



Military Police
Complaints Commission
of Canada

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



STRIKING A BALANCE

ANNUAL REPORT

— 2016 —



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LETTER OF TRANSMISSION TO THE MINISTER

March 31, 2017

The Honourable Harjit Sajjan, P.C., M.P.
Minister of National Defence
National Defence Headquarters
Major-General George R. Pearkes Building
Ottawa, Ontario K1A 0K2

Dear Minister:

In accordance with subsection 250.17(1) of the *National Defence Act*, it is my duty and privilege to submit, for tabling in Parliament, the Military Police Complaints Commission of Canada's *2016 Annual Report*.

In this annual report, you will find a detailed discussion of all significant aspects of the Military Police Complaints Commission of Canada's activities during 2016, including summaries of some of its reviews and investigations of complaints.

All of which is respectfully submitted.

Yours truly,

A handwritten signature in blue ink, reading "Hilary C. McCormack".

Hilary C. McCormack, LL.B.
Fellow Litigation Counsel of America
Chairperson

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CHAIRPERSON'S MESSAGE

It brings me great pleasure to present the Military Police Complaints Commission of Canada's 2016 Annual Report. Since its founding in 1999, the Military Police Complaints Commission of Canada (MPCC) has been steadfast in carrying out its mandate to provide independent civilian oversight of the Canadian Armed Forces (CAF) Military Police.

This year's annual report provides an overview of some of the operational, corporate and policy developments that the MPCC has achieved this past year. It also includes several case summaries that illustrate the types of specific and systemic issues the MPCC investigates each year.

The theme of this year's annual report is 'Striking a Balance'.

In fulfillment of our mandate, close professional collaboration with our colleagues in the Office of the Canadian Forces Provost Marshal (CFPM) needs to be balanced with our need to preserve our independent and impartial judgment and discretion in making oversight decisions in our various complaint files. Naturally, we want to make sure we serve the needs of the Canadian Forces Military Police Group in providing oversight that is meaningful and sensitive to their particular operational needs and unique context. But we are also ever mindful of our duty to promote Military Police (MP) accountability in the broader public interest of Canadians.



In our treatment of complaints, we must balance our understanding and sensitivity of the duties and challenges which confront MPs in all manner of situations, with the reasonable expectations of informed citizens, military and civilians alike, whom they serve and protect. In our work, we must be informed in equal measure by our knowledge of the particular exigencies of military policing as well as by our understanding of how MP actions and services are perceived, experienced, and understood by the broader CAF community and the general public.

Finally, in reiterating our recommendation from last year about our need for robust and secure access to all relevant information in our review and investigation of complaints, including sensitive military and national security information when necessary, we are seeking to appropriately balance our comparatively modest oversight authority with a robust ability to access information such that the credibility and integrity of our oversight regime serves to meaningfully support and sustain public confidence in Canadian military policing into the future.

'Striking a balance' applies equally to the work we do here at the MPCC and to our partners who share with us a commitment to the highest standards of professional excellence. It is a theme that also resonates with the Government of Canada's focus on mental wellness in the workplace, as employees strive to 'strike a balance' between the demands of their professional and personal lives.

In keeping with the announcement of the federal government's workplace mental health strategy, the MPCC created its own action plan to continuously improve how mental health issues are managed and to promote employee well-being in our workplace. Guest speakers at an all staff awareness training session held on November 10, 2016 stressed the important role communication plays in reducing the stigma so often associated with mental illness.

The MPCC cannot carry out its mandate or meet its commitment to the timely resolution of complaints without the cooperation of our colleagues in the military, particularly the Military Police and its leader, the Canadian Forces Provost Marshal. We are of course dependent on the timeliness of the disclosure from the CFPM to the MPCC to ensure a timely investigation and response.

In particular, timeliness has often been an issue when dealing with complex complaints. In the past year, MPCC staff and I completed a comprehensive internal review of our complaint process. Our goal is to conduct quality investigations and produce quality reports in a timely manner. We believe the changes we have made to streamline internal procedures in the complaint process will allow us to resolve complaints in substantially less time than in the past.

In an ongoing effort to strengthen and maintain positive, productive relationships, I have met this past year with the Canadian Forces Provost Marshal, Brigadier-General Robert Delaney; the Judge Advocate General, Major-General Blaise Cathcart; and the Minister of National Defence, the Honourable Harjit Sajjan.

