On the basis of a reportedly unsolicited complaint, the Canadian Forces National Investigation Service Sensitive Investigations Detachment opened a third investigation of Lieutenant-Colonel Battista concerning travel claims submitted between 1995 and 1999. This investigation was undertaken between May 2, 2000 and May 10, 2000. However, the investigation report was not finalized until July 17, 2000. It concluded that there existed no evidence to suggest that Lieutenant-Colonel Battista was involved in any form of criminal activity or wrongdoing.

On April 20, 2000, the Military Police credentials of Lieutenant-Colonel Battista and Major Wight were suspended by then Deputy Provost Marshal for Professional Standards, Lieutenant-Colonel Paul Cloutier. Both officers were accused by the Deputy Provost Marshal, Professional Standards, of contravening paragraphs 4(h) and (l) of the *Military Police Professional Code of Conduct* in that they misrepresented or falsified information in their travel order claims and that by doing so they brought discredit to the Military Police organization.

On October 3, 2000, a Military Police Credentials Review Board voted unanimously to re-instate Major Wight's appointment expressing their view that "there was not clear and convincing evidence to support the revocation of Major Wight's MP Credentials". The Canadian Forces Provost Marshal returned Major Wight's credentials with conditions on October 11, 2000. Major Wight applied to the Federal Court for a judicial review to challenge the authority of the Provost Marshal to ignore a determination of the Military Police Credentials Review Board and to impose her own conditions on the return of Military Police credentials. At the writing of this report, the results of the judicial review by the Federal Court were not known.

A Military Police Credentials Review Board was convened on July 26, 2001 to consider the situation of Lieutenant-Colonel Battista. This resulted in a 4 – 1 decision to reinstate Lieutenant-Colonel Battista's credentials. On August 15, 2001, the Canadian Forces Provost Marshal directed that Lieutenant-Colonel Battista's credentials be reinstated immediately with terms and conditions. It should be noted that these decisions were made prior to the judgment of the Court Martial Appeal Court and the entering of a not guilty verdict on all four (4) charges against Lieutenant-Colonel Battista.

## (b) The Complaints

### **Lieutenant-Colonel Tony Battista:**

Lieutenant-Colonel Battista's complaints related to the conduct and supervision, by the Canadian Forces National Investigation Service, of three (3) investigations concerning him.

Lieutenant-Colonel Battista stated that these investigations were "heavy-handed, unnecessarily intrusive, biased and incomplete" causing him great prejudice. He also stated that he did not feel that he had been treated fairly and impartially by the Canadian Forces Provost Marshal organization. Lieutenant-Colonel Battista also raised the issue of the selection process for a new Provost Marshal, a position for which he was a candidate.

Specifically, Lieutenant-Colonel Battista alleged that the investigators failed to thoroughly examine the content of a Canadian Forces Administrative Order that provides guidance on the issue of the selection of purposes for “Temporary Duty” and that they failed to return to re-interview him, as he had requested. As well, he maintained that the Canadian Forces National Investigation Service should have requested the Chain of Command resolve this issue since this was “not a Military Police function but rather an administrative matter ...”.

Lieutenant-Colonel Battista also alleged that the Canadian Forces National Investigation Service investigators and supervisors violated standard investigative practices and procedures, including their failure to acquaint themselves with regulations pertaining to official attendance at a military funeral. He stated that they undertook unnecessary follow-up actions, intrusive investigative steps, squandered valuable public resources and presented incomplete (and in some instances inaccurate and biased) information in their police reports. Lieutenant-Colonel Battista argued that the actions of the investigators and incomplete investigations presented an unfair and biased portrait of him and what actually transpired.

Lieutenant-Colonel Battista made additional complaints that as a result of an incomplete, inaccurate and biased report his Military Police credentials were suspended. He alleged that such actions caused him grave prejudice.

Lieutenant-Colonel Battista alleged that one investigation report contained several inaccuracies and untrue information. Lieutenant-Colonel Battista also expressed concern regarding the third investigation of him (covering the period between 1995 and 1999) in that his supervisor during this time, who allegedly approved his temporary duty travel and could have clarified the relevant issues, was not interviewed by the investigators. Lieutenant-Colonel Battista alleges that, by interviewing several other members instead, Canadian Forces National Investigation Service investigators squandered precious public resources while unnecessarily subjecting his reputation to an intrusive and lengthy process.

## **Major Gordon Wight:**

Major Wight complained that Canadian Forces National Investigation Service investigators and their supervisors involved with the investigation into his conduct violated standard investigative practices and procedures. He further complained that, in doing so, they undertook unnecessary, intrusive investigative steps and thus squandered valuable and expensive resources. Major Wight took “particular exception” to how the information collected during the investigation was presented in the investigation report. He said that the presentation of the information collected during the investigation was “slanted, biased, selective and highly suggestive of wrongdoing.” Major Wight argued that Canadian Forces National Investigation Service investigators failed to understand his explanation of events and inaccurately portrayed his responses.

Major Wight stated that proper investigative procedure requires research to be done at the start of the investigation. Specifically, he said, the alleged crime or service offence must be identified. Following this, the elements of the offence must be identified. Major Wight stated that this “essential step” did not appear to have been done when so required in accordance with proper investigative procedure.

Major Wight argued that there was a lack of evidence setting up a standard of care for a *Financial Administration Act* signing authority under section 34. Major Wight stated that if investigators had taken the time to determine the standard of care under the Act, they would have realized that there was no need to investigate him further. Because this was not done, he believed that the investigators and their supervisors had clearly failed to follow proper investigative procedure.

Major Wight stated that if, on the other hand, the standard of care under section 34 of the *Financial Administration Act* was understood at the beginning of the investigation, the conduct of an unnecessary investigation with the use of intrusive police techniques “would lead one to suspect a level of maliciousness in the NIS’ actions.”



Major Wight expressed concern that Chief Warrant Officer Galway, also being investigated for possible violation of the same *Financial Administration Act* section, may have been treated in a less confrontational manner by the Canadian Forces National Investigation Service investigators. According to Major Wight, if there was in fact a difference in their treatment, this would suggest a double standard and it would also support his accusation of malicious actions by the Canadian Forces National Investigation Service towards him. “For this reason, I believe informal resolution is not an option in this instance and thus, I request a formal investigation be conducted.”

Major Wight also alleged that during a cautioned interview, two investigators from the Canadian Forces National Investigation Service told him untruths. In addition, Major Wight alleged that the information he provided during the interview was misrepresented in the final investigation report.

### (c) Issues

The main issues examined by the Military Police Complaints Commission (hereinafter referred to as the Commission) during this public interest investigation are as follows:

1. The handling of the investigations conducted by the Canadian Forces National Investigation Service.
2. The process for the suspension of credentials in relation to Canadian Forces National Investigation Service investigations.
3. The implications and repercussions of the "zero tolerance" approach on Canadian Forces National Investigation Service Sensitive Investigations Detachment investigations and the laying of charges.
4. The independence of Military Police investigations and involvement of the Chain of Command in Military Police investigations and the laying of charges.
5. The appropriateness of the Military Police investigating its own officers.

## (d) Chairperson's Findings

### Chairperson's Finding #1:

Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief delivered April 3, 2000 to the Regional Military Prosecutor may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. In particular:

- The misinterpretation of Major Wight's understanding of "Command and Control" may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.
- The inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service investigation report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case, to conclude that charges were warranted.

### Chairperson's Finding #2:

The wide distribution of Canadian Forces National Investigation Service investigation reports provides the potential for harm to the reputations and careers of those being investigated should these reports contain falsehoods or factual errors.

### Chairperson's Finding #3:

Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. Furthermore, since the Canadian Forces National Investigation Service report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.

Chairperson's Finding #4:

The failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favour of laying charges and prosecuting Lieutenant-Colonel Battista. Had the Canadian Forces National Investigation Service report been more accurate and complete, and if the Canadian Forces National Investigation Service had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.

Chairperson's Finding #5:

The April 17, 2000 Canadian Forces National Investigation Service report recorded that [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, described Lieutenant-Colonel Battista as "[REDACTED]." The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. Remarks such as this have no place in an objective police report.

Chairperson's Finding #6:

The Chairperson found nothing to suggest that the military justice system was being used to "get at" Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.

Chairperson's Finding #7:

The Chairperson finds that the competition process to select a new Canadian Forces Provost Marshal was fair and equitable and that Lieutenant-Colonel Battista was treated similarly to other potential candidates with no discrimination evident.

Chairperson's Finding #8:

The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.

Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented.

Chairperson's Finding #9:

The apparently suspicious coincidence in which two separate complaints about Lieutenant-Colonel Battista, from different parts of the country, and concerning completely different activities and timeframes, were reported to the Canadian Forces National Investigation Service on the same day, was the result of a simple clerical error by an investigator. In fact, these two complaints were not made on the same day.

Chairperson's Finding #10:

The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Further, had he spoken to Lieutenant-Colonel Battista, Chief Warrant Officer Galway might have been perceived as interfering with a potential police investigation.

Chairperson's Finding #11:

The Commission uncovered no information to indicate that Chief Warrant Officer Galway's actions were in any way vindictive. To the contrary, Chief Warrant Officer Galway held considerable respect for Lieutenant-Colonel Battista and was clearly troubled by the decision he had to take.

Chairperson's Finding #12:

The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support either the temporary suspension or the revocation of Major Wight's Military Police credentials.

Chairperson's Finding #13:

The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista's credentials **with terms and conditions**, as these may no longer be relevant or appropriate.

Chairperson's Finding #14:

A "zero tolerance" approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. A "zero tolerance" approach may end up sacrificing the innocent in order not to miss the guilty.

Chairperson's Finding #15:

The Provost Marshal must reconsider the application of the "zero tolerance" practice in the Military Police. Military Police members need discretion to perform their duties fairly. However, any change in the use of police discretion must be accompanied by a change in attitudes or culture. The Provost Marshal must encourage and support a culture of fair, focused, objective and unbiased investigators that are rank blind. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.

Chairperson's Finding #16:

The Chairperson finds that a better distinction must be made between breaches of administrative policy and statutory or criminal offences.

Chairperson's Finding #17:

To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. It is important to note that the Commission is not reviewing the legal opinions themselves. Rather, the Commission needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information.

Chairperson's Finding #18:

The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.

Chairperson's Finding #19:

The presence of Royal Canadian Mounted Police Inspector Russ Grabb on the investigative team did not fulfill the policy requirement that the investigation be conducted jointly or by an outside agency. Inspector Grabb was not "outside" the Canadian Forces National Investigation Service because he was under the direction, control, supervision and instruction of Military Police management as part of the terms of the Memorandum of Understanding governing his secondment.

Chairperson's Finding #20:

The facts of the present case suggest that engaging the services of outside investigators might have been appropriate given the rank of Lieutenant-Colonel Battista and Major Wight, the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and the fact that both those being investigated and those investigating were members of the same small police organization.

Chairperson's Finding #21:

Canadian Forces National Investigation Service investigators did not discover that a standard of care necessary to demonstrate a breach of the *Financial Administration Act* had not been established until they sought legal advice at the conclusion of their investigation.

Chairperson's Finding #22:

Given the circumstances surrounding the Canadian Forces National Investigation Service interviews of Major Wight and Chief Warrant Officer Galway, it is understandable that Major Wight might perceive preferential treatment extended to Chief Warrant Officer Galway. However, the Chairperson finds that no preferential treatment was provided and that any difference in atmosphere during the two interviews was more a factor of circumstance and interview content than any intent to favour one interview subject over another on the part of Canadian Forces National Investigation Service investigators.

Chairperson's Finding #23:

The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the five year review of the *National Defence Act*.

Chairperson's Finding #24:

The Chairperson finds that investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.

## (e) Chairperson's Recommendations

### Chairperson's Recommendation #1:

The Canadian Forces Provost Marshal must ensure that military police members, in particular Canadian Forces National Investigation Service investigators, receive essential training on police report writing with emphasis on the need to be objective, accurate and unbiased. Police reports should state relevant facts and details only. There is no place for personal comments irrelevant to the investigation being conducted.

### Chairperson's Recommendation #2:

Military police members and Canadian Forces National Investigation Service investigators must be thorough in conducting service offence/criminal investigations. The subject of an investigation must be given every reasonable opportunity to provide input in their own defence. The Canadian Forces Provost Marshal must ensure that Military Police policies and procedures provide such a guarantee.

### Chairperson's Recommendation #3:

The Canadian Forces Provost Marshal should review the standard distribution of police investigation reports with a view to limiting their release to those with an absolute demonstrated need to know so as not to negatively impact reputations and careers.

### Chairperson's Recommendation #4:

The Canadian Forces Provost Marshal should re-consider the terms and conditions imposed on the return of Lieutenant-Colonel Battista and Major Wight's Military Police credentials, given the decisions of the Military Police Credentials Review Boards, the Court Martial Appeal Court and now the results of the investigation by the Military Police Complaints Commission.



Chairperson's Recommendation #5:

The Canadian Forces Provost Marshal must reconsider the application of the “zero tolerance” approach. Military Police members, like their civilian counterparts, need to use discretion to perform their duties fairly. Given the alleged culture within, any change in policy on the use of discretion must be accompanied by relevant training to assist in the appropriate exercise of discretion.

Chairperson's Recommendation #6:

The Canadian Forces Provost Marshal must seek out ways to ensure the development and promotion of a culture of fair, focused, accurate, objective and unbiased investigations by the Military Police.

Chairperson's Recommendation #7:

To uphold the independence of the Military Police, the Canadian Forces Provost Marshal must possess authority over legal opinions and advice requested by, and provided to, the Military Police. The decision to waive solicitor-client privilege must rest with the Canadian Forces Provost Marshal.

Chairperson's Recommendation #8:

Given the small size of the Military Police organization, consideration should be given to conducting serious offence investigations of **military police members** jointly with a civilian police agency or exclusively by an outside police agency.

Chairperson's Recommendation #9:

The ability of the Chain of Command to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, and not interfering in that process, should form part of the analysis of issues leading up to the five year review of the amendments to the *National Defence Act*.

Chairperson's Recommendation #10:

The Canadian Forces Provost Marshal must recognize the need to provide assistance to witnesses during investigations and implement measures to ensure that they, too, do not become victims.

## I: Summary of the Incident

On February 10, 2000, Lieutenant-Colonel D.R. Dixon, the Deputy Provost Marshal, Canadian Forces National Investigation Service, Investigation Support, tasked the Sensitive Investigations Detachment to investigate a complaint that Lieutenant-Colonel Tony Battista and Major Gordon Wight of A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, had submitted fraudulent travel claims.

The travel claims in question related to the attendance, by both Lieutenant-Colonel Battista and Major Wight, at a military funeral held in Hamilton, Ontario on Monday, January 31, 2000 following the sudden death of a military police colleague, [REDACTED], at Canadian Forces Base Trenton.

The ensuing Canadian Forces National Investigation Service investigation (NSI 370-0002-00) concluded, on April 17, 2000, that Lieutenant-Colonel Battista should be charged with two counts under subsection 125(a) of the *National Defence Act* (Offences in relation to documents). No charges were laid against Major Wight.

On April 20, 2000, the Deputy Provost Marshal, Professional Standards, Lieutenant-Colonel Paul Cloutier, suspended the Military Police credentials of both Lieutenant-Colonel Battista and Major Wight. Both officers were accused, by the Deputy Provost Marshal for Professional Standards, of contravening paragraphs 4(h) and (l) of the *Military Police Professional Code of Conduct* in that they misrepresented or falsified information in their travel order claims and that by doing so, they brought discredit to the Military Police organization.

In his covering letter to the April 17, 2000 Canadian Forces National Investigation Service investigation report, Lieutenant-Colonel Dixon comments that, during the investigation, other evidence was uncovered indicating that Lieutenant-Colonel Battista may have submitted fraudulent travel claims unrelated to this incident. He indicates that this will be investigated as a

separate Canadian Forces National Investigation Service file. This second investigation was reported under file NSI 370-0006-00.

In his July 16, 2000 cover letter to NSI 370-0006-00, Lieutenant-Colonel Dixon indicates that the Canadian Forces National Investigation Service investigated allegations that Lieutenant-Colonel Battista submitted fraudulent travel claims during his tenure as A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba. In addition, Major Wight and Chief Warrant Officer Frank Galway, also of A3 Security and Military Police, 1 Canadian Air Division, were investigated relative to their responsibilities for approving payment of Lieutenant-Colonel Battista's claims as *Financial Administration Act*, section 34, signing authorities. This investigation failed to uncover sufficient information or evidence to support criminal or service offence charges against any of the subjects of investigation.

Also on July 16, 2000, Lieutenant-Colonel Dixon provides, by way of covering letter and attached Canadian Forces National Investigation Service investigation report (NSI 370-0009-00), the results of a third investigation of Lieutenant-Colonel Battista pursuant to the receipt, by the Canadian Forces National Investigation Service, of a reportedly unsolicited allegation that Lieutenant-Colonel Battista, during his tenure as Commandant, Canadian Forces School of Intelligence and Security, Canadian Forces Base Borden, submitted fraudulent travel claims between the period of 1995 – 1999. This investigation failed to uncover any information or evidence that would support criminal or service offence charges against Lieutenant-Colonel Battista.

On September 27, 2000, Lieutenant-Colonel Battista was served with a copy of the Charge Sheet in respect of four (4) charges preferred against him under subsection 125(a) of the *National Defence Act* in connection with investigation NSI 370-0002-00. During the post-charge screening, it was decided to increase the original two (2) charges to four (4) charges.

During the period of November 28, 29, and 30, 2000, Lieutenant-Colonel Battista was tried by Standing Court Martial in Winnipeg, Manitoba. He was found guilty on all four (4) charges and sentenced to a reprimand. On the advice of his counsel, Lieutenant-Colonel Battista filed a

Notice of Appeal to the Court Martial Appeal Court, on December 5, 2000, for “unreasonable finding”. On October 1, 2001, the Court Martial Appeal Court allowed the appeal on all four (4) charges, set aside the verdicts of guilty and entered verdicts of not guilty.

As regards the suspension of Military Police credentials, a Military Police Credentials Review Board was convened on October 3, 2000 to consider the suitability of Major Wight to exercise the powers and discharge the duties of a Military Police Person pursuant to section 156 of the *National Defence Act*. The Board members voted unanimously for the re-instatement of Major Wight’s appointment expressing their view that “there was not clear and convincing evidence to support the revocation of Maj Wight’s MP Credentials.”

The Canadian Forces Provost Marshal returned Major Wight’s credentials, but in doing so imposed conditions. The authority of the Canadian Forces Provost Marshal to ignore a determination of the Military Police Credentials Review Board and to impose her own conditions on the return of Military Police credentials has been appealed to the Federal Court by Major Wight. A date for this Appeal is currently unknown.

A Military Police Credentials Review Board was convened on July 26, 2001 to consider the situation of Lieutenant-Colonel Battista. This resulted in a 4 – 1 decision to reinstate Lieutenant-Colonel Battista’s credentials. On August 15, 2001, the Canadian Forces Provost Marshal directed that Lieutenant-Colonel Battista’s credentials be reinstated immediately with terms and conditions. It should be noted that these decisions were made prior to the judgment of the Court Martial Appeal Court and the entering of a not guilty verdict on all four (4) charges against Lieutenant-Colonel Battista.

## II: The Complaints

### Lieutenant-Colonel Tony Battista

In a letter dated January 18, 2001, Lieutenant-Colonel Battista submitted his complaints to the Military Police Complaints Commission. Therein, he stated that his complaints resulted from what he believed to be “heavy-handed, unnecessarily intrusive, biased and incomplete investigations and investigation reports” that had caused him grave prejudice.

Lieutenant-Colonel Battista specifically cites three investigations conducted by members of the Canadian Forces National Investigation Service and captured under files NSI 370-0002-00 dated April 17, 2000, NSI 370-0006-00 and NSI 370-0009-00 both dated July 16, 2000.

#### **(a) Conduct of Canadian Forces National Investigation Service Investigation (NSI 370-0002-00)**

In support of his complaint against Canadian Forces National Investigation Service members investigating him in connection with their file NSI 370-0002-00, Lieutenant-Colonel Battista provided the following information to substantiate his claim that standard investigative practices and procedures were violated:

I believe the CFNIS investigators and supervisors involved with the conduct of the police investigation at Reference A [NSI 370-0002-00] violated standard investigative practices and procedures, including such basic requirements as familiarization with regulations pertaining to official attendance at a military funeral. In doing so, they undertook unnecessary follow-on actions, intrusive investigative steps, squandered valuable public resources and presented incomplete (and in some instances inaccurate and biased) information in their police reports. For instance, the report contains numerous comments allegedly made regarding my character (i.e. ████████) for no apparent reason and with no relevance to the allegation in question. In my review of transcripts of some of the interviews, some pertinent information was not included in the report, while other apparently irrelevant information was included. In one significant (and telling) episode, I called the investigators back immediately after my cautioned interrogation to offer them additional explanatory information, because I could not possibly recall all relevant details due to the bombardment of questions to which they subjected me during the almost three-hour interview. It was (and still remains) my

belief that this additional information would have assisted them in establishing accurate facts to guide them in their subsequent assessment and decision to lay or not to lay charges against me. The morning following my cautioned questioning by the CFNIS, one of the investigators (Inspector Grabb) returned my phone call and, he informed me that they would come back to re-interview me under caution regarding the additional information about my official attendance at the military funeral that I was able to retrieve/recollect. The CFNIS never came back to re-interview me regarding this matter. In fact, two months after they had laid charges against me, they came back without prior notice to see me about the second CFNIS investigation. At that time, I expressed my concerns to them for not having re-interviewed me about the funeral investigation. Capt Chiasson stated words to the effect that they did not want to discuss the funeral issue. In all, the actions and incomplete investigation presents an unfair and biased portrait of me and what actually transpired.

Further, Lieutenant-Colonel Battista expressed his belief that the original complaint, which resulted in the NSI 370-0002-00 investigation, contained falsehoods. In support, he provided the following:

I believe that the original complaint which resulted in the investigation at reference A [NSI 370-0002-00] contained some falsehoods. It is not wholly clear to me whether these falsehoods stem from the complainant or those who received and/or investigated the complaint. However, based on the information disclosed to me thus far, reference A para 2 contains, among other things, alleged statements by Chief Warrant Officer Galway regarding his reasons for not proceeding on Temporary Duty (TD) to a military memorial service, which I know to be untrue. He allegedly stated that the reason he 'declined' to go to the funeral was because MGen Lucas would not sign the request for travel. As I stated to the CFNIS investigators, I personally made the decision not to allow Chief Warrant Officer Galway to proceed on Temporary Duty because there were no seats available on the service flight. Had I allowed him to proceed on a commercial flight, this would have gone against the understanding with my superior (MGen Lucas) to travel on the service flight. I also recall clearly informing Chief Warrant Officer Galway at the time of the reason for my decision. Moreover, Chief Warrant Officer Galway personally signed the Travel Order and Claim for Major Wight, 'certifying that the duty was justified'. This claim was prepared by the administrative staff with the same wording as my Travel Order and Claim. Yet he ultimately made the telephone call to complain to the CFNIS. I find this inconsistency simply inexplicable. There is no indication in the CFNIS

report that these apparent contradictions regarding Chief Warrant Officer Galway were properly investigated.

Again, in relation to the Canadian Forces National Investigation Service investigation reported in NSI 370-0002-00, Lieutenant-Colonel Battista provided the following allegations:

Based on information disclosed to me thus far, I believe that Master Warrant Officer Verreault made a number of prejudicial statements to the CFNIS investigator(s) regarding my character. I believe that these defamatory statements were not made in good faith and/or without any substantial knowledge of the facts. Furthermore, Master Warrant Officer Verreault made statements to the CFNIS investigator to the effect that Chief Warrant Officer Galway had informed Major Wight about claim irregularities and that I may be trying to discredit him (Chief Warrant Officer Galway). This is simply not true. In fact, I have never been made aware of any such statements allegedly made by Chief Warrant Officer Galway to Major Wight or anyone else.

**(b) Conduct of Canadian Forces National Investigation Service Investigations  
(NSI 370-0006-00 and NSI 370-0009-00)**

In support of his complaint against Canadian Forces National Investigation Service members investigating him in connection with their files NSI 370-0006-00 and NSI 370-0009-00, Lieutenant-Colonel Battista provided the following information:

References B and C [NSI 370-0006-00 and NSI 370-0009-00 respectively] contain several inaccuracies and/or untrue information. As these reports are official documents relied upon in making important judicial, administrative and career decisions, it is essential that they reflect accurate and true information. Even the signatures on the covering letters of these reports appear suspect. I am of the understanding that the person who signed them was no longer in the position stated in the letters. Prima facie, this might suggest some form of misrepresentation. Regarding the investigation report at Reference C [NSI 370-0009-00], there is no indication that my immediate superior in Borden at the time, who had approved my duty travel in question, was interviewed by the investigators. The fact that the investigators must normally decide on the best investigative strategy is understood, but that they completely ignored to interview the principal person who authorized the duty is troubling, to say the least. The CFNIS chose to interview several other members instead, and in so doing, they squandered precious public resources while unnecessarily subjecting my reputation to an intrusive and lengthy process.



Unfortunately, reputations can be easily tarnished as a result of rumors and innuendoes. That is what I believe occurred as a result of this investigation. I served as the Commandant of the Military Police Academy (formerly CFSIS) for four years and, as such I am well known in the Borden area and throughout Simcoe County (as I was also the Chairperson of the United Way Campaign for the entire County.) This matter could have been clarified quickly and accurately by simply interviewing my immediate superior. Also, paragraph 1 of Reference C [NSI 370-0009-00] suggest that a second allegation against me regarding fraudulent travel claims, during my tenure as Commandant in Borden, was made on 10 February 2000. The report suggests that this allegation was made on the same day as the allegation in Winnipeg. If this is true, I find it to be an unusual coincidence; two different persons making similar allegations to the CFNIS about different matters on the same date!

**(c) Repercussions From Incomplete, Inaccurate and Biased Canadian Forces National Investigation Service Investigation Report (NSI 370-0002-00)**

Lieutenant-Colonel Battista's Military Police credentials were suspended by the Deputy Provost Marshal for Professional Standards based on the NSI 370-0002-00 investigation report. In his letter of complaint, Lieutenant-Colonel Battista makes the following comments:

As a result of an incomplete investigation and the inaccurate and biased report at Reference A [NSI 370-0002-00], I believe that the DPM-PS suspended my credentials in haste. For instance, DPM PS wrongly concluded that I gave a false statement regarding my attempt to meet with the Trenton Wing Commander. While acting precipitously, procedural and factual errors were made, including interpreting and applying in a questionable way regulations and policies in place at the time and, also breaching my and another member's privacy. These actions by DPM(PS) have caused me grave prejudice, including the potential loss of a competition to be a Chief of Police in a medium-size Canadian city and humiliation as I was directed to be removed from my office and position. I am aware that Chapter 13 of the Military Police Policies and Procedures does not identify the duties and responsibilities of DPM-PS as police functions. I urge the MPCC, however, to consider DPM-PS actions as police functions or, at the very least, to consider them as part of the Commission's overall examination of the matter.

In his January 18, 2001 letter, Lieutenant-Colonel Battista requested that the Military Police Complaints Commission deal with his complaints under section 250.38 of the *National Defence Act*. This section of the Act empowers the Chairperson of the Military Police Complaints

Commission to cause the Complaints Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint if considered advisable in the public interest by the Chairperson. In this event, the duty of the Canadian Forces Provost Marshal to investigate, report on or otherwise deal with the conduct complaint is suspended.

