



Military Police  
Complaints Commission  
of Canada

Commission d'examen des  
plaintes concernant la police  
militaire du Canada

ANNUAL REPORT

# MAPPING THE FUTURE

2004

2004



2004

Canada

## HOW TO CONTACT THE MILITARY POLICE COMPLAINTS COMMISSION

- Call our information line at (613) 947-5625
- Call toll-free at 1 800 632-0566 to speak to an intake officer
- Send us a fax at (613) 947-5713, or toll-free at 1 877 947-5713
- Write to:  
Military Police Complaints Commission  
270 Albert Street, 10th floor,  
Ottawa, ON K1P 5G8
- Visit our office at the above address for a private consultation – appointments are recommended
- E-mail us at: [commission@mpcc-cppm.gc.ca](mailto:commission@mpcc-cppm.gc.ca)  
*NOTE: Please do not send confidential information via E-mail – we cannot guarantee the security of electronic communications at this time.*
- Visit our Web site at: [www.mpcc-cppm.gc.ca](http://www.mpcc-cppm.gc.ca)
- Media may direct inquiries to (613) 947-5668, or by E-mail to [media@mpcc-cppm.gc.ca](mailto:media@mpcc-cppm.gc.ca)

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March 31, 2005

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

Dear Minister:

In accordance with section 250.17(1) of the *National Defence Act*, I am pleased to submit for tabling in Parliament the Military Police Complaints Commission's Annual Report for 2004.

The Complaints Commission saw significant changes during 2004, including the departure of its first Chairperson, Madame Louise Cobetto, whose five-year term expired November 30, 2004.

Earlier in the year, the Complaints Commission underwent a major corporate restructuring. As a result, the Complaints Commission is a smaller organization, but no less dedicated to providing Canadians with effective and efficient civilian oversight of Canadian Forces Military Police.

This Annual Report describes in more detail the changes at the Complaints Commission, as well as an overview of its activities for the year, including summaries of some of its reviews and investigations.

On behalf of the staff of the Military Police Complaints Commission, I trust you will find the report both interesting and informative.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Henry Kostuck', with a stylized flourish at the end.

Henry Kostuck,  
Interim Chairperson



## INTERIM CHAIRPERSON'S MESSAGE

It is an honour to have been entrusted with the responsibility of serving the Military Police Complaints Commission as Interim Chairperson, pending the appointment of Madame Louise Cobetto's successor as Chairperson.

Our 2004 Annual Report is titled "Mapping the Future," and I believe this is a most appropriate description of the past year for the Complaints Commission. The organization has undergone a major re-structuring, charting a course toward further enhancing the efficiency of the Complaints Commission without compromising its effectiveness. We will continue to evaluate the performance of our new structure, and fine-tune the organization whenever possible in the months ahead.

In addition, through the combined efforts of our past Chairperson and the Vice-Chief of the Defence Staff, we have set a path toward achieving a more positive and productive relationship between the Complaints Commission and the office of the Provost Marshal. A strong working relationship between the two organizations is essential if we are to continue to move toward our shared goal of building confidence in and promoting the highest standards of conduct of Canadian Forces military police.

As Interim Chairperson, I am pleased to re-affirm our part in this joint commitment, and to assure the Canadian Forces Provost Marshal that our efforts in this area will continue during this time of transition at the Complaints Commission.

I would also like to take this opportunity to assure all members of the Canadian Forces Military Police, the Canadian Forces, and the Canadian public of my personal commitment to providing civilian oversight of Canada's military police in a manner that continues to be effective, efficient, and fair to all concerned.

Henry Kostuck,  
Interim Chairperson

## IN RECOGNITION OF MADAME LOUISE COBETTO

### Chairperson

### Military Police Complaints Commission of Canada

1999 – 2004

It is with both gratitude for her exceptional contribution and a degree of sadness that the Military Police Complaints Commission acknowledges the completion of Madame Louise Cobetto's five-year term as Chairperson on November 30, 2004.

As Chairperson, Madame Cobetto was guided by her deep respect for the men and women of the Canadian Forces and Canadian Forces Military Police, and by her understanding of the prominent role these institutions play in defining Canada to Canadians and to the world – a respect and understanding she inspired in all who have had the privilege of working with her.

Establishing this new organization, while simultaneously managing the successful introduction of civilian oversight to Canada's military police service is, in itself, a truly remarkable achievement. That the Complaints Commission stands today as an effective, efficient organization, and makes an important contribution to the Canadian Forces, is lasting testament to her ongoing and tireless dedication to the pursuit of excellence.

Madame Cobetto's approach to this pioneering work of the Complaints Commission reflected her uncompromising commitment to the laws of natural justice, and her belief that it is as important to respect the spirit of the law, as it is as to follow its letter. It was her conviction that the Complaints Commission should strive always to fulfill the intent of the Parliament of Canada, to be a fair and impartial overseer and, when necessary, a defender of the principles of transparency and fairness that are the foundation of the military police complaints process.



## PAST CHAIRPERSON'S MESSAGE

It is remarkable how quickly five years can pass. The feeling of excitement – mixed with some apprehension – as we set out to establish the Military Police Complaints Commission in the latter part of 1999 truly does not seem so long ago.

I am still amazed that, in a scant three months, the Complaints Commission made the journey from legislative text to a fully operational organization, receiving and investigating complaints and requests for review and issuing reports. That this was possible is testament to the efforts of many dedicated people.

It would be impossible for me to name all of those who played a part in the creation of the Complaints Commission, but I would be remiss if I did not acknowledge the exceptional support and loyalty I received from founding part-time members, the late Thomas G. Flanagan, S.C., and Paul E. Duffie, Q.C.

From its inception, I envisioned an organization that would focus on serving the needs of its clients, whether complainants or the subjects of complaint. The quality of client services – to handle every request with kindness and courtesy, and to treat those in difficulty with understanding – has been my constant priority. It is truly gratifying to be able to say the Military Police Complaints Commission continues to put service to people ahead of all else. In so doing, the Complaints Commission is able to fulfill a role of fundamental importance in assuring Canadians that allegations of misconduct against Canadian Forces Military Police are investigated fully and fairly, and that military police are able to carry out their investigations free of interference from the chain of command.

The past five years have been filled with the challenges inherent in constructing a new organization and bringing civilian oversight of Canada's military police service to its current level of maturity. While we were not always successful in overcoming the challenges set before us, neither did they defeat us.

I am proud to have led the team that built the Military Police Complaints Commission into the professional, effective and efficient organization it is today, and also of the contributions this organization has made to enhance Canadians' confidence in the Canadian Forces Military Police. Equally, I am grateful for the opportunity to have enjoyed the support of the current part-time members of the Military Police Complaints Commission: Peter Seheult, Odilon Emond and Henry Kostuck and to my staff, who share in these achievements, and who have provided friendships and memories that I shall cherish always.

Louise Cobetto  
Chairperson, 1999 – 2004



## THE MILITARY POLICE COMPLAINTS COMMISSION OF CANADA

The Military Police Complaints Commission provides independent, civilian oversight of Canadian Forces Military Police, and is one of many such agencies around the world. Indeed, in Canada, the United States and elsewhere, it is unusual for a police service of any significant size not to be subject to civilian oversight in some form, although such oversight of military police services is still relatively rare.

Like its counterpart agencies that oversee civilian police services, the Complaints Commission investigates and reviews complaints about the conduct of military police members; in addition, it also investigates complaints of interference with military police investigations. This recognizes the unique and sometimes difficult situations military police face in carrying out their investigations – they are responsible to their superiors within the military police organization but, as members of the Canadian Forces, they also hold a place within the chain of command. Any member of the military police who believes a member of the Canadian Forces or a senior official with the Department of National Defence has interfered with their investigation may file a complaint.

Canadians can be proud that their nation is among the world leaders in bringing this type of accountability to its military police service. As the late Brian Dickson, former Chief Justice of the Supreme Court of Canada stated in the 1997 *Report of the Special Advisory Group on Military Police and Military Police Investigations*,

“Independent oversight is especially important for the military police and, in this regard, civilian oversight of police services is particularly instructive. If an individual citizen complains to a civilian police force about improper conduct of its personnel, there is an expectation of and a right to a response. The situation should be no different in the military context...an independent review capability is essential to ensure confidence and respect for the military justice system.”