Rear-Admiral Jennifer Bennett, the Director General of the CAF's Strategic Response Team on Sexual Misconduct and Glynnis French, the Executive Director of the Sexual Misconduct Response Centre, were invited to provide staff with a presentation of the mandate in dealing with sexual misconduct in the Canadian Forces as part of Operation HONOUR, and progress to date. Their comprehensive presentation was an excellent overview of the work they are doing as part of the Chief of Defence Staff Lieutenant-General Jonathan Vance's response to the External Review into Sexual Misconduct and Sexual Harassment in the Armed Forces.

As the caseload statistics show, it has been a busy twelve months for our staff. The MPCC opened 104 new case files and issued 12 interim reports and 14 final reports. The Office of the Canadian Forces Provost Marshal accepted 95% of the MPCC's recommendations made in the Commission reports, most of which focused on training, operational procedures and supervisory practices.

The MPCC's reputation as a respected civilian oversight body has garnered international interest. I recently had the pleasure of meeting with a senior civil servant from the United Kingdom (UK)'s Ministry of Defence who was interested in learning more about the MPCC model. An amendment to the UK's Policing and Crime Bill has been proposed which would create an oversight body for the military police. We will follow the debate with interest.

As my first full year as Chairperson of the MPCC draws to a close, I want to take the opportunity to emphasize the MPCC's commitment to members of the Canadian Armed Forces, the Military Police, the Canadian Forces Provost Marshal and all Canadians to continue to provide civilian oversight in a manner that is fair, transparent and balanced.

I want to sincerely thank Commission Members, Michel Séguin and Troy DeSouza for their support and hard work. I also wish to give a special acknowledgement to the MPCC staff. Their professionalism, tireless dedication, superb attention to detail and commitment to the highest professional standards is truly admirable and inspiring. I am proud to be a member of this team.

We look forward to meeting the challenges 2017 will undoubtedly bring.



Hilary C. McCormack, LL.B.
Fellow Litigation Counsel of America
Chairperson



MILITARY POLICE COMPLAINTS COMMISSION
OF CANADA 2016 ANNUAL REPORT

PART 1 – OVERVIEW



I MILITARY POLICE COMPLAINTS COMMISSION OF CANADA

The Military Police Complaints Commission of Canada (MPCC) was established on December 1, 1999 by the Government of Canada to provide independent civilian oversight of the Canadian Forces Military Police. This was achieved through an amendment to the *National Defence Act* (NDA) creating a new Part IV, which sets out the mandate of the MPCC and how complaints are to be handled. As stated in Issue Paper No. 8, which accompanied the Bill that created the MPCC, its role is “...to provide for greater public accountability by the military police and the chain of command in relation to military police investigations.”

II MANDATE AND MISSION

Mandate: The MPCC reviews and investigates complaints concerning Military Police conduct and investigates allegations of interference in Military Police investigations. The MPCC reports its findings and makes recommendations directly to the Military Police and National Defence leadership.

Mission: To promote and ensure the highest standards of conduct of Military Police in the performance of policing duties and to discourage interference in any Military Police investigation.

The MPCC fulfils its mandate and mission by exercising the following responsibilities:

- Monitoring investigations by the Canadian Forces Provost Marshal (CFPM) of Military Police conduct complaints;
- Reviewing the disposition of conduct complaints at the request of the complainant;
- Investigating complaints of interference; and
- Conducting public interest investigations and hearings.

III ORGANIZATIONAL BACKGROUND

The MPCC is one of 12 organizations in the Defence Portfolio. While it reports to Parliament through the Minister of National Defence (MND), the MPCC is both administratively and legally independent from the Department of National Defence (DND) and the Canadian Armed Forces (CAF). The MPCC is not subject to direction from the MND in respect of its operational mandate.

The MPCC is an independent federal government institution as defined under Schedule I.1 of the *Financial Administration Act* (FAA). As an independent oversight agency, the MPCC must operate at a distance and with a degree of autonomy from government, including the DND and the CAF. The MPCC Commission Members and employees are civilians and are independent of the DND and the CAF in fulfilling their responsibilities and accountabilities in accordance with governing legislation, regulations and policies.