Lieutenant-Colonel Battista explained this request by stating that he believed he had not been treated fairly and impartially by the Provost Marshal's organization. Furthermore, he advised that these Canadian Forces National Investigation Service investigations occurred when other potentially related issues were taking place. These related issues included the selection process for a new Canadian Forces Provost Marshal and a study of Military Police Services within the Air Force. Lieutenant-Colonel Battista asserted that even the newly appointed Canadian Forces Provost Marshal, Colonel Dorothy Cooper, might potentially be in a conflict of interest position as a result of the circumstances of the time. He indicated that Colonel Cooper was the Deputy Provost Marshal, National Investigation Service, Investigative Support during a portion of the period when the Canadian Forces National Investigation Service investigations of him were being conducted. As well, Colonel Cooper was "a peer competitor for the position of CFPM." For these reasons, Lieutenant-Colonel Battista stated that it would be unfair for her to become involved at this stage in dealing with these complaints.

Lieutenant-Colonel Battista went on to take issue with the current wording, interpretation and application of the *Military Police Professional Code of Conduct*. Although a strong proponent of a professional code for the Military Police as it pertains to clearly defined policing functions and duties, Lieutenant-Colonel Battista suggested that the current *Military Police Professional Code of Conduct* was being interpreted by the Deputy Provost Marshal, Professional Standards, as applying to events not related to policing duties and functions.

Lieutenant-Colonel Battista stated: "This, coupled with the duty to report these events in a highly specific manner as directed at paragraph 7 of the MPPCC, precludes the use of equally effective ways to deal with lesser issues without engaging the formal mechanisms, i.e. reporting to the next superior in the military police 'technical chain of command', reporting the matter to the DPM-PS or calling in the CFNIS." He concluded that, at a minimum, the wording of the

*Military Police Professional Code of Conduct*, particularly paragraph 7, needed revision to allow for a more balanced interpretation and application.

## Major Gordon Wight

An exchange of correspondence, commencing on October 24, 2000, between Major Wight and the Military Police Complaints Commission culminated in the receipt of two letters of complaint on January 9, 2001. One letter, dated January 3, 2001, contained allegations relating to the conduct of Military Police members of the Canadian Forces National Investigation Service conducting investigation NSI 370-0002-00. The other letter, dated January 2, 2001, contained allegations relating to the conduct of military police members of the Canadian Forces National Investigation Service conducting investigation NSI 370-0006-00.

### **(a) Conduct of Canadian Forces National Investigation Service Investigation (NSI 370-0002-00)**

In his letter to the Military Police Complaints Commission dated October 24, 2000, Major Wight outlines two complaints relative to this Canadian Forces National Investigation Service investigation. Firstly, Major Wight asserts his belief that the NSI 370-0002-00 investigation report “does not accurately portray information I provided to investigators during my cautioned interview and written statement.” Secondly, Major Wight adds “that during the cautioned interview, the investigators repeatedly told me a falsehood.”

In support of these allegations, Major Wight provided the following:

2. I believe there are inaccurate statements in reference A [NSI 370-0002-00]. In para 9 of the report at reference A, it states that "When asked what Command and Control Security Review meant, he referred to the presentation that was prepared at (name blanked out) residence" and that "it was not the reason for the visit." Then in the conclusion, the report states, "Maj Wight stated that his only reason for proceeding on the TD was to attend the funeral and that he really did not know what 'Command and Control Security Review Update' involved." I believe that during the two hour interview session I continually attempted to explain that the stated purpose of the TD trip consisted of two separate parts - the term

'Command and Control' was used to denote participation in the military funeral and the term 'Security Review Update' was used to denote the work done on the presentation in question. Despite these explanations and the existence of a physical separation of the two parts, as denoted by a comma, on my TD request memorandum and Travel Order Claim, NIS investigators continually and incorrectly ignored the separation between the purposes and merged them into one and then incorrectly assigned this combined purpose solely to the presentation.

3. This being the case, the statement that I reportedly make in reference A to the effect that the only reason for travel/visit was to go to the funeral is perfectly true. My presence at the funeral was identified as 'Command and Control'. Had there been no funeral, I would not have gone on a TD trip to Ontario during that time frame. The statement in reference A that I did not know what Command and Control, Security Review Update involved, however, is entirely false. As well, the statements in reference A, that 'Command and Control Security Review Update referred to the presentation that was prepared at (name blanked out) residence' and that 'it was not the reason for the visit' are inaccurate. I do not recall ever making the first statement. I believe the investigators may have either misinterpreted and incorrectly paraphrased information or they may have used a statement that **I did not say** but merely agreed to out of a belief on my part that the investigators were only referring to the 'Security Review Update' portion of the two part TD purpose. If the latter is the case, I believe investigators may have taken the statement I agreed to out of context and without considering the pre and post conversation to that statement nor any of the other numerous attempts by me throughout the interview to clarify the issue. Either way, I believe the reference A statements are improper and incorrect. ....

4. Following my interview I recall further trying to clarify the issue in writing. In my written statement I believe I state that 'Command and Control' was the term that represented the funeral. Unfortunately, this too appears to have been ignored. ....

5. My second complaint involves my belief that investigators repeatedly stated words to the effect that 'approval to go on TD to a military funeral cannot be granted.' This is completely untrue: refer to QR&O 24.16 (reference B). The investigators were either ignorant of this regulation or they lied to me. Either way, they should not have made such statements during the interview.

Following receipt of a copy of the transcript of his cautioned interview by the Canadian Forces National Investigation Service in connection with this investigation, Major Wight provided the following analysis in a letter dated November 21, 2000.

1. As a follow on to my complaint at reference A [Major Wight's letter to the Military Police Complaints Commission Chairperson dated October 24, 2000], I have acquired reference B [the transcript of a March 21, 2000, interview of Major Wight by Canadian Forces National Investigation Service investigators] through the Western Region's Military Prosecution office. I have still not [obtained] a copy of my written statement thus my request for same remains. An analysis of reference B revealed the following information.

2. On pages 22, 23 and 25 of reference B, the investigators state words to the effect that 'BGen Lucas would not sign a claim to go to a funeral.' The first issue is that how would the investigators know this information as BGen Lucas had not been interviewed prior to my interview. The second issue is that I strongly believe this information to be wrong. A review of BGen Lucas' interview transcript will have to be done to confirm this fact. On pages 41 and 44 of reference B, I state my belief that BGen Lucas supported representation at the funeral. I strongly believe that the investigators told me an untruth.

3. Next, on pages 25, 42 to 43 and 58 of reference B, investigators stated words to the effect that 'approval to go on TD to a military funeral cannot be granted.' This is completely untrue: refer to QR&O 24.16. On pages 57 - 58, I explained my reasons for believing TD to military funerals can be approved. The investigators were either ignorant of the regulation or they lied to me.

4. Further, with regard to my contention in reference A that there was a prevalent theme during the two hour interview (i.e. I continually attempt to explain that the stated purpose of the TD trip consisted of two separate parts - the term 'Command and Control' was used to denote participation in the military funeral and the term 'Security Review Update' was used to denote the work done on the presentation in question and despite my explanations and the existence of a physical separation of the two parts of the TD purpose, as denoted by a comma, on my TD request memorandum and Travel Order Claim, NIS investigators continually and incorrectly ignored the separation between the purposes and merged them into one) I offer the following from reference B:

- a. page 9 - a reference by me to the dual purpose of the TD trip - [REDACTED]'s funeral and then the work in Borden on our 'stuff' (i.e. presentation);
- b. page 19-20 - wording for 'attending the funeral' changed to 'Command and Control';
- c. page 22 - 23 - reason for the trip is 'Command and Control';

- d. page 28 - 'Security Review' term was for the presentation;
- e. page 41 - function of 'Command and Control' to see troops off when they pass away; and
- f. page 44-45 - function of command to go to funeral.

5. During this period, despite the above clarifications, the NIS investigators made the following points:

- a. page 14 - the 'Security Review Update' portion of the TD purpose was, within the space of a few lines, referred to by the investigator as 'Command and Security Review', 'Command and Security Control Review' and 'Command and Security Control'. (At the time, I did not feel the need to nit pick with the investigator as I understood and believed that he was referring to the Security Review Update part of the TD purpose. Thus, when the investigator unfortunately linked the two purposes and suggested soon after this, on page 26, that it could have been done in Winnipeg, and then, on page 29, that it was just the creation of a presentation, I agreed as I believed based on the confusing references on page 14, that the investigator was still referring to the presentation.) Even then, as mentioned above in paragraph 4 b, c and d, I make the point that 'Command and Control' meant attending the funeral and 'Security Review Update' meant the presentation;
- b. pages 27,28-29,38 and 56 - the investigator continues to use the improper term, 'Command and Control Security Review' which I believe is being used to describe the presentation; and
- c. page 59-60 - the investigator again lumps the two separate purposes, 'Command and Control' and then 'Security Review Update', together.

6. Based upon the comments by the investigator pages 59-60, I again explain the separate purposes of the TD:

- a. page 59-60 - I explained that the two activities were separate - 'Command and Control' and then the 'Security Review' and that the 'Command and Control' portion was for the funeral;
- b. page 61 - 'Command and Control' is tied to the funeral;
- c. page 62 - attendance at the funeral is a function of command;
- d. page 63 - 'Command and Control' was used to replace the term

'go to funeral';

e. page 64 - function of command to represent the air force, 1CAD and MPs in the air force;

f. page 71 - 'Command and Control' was a replacement term for 'going to a funeral'; and

g. page 72 - because of return flights we were going to be away from Winnipeg so we worked on a briefing package that included the Security Review.

7. Despite my repeated attempts to explain the dual purpose of the TD (Command and Control for the funeral, and Security Review Update for the presentation) the investigators continually joined them together, often using incomplete wording, and incorrectly assigned this combined purpose solely to the presentation. This being the case, the statement that is reported in reference C [investigative report of April 17, 2000: NSI 370-0002-00] to the effect that I state the only reason for travel/visit was to go to the funeral is entirely correct. My presence at the funeral was identified as 'Command and Control'. Had there been no funeral, I would not have gone on a TD trip to Ontario during that time frame. The statement in reference C, that I did not know what Command and Control, Security Review Update involved, however, is entirely false. As well, the statements in reference C, that 'Command and Control Security Review Update referred to the presentation that was prepared at (name blanked out) residence' and that 'it was not the reason for the visit' are inaccurate. I believe the investigators may have either misinterpreted and incorrectly paraphrased information or they have used a statement that **I did not say** but merely agreed to out of a belief on my part that the investigators were only referring to the 'Security Review Update' portion of the two part TD purpose. If the latter is the case, I believe investigators may have taken the statement I agreed to out of context and used it without:

a. an appreciation of the pre and post conversation to that statement;

b. an understanding of the confusion they caused by the varied and inaccurate terms they were using to describe the purpose(s) of the TD and the falsehoods they told me; and

c. paying attention to any of my numerous attempts throughout the interview to clarify the issue.

As with the complaint of Lieutenant-Colonel Battista regarding this investigation, Major Wight requested that his complaint be dealt with by the Military Police Complaints Commission and not referred to the Canadian Forces Provost Marshal. Major Wight comments that "...the CFPM has used these inaccurate statements as a basis for rendering a decision with which I do not agree. Therefore, a conflict of interest would result if this complaint were forwarded to her or anyone under her command for investigation." When asked to expand on this perceived conflict of interest on the part of the Canadian Forces Provost Marshal, Major Wight added in a subsequent letter "In particular, she [CFPM] uses the statement 'it was not the reason for the visit' as justification to determine that I had breached the Military Police Professional Code of Conduct. .... As the CFPM has become personally involved by using the inaccurate information to render a decision, I am not confident that any inquiry into my complaint by the CFPM or anyone under her command will be done in an objective, unbiased manner."

**(b) Conduct of Canadian Forces National Investigation Service  
Investigation (NSI 370-0006-00)**

Major Wight outlines his complaint regarding this investigation in a letter to the Military Police Complaints Commission dated January 2, 2001. He states his belief that "NIS investigators and investigative supervisors involved with the reference A [NSI 370-0006-00] investigation, violated standard investigative practices and procedures and in doing so undertook unnecessary follow-on, intrusive investigative steps and thus squandered valuable and expensive resources. Along with this, I take particular exception to how the information collected during the unnecessary investigation is presented in reference A. In many cases, the wording used is both unsuitable and prejudicial."

Major Wight supports his complaint as follows:

2. Proper investigative procedure requires research to be done at the start of the investigation. Specifically, the alleged crime or service offence must be identified. Following this, the elements of the offence must be identified as these are the key points that must be proved and thus they guide the investigator in the collection of evidence. This step must be done



and done well. This fact was highlighted and emphasized to all MP Branch Officers, CWOs and MWOs during the day long workshop on investigations held during the last CFPM Symposium, 28 February to 3 March 2000. In the portion of the reference A investigation [NSI 370-0006-00] that specifically relates to me, this essential first step does not appear to have been done when so required in accordance with proper investigative procedure. Instead, it appears as an afterthought at the end of the investigation. To quote from the report para 13 (c):

"...concerning Maj Wight and (name blanked out) charges contemplated including NDA 124 (Negligent Performance of a Military Duty) and NDA 129 (2) (b) (Conduct to the Prejudice of Good Order and Discipline), relating to their failure as FAA [*Financial Administration Act*] Section 34 Signing Authorities, in conducting accurate and detailed reviews of the claims submitted by (name blanked out) for payment. In proving these charges it must be clearly proven that there existed a marked departure from the standard of care required. The problem which exists is the lack of evidence in the documentary or viva voce, setting out the standard of care for a FAA Section 34, Signing Authority. Ergo, it is impossible to say the standard was breached and, if there was a breach, whether it was a marked departure. As such, there is insufficient evidence upon which a reasonable belief can be formed that the aforementioned offences occurred in these circumstances..."

3. As stated, there is a lack of evidence setting out the standard of care for a FAA Section 34, Signing Authority. My question and complaint is why was this fact not discovered during the investigative planning phase of the investigation as per proper procedure (refer to reference B para 9[A-SJ-100-004/AG-00 Military Police Policies Chapter 9])? Clearly, once it had been decided to investigate me for how I conducted my Section 34 duties, specific knowledge by investigators of the standard of performance expected by persons carrying out that duty is absolutely essential. Without a standard from which to measure and determine any deviation, there can be no justification whatsoever to believe a service offence had been committed. Unfortunately, this logical and highly crucial step was not done when so required, or if it was done at this early stage of the investigation, it was ignored. Had the action been carried out, it would have been determined that there was no need for any further investigation of me. This being the case, I believe the investigators and their supervisors clearly failed to follow proper investigative procedure.

4. The failure to follow proper procedures, which would have shown that there was no offence, resulted in investigators wrongly continuing their

investigation of me. As such, investigators subjected me to a cautioned interrogation. This is a highly intrusive police technique that, as previously stated, was completely unnecessary (refer to reference B para 8). While it is true that I could have refused to be interrogated, the reality of the situation is as follows:

- a. I am a senior officer in the MP Branch. Within the police milieu, refusal to be interrogated is perceived by others as an indication of guilt;
- b. as most investigations of MPs are followed by allegations of breaching the Military Police Professional Code of Conduct, refusal to be interrogated will be interpreted negatively by Deputy Provost Marshal Professional Standards (the suspension authority) and the Military Police Credentials Review Board.

In order to maintain any resemblance of a good reputation within the MP Branch, I could not refuse to be interrogated. As well, as previously noted, a further consequence of this unnecessary investigation, including the highly intrusive interrogation, was the squandering and wasting of valuable resources by investigators and their supervisors.

5. To add insult to injury, the presentation of the information collected during this unnecessary investigation was slanted, biased, selective and highly suggestive of wrongdoing. Examples are as follows:

- a. para 8 (a) - states "... he (I) was unfamiliar with the contents of CFAO 209-13." I really do not recall making this statement. It conflicts with my written statement. I believe the investigators have incorrectly interpreted my misapplication of two paras of the CFAO to mean unfamiliarity with the entire CFAO;
- b. para 8 (b) - concerning the use of a CF rented vehicle for proceeding to and from his personal residence. In my written statement I provide the justification and I quote the applicable QR&O article, yet the report merely states that "... it was his knowledge that (name blanked out) was entitled to these expenses." The wording leaves the impression that my knowledge was wrong;
- c. para 11 - states "... in each instance, his short comings concerning the review of (name blanked out) claims could be attributed to his lack of knowledge and training ..." The wording of this statement is open to various interpretations. I do not know what 'each instance' means - is it each instance that the investigators thought I made an error or when I believe I made an error. Moreover, I mentioned my lack of training and experience to the investigators

only as facts. They have twisted the context around to make it appear as though I am attempting to use these points to hide from my responsibilities; and

- d. para 11 - states " ... could provide no other explanation other than to state the oversight occurred when the claims were reviewed/signed by himself one day apart." The inclusion of the term 'no other explanation' in this statement is highly judgemental.

6. With regard to the points of this complaint, if investigators and their supervisors neglected to follow proper procedure and missed the determination of the FAA Section 34 signing duties standard of care at the beginning of the investigation, then their investigative and reporting actions could be interpreted as being, at worse, the result of incompetence. If, however, the standard of care ruling of the FAA Section 34 was known at the beginning of the investigation, the conduct of an unnecessary investigation with the use of intrusive police techniques would lead one to suspect a level of maliciousness in the NIS' actions. Also, although I have no direct knowledge, as the applicable portion of the reference report was blanked out, I have been informed that the other individual investigated (CWO F. Galway) for his FAA Section 34 activities, did not receive anywhere near the same level of attention in the reference report as I did nor were any biased comments directed at him. If this is true, a double standard would appear to exist and the accusation of maliciousness towards me by the NIS is supported. For this reason, I believe informal resolution is not a option in this instance and thus, I request a formal investigation be conducted.

7. My intent in submitting this complaint is to have the individuals identified in para 1 of this document be made aware of their errors so that they may learn from the experience. The words in investigation reports are taken as undisputed fact by many who read them. Individuals involved in their production, therefore, have a particular responsibility to be scrupulously thorough, accurate and unbiased in establishing and reporting the facts. Moreover, the injection of personal opinion in the writing of their reports does not serve the profession well. I respectfully seek your consideration of the points made in this complaint.

### III: Military Police Complaints Commission

The Military Police Complaints Commission was created by amendments in 1998 to the *National Defence Act*. Subsection 250.18(1) of the Act authorizes any person, including Department of National Defence and Canadian Forces personnel, to make a complaint to the Commission about the conduct of a member of the military police in the performance of prescribed policing duties or functions. As well, subsection 250.19(1) states that any military police member conducting or supervising an investigation and who believes on reasonable grounds that any officer or non-commissioned member or any senior official of Department of National Defence has improperly interfered with the investigation may make an interference complaint to the Commission.

The Military Police Complaints Commission is a civilian oversight authority. The Commission is external to, and independent of, the Department of National Defence and the Canadian Forces. It reports directly to Parliament. The Commission was created to render the handling of complaints involving the Military Police more transparent and accessible and to ensure that both complainants and members of the Military Police are dealt with impartially and fairly. The mandate of the Military Police Complaints Commission is to promote and to ensure the highest standards of conduct of military police members in the performance of their policing duties, to discourage improper interference in any Military Police investigation and to further the climate of confidence within the Department of National Defence, the Canadian Forces and the Canadian public regarding the Military Police. The Commission carries out quasi-judicial functions pursuant to statutory authority. It has sole jurisdiction over monitoring and reviewing conduct complaints lodged with the Provost Marshal about the conduct of members of the Military Police in the performance of their policing duties or functions, and the investigation of complaints of interference in any Military Police investigation. When it is in the public interest, the Chairperson may cause the Commission to conduct an investigation and, if warranted, hold a public hearing.

The *National Defence Act* allows the Commission to investigate only those events occurring on or after December 1, 1999. The Provost Marshal deals with complaints relating to events that occurred before December 1, 1999. However, the Commission may examine events occurring

before December 1, 1999, to provide the necessary background for its investigation into more current events.

### (a) Scope of the Investigation

Under the *National Defence Act*, the Provost Marshal is initially responsible for dealing with conduct complaints, such as those by Lieutenant-Colonel Battista and Major Wight. Also, pursuant to section 250.26 of the Act, the Chief of the Defence Staff is responsible for dealing with complaints about the conduct of the Provost Marshal.

As previously mentioned, the Chairperson of the Military Police Complaints Commission has the exclusive authority to review a conduct complaint and investigate an interference complaint. However, subsection 250.38(1) of the *National Defence Act* allows the Chairperson, if she considers it advisable in the public interest, to cause the Commission to conduct an investigation and, if warranted, to hold a hearing into a conduct complaint or an interference complaint.

In this case, the Chairperson considered it advisable in the public interest to cause the Commission to conduct an investigation into the complaints. She reached this conclusion for two reasons: (1) Both complaints implicated members in the office of the Provost Marshal; and (2) both complainants believed that they had not been fairly and impartially treated, and they perceived bias on the part of the Provost Marshal. The Chairperson concurred with the view that a reasonable apprehension of bias existed. Accordingly, the Chairperson concluded that it would be inappropriate for personnel in the office of the Provost Marshal to deal with these complaints.

As required by subsection 250.38(3) of the Act, the Chairperson notified the complainants, the Minister of National Defence, the Chief of the Defence Staff, the Judge Advocate General and the Provost Marshal of her decision, and the reasons for it, in letters dated February 6, 2001. Following an initial analysis of the complaints, the Chairperson notified the subjects of the complaints of her decision, and the reasons for it, in letters dated March 16, 2001.

## (b) Methodology

The Chairperson of the Commission directed Mr. Robert A. MacDougall, then Director of Operations, to gather all the necessary facts and details about these complaints. The Chairperson also wrote to the Provost Marshal on February 6, 2001, asking for specific documents and materials related to the complaints.

On February 16, 2001, the Commission received the first of three shipments of documentation and materials relevant to these complaints from the office of the Provost Marshal. A second shipment was received on March 9, 2001 and a third shipment arrived on July 4, 2001. Since then, additional documents were presented to the Commission, some by witnesses who identified documents that had not previously been provided.

To clarify some facts and details, Mr. MacDougall interviewed 11 individuals.

### **(i) Designated Members**

In conformity with subsection 250.38(1) of the *National Defence Act*, Louise Cobetto, Chairperson, and the late Thomas G. Flanagan, S.C., Commission Member, were designated by the Chairperson to constitute the Complaints Commission (hereinafter referred to as the Commission) for the purpose of conducting the investigation.

### **(ii) Persons Interviewed and Documents Examined by the Commission**

Following the initial collection and analysis of information and materials by Mr. MacDougall, the Commissioners decided that it would be necessary for them to conduct interviews, as part of their investigation, commencing in September 2001. However, the Chairperson decided to postpone the investigation until the completion of Lieutenant-Colonel Battista's appeal to the Court Martial Appeal Court. The Appeal was heard on October 1, 2001.

The Commission interviewed 18 individuals between November 8, 2001, and February 15, 2002. Sixteen of these were interviewed at the Commission offices at 270 Albert Street, 10<sup>th</sup> Floor, Ottawa, Ontario. Two (2) witnesses were interviewed via video conferencing facilities.

The correspondence sent to each individual informed them of their rights including that a person of their choosing could accompany them to the interview if they felt it necessary. All individuals were provided with ample opportunity to express their point of view.

The Commission also examined the following:

- *National Defence Act*, R.S.C. 1985, c. N-5
- *The Queen's Regulations and Orders for the Canadian Forces*
- *Complaints About the Conduct of Members of the Military Police Regulations*, App. 7.2 of the *National Defence Act*, R.S.C. 1985, c. N-5
- A-SJ-100-004/AG-000 *Military Police Policies*
- A-SJ-100-004/AG-000 *Military Police Policies and Technical Procedures*
- *Military Police Professional Code of Conduct*, S.O.R./00-14
- *Canadian Forces National Investigation Service Standard Operating Procedures*
- *Canadian Forces Administrative Orders*

### **(iii) Assisting the Commission**

Assisting the Commission during its investigation were Simon Noël, Q.C., Johanne Gauthier, General Counsel/Director of Legal Services, Robert A. MacDougall, Executive Director, and Suzan Fraser, Registrar.

#### **(iv) Legal Framework of the Investigation**

The Chairperson made a brief opening statement before the Commission interviewed each of the individuals. Among other things, she described the role of the Military Police Complaints Commission, pursuant to subsection 250.38(1) of the *National Defence Act*, in conducting this investigation by collecting any information (oral, written or otherwise) which would allow the Commission to weigh, as fairly as possible, the complainants' allegations. The Chairperson also reminded the persons interviewed that this investigation by the Commission was not a public hearing, nor an adversarial proceeding. The Commission had been constituted as an investigator whose role was to collect evidence and decide whether a public hearing was warranted. Those interviewed were told that they were under no obligation to answer questions or provide statements.

To maintain the integrity of this investigation, the Chairperson requested that each of the persons interviewed not disclose any part of the discussions stemming from their interviews.

Finally, the Chairperson described the issues under investigation.



## IV: Facts

On Wednesday, January 26, 2000, [REDACTED], a military police member with the Air Force, died suddenly at Canadian Forces Base Trenton. Lieutenant-Colonel Tony Battista, the most senior Military Police Officer in the Air Force posted to 1 Canadian Air Division in Winnipeg, received a telephone message informing him of [REDACTED]'s death.

Before leaving his office that night, Lieutenant-Colonel Battista telephoned the then Provost Marshal, Brigadier-General P. Samson, to inform her of the death. He also sent a brief email message to his management, the Commander 1 Canadian Air Division, then Major-General L. Campbell, his supervisor, then Brigadier-General S. Lucas, and Brigadier-General R. Findley, to advise them of the death.

The next morning, Thursday, January 27, 2000, Lieutenant-Colonel Battista met with Brigadier-General Lucas to brief him on some discussions held at National Defence Headquarters and to discuss the funeral for [REDACTED]. Lieutenant-Colonel Battista requested from Brigadier-General Lucas, and was granted, permission to attend the funeral of [REDACTED] in an official capacity, should there be a military funeral. Because [REDACTED] had been employed at Canadian Forces Base Trenton, it was thought that an official function might take place in Trenton. At this same meeting, Lieutenant-Colonel Battista asked permission from Brigadier-General Lucas to use this trip to spend the weekend with his family, if this was possible with no additional cost to the Canadian Forces. Lieutenant-Colonel Battista's family resided at Canadian Forces Base Borden, a few hours drive away from Trenton. Brigadier-General Lucas gave his approval.

Also during this meeting, Lieutenant-Colonel Battista and Brigadier-General Lucas discussed the movement of Military Police positions from Canadian Forces Base Trenton to Winnipeg and personnel issues that had surfaced in Trenton. Some of these issues arose from a recently completed extensive study referred to as the Air Force Security Review.

Brigadier-General Lucas suggested that, if possible, Lieutenant-Colonel Battista could deal with these matters in Trenton after attending the funeral for [REDACTED].

It was only because Brigadier-General Lucas thought the funeral would be held in Trenton that he suggested that Lieutenant-Colonel Battista hold this discussion at the same time. In later interviews, Brigadier-General Lucas confirmed his support for Lieutenant-Colonel Battista and Major Wight attending funeral services for [REDACTED]. However, he believed that Friday morning (January 28, 2000) that these services would be in Trenton and that this presented an opportunity to “kill two birds with one stone” as he had suggested to Lieutenant-Colonel Battista during their discussions the day before. It was also indicated that, even if the funeral services were in Hamilton, [REDACTED], the discussions could still take place subject to availability and circumstances.