The Right Honourable Antonio Lamer, another former Chief Justice, who presided over the five-year independent review of the *National Defence Act* in 2003, reinforced the crucial role played by civilian oversight of military police:

“I cannot emphasize enough the importance of independent oversight of the military police. Oversight is essential to promote confidence in the investigative process and to ensure that both complainants and members of the military police are dealt with impartially and fairly.”

The members and staff of the Military Police Complaints Commission continue to strive to ensure that complaints of improper conduct against members of the military police are dealt with in a full, fair and transparent manner, and that military police are able to conduct their investigations free of interference from the chain of command.

To learn more about the part-time Members of the Complaints Commission and the structure of the Complaints Commission’s organization, please refer to Annex A and Annex B of this Annual Report.

## ADMINISTRATION AND MANAGEMENT

From its inception, the Military Police Complaints Commission has been committed to providing effective civilian oversight of the Canadian Forces Military Police, and to do so in a manner that demonstrates appropriate respect both for the funds entrusted to it by the people of Canada, and for the administrative policies and procedures of the Government of Canada. There were a number of significant developments in this regard during 2004.

### Reorganization

In the autumn of 2003, following the report of the Minister's Advisory Committee on Administrative Efficiency, the Minister of National Defence suggested a re-alignment of resources affecting a number of agencies within the broad umbrella of the Department of National Defence, including the Complaints Commission.

In keeping with this re-alignment of resources, and its ongoing commitment to provide service that is both effective and efficient, the Complaints Commission underwent a significant reorganization in February of 2004. The changes, which included the very difficult step of declaring surplus 14 full-time positions, refine and enhance the operational and administrative efficiency of the Complaints Commission.

The redesign of the organization was based on the findings of a complete organizational review, including a workload analysis, conducted for the Complaints Commission by Consulting and Audit Canada.

The Complaints Commission now has in place a new service delivery model, based on teamwork, multi-tasking and flexibility. A revised management structure, appropriate to overseeing the new model, is also in place. The implementation of the principles of modern comptrollership continues, and a complete Business Plan was adopted and published at the beginning of the 2004-2005 fiscal year, allowing the Complaints Commission to comply fully with all operational reporting requirements.

### Budget

As detailed in the financial charts at Annex C of the Annual Report, the reorganization will result in considerable savings. This continues the Commission's long-time commitment to financial efficiency. At the end of the 2003-2004 fiscal year for example, the Complaints Commission returned \$560,000 – 13 percent of its \$4.2 million budget – to the federal treasury.

**It is worth noting that the Complaints Commission has, in each year of its existence, returned to the federal treasury an average of some 10 percent per year of its annual funding allocation.**

In the 2004-2005 and subsequent fiscal years, Complaints Commission expenditures on personnel, benefits, and other operating costs will be reduced significantly.

### **Public Service Commission Audit**

In February 2004, the Public Service Commission (PSC) undertook an audit of the Complaints Commission's staffing activities over the three-year period from April 1, 2001 to March 31, 2004. The results of the audit were released in October 2004.

The audit did identify a number of shortcomings in the administration of staffing policies and procedures, but emphasized there was no indication of unfairness or favouritism.

The Complaints Commission is committed to fairness and transparency in everything it does, and cooperated fully with the PSC during the audit process. The Complaints Commission continues to work in close collaboration with both the PSC and Public Works and Government Services Canada (which has provided human resources services to the Complaints Commission since April of 2002) to address any shortcomings and to ensure the Complaints Commission is in full compliance with all Government of Canada staffing policies and procedures.

## OPERATIONS

### Overview

The operations of the Military Police Complaints Commission can be divided into four primary areas of responsibility:

- monitoring the handling of complaints by the Provost Marshal;
- reviewing investigations of conduct complaints by the Canadian Forces Provost Marshal;
- investigating interference complaints; and,
- conducting its own investigations or hearings of conduct and interference complaints when the Chairperson deems it to be in the public interest.

A conduct complaint or an interference complaint may be made, either orally or in writing, to the Chairperson of the Military Police Complaints Commission, the Judge Advocate General or the Provost Marshal. A conduct complaint may also be made to any member of the military police. Each of these organizations is obliged to assist the complainant in filing their complaint to ensure it is an accurate statement of the complainant's concerns.

The process for dealing with both conduct and interference complaints is set out in Part IV of the *National Defence Act*. To familiarize the reader with the operations of the Complaints Commission, a summary of the process is presented here, and also depicted in chart form at Annex D of this report.

### Monitoring the handling of complaints by the Provost Marshal

While the investigation of complaints about the conduct of military police is the responsibility of the Canadian Forces Provost Marshal, the Provost Marshal is required to notify the Complaints Commission when a conduct complaint is received. The Complaints Commission monitors the handling of complaints by the Provost Marshal.

The Provost Marshal is also required to notify the Chairperson when a complaint is resolved informally, and has agreed to provide the Chairperson with enough information about the complaint and its resolution to allow the Chairperson to determine whether the terms of the informal resolution are fair and appropriate.

**The monitoring function is necessary to ensure the transparency and fairness of the complaints process.**

The monitoring function also supports the Chairperson's power to cause the Complaints Commission to assume responsibility for the handling of a conduct complaint if the Chairperson deems this to be in the public interest. This power to assume responsibility for dealing with conduct complaints applies even to cases where a complaint has been withdrawn.

## Reviewing investigations of conduct complaints

Anyone, whether a civilian or a member of the military, and whether or not they were affected personally, has the right to complain about the conduct of military police members in the performance of their policing duties and functions.

The initial investigation of such conduct complaints is the responsibility of the Canadian Forces Provost Marshal. Anyone who has made a complaint and is not satisfied with the disposition of his or her complaint by the Provost Marshal can ask the Complaints Commission to review the matter.

## Interference complaints

The Military Police Complaints Commission has primary jurisdiction for the investigation of interference complaints.

Military police who conduct or supervise an investigation can complain to the Complaints Commission about interference in or obstruction of their investigations by any Canadian Forces member of any rank or by senior officials of the Department of National Defence. Reasonable grounds for an interference complaint include abuse of authority and intimidation.

According to the law, civilians, members of the Canadian Forces who are not members of the military police, and military police members who have not been involved in the conduct or supervision of the investigation in question cannot file complaints of interference.

## Public interest investigations and hearings

As noted above, the Chairperson may, at any time in the complaints process, deem it to be in the public interest for the Complaints Commission to assume responsibility for handling a conduct or interference complaint, even in situations where a complaint has been withdrawn.

As part of an investigation undertaken in the public interest, the Chairperson may decide a hearing on the complaint is necessary. The Complaints Commission has considerable authority in the conduct of such hearings, including the power to compel witnesses to give evidence under oath. These hearings are normally open to the public, although exceptions can be made when factors such as the administration of justice or national security are a concern.

## Reports, findings and recommendations

The findings of a review by the Chairperson and any recommendations that may flow from it are submitted to the appropriate authorities in the Canadian Forces and the Department of National Defence in the form of an “interim report.” The *National Defence Act* requires that the designated authority respond to the interim report with a “Notice of Action,” setting out any action that has or will be taken with respect to the findings and recommendations of the review.

Although the circumstances of a particular case may dictate otherwise, the Provost Marshal usually prepares the Notice of Action for conduct complaints, while the Chief of the Defence Staff responds to the Chairperson’s findings related to interference complaints.

The findings and recommendations contained in an interim report are not binding; however, if they are not acted on, the responsible official must include an explanation for not acting in the Notice of Action, which is submitted to the Minister and the Chairperson.

After considering the Notice of Action responding to the interim report, a “final report” is issued by the Chairperson of the Complaints Commission. The final report, including findings and recommendations, is provided to the Provost Marshal and other senior officials, including the Minister of National Defence, as well as the person who filed the complaint and the military police member or members against whom the complaint was made.

### **The Complaints Commission and the Canadian Forces Provost Marshal**

In order to conduct its reviews and investigations effectively and efficiently, the Complaints Commission must at all times maintain a cooperative relationship with the office of the Canadian Forces Provost Marshal.

Given the nature of civilian oversight of law enforcement in general, it is only natural that there will be disagreement from time-to-time. In addition, the legislation that governs the complaints process includes a number of grey areas that have been interpreted differently by the Complaints Commission and the Provost Marshal, and this has been the source of some difficulties between the two organizations as well.

Disagreements over the jurisdiction of the Complaints Commission and its authority to monitor investigations by the Provost Marshal have been especially difficult to resolve, and have, on occasion, threatened to blur the transparency that is the very heart of the credibility of the complaints process.