Tribunal decisions and MPCC operations and administration must also be, and be seen to be, free from ministerial influence, other than seeking the signature of the MND as the Minister responsible for routine tabling of the MPCC's Reports on Plans and Priorities, Departmental Performance Reports, Annual Reports to Parliament, and other accountability documents such as Memoranda to Cabinet and Treasury Board submissions.

The Chairperson, as Chief Executive Officer (CEO) of the MPCC, is accountable for all MPCC activities and for the achievement of results. Based on the *Terms and Conditions of Employment for Full-Time Governor in Council Appointees*, the Chairperson is CEO, statutory deputy head or Deputy Head, as defined by the FAA and as designated through the Governor in Council.

As Deputy Head, the Chairperson is accountable to Parliament for fulfilling management responsibilities, including financial management. This includes accountability for allocating resources to deliver MPCC programs and services in compliance with governing legislation; regulations and policies; exercising authority for human resources as delegated by the Public Service Commission; maintaining effective systems of internal controls; signing accounts in a manner that accurately reflects the financial position of the MPCC and exercising any and all other duties prescribed by legislation, regulations or policies relating to the administration of the MPCC.

IV THE CANADIAN FORCES PROVOST MARSHAL AND THE DEPUTY COMMANDER, CANADIAN FORCES MILITARY POLICE GROUP/ PROFESSIONAL STANDARDS

On April 1, 2011, the CFPM assumed full command of all MP members who are directly involved in policing. The CFPM also assigns MP resources to other supported commanders under operational command.

The Deputy Commander of the Canadian Forces Military Police Group (CF MP Gp) manages public complaints and internal MP misconduct investigations and ensures adherence to the *Military Police Professional Code of Conduct*.

The CFPM is the first to respond to complaints about MP conduct. The MPCC has the authority to monitor the actions taken by the CFPM as it responds to complaints, and to conduct its own reviews and investigations as required. The MPCC has the exclusive authority to deal with interference complaints.

The MPCC's recommendations, contained in its Interim and Final Reports, are not binding on the CAF and the DND. However, such recommendations do provide the Military Police with the opportunity to improve its operations and further enhance transparency and accountability.

Detailed information about the conduct and interference complaints processes are set out in sub-sections vi) and vii).

V THE MILITARY POLICE

The CAF MP Branch was formed in 1968 with the unification of the CAF MP members were allocated to the Army, Navy and Air Force. The stated Mission of the CAF MP is to contribute to the effectiveness and readiness of the CAF and the DND through the provision of professional police, security and operational support services worldwide.

The MP Branch is comprised of 1785 personnel: 366 reservists and 1,419 sworn, credentialed members (officers and non-commissioned members). Credentialed members are those members who are entitled to be in possession of an MP badge and identification card and thus are peace officers by virtue of article 22.02 of the *Queen's Regulations and Orders*, s. 156 of the NDA and s. 2 of the *Criminal Code of Canada*.

The MP exercise jurisdiction within the CAF over both DND employees and civilians on DND property. The MP form an integral part of the military justice system in much the same way as civilian police act within the civilian criminal justice system. MP routinely train and work with their civilian counterparts in the provision of police and security services to the CAF and the DND.

Members of the Military Police are granted certain powers under the NDA in order to fulfill their policing duties. For example, Military Police members have the power to arrest, detain and search. The *Criminal Code* recognizes members of the MP as peace officers. Therefore, they can make arrests and lay charges in civilian criminal courts. Additionally, MP members posted to the Canadian Forces National Investigation Service (CFNIS) can also lay charges under the NDA's *Code of Service Discipline*.

VI CONDUCT COMPLAINTS PROCESS

Conduct Complaint Filed

Anyone may make a conduct complaint regarding the MP in the performance of their policing duties or functions, including individuals not directly affected by the subject matter of the complaint. Such complaints are initially dealt with by the CFPM. Informal resolution is encouraged.

Complaint Investigated by the CFPM

As the CFPM investigates a complaint, the MPCC monitors the process. At the conclusion of the investigation, the CFPM provides a copy of its final disposition of the complaint to the MPCC. The MPCC may, at any time during the CFPM investigation, assume responsibility for the investigation or call a public hearing if it is deemed to be in the public interest (see section viii below).

Request for Review

Complainants may request the MPCC review the complaint if they are not satisfied with the results of the CFPM's investigation or disposition of the complaint.