On Friday, January 28, 2000, Lieutenant-Colonel Battista met with Major Wight and Chief Warrant Officer Galway to discuss attendance at [REDACTED]'s funeral. At this meeting, Chief Warrant Officer Galway expressed his view that attendance at the funeral might set a bad precedence. Ms. [REDACTED], Administrative Assistant to Lieutenant-Colonel Battista at that time, recalled for the Commission a conversation that she had with Chief Warrant Officer Galway that morning as follows: “If there was – the example he said was that if Sergeant Gilmore wished to attend the funeral of a Sergeant in North Bay, we would have to pay for that TD [Temporary Duty] out of our budget.”

At this time, Chief Warrant Officer Galway's rationale for objecting to attendance at [REDACTED]'s funeral was based on rank and the precedence being set and no other reason.

Lieutenant-Colonel Battista decided that he and Major Wight would attend the funeral, tentatively scheduled for Monday, January 31, 2000. Details of the location of the funeral were not known at that time. It was thought that there might also be a memorial service. Lieutenant-Colonel Battista had originally intended that Chief Warrant Officer Galway would accompany them to the funeral, but no additional seats were available on the service flight.

Lieutenant-Colonel Battista decided instead that Chief Warrant Officer Galway should represent them at the memorial service.

To keep costs down, as the cost of attending the funeral had not been anticipated, Lieutenant-Colonel Battista had Ms. ██████ book seats on Service Flights from Winnipeg to Toronto for himself and Major Wight. As he had discussed with Brigadier-General Lucas, Lieutenant-Colonel Battista planned to depart that afternoon, Friday, January 28, 2000, to spend the weekend with his family in Borden. Major Wight was to depart on a flight on Sunday, January 30, 2000.

Following his Friday morning meeting with Major Wight and Chief Warrant Officer Galway, Lieutenant-Colonel Battista asked Ms. ██████ to prepare the standard approval memo in his name for Temporary Duty travel to attend the funeral being held on Monday, January 31, 2000. Ms. ██████ delivered the memo to Brigadier-General Lucas for his approval.

Shortly after lunch on Friday, January 28, Ms. ██████ went to retrieve the approval memo for Lieutenant-Colonel Battista's Temporary Duty travel from the office of Brigadier-General Lucas. His Executive Assistant informed Ms. ██████ that Brigadier-General Lucas would not sign the approval memo to attend the funeral. He did not explain why, nor did she ask why.

Ms. ██████ told Lieutenant-Colonel Battista about the refusal by Brigadier-General Lucas to sign the form. Ms. ██████ told the Commission that Lieutenant-Colonel Battista just said, "Oh, I wonder why he [Brigadier-General Lucas] didn't sign it." Ms. ██████ stated further that she and Lieutenant-Colonel Battista had a brief discussion and that Lieutenant-Colonel Battista instructed her to state "Command and Control, Security Review" as the reason for travel on the Temporary Duty form. The approval memo did not require Lieutenant-Colonel Battista's signature. Ms. ██████ delivered a revised approval memo to the Executive Assistant of Brigadier-General Lucas, and received a call from him a short time later that Brigadier-General Lucas had signed it.

The purpose stated on the returned approval memo was “Command and Control, Security Review Update”. There was no specific mention of attendance at the funeral. Reference to the locations Borden, Trenton and Hamilton remained. Even though there was now no specific mention of attendance at the funeral on the approval form, Lieutenant-Colonel Battista decided not to disturb Brigadier-General Lucas, who was attending a meeting related to a high priority NORAD exercise, to confirm his support for attendance at the funeral.

Lieutenant-Colonel Battista was confident that both he and Major Wight had support to attend the funeral based on his earlier discussions with Brigadier-General Lucas.

Ms. [REDACTED] had also prepared earlier an approval memo for Major Wight citing the funeral as the reason for the Temporary Duty. On her own initiative, to be consistent with the reasons now given on Lieutenant-Colonel Battista’s approval memo, she placed the same reason for travel on Major Wight’s approval memo. Lieutenant-Colonel Battista signed the memo approving Major Wight’s Temporary Duty travel.

Lieutenant-Colonel Battista left Winnipeg on a Service Flight on January 28, 2000, at 16:25 hrs, just shortly after Brigadier-General Lucas had approved the travel. Lieutenant-Colonel Battista spent the weekend in Borden with his family. Major Wight took the Sunday, January 30, 2000, Service Flight to Toronto, and spent the night with family, as planned. He spoke with Lieutenant-Colonel Battista on arrival and learned that Lieutenant-Colonel Battista would travel to the funeral, now confirmed as being held in Hamilton, on a bus that was being supplied by Canadian Forces Base Borden. Lieutenant-Colonel Battista told Major Wight to rent a car to travel to the funeral.

As stated above, Lieutenant-Colonel Battista had decided that Chief Warrant Officer Galway should attend the memorial service, now scheduled for Trenton on Thursday, February 3, 2000 (the day after the return Service Flight from Toronto to Winnipeg for Lieutenant-Colonel Battista and Major Wight), instead of travelling to the funeral in Hamilton.

Chief Warrant Officer Galway was wait-listed for a seat on a Service Flight to attend the Trenton memorial service. Ms. [REDACTED] told him that it was unlikely that he would be able to get a seat. Chief Warrant Officer Galway later confirmed to the Commission that he did not attend the

memorial service because he could not get a seat on the Service Flight. He did not “decline” to attend because of concern regarding any stated purpose for this trip. Because he could not get a seat on the Service Flight, it was never necessary to submit a Temporary Duty approval memo.

Chief Warrant Officer Galway contacted Lieutenant-Colonel Battista at his residence in Borden to say that he had not been able to secure a seat on the Service Flight but that a [REDACTED] [REDACTED], was already in Trenton on other business and could represent them at the memorial service.

Lieutenant-Colonel Battista and Major Wight returned to Winnipeg on Wednesday, February 2, 2000, as scheduled. They both submitted their Travel Order and Claim forms the next day, February 3, 2000. Although his form reported expenses totalling \$236.75, Lieutenant-Colonel Battista made no claim for reimbursement of any of the costs he incurred during this trip. Ms. [REDACTED] wrote on the form, “No cost associated with this claim. 3 Feb 2000.” Major Wight certified Lieutenant-Colonel Battista’s claim under section 34 *Financial Administration Act*. Section 34 of the Act reads, in part:

34. (1) No payment shall be made in respect of any part of the public service of Canada unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister, or another person authorized by that Minister, certifies

(c) in the case of a payment for the performance of work, the supply of goods or the rendering of services,

(i) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified by the contract, is reasonable,

(ii) where, pursuant to the contract, a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is according to the contract, or

(iii) where, in accordance with the policies and procedures prescribed under subsection (2), payment is to be made in advance of verification, that the claim for payment is reasonable; or

(b) in the case of any other payment, that the payee is eligible for or entitled to the payment.

Both Lieutenant-Colonel Battista and Major Wight immediately became involved in the NORAD exercise then underway.

On Friday, February 4, 2000, Chief Warrant Officer Galway had a discussion with Master Warrant Officer Verreault, a reservist working with A3 Security and Military Police in Winnipeg. Chief Warrant Officer Galway told Master Warrant Officer Verreault he was concerned about the change in the stated purpose of the Temporary Duty travel of Lieutenant-Colonel Battista and Major Wight. Chief Warrant Officer Galway also told Master Warrant Officer Verreault that he had heard that Lieutenant-Colonel Battista had submitted a “no-cost claim.” In the past, no-cost claims were sometimes associated with questionable practices. However, there was no consistent understanding of what “no-cost claims” were. Some witnesses told the Commission that “no cost” simply meant that no reimbursement was being claimed. Ms. [REDACTED], for example, simply thought that “no cost” meant that no costs – meals, hotels, taxis and incidentals -- were claimed. Major Wight explained his understanding as follows:

I guess from days gone past, things that are attached to that no-cost claim thing, I guess it was used primarily by sports teams that would go, and it's not really a duty trip, so they would get duty travel, because we had our own airline at that time, and they would come back and submit a no-cost claim. So there was -- the gist of it was that by bringing that point that he had submitted a no-cost claim, that that was indicative of hiding something. When he [Chief Warrant Officer Galway] told me that the no-cost claim was submitted, I said yes, because I saw it. I didn't see any issue with it, but his interpretation was that because it was a no-cost, there was an issue with it. So that was right after the trip, and I thought nothing more of it.

Major Wight's conversation with Chief Warrant Officer Galway occurred shortly after he and Lieutenant-Colonel Battista returned from their Temporary Duty travel.

Chief Warrant Officer Galway had invited Major Wight for coffee.

Chief Warrant Officer Galway stated that he discussed his concerns about the Temporary Duty travel and the "no cost" travel claim submitted by Lieutenant-Colonel Battista. As stated above, Major Wight recalled that Chief Warrant Officer Galway mentioned "no-cost claims," but said that the discussion did not cause him [Wight] any concern.

On February 9, 2000, Master Warrant Officer Verreault and Lieutenant-Colonel Battista were both taking part in the NORAD exercise. Lieutenant-Colonel Battista joined Master Warrant Officer Verreault for supper. Master Warrant Officer Verreault claimed that during their conversation Lieutenant-Colonel Battista mentioned the rumours about his (Lieutenant-Colonel Battista's) travel claims. Master Warrant Officer Verreault said that Lieutenant-Colonel Battista told him that he had submitted a no-cost claim and indicated that, "if this got out," Brigadier-General Lucas could lose his job.

Master Warrant Officer Verreault interpreted the "no-cost claim" statement as an admission by Lieutenant-Colonel Battista that something illegal happened. The comment about Brigadier-General Lucas confirmed this in his mind. Lieutenant-Colonel Battista later recalled that Master Warrant Officer Verreault had raised the issue of rumours, and that he (Lieutenant-Colonel Battista) responded that he had not claimed anything for the trip and that he would never do anything to put the Brigadier-General in an awkward position or to cause him to lose his job. Lieutenant-Colonel Battista said that the room was crowded and noisy and that perhaps the Master Warrant Officer had not heard him accurately.

Master Warrant Officer Verreault then contacted Chief Warrant Officer Galway and met with him early on the morning of February 10, 2000. Master Warrant Officer Verreault reported the conversation he had with Lieutenant-Colonel Battista the previous evening.

Chief Warrant Officer Galway instructed Master Warrant Officer Verreault to prepare a written statement with his recollection of the discussion. Chief Warrant Officer Galway said that he would take matters from there.

That same day, February 10, 2000, Chief Warrant Officer Galway telephoned Lieutenant-Colonel Don Dixon, Deputy Provost Marshal, Canadian Forces National Investigation Service, to report his suspicion of improper activity in the submission of travel claims by Lieutenant-Colonel Battista and Major Wight. He did not speak beforehand with Lieutenant-Colonel Battista or Brigadier-General Lucas.

Also on February 10, Lieutenant-Colonel Dixon tasked the Canadian Forces National Investigation Service Sensitive Investigations Detachment to investigate whether Lieutenant-Colonel Battista and Major Wight had submitted fraudulent travel claims. The Sensitive Investigations Detachment was also tasked to determine if Brigadier-General Lucas had counselled them to submit fraudulent travel claims. Inspector Russ Grabb, on secondment to the Canadian Forces National Investigation Service from the Royal Canadian Mounted Police, was to be appointed lead investigator.

On April 3, 2000, the Canadian Forces National Investigation Service delivered a Brief to the Regional Military Prosecutor relating to this investigation.

In a legal opinion dated April 12, 2000, Commander C.J. Price concluded that there was no basis on which to form a reasonable belief that Brigadier-General Lucas had committed an offence with respect to Lieutenant-Colonel Battista's Temporary Duty. Similarly, he found insufficient evidence to form a belief that Major Wight had committed an offence in relation to the travel claim in question.

Concerning Lieutenant-Colonel Battista, Commander Price concluded that it appeared that the stated purpose of the trip on the claims was false. He concluded that Brigadier-General Lucas was misled into thinking that Lieutenant-Colonel Battista was going to Trenton, and that it was fair to conclude that Lieutenant-Colonel Battista knew he could not make the Trenton trip even before he submitted the "command and control" Temporary Duty approval memo to Brigadier-General Lucas. Commander Price also noted that even if Lieutenant-Colonel Battista ultimately believed that Brigadier-General Lucas' direction was that the word "funeral" was not



to appear on the claim and that, in effect, a false purpose was to be created, that still did not exculpate Lieutenant-Colonel Battista.

Commander Price therefore concluded that “on the face of” what he read and heard on interview tapes, there was evidence upon which to form a reasonable belief that Lieutenant-Colonel Battista had breached subsection 125(a) of the *National Defence Act*. In reaching this conclusion, Commander Price wrote that he found it “of some significance” that the Canadian Forces National Investigation Brief comments that Chief Warrant Officer Galway refused to go to the funeral given the wording that he was told must appear on the claim.

The legal opinion suggested two charges: wilfully making a false statement in a document made by Lieutenant-Colonel Battista (the Temporary Duty approval for his own travel) that was required for official purposes, and wilfully making a false statement in a document signed by him (the Temporary Duty form for Major Wight) that was required for official purposes.

On April 17, 2000, the Canadian Forces National Investigation Service report NSI-370-0002-00 concluded as follows:

[I]t is clear that although Brigadier-General Lucas signed the TD request form for Lieutenant-Colonel Battista, he neither made a statement or entry in that document; further there is no evidence to suggest that Brigadier-General Lucas knew that the stated purpose for the trip was fictitious. As a result Brigadier-General Lucas did not possess the requisite mens rea for a charge under Section 125 (a) of the NDA. Furthermore, there is no evidence to suggest that by signing Lieutenant-Colonel Battista’s TD request, under these circumstances, the actions of Brigadier-General Lucas amounted to Negligent Performance of a Military Duty as per Section 124 of the NDA.

Through this investigation it appears that Major Wight played no part in the creation of the wording in the “purpose” portion of the claim. It appears this was created at the instance of Lieutenant-Colonel Battista. Therefore, the reason of the trip was the idea of, and authorized by, Major Wight’s superior, who also accompanied him. Given the available evidence there does not appear to be the element of intent on the part of Major Wight to perpetrate any sort of falsehood. There is also no evidence to suggest that he acted in concert with Lieutenant-Colonel

Battista to deceive the crown or to intentionally create a fictitious reason for travel. As a result, there is insufficient evidence to form a belief that Major Wight has committed an offence in relation to the claim in question.

This investigation has determined that Lieutenant-Colonel Battista knew before he embarked on this TD, and authorized Major Wight's TD, that there was no requirement to travel to Trenton, Borden and Hamilton for a "Command and Control Security Review Update" during the dates specified. Brigadier-General Lucas was misled into thinking that Lieutenant-Colonel Battista was in fact going to Trenton, and that a false purpose was created. As a result, Lieutenant-Colonel Battista will be charged with one count of Section 125 (a) of the NDA (Willfully made a false statement in a document) in relation to his TD request. He will further be charged with one count of Section 125 (a) of the NDA in that he willfully made a false statement in the TD request for Major Wight and subsequently signed that request.

As a result of this investigation, two (2) charges were laid against Lieutenant-Colonel Battista. No charges were laid against Major Wight or Brigadier-General Lucas.

Subsection 125(a) of the *National Defence Act* reads:

Every person who... willfully or negligently makes a false statement or entry in a document made or signed by that person and required for official purposes or who, being aware of the falsity of the statement or entry in a document so required, orders the making or signing thereof... is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

On May 3, 2000, Lieutenant-General D.N. Kinsman, Chief of the Air Staff, wrote to the Chief of the Defence Staff and Vice Chief of the Defence Staff expressing his concerns about the case:

I would conclude that, technically, this case unfolded as required by the governing procedure and policies. Nevertheless, based upon a variety of cases I have observed, considered and/or adjudicated over the past four years, the potential impact on the lives of the three people in this instance strikes me as being out of proportion to the factual evidence. I have been cautious neither to interfere with the process nor to allow my personal knowledge of the persons involved obscure my objectivity. That being said, I am most uncomfortable with what I see and this poses a dilemma

for me. As one of your senior advisers I have, therefore, chosen to register my views with you via this means.

*Queen's Regulations and Orders* article 107.12 gives the authority to a commanding officer or superior commander to decide not to proceed with a charge laid by a member of the Military Police assigned to Canadian Forces National Investigation Service investigative duties. This decision, and the reasons for it, must be communicated to the Canadian Forces National Investigation Service member who laid the charge or the supervisor of the investigation. A copy of the decision must also be provided to the officer to whom the commanding officer or superior commander is responsible in matters of discipline.

In a memorandum dated May 19, 2000, Colonel W.F.G. Koch, Headquarters Commanding Officer, 1 Canadian Air Division, recorded his decision that the two charges against Lieutenant-Colonel Battista should not proceed. He gave several reasons, among them that the matter should have been resolved administratively and internally.

*Queen's Regulations and Orders* article 107.12 provides that if, following a review of reasons given for not proceeding with the charge, the Canadian Forces National Investigation Service member considers that the charge should proceed, this member may refer the charge directly to a referral authority in accordance with article 109.03, which outlines this procedure.

On May 26, 2000, Inspector Grabb, the Canadian Forces National Investigation Service supervisor of the investigation that led to charges against Lieutenant-Colonel Battista, recorded that the case investigator did not agree with the Commanding Officer's decision not to proceed with the charges and wanted to refer the matter to the referral authority. The referral authority in this case was Major-General L.C. Campbell, Commander, 1 Canadian Air Division.

*Queen's Regulations and Orders for the Canadian Forces* article 109.03 sets out the procedure for referring a charge to the referral authority in cases of disagreement. Article 109.05 describes the courses of action available to the referral authority. Article 109.05 reads, in part:

- (1) Subject to paragraph (2) [paragraph (2) is not relevant to the Battista case], a referral authority who receives an application prepared in accordance with article 109.03 . . . shall forward the application to the Director of Military Prosecutions, together with any recommendation concerning the disposal of the charge that the referral authority considers appropriate.

On June 20, 2000, Major-General Campbell wrote to the Director of Military Prosecutions recommending that the Director not proceed with the charges. He cited the reasons given earlier by Colonel Koch as justification for his decision.

*Queen's Regulations and Orders for the Canadian Forces* article 110.04 establishes that the Director of Military Prosecutions may:

- (a) prefer the charge, or any other charge that is founded on facts disclosed by evidence in addition to or in substitution for the charge ;
- (b) refer the charge for disposal by an officer who has jurisdiction to try the accused person by summary trial where the Director is satisfied that a charge should not be proceeded with by court martial; or
- (c) decide not to proceed with the charge.

In a Charge Sheet dated September 20, 2000, the Deputy Director of Military Prosecutions, Lieutenant-Colonel Mario Dutil, communicated the decision to prefer four charges against Lieutenant-Colonel Battista (two (2) additional charges were preferred with the original two (2) Canadian Forces National Investigation Service charges). A Standing Court Martial was to be held in Winnipeg, Manitoba in due course.

From November 28 to 30, 2000, Lieutenant-Colonel Battista was tried by Standing Court Martial. On November 30, he was found guilty on all four charges and sentenced to a reprimand. Lieutenant-Colonel Battista filed a notice of appeal to the Court Martial Appeal Court of Canada on December 5, 2000, for “unreasonable finding.”

The Court Martial Appeal Court rendered its decision<sup>1</sup> on October 1, 2001. The Court stated that the only issue to be decided was whether it was unreasonable for the Military Judge to find that

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<sup>1</sup> *Lieutenant-Colonel Tony Battista v. The Queen*, 2001 C.M.A.C. 1.

Lieutenant-Colonel Battista had made false statements and entries on travel and expense account documents. The Court Martial Appeal Court allowed the appeal on all four charges, set aside the verdicts of guilty and entered verdicts of not guilty.

In reaching this decision, the Court Martial Appeal Court states:

[11] As to the first set of facts, in the circumstances of this case, that the first request said “funeral”, while the second did not, is insufficient to support the inference drawn by the Military Judge. The Military Judge found that Brigadier-General Lucas required the secondary purpose to be named and it was. Whatever the reason for not using the word “funeral” in the second request, it does not support the inference that there was no secondary purpose for the trip.

[12] As to the second set of facts, that no security review activities were preplanned and held, these facts, in and of themselves, do not prove that such activities were not contemplated and were not a secondary purpose of the trip....

[13] These sets of facts relied upon by the Military Judge were, in our opinion, insufficient to support the inference drawn by him and the conclusion he reached.

### **Related Investigations**

In a covering letter accompanying the April 17, 2000 Canadian Forces National Investigation Service report [NSI 370-0002-00] that resulted in charges against Lieutenant-Colonel Battista, Lieutenant-Colonel Dixon stated that other evidence uncovered during the investigation indicated that Lieutenant-Colonel Battista might have submitted other fraudulent travel claims. Lieutenant-Colonel Dixon indicated that this would be investigated as a separate file. The report of this second investigation [NSI 370-0006-00], which also examined possible wrongful activities by Major Wight and Chief Warrant Officer Galway, concluded on July 11, 2000 that, “Investigation into this matter has determined that insufficient evidence exists to proceed with service offence charges against Lieutenant-Colonel Battista, Major Wight or

Chief Warrant Officer Galway.” In a July 16, 2000 covering letter accompanying the report, Lieutenant-Colonel Dixon wrote: “Canadian Forces National Investigation Service investigation into these allegations failed to uncover any information or evidence which would support criminal or service offence charges. As such, investigation into this matter has been concluded.”

A third investigation was conducted into the alleged submission of fraudulent travel claims by Lieutenant-Colonel Battista between 1995 and 1999 while he was Commandant, Canadian Forces School of Intelligence and Security. The Canadian Forces National Investigation Service report of that investigation [NSI 370-0009-00], dated July 17, 2000, concluded that, “there exists no information to suggest that Lieutenant-Colonel Battista was involved in any form of criminal activity/wrongdoing.” In a covering letter dated July 16, 2000 accompanying the report, Lieutenant-Colonel Dixon wrote: “CFNIS investigation into these allegations failed to uncover any information or evidence which would support criminal or service offence charges. As such, investigation into this matter has been concluded.”

### **Military Police Credentials**

On April 20, 2000, the then Deputy Provost Marshal, Professional Standards, Lieutenant-Colonel Paul Cloutier, suspended the Military Police credentials of both Lieutenant-Colonel Battista and Major Wight. The Deputy Provost Marshal, Professional Standards concluded that both officers had contravened the *Military Police Professional Code of Conduct*. They had allegedly misrepresented or falsified information in their travel order claims and thereby brought discredit to the Military Police organization.

A Military Police Credentials Review Board was convened on October 3, 2000, to consider the suitability of Major Wight to exercise the powers and discharge the duties of a Military Police Person under section 156 of the *National Defence Act*. The Board members voted unanimously to re-instate Major Wight’s appointment. They found that “there was not clear and convincing evidence to support the revocation of Major Wight’s MP credentials.”

The then Provost Marshal returned Major Wight's credentials with conditions. Major Wight applied to the Federal Court for a judicial review to challenge the authority of the Provost Marshal to ignore a determination of the Military Police Credentials Review Board and to impose her own conditions on the return of Military Police credentials. This matter had not been heard as of the conclusion of Commission witness interviews in February 2002.

A Military Police Credentials Review Board was convened on July 26, 2001 to consider the situation of Lieutenant-Colonel Battista. This resulted in a 4 – 1 decision to reinstate Lieutenant-Colonel Battista's credentials. On August 15, 2001, the Canadian Forces Provost Marshal directed that Lieutenant-Colonel Battista's credentials be reinstated immediately with terms and conditions. It should be noted that these decisions were made prior to the judgment of the Court Martial Appeal Court and the entering of a not guilty verdict on all four (4) charges against Lieutenant-Colonel Battista.

### **Competition for the Position of Provost Marshal**

On February 16, 2000, six days after Chief Warrant Officer Galway reported the alleged misconduct of Lieutenant-Colonel Battista to Lieutenant-Colonel Dixon, the then Provost Marshal, Brigadier-General Samson, sent an email to all Lieutenant-Colonels advising them that the competition for her replacement as Provost Marshal would soon begin. On May 17, 2000 a formal announcement was made about the competition and applications were invited.

Lieutenant-Colonel Battista was interested in seeking the position. He was concerned that the criminal investigations and charges would seriously diminish his chances of becoming Provost Marshal. Lieutenant-Colonel Battista did apply for the position, but was not the successful candidate. Interviews for the position were held on June 26, 2000, at which time Lieutenant-Colonel Battista had been charged with two (2) offences, but not yet tried. At the time of the interview, his Military Police credentials had also been removed.

## V: Chairperson's Findings Subsequent to the Investigation

The Chairperson found, during this investigation by the Complaints Commission, that there was an absence of malice or bad faith on the part of military police members on all sides of this incident. Issues that arose from the complaints before the Military Police Complaints Commission are based on historical, cultural and organizational factors such as the history of Military Police activities, the culture of the military institution and the introduction of a practice of "zero tolerance".

The Commission is aware that, within the Military Police organization, this case has been the topic of much debate and upset. Comparisons have allegedly been made between the treatment of an Officer versus that of a Non-Commissioned Member. The Chairperson of the civilian Military Police Complaints Commission wishes to assure all members of the Military Police organization that, for the Commission, this has nothing to do with rank. Rather, it has everything to do with the fair and equitable treatment of military police members, regardless of rank or position.

### Findings Relating to Specific Issues

#### **(a) Erroneous and Incomplete Information in the Investigation Report and Brief for the Regional Military Prosecutor (NSI 370-0002-00)**

Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief, delivered April 3, 2000 to the Regional Military Prosecutor, may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. These errors were as follows:

- The brief to the Regional Military Prosecutor and the Canadian Forces National Investigation Service investigation report stated that Major Wight "really did not know" what "Command and Control Security Review Update" meant. This was not an accurate



assessment of what Major Wight had said to the Canadian Forces National Investigation Service investigators. In fact, during his video taped cautioned interview, Major Wight did discuss extensively the possible meaning of this phrase with investigators. Elsewhere in the brief, it partially corrects this misleading information by stating that Major Wight felt that “Command and Control” was an issue of the chain of command looking after subordinates. This misinterpretation of Major Wight’s understanding of “Command and Control” may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.

- The brief to the Regional Military Prosecutor and the investigation report also indicated that Chief Warrant Officer Galway had been prepared to submit a claim to attend a memorial service in Trenton, when Ms. [REDACTED] informed him that Brigadier-General Lucas would not sign a claim for that reason. Both documents further indicated that Ms. [REDACTED] told Chief Warrant Officer Galway that Lieutenant-Colonel Battista and Major Wight had to change their claims before Brigadier-General Lucas would sign them, and that Chief Warrant Officer Galway then declined to go on his trip.

In fact, Chief Warrant Officer Galway was not able to go to the memorial service in Trenton because there was no seat available for him on the Service Flight. Chief Warrant Officer Galway told the Commission that he did not decline to go on the trip. He did not go because there was no seat available on the flight. This inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case. Commander Price wrote that he found it “of some significance” that Chief Warrant Officer Galway refused to go to the funeral given the wording (“command and control etc.”) that he was told must appear on the claim.

Commander Price concluded that there was evidence upon which to form a reasonable belief that Lieutenant-Colonel Battista had breached subsection 125(a) of the *National Defence Act*, and that two (2) charges could be laid on the basis of making false statements by using the wording “Command and Control Security Review Update” as a purpose for his and Major Wight’s Temporary Duty travel.

The problem extends beyond this. The Canadian Forces National Investigation Service investigative report is distributed to others as well, including the Vice Chief of the Defence Staff. Any factual errors in the investigative report can therefore affect the reputation and careers of those being investigated.

Chairperson’s Finding #1:

Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief delivered April 3, 2000 to the Regional Military Prosecutor may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. In particular:

- The misinterpretation of Major Wight’s understanding of “Command and Control” may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.
- The inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service investigation report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case, to conclude that charges were warranted.