### **During 2004, the Vice-Chief of the Defence Staff and the Chairperson committed to bringing about a renewed, cooperative relationship between the office of the Provost Marshal and the Complaints Commission.**

Concrete steps have been taken to fulfill this joint commitment. Among others, members of the Complaints Commission staff now meet on a regular basis with representatives of the Judge Advocate General, the Vice-Chief of the Defence Staff and the Provost Marshal to discuss problems as they arise.

By maintaining open lines of communication, it is hoped any future difficulties that may arise between the Complaints Commission and the office of the Provost Marshal can be addressed in a mutually respectful manner, to ensure due process.

### **Implementation of the Review of the *National Defence Act***

The five-year independent review of the *National Defence Act* in 2003, led by former Chief Justice Antonio Lamer, included a number of recommendations concerning, among others, much-needed clarification of some areas of Military Police Complaints Commission jurisdiction. Staff of the Complaints Commission continues to work with, and through, the office of the Vice-Chief of the Defence Staff to provide input and analysis in the development of draft amendments to the Act.



At the same time, the Complaints Commission has ongoing concerns with some recommendations contained in the five-year review. The issues in question affect the ability of the Complaints Commission, in certain situations, to provide credible oversight in a way that is in keeping with its statutory obligation to resolve matters before it as informally and expeditiously as the circumstances and considerations of fairness permit.

Among others, one recommendation of the five-year review would forbid the Complaints Commission from being advised of the terms of any informal resolution of a complaint reached between a complainant, the subject member(s), and the office of the Provost Marshal. In its current form, the *National Defence Act* requires the Provost Marshal to provide this information to the Complaints Commission, and a protocol has been negotiated with the office of the Provost Marshal to facilitate this transfer of information – information that is necessary if the Complaints Commission is to determine whether the terms of an informal resolution are indeed fair and reasonable.

Another recommendation would place significant restrictions on the information the Complaints Commission can request from the Provost Marshal about an investigation of a complaint.

This would reduce the monitoring powers of the Complaints Commission, and represents a major departure from what has become accepted practice to date. Unless a complainant filed a request for review, the Complaints Commission would no longer be able to request investigative reports and other pertinent material without the Chairperson calling a public hearing and exercising the power of subpoena. Even more fundamentally, it would hinder an investigation or the ability of the Chairperson to assess whether the public interest requires that a hearing be directed.

The Complaints Commission also believes its power of subpoena should be extended to include investigations undertaken in the public interest.

**Subpoena powers for public interest investigations would allow the Complaints Commission to conduct thorough investigations without having to resort to the more costly and formal step of calling a hearing into a complaint.**

It is interesting to note that, in their submissions to the five-year review of the *National Defence Act*, both the Complaints Commission and the Canadian Forces Grievance Board requested this expanded power of subpoena. The review recommended the additional power for the Grievance Board, but made no mention of the Complaints Commission in this regard.

The Complaints Commission has brought these concerns to the attention of the Minister of National Defence and hopes that, when asked to consider legislation dealing with changes to the *National Defence Act*, it will have the opportunity to comment on these issues during the drafting or committee stage.

## CASE SUMMARIES

During 2004, the Complaints Commission initiated or completed reviews or investigations of 10 complaints, including two complaints of interference, while monitoring a total of 46 conduct complaints investigated by the Canadian Forces Provost Marshal. The Complaints Commission also completed a major public interest investigation (summarized below). In reporting the findings of the reviews and investigations conducted during 2004, it should be noted that a number of the concerns raised in these cases are issues that have come to light in reviews and investigations carried out by the Complaints Commission in previous years.

### Public interest investigation initiated in 2004

*Military police and civilians – Military police and young persons*

After considering a number of issues arising from conduct complaints filed by the parents of two young persons, the Chairperson determined it would be in the public interest for the Complaints Commission to investigate these complaints.

This new public interest investigation – the fourth since the inception of the Complaints Commission – will examine a number of important issues related to military police policy and procedures, including the role of military police in conducting investigations involving young persons; whether military police have in place consistent and well-understood policies related to the detention, questioning and search of young persons; and whether policies and procedures that are in place are in keeping with the requirements of the *Canadian Charter of Rights and Freedoms* and the *Youth Criminal Justice Act*.

### Case No. 1 – Public interest investigation concluded in 2004

*Unlawful arrest – “Internal” classification of complaint*

#### ***Facts and complaint***

In December of 2000, a member of the military police was at home on sick leave when his supervisor contacted him by telephone to advise him that he should start preparations for a deployment scheduled to begin within the coming three weeks. The member’s sick leave pass was due to expire shortly, and the supervisor was acting on the assumption that the member would be back at work prior to the beginning of the planned deployment. The conversation became heated, ending with the military police member hanging up on his supervisor, and leaving the supervisor with the impression that the member had refused to accept the deployment, and had been insubordinate.

The supervisor subsequently ordered two other members of the military police to go to the first member’s home, and direct him to report to the guardhouse. If he refused, the members were instructed to arrest him.

When the two members arrived at his residence, they advised him of the order to report to the guardhouse. The member pointed out that he was on sick leave, and thus could not be recalled to duty. The member called his doctor (a member of the Canadian Forces), who also advised one of the two MPs that a member on sick leave was not required to report for duty.

The military police member said that unless the doctor could provide a specific authority (i.e., point to a particular regulation) to support the member's refusal to report to the guardhouse, the member would be arrested.

The doctor was not able to do so in the few moments allowed; the member continued to refuse to report to the guardhouse, and he was arrested and read his rights under the *Canadian Charter of Rights and Freedoms*.

Once at the guardhouse, the member was brought before his supervisor. This discussion too became heated. The arrested member more than once refused his supervisor's orders to come to attention, stating that he was under arrest and wanted to speak to a lawyer. The arrested member walked out of the meeting and went to an interview room at the guardhouse, where he remained, under guard, for some two hours.

During this time, the member tried unsuccessfully to reach legal counsel, and eventually contacted his brother – also a member of the military police – at another Canadian Forces Base. The member informed his brother of his situation, suggesting he had been arrested for no reason. The brother also spoke with the military police member who had carried out the arrest, and this military police member agreed with the brother's suggestion that the arrest had been unlawful.

Also during this time, the arrested member's doctor spoke with the member's supervisor, and advised him of the nature of the member's sick leave.

Shortly afterward, the arrested member's supervisor briefed his own superior on the situation, and the arrested member was brought to the senior member's office. At this meeting, the supervisor offered an apology to the arrested member, saying that had he known the nature of the member's sick leave, he would not have considered the member for the deployment in the first place. The senior member present then released the arrested member from custody, and the member was driven back to his residence by another military police member.

Meanwhile, concerned about his sibling's welfare and that he may have been arrested unlawfully, the arrested member's brother consulted his own supervisor and, on the supervisor's advice, another member of the military police at another Base.

This military police member, believing the information provided by the arrested member's brother suggested a possible breach of the *Military Police Professional Code of Conduct*, forwarded the information to the Deputy Provost Marshal Professional Standards. At the same time, acting independently, the brother of the arrested member submitted a formal complaint about the conduct of the military police members involved in the incident to the Deputy Provost Marshal Professional Standards, stressing that the information he was providing was third hand, having been received from his brother.

#### ***Disposition by the Canadian Forces Provost Marshal***

In response to the complaint filed by the brother of the arrested member and the information received from the senior military police member consulted by the arrested member's brother, the Deputy Provost Marshal Professional Standards initiated a Professional Standards "internal" investigation into the complaint. This investigation named four members of the military police as subjects: the senior member who released the arrested member from custody, the arrested member's supervisor, and the two military police members who made the arrest.

**The Complaints Commission was not notified of this complaint because it was considered to be an “internal” matter.**

Before the Professional Standards investigation began, the Canadian Forces National Investigation Service started a separate investigation to determine whether the information in the conduct complaint disclosed the commission of a criminal or service offence by any members of the military police. As is required, the Professional Standards investigation was put on hold until the Canadian Forces National Investigation Service investigation was completed.

***The Canadian Forces National Investigation Service investigation***

The Canadian Forces National Investigation Service investigation looked at two issues: whether service or criminal offences had been committed in relation to the alleged unlawful arrest in December of 2000, and whether the more senior military police member who released the member from custody had improperly coached a witness who testified at an earlier trial in which the member arrested in this case was the defendant. The latter issue arose from underlying allegations in the complaint filed by the arrested member's brother, suggesting the arrested member may have been for some time the victim of some degree of harassment by his superiors.

