



## **BILL C-45 AMENDMENTS TO THE NATIONAL DEFENCE ACT: IMPLICATIONS FOR INDEPENDENT OVERSIGHT OF MILITARY POLICING**

### **Overview**

Bill C-45 reintroduces many of the proposed legislative changes contained in Bill C-7.

However, amendments in Bill C-7 which would have most directly impaired the Commission's ability to perform its intended oversight role have not been retained in the new bill. Those provisions would have:

- Effectively eliminated MPCC's jurisdiction to intervene in the public interest;
- Rendered MPCC's monitoring function purposeless;
- Limited MPCC access to military police files;
- Denied MPCC access to information regarding informally resolved complaints;
- and
- Denied MPCC access to information subject to privilege.

The MPCC is pleased that these proposed changes have been left out of this bill, however, in the Commission's view, there are further desirable improvements to the proposed legislation.

### **Significant Concern: Authorized Interference by VCDS**

Most significantly, the Commission is concerned that the authority proposed to be conferred on the Vice Chief of the Defence Staff in clause 3 (subsection 18.5(3)), to issue instructions or guidelines in respect of particular military police investigations, would amount to legislatively authorized interference:

- Is in direct contradiction to the existing Part IV provisions relating to interference.
- Not recommended by the Lamer Review.
- No parallel in civilian policing and is contrary to existing norms.

### **Missed Opportunities to Improve Oversight**

In addition, the bill ignores opportunities for strengthening oversight of military policing which the Commission put forward in its "Brief to the Standing Committee on National Defence on Bill C-7" in May 2006.

In that brief, the Commission outlined a number of specific amendments which would have significantly improved the legislation in respect of military policing oversight. These proposals included amendments which would:

- Provide a right to request a review by MPCC to subjects of complaints.
- Extend independent oversight to all who perform military police duties in the Canadian Forces.
- Allow anyone, on reasonable grounds, to file an interference complaint.
- Enhance MPCC's access to relevant information needed to do its job by:
  - providing a subpoena power for MPCC public interest investigations;
  - imposing a duty to cooperate with MPCC investigations on CF members and DND employees; and
  - requiring the CF Provost Marshal to produce to MPCC all information and materials relevant to a complaint.
- Require MPCC notification and approval of terms of informal complaint resolutions by the CF Provost Marshal.
- Define military police duties subject to oversight in the Act instead of the regulations.

### **Inconsistencies in French and English Versions of Part IV Remain**

Finally, the Commission also remains concerned about a number of inconsistencies between the French and English versions of NDA Part IV. A few have been addressed in Bill C-45, but a number of others remain outstanding. The Commission has identified the various linguistic inconsistencies in a document which it prepared for the First Independent Review of the legislation. Such inconsistencies in meaning can give rise to significant obstacles to implementing the will of Parliament.