Chairperson’s Finding #2:

The wide distribution of Canadian Forces National Investigation Service investigation reports provides the potential for harm to the reputations and careers of those being investigated should these reports contain falsehoods or factual errors.

**(b) The Failure of the Canadian Forces National Investigation Service to Conduct a Follow-up Meeting with Lieutenant-Colonel Battista (NSI 370-0002-00)**

Compounding the factual errors in the April 17, 2000 Canadian Forces National Investigation Service investigative report was the failure of investigators to meet with Lieutenant-Colonel Battista to discuss additional information that he wanted to present to them.

Inspector Grabb confirmed that Lieutenant-Colonel Battista had advised him about further information pertaining to the investigation. Inspector Grabb told the Commission that he did not want to discuss this with Lieutenant-Colonel Battista over the telephone, so said that someone would get back to him about this. Inspector Grabb stated: “I know that on at least eight occasions, I mentioned to Captain Garrick [the investigator] that they have to get back to him [Lieutenant-Colonel Battista].”

Inspector Grabb further explained that he saw no real investigative need to meet with Lieutenant-Colonel Battista again, because in his [Grabb’s] view, there was no basis for laying charges:

I knew at the time that it was irrelevant and it was a moot [point] anyway because he was providing a logical explanation or he had new information about matters for which in my view there was no basis to lay charges anyway. But it was a question of professional courtesy for a guy who was under investigation.

Lieutenant-Colonel Battista told the Commission that he did not press this matter, in part, because of a telephone message he received from Captain Garrick on March 24, 2000:

He called me from the airport. ... He [said he] would get back to me. He also stated that things looked good. He never got back to me.

Captain Chiasson and Lieutenant Kirschner, two other Canadian Forces National Investigation Service investigators on the case, did interview Lieutenant-Colonel Battista in June 2000.

However, they told Lieutenant-Colonel Battista that they were not there to interview him about the initial funeral claims investigation. Lieutenant-Colonel Battista said he expressed his

concerns that he had not been re-interviewed about the initial investigation. He reported that the investigator said words to the effect that they did not want to discuss this investigation further.

Lieutenant-Colonel Battista complained to the Commission that the Canadian Forces National Investigation Service investigators failed to conduct an adequate investigation and that this incomplete investigation presented an unfair and biased portrait of him and what actually transpired.

The Commission investigation lends support to Lieutenant-Colonel Battista's concerns. He was not re-interviewed, and was not given the opportunity to provide additional information. The Chairperson cannot say whether the additional information held by Lieutenant-Colonel Battista would have persuaded investigators not to lay charges. However, at the very least, Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. This "professional courtesy" was not extended to Lieutenant-Colonel Battista by the Canadian Forces National Investigation Service investigators. Furthermore, since the Canadian Forces National Investigation Service investigation report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.

Chairperson's Finding #3:

Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. Furthermore, since the Canadian Forces National Investigation Service report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.

The Chairperson concludes that the failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favor of laying charges and prosecuting. Had the

Canadian Forces National Investigation Service report been more accurate and complete, and if it had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.

Chairperson's Finding #4:

The failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favour of laying charges and prosecuting Lieutenant-Colonel Battista. Had the Canadian Forces National Investigation Service report been more accurate and complete, and if the Canadian Forces National Investigation Service had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.

**(c) Extraneous Comments in Canadian Forces National Investigation Service Reports  
(NSI 370-0002-00)**

The April 17, 2000 Canadian Forces National Investigation Service investigative report indicated that an interview had been conducted with a [REDACTED] [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba. The report recorded that [REDACTED] described Lieutenant-Colonel Battista as "[REDACTED]." The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. Remarks such as this have no place in an objective police report. Again, the Chairperson reminds Canadian Forces National Investigation Service investigators that these reports are seen by others outside the investigative sphere, and comments such as this may unfairly influence how others perceive the subject of investigation, even after the criminal issues are resolved.

Chairperson's Finding #5:

The April 17, 2000 Canadian Forces National Investigation Service report recorded that [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, described Lieutenant-Colonel Battista as "[REDACTED]." The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. Remarks such as this have no place in an objective police report.

**(d) Provost Marshal Competition - Possible Improper Motives?**

The Chairperson was concerned by the suggestion that the military justice system had been used vindictively in this case – in particular, that it may have been applied to Lieutenant-Colonel Battista to eliminate him from the running for the position of Provost Marshal. If this proved to be the case, there would indeed be serious cause for concern.

Given the appearance to some that the alleged misconduct was so trivial, it was not unreasonable for Lieutenant-Colonel Battista to wonder whether the investigation and prosecution were improperly motivated. As well, Lieutenant-Colonel Battista had made efforts to have a further meeting with investigators to explain his situation more fully, but that meeting never occurred. This might have suggested to him that the investigators were not interested in exonerating him.

One must also keep in mind the fact that the Canadian Forces Provost Marshal is the Commanding Officer of the Canadian Forces National Investigation Service. It was no secret that the serving Canadian Forces Provost Marshal, Brigadier-General P. Samson, and Lieutenant-Colonel Battista had differences of view, specifically in relation to the conclusions of the Air Force Security Review led by Lieutenant-Colonel Battista. That said, Brigadier-General Samson had no involvement in the competitive process to find her replacement as Provost Marshal.

Furthermore, Lieutenant-Colonel Battista noted the strange coincidence that two complaints against him – from completely different sources – were made on the same day. This again might arouse suspicion of an orchestrated campaign against him.

The Commission reviewed a host of materials provided to it. It heard from numerous witnesses – those in the chain of command, the investigators and the complainants. The Chairperson found nothing to suggest that the military justice system was being used to “get at” Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.

Chairperson’s Finding #6:

The Chairperson found nothing to suggest that the military justice system was being used to “get at” Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.

It goes without saying that in any organization not everyone likes everyone else. Personalities do come into conflict. Still, the Chairperson found no evidence that any of the actions taken during the investigation and prosecution were motivated by malice.

Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. It certainly robbed Lieutenant-Colonel Battista of some confidence as he went through the selection process, and this may have harmed his performance during that process. It was clear from comments made by several of the witnesses that he was held in sufficient esteem and that he was also sufficiently qualified to be a contender for the position.

The Chairperson is convinced that the actual competition for the position of Provost Marshal was fair. Commission Counsel asked Vice-Admiral Gary Garnett, Vice Chief of the Defence Staff from 1997 to September 2001, to describe the procedure for selecting the replacement for

Brigadier-General Samson as Provost Marshal. Admiral Garnett's description completely satisfied the Commissioners that this competition process was fair and equitable and that Lieutenant-Colonel Battista was treated similarly with the other candidates in the competition with no discrimination directed against his candidature. Clear and convincing evidence was presented to the Commissioners indicating that Brigadier-General Samson, the former Canadian Forces Provost Marshal, had no involvement or input in this competitive selection process to replace her.

Chairperson's Finding #7:

The Chairperson finds that the competition process to select a new Canadian Forces Provost Marshal was fair and equitable and that Lieutenant-Colonel Battista was treated similarly to other potential candidates with no discrimination evident.

What Lieutenant-Colonel Battista experienced was a combination of unfortunate timing (the investigation, revocation of credentials and laying of charges in the months before the Provost Marshal competition) and the reality that being drawn into the justice system can damage one's reputation, innocent or not. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police, as a whole, to ensure that investigations are thorough, unbiased and objectively presented.

The investigative processes in these cases were obviously not faultless. Follow-up investigations might have exonerated Lieutenant-Colonel Battista and Major Wight at an earlier stage; investigative reports might have been prepared with greater precision so that military prosecutors had more accurate information on which to base their recommendations concerning charges; and the discretion vested in every civilian peace officer could have been used in this case to decide whether or not to proceed by way of a criminal process or to rely on an administrative procedure to address any concern that may have arisen from the trip to the funeral. The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.



Chairperson's Finding #8:

The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.

Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented.

**(e) The Coincidence of Dates on Which Complaints Were Made  
(All Investigation Reports)**

Lieutenant-Colonel Battista told the Commission that he found it unusual that two separate complaints from different regions of Canada, leading to two separate investigations of him, were both made on February 10, 2000. Indeed, investigation reports concerning two separate complaints, by two separate individuals, indicated that both were reported to the Canadian Forces National Investigation Service the same day, February 10. The first complaint related to his attendance at [REDACTED]'s funeral in January 2000. The second related to alleged fraud by Lieutenant-Colonel Battista between 1995 and 1999 while he was Commandant, Canadian Forces School of Intelligence and Security.

On the surface, Lieutenant-Colonel Battista was right to be suspicious about the dates. However, the date of the report to the Canadian Forces National Investigation Service about the alleged fraud by Lieutenant-Colonel Battista between 1995 and 1999 stated February 10 in error. This seems to have been a clerical error made by the Canadian Forces National Investigation Service investigator when compiling information for the three different investigative reports. This investigator opened the second investigation file (NSI 370-0006-00) to accommodate reporting on expense claims reviewed as part of the original investigation (NSI 370-0002-00). Upon receipt of the alleged unsolicited complaint covering the 1995 to 1999 period, a third investigation file was opened (NSI 370-0009-00). As they all had the identical subject of

investigation, the investigator mistakenly “cut and pasted” tasking information from the first report to the two subsequent investigation reports.

Chairperson’s Finding #9:

The apparently suspicious coincidence in which two separate complaints about Lieutenant-Colonel Battista, from different parts of the country, and concerning completely different activities and timeframes, were reported to the Canadian Forces National Investigation Service on the same day, was the result of a simple clerical error by an investigator. In fact, these two complaints were not made on the same day.

**(f) The Decision by Chief Warrant Officer Galway to Report his Concerns to the Deputy Provost Marshal, National Investigation Service (NSI 370-0002-00)**

Chief Warrant Officer Galway played a pivotal role in setting the chain of events in motion that led to the charges against, and prosecution of, Lieutenant-Colonel Battista. The Commission examined whether it was appropriate for Chief Warrant Officer Galway to report his concerns to Lieutenant-Colonel Dixon, the Deputy Provost Marshal, National Investigation Service, rather than to speak directly with Lieutenant-Colonel Battista or Brigadier-General Lucas beforehand.

Chief Warrant Officer Galway told the Commission that he had two concerns about Lieutenant-Colonel Battista’s attendance at the funeral. First, Chief Warrant Officer Galway did not understand why Brigadier-General Lucas would not sign a Temporary Duty request for the purpose of attending a military funeral only, nor did he understand why Lieutenant-Colonel Battista’s claim did not have the word “funeral” on it. Second, he felt that the notion of filing a no-cost claim was wrong.

Chief Warrant Officer Galway told the Commission that he decided not to address these concerns directly with Lieutenant-Colonel Battista. Among the reasons Chief Warrant Officer Galway gave: he was very busy concentrating on preparing for a NORAD evaluation exercise; and he and Lieutenant-Colonel Battista would go days without seeing each other because of this. He did, however, raise his concerns about the no-cost claim with Major Wight, but Major Wight found nothing wrong with this claim.

After hearing Master Warrant Officer Verreault's report of his conversation with Lieutenant-Colonel Battista about changing the purpose of the funeral trip and the no-cost claim, Chief Warrant Officer Galway located copies of both Lieutenant-Colonel Battista's and Major Wight's claims. Because his suspicions were further aroused at that point, Chief Warrant Officer Galway felt that he could not approach Lieutenant-Colonel Battista about his concerns. Nor did he go to Brigadier-General Lucas. Chief Warrant Officer Galway said he elected to go "outside our headquarters" and have someone else review the file. He immediately reported the allegations to Lieutenant-Colonel Dixon.

Chief Warrant Officer Galway told the Commission that he was very loyal to the Chain of Command, but if the matter was a possible police issue, someone outside the Winnipeg office had to review it. He further told the Commission that he wanted to get as few people involved in this case as possible because of Lieutenant-Colonel Battista's rank and position of authority.

The day Lieutenant-Colonel Battista was charged, he asked Chief Warrant Officer Galway if he knew who had laid the complaint. Chief Warrant Officer Galway immediately replied that he was the complainant. Chief Warrant Officer Galway told the Commission that when Lieutenant-Colonel Battista asked him why he would do such a thing, he responded, "Sir, I had a decision to make, and made the decision and a decision I'm going to have to live with the rest of my life." Chief Warrant Officer Galway told the Commission, "right or wrong, I made a decision."

In fact, no guidelines exist in the *Military Police Professional Code of Conduct* about the types of violations to be reported or the standard of evidence required to report on another military police member. Section 7 of the *Military Police Professional Code of Conduct* states:

A member of the military police who believes, or is aware of an allegation, that another member of the military police has breached this Code shall report the belief or allegation, as the case may be, to

(a) their superior in the military chain of command; or

(b) the next superior in the military police chain of command, if the superior referred to in paragraph (a) is the subject of the belief or allegation.

The threshold for requiring a military police member to report another member is quite low. The duty to report lies with any member who simply “believes,” or “is aware” of an allegation of a breach of the Code. It is not a requirement that a military police member who reports another member have reasonable or probable grounds to believe that a violation took place. The appreciation of what may constitute a violation is therefore left to the military police member, his discretion and good faith. This aspect of the *Military Police Professional Code of Conduct* is consistent with the Codes of Conduct for other Police Agencies. It is also consistent with the philosophy and practice of police ethics.

The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Chief Warrant Officer Galway sincerely believed that something was amiss, and that criminal activity might have been involved. In that circumstance, it was very proper for him to report his concerns to Lieutenant-Colonel Dixon, the Deputy Provost Marshal, National Investigation Service. Had Chief Warrant Officer Galway spoken to Lieutenant-Colonel Battista, he [Galway] might have been perceived as interfering with a potential police investigation.

Chairperson’s Finding #10:

The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Further, had he spoken to Lieutenant-Colonel Battista, Chief Warrant Officer Galway might have been perceived as interfering with a potential police investigation.

Furthermore, the Commission uncovered no information to indicate that Chief Warrant Officer Galway’s actions were in any way vindictive. It was quite clear that he was troubled about reporting the senior officer with whom he worked. He clearly respected

Lieutenant-Colonel Battista. He described Lieutenant-Colonel Battista as having “everything he needs to be Provost Marshal. In addition to that, Lieutenant-Colonel Battista has a great vision. ... he has [the] vision to be the Provost Marshal.... He has the qualifications, he has everything.”

Chairperson’s Finding #11:

The Commission uncovered no information to indicate that Chief Warrant Officer Galway’s actions were in any way vindictive. To the contrary, Chief Warrant Officer Galway held considerable respect for Lieutenant-Colonel Battista and was clearly troubled by the decision he had to take.

**(g) Authority and Process for the Suspension of Credentials (NSI 370-0002-00)**

Military Police Credentials Review Board Procedures state that the authorized possession of Military Police credentials is a requirement for appointment as a military police member. Hence, the withdrawal of these credentials constitutes the suspension/revocation of the *National Defence Act* section 156 appointment. The Canadian Forces Provost Marshal may revoke, suspend or reinstate (with or without conditions) Military Police credentials.

This procedural statement includes the following guidance on the removal of Military Police credentials:

Although suspension and revocation of MP Credentials are decided by the CFPM upon recommendations of the MPCRB, MP Credentials may be temporarily removed by the DPM PS pending review of the matter by a MPCRB Panel when the member’s alleged breach of the Code is so serious so as to render, considering all the circumstances of the case, the members incapable of effectively discharging their MP duties.

Evidently, the authority to temporarily suspend Military Police credentials in the event of a perceived serious breach of the *Military Police Professional Code of Conduct* is delegated by the Canadian Forces Provost Marshal to the Deputy Provost Marshal for Professional Standards.

The role of the Military Police Credentials Review Board is to determine actual breaches of the Military Police Professional Code of Conduct and to make recommendations to the Canadian

Forces Provost Marshal, with respect to Military Police credentials, according to the referenced procedures.

*Queen's Regulations and Orders for the Canadian Forces* section 22.04 deals with the Military Police Credentials Review Board. Paragraph 22.04(7) states:

If the member of the military police responsible for professional standards in the office of the Provost Marshal considers that there has been a breach of this Code [the Military Police Professional Code of Conduct] by another member of the military police that warrants review, that member shall refer the matter to the Chairperson of the Board.

The Chairperson of the Board then assigns a panel to review the matter. The Panel determines whether there has been a breach of the Code. Paragraph 22.04(11) states:

The Panel may make any recommendation to the Provost Marshal that it considers appropriate, including, if it determines that a member of the military police has breached the Code, the recommendation that the Provost Marshal:

- (a) revoke the Military Police Credentials of the member;
- (b) suspend the Military Police Credentials of the member for a period of not more than 180 days, on any terms or conditions that it considers appropriate; or
- (c) re-instate the Military Police Credentials of the member, with or without terms or conditions.

Paragraph 22.04(12) requires the Panel to give reasons for its recommendations.

As concerns Lieutenant-Colonel Battista and Major Wight, Canadian Forces National Investigation Service investigation report NSI 370-0002-00 was dated April 17, 2000. It concluded that there was insufficient evidence to form a belief that Major Wight committed an offence. However, it confirmed that Lieutenant-Colonel Battista would be charged with two (2) counts under subsection 125(a) of the *National Defence Act* (Offences relating to documents). Lieutenant-Colonel Battista was served with these charges on April 19, 2000.

On April 20, 2000, then Deputy Provost Marshal for Professional Standards, Lieutenant-Colonel Paul Cloutier, forwarded a message to then Commander, 1 Canadian Air Division, Major-General Campbell, with copies to then Vice Chief of Defence Staff, Vice-Admiral Garnett, then Chief of the Air Staff, Lieutenant-General Kinsman and the Deputy Provost Marshal (Police) informing them of the suspension of Lieutenant-Colonel Battista and Major Wight's credentials.

In this message, the Deputy Provost Marshal for Professional Standards explains his decision to suspend the two military police members for their alleged breach of the *Military Police Professional Code of Conduct*. Specifically, the Deputy Provost Marshal for Professional Standards cites Reference B 4 (H) of the Code in that:

Lieutenant-Colonel Battista knowingly misrepresented or falsified information in documents in that on one occasion he falsely indicated on his travel claims and other related documents as to the purpose and locations of his temporary duty trip when in fact the trip was for his personal travel to a funeral 31 JAN 00; on one occasion made similar false statements or misrepresentation in the TD requests and approval of Maj Wight, one of his subordinates; and one occasion gave a false statement or misrepresentation in that he attempted to arrange a meeting in Trenton with the 8 Wing Comd and Wing Ops O during the same TD trip while the investigation shows that such attempts did not occur; Ref 4 (L) engage in conduct that is likely to discredit the Military Police or that calls into question the member's ability to carry out his duties in a faithful and impartial manner in that he has brought discredit to the Military Police by knowingly making false statements or misrepresentation on three separate occasions. In making these false statements and misrepresentations, he misled a superior and knowingly caused a subordinate to do the same.

...he [Major Wight] allegedly made false statements or misrepresentation on his travel order claims in relation to his trip to Hamilton and the purpose of his trip to Hamilton; 4 (L) in that by making false statements or misrepresentation he brought discredit to the Military Police organization.

On October 3, 2000, a Military Police Credentials Review Board was convened to consider the case of Major Wight. A report from the Board to the Canadian Forces Provost Marshal was issued that date communicating the following:

Following determination and review of the material facts the Board members voted unanimously that the item of suspension, dishonesty, was not valid. The Board members voted unanimously that the second item of suspension, discredit the Branch, was not valid. This vote reflected the common concern that DPM PS had suspended Maj WIGHT's appointment although the CFNIS investigation acknowledged that there were neither ground for any criminal charges nor a service offence. Furthermore, the MP Professional Code of Conduct establishes the parameter for a presumed discredit, which in this case, was not met. All members agree that there was not clear and convincing evidence to support the revocation of Maj WIGHT's MP Credentials. There was not a preponderance of evidence that he acted in a manner that would preclude him from exercising the powers and discharging the duties of a MP person pursuant to Section 156 of the NDA. The Board recommends the re-instatement of Maj WIGHT's appointment.

The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support the revocation of Major Wight's credentials, nor their temporary suspension. Even on the basis of the inaccurate, erroneous, incomplete and biased wording of the Canadian Forces National Investigation Service investigation report, the Canadian Forces National Investigation Service itself had concluded that Major Wight had committed no offences. Yet, his Military Police credentials were suspended for six months. No perceived breach of the Code could have been so serious as to render, considering all the circumstances of the case, the member incapable of effectively discharging his Military Police duties.

Chairperson's Finding #12:

The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support either the temporary suspension or the revocation of Major Wight's Military Police credentials.



A Military Police Credentials Review Board was convened on July 26, 2001 to consider the situation of Lieutenant-Colonel Battista. This resulted in a 4 – 1 decision to reinstate Lieutenant-Colonel Battista’s credentials. On August 15, 2001, the Canadian Forces Provost Marshal directed that Lieutenant-Colonel Battista’s credentials be reinstated immediately with terms and conditions. It should be noted that these decisions were made prior to the judgment of the Court Martial Appeal Court on October 1, 2002 and the entering of a not guilty verdict on all four (4) charges against Lieutenant-Colonel Battista.

Given the circumstances existing at the time, the temporary suspension of Lieutenant-Colonel Battista’s credentials may be able to be understood. However, given the written decision of the Court Martial Appeal Court, much of the rationale of the moment may no longer be a valid consideration. The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista’s credentials **with terms and conditions**, as these may no longer be relevant or appropriate.

Chairperson’s Finding #13:

The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista’s credentials **with terms and conditions**, as these may no longer be relevant or appropriate.

**(h) “Zero Tolerance” Charging Practices**

One of the most troubling aspects of the Chairperson’s investigation into these complaints was the apparent inflexibility of the Canadian Forces National Investigation Service when it came to laying charges against Lieutenant-Colonel Battista. This case exhibited an inflexible “zero tolerance” practice regarding the laying of charges. In essence, “zero tolerance” means abandoning the discretion, inherent to police work, about whether to lay charges. “Zero tolerance” simply means that if there is evidence to form a reasonable belief that an offence has been committed, a charge must be laid.

In the historical context of the creation of the Canadian Forces National Investigation Service and the question of the independence of Military Police investigations, Inspector Grabb described his perception of the introduction of this “zero tolerance” approach by the then Provost Marshal, Brigadier-General Samson:

I had long discussions with General Samson about this and it was her repeated view that in that first five years of the creation and the existence of the NIS, it was crucial to demonstrate unequivocally that the Chain of Command was not getting a special break. The NIS could investigate the Chain of Command independently. And this is why we have the ‘zero tolerance, mandatory charge with evidence policy’ and she used to say maybe after five years, we will look at loosening that up.

Lieutenant-General Lloyd Campbell, then Commander of 1 Canadian Air Division in the Canadian NORAD Region, gave the Commission his explanation of how this “zero tolerance” practice evolved in the Canadian Forces National Investigation Service:

I think it's fair to say that as a fallout of a number of events over the last four to five years, the Somalia Inquiry being one of those, the findings that came from there, other activities that we've done, you know, the Dickson reports and so on, that there was not only a perception of justice being somewhat differently applied by rank but there were enough circumstances where it was demonstrated that perhaps a different standard was applied, that the system has reacted by moving the pendulum from one side of the bar to quite the other side and so I mean my sense here on the part of the NIS and other investigators in general is not one of vindictiveness but one of trying to make sure that they can never be accused of favouritism towards one of their own or to a senior officer in general. ... I believe that the pendulum needs to swing back a bit, not to where it might have been at one time but to something that recognized that there are shades of grey in many of these areas and a degree of common sense needs to be applied as we work our way through these programs.

So my sense is not one that the system is broken irreparably or that there are people there who just are out to get their fellow Military Police officers, my sense is more one of we haven't yet well defined what movement space there is.

*Standard Operating Procedure 238* explains the Canadian Forces National Investigation Service policy in laying charges. Paragraph 3 states, in part:

... where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there are sufficient grounds to justify the laying of a charge. Additionally, there must be an actual belief based solely on the circumstances of the case (elements of the offence) without regard to extraneous influence on the part of the person laying a charge that the accused has committed the alleged offence and that the belief must be reasonable. A “reasonable belief” is a belief which would lead any ordinary, prudent and cautious person to the conclusion that the accused is probably guilty of the offence alleged.

The Chairperson has been unable to locate any formal policy statement of “zero tolerance” relating to the period during which the present investigations and charges occurred. However, on May 28, 2001, Inspector Grabb circulated an email entitled “Clarification on Laying Charges and Reporting on SI Cases.” The relevant portions of the email read as follows:

When it comes to the execution of criminal or service-offence investigations falling under the SI umbrella, there are essentially five evidentiary tests that one typically addresses. They are as follows:

1. Whether or not there is a factual or evidentiary basis to initiate an investigation. If there is such a basis, then there is almost always a necessity to approach the subject(s) directly, unless during the course of the investigation such a basis evaporates. As a matter of sound investigative procedure, and given the fact that these investigations almost always implicate Senior Officers, there will be very few occasions when the subject(s) won't be approached for an interview.
2. Whether or not there is an evidentiary basis, based upon an analysis of each element of each alleged offence, to form a reasonable belief that an offence has been committed by the subject(s). The reasonable belief must be that of the investigator(s). Nobody can be directed to form a reasonable belief.
3. Whether or not there is a reasonable prospect of a conviction.
4. Whether or not a prosecution is in the public interest.

5. Whether or not the charge(s) can be proven beyond a reasonable doubt.

When it comes to the execution of criminal or service-offence investigations falling under the SI umbrella, we only concern ourselves with meeting tests No. 1 & 2. If test 2 can be satisfied, then charges will be laid, regardless if tests 3,4 & 5 cannot. ...

When it comes to the execution of criminal or service-offence investigations falling under the SI umbrella, we will seek the advice of the RMP only to the degree that it is necessary to conduct the analysis specified in test number 2 above. Although RM Prosecutors generally give us unsolicited advice with respect to tests 3 & 4, and occasionally on test 5, we ONLY ask their opinion on evidentiary test number 2.

If the investigator cannot form the reasonable belief necessary to lay a charge, after having exhausted all necessary investigative avenues, there is no need to seek the advice of the RMP. If the investigator is not quite sure, or if the investigator believes that there is indeed sufficient evidence to lay a charge, then regulations require us to seek a “pre-charge” legal opinion in writing from the RMP, with respect to evidentiary test number 2 only. The final decision to charge rests strictly with the investigator. Such written legal opinions are only to be interpreted as one tool necessary to conduct the analysis specified in test 2.

When a written legal opinion is received from the RMP, ignore all comments on the public interest and the reasonable prospect of a conviction. Direct your attention only to the analysis of whether or not there exists an evidentiary basis to form a reasonable belief necessary to lay the specified charge.

... If charges are going to be laid, no great analysis in the SI report is necessary. Simply say words to the effect that “this investigation has determined that there is an evidentiary basis to allege that [the subject(s)] contravened [whatever acts or regulations]. As such, [the subject(s)] will be charged with [x number of specified charges under whatever applicable act].

Lieutenant-General Kinsman was critical of any “zero tolerance” approach:

[A]ny time I hear of anything that talks about people wanting to apply the terminology zero tolerance, my antennas immediately go up because in

many cases, that is just a facile way of not applying your brain to figure out what's going on.

. . . [I]f you don't have that kind of latitude [to use discretion], if you don't expect that kind of latitude, then you've got nothing but -- I hesitate to use it -- but you've got a mini police state working in there which is clearly going to create a huge confrontation within the organization, because from my perspective, if you can't bring discretion to bear on a relatively simple situation like this, then how can I, as a Commander, be comfortable that the application of police activity and military justice is going to be reasonable. If you have to wait until you've gone to a federal appeals court before you actually get the right answer, he says with prejudice, well there is an awful lot of damage that has been done along the way, and I don't think that's fair.