This investigation concluded in early July 2001, that there was no evidence to support the allegation that the senior military police member had improperly coached the witness. It also found that the two military police members who arrested the member had reasonable grounds to believe the member's refusal to accompany them to the guardhouse constituted a service offence, and made the arrest in good faith. No further action was recommended against them.

In the case of the arrested member's supervisor, the investigation determined that the arrested member had been recalled to duty contrary to section 16.01 of the *Queen's Regulations and Orders for the Canadian Forces*. This section sets out the specific conditions and circumstances under which a member of the Canadian Forces on sick leave can be recalled to duty. The supervising military police member was subsequently charged with the service offence of Neglect to the Prejudice of Good Order and Discipline, under the *National Defence Act*. His military police credentials were suspended for a period of some 10 months, until he was found not guilty of the charge at trial.

In early August of 2001, about a month after the Canadian Forces National Investigation Service investigation finished, a senior officer in the military police wrote to the Deputy Provost Marshal National Investigation Service, expressing his unhappiness with the conclusions of the Canadian Forces National Investigation Service investigation. This officer alleged the military police member arrested back in December 2000 had committed a number of service offences in the course of that day's events, and asked the Canadian Forces National Investigation Service to start a new investigation to look into these allegations.

A few weeks later, the Officer Commanding the Canadian Forces National Investigation Service Sensitive Investigation Detachment replied to the officer's letter, denying the request for a new investigation. The letter of response also disputed the officer's suggestion the initial Canadian Forces National Investigation Service investigation was deficient in any way, and stated that all investigative materials would be forwarded to the Complaints Commission for an unbiased review.

The Canadian Forces National Investigation Service investigative materials arrived at the Complaints Commission a few days later, accompanied by a letter from the Officer Commanding the Canadian Forces National Investigation Service Sensitive Investigation Detachment requesting a complete review of the complaint, the Canadian Forces National Investigation Service investigation, and issues related to the findings of the investigation.

It should be noted that this was the first time the Complaints Commission had heard of the conduct complaint filed by the arrested member's brother almost nine months earlier. The *National Defence Act* requires that the person who receives a complaint must “ensure that notice of the complaint is sent as soon as practicable...to the Chairperson” of the Complaints Commission.

In response to a subsequent inquiry from the Chairperson regarding the classification of the initial complaint as “internal,” and the lack of notice to the Chairperson, the Deputy Provost Marshal Professional Standards stated that the classification of the complaint as “internal” and the failure to provide notice of the complaint were the result of an oversight.

***The Deputy Provost Marshal Professional Standards investigation***

The Professional Standards investigation resumed upon the completion of the Canadian Forces National Investigation Service investigation, and concluded in February of 2002. This investigation found no evidence to support any of the allegations against any of the four members named as subjects of the complaint. The Deputy Provost Marshal Professional Standards did note some of the actions by certain military police members were of concern and follow-up actions were imposed.

The letter of final disposition from the Deputy Provost Marshal Professional Standards to the member who had been arrested stated that the investigation found evidence that he had committed five service offences in connection with the events on the day of his arrest; supplied his brother with misleading information; and was found to have violated three sections of the *Military Police Professional Code of Conduct*. The arrested member's military police credentials were suspended a few days later.

The final letter from the Deputy Provost Marshal Professional Standards to the arrested member's brother – who filed the initial complaint – criticized him for not verifying the accuracy of the information he received from his brother prior to lodging his complaint.

***Request for Review and Second Complaint***

After receiving the Letter of Final Disposition, the brother of the arrested member asked the Complaints Commission to review both the Canadian Forces National Investigation Service and the Professional Standards investigations. A short time later, the member who had been arrested contacted the Complaints Commission to complain about his arrest, the investigation by the Canadian Forces National Investigation Service, and the actions taken against him by the Deputy Provost Marshal Professional Standards.

***The Public Interest Investigation by Military Police Complaints Commission part-time Members, Seheult and Emond***

On October 31, 2002, the Chairperson caused the Complaints Commission to conduct a public interest investigation, delegating part-time Commission Members Mr. Peter Seheult and Mr. Odilon Emond, to do so.

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

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

In conducting their investigation, Complaints Commission Members Seheult and Emond examined extensive documentation, transcripts and other materials compiled during the course of the earlier investigations by the Canadian Forces National Investigation Service and the Deputy Provost Marshal Professional Standards. In addition, the Complaints Commission Members consulted legislation, Canadian Forces Military Police policies, and Canadian Forces regulations, orders and procedures relevant to the matter. Complaints Commission Members interviewed 13 witnesses, and investigators for the Complaints Commission conducted interviews with 19 witnesses. Four individuals, all members of the military police, exercised their right to refuse to be interviewed by the Complaints Commission Members (although one of the four had been interviewed previously by the Complaints Commission investigators).

Upon completing the investigation, the Complaints Commission Members prepared an interim report, some 200 pages in length, detailing the results of the investigation and addressing a total of six key issues identified at the outset. The interim report, completed on October 23, 2003, listed 52 findings and offered 10 recommendations.

***The Canadian Forces Provost Marshal's Notice of Action***

The Canadian Forces Provost Marshal, as required by the *National Defence Act*, responded to the interim report issued by the Complaints Commission in October 2003 with a Notice of Action in mid-February 2004.

In the Notice of Action, the Provost Marshal rejected the majority of the Complaints Commission Members' findings and recommendations, stating that the matter was outside the jurisdiction of the Complaints Commission.

Despite the admission by the Deputy Provost Marshal Professional Standards that the initial conduct complaint had been classified as "internal" by mistake, and should have been dealt with under the complaints process set out in Part IV of the *National Defence Act*, the Provost Marshal stated that the arrest of the member in question was conducted as part of an administrative procedure related to

discipline within a military unit. As such, the Provost Marshal maintained that the military police members who made the arrest were not performing a policing duty or function, and thus the complaint was an “internal” matter. The Provost Marshal further stated that the Complaints Commission had neither the competence nor the expertise to make findings related to issues of military discipline.

***The Final Report of the Complaints Commission***

After considering the Provost Marshal’s Notice of Action, Complaints Commission Members Seheult and Emond issued a final report of the public interest investigation in July 2004.

**Although some of the findings and recommendations included in the interim report were modified based on the information and comments included in the Notice of Action, the Complaints Commission Members disagreed with the Provost Marshal’s definition of this complaint as an internal matter, outside the jurisdiction of the Complaints Commission.**

Regardless of the reason for the arrest, administrative or not, the Complaints Commission Members held that, in essence, ‘an arrest is an arrest.’ The *Complaints About the Conduct of Members of the Military Police Regulations* defines what are to be considered policing duties or functions for the purposes of the complaints process set out in Part IV of the *National Defence Act*. In the *Regulations*, “the arrest or custody of a person” is listed as a policing duty or function.

The final report details the findings related to six key issues in this case, identified by the Complaints Commission Members at the outset of their investigation:

***Issue 1 and Issue 2***

*Was the order to arrest the military police member in December 2000 proper and lawful? Was the arrest itself proper and lawful?*

The Complaints Commission Members found that, while in an agitated state following a heated telephone conversation with his subordinate, the arrested member’s supervisor did not give the military police members enough information to allow them to determine whether, as arresting officers, they had reasonable and probable grounds to make an arrest. The direction from the supervisor amounted, in essence, to ‘tell him to report to the guardhouse, and if he refuses, arrest him.’ Further, by failing to confirm either why the supervisor wanted the member to report to the guardhouse or the reason for an arrest, the two military police members were unable to properly advise the member of the reason he was being arrested. Indeed, when the member asked the military police members at his home why he was being arrested, the responses ranged from, “I don’t know” to “I surmise it might be...”

**As the two military police members were not able to provide the member with the reason he was being arrested – requirements of the *Canadian Charter of Rights and Freedoms*, the law, and *Military Police Policy and Procedures* – the Complaints Commission Members found the arrest was unlawful.**

Moreover, the Complaints Commission Members found that the arrest was not necessary nor was it reasonable or proportional to the alleged violation. The Complaints Commission also found that, in ordering the arrest, the member's supervisor acted beyond the scope of his authority and responsibilities in the circumstances.