MPCC Reviews Complaint

At a minimum, this process involves a review of documentation related to the CFPM's investigation. Often, it also includes interviews with the complainant, the subject(s) of the complaint, and witnesses, as well as consideration of relevant legislation, and military and civilian police policies, procedures and best practices.

MPCC Releases Interim Report

At the completion of the review, the Chairperson sends the Interim Report to the MND, the Chief of the Defence Staff (CDS) and the CFPM, setting out the MPCC's findings and recommendations regarding the complaint.

Notice of Action

The Notice of Action is the official response by the CAF to the Interim Report. It outlines what action, if any, has been or will be taken in response to the MPCC's recommendations.

MPCC Releases Final Report

After considering the Notice of Action, the MPCC issues a Final Report of findings and recommendations. The Final Report is provided to the MND, the Deputy Minister (DM), the CDS, the Judge Advocate General (JAG), the CFPM, the complainant(s) and the subject(s) of the complaint, as well as anyone who has satisfied the MPCC that they have a substantial and direct interest in the case.

How the MPCC carries out its reviews and investigations of conduct complaints

In response to a request from a complainant for a review, the MPCC follows the steps described below:

- The MPCC conducts a preliminary review of the complaint and the related Military Police (MP) files and records, which the Canadian Forces Provost Marshal (CFPM) is obligated to provide, in order to determine how to respond to the request for review; including, whether an investigation is required, the scope of the investigation warranted and how to approach the investigation. The Chairperson may also delegate a Commission Member to handle the file.
- A lead investigator is assigned and, with MPCC legal counsel, reviews the evidence and other materials gathered during the CFPM's investigation of the complaint. This could be hundreds of pages of documents, emails, handwritten notes and reports, and many hours of witness audio and video recordings.

- The lead investigator, in consultation with the assigned legal counsel, prepares an Investigative Assessment (IA) for consideration and approval by the Chairperson or delegated Commission Member. The IA is a report summarizing all the available evidence, and identifying any further lines of inquiry which may be necessary in order to conclude the review of the complaint: further documents or records to be obtained; research on issues of law, MP policy or policing best practices; or witness interviews. Where further investigation is deemed appropriate, the IA will also include timeline and budget estimates which must also be approved by the Chairperson or the delegated Commission Member.
- If the IA, as approved by the Chairperson or delegated Commission Member, indicates that there is sufficient information to decide the complaint, either with or without further records and/or research, the Chairperson or delegated Commission Member, with the assistance of legal counsel, will proceed to prepare the Interim Report, containing the MPCC's findings and recommendations regarding the complaint.
- If the Chairperson or delegated Commission Member determines that witness interviews are required in order to decide the complaint, the assigned investigator(s) will proceed to conduct the interviews. The additional information obtained from these interviews will be summarized and added to the IA to produce an Investigation Report (IR). Once the IR is completed to the satisfaction of the Chairperson or delegated Member, the MPCC will then proceed to the preparation of the Interim Report.
- As described in the previous section, the Interim Report is provided to the Minister of National Defence (MND), the Chief of the Defence Staff (CDS) and the CFPM for an official response in the form of a Notice of Action. The Notice of Action will be considered in the MPCC's Final Report, which will be sent to the parties to the complaint, the relevant departmental officials, as well as anyone who has satisfied the MPCC that they have a substantial and direct interest in the case.

VII INTERFERENCE COMPLAINTS PROCESS

Interference Complaint Filed

Any member of the MP who conducts or supervises investigations and believes a member of the CAF or a senior official of the DND has interfered with or attempted to influence an MP investigation may file a complaint with the MPCC.

MPCC Investigates

The MPCC has sole jurisdiction to investigate interference complaints. A preliminary review is conducted to determine whether an investigation should be commenced, the scope of the investigation and how to approach the investigation. Once this process is complete, the MPCC begins its investigation.

MPCC Releases Interim Report

The Interim Report includes a summary of the MPCC's investigation, as well as its findings and recommendations. This report is provided to the MND, the CDS, if the alleged interference was carried out by a member of the military, or to the Deputy Minister (DM) of National Defence, if the subject of the complaint is a senior official of the DND; and to the JAG and the CFPM.

Notice of Action

The Notice of Action is the official response to the Interim Report. It indicates the actions, if any, which have been or will be taken to implement the MPCC's recommendations.