Former Vice Chief of the Defence Staff, Admiral Gary Garnett, offered the following insights:

In all cases, the Provost Marshal, in using advice from the Prosecutor's Office, has a degree of discretion. Certainly initially the discretion is in the review of whether even to proceed with an investigation. That is a degree of discretion.

In relation to the changes in policing, certainly the Provost Marshal would have been very conscious that in this new cultural era -- and now I'm speaking, you know, I'm trying to put things in a bit of a historical context in '97, '98 through to, you know, leading to today -- that the Provost Marshal would have been very conscious initially that the overall performance of her office and the independent investigation and laying of charges had to be as a package, if you like, again beyond reproach and certainly not wanting to have the same kinds of criticism that took place before that, that the chain of command was exercising too much discretion and exercising discretion differently based on rank in particular.

So the Provost Marshal would have been aware of that and again that zero tolerance notion may well have been very strict at the beginning, or was, in relation to what I answered before in terms of police beyond reproach.

. . .

I think that it's only fair and logical that these new processes that were tremendously difficult and culturally difficult for the Canadian Forces, that when they mature, then, indeed, the issue of discretion can become a little broader and a little more broadly applied.

The Chairperson remains concerned that a “zero tolerance” approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. The objective – to develop a policy on investigations that will not overlook wrongdoing or be improperly influenced by the Chain of Command – is good, but the strict application of the policy may cause harm. A “zero tolerance” approach may end up sacrificing the innocent in order not to miss the guilty.

Chairperson’s Finding #14:

A “zero tolerance” approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. A “zero tolerance” approach may end up sacrificing the innocent in order not to miss the guilty.

Discussion on the application of discretion in the Military Police environment led to a description of the culture within the Military Police organization. Inspector Grabb provided some interesting insights to this culture from the perspective of a member of the Royal Canadian Mounted Police on secondment with the Military Police. Following are some of these comments:

...  
Culturally within the NIS, they believe - - they tended to believe that any violation of policy on any case - - and I can cite many outside of the Battista situation - - any violation where someone gets a meal that they are not entitled to in policy, that is automatically in and of itself proof that an offence has been committed.

...  
But I was also alive to their cultural tendency, not Dixon’s tendency but the whole NIS tendency to want to jump - - eat their own young and jump all over their own people before the investigations are completed.

...

And I remember thinking my first reaction when I first got to the NIS, which would be obviously eight to nine months before the Battista case came to my attention, that the policies, the rules, the culture, the procedures, the way they go about their business creates a culture of cruelty for particularly senior officers in the military. And I was really uncomfortable when I first got there and I remember having a number of philosophical discussions with Brigadier General Samson about this and the whole notion of equality before the law and how senior officers were being put under a microscope to a greater degree than any other individuals who were the subject of complaints.

Now of course, public perception was just the opposite that the rank and file were under a microscope and going to jail while senior officers were walking and things were being swept under the rug. It became very apparent to me that the 'zero tolerance approach', particularly with Majors and above, creates the impression that the NIS was devoting an awful lot of time, energy and money and the whole justice system indeed was focusing on an awful lot of trivial cases, which is the unfortunate consequence of a 'zero tolerance policy', whereby every complaint, no matter how trivial, as long as there is a factual basis to suggest that an offence might have been committed - - I am not talking administrative conduct. I am talking statutory violation or Criminal Code, then there is always an obligation to open up a file and do an investigation. And where the evidence exists to lay a charge, no matter how trivial, charges will be laid, if the investigator can form a reasonable belief.

...

But what we have here in the Battista case is perception created by 'zero tolerance policy', mandatory charge and decision to look at travel claims as a potential statutory violation as opposed to administrative irregularities. And one last point, the culture of the investigators, I remember when I first joined the RCMP, a lot of my peers fresh out of the Academy were put on traffic duties and were eager to pull over every vehicle that didn't have their licence plate properly affixed and speeding for one kilometer over the limit. There was this cultural attitude among junior officers to want to enforce every violation of every law ..... That was kind of in many instances the culture with the NIS investigators. Any irregularity, any potential conduct that was out of line and could be potentially statutory was automatically looked at as a possible NIS investigation in every instance. And it would be highly narcissistic for a Colonel Battista and Major Wight to assume that they were centred out for any particular unfair treatment ..... It was just one of many sensitive cases we were working on and we were doing our best to survive with five or six investigators and a caseload of about 80 cases.

It is obvious from these observations that any change in the use of discretion by Military Police investigators must be accompanied by a change in the culture of the organization and its

investigators. A better distinction must be made between breaches of administrative policies and statutory or criminal offences. This would serve to better focus and utilize the valuable resources of the Canadian Forces National Investigation Service. If the culture within the Canadian Forces National Investigation Service, as described by Inspector Grabb, exists, it must be replaced by a culture of fair, focused, objective and unbiased investigators that are rank blind. Officers and Non-Commissioned Members must be treated similarly by the investigative arm of the military justice system.

In light of the harms associated with “zero tolerance” notions, the Chairperson finds that the Provost Marshal must reconsider the “zero tolerance” practice. Military police members need discretion to perform their duties fairly. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.

Chairperson’s Finding #15:

The Provost Marshal must reconsider the application of the “zero tolerance” practice in the Military Police. Military police members need discretion to perform their duties fairly. However, any change in the use of police discretion must be accompanied by a change in attitudes or culture. The Provost Marshal must encourage and support a culture of fair, focused, objective and unbiased investigators that are rank blind. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.

Chairperson’s Finding #16:

The Chairperson finds that a better distinction must be made between breaches of administrative policy and statutory or criminal offences.



### **(i) Solicitor-Client Privilege**

Military Police are required by the *Queen's Regulations and Orders for the Canadian Forces* to consult with legal counsel from the Office of the Director of Military Prosecutions about the laying of charges. To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. For example, the Commission may need to examine the information that the Military Police provided to military prosecutors to determine if that information is accurate and complete.

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

#### Chairperson's Finding #17:

To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. It is important to note that the Commission is not reviewing the legal opinions themselves. Rather, the Commission needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information.

When a civilian police agency consults Crown prosecutors, the privilege in any resulting legal opinion belongs to the police. This may well be an appropriate model for legal opinions given to Military Police. The present administrative procedure does not allow the Provost Marshal to

waive solicitor-client privilege. The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution, whom the Chairperson considers the client in this relationship. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson understands and respects military culture and that the Provost Marshal is part of the Canadian Forces/Department of National Defence. Still, control over the legal opinions it obtains is necessary for the Military Police to be credible and independent. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.

Chairperson's Finding #18:

The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.

**(j) The Appropriateness of the Military Police Investigating its Own Members**

Both Lieutenant-Colonel Battista and Major Wight are members of the military police. They were investigated by other members of the military police. To an outside observer, the prospect of a police organization investigating its own members may well raise concerns about impartiality, favoritism or bias in the conduct of the investigation, especially in a small organization such as the Military Police. Furthermore, simply because a seconded member of the Royal Canadian Mounted Police or another police force is involved in a Canadian Forces National Investigation Service investigation does not make it a joint investigation.

The *National Defence Headquarters Policy Directive: Revised Military Police Investigation Policy*, distributed by the Provost Marshal on May 7, 1999, states in part:

## Investigation of Offences Committed by Military Police Personnel

19. Offences committed by Military Police personnel will be investigated by CFNIS, by a joint investigation involving CFNIS and a civilian police force, or solely by an outside agency. The composition of the investigative team shall be determined by the CFPM in accordance with the continuum at Annex F. Whenever possible CFNIS investigators will not be tasked to investigate a Military Police person(s) within the same [geographical] area/area of responsibility. It is emphasized that notwithstanding these guidelines the CFPM has the discretion to assign an investigation to other investigators. Further, the CFPM is the only authority who may deviate from this continuum.

20. Investigations into alleged breaches of service regulations/criminal code offences, involving Military Police personnel, shall be reported to DPM CFNIS Invest SP as soon as possible. The Military Police Unusual Incident Report would normally be the first communiqué that would alert DPM CFNIS Invest Sp of allegations involving Military Police personnel.

The investigative continuum set out in Annex F of this policy indicates that a civilian police agency should conduct the investigation if the subject of the investigation is a Military Police/Canadian Forces National Investigation Service member and it involves a sensitive offence.

The policy describes “sensitive offence” as:

An offence involving a senior officer (Major and above) or civilian equivalent as a subject. It also includes a Commanding Officer or personnel in a position of trust or civilian equivalent. Additionally, an offence involving sensitive material or any instances which could bring discredit to the Department of National Defence is included in this category.

Several of those who appeared before the Commission were asked for their views about whether the Canadian Forces National Investigation Service should investigate military police members. Lieutenant-General Campbell spoke of the concern in the Canadian Forces National Investigation Service “that they don't want to be perceived by Canadians and by those in government and elsewhere as showing favouritism to either senior officers or members of their own organization.” He added:

Now, could that be solved by having somebody who is independent come in and do it? I think that may be so. It brings with it though some added dimensions of what happens if this is on deployment, what if it takes place overseas?

So I don't know whether the advice that I would give here would be let's automatically move anything that has to do with a military police member outside of the Canadian Forces because I think there will be circumstances where that probably would not be the right approach. But is that one of the avenues that should be made available or should be used? I think so and in fact the avenue exists. We've done that in certain cases, used external review authorities for particularly sensitive cases.

Commission counsel asked Lieutenant-Colonel Dixon if the type of investigation in this case -- military police officers of high rank, when sensitive issues are brought up in relation to them -- should as a matter of policy be referred outside the Canadian Forces National Investigation Service. Lieutenant-Colonel Dixon replied that he considered the presence of Inspector Grabb (who had been seconded from the Royal Canadian Mounted Police but was working under the direction of Military Police management) satisfied that requirement. However, Inspector Grabb's involvement with this case was minimal because of other pressing duties. He was certainly not the lead investigator.

Chairperson's Finding #19:

The presence of Royal Canadian Mounted Police Inspector Russ Grabb on the investigative team did not fulfill the policy requirement that the investigation be conducted jointly or by an outside agency. Inspector Grabb was not "outside" the Canadian Forces National Investigation Service because he was under the direction, control, supervision and instruction of Military Police management as part of the terms of the Memorandum of Understanding governing his secondment.

Deciding to engage outside investigators is very much a judgment call. However, the facts of the present case suggest that, if an investigation was considered necessary, relying on outside investigators might have been appropriate for several reasons:

- the rank of Lieutenant-Colonel Battista and Major Wight

- the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and
- the fact that both those being investigated and those investigating were members of the same small police organization.

Chairperson's Finding #20:

The facts of the present case suggest that engaging the services of outside investigators might have been appropriate given the rank of Lieutenant-Colonel Battista and Major Wight, the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and the fact that both those being investigated and those investigating were members of the same small police organization.

**(k) The Second Investigation of Major Wight (NSI 370-0006-00)**

Although Canadian Forces National Investigation Service investigators concluded that there was insufficient evidence to form a belief that Major Wight had committed any offence, he was subjected to two (2) Canadian Forces National Investigation Service investigations followed by the temporary suspension of his Military Police credentials.

Major Wight's complaint in the NSI 370-0006-00 investigation alleged that investigators did not perform essential research in advance to identify the elements of the offence. He maintained that, had this been done, investigators would have determined that there was no need to investigate his conduct further.

In this case, investigators simply did not discover that a standard of care necessary to demonstrate a breach of the *Financial Administration Act* had not been established until they sought legal advice at the conclusion of their investigation.

Chairperson's Finding #21:

Canadian Forces National Investigation Service investigators did not discover that a standard of care necessary to demonstrate a breach of the *Financial Administration Act* had not been established until they sought legal advice at the conclusion of their investigation.

Major Wight also raised a question about the treatment, by the Canadian Forces National Investigation Service investigators, of Chief Warrant Officer Galway implying that Chief Warrant Officer Galway was treated better than was Major Wight. Given the circumstances and the fact that this represented the second investigation of Major Wight, it is understandable that Major Wight might raise this question and may have entertained suspicions of differing standards of treatment. Although the atmosphere during the Canadian Forces National Investigation Service interviews of Major Wight and Chief Warrant Officer Galway differed somewhat, this appears to be more a factor of circumstances and interview content than preferential treatment by the investigators.

Chairperson's Finding #22:

Given the circumstances surrounding the Canadian Forces National Investigation Service interviews of Major Wight and Chief Warrant Officer Galway, it is understandable that Major Wight might perceive preferential treatment extended to Chief Warrant Officer Galway. However, the Chairperson finds that no preferential treatment was provided and that any difference in atmosphere during the two interviews was more a factor of circumstance and interview content than any intent to favour one interview subject over another on the part of Canadian Forces National Investigation Service investigators.

**(I) Involvement of the Chain of Command**

The purpose of limiting the legal authority of the chain of command in investigations is to maintain the integrity of the military justice system. The 1997 *Report of the Special Advisory Group on Military Justice and Military Police Investigative Services* (often referred to as the Dickson report) stressed the need for Military Police to be independent in the investigation of

service offences, and recognized that the system then in place did not give the appearance or reality of independence:

Certainly, the present structure creates the appearance of a lack of independence between the investigative functions and the chain of command. This lack of independence contributes to the perception of a double standard in the military justice system. Many CF members believe that senior ranks are not investigated with the same intensity as lower ranks. As well, there is a common view that junior military police members have great difficulty in conducting investigations of more senior personnel. We believe that all of these circumstances justify the creation of a specialized and independent investigative force.

As a result, the report recommended a number of changes to the Military Police function:

We recommend that the National Investigation Service of the military police be reorganized and tasked on the following basis:

...

b. it would operate independently of the chain of command;

...

d. its investigators would have the authority to lay charges as a consequence of their investigations;

...

f. review and oversight of its operations would be the responsibility of the Vice Chief of the Defence Staff facilitated by an annual report from the Director General Security and Military Police.

These changes were implemented. However, the Chain of Command retained an advisory role relating to the conduct of investigations and the laying of charges. The Commission recognizes that restricting the Chain of Command to an advisory role in these circumstances was designed to prevent the perception and reality of interference by the Chain of Command with Military Police investigations. The Commission also recognizes the frustration and discomfort that some within the Chain of Command feel when witnessing investigations such as those relating to Lieutenant-Colonel Battista and Major Wight.

Those in the Chain of Command may possess knowledge and a perspective on issues that can be useful to investigators and the Provost Marshal. It might be appropriate in certain cases to allow them to communicate their views about the conduct of investigations and prosecutions.

However, maintaining the integrity and independence of the system and yet allowing these views to be communicated poses a delicate problem.

In his independent review of the *VCDS/CFPM Accountability Framework* dated June 12, 2001, former Royal Canadian Mounted Police Commissioner, Mr. Philip Murray, addressed the principle of the independence of the criminal investigative process and the reporting relationship of the entire Military Police to the Canadian Forces Provost Marshal by recommending that a full analysis of these issues be included in the first five year review of the 1998 amendments to the *National Defence Act*. The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the review of the Act.

Chairperson's Finding #23:

The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the five year review of the *National Defence Act*.

**(m) Duty to Assist Witnesses**

Several of those who gave evidence to the Commission mentioned the enormous strain placed on Ms. [REDACTED], Lieutenant-Colonel Battista's administrative assistant, by the events under investigation. Although she was in no way implicated in any possible wrongdoing, Ms. [REDACTED] found herself at the centre of the investigation of Lieutenant-Colonel Battista and Major Wight. She was not the person who reported the alleged misconduct relating to the attendance by Lieutenant-Colonel Battista and Major Wight at the funeral, but others may have thought she was.

Amidst all this, Ms. [REDACTED] had to continue to work in the same office environment with Lieutenant-Colonel Battista and Major Wight. This certainly created a situation of conflict and distress for her. On one hand, she was attempting to perform her professional duties for these two



officers, while on the other hand she was being asked to provide information that might incriminate them. Yet, the Canadian Forces National Investigation Service appeared to abandon her when she wanted to turn to it for advice and assistance. The investigator, who had interviewed her, told her to call him but Ms. [REDACTED] found that he was frequently not available. Investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.

Chairperson's Finding #24:

The Chairperson finds that investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.

## VI. Chairperson's Recommendations Subsequent to the Investigation

### Chairperson's Recommendation #1:

The Canadian Forces Provost Marshal must ensure that military police members, in particular Canadian Forces National Investigation Service investigators, receive essential training on police report writing with emphasis on the need to be objective, accurate and unbiased. Police reports should state relevant facts and details only. There is no place for personal comments irrelevant to the investigation being conducted.

### Chairperson's Recommendation #2:

Military police members and Canadian Forces National Investigation Service investigators must be thorough in conducting service offence/criminal investigations. The subject of an investigation must be given every reasonable opportunity to provide input in their own defence. The Canadian Forces Provost Marshal must ensure that Military Police policies and procedures provide such a guarantee.

### Chairperson's Recommendation #3:

The Canadian Forces Provost Marshal should review the standard distribution of police investigation reports with a view to limiting their release to those with an absolute demonstrated need to know so as not to negatively impact reputations and careers.

### Chairperson's Recommendation #4:

The Canadian Forces Provost Marshal should re-consider the terms and conditions imposed on the return of Lieutenant-Colonel Battista and Major Wight's Military Police credentials, given the decisions of the Military Police Credentials Review Boards, the Court Martial Appeal Court and now the results of the investigation by the Military Police Complaints Commission.

Chairperson's Recommendation #5:

The Canadian Forces Provost Marshal must reconsider the application of the “zero tolerance” approach. Military Police members, like their civilian counterparts, need to use discretion to perform their duties fairly. Given the alleged culture within, any change in policy on the use of discretion must be accompanied by relevant training to assist in the appropriate exercise of discretion.

Chairperson's Recommendation #6:

The Canadian Forces Provost Marshal must seek out ways to ensure the development and promotion of a culture of fair, focused, accurate, objective and unbiased investigations by the Military Police.

Chairperson's Recommendation #7:

To uphold the independence of the Military Police, the Canadian Forces Provost Marshal must possess authority over legal opinions and advice requested by, and provided to, the Military Police. The decision to waive solicitor-client privilege must rest with the Canadian Forces Provost Marshal.

Chairperson's Recommendation #8:

Given the small size of the Military Police organization, consideration should be given to conducting serious offence investigations of **military police members** jointly with a civilian police agency or exclusively by an outside police agency.

Chairperson's Recommendation #9:

The ability of the Chain of Command to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, and not interfering in that process, should form part of the analysis of issues leading up to the five year review of the amendments to the *National Defence Act*.

Chairperson's Recommendation #10:

The Canadian Forces Provost Marshal must recognize the need to provide assistance to witnesses during investigations and implement measures to ensure that they, too, do not become victims.

## VII: Chairperson's Concluding Statement Subsequent to the Investigation (Interim Report)

At the conclusion of the investigation by the Complaints Commission, the Chairperson provided the following concluding statement in her interim investigation report dated June 19, 2002:

“The complaints that formed the basis of the present report highlight what can go wrong with well-intentioned Military Police actions. The genesis of the problems uncovered in the Commission's investigation started many years ago with expressions of concern about the lack of independence of the Military Police within the Canadian Forces. In other words, the military justice pendulum had swung too far in one direction. It was time to bring it back towards equilibrium.

The various reports about the military justice system within the past five years, and the efforts of many within the Canadian Forces to strengthen the military justice system have, the Chairperson believes, greatly improved the system. However, in some areas, the pendulum appears to have swung too far. It is now time to look particularly at the issue of police discretion. Civilian police have, since their inception, relied on discretion as an indispensable tool in their work. The Military Police, understandably, have been reluctant to exercise discretion in some areas – notably charging practices – because of past history. The exercise of discretion with a civilian justice system may not be wholly transferable to a military justice setting, given the sometimes differing objectives of military and civilian justice systems. The Military Police now have several years experience under the “new” system of military justice. A rigid “zero-tolerance” approach may have had some merit in the early days of this new system, however that approach now warrants close re-examination. Otherwise, there will be more results like those in the present complaints before the Commission, where both the complainants and their colleagues who were drawn into the investigations have suffered unwarranted trouble. As Lieutenant-General Kinsman stated in a May 3, 2000, memorandum to the Chief of the Defence Staff:

Now, as a result of what I would conclude is largely an administrative oversight, we have one general officer who has been investigated for counseling fraud, one officer who has been charged and had his

credentials removed and a third officer who has been investigated, found blameless of any impropriety but has had his credentials removed anyway . . . [T]he potential impact on the lives of the three people in this instance strikes me as being out of proportion to the factual evidence.

Not only the lives of those three under investigation, but many of those on the periphery – those who reported their concerns to the Military Police, Canadian Forces National Investigation Service investigators and those who became witnesses – have suffered unnecessarily.

It is important to remember that members of the Military Police possess powerful tools of investigation. Using these investigative tools may have a dramatic impact on the lives of those involved whether they are the subjects of the investigation or they merely provide evidence to further the investigation. Such powers of investigation must always be used wisely.”

## VIII: Review of Chairperson's Investigation Report

In accordance with section 250.39 of the *National Defence Act*, the Chairperson sent her investigation report, often referred to as the interim report, to the Minister, the Chief of the Defence Staff, the Judge Advocate General and the Provost Marshal on June 19, 2002.

Sections 250.49 and 250.51 of the *National Defence Act* require that, on receipt of a report under section 250.39 in respect of a conduct complaint, the Provost Marshal shall review the complaint in light of the findings and recommendations set out in the report. Following this review, the Minister and the Chairperson are to be notified in writing of any action that has been or will be taken with respect to the complaint. Included in this notice are reasons for not acting should the person reviewing the investigation report so decide.

In the letter sending this report to the Chief of the Defence Staff (Annex A), the Chairperson revisited her reasons for causing the Complaints Commission to conduct a public interest investigation under section 250.38 of the *National Defence Act* as follows:

My decision to cause this public interest investigation to be conducted by the Complaints Commission was based largely on the assertions of both complainants that they had not been treated fairly and impartially and, in fact, perceived a bias on the part of the Provost Marshal. Both complainants indicated that, since the Provost Marshal had taken decisions based on the police investigation being complained about, a conflict of interest situation existed. The complaints also implicated military police members in the office of the Provost Marshal. I concurred with the view that a reasonable apprehension of bias existed. During the course of the investigation by the Complaints Commission, the Canadian Forces Provost Marshal was also invited to provide her testimony before the Commission.

Consistent with this analysis, the Chairperson continued:

For these reasons, I believe that it would be inappropriate, and contrary to the spirit of the Act, for the Provost Marshal to conduct the review of my interim report. I am, therefore, requesting that you, as the Chief of the Defence Staff, review this report.

On July 30, 2002, the Chairperson received a letter of response, dated July 25, 2002, from the Chief of the Defence Staff, signed on his behalf by LGen G. Macdonald, Vice Chief of the Defence Staff and immediate superior of the Provost Marshal (Annex B). The letter stated:

I have considered your request to review the Interim Report. Under section 250.49 of the *National Defence Act*, the Provost Marshal has a statutory duty to review the complaint in light of the findings and recommendations set out in the report, unless the Provost Marshal is the subject of the complaint. It is my assessment that the Provost Marshal is not the subject of the complaint, and as confirmed by your Interim Report, had no involvement in the conduct of the related investigations. Therefore, I have passed this matter to Provost Marshal for her review in accordance with the *Act*. If it appears that there are issues remaining to be resolved on the completion of this review, I will of course provide any comments that I may have at that time.



## IX: Canadian Forces Provost Marshal's Notice of Action and Accompanying Letter From the Chief of the Defence Staff

On October 11, 2002, the Chairperson received a letter, dated October 8, 2002, from the Chief of the Defence Staff (Annex C) as correspondence further to his July 25, 2002 letter. In this letter, the Chief of the Defence Staff provides comment on two issues that were surfaced in findings and recommendations contained in the Chairperson's interim report.

On October 15, 2002, the Chairperson received the Notice of Action from the Provost Marshal in a letter also dated October 8, 2002 (Annex D).

Both of these letters will be the subject of considerable comment in the next section of this Final Report.

## X: Chairperson's Findings and Recommendations Having Considered the Notice of Action from the Provost Marshal and the Letter from the Chief of the Defence Staff

In considering the Notice of Action from the Provost Marshal and the letter from the Chief of the Defence Staff, both dated October 8, 2002, the Chairperson finds it necessary to address the issue of a reasonable apprehension of bias.

In the Chairperson's letter to the Chief of the Defence Staff of June 19, 2002, the reasons for causing the Complaints Commission to conduct a public interest investigation were clearly set out. The Chairperson's decision "was based largely on the assertions of both complainants that they had not been treated fairly and impartially and, in fact, perceived a bias on the part of the Provost Marshal. Both complainants indicated that, since the Provost Marshal had taken decisions based on the police investigation being complained about, a conflict of interest situation existed. The complaints also implicated military police members in the office of the Provost Marshal. I concurred with the view that a reasonable apprehension of bias existed."

Consistent with this view, and though quite aware of the provisions of subsection 250.49(1) of the *National Defence Act* wherein it is indicated that the Provost Marshal shall review the Chairperson's interim report prepared pursuant to section 250.39, the Chairperson requested that, with respect for the spirit of the Act as well as the rules of natural justice and fairness, the Chief of the Defence Staff review the Chairperson's interim report in this case and prepare the Notice of Action. This request was not made lightly. It was considered appropriate given the particular circumstances of this matter. The Chairperson deeply regrets that this request was not accepted.

The review of a section 250.39 investigation report from the Chairperson, and the preparation of a Notice of Action, is a crucial step in the *National Defence Act* Part IV process. As regards conduct complaints, Parliament has given sole responsibility to one person to review interim reports from the Chairperson and take action (sections 250.49 and 250.51). A reviewing authority must abide by the rules of natural justice and fairness. According to these rules,

complainants and subjects of complaint are entitled to a completely unbiased process; otherwise, the credibility of the complaint process is in jeopardy. Findings and recommendations of the Chairperson, subsequent to an investigation by the independent and civilian Complaints Commission, must be unbiased. The authority reviewing these findings and recommendations, and identifying actions to be taken, must be expected to be unbiased as well.

To be completely clear and transparent, it must be stated that the principles expressed here relate to the responsibilities of the position of reviewing authority and are not personalized. The reviewing authority, bearing in mind his or her authority to make decisions, may truly affect the rights or interests of individuals. It is worthwhile to reproduce a few excerpts from the *Baker v. Canada (Minister of Citizenship and Immigration)*<sup>2</sup> decision. In this case, the Supreme Court of Canada recently stated in respect of the duty of fairness:

“A third factor in determining the nature and extent of the duty of fairness owed is the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated.”<sup>3</sup>

The Court had established five (5) factors to be considered when determining the extent of the duty of fairness. They are as follows: the nature of the decision being made, the nature of the statutory scheme, the importance of the decision to the individual(s) affected, the legitimate expectations of the individual(s) and the choices of procedure made by the decision-maker.

It further added:

“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.”<sup>4</sup>

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<sup>2</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, (1999) 2 S.R.C. 817

<sup>3</sup> *Ibid.* at par. 25

<sup>4</sup> *Ibid.* at par. 28

It is not necessary to establish that a bias exists on the part of the reviewing authority. It is sufficient to apply the “reasonable apprehension of bias test” established by the Supreme Court of Canada.

“(…) the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, the test is ‘what would an informed person, viewing the matter realistically and practically – and having thought the matter through – concluded…’<sup>5</sup>

In his July 25, 2002 response to the Chairperson’s request that he review her interim investigation report, the Chief of the Defence Staff refers to the requirement of section 250.49 of the *National Defence Act* that the Provost Marshal review the complaint, in light of the findings and recommendations set out in this report, to justify his decision to pass the matter to the Provost Marshal for review. The Chief of the Defence Staff commented that, as the Provost Marshal was not the subject of these complaints, she had a statutory duty to review the complaint.