### **Issue 3**

*Was the release of the arrested member by the senior military police member proper and lawful?*

During a meeting with the arrested member and his supervisor, a more senior military police member released the member from arrest, and instructed another military police member to drive him home.

Both the *Queen's Regulations and Orders for the Canadian Forces* and the *National Defence Act* make it clear that only the arresting officer – which, in this case, would have been one of the two military police members who had gone to the member's home – and other specified authorities have the authority to release the arrested person from custody. As such, the Complaints Commission Members found the senior military police member did not have the authority to release the arrested member.

### **Issue 4**

*Did the senior military police member, during the meeting on the day of the arrest at which he attempted to "defuse the situation," use intimidation or other means in an effort to deter the arrested member from making a complaint?*

The Complaints Commission Members found that some of the words and gestures used by the senior military police member during this meeting could have been viewed as intimidating by someone subordinate in rank, and who was under arrest. While some of the words and gestures were not appropriate in the circumstances, Complaints Commission Members could not conclude that they were used by the senior military police member as an attempt or with the intention of intimidating the arrested member from making further complaints.

### **Issue 5**

*Are the rights of complainants being negated due to a lack of adherence to Part IV of the *National Defence Act*, through the classification of complaints as "internal"?*

The Complaints Commission has been concerned for some time about the process by which the Provost Marshal determines whether an allegation of misconduct is brought forward as a formal complaint, and thus subject to the open and transparent process set out in Part IV of the *National Defence Act*, or is dealt with as an "internal" matter and, as a result, eludes civilian oversight.

Certainly, there can be many situations where the alleged misconduct is of a strictly administrative or internal nature, and it is normal that such matters would be handled within the Provost Marshal's organization. At the same time, if the principles of civilian oversight are to be respected, it is essential that the process by which this determination is made be coherent and transparent.

In this case, as noted earlier, the Deputy Provost Marshal Professional Standards advised the Chairperson that the conduct complaint filed by the arrested member's brother had been classified as "internal" as the result of an error. Although they were not satisfied by the explanation for the error, the Complaints Commission Members did agree that the complaint could have been designated as "internal" by mistake.



Nonetheless, the *National Defence Act* is clear in its requirement that the Chairperson of the Complaints Commission be notified of all conduct complaints relating to the performance of policing duties and functions as soon as practicable after they are received. If conduct complaints brought to the attention of the Canadian Forces Provost Marshal are classified as “internal,” whether by design or by mistake, complainants may never be notified of their right to have their complaints reviewed by the Complaints Commission. Both the complainant and the subject of the complaint may also lose the right to have the complaint monitored by the Complaints Commission at all stages of the process, and both may also lose the right to have the complaint investigated by the Complaints Commission through a public interest investigation or hearing.

### **Issue 6**

*Did the Deputy Provost Marshal Professional Standards handle the conduct complaint filed by the arrested military police member's brother properly, and were the arrested military police member and his brother treated fairly after the complaint was filed?*

Although the Complaints Commission Members had no major concerns with the investigation into the member's arrest conducted by the Canadian Forces National Investigation Service, they did express a number of concerns about the Professional Standards investigation into the conduct complaint filed by the arrested member's brother.

The Professional Standards investigator told Complaints Commission Members in an interview that, from the outset of his investigation, it appeared to him that the arrested member might have committed service offences in the course of events on the day of his arrest. The investigator also said that, based on his review of the Canadian Forces National Investigation Service investigation, he had strong doubts about the credibility of the member who had been arrested and that it was clear to him that the member had “manipulated information.”

Complaints Commission Members found that, at this point in the investigation, the arrested member should have been designated as a subject of the complaint. In addition, when the investigator determined the arrested member's brother may have committed a violation of the *Military Police Professional Code of Conduct* by not confirming the accuracy of the information provided by his brother, he too should have been designated as a subject of complaint, and a new, separate investigation into those allegations should have been initiated.

**In failing to designate them as subjects of complaint, the arrested member and his brother were deprived of their basic right to natural justice; their right to appreciate the potential jeopardy they were facing; and their right to defend themselves against the allegations.**

**They also were denied their right of choice to refuse to be interviewed and their right to have counsel or an assisting officer present if they did agree to be interviewed.**

Beyond finding that the arrested military police member and his brother were not treated fairly during the investigation, the Complaints Commission Members also questioned whether the arrested member had committed the five service offences detailed in the letter of final disposition from the Deputy Provost Marshal Professional Standards, or had provided misleading information to his brother that was relevant to the conduct complaint. The Complaints Commission Members also disagreed with the Deputy Provost Marshal Professional Standards findings regarding the arrested member's brother, rejecting the idea that he was negligent in basing his complaint on the information he received from his brother without confirming the accuracy of the information.

In making the latter finding, the Complaints Commission Members noted that the *Military Police Professional Code of Conduct* requires any member of the military to report to a superior a belief in or an awareness of an allegation that a member of the military police had breached the *Code of Conduct*. There is no requirement to verify or investigate the allegation before it is reported, as implied by the finding of the Deputy Provost Marshal Professional Standards.

### ***Complaints Commission Members' Recommendations***

In addition to recommending additional training for the member's supervisor and the two military police members who carried out the arrest, the Complaints Commission Members recommended that, in order to maintain high police standards, the Provost Marshal should ensure all military police members are trained to understand, respect and fully protect the rights of individuals, as well as the law governing the exercise of the power of arrest.

To ensure the rights of complainants and subjects of complaint alike are protected, the Complaints Commission Members also recommended that the Complaints Commission be involved with the Provost Marshal in developing the criteria under which a complaint is classified as "internal." As part of this recommendation, the Complaints Commission Members stated that, in the case of complaints that are classed as "internal", complainants should be advised of their right to have this decision reviewed by the Complaints Commission.

### ***Conclusion***

There is no question of the impact of these complaints and three separate investigations, stretching over a period of nearly four years, on the subject members, the complainants and their families. At the same time, the incidents that occurred in December 2000 related to core issues in military policing, such as the proper role and conduct of the military police when making arrests.

The power to arrest and detain a person is an exceptional power. It is essential that all Canadians, whether they are members of the Canadian Forces or of the general public, can have confidence that their police services will exercise this exceptional power only when it is proper and reasonable to do so. This requires that police understand the law governing the exercise of the power of arrest.

## Case No. 2 – Conduct Complaint – Request for Review

*Role of the Military Police Complaints Commission in reviewing complaints of conduct not related to policing duties and functions*

### ***Facts and Complaint***

A member of the Canadian Forces, whose wife operated a childcare business in their home, complained that a military police member had used his status as such to intimidate the complainant's wife during a disagreement over payment and receipts for childcare. In doing so, the complainant alleged that the military police member had engaged in conduct likely to discredit the military police, or call into question the member's ability to carry out his duties in a faithful and impartial manner – a violation of the *Military Police Professional Code of Conduct*.

An investigation by the Deputy Provost Marshal Professional Standards supported this allegation. In the letter of final disposition, the Deputy Provost Marshal noted that, while the relationship between the subject member and the complainant's wife was a private matter, the *Military Police Professional Code of Conduct* applies to behaviour both on- and off-duty.

On the day before the Deputy Provost Marshal Professional Standards issued the letter of final disposition, a letter signed by a number of parents, including the military police member who was the subject of the initial complaint, was delivered to provincial child welfare authorities. This letter detailed a number of concerns about the quality of childcare provided by the complainant's wife. After learning of this letter, the complainant filed a second complaint against the military police member, alleging it was retaliation for the initial complaint. The complainant further alleged that the military police member knowingly made false statements in the letter to child welfare authorities, and used his position to coerce or coax other parents into adding their names to the complaint.

It should be noted that an investigation by the provincial child welfare agency, which included interviews with both past and present clients of the childcare, did not substantiate any of the allegations raised in the letter. The provincial agency stated that it had no child protection concerns with respect to the operation of the childcare facility.

### ***Disposition by the Canadian Forces Provost Marshal***

Following an investigation of the second complaint, the Deputy Provost Marshal Professional Standards concluded that the military police member's letter to child welfare authorities was motivated by a desire to retaliate for the conduct complaint that had been filed against him, and thus the military police member had violated the *Military Police Professional Code of Conduct*. This investigation did not, however, support the allegations that the military police member had used his position to influence other parents to join in the complaint, nor did the investigation support the complainant's allegation that the subject member knowingly made false statements in the letter to the child welfare agency.