MPCC Releases Final Report

Taking into account the response set out in the Notice of Action, the MPCC prepares a Final Report of its findings and recommendations in the case. The Final Report is provided to the MND, the DM, the CDS, the JAG, the CFPM, the complainant(s), and the subject(s) of the complaint, as well as anyone who has satisfied the MPCC that they have a substantial and direct interest in the case.

VIII PUBLIC INTEREST INVESTIGATIONS AND HEARINGS

At any time, if it is in the public interest, the Chairperson may initiate an investigation into a complaint about police conduct or interference in a police investigation. If warranted, the Chairperson may decide to hold a public interest hearing. In exercising this statutory discretion, the Chairperson considers a number of factors including, among others:

- Does the complaint involve allegations of serious misconduct?
- Do the issues have the potential to affect confidence in the MP or the complaints process?
- Does the complaint involve or raise questions about the integrity of senior military or DND officials, including senior MP members?
- Are the issues involved likely to have a significant impact on MP practices and procedures?
- Are the issues of broader public concern or importance?





1 At any time, if in the public interest, the Chairperson may take over a complaint and cause the Complaints Commission to conduct an investigation (section 250.38 of the NDA).

2 Does not apply to a conduct complaint of the type specified in the regulation.

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 of the NDA).

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 CFPM, the Chief of the Defence Staff, the Deputy Minister or the Minister (sections 250.49 and 250.5 of the NDA).

6 Exceptionally, the Chairperson may ask the CFPM to investigate.



MILITARY POLICE COMPLAINTS COMMISSION
OF CANADA 2016 ANNUAL REPORT

PART 2 –

THE YEAR IN REVIEW



MONITORING AND INVESTIGATIONS

The following table highlights the Military Police Complaints Commission of Canada (MPCC) statistics on a four-year comparative basis from 2013 to 2016. The table cannot fully report the increase in the complexity and scope of the types of complaints the MPCC handles, nor accurately predict when complex complaints will be referred.

STATISTICS FROM 2013 – 2016	2013	2014	2015	2016
Conduct Complaints Carried Over	31	26	31	41
New Conduct Complaints (A)	43	54	57	40
Interference Complaints Carried Over	3	3	7	3
New Interference Complaints	3	2	1	0
Reviews Carried Over	9	11	17	23
New Reviews	14	15	8	2
s.250.38 of the NDA Public Interest Investigations/Hearings Carried Over	1	1	1	1
New s.250.38 of the NDA Public Interest Investigations/Hearings	0	0	1	0
Judicial Proceedings Carried Over (e.g. Judicial Review)	0	1	0	0
New Judicial Proceedings (e.g. Judicial Review)	1	0	1	1
Other External Proceedings Carried Over	0	0	1	0
New Other External Proceedings	0	1	0	1
General Files Opened (Request for information, summary advice and other)	63	56	69	60
New Files Opened	124	128	137	104
Total Files Dealt With During the Year	168	170	194	172
Public Interest Decisions/Rulings Issued	0	0	1	0
Time Extension Decisions Issued	7	5	11	9
Interim Reports Issued	6	12	6	12
Final Reports Issued (B)	12	9	13	14
Recommendations on Final Reports	7	12	104 ¹	19
Percentage of Recommendations Accepted	86%	100%	36% ²	95%
Reports/Decisions/Rulings Issued	25	26	31	35

(A) Includes No Jurisdiction complaints/Ext. of Time Denied

(B) Includes Concluding Reports and No Jurisdiction letters

¹ 96 recommendations in one file.

² An unusually large proportion of the recommendations made by the MPCC during the reporting period – 96/112, or 86%, arises from one large case – a complex Public Interest Hearing (the Fynes PIH). In this case, a large number of the CFPM responses to the MPCC recommendations (70%) were framed in non-committal language, rather than in terms of a straightforward “accepted” or “not accepted”. In the circumstances of this case, the MPCC deemed these non-committal responses as not accepting of the associated recommendation. For all the other cases completed during the reporting period, 100% of MPCC recommendations were accepted.

II PUBLIC INTEREST INVESTIGATION INTO ANONYMOUS COMPLAINT (TREATMENT OF DETAINEES)

On November 4, 2015, Chairperson Hilary McCormack decided that the MPCC would conduct a Public Interest Investigation (PII) into an anonymous complaint relating to the alleged mistreatment of detainees in Afghanistan by the Military Police. This is the MPCC's 14th Public Interest Investigation, and the first to be launched based on allegations made in an anonymous complaint.