The Chairperson would, once again, like to draw the attention of the Chief of the Defence Staff to the *Baker v. Canada (Minister of Citizenship and Immigration)* decision, specifically:

“Procedural fairness requires that decisions be made free from a reasonable apprehension of bias by an impartial decision-maker.”<sup>6</sup>

It is interesting to point out that the Ontario Court of Appeal recently rendered a decision in relation to the complaint process for police misconduct in the Province of Ontario. The Chief of Police, in Ontario, does not take action with respect to the complaint, as does the reviewing authority under the *National Defence Act*. Under the Ontario statutory scheme, the Chief of Police has the following three (3) options:

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<sup>5</sup> *Committee for Justice and Liberty v. National Energy Board*, (1978) 1 S.C.R. 369, 394. The Supreme Court of Canada repeatedly applied this test: *R. v. Valente*, (1985) 2 S.C.R. 673; *R. v. Lippé*, (1991) 2 S.C.R. 114; *R. v. Bain*, (1992) 1 S.C.R. 91; *R. v. Généreux*, (1992) 1 S.C.R. 259; *Canadian Pacific Ltd. V. Matsqui Indian Band*, (1995) 1 S.C.R. 3; *2747-3174 Québec Inc. v. Régie des permis d'alcool*, (1996) 3 S.C.R. 919; *Reference re remuneration of Judges of the Provincial Court of Prince Edward Island*, (1997) 3 S.C.R.

<sup>6</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, *Supra* note 2 at par 45

1. Dismiss the complaint
2. Resolve the complaint informally if the misconduct is not serious
3. Hold a hearing

Bearing this important distinction in mind, the Court of Appeal for Ontario mentioned the following with respect to the Chief of Police when making such decisions:

“Fourthly, unlike the judge at a preliminary inquiry, the Chief is engaged in a balancing exercise. On the one hand, the expectation of the public is that those they have entrusted to serve and protect them do so in a manner that is worthy of this trust, confidence and respect. On the other hand, the Chief must take into consideration that the police must often act in highly stressful, emotionally charged situations and must make decisions quickly that, while perfectly legitimate, may be offensive to those affected by them. The Chief will obviously be cognizant of the stress and stigma for a police officer if a hearing is held into his or her conduct as opposed to informal resolution. The Chief must treat both complainants and police officers in the fairest possible manner.”<sup>7</sup>

Having failed to address, and apparently discarded, the complainants’ legitimate concerns and the Chairperson’s view in this regard, the Chairperson finds herself in possession of a Notice of Action prepared by a reviewing authority, against whom a reasonable apprehension of bias existed. This diminishes the meaningful input and validity that is the essence of the Notice of Action process. Nevertheless, the Chairperson will consider this Notice of Action as part of this Final Report.

Given this situation, it is extremely important that, in the Chairperson’s consideration of the October 8, 2002 Notice of Action from the Provost Marshal, inaccuracies and misrepresentations be pointed out where they appear in this document. For example, in the second paragraph of this letter it is stated, “I note that the Chief of the Defence Staff has accepted, at your request, to review this Notice of Action.” The Chairperson did not request that the Chief of the Defence Staff review the Notice of Action from the Provost Marshal. The June 19, 2002 letter to the Chief of the Defence Staff, transmitting the Chairperson’s interim report, quite clearly stated, “I

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<sup>7</sup> *The Corporation of the Canadian Civil Liberties Association, Emilee Aspinwall, Amanda Dorter, Alison Gorbould and Fredericka Potvin v. Ontario Civilian Commission on Police Services and Police Association of Ontario, Ontario Provincial Police Association and Ontario Association of Chiefs of Police* (3 October 2002), Toronto C36929 (Ont. C.A.), at par. 66

am, therefore, requesting that you, as the Chief of the Defence Staff, review this report.” It went on to further state, “Upon receipt of your notice of action, I will prepare my final report ...”. It is quite evident that the Chairperson strongly believed that the Chief of the Defence Staff should review her interim report and provide the Notice of Action.

In the third paragraph of this letter, the Provost Marshal has chosen to note that the Chairperson’s interim report concluded that “the Canadian Forces National Investigation Service (CFNIS) investigators and others within the Office of the Canadian Forces Provost Marshal, notably the Deputy Provost Marshal National Investigation Service and the Deputy Provost Marshal Professional Standards acted professionally and without malice or bias. Individually, all respondent Military Police acted in a duty bound manner.” The Provost Marshal has neglected, at this point, to comment on the complainants in this case. The actual conclusion in the interim report states that, “The Chairperson found, during this investigation by the Complaints Commission, that there was an absence of malice or bad faith on the part of military police members on all sides of this incident.” No assessment was made regarding the professionalism of the Deputy Provost Marshal Professional Standards or the Deputy Provost Marshal National Investigation Service nor the duty bound manner of respondent Military Police behaviour. These appear to be conclusions of the Provost Marshal.

The Chairperson will now consider the Notice of Action, as presented by the Provost Marshal, by interim report findings and recommendations, providing further comment where appropriate.

Chairperson's Finding #1:

Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief delivered April 3, 2000 to the Regional Military Prosecutor may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. In particular:

- The misinterpretation of Major Wight's understanding of "Command and Control" may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.
- The inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service investigation report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case, to conclude that charges were warranted.

The findings of the Chairperson result from a lengthy, thorough, neutral and unbiased investigation by the independent civilian oversight body, the Complaints Commission. As regards these complaints, a considerable quantity of information and materials was reviewed and analyzed. All necessary facts and details were gathered, supplemented by 11 interviews conducted in the preparatory stage of this investigation. The Complaints Commission itself interviewed 18 individuals, at the conclusion of which facts relating to these complaints were determined and findings and recommendations established. The Chairperson's interim report setting out findings and recommendations with respect to the complaints is the result of this extensive process, considerable debate and reflection. The Chairperson would like to emphasize, at this point, that this Final Report includes the substantial and significant input of her colleague and part-time Commission member, Mr. Thomas G. Flanagan, S.C., provided just prior to his untimely death.

The Chairperson finds nothing in the review of these complaints, in light of this finding, that would cause her to doubt the testimony provided by any of the individuals appearing before the

Commission; specifically, in this case, the testimony of then Commander C.J. Price and Chief Warrant Officer F. Galway. The Chairperson has confidence in the accuracy and validity of this finding, which is consistent with the evidence presented to the Complaints Commission, and therefore reaffirms the finding in this Final Report. Given that the Provost Marshal was not privy to the evidence presented to the Complaints Commission, the Chairperson is somewhat surprised by the comments provided by the Provost Marshal in addressing this finding.

That being said, in her review of this finding, the Provost Marshal states, "... I do take this issue very seriously and will take measures to reinforce the importance of ensuring the complete accuracy of statements attributed to personnel interviewed in the course of an investigation." The Chairperson is pleased to note that this issue has been taken seriously. A more precise explanation of the action that will be taken, referred to as "measures", is requested.

Chairperson's Finding #2:

The wide distribution of Canadian Forces National Investigation Service investigation reports provides the potential for harm to the reputations and careers of those being investigated should these reports contain falsehoods or factual errors.

This finding is related to Finding #1 and was intended to address the negative impact on individual reputations when investigation reports contain inaccurate or false information or misrepresentations. The issue on this occasion was the content of the Canadian Forces National Investigation Service (CFNIS) investigative report and not its distribution.

As the Provost Marshal has recognized the seriousness of this issue, no further comment is required.

Chairperson's Finding #3:

Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. Furthermore, since the Canadian Forces National Investigation Service report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.



In comments addressing this finding, the Provost Marshal, in her Notice of Action, appears to be sharing with the reader either her own personal version of how events unfolded or the results of her own investigation of events. Evidence presented to the Complaints Commission indicated otherwise. These comments by the Provost Marshal provide no new information, nor do they detract in any way from this finding of the Complaints Commission. The Chairperson stands by this finding as an accurate and valid conclusion. It is noted that no action that has been or will be taken is identified.

Chairperson's Finding #4:

The failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favour of laying charges and prosecuting Lieutenant-Colonel Battista. Had the Canadian Forces National Investigation Service report been more accurate and complete, and if the Canadian Forces National Investigation Service had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.

In her response to this finding, the Provost Marshal provides her opinion that the Canadian Forces National Investigation Service report was "accurate and complete". This is not the conclusion of the thorough, independent and unbiased investigation conducted by the Complaints Commission.

It must be realized that a police investigation report is one of the very significant tools upon which Prosecutor's depend in rendering their decisions and providing advice as regards the laying of charges. This is exactly what occurred in this instance. The same police report was used in both pre-charge and post-charge deliberations. If inaccuracies led to two charges being laid in the pre-charge phase, the addition of two more charges at the post-charge phase does not make the police report more accurate.

Reference is made to the addition of two more charges at the post-charge stage of considerations but no mention is made that, on October 1, 2001, the Court Martial Appeal Court set aside the verdicts of guilty and entered verdicts of not guilty to all four charges. The Chairperson would hope that the reviewing authority would reconsider the position taken and find a way to accept this finding. The Chairperson stands by this finding.

Chairperson's Finding #5:

The April 17, 2000 Canadian Forces National Investigation Service report recorded that [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, described Lieutenant-Colonel Battista as "[REDACTED]". The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. This has no place in an objective police report.

The Chairperson is pleased to note agreement with this finding and the conclusion that an objective police report would not have included this comment. No indication is provided of the action that has been or will be taken as a result of the agreement with this finding. The Chairperson requests that this requirement of the person reviewing an interim report, as stipulated in subsection 250.51(1) of the *National Defence Act*, be met.

Chairperson's Finding #6:

The Chairperson found nothing to suggest that the military justice system was being used to "get at" Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.

The Chairperson notes acceptance of this finding.

Chairperson's Finding #7:

The Chairperson finds that the competition process to select a new Canadian Forces Provost Marshal was fair and equitable and that Lieutenant-Colonel Battista was treated similarly to other potential candidates with no discrimination evident.

In her review of this finding, the Provost Marshal expresses her pleasure with the finding but is unclear about the scope of the Complaints Commission's mandate in making the finding. The Chairperson would refer the Provost Marshal to the section of the interim report captioned "The Complaints" and, specifically, to where one of the complainants complained about the timing of three Canadian Forces National Investigation Service investigations of him which coincided with "other potentially related issues". One of these potentially related issues was then stated to be the selection process for the new Canadian Forces Provost Marshal. Clearly, the complainant, LCol Battista, was expressing concern about the motivation behind the conduct of these three investigations. Equally clear is the inclusion of this aspect of this complaint in the investigation, by the Complaints Commission, of the conduct of these investigations and the possibility of bias.

Chairperson's Finding #8:

The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.

Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented.

The Chairperson notes acceptance of this finding.

Chairperson's Finding #9:

The apparently suspicious coincidence in which two separate complaints about Lieutenant-Colonel Battista, from different parts of the country, and concerning completely different activities and timeframes, were reported to the Canadian Forces National Investigation Service on the same day, was the result of a simple clerical error by an investigator. In fact, these two complaints were not made on the same day.

The Chairperson notes acceptance of this finding and that investigators of the Canadian Forces National Investigation Service will be reminded to be more vigilant in the accurate recording of information. Nonetheless, the Chairperson believes that section 250.51 of the *National Defence Act* requires that the action to be taken, specifically the means by which this reminder will be issued, must be specified.

Chairperson's Finding #10:

The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Further, had he spoken to Lieutenant-Colonel Battista, Chief Warrant Officer Galway might have been perceived as interfering with a potential police investigation.

The reporting procedure followed by Chief Warrant Officer Galway was appropriate, as stated in this finding. No evidence was presented to the Complaints Commission with respect to Chief Warrant Officer Galway addressing his concerns to the Deputy Provost Marshal Professional Standards, as stated in the Provost Marshal's response to this finding. The appropriateness for the Canadian Forces National Investigation Service to investigate these concerns is a conclusion of the Provost Marshal and is not a finding of the Chairperson of the Complaints Commission.

Chairperson's Finding #11:

The Commission uncovered no information to indicate that Chief Warrant Officer Galway's actions were in any way vindictive. To the contrary, Chief Warrant Officer Galway held considerable respect for Lieutenant-Colonel Battista and was clearly troubled by the decision he had to take.

The Chairperson notes acceptance of this finding.

Chairperson's Finding #12:

The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support either the temporary suspension or the revocation of Major Wight's Military Police credentials.

Chairperson's Finding #13:

The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista's credentials **with terms and conditions**, as these may no longer be relevant or appropriate.

The comments contained in the Notice of Action relating to Chairperson's Findings #12 and #13 will be addressed jointly.

The Chairperson would like to point out to the Provost Marshal that, as Head of the Complaints Commission, she is able to make findings and recommendations on a broad scale. In particular, when the Complaints Commission conducts a public interest investigation into the conduct of Canadian Forces National Investigation Service investigations and concludes that a police investigation report produced is inaccurate, erroneous and incomplete, and when decisions, such as those noted above, are taken on the basis of such a report, it is not only part of the Commission's mandate but it is incumbent upon the Chairperson to comment and, as seen fit, make findings and recommendations relating to the complaints.

The Chairperson stands by Finding #12 and Finding #13.

Chairperson's Finding #14:

A "zero tolerance" approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. A "zero tolerance" approach may end up sacrificing the innocent in order not to miss the guilty.

Chairperson's Finding #15:

The Provost Marshal must reconsider the application of the “zero tolerance” practice in the Military Police. Military police members need discretion to perform their duties fairly. However, any change in the use of police discretion must be accompanied by a change in attitudes or culture. The Provost Marshal must encourage and support a culture of fair, focused, objective and unbiased investigators that are rank blind. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.

Once again, the comments contained in the Notice of Action relating to Findings #14 and #15 will be addressed jointly.

Firstly, the Chairperson would like to clarify that the use of the “zero tolerance” terminology to describe the approach being taken within the Canadian Forces National Investigation Service did not originate with the Complaints Commission. Rather, it was introduced by investigators with the Canadian Forces National Investigation Service when providing their testimony to the Commission. This was discussed extensively during many of the interviews conducted by the Complaints Commission, including the interview of the current Provost Marshal. At no time did anyone raise concerns with this characterization of the approach being taken. Everyone seemed to understand its usage and the context of this “zero tolerance” approach.

The Chairperson is encouraged by the comment of the Provost Marshal relating to the exercise of greater discretion by investigators with the Canadian Forces National Investigation Service. In *Krieger v. Law Society of Alberta*<sup>8</sup>, it is stated that:

“Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid. Police necessarily exercise discretion in deciding when to lay charges, to arrest and to conduct incidental searches, as prosecutors do in deciding whether or not to withdraw a charge, enter a stay, consent to an adjournment, proceed by way of indictment or summary conviction, launch an appeal and so on.

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<sup>8</sup> *Krieger v. Law Society of Alberta* (2002) S.C.C. 45

...

Still, the corollary to these extensive discretionary powers is that they must be exercised with objectivity and dispassion.”<sup>9</sup>

The Chairperson takes particular note of the work instruments recently published to assist in the exercise of appropriate police discretion and would request that the Elements of Offence Manual produced by the Director of Military Prosecutions be provided to the Military Police Complaints Commission. Receipt of the Canadian Forces National Investigation Service interim policy on discretion is acknowledged.

The Chairperson would like to register considerable concern with the comments appearing in the Notice of Action following Chairperson’s Finding #15. While full support is expressed by the Provost Marshal in her final paragraph for the notion that investigations must be fair, unbiased and rank blind, she goes on to say that “where charge laying decisions are being made all relevant circumstances must be considered, and in a military context, rank and position often will be a relevant factor.” What is meant by this statement? Is the Provost Marshal suggesting that decisions whether or not to lay a charge can depend on rank? Rank and position may be relevant factors in the military for sentence/sanction purposes, but it would be troubling if a decision on the laying of charges were dependent on an individual’s rank or position.

Chairperson’s Finding #16:

The Chairperson finds that a better distinction must be made between breaches of administrative or criminal offences.

In the lead up to this finding by the Chairperson, the testimony of then Inspector Russ Grabb of the Royal Canadian Mounted Police is quoted. Inspector Grabb commented on the tendency of investigators with the Canadian Forces National Investigation Service to view travel claims “as a potential statutory violation as opposed to administrative irregularities.” Outside the military, a situation, such as the one facing LCol Battista and Major Wight, where no fraudulent activity existed, would likely be handled administratively. A civilian police service is unlikely to have

considered entering into an investigation such as the three undertaken by the Canadian Forces National Investigation Service in this case. Nevertheless, the Provost Marshal seems to hold the view that an accusation for having made a false entry in a document is more serious than “a simple breach of an order or administrative policy.” Again, we must repeat that, in this case, Major Wight was not charged with either a criminal or a service offence and, although charged, LCol Battista was found to be not guilty. Considerable resources have been devoted to a relatively minor event.

It may be useful to repeat a quote provided by LGen (retired) Kinsman:

Now, as a result of what I would conclude is largely an administrative oversight, we have one general officer who has been investigated for counseling fraud, one officer who has been charged and had his credentials removed and a third officer who has been investigated, found blameless of any impropriety but has had his credentials removed anyway . . . [T]he potential impact on the lives of the three people in this instance strikes me as being out of proportion to the factual evidence.

The Chairperson stands by this finding and is hopeful that it will one day be accepted and acted upon.

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<sup>9</sup> *Ibid.* at par. 48



Chairperson's Finding #17:

To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. It is important to note that the Commission is not reviewing the legal opinions themselves. Rather, the Commission needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information.

Chairperson's Finding #18:

The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.

The comments contained in the Notice of Action relating to Findings #17 and #18 as well as those contained in the October 8, 2002 letter from the Chief of the Defence Staff will be addressed jointly.

With reference to Notice of Action comments concerning Chairperson's Finding #17, the Chairperson would like to point out that section 250.41 of the *National Defence Act* applies when the Complaints Commission is conducting a hearing. In this case, the Commission was conducting an investigation under section 250.38.

The Commission is very sensitive to the issue of solicitor-client privilege. The Military Police Complaints Commission does not act in a "cavalier" fashion when it deals with such documents. A "carte blanche" is not being requested. A mechanism, such as a protocol between the

Commission and the Military Police organization, should be in place to facilitate the work of the Commission in this regard.

Although respectful of the Military Police organizational structure, the historical context of that structure, and the place of the Military Police organization within the Department of National Defence and the Canadian Forces, the Chairperson is both astonished and disturbed by the fact that the solicitor/client privilege in Military Police files is waived by the Minister and by the fact that the Military Police organization does not vigorously claim “ownership” of its privilege. The solicitor/client privilege belongs to the client, in this case, the Military Police.<sup>10</sup> This goes to the heart of the independence of the Military Police. It is a well-established principle that the police, in performing its policing function, is and must remain independent from the Executive Branch. The Supreme Court of Canada recently reaffirmed this in *R. v. Campbell*<sup>11</sup>. It stated:

“The Status of the Police

The Crown’s attempt to identify the RCMP with the Crown for immunity purposes misconceives the relationship between the police and the executive government when the police are engaged in law enforcement. A police officer investigating a crime is not acting as a government functionary or as an agent of anybody. He or she occupies a public office initially defined by the common law and subsequently set out in various statutes.”<sup>12</sup>

It added:

“In this appeal, however, we are concerned only with the status of an RCMP officer in the course of a criminal investigation, and in that regard the police is independent of the control of the executive government.”<sup>13</sup>

Finally, the Supreme Court of Canada mentioned the following:

“The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience.”<sup>14</sup>

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<sup>10</sup> *R. v. Campbell*, (1999) 1 S.C.R. 565

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* at par. 27

<sup>13</sup> *Ibid.* at par. 29

<sup>14</sup> *Ibid.* at par. 33

Attention is also drawn to Judge Ted Hughes comments in the APEC Inquiry. He wrote:

“It is clearly unacceptable for the federal government to have the authority to direct the Royal Canadian Mounted Police’s law enforcement activities, telling it who to investigate, arrest and prosecute, whether for partisan or other purposes.”<sup>15</sup>

By saying that the Minister waived the solicitor-client privilege attached to a Military Police investigation, the Provost Marshal implies that the Military Police reports to the Minister on operational files and that he has authority over these matters. In saying this, the Chairperson is not expressing the view that the Minister directs Military Police investigations. She is pointing out that the public perception of the independence of a police service is crucial in fostering confidence and trust in the justice system.

The Chairperson questions the effectiveness of the VCDS/CFPM Accountability Framework if the Military Police must seek the approval of anyone outside the Military Police (i.e. the Minister, the Chief of the Defence Staff, etc.) to release documents relating to a Police investigation, such as a Court Brief and correspondence exchanged between a military police member and a prosecutor. The Chairperson understands and respects the fact that the Military Police is a specialized service operating within a particular milieu. Nonetheless, Parliament has entrusted military police members with extraordinary powers, powers identical to those granted civilian police services, such as the power of arrest, search and seizure, to lay charges, etc. These exceptional powers for the performance of policing duties and functions cannot be reconciled with the “institutional framework applicable to all other parts of the Canadian Forces”. The Military Police Complaints Commission concerns itself only with policing duties and functions and the solicitor-client privilege in that context.

The Chairperson would like to clarify a comment in the Notice of Action response to Chairperson’s Finding #18. It was never implied that the Military Police does not have “unfettered access to legal advice when and if required”. The Complaints Commission simply

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<sup>15</sup> Canada, Commission for Public Complaints Against the RCMP, *Commission Interim Report (following a public hearing into the APEC Conference)* (Ottawa: 2001) at 82, 83

believes that, once such advice has been sought and received, it belongs to the Military Police and no one else.

Members of the Canadian Forces and the Canadian public at large must trust that they are dealing with, and being dealt with by, an independent and professional police organization. This is the basis of a healthy justice system, military or civilian.

Chairperson's Finding #19:

The presence of Royal Canadian Mounted Police Inspector Russ Grabb on the investigative team did not fulfill the policy requirement that the investigation be conducted jointly or by an outside agency. Inspector Grabb was not "outside" the Canadian Forces National Investigation Service because he was under the direction, control, supervision and instruction of Military Police management as part of the terms of the Memorandum of Understanding governing his secondment.

In the Notice of Action response to this finding, the Provost Marshal agrees that then Inspector Russ Grabb of the Royal Canadian Mounted Police was not "outside" the Canadian Forces National Investigation Service as the terms of the Memorandum of Understanding governing his secondment placed him under the direction, control, supervision and instruction of Military Police management. Therefore, the previous Provost Marshal concurred with the assignment of this investigation to the Canadian Forces National Investigation Service only, and specifically to the Sensitive Investigations Section headed up by Inspector Grabb.

As pointed out in this report, "The investigative continuum set out in Annex F of this policy indicates that a civilian police agency should conduct the investigation if the subject of the investigation is a Military Police/Canadian Forces National Investigation Service member and it involves a sensitive offence." A sensitive offence is defined as an offence involving a senior officer (Major and above). Subsequently, by policy, this investigation should have been conducted by a civilian police agency.

The Provost Marshal, in her Notice of Action, goes on to state, “The assignment of investigative resources was therefore consistent with Policy requirements.” The Chairperson would qualify this statement by adding that the only consistency with Policy requirements was compliance with the policy statement that “the CFPM is the only authority who may deviate from this continuum.”

Chairperson’s Finding #20:

The facts of the present case suggest that engaging the services of outside investigators might have been appropriate given the rank of Lieutenant-Colonel Battista and Major Wight, the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and the fact that both those being investigated and those investigating were members of the same small police organization.

The Chairperson believes that hindsight should not be required to conclude that having one Lieutenant-Colonel, who is competing to be the next Provost Marshal, oversee an investigation of another Lieutenant-Colonel, who is a peer and fellow competitor, is not an optimal situation. Further, involving a third Lieutenant-Colonel, with the power to suspend Military Police credentials, who is also a peer competitor to be the next Provost Marshal, presents a very obvious reasonable apprehension of bias. Investigation by an outside police service would have been the logical conclusion in this particular situation.

The Chairperson regrets the inclusion, by the Provost Marshal, in her response to this finding, of comments providing an assessment of LCol Battista’s level of trust and regard for Military Police investigators. By so doing, the Provost Marshal has verified the Chairperson’s concern of a reasonable apprehension of bias in the Provost Marshal’s review of the Chairperson’s interim report and the preparation of this Notice of Action. As established by the Supreme Court of Canada test cited previously<sup>16</sup>, an informed person, viewing this matter realistically and

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<sup>16</sup> *Committee for Justice and Liberty v. National Energy Board*, (1978) 1 S.C.R. 369, 394. The Supreme Court of Canada repeatedly applied this test: *R. v. Valente*, (1985) 2 S.C.R. 673; *R. v. Lippé*, (1991) 2 S.C.R. 114; *R. v. Bain*, (1992) 1 S.C.R. 91; *R. v. Généreux*, (1992) 1 S.C.R. 259; *Canadian Pacific Ltd. V. Matsqui Indian Band*, (1995) 1 S.C.R. 3; 2747-3174 *Québec Inc. v. Régie des permis d’alcool*, (1996) 3 S.C.R. 919; *Reference re*

practically, and having thought the matter through, would have concluded the existence of a reasonable apprehension of bias.

The Chairperson is, at least, pleased to note that the Provost Marshal has agreed that greater consideration must be given to engaging outside investigators in future cases of this nature.

Chairperson's Finding #21:

Canadian Forces National Investigation Service investigators did not discover that a standard of care necessary to demonstrate a breach of the Financial Administration Act had not been established until they sought legal advice at the conclusion of their investigation.

The Chairperson is of the view that it is imperative, not just preferable as stated by the Provost Marshal in her Notice of Action, that investigators be fully conversant with the elements of an offence early on in an investigation.

Chairperson's Finding #22:

Given the circumstances surrounding the Canadian Forces National Investigation Service interviews of Major Wight and Chief Warrant Officer Galway, it is understandable that Major Wight might perceive preferential treatment extended to Chief Warrant Officer Galway. However, the Chairperson finds that no preferential treatment was provided and that any difference in atmosphere during the two interviews was more a factor of circumstance and interview content than any intent to favour one interview subject over another on the part of Canadian Forces National Investigation Service investigators.

The Chairperson notes acceptance of this finding.

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*remuneration of Judges of the Provincial Court of Prince Edward Island*, (1997) 3 S.C.R. 3; *Baker v. Canada*, (1999) 2 S.C.R. 817

Chairperson's Finding #23:

The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the five year review of the *National Defence Act*.

Contrary to the comment of the Provost Marshal in her Notice of Action (Annex D, page 13-14) that this finding does not relate to the conduct of the investigations or specific Military Police Policies and Procedures, this finding relates directly to this and all investigations of the Canadian Forces National Investigation Service and how they are conducted. For example, in the charge-laying process, input from the Chain of Command is prescribed in the *Queen's Regulations and Orders for the Canadian Forces*.

Although the Provost Marshal asserts that the five-year review of the *National Defence Act* is not within her direction or control, the Chairperson is hopeful that the Provost Marshal will be expressing her views and needs in the lead up to the five-year review of the Act. It is the Chairperson's view that statutory amendments to the *National Defence Act* or its regulations hold the potential for improving legitimate dialogue involving the Chain of Command.

Having said this, the Chairperson acknowledges the comment of the Chief of the Defence Staff in his October 8, 2002 letter (Annex C) regarding the continuing need for education as the Canadian Forces make efforts to recognize and adjust to the changes introduced in 1999.

