



February 20, 2008

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**Our File: MPCC-2007-003 (Public Interest Investigation)
Professor Amir Attaran**

Gentlemen:

As you are aware, it has now been a little over a year since the military police (MP) conduct complaint in the captionally-noted file was submitted pursuant to section 250.18 of the *National Defence Act* (NDA). You will recall of course that this complaint concerned the possible acts or omissions of unnamed MPs serving with the Canadian Joint Task Force Afghanistan in respect of three Afghan detainees who may have sustained injuries while in Canadian Forces (CF) custody in early April 2006.

As required by statute, this office has been providing you with monthly reports advising of the status of our ongoing investigation in respect of these matters. These letters have briefly indicated the ongoing investigative steps which are in progress. At this stage, however, the Commission is obliged by the legislation to further explain why its investigation has not been completed. Therefore, subject to the need to protect the integrity of our ongoing investigation, the Commission will in this report provide a more detailed account of our activities to date and of our prospects for completion of our investigation within a reasonable further period of time.

Upon receipt of this complaint, the first matter to be addressed was the complainant's request that the Commission Chair exercise jurisdiction under section 250.38 of the NDA and launch an immediate investigation of the complaint in the public interest, including the holding of public hearings. The

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typical procedure stipulated by the NDA for MP conduct complaints calls for them to be referred to the CF Provost Marshal for investigation in the first instance, subject to the possibility of subsequent review by the Commission at the request of the complainant. After communicating with other stakeholders (the CF Provost Marshal and the Chief of the Defence Staff), you will recall that the Chair decided to exercise the authority to launch an immediate Commission investigation in the public interest, given the seriousness of the allegations, among other considerations. However, the Chair was not persuaded that public hearings would produce any better or more timely results to justify the additional time and expense which such proceedings inevitably entail. The Chair continues to be of this view at this time, although this option will continue to be reviewed as circumstances warrant.

The Commission has, therefore, proceeded with this complaint through the mechanism of a public interest investigation. The main components of this process have been: the gathering of relevant documents and other information from the Department of National Defence (DND); the researching of relevant issues of law, policies and procedures; and the interviewing of relevant witnesses. While these processes are still ongoing, it can now be reported that considerable progress has been made in all areas.

As has been noted in previous communications, the manner in which the Commission has conducted this investigation has been affected by concurrent investigations by other authorities into matters related to this complaint. You will recall that, after being made aware of this complaint, the CF Provost Marshal directed that the CF National Investigation Service (NIS) conduct a criminal investigation (including potential NDA service offences as well as *Criminal Code* offences as such) into the incident. This investigation is still ongoing.

The NIS investigation has had a considerable impact on the Commission's conduct of this investigation. To avoid the tainting of witnesses' evidence or the premature disclosure of NIS information, for instance, it has been necessary for the Commission to hold off on interviews with witnesses until the NIS has interviewed them. As a result, the Commission's investigative team was not able to start conducting witness interviews in significant numbers until November of last year.

To a great extent, therefore, the Commission's progress on this file has been dependent upon the progress of the NIS investigation. It should be noted that the NIS investigation is addressing the detainees' treatment throughout their time in CF custody – that is, both the period from their initial apprehension until their transfer to MP custody, as well as their treatment while in MP custody – and furthermore, that most witnesses of interest to the Commission naturally relate to this latter phase of the NIS investigation.

In analogous circumstances, where the respective investigative mandates of a law enforcement agency and an administrative body are both triggered, the latter will typically be expected to postpone its investigation altogether pending the former's discharge of its mandate. However, the Commission felt that this approach did not give sufficient weight to the public interest in an examination of this incident from the broader systemic perspective which is an essential part of the Commission's mandate. Therefore, less than a month after receiving this complaint, the Commission developed with the NIS an innovative protocol which, through the coordination of witness interviews and the sharing of information, has enabled the Commission to make meaningful progress on its public interest investigation even while the NIS criminal investigation has been underway.

Thus, while the Commission would have preferred to move more rapidly in respect of this complaint, it is essential for the Commission to respect the primacy of the NIS's law enforcement mandate. At the same time, the Commission has taken steps to ensure that its own investigation could progress responsibly in the meantime and would benefit as much as possible from the NIS investigation.

While the Commission is still awaiting the production of some documents from the relevant CF authorities, and further witness interviews are still pending, the Commission's investigative team has to date obtained and reviewed over 2,500 pages of documentation, reviewed the transcripts of 27 witness interviews from the NIS investigation, and conducted 23 witness interviews of its own, both in Ottawa and at locations throughout Canada. As a result of these efforts, the Commission has gained a fairly clear picture of the events related to the handling of the three Afghan detainees of concern who passed through CF MP custody at Kandahar Air Field on April 7-8, 2006.

While the completion of the NIS investigation will facilitate the Commission's completion of its investigation, the Commission will still have some further work to do at that time. Although the NIS and Commission investigations do overlap, they are not identical. For one thing, the Commission's examination and assessment of MP conduct will address applicable professional standards for military policing in addition to those legal obligations which could support criminal or service offence liability. Furthermore, as mentioned above, the Commission also has a broader mandate to examine possible systemic deficiencies and remedies.

However, as things presently stand, the Commission expects to be able to complete its investigation and submit its report with findings and any recommendations to the relevant DND officials in accordance with section 250.39 of the NDA (i.e., the Minister, Judge Advocate General and CF Provost Marshal) by late spring or summer of this year. Once the CF Provost Marshal provides the Commission with a Notice of Action responding to the Commission's findings

and recommendations, then the Commission will proceed to issue its final report, a copy of which will also be provided to the complainant and any subjects of the complaint. Consistent with its practice to date in respect of public interest complaints, the Commission will also publish its final report on its website.

Notwithstanding the necessary limitations on the amount of detail that can be properly disclosed at this time, I hope that you find this report to be helpful. The Commission will endeavour to apprise you of any developments likely to affect the anticipated timetable for completion of this investigation. In the meantime, you will continue to receive our regular reports outlining the status of this complaint every 30 days.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julianne C. Dunbar". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Julianne C. Dunbar
General Counsel