The complaint alleges that between December 2010 and January 2011, the Commanding Officer of the Military Police Company stationed at Kandahar Airfield, Afghanistan conducted exercises at the Detainee Transfer Facility in order to “terrorize” the detainees. According to the complaint, on at least one occasion, MP members entered the detainees’ cells in the middle of the night, carrying weapons and other police equipment, and pushed detainees against the wall and on the floor and applied arm locks. The complaint alleges the tension was so high after the previous two months that several detainees defecated and urinated on the spot.

The complaint alleges that the Canadian Forces National Investigation Service (CFNIS) conducted an investigation in order to bring serious charges against the MP Commanding Officer. Although the CFNIS has the independence and authority to lay charges, it is alleged that in this case, they did not do so. Instead, charges were allegedly provided to the CAF Task Force Commander who, according to the complainant, ignored them. The complainant further alleges that a lieutenant-colonel in the MP chain of command was subsequently tasked to conduct an investigation into the events. S/he complains that despite these various investigations, no court martial or charges resulted.

The MPCC Chairperson noted that the complaint letter reveals a perception that the matter may have been deliberately ignored or even “covered up”, and that the CFNIS members may have ceded their authority to lay charges. She also found that the comments of some of the individuals identified as “reference persons” in the letter further reveal a perception on the part of at least some of the members deployed to Kandahar Airfield at the time that the CFNIS investigation may have been improperly directed by “Ottawa” or influenced by concerns about the reputation of the MP or CAF in light of the public attention issues involving the treatment detainees can receive.

In making her decision to conduct a PII into this complaint, the Chairperson considered the nature and seriousness of the allegations, the need for an independent, public and transparent investigation process, and the measures taken by the complainant to protect his or her identity.

On January 14, 2016, the MPCC Chairperson co-delegated this file to MPCC Member Michel Séguin. As a result, the Chairperson and Member will be jointly conducting this Public Interest Investigation and preparing the Interim and Final Reports relating to this complaint.

On November 6, 2015, the MPCC had requested that the Military Police provide disclosure and all relevant materials in its possession. Follow up requests were sent in 2016, and discussions were held with the office of the Canadian Forces Provost Marshal (CFPM) regarding this matter. The MPCC began to receive disclosure of the materials relating to the CFNIS investigative files in June 2016. Further materials were received in late August 2016. Additional materials requested by the MPCC were also received in September and October 2016.

The materials, totaling over 3000 pages, were reviewed by the MPCC in order to inform its decision regarding the scope of the Public Interest Investigation and the MPCC's jurisdiction over each aspect of the complaint, as well as to identify the subjects of the complaint. The MPCC is now in the process of preparing its decision regarding MPCC jurisdiction and will be identifying and notifying the subjects when the decision is released.

During the year 2016, the MPCC has also assigned two investigators to assist with the conduct of this PII. The investigators have begun to review and analyze the materials and will be assisting the MPCC in determining whether additional documents are required, in identifying witnesses, in preparing an investigation plan for the PII and in conducting interviews with the witnesses.

III CONDUCT COMPLAINT – “MULTI-JURISDICTIONAL” REVIEW – SUDDEN DEATH INVESTIGATION

At the end of 2011, the MPCC received a request for a review of a complaint about the conduct of a Canadian Forces National Investigation Service (CFNIS) sudden death investigation conducted eight years previously. In late 2003, a young officer cadet attending the Royal Military College (RMC) inexplicably disappeared from his student residence and was found dead in a nearby river some three weeks later. As the body had washed onto land belonging to RMC, the CFNIS assumed jurisdiction over the death investigation. A post-mortem examination determined no specific cause of death, nor could it be determined whether the officer-cadet's death was the result of an accident, suicide or homicide.

Several months later, the Coroner directed the Ontario Provincial Police (OPP) to take over the death investigation. A second post-mortem examination by the Chief Forensic Pathologist for Ontario took place in Toronto in late 2004, but again the cause of death remained “unascertained”. A coroner's inquest was commenced in 2006, concluding in 2007. The jury returned with a verdict of cause of death as “Unascertained, Non-Natural Causes” and manner of death as “Undetermined”. The jury also returned ten recommendations concerning the processes used in death investigations.

Following continued questioning from the deceased's family, in late 2007, the CFPM asked the RCMP Office of Investigative Standards and Practices (RCMP OISP) to review the work of the CFNIS in the matter. Also, a CF Board of Inquiry (BOI) was convened in 2008. The BOI recommendations were sent to the CFPM in late 2009, and the RCMP OISP report was submitted in late 2010. A final joint briefing to the deceased's family was given by representatives of the OPP and CFNIS in mid-2011.

Following receipt of the request for review of the conduct complaint in December 2011 from the father of the deceased, the MPCC assigned two investigative counsel to review the vast amount of evidence and documentation generated by the various prior inquiries noted above. The complainant's eleven allegations were broken down into 24 separate allegations against five subject MP members of the CFNIS. Reviewing the more than 200,000 pages of material (including photos and documents), amounting to some 70 gigabytes of data, was an immense and time-consuming undertaking. Investigative counsel also conducted 39 witness interviews.

In its report on the complaint, the MPCC concluded that some allegations dealing with the proper gathering and preservation of evidence, as well as failing to properly implement a ‘major case management’ model, were substantiated. The rest of the allegations, dealing with such matters as wrongly taking jurisdiction over the investigation in the first place, undue focus on suicide as the cause of death, bias in favour of military interests, and poor communication with the family, were all found to be unsubstantiated. In total, there were 25 findings made; 18 of the allegations were unsubstantiated, 6 of the allegations were substantiated and one substantiated in part.

The CFPM agreed with and accepted all of the MPCC’s findings except for one which was accepted in part. The MPCC found the leader of the investigation team failed to ensure that a civilian agency’s identification officer adequately photographed or videotaped the body recovery scene. The CFPM accepted that the audio-visual documentation of the scene was inadequate; however, the CFPM would not have held the team leader solely responsible for this in the absence of an explanation from the civilian identification officer (who was deceased and thus unavailable to provide reasons for his actions).

The MPCC made five recommendations in its report (all accepted by the CFPM) relating to: the establishment of protocols with other police services aimed at enhancing the field experience for CFNIS investigators as well as the conduct of joint investigations; the review and, where necessary, the revision of MP orders and policies regarding the attendance of investigators at autopsies and maintaining the integrity of ‘crime scenes’, even when it is not evident that a crime had occurred; and, making briefings of families in death investigations more informal and interactive.

“The MPCC’s reputation as a respected civilian oversight body has garnered international interest”

– Hilary McCormack, Chairperson

IV OUTREACH

Meeting with Military and Departmental Counterparts

Meeting with the Minister of National Defence

On June 22, 2016, the MPCC Chairperson and General Counsel met with the Minister of National Defence, the Honourable Harjit Sajjan. In this introductory meeting, the MPCC’s mandate, roles, responsibilities as well as challenges were amongst subject of discussion.



Julian Blazeby, UK Ministry of Defence with Hilary McCormack, Chairperson

Meeting with a senior civil servant from the United Kingdom’s Ministry of Defence

On February 4, 2016, the MPCC Chairperson met with Julian Blazeby, a civil servant from the United Kingdom’s (UK) Ministry of Defence who was interested in learning more about the MPCC oversight model. An amendment to the UK’s Policing and Crime Bill has been proposed which would create an oversight body for the military police.



From Left to right – David Goetz (Senior Counsel), Julianne Dunbar (General Counsel), Hilary McCormack (Chairperson), BGen Robert Delaney (CFPM), LCol Brian Frei (Deputy Commander) and Cdr Peter Killaby (CFPM Legal Advisor)

Meeting with the Canadian Forces Provost Marshal

On September 26, 2016, the MPCC Chairperson, General Counsel and Senior Counsel met with the Canadian Forces Provost Marshal (CFPM) Brigadier-General (BGen) Delaney, Deputy Commander Lieutenant Colonel (LCol) Frei, and JAG lawyer Commander (Cdr) Killaby to discuss core mandate issues such as process, timeliness and how to enhance the complaints process. The MPCC is aiming to meet with the CFPM on a bi-annual basis to discuss issues of common interest. This meeting was in addition to on-going discussions to address file specific concerns between our respective offices.

Presentation from the Canadian Armed Forces Strategic Response Team – Sexual Misconduct

Former Supreme Court Justice and External Review Authority, Marie