Chairperson's Finding #24:

The Chairperson finds that investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.

With all due respect for the personal understandings of the Provost Marshal, her assertions in the response to this finding are not consistent with the testimony presented during the investigation by the Complaints Commission.

The Chairperson stands by this finding and the facts leading up to it as presented in this report.

Chairperson's Recommendation #1:

The Canadian Forces Provost Marshal must ensure that military police members, in particular Canadian Forces National Investigation Service investigators, receive essential training on police report writing with emphasis on the need to be objective, accurate and unbiased. Police reports should state relevant facts and details only. There is no place for personal comments irrelevant to the investigation being conducted.

The Chairperson is pleased to note that a review of training on report writing was recently undertaken and that further enhancements to report writing procedures and format will be introduced with the Security and Military Police Information System (SAMPIS). It is hoped that examples, such as the one examined in this investigation by the Complaints Commission, will not reoccur.

Chairperson's Recommendation #2:

Military police members and Canadian Forces National Investigation Service investigators must be thorough in conducting service offence/criminal investigations. The subject of an investigation must be given every reasonable opportunity to provide input in their own defence. The Canadian Forces Provost Marshal must ensure that Military Police policies and procedures provide such a guarantee.

The Chairperson is pleased to note the acceptance of this recommendation and that these principles will be highlighted and promoted in Military Police professional development training.



Chairperson's Recommendation #3:

The Canadian Forces Provost Marshal should review the standard distribution of police investigation reports with a view to limiting their release to those with an absolute demonstrated need to know so as not to negatively impact reputations and careers.

This recommendation is related to Finding #2 and was intended to address the negative impact on individual reputations when investigation reports containing inaccurate or false information or misrepresentations are distributed broadly. The issue on this occasion was the content of the Canadian Forces National Investigation Service (CFNIS) investigative report and not its distribution. This recommendation was intended to cause the Provost Marshal to reflect on this and to review the distribution of police investigation reports to assure herself that only those with a demonstrated need to know were receiving the reports. It appears to have achieved its objective.

Chairperson's Recommendation #4

The Canadian Forces Provost Marshal should re-consider the terms and conditions imposed on the return of Lieutenant-Colonel Battista and Major Wight's Military Police credentials, given the decisions of the Military Police Credentials Review Boards, the Court Martial Appeal Court and now the results of the investigation by the Military Police Complaints Commission.

This recommendation refers to the Chairperson's Findings #12 and #13. The Chairperson stands by this recommendation.

Chairperson's Recommendation #5:

The Canadian Forces Provost Marshal must reconsider the application of the "zero tolerance" approach. Military Police members, like their civilian counterparts, need to use discretion to perform their duties fairly. Given the alleged culture within, any change in policy on the use of discretion must be accompanied by relevant training to assist in the appropriate exercise of discretion.

This recommendation relates to Chairperson's Findings #14 and #15.

The Chairperson is encouraged by the comment of the Provost Marshal relating to the exercise of greater discretion by investigators with the Canadian Forces National Investigation Service but would reiterate the need, identified in this finding, for training on the appropriate exercise of discretion.

Chairperson's Recommendation #6:

The Canadian Forces Provost Marshal must seek out ways to ensure the development and promotion of a culture of fair, focused, accurate, objective and unbiased investigations by the Military Police.

Testimony presented to the Complaints Commission, during its investigation of these complaints, led to the development of this recommendation. This testimony is accurately reported in the Chairperson's Final Report. The Provost Marshal states in her Notice of Action that, "Imperfections in one investigation are not necessarily representative of pervasive, systemic problem throughout the organization." Future investigations by the Complaints Commission will reveal whether this represents a recurring systemic problem or was unique to this investigation.

The Chairperson notes the referral to oversight of Canadian Forces National Investigation Service investigations by the Deputy Provost Marshal National Investigation Service but cautions the Provost Marshal that greater attention must be paid to the potential for conflict of interest or bias. It is not always easy in a police service the size of the Military Police but options exist such as the use of outside police services.

Chairperson's Recommendation #7

To uphold the independence of the Military Police, the Canadian Forces Provost Marshal must possess authority over legal opinions and advice requested by, and provided to, the Military Police. The decision to waive solicitor-client privilege must rest with the Canadian Forces Provost Marshal.

The “real issue” is not, for the Chairperson, access to legal opinions when required by the Complaints Commission for its work. The real issue for the Chairperson is the “independence” of the Military Police. The organization must be independent institutionally when performing policing duties and functions. It is then accountable to the Courts and, in cases of misconduct, to the Military Police Complaints Commission.

Again, the Complaints Commission is not requesting a “carte blanche” for any and all legal opinions but a mechanism, such as a protocol between the Military Police and the Commission, to facilitate the work of the Commission. It is not appropriate, in law and in practice, to require the Complaints Commission to go to the Minister or the Chief of the Defence Staff to get access to privileged documents concerning police matters that should belong to the Military Police.

One of the reasons the Military Police Complaints Commission was created was to promote and foster the independence of the Military Police. Requiring the Commission to address requests for information/documents to the Minister or the Chief of the Defence Staff would be asking the Commission to recognize that the Military Police reports to the Minister and/or the Chief of the Defence Staff on police matters.

Chairperson’s Recommendation #8:

Given the small size of the Military Police organization, consideration should be given to conducting serious offence investigations of **military police members** jointly with a civilian police agency or exclusively by an outside police agency.

The Chairperson concurs that the current Military Police policy on the assignment of investigative resources is consistent with this recommendation. It is unfortunate that the policy was not followed in this case.

Chairperson’s Recommendation #9:

The ability of the Chain of Command to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, and not interfering in that process, should form part of the analysis of issues leading up to the five year review of the amendments to the *National Defence Act*.

This recommendation relates to Chairperson's Finding #23.

The Chairperson has taken note of the views of the Canadian Forces Provost Marshal and the Chief of the Defence Staff on this issue.

Chairperson's Recommendation #10:

The Canadian Forces Provost Marshal must recognize the need to provide assistance to witnesses during investigations and implement measures to ensure that they, too, do not become victims.

This recommendation relates to Chairperson's Finding #24.

The Chairperson confirms the findings of this independent investigation by the Complaints Commission as expressed in Finding #24 and stands by this recommendation. The comments of the Provost Marshal are noted.



In concluding this section of the Final Report, the Chairperson finds it necessary to point out one further inaccurate statement to be found on page 18 of the Notice of Action from the Provost Marshal. The Provost Marshal comments, "I am pleased this Report will confirm to the complainants that the CFNIS conducted a professional, unbiased investigation." It should have been apparent to the Provost Marshal that this was not the conclusion of the Complaints Commission. I would, once again, draw attention to Chairperson's Findings #1 and #4.

The Chairperson found that there was an absence of malice or bad faith on the part of military police members on all sides of this incident. This includes complainants and subjects of complaint. However, the absence of malice or bad faith does not change the fact that the

Canadian Forces National Investigation Service investigations and reports were incomplete and inaccurate in part.

The Chairperson acknowledges the positive comments offered by the Provost Marshal in concluding her Notice of Action relating to the contributions of the Military Police Complaints Commission. There can be no doubt that everyone is working towards the continued professional conduct of Military Police investigations.

## XI: Chairperson's Conclusion

The Chairperson is acutely aware of the turmoil these complaints, and the investigation of them by the Complaints Commission, have had in the lives of many members of the Military Police and, indeed, others in the Canadian Forces, their spouses and families.

The incident that led to three investigations by the Canadian Forces National Investigation Service seemed minor and inconsequential. Some have even used the word “petty” to describe it. Nevertheless, these investigations were undertaken and have had serious consequences that seem totally out of proportion to the original event.

When subjects of a police investigation perceive that an injustice has been committed or that an investigation has not been thoroughly conducted, accurately reported and free from any bias, it is imperative that they be able to avail themselves of recourse mechanisms. That is exactly what Lieutenant-Colonel Battista and Major Wight have done in this case. That is exactly what anyone must be able to do in similar circumstances. And that is exactly what the Military Police Complaints Commission was created to address. No one should be denied the free exercise of this right.

The considerable resources spent by both the Canadian Forces National Investigation Service and the Military Police Complaints Commission in investigating service/criminal offences and conduct complaints, respectively, will have been worth the investment if they lead to positive outcomes for change and development. In this regard, the Chairperson is pleased with the many positive results of the Complaints Commission investigation of these complaints. At the same time, it is evident that much remains to be done.

On the one hand, the Chairperson sees a number of positive outcomes such as the greater use of discretion by Canadian Forces National Investigation Service investigators and enhanced training in the areas of report writing, professional development and, hopefully, in the use of these discretionary powers.

On the other hand, much remains to be done in fostering an appreciation for situations presenting a conflict of interest or the reasonable apprehension of bias. Efforts are still required towards the objective of balancing appropriately the independence of the Military Police and their investigations and the legitimate input from the Chain of Command.

The Chairperson is hopeful that her Final Report with respect to these complaints will provide some closure for complainants and subjects of complaint. Much remains to be done. By working cooperatively and retaining an optimistic outlook, we can all make a difference in the continuing professional development of the Military Police organization.

## XII: Summary of the Chairperson's Findings

### Chairperson's Finding #1:

Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief delivered April 3, 2000 to the Regional Military Prosecutor may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. In particular:

- The misinterpretation of Major Wight's understanding of "Command and Control" may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.
- The inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service investigation report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case, to conclude that charges were warranted.

### Chairperson's Finding #2:

The wide distribution of Canadian Forces National Investigation Service investigation reports provides the potential for harm to the reputations and careers of those being investigated should these reports contain falsehoods or factual errors.

### Chairperson's Finding #3:

Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. Furthermore, since the Canadian Forces National Investigation Service report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.



Chairperson's Finding #4:

The failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favour of laying charges and prosecuting Lieutenant-Colonel Battista. Had the Canadian Forces National Investigation Service report been more accurate and complete, and if the Canadian Forces National Investigation Service had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.

Chairperson's Finding #5:

The April 17, 2000 Canadian Forces National Investigation Service report recorded that [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, described Lieutenant-Colonel Battista as "[REDACTED]." The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. Remarks such as this have no place in an objective police report.

Chairperson's Finding #6:

The Chairperson found nothing to suggest that the military justice system was being used to "get at" Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.

Chairperson's Finding #7:

The Chairperson finds that the competition process to select a new Canadian Forces Provost Marshal was fair and equitable and that Lieutenant-Colonel Battista was treated similarly to other potential candidates with no discrimination evident.

Chairperson's Finding #8:

The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.

Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented.

Chairperson's Finding #9:

The apparently suspicious coincidence in which two separate complaints about Lieutenant-Colonel Battista, from different parts of the country, and concerning completely different activities and timeframes, were reported to the Canadian Forces National Investigation Service on the same day, was the result of a simple clerical error by an investigator. In fact, these two complaints were not made on the same day.

Chairperson's Finding #10:

The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Further, had he spoken to Lieutenant-Colonel Battista, Chief Warrant Officer Galway might have been perceived as interfering with a potential police investigation.

Chairperson's Finding #11:

Chairperson's Finding #12:

The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support either the temporary suspension or the revocation of Major Wight's Military Police credentials.

Chairperson's Finding #13:

The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista's credentials **with terms and conditions**, as these may no longer be relevant or appropriate.

Chairperson's Finding #14:

A "zero tolerance" approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. A "zero tolerance" approach may end up sacrificing the innocent in order not to miss the guilty.

Chairperson's Finding #15:

The Provost Marshal must reconsider the application of the "zero tolerance" practice in the Military Police. Military Police members need discretion to perform their duties fairly. However, any change in the use of police discretion must be accompanied by a change in attitudes or culture. The Provost Marshal must encourage and support a culture of fair, focused, objective and unbiased investigators that are rank blind. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.

Chairperson's Finding #16:

The Chairperson finds that a better distinction must be made between breaches of administrative policy and statutory or criminal offences.

Chairperson's Finding #17:

To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. It is important to note that the Commission is not reviewing the legal opinions themselves. Rather, the Commission needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information.

Chairperson's Finding #18:

The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.

Chairperson's Finding #19:

The presence of Royal Canadian Mounted Police Inspector Russ Grabb on the investigative team did not fulfill the policy requirement that the investigation be conducted jointly or by an outside agency. Inspector Grabb was not "outside" the Canadian Forces National Investigation Service because he was under the direction, control, supervision and instruction of Military Police management as part of the terms of the Memorandum of Understanding governing his secondment.

Chairperson's Finding #20:

The facts of the present case suggest that engaging the services of outside investigators might have been appropriate given the rank of Lieutenant-Colonel Battista and Major Wight, the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and the fact that both those being investigated and those investigating were members of the same small police organization.

Chairperson's Finding #21:

Canadian Forces National Investigation Service investigators did not discover that a standard of care necessary to demonstrate a breach of the *Financial Administration Act* had not been established until they sought legal advice at the conclusion of their investigation.

Chairperson's Finding #23:

The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the five year review of the *National Defence Act*.

Chairperson's Finding #24:

The Chairperson finds that investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.

## XIII: Summary of the Chairperson's Recommendations

### Chairperson's Recommendation #1:

The Canadian Forces Provost Marshal must ensure that military police members, in particular Canadian Forces National Investigation Service investigators, receive essential training on police report writing with emphasis on the need to be objective, accurate and unbiased. Police reports should state relevant facts and details only. There is no place for personal comments irrelevant to the investigation being conducted.

### Chairperson's Recommendation #2:

Military police members and Canadian Forces National Investigation Service investigators must be thorough in conducting service offence/criminal investigations. The subject of an investigation must be given every reasonable opportunity to provide input in their own defence. The Canadian Forces Provost Marshal must ensure that Military Police policies and procedures provide such a guarantee.

### Chairperson's Recommendation #3:

The Canadian Forces Provost Marshal should review the standard distribution of police investigation reports with a view to limiting their release to those with an absolute demonstrated need to know so as not to negatively impact reputations and careers.

### Chairperson's Recommendation #4:

The Canadian Forces Provost Marshal should re-consider the terms and conditions imposed on the return of Lieutenant-Colonel Battista and Major Wight's Military Police credentials, given the decisions of the Military Police Credentials Review Boards, the Court Martial Appeal Court and now the results of the investigation by the Military Police Complaints Commission.

Chairperson's Recommendation #5:

The Canadian Forces Provost Marshal must reconsider the application of the “zero tolerance” approach. Military Police members, like their civilian counterparts, need to use discretion to perform their duties fairly. Given the alleged culture within, any change in policy on the use of discretion must be accompanied by relevant training to assist in the appropriate exercise of discretion.

Chairperson's Recommendation #6:

The Canadian Forces Provost Marshal must seek out ways to ensure the development and promotion of a culture of fair, focused, accurate, objective and unbiased investigations by the Military Police.

Chairperson's Recommendation #7:

To uphold the independence of the Military Police, the Canadian Forces Provost Marshal must possess authority over legal opinions and advice requested by, and provided to, the Military Police. The decision to waive solicitor-client privilege must rest with the Canadian Forces Provost Marshal.

Chairperson's Recommendation #8:

Given the small size of the Military Police organization, consideration should be given to conducting serious offence investigations of **military police members** jointly with a civilian police agency or exclusively by an outside police agency.

Chairperson's Recommendation #9:

The ability of the Chain of Command to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, and not interfering in that process, should form part of the analysis of issues leading up to the five year review of the amendments to the *National Defence Act*.

Chairperson's Recommendation #10:

The Canadian Forces Provost Marshal must recognize the need to provide assistance to witnesses during investigations and implement measures to ensure that they, too, do not become victims.

Ottawa, December 12, 2002

-ORIGINAL SIGNED BY-

Louise Cobetto

Chairperson





C H A I R P E R S O N . P R É S I D E N T E

June 19, 2002

General Ray Henault, CMM, CD  
Chief of the Defence Staff  
National Defence Headquarters  
13<sup>th</sup> Floor, South Tower  
101 Colonel By Drive  
Ottawa, ON K1A 0K2

**Our Files:** MPCC-2000-055 (Complaint of Major G.D. Wight)  
MPCC-2001-003 (Complaint of Lieutenant-Colonel T. Battista)

**General Henault:**

Please refer to my earlier letter to your predecessor, General Baril, dated February 6, 2001 concerning these files. In this letter, I notified the Chief of the Defence Staff of my decision to cause the Complaints Commission to conduct an investigation, in the public interest, into these conduct complaints, pursuant to subsection 250.38(3) of the *National Defence Act*.

Enclosed is my interim report on this investigation setting out my findings and recommendations. I have included a working copy for your convenience. In accordance with section 250.39 of the Act, the interim report is sent to the Minister, the Chief of the Defence Staff, the Judge Advocate General and the Provost Marshal.

Sections 250.49 and 250.51 of the Act require that, on receipt of a report under section 250.39 in respect of a conduct complaint, the Provost Marshal shall review the complaint in light of the findings and recommendations set out in the report. Following this review, the Minister and the Chairperson are to be notified in writing of any action that has been or will be taken with respect to the complaint. Included in this notice are reasons for not acting should the person reviewing my report so decide.

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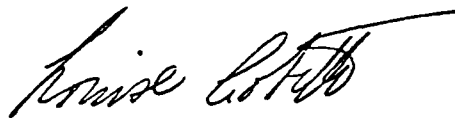
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My decision to cause this public interest investigation to be conducted by the Complaints Commission was based largely on the assertions of both complainants that they had not been treated fairly and impartially and, in fact, perceived a bias on the part of the Provost Marshal. Both complainants indicated that, since the Provost Marshal had taken decisions based on the police investigation being complained about, a conflict of interest situation existed. The complaints also implicated military police members in the office of the Provost Marshal. I concurred with the view that a reasonable apprehension of bias existed. During the course of the investigation by the Complaints Commission, the Canadian Forces Provost Marshal was also invited to provide her testimony before the Commission.

For these reasons, I believe that it would be inappropriate, and contrary to the spirit of the Act, for the Provost Marshal to conduct the review of my interim report. I am, therefore, requesting that you, as the Chief of the Defence Staff, review this report.

Upon receipt of your notice of action, I will prepare my final report with findings and recommendations for distribution to recipients as specified in subsection 250.53(2) of the Act.

Yours truly,

A handwritten signature in cursive script, appearing to read "Louise Cobetto".

Louise Cobetto  
Chairperson

Encl.

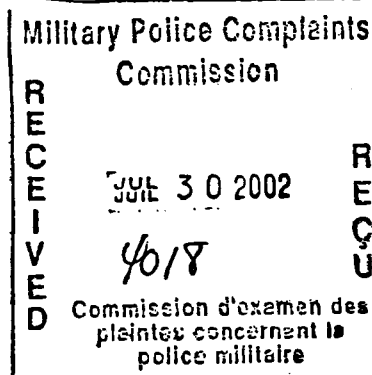
Chief of the Defence Staff



Chef d'état-major de la Défense

National Defence  
Headquarters  
Ottawa, Ontario  
K1A 0K2

Quartier général de  
la Défense nationale  
Ottawa (Ontario)  
K1A 0K2



25 July 2002

Madame Louise Cobetto  
Chairperson, Military Police Complaints Commission  
270 Albert Street, 10<sup>th</sup> Floor  
Ottawa, Ontario  
K1P 5G8


Dear Madame Cobetto

Thank you for the copy of your Interim Report following the Commission's Public Interest Investigation pursuant to Subsection 250.38(1) of the *National Defence Act* with respect to the Complaints of Lieutenant-Colonel Tony Battista and Major Gordon Wight.

I have considered your request to review the Interim Report. Under section 250.49 of the *National Defence Act*, the Provost Marshal has a statutory duty to review the complaint in light of the findings and recommendations set out in the report, unless the Provost Marshal is the subject of the complaint. It is my assessment that the Provost Marshal is not the subject of the complaint, and as confirmed by your Interim Report, had no involvement in the conduct of the related investigations. Therefore, I have passed this matter to Provost Marshal for her review in accordance with the *Act*. If it appears that there are issues remaining to be resolved on the completion of this review, I will of course provide any comments that I may have at that time.

Your assistance in bringing a positive resolution to this matter is appreciated.

Yours sincerely,

  
for R.R. Henault  
General

c.c. Minister of National Defence  
Vice Chief of the Defence Staff  
Canadian Forces Provost Marshal



National Défense  
Defence nationale

Canada



National Defence  
Headquarters  
Ottawa, Ontario  
K1A 0K2

Quartier général de  
la Défense nationale  
Ottawa (Ontario)  
K1A 0K2

08 October 2002

Mrs. Louise Cobetto  
Chairperson  
Military Police Complaints Commission  
270 Albert Street, 10th Floor  
Ottawa ON K1P 5G8

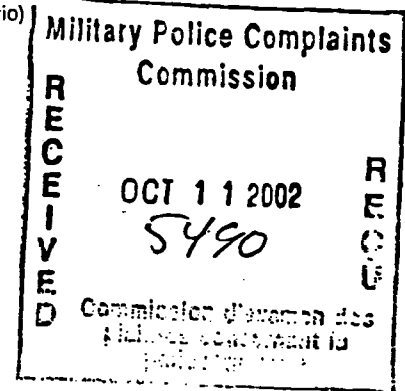
Dear Mrs. <sup>Louise</sup> Cobetto:

Further to my letter dated 25 July 2002, I have now had an opportunity to review the response of the Canadian Forces Provost Marshal (CFPM) to your Interim Report following the Commission's Public Interest Investigation pursuant to Subsection 250.38(1) of the *National Defence Act* (NDA) with respect to the complaints of Lieutenant-Colonel Tony Battista and Major Gordon Wight.

I am pleased to note that the CFPM has accepted the recommendations provided in your report that address policing duties and functions. I would also like to take this opportunity to comment on two other areas that are addressed in your recommendations. The first deals with the issue of the provision of information subject to solicitor/client privilege (Findings #17 and #18 and Recommendation #7) and the second relates to the ability of the Chain of Command to communicate with investigators (Finding #23 and Recommendation #9).

With respect to the question of providing information subject to solicitor/client privilege, I am fully satisfied with the explanation of the DND/CF position on this issue as set out in the CFPM's response. It is understood and agreed that there may well be situations where a waiver of the privilege will be sought to allow the Commission to perform its duties, and in such cases, a mechanism does exist within the institution to consider a request for waiver. I concur with the CFPM's view that the internal mechanisms for staffing and considering such requests in no way impacts upon the investigation or charge-laying independence of the Military Police.

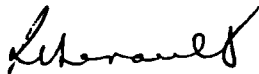
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With respect to communications between the chain of command and investigators, your Commission has been and will continue to be instrumental in enhancing the understanding of the different yet vital functions of these key players in the system and the need to respect these different roles, while at the same time cooperating to achieve the ultimate objective of a disciplined military force. I believe that much progress has been made in this regard in the last few years. However, our efforts to educate clearly must continue. While this matter might well be considered in the context of the upcoming NDA five-year review, I am of the view that this issue does not reflect a statutory or regulatory deficiency, but rather is a matter of recognizing and adjusting to the changes that were introduced in 1999.

In closing, I again express my thanks and appreciation for the Commission's efforts to not only resolve individual complaints but also identify systematic issues that impact on the performance of policing duties and functions.

Sincerely,

A handwritten signature in cursive script, appearing to read "R.R. Henault".

R.R. Henault  
General



National Defence

Défense nationale

National Defence Headquarters  
Ottawa, Ontario  
K1A 0K2

Quartier général de la Défense nationale  
Ottawa (Ontario)  
K1A 0K2

<b>Military Police Complaints Commission</b>	
<b>RECEIVED</b>	OCT 15 2002 #5498
<b>RECU</b>	Commission d'examen des plaintes concernant la police militaire

2002 OCT 15 AM 5

8 October 2002

Madame Louise Cobetto  
Chairperson, Military Police Complaints Commission  
270 Albert Street, 10<sup>th</sup> Floor  
Ottawa ON K1P 5G8

References: MPCC-2000-55 and MPCC-2001-003

Dear Madame Cobetto:

Thank you for the copy of your Interim Report following the Commission's Public Interest Investigation pursuant to Subsection 250.38(1) of the *National Defence Act* with respect to the complaints of Lieutenant-Colonel Tony Battista and Major Gordon Wight.

Given my statutory obligations pursuant to Subsection 250.49 (1) and having not been named as the subject of the complaint, I have reviewed the Interim Report in light of the findings and recommendations made. I note that the Chief of the Defence Staff has accepted, at your request, to review this Notice of Action. As such, a copy has been forwarded to the Chief of the Defence Staff for this purpose.

I am pleased to note that the Interim Report concludes that the Canadian Forces National Investigation Service (CFNIS) investigators and others within the Office of the Canadian Force Provost Marshal, notably the Deputy Provost Marshal National Investigation Service and the Deputy Provost Marshal Professional Standards acted professionally and without malice or bias. Individually, all respondent Military Police acted in a duty bound manner.

My comments with respect to each of the individual findings and recommendations contained in the Interim Report are set out below.

Chairperson's Finding #1:

*Erroneous and incomplete information in Canadian Forces National Investigation Service report NSI 370-0002-00 and in the related brief delivered April 3, 2000 to the Regional Military Prosecutor may have been responsible for the decision to charge and prosecute Lieutenant-Colonel Battista. In particular:*

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- *The misinterpretation of Major Wight's understanding of "Command and Control" may have led prosecutors to conclude that there was an attempt to deceive through using this term to justify the travel.*
- *The inaccurate analysis in the Regional Military Prosecutor brief and the Canadian Forces National Investigation Service investigation report gave the strong impression that Chief Warrant Officer Galway had declined to go on the trip because he perceived some illegality in stating the purpose of the trip. This erroneous information appeared to influence Commander C.J. Price, Deputy Director of Military Prosecutions, who signed an April 12, 2000 legal opinion reviewing the case, to conclude that charges were warranted.*

The Interim Report states that in his videotaped cautioned interview, Major Wight discussed "possible" meanings of the term "Command and Control". The use of the term possible suggests he did not have a clear understanding of the term and this appears to be consistent with the language used in the CFNIS report "*really did not know what command and control security review update meant*". Although the investigators could have worded this particular statement more accurately, I do not believe that this wording amounts to a "misinterpretation" of Major Wight's understanding of "Command and Control". That being said, I do take this issue very seriously and will take measures to reinforce the importance of ensuring the complete accuracy of statements attributed to personnel interviewed in the course of an investigation.

With respect to the impact this statement had on the legal advice provided, I certainly agree that the Regional Military Prosecutor would have properly considered this information. However, to conclude that this statement "may have led prosecutors to conclude that there was an attempt to deceive" is not supported by any information contained in the Interim Report and fails to recognize that, in accordance with the Deputy Military Prosecutor policy directive relating to post charge screening, prosecutors would have assessed all of the evidence, not just the National Investigation Service report and the related brief prior to preferring charges in this case.

With regard to "*The inaccurate analysis in the Regional Military Prosecutor brief...*" I believe Chief Warrant Officer Galway in his discussions with Ms [REDACTED] regarding the Trenton trip, was told that Brigadier-General Lucas would not sign the claims if they listed attending the memorial service in Trenton as the reason for travel. He stated to Ms [REDACTED] that he would not proceed to Trenton unless his claim listed attending the memorial service as the reason for travel. The investigation report and the Regional

Military Prosecutor Brief states "Chief Warrant Officer Galway further stated that he had been prepared to submit a claim to attend a memorial service in Trenton, ON when Ms [REDACTED] informed him that Brigadier-General Lucas would not sign it for that reason. She further told him that Lieutenant-Colonel Battista and Major Wight had to change their claims before Brigadier-General Lucas would sign them.

Although one could argue, in hindsight, that the statement reporting that Chief Warrant Officer Galway declined to travel could have been better worded, I am of the view that it does reflect the essence and spirit of the conversation between Chief Warrant Officer Galway and Ms [REDACTED]. The critical question is if a seat had been available on the service flight, was Chief Warrant Officer Galway prepared to travel if the purpose of trip remained "Command and Control Security Review Update"? Chief Warrant Officer Galway indicated to Ms [REDACTED] and the investigators that he would not travel to Trenton under this circumstance and, as such, the CFNIS report would appear to be accurate. Although, I agree that the legal opinion placed some emphasis on the fact Chief Warrant Officer Galway did not attend the funeral, there is no evidence cited to support the supposition in the Commission's finding to the effect that this information was responsible for the decision to prosecute.

Chairperson's Finding #2:

*The wide distribution of Canadian Forces National Investigation Service investigation reports provides the potential for harm to the reputations and careers of those being investigated should these reports contain falsehoods or factual errors.*

I have reviewed the distribution of the reports in question and I find them to be appropriate. The main CFNIS Investigation Report NSI 370-0002-00 dated 17 April 2000 was distributed to the Vice Chief of the Defence Staff, the Chief of the Air Staff, and the Commander, 1 Canadian Air Division. Considering the role of the Chain of Command in the Military Justice System as set forth within the *National Defence Act*, I am of the opinion that the distribution of the CFNIS reports to the above noted individuals was necessary and appropriate.

It is accepted that distribution of such reports can be detrimental to the subject of an investigation. However, there is no evidence cited in the Commission's report to suggest that the distribution of the CFNIS reports was too wide or provided to individuals that did not have a legitimate need to review the reports.



Chairperson's Finding #3:

*Lieutenant-Colonel Battista was denied the opportunity to present further evidence with the potential to exonerate himself. Furthermore, since the Canadian Forces National Investigation Service report was distributed to others, the failure to follow up with Lieutenant-Colonel Battista could have had even greater negative repercussions than those related simply to the criminal investigation.*

Upon being advised that Lieutenant-Colonel Battista wished to be re-interviewed, Captain Garrick, who was in Winnipeg at the time, left a voice mail message for Lieutenant-Colonel Battista with his hotel and pager number and phoned Chief Warrant Officer Galway to ask him to tell Lieutenant-Colonel Battista that he (Captain Garrick) was trying to reach him. Lieutenant-Colonel Battista then contacted Inspector (RCMP) Grabb, Officer Commanding CFNIS Sensitive Investigations Detachment and informed him of the information he wished to be re-interviewed about. Captain Garrick and Inspector Grabb discussed this information and they agreed that it was not relevant to the allegations against Lieutenant-Colonel Battista and would not impact either positively or negatively on the decision to lay charges. Captain Garrick asked another investigator to pass this on to Lieutenant-Colonel Battista during their next conversation. It appears that this was never done.

I do agree that even if early in the investigation it was felt to be unimportant to re-interview Lieutenant-Colonel Battista, once it was determined that charges would be pursued a follow-up interview should have been conducted before the file was closed. The role of the investigator is to gather all the readily available facts bearing on the guilt or innocence of the person who is subject to the investigation

Chairperson's Finding #4:

*The failure of the Canadian Forces National Investigation Service to complete its investigation, the misreporting of the understanding of Major Wight about the term "Command and Control Security Review Update," and the inaccurate portrayal of the reasons given by Chief Warrant Officer Galway for not attending the memorial service in Trenton may have tilted the balance in favour of laying charges and prosecuting Lieutenant-Colonel Battista. Had the Canadian Forces National Investigation Service report been more accurate and complete, and if the Canadian Forces National Investigation Service had provided this same information in the brief to the Regional Military Prosecutor, it is at least possible, and perhaps likely, that these charges would not have proceeded.*

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In light of my comments relating to Finding #1, I am of the opinion that even though the wording of some portions of the NIS report could have been better, the report was accurate and complete. It is also important to note that the report itself is not evidence, but an executive summary of the investigation. Although Commander Price states that he found Chief Warrant Officer Galway's declining to go on the trip "of some significance" he does not say how much significance or if he would have changed his pre-charge opinion in the absence of this statement. It is essential to highlight that prior to this matter proceeding to trial by court martial, the results of this investigation also went through a post-charge processing. During this process the prosecutor would logically base his opinion, not solely on the report and brief, but on the face-to-face interviews personally conducted with the witnesses. Not only did the prosecutor find that the NIS charges met the post charge considerations of "in the public interest" and "reasonable prospect of conviction" but found it appropriate to add two more charges. The NIS charges met the police standard of "reasonable grounds". Based on the above I am unable to accept Chairperson's finding #4.

Chairperson's Finding #5:

*The April 17, 2000 Canadian Forces National Investigation Service report recorded that [REDACTED] assigned to A3 Security and Military Police, 1 Canadian Air Division, Winnipeg, Manitoba, described Lieutenant-Colonel Battista as "[REDACTED]". The Chairperson finds it difficult to see how this editorial comment is in any way related to the fraud investigation of Lieutenant-Colonel Battista. Remarks such as this have no place in an objective police report.*

Personality characteristics are not necessarily irrelevant in an investigation. However, I fully agree that without linking the relevance of this comment to the offences being investigated, inclusion of the comment would appear to be editorial and inappropriate in an objective police report.

Chairperson's Finding #6:

*The Chairperson found nothing to suggest that the military justice system was being used to "get at" Lieutenant-Colonel Battista or Major Wight. There was no evidence of any coordinated conspiracy to undermine either Lieutenant-Colonel Battista or Major Wight.*

Accepted.

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[REDACTED]

Chairperson's Finding #7:

*The Chairperson finds that the competition process to select a new Canadian Forces Provost Marshal was fair and equitable and that Lieutenant-Colonel Battista was treated similarly to other potential candidates with no discrimination evident.*

I am pleased that the Commission has found that Lieutenant-Colonel Battista was treated fairly, equitably and similarly to other potential candidates during the independent Selection Process for the Canadian Forces Provost Marshal appointment. However, it is not clear to me that this is a matter that falls within the scope Commission's mandate. Recognizing that the MPCC is only one of a variety of oversight and review processes available to CF members, I question whether or not it is appropriate for the Commission to make findings on issues of this nature without either indicating how the finding is linked to the Commission's mandate or clearly stating that the Commission is merely expressing a view on a collateral matter based on the information before it.

Chairperson's Finding #8:

*The investigation by the Commission revealed that, in spite of the inaccuracies in investigative reporting, there existed no malice, vindictiveness or personal intent to harm any individual by Canadian Forces National Investigation Service investigators.*

*Despite the lack of malice in the investigation, it is clear that the investigation itself, suspension of credentials and subsequent charges against Lieutenant-Colonel Battista had the potential to harm his chances of being appointed Provost Marshal. The potential harm done to an individual merely by a criminal accusation underlines the importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented.*

I accept that there was no malice, vindictiveness or personal intent to harm any individual by the Canadian Forces National Investigation Service investigators. In principle, there are potential consequences for any individual who is involved or named as the subject of a police investigation in any circumstance. The importance for the Military Police as a whole to ensure that investigations are thorough, unbiased and objectively presented is noted and relevant to all investigative bodies.

Chairperson's Finding #9:

*The apparently suspicious coincidence in which two separate complaints about Lieutenant-Colonel Battista, from different parts of the country, and concerning completely different activities and timeframes, were reported to the Canadian Forces National Investigation Service on the same day, was the result of a simple clerical error by an investigator. In fact, these two complaints were not made on the same day.*

Accepted. The CFNIS will be reminded to take care when recording information.

Chairperson's Finding #10:

*The Chairperson does not fault Chief Warrant Officer Galway for proceeding in the manner he chose after he became concerned about the justification given for travel to the funeral and the no-cost claim. His conduct was appropriate. Further, had he spoken to Lieutenant-Colonel Battista, Chief Warrant Officer Galway might have been perceived as interfering with a potential police investigation.*

I accept this finding and share the Commission's view that it was appropriate for Chief Warrant Officer Galway to raise his concern about the justification given for travel to the funeral and the no-cost claim. In doing so, it was also appropriate for him to address his concerns to the Deputy Provost Marshal National Investigation Service, the Deputy Provost Marshal Professional Standards and for the CFNIS to investigate.

Chairperson's Finding #11:

*The Commission uncovered no information to indicate that Chief Warrant Officer Galway's actions were in any way vindictive. To the contrary, Chief Warrant Officer Galway held considerable respect for Lieutenant-Colonel Battista and was clearly troubled by the decision he had to take.*

I accept this finding and further note that if Chief Warrant Officer Galway believed an offence had been committed, he was bound under Queen's Regulations and Orders Volume 1, Article 5.01(e) to report the matter.

Chairperson's Finding #12:

*The Chairperson notes and endorses the unanimous decision of the Military Police Credentials Review Board that there was no evidence to support either the temporary suspension or the revocation of Major Wight's Military Police credentials.*

The Military Police Credentials Review is an administrative process, which is subject to judicial review. All decisions of the Canadian Forces Provost Marshal are made upon the recommendations of the Military Police Credentials Review Board Panel and as such the decisions may be reviewed by way of a judicial review application under section 18.1 of the *Federal Court Act*. The Panel recommendations and the decisions made by the Canadian Forces Provost Marshal are based on the administrative Standard of Proof.

Although the matter at Finding #12 and Finding #13 is outside the scope of the Commission's mandate and is currently being reviewed by way of judicial oversight, it would be appropriate to clarify the circumstances surrounding the decision in question. First, I note that the matter deliberated by the Panel was not trivial in nature. The alleged misconduct of any senior Military Police officer is in itself a serious matter. Although Major Wight was not charged with a criminal or service offence, the Deputy Provost Marshal Professional Standards documented sufficient grounds to temporarily suspend Major Wight's credentials. Following review of the Credentials Board recommendations, Brigadier-General Samson, as the Canadian Forces Provost Marshal found the deliberations of the Board unclear and appropriately substantiated her decision, in writing, that Major Wight did breach the Code with respect to the issue of misrepresentation. It is this decision, which is currently under judicial review.

Chairperson's Finding #13:

*The Chairperson finds that it would be fair and prudent for the Canadian Forces Provost Marshal to re-visit her decision to reinstate Lieutenant-Colonel Battista's credentials with terms and conditions, as these may no longer be relevant or appropriate.*

I note that the terms and conditions for both Lieutenant-Colonel Battista and Major Wight have long since been satisfied and their credentials reinstated. While I acknowledge the Chairperson's comments at Finding #12 and #13, and although the matter is outside the scope of the Commission's mandate, I will have a copy of the Final Report placed with Credential Review files of both Lieutenant-Colonel Battista and Major Wight.

Chairperson's Finding #14:

*A "zero tolerance" approach poses a danger for any system of justice. Police discretion is an integral element of the policing function. While the nature of military policing duties may demand some restrictions on that discretion beyond those that would apply in traditional civilian policing, the complete removal of discretion in military policing activities can lead to very harsh consequences out of proportion to the alleged misconduct. A "zero tolerance" approach may end up sacrificing the innocent in order not to miss the guilty.*

Although I would not characterize the policy approach to charge laying as "zero tolerance", the CFNIS investigation procedures in effect at the relevant time did provide little latitude to the investigator once the elements of an offence were established. Police discretion does impact on the appropriateness and manner in which policing duties and functions are conducted. Over the past year, I have encouraged the exercise of greater discretion by CFNIS investigators in a manner that is consistent with the comments and guidance provided by the Code of Service Discipline Committee on this issue. With the recent publication of the Elements of Offence Manual by the Director of Military Prosecutions and the development of a CFNIS interim policy on discretion, investigators and Military Police supervisors now have work instruments that will assist in the exercise of appropriate police discretion.

Chairperson's Finding #15:

*The Provost Marshal must reconsider the application of the "zero tolerance" practice in the Military Police. Military Police members need discretion to perform their duties fairly. However, any change in the use of police discretion must be accompanied by a change in attitudes or culture. The Provost Marshal must encourage and support a culture of fair, focused, objective and unbiased investigators that are rank blind. Relevant training will help them learn to exercise that discretion appropriately, as well as ongoing guidance from supervisors and interaction with members of civilian police forces.*

I agree that discretion is an essential aspect of police practices and as I indicated in my response above to finding #14 steps have been taken to encourage the exercise of discretion in appropriate circumstances.

While I fully support the notion that investigations must be fair, unbiased and rank blind, where charge laying decisions are being made all relevant circumstances must be considered, and in a military context, rank and position often will be a relevant factor.

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Chairperson's Finding #16:

*The Chairperson finds that a better distinction must be made between breaches of administrative policy and statutory or criminal offences.*

Although I acknowledge and appreciate the spirit and intent of this finding, its implementation is much more complex. Section 129 of the *National Defence Act* makes it an offence to commit:

- (2) An act or omission constituting an offence under section 72 or a contravention by any person of
- (a) any of the provisions of this Act;
  - (b) any regulations, orders or instructions published for the general information and guidance of the Canadian Forces or any part thereof; or
  - (c) any general, garrison, unit, station, standing, local or other orders, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

This section has the effect of making any breach of orders a service offence. That being said, the main charge against Lieutenant-Colonel Battista was for making a false statement in a document. This is somewhat more serious than a simple breach of an order or administrative policy.

Chairperson's Finding #17:

*To conduct a thorough investigation, the Chairperson may need to review the legal opinions requested by the Military Police in the process leading to the laying of charges, as well as the police brief upon which the legal opinions are based. The Commission may be unable to investigate a matter thoroughly if it cannot review one of the relevant pieces of information in the laying of charges. It is important to note that the Commission is not reviewing the legal opinions themselves. Rather, the Commission needs to know what information the Regional Military Prosecutor provides to the Military Police, the basis for that advice, and what the Military Police do with the information.*

I accept the Commission's finding that there may well be some cases where it might be necessary to review legal opinions in order to ensure the Commission is able to fully carry out its responsibilities. However given the importance of the solicitor/client privilege and recognizing that section 250.41(1) of the *National Defence Act* states that the Commission may not receive evidence or other information during the conduct of hearing that would be inadmissible in a court of law by reason of any privilege under the law of evidence, such circumstances should only arise on an exceptional basis. Where the Commission is of the opinion that it is faced with such an exceptional circumstance then it certainly can seek a waiver. This position was set out most recently in the Judge Advocate General's letter to the Commission dated 19 November 2001, in which the decision of the Minister to waive the privilege in respect of a legal opinion related to this case was communicated based upon the exceptional circumstances identified by the Commission in support of its request.

Chairperson's Finding #18:

*The Chairperson strongly believes that the decision to waive solicitor-client privilege should rest with the Provost Marshal as head of the Military Police institution. The independence of the Provost Marshal is essential for the integrity of her investigations. Control of legal opinions obtained by the Military Police is a cornerstone of that independence. The Chairperson finds that the authority to waive solicitor-client privilege should in future rest with the Provost Marshal.*

As the Canadian Forces Provost Marshal, I am fully independent in the performance of my investigative and charge-laying functions, as is evident when one reviews the VCDS/CFPM Accountability Framework. Contrary to the belief expressed above, the fact that the CFPM organization functions within the institutional framework applicable to all other parts of the Canadian Forces in matters that do not relate to investigative or charge laying independence does not undermine or impact upon the independence of the office. Regardless of any subsequent institutional decision relating to a request to waive the solicitor/client privilege in respect of any particular document, the military police always have, in the course of their duties, unfettered access to legal advice when and if required.



Chairperson's Finding #19:

*The presence of Royal Canadian Mounted Police Inspector Russ Grabb on the investigative team did not fulfill the policy requirement that the investigation be conducted jointly or by an outside agency. Inspector Grabb was not "outside" the Canadian Forces National Investigation Service because he was under the direction, control, supervision and instruction of Military Police management as part of the terms of the Memorandum of Understanding governing his secondment.*

At Annex E, Note 1 to the 7 May 1999 Revised Military Police Investigation Policy, the supervisory discretion of the CFPM is noted with respect to the allocation and assignment of investigative resources. It is my understanding that the then Canadian Force Provost Marshal concurred with the assignment of the investigations to the CFNIS Sensitive Investigation Section under the leadership of Inspector (RCMP) Grabb with oversight by the Deputy Provost Marshal National Investigation Service. The assignment of investigative resources was therefore consistent with Policy requirements. That being said, I do agree that Inspector Grabb was not "outside" the CFNIS and was, as part of the terms of the Memorandum of Understanding governing his secondment under the direction, control, supervision and instruction of Military Police management.

Chairperson's Finding #20:

*The facts of the present case suggest that engaging the services of outside investigators might have been appropriate given the rank of Lieutenant-Colonel Battista and Major Wight, the possible perception of bias on the part of some of those connected with the investigation due to an upcoming competition for the Provost Marshal position, and the fact that both those being investigated and those investigating were members of the same small police organization.*

In hindsight, the upcoming Selection Process for the Canadian Forces Provost Marshal appointment did give rise to Lieutenant-Colonel Battista's perception of bias. Regrettably, Lieutenant-Colonel Battista's diminished trust in the integrity and professionalism of individual Military Police investigators and his regard for their obligations under the Military Police Professional Code of Conduct led to assertions of vindictiveness and a coordinated conspiracy by the Office of the Canadian Forces Provost Marshal and the CFNIS. I agree that in the future greater consideration must be given to the engagement of outside investigators in cases of this nature but, not necessarily due solely to the rank of the individuals involved, although this would be an important consideration.

Chairperson's Finding #21:

*Canadian Forces National Investigation Service investigators did not discover that a standard of care necessary to demonstrate a breach of the Financial Administration Act had not been established until they sought legal advice at the conclusion of their investigation.*

It is preferable that the investigators are fully conversant with the elements of the offence early on in the investigation.

Chairperson's Finding #22:

*Given the circumstances surrounding the Canadian Forces National Investigation Service interviews of Major Wight and Chief Warrant Officer Galway, it is understandable that Major Wight might perceive preferential treatment extended to Chief Warrant Officer Galway. However, the Chairperson finds that no preferential treatment was provided and that any difference in atmosphere during the two interviews was more a factor of circumstance and interview content than any intent to favour one interview subject over another on the part of Canadian Forces National Investigation Service investigators.*

Accepted.

Chairperson's Finding #23:

*The Chairperson finds it appropriate that the involvement of the Chain of Command, including their ability to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, form part of the analysis of issues leading up to the five year review of the National Defence Act.*

The views of the Chain of Command were an integral part of the creation of the CFNIS and key to establishing the threshold of offences investigated by the CFNIS including those perceived as administrative. The Chain of Command also has an essential role and specific responsibilities within the Military Justice System. The VCDS/CFPM Accountability Framework respects the independence of the investigative process and allocates independent authority to the Provost Marshal with respect to specific operational decisions of an investigative nature. The Accountability Framework ensures the Chain of

Command interest is considered and communications are mindful of the independence of the investigation process. While I acknowledge the spirit of this finding, I note this finding does not relate to the conduct of the investigations or specific Military Police Policies and Procedures. The five-year review of the *National Defence Act* is not a matter that is within the direction or control of the Canadian Forces Provost Marshal.

Chairperson's Finding #24:

*The Chairperson finds that investigators must become more aware of the strain that some investigations place upon witnesses and recognize their duty to assist.*

While I wholeheartedly believe and have directed that all Military Police be aware of their responsibilities towards victims, I find insufficient substantiation in the Interim Report to attribute this finding to the CFNIS. The Military Police Victim Assistance Program is on the cutting edge of victim support. The CFNIS recognizes their duty to assist witnesses and did so in this case. The CFNIS had frequent communications with Ms [REDACTED] and went above and beyond the assistance standard established in the Victim's Assistance Protocol.

It is my understanding that Ms [REDACTED] was appreciative of the regular communications being made by the CFNIS investigators, although she would have preferred having the opportunity to regularly meet face-to-face with the CFNIS investigator in Winnipeg as needed. I understand her feelings, however this level of responsiveness by CFNIS investigators is simply not feasible.

I am confident the CFNIS took appropriate action to assist Ms [REDACTED], which included referring her to other support programs such as the DND Employee's Assistance Program. Should the Commission have information to the contrary, I would appreciate this being specifically brought to my attention.

Chairperson's Recommendation #1:

*The Canadian Forces Provost Marshal must ensure that military police members, in particular Canadian Forces National Investigation Service investigators, receive essential training on police report writing with emphasis on the need to be objective, accurate and unbiased. Police reports should state relevant facts and details only. There is no place for personal comments irrelevant to the investigation being conducted.*

Training on report writing was recently reviewed as part of the overall management review of all Military Police course-training standards. The implementation of the Security and Military Police Information System (SAMPIS) will result in a further renewal and significant change to report writing procedures and format. Training on Military Police report writing is of a general high standard and does reflect the principles of objective, accurate, and unbiased reporting.

Chairperson's Recommendation #2:

*Military police members and Canadian Forces National Investigation Service investigators must be thorough in conducting service offence/criminal investigations. The subject of an investigation must be given every reasonable opportunity to provide input in their own defence. The Canadian Forces Provost Marshal must ensure that Military Police policies and procedures provide such a guarantee.*

Military Police members and Canadian Forces National Investigation Service investigators strive to be thorough in conducting service offence/criminal investigations. Recommendation #2 is addressed in Military Police Policy direction, training standards, and was an item of discussion at a 2002 Military Police Professional Development symposium. The importance of these principals will continue to be highlighted and promoted in future military police professional development training.

Chairperson's Recommendation #3:

*The Canadian Forces Provost Marshal should review the standard distribution of police investigation reports with a view to limiting their release to those with an absolute demonstrated need to know so as not to negatively impact reputations and careers.*

The current distribution policy is based on years of feedback from our clients and continuous adjustment to ensure that those who need to know receive the report and that the privacy of those identified in the report is respected. I am confident that our policy fills these needs, however, I would be appreciative of hearing the Commission's view as to which addressees did not have justification to review the Investigation Reports.

Chairperson's Recommendation #4:

*The Canadian Forces Provost Marshal should re-consider the terms and conditions imposed on the return of Lieutenant-Colonel Battista and Major Wight's Military Police credentials, given the decisions of the Military Police Credentials Review Boards, the Court Martial Appeal Court and now the results of the investigation by the Military Police Complaints Commission.*

While I acknowledge Recommendation #4, I note that appeal of Military Police Credential Board recommendations and the decision of the Canadian Forces Provost Marshal including corresponding judgments is subject to judicial review and is outside the review mandate of the Military Police Complaints Commission. I can inform the Chairperson's that I will be placing of copy of the Final Report with the complainants Credential Review file.

Chairperson's Recommendation #5:

*The Canadian Forces Provost Marshal must reconsider the application of the "zero tolerance" approach. Military Police members, like their civilian counterparts, need to use discretion to perform their duties fairly. Given the alleged culture within, any change in policy on the use of discretion must be accompanied by relevant training to assist in the appropriate exercise of discretion.*

Over the past year, I have encouraged the exercise of greater discretion by CFNIS investigators in a manner that is consistent with the comments and guidance provided by the Code of Service Discipline Committee on this issue. With the recent publication of the Elements of Offence Manual by the Director of Military Prosecutions and the development of a CFNIS interim policy on discretion, investigators and Military Police supervisors now have work instruments that will assist in the exercise of appropriate police discretion. I have enclosed a copy of the interim policy for your information and will forward a copy of the final version in due course.

Chairperson's Recommendation #6:

*The Canadian Forces Provost Marshal must seek out ways to ensure the development and promotion of a culture of fair, focused, accurate, objective and unbiased investigations by the Military Police.*

The wording of this recommendation suggests that the Military Police does not have a culture of conducting fair, focused, accurate, objective and unbiased investigations. Imperfections in one investigation are not necessarily representative of pervasive, systemic problem throughout the organization. That being said, oversight of CFNIS investigations through the office of the Deputy Provost Marshal National Investigation Service, validation of training standards, and the work of the Commission will continue to promote the highest standard of police investigative conduct.

Chairperson's Recommendation #7:

*To uphold the independence of the Military Police, the Canadian Forces Provost Marshal must possess authority over legal opinions and advice requested by, and provided to, the Military Police. The decision to waive solicitor-client privilege must rest with the Canadian Forces Provost Marshal.*

As indicated in my comments relating to Finding # 18, I do not share the Commission's view that the internal mechanism for the handling of requests for the waiver of Solicitor/Client privilege in any way impacts upon the investigative and charge-laying independence of the Military Police generally or the office of the Canadian Forces Provost Marshal specifically. While I appreciate that the Commission's opinion differs in this regard, I note that the real issue appears to be access to legal opinions in those exceptional cases where the Commission is of the view that it requires a waiver of privilege in order to ensure it is able to fully carry out its responsibilities. In this regard, I am fully satisfied that there is a mechanism to allow for the consideration of such requests.

Chairperson's Recommendation #8:

*Given the small size of the Military Police organization, consideration should be given to conducting serious offence investigations of military police members jointly with a civilian police agency or exclusively by an outside police agency.*

It may, depending upon a variety of factors such as, the seriousness of the offence, position and rank of the military police member be more appropriate to engage either jointly or exclusively the services of outside civilian police. The current policy is

consistent with this recommendation and is more stringent than current policing standards in Canada. That being said, in future the Canadian Forces Provost Marshal will be advised by the CFNIS of all serious offence investigations involving military police members and will confirm the assignment of investigative resources on a case-by-case basis.

Chairperson's Recommendation #9:

*The ability of the Chain of Command to communicate their views, knowledge and perspectives while respecting the independence of the investigative process, and not interfering in that process, should form part of the analysis of issues leading up to the five year review of the amendments to the National Defence Act.*

While I acknowledge this recommendation and note that Briefing Protocols are established with Commanding Officers to promote appropriate communications during investigations and the charge laying process, implementation of this recommendation is outside the mandate of the Canadian Forces Provost Marshal.

Chairperson's Recommendation #10:

*The Canadian Forces Provost Marshal must recognize the need to provide assistance to witnesses during investigations and implement measures to ensure that they, too, do not become victims.*

The Canadian Forces Provost Marshal introduced the Military Police Victim Assistance Program, 23 October 2000. The policy direction specifically noted that a victim includes a witness who experiences some form of trauma or distress. Without question, the Canadian Forces Provost Marshal and the CFNIS clearly recognize the need to provide assistance to all victims. I have been informed the efforts of the CFNIS were appreciated by Ms [REDACTED], and went beyond the policy standard confirming that the policy direction is well understood among CFNIS investigators and is being effectively implemented.

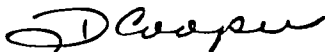
Overall, the independent oversight provided by the Commission is making a valuable contribution towards improving and assuring the continued professional conduct of Military Police investigations. Without question, this Report will serve to improve the conduct of investigations particularly when dealing with military police members. I am pleased this Report will confirm to the complainants that the CFNIS conducted a professional, unbiased investigation. There was no maliciousness, vindictiveness or coordinated conspiracy. The isolated imperfections in a CFNIS report as highlighted by

the Commission are not, in my view, indications of a systemic shortcoming. That being said, the lessons learned will be shared so that all Military Police may benefit from the Chairperson's insight.

Finally, I note that the full details of the complaints made by Lieutenant-Colonel Battista and Major Wight to the Commission were not disclosed to the Provost Marshal. The Provost Marshal under Section 250.49(1) of the *Act* "shall review the complaint in light the findings and recommendations set out in the report". In the interest of transparency and in consideration of my statutory responsibilities, full disclosure of the complaints is solicited.

Once again, I thank you for your Interim Report and look forward to your Final Report and resolution of this matter.

Sincerely,



D. A. Cooper  
Colonel  
Canadian Forces Provost Marshal

cc: The Minister  
Chief of the Defence Staff (thru Vice Chief of the Defence Staff)  
Judge Advocate General