The complainant, not fully satisfied with the findings of the Deputy Provost Marshal Professional Standards investigation, asked the Complaints Commission to review the matter.

***Issues, Findings and Recommendations***

The *National Defence Act* specifies that the Complaints Commission is to review only those complaints against military police members that relate to the performance of their policing duties and functions, as set out in the regulations attached to the Act. In this instance, therefore, it was necessary to determine whether the subject member's actions related to the performance of his policing duties and functions prior to conducting a complete review.

Complaints Commission Member Mr. Henry Kostuck conducted an extensive examination of documents and other information provided by the Deputy Provost Marshal Professional Standards, and also considered the results of interviews of the complainant and his wife carried out by the Complaints Commission.

Although complicated by the allegation that the subject of the complaint had used his status as a military police member to advance a personal cause, Mr. Kostuck concluded that the subject member was acting as a parent, and not as a police officer, and that the Deputy Provost Marshal Professional Standards was correct in finding that the relationship between the subject member and the complainant's wife was of a private nature, unrelated to the performance of his policing duties and functions. As such, Mr. Kostuck found that the Complaints Commission did not have jurisdiction in this case, and thus could not comment on the findings or recommendations of the investigation conducted by the Deputy Provost Marshal Professional Standards.

**Mr. Kostuck commended the Deputy Provost Marshal Professional Standards for recognizing the potential jurisdiction of the Complaints Commission in this case, and ensuring the complainant was aware of the possibility of requesting a review.**

**Case No. 3 – Conduct Complaint – Request for Review**

*Handling of initial complaint by military police – Need to provide all parties with appropriate information regarding the disposition of complaint – Need to assure complainants that remedial measures directed have been completed*

***Facts and Complaint***

Following the investigation of an altercation between two young people in a recreation area on a Canadian Forces Base, a military police member charged one of the young people with assault.

The father of the young person charged sent a memo to his Chain of Command at the Base, detailing his concerns with the actions of the military police member involved in the case. Two weeks later, the Chain of Command forwarded this memo to the Military Police Detachment on the Base, whereupon the military police member in question was directed to provide "his side of the story" in a written reply to the father of the young person. The military police member did so, although the reply was never delivered to the father of the young person.

During the two weeks between sending his original memo to the Chain of Command and its arrival at the Military Police Detachment, the young person's father also submitted a Military Police Complaint Form concerning the conduct of the military police member in question.

Among other concerns, the father of the young person stated that the military police member did not conduct a thorough investigation of the incident, used excessive force in arresting the young person, and that, in general, members of the Military Police Detachment were not fostering a positive relationship with the young people who use the facilities of the community centre on the Base.

The Deputy Provost Marshal Professional Standards subsequently reviewed this complaint.

***Disposition by the Canadian Forces Provost Marshal***

A Professional Standards investigation initiated by the Deputy Provost Marshal Professional Standards concluded that the military police member did not conduct a proper investigation into the incident, resulting in the premature arrest and detention of the young person, but did not support the allegation that the military police member had used excessive force in arresting the young person. The Professional Standards investigation did not reach any conclusions regarding the third allegation – that the actions of military police in general were serving to erode, rather than build, a relationship of trust with young people on the Base.

In a letter of final disposition to the complainant and the subject of the complaint, the Deputy Provost Marshal Professional Standards summarized the findings of the investigation, and noted that the subject member would be counselled with regard to the shortcomings in his handling of the incident. As well, he would undergo refresher training in the areas of arrest, detention and custody, investigative procedures, and dealing with young persons.

Although he agreed that excessive force had not been used in the arrest of his son, the father of the young person was not completely satisfied with the way his complaint had been handled and requested a review by the Complaints Commission. In his request for review, the complainant questioned the accuracy of some of the statements in the Letter of Final Disposition, and stated that he was not satisfied with the response to his allegation that military police had been harassing young people at the Base community centre. The complainant also stated that he did not believe counselling and refresher training were sufficient consequences for the conduct of the military police member in this case.

***Issues, Findings and Recommendations***

**In the final report of her review of this case, then-Chairperson Madame Louise Cobetto stated that, overall, she was quite pleased with the manner in which the Deputy Provost Marshal Professional Standards handled this conduct complaint.**

The Chairperson also found the Deputy Provost Marshal Professional Standards' direction that the military police member be counselled and undergo refresher training in a number of areas to be an appropriate response in this case, and in keeping with current practices in police discipline which favour a more remedial, rather than punitive, approach.

Nonetheless, Madame Cobetto identified a number of issues that may have contributed to the complainant's dissatisfaction with the disposition of his complaint, as well as concern over the handling of the initial complaint filed by the young person's father:

- 1) *The complainant's memo to his Chain of Command was a conduct complaint, and should have been treated as such by military police*

In submitting a memo to his Chain of Command outlining his concerns over the arrest of his son, the father believed, and the Chairperson agreed, that he had filed a complaint about the conduct of the military police member involved. Thus, when the Chain of Command forwarded the memo to the Military Police Detachment, it should have been treated as a conduct complaint, and passed on to the Canadian Forces Provost Marshal for consideration and acknowledgement, as required by Part IV of the *National Defence Act*. Instead, the military police member was instructed to put "his side of the story" in writing, and send it to the young person's father.

The Chairperson described this response as inappropriate, and noted that, had the complainant not repeated his complaint by filing a Military Police Complaint Form, it is possible this complaint may have been ignored altogether.

The Canadian Forces Provost Marshal disagreed with this finding, stating that the complainant's memo to his Chain of Command was a "request for assistance," and not a complaint. The Provost Marshal further stated that military police "fully complied with the requirements of Part IV of the Act upon its receipt of the only complaint made to it," referring to the Military Police Complaint Form submitted by the complainant some days after he had put his concerns in writing to his Chain of Command.

- 2) *The letter of final disposition to the complainant differed in important ways from the letter of final disposition to the subject of the complaint*

As noted in earlier reports prepared by the Complaints Commission, the Chairperson has long held that the letter of final disposition should provide the same substance and quality of information to both the complainant and the subject of the complaint. In this case, the Chairperson found some statements in the final letter to the complainant were included without proper context, and that the letter did not contain enough information to allow him to understand clearly how and why the conclusions regarding his complaint were reached. It was the Chairperson's opinion that the lack of detail in the final letter may have contributed to the complainant's decision to request a review of his complaint.

As a result, the Chairperson recommended the Deputy Provost Marshal Professional Standards adopt a practice whereby the letter of final disposition sent to the complainant and to the subject of the complaint are identical.

In response, the Canadian Forces Provost Marshal has implemented a policy under which the complainant and the subject of the complaint, as well as the Complaints Commission, all receive the same information in the final letter prepared by the Deputy Provost Marshal Professional Standards.

The Chairperson welcomed this decision by the Provost Marshal, but also stated her disappointment that the Provost Marshal directed that the final letter, now known as the "Report on Findings and Actions," would contain only that information considered to have direct relevance to the complaint.

Professional Standards investigations of conduct complaints often lead to incidental findings and observations that, in turn, can lead to changes that enhance the professionalism of Canadian Forces Military Police.

In this case, for example, the Professional Standards investigator observed a lack of follow-through and “vetting” of the investigation into the initial incident by the subject member’s Chain of Command; that the form used by the Military Police Detachment to provide information to Crown prosecutors indicates the information contained in the form belongs to the Royal Canadian Mounted Police (which could hamper any potential access to information request); and that the subject of the complaint did not believe it was necessary to complete a Military Police Investigation Report in this case because it involved charges against a civilian.

These and other observations, as well as recommendations to address them, were included in the letter of final disposition to the subject of the complaint, but not in the letter to the complainant.

While not directly related to the matter at hand, the Chairperson noted that being made aware of these incidental findings can help both the complainant and the subject of the complaint see the true impact and significance of the complaints process.

*3) The importance of advising complainants that remedial measures directed and/or recommended by the Canadian Forces Provost Marshal are implemented*

Openness and transparency are fundamental to the effectiveness of the complaints process. These qualities are essential to assure subjects of complaint that the allegations against them are investigated in a fair and impartial manner, and equally, to assure complainants their complaint was not made in vain. In this case, the complainant’s request for review indicated he did not believe counselling and refresher training in arrest, detention and custody, investigative procedures, and dealing with young persons were sufficient consequences for the conduct of the military police member.

Had the complainant been provided with more information on what such counselling and training involved and the specific deficiencies it was intended to address, and notified of its successful completion, it is possible he may have expressed greater satisfaction with the disposition of his complaint.

In this regard, the Chairperson repeated a recommendation that has been made in a number of previous reports from the Complaints Commission: that the Provost Marshal provide complainants with a detailed summary of the remedial measures that have been directed, and also of the status of the implementation of these measures. Section 250.29 of the *National Defence Act* states that a summary of any action that has or will be taken with respect to the disposition of a conduct complaint, including action taken concerning a member of the military police, must be given to the complainant.

## **Case No. 4 – Interference Complaint**

### *Jurisdiction of Part IV of the National Defence Act over members of a visiting military force*

Any member of the military police who conducts or supervises a military police investigation, and who believes any member of the Canadian Forces or senior official of the Department of National Defence has interfered with the investigation may make a complaint about that person under Part IV of the *National Defence Act*. The Military Police Complaints Commission has exclusive jurisdiction over the investigation of interference complaints.

The Complaints Commission received two complaints of interference during 2004. One of these complaints was somewhat unusual, in that it concerned the actions of a member of a foreign military police service deployed to Canada as part of a visiting military force. The Canadian Forces military police member complained that the foreign military police member asked him to cancel a parking ticket he had given to another member of the visiting force.

The Complaints Commission could not deal with this complaint, as Part IV of the *National Defence Act* does not allow for complaints of interference against members of other military forces. In responding to the complainant, the Chairperson noted that this issue would be taken under advisement in the context of possible future revisions to the Act.

## OUTREACH

Due to the major reorganization, the Complaints Commission carried out a somewhat reduced program of visits to meet and consult with military police members during 2004. For 2005, the Complaints Commission is currently examining ways to return its outreach activities to their former levels.

Outreach during 2004 included a visit to CFB Saint-Jean in Québec in April by two staff members from the Complaints Commission. In addition, Members and staff visited military bases in London, Toronto and Trenton, Ontario, where they also met with military police and other Canadian Forces personnel. As well, the Director of Operations for the Complaints Commission visited CFB Borden in Ontario on several occasions during the year. These visits were for the purpose of making a presentation on the Complaints Commission and its roles and responsibilities as part of advanced training for military police members who have attained the rank of Sergeant.



## ANNEX A – BIOGRAPHIES



### **Mr. Henry Kostuck – Member; Interim Chairperson**

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

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

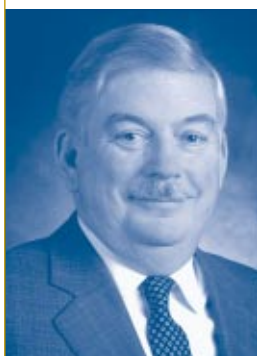
Mr. Kostuck was named Interim Chairperson of the Complaints Commission following the completion of Madame Louise Cobetto's five-year term in November 2004.



### **Mr. Odilon Emond – Member**

Mr. Emond, of Lac Mégantic, Québec, brings the benefit of more than 35 years' experience in police work to the Complaints Commission. Mr. Emond began his career with the Sherbrooke Police Department in 1963, joining the Royal Canadian Mounted Police in 1975.

During his 23 years with Canada's national police service, Mr. Emond served in a number of senior positions including Head, Police Division with Interpol; Director, Criminal Intelligence Directorate; Director, International Liaison and Protective Operations Directorate, and Assistant Commissioner and Commanding Officer "C" Division (Province of Québec). Mr. Emond retired from the Royal Canadian Mounted Police in 1998.



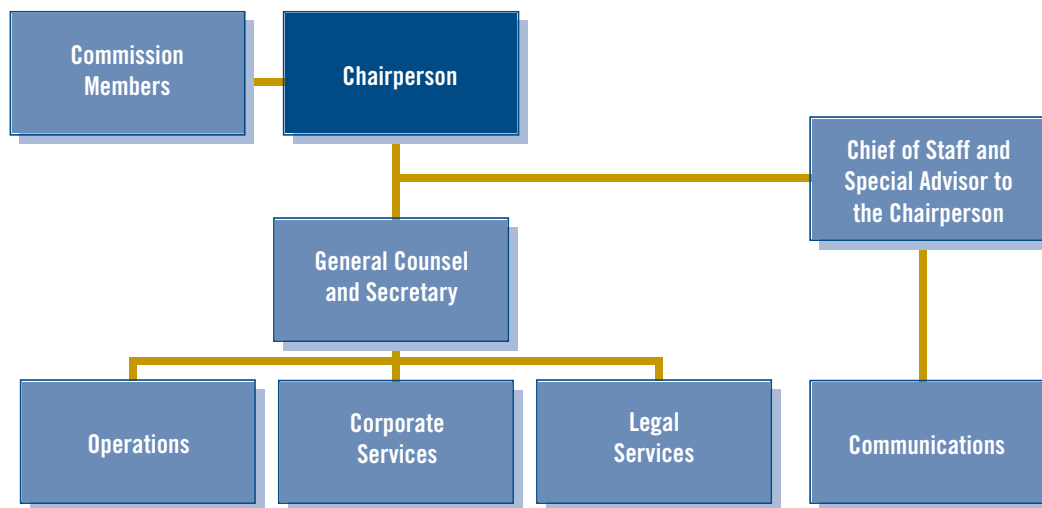
### **Mr. Peter Seheult – Member**

Mr. Seheult practises law in Grand Falls, New Brunswick. He was a member of the New Brunswick Police Commission from 1995 to 2000, including two years as Chairperson.

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

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

## ANNEX B – ORGANIZATIONAL CHART



## ANNEX C – FINANCIAL SUMMARY

### Actual Use of Budget Allocation – 1

(in thousands of dollars)

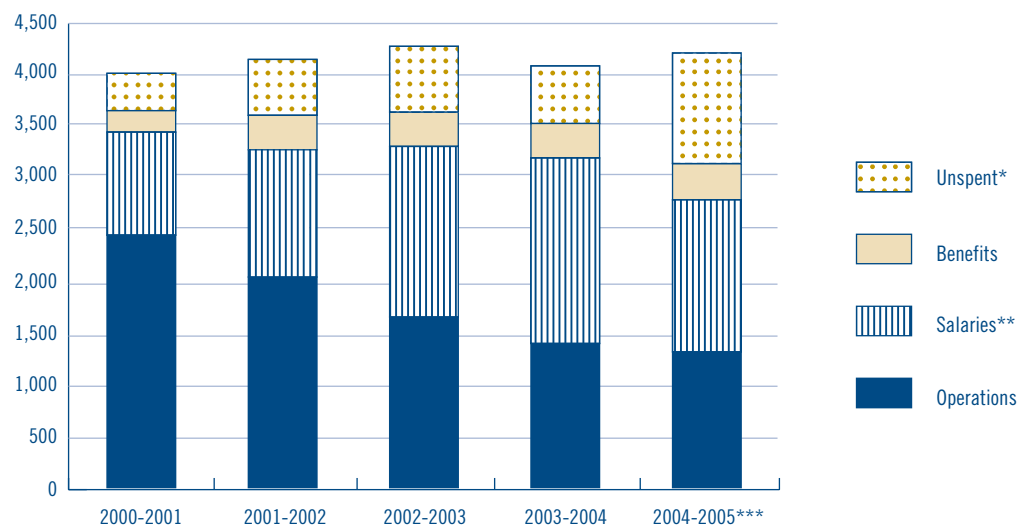
| Fiscal Year | Operations | Salaries | Benefits | Total Spending | Budget Allocation | Unspent* |
|-------------|------------|----------|----------|----------------|-------------------|----------|
| 2000-2001   | 2,465      | 1,000    | 195      | 3,660          | 4,010             | 350      |
| 2001-2002   | 2,036      | 1,250    | 348      | 3,635          | 4,176             | 541      |
| 2002-2003   | 1,654      | 1,655    | 332      | 3,642          | 4,278             | 636      |
| 2003-2004   | 1,380      | 1,831    | 334      | 3,566          | 4,126             | 560      |
| 2004-2005** | 1,302      | 1,494    | 354      | 3,150          | 4,211             | 1,061    |

\* Returned to federal treasury

\*\* Planned spending

### Actual Use of Budget Allocation – 2

(in thousands of dollars)



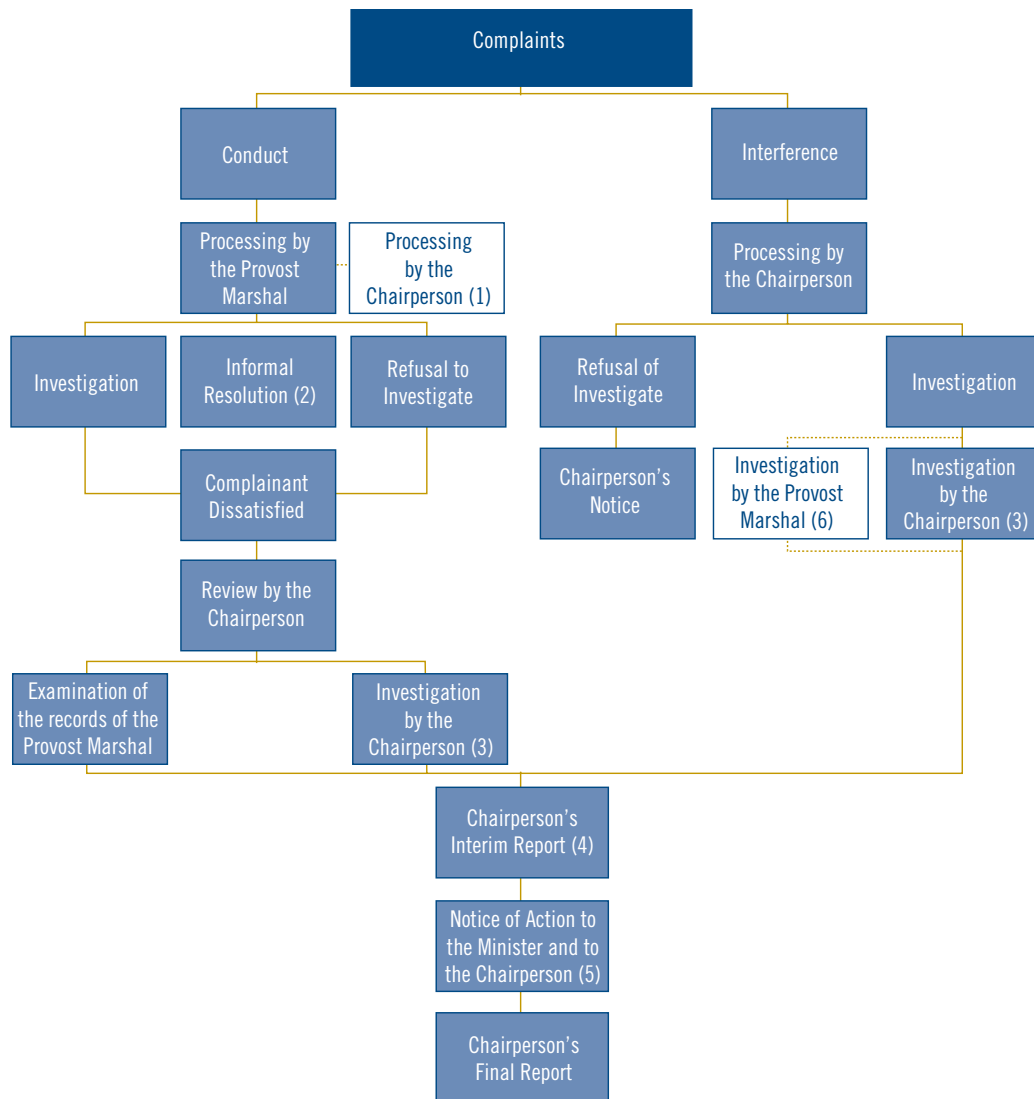
\* Returned to federal treasury

\*\* Initially, largely temporary help, paid from the operations budget, staffed the Complaints Commission. As employees gradually filled these temporary positions, the salary and benefits budgets grew, with a corresponding decrease in operational expenses.

\*\*\* Planned spending

**NOTE:** Financial details for the 1999-2000 fiscal year are not included here. As the Complaints Commission was operational for only four months during that period, the figures are not useful for purposes of comparison.

## ANNEX D – COMPLAINTS PROCESS (CHART)



- (1) At any time, in the public interest, the Chairperson may take over a complaint and cause the Complaints Commission to conduct an investigation (section 250.38).
- (2) Does not apply to a conduct complaint of the type specified in regulations of the Governor in Council.
- (3) In the public interest, the Chairperson may cause the Complaints Commission to conduct an investigation and, if warranted, hold a hearing (section 250.38).
- (4) In the case of a hearing, the interim report is prepared by the Complaints Commission.
- (5) According to the nature of the complaint, the status or the rank of the subject of the complaint, the person who provides the notice could be the Provost Marshal, the Chief of the Defence Staff, the Deputy Minister or the Minister (section 250.49 and 250.5)
- (6) Exceptionally, the Chairperson may ask the Provost Marshal to investigate.

## ANNEX E – CASE STATISTICS

|  | 2000 | 2001 | 2002 | 2003 | 2004 | TOTAL |
|--|------|------|------|------|------|-------|
| Conduct complaints monitored   | 55   | 64   | 65   | 34   | 46   | 264   |
| Number of interference complaints  | 1    | 1    | 2    | ∅    | 2    | 6     |
| Number of reviews  | 1    | 10   | 6    | 2    | 8    | 27    |
| Number of s.250.38 public interest investigations / hearings                                   | 2    | 2    | 2    | ∅    | 2    | 8     |
| Number of general files open ( <i>request for information / outside jurisdiction of MPCC</i> ) | 23   | 17   | 29   | 28   | 14   | 111   |
| Documentation / Material requested as per s. 250.25  |      |      |      | * 2  |      |       |
| Number of files opened   | 82   | 94   | 104  | 64   | 72   | 416   |
| Number of interim reports  | 1    | 5    | 15   | 4    | 4    | 29    |
| Number of final reports  | N/A  | 3    | 16   | 5    | 2    | 26    |
| Number of Findings   | N/A  | 33   | 180  | 207  | 131  | 551   |
| Number of Recommendations  | N/A  | 8    | 60   | 46   | 36   | 150   |
| Number of letters of observations as per s. 250.25   |      |      |      | 2    |      | 2     |
| Number of observations as per s. 250.25  |      |      |      | 9    |      | 9     |

\* The total for files opened in 2003 does not reflect these two requests, as these files were already open.



### Allegations of misconduct by policing duties and functions\*

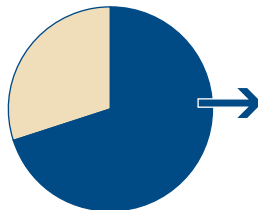
|  |    |
|--|----|
| a) the conduct of an investigation:                        | 36 |
| b) the rendering of assistance to the public:              | 14 |
| c) the execution of a warrant or another judicial process: | 10 |
| d) the handling of evidence:                               | 13 |
| e) the laying of a charge:                                 | 6  |
| f) attendance at a judicial proceeding:                    | 0  |
| g) the enforcement of laws:                                | 25 |
| h) responding to a complaint:                              | 3  |
| i) the arrest or custody of a person:                      | 14 |

\* As set out in the *Complaints About the Conduct of Military Police Regulations*

|   |     |
|---|-----|
| Correspondence received from Deputy Provost Marshal Professional Standards: | 313 |
| Correspondence received from complainants:                                  | 41  |
| Correspondence from others:   | 126 |
| Letters sent:   | 893 |

### Chairperson's Recommendations 1999-2004

-  70% of the Chairperson's recommendations have been accepted
-  30% of the Chairperson's recommendations were not accepted





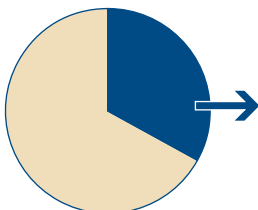
As a result:

- 62% of the accepted Chairperson's recommendations have been implemented, and
- 38% of the Chairperson's recommendations are pending\*

\* The balance of the accepted recommendations may have been implemented; however, to date the Complaints Commission has not received confirmation and is unable to verify.

### Chairperson's Recommendations 2004

-  33% of the Chairperson's recommendations have been accepted
-  67% of the Chairperson's recommendations were not accepted



As a result:

- 67% of the accepted Chairperson's recommendations have been implemented, and
- 33% of the Chairperson's recommendations are pending\*

\* The balance of the accepted recommendations may have been implemented; however, to date the Complaints Commission has not received confirmation and is unable to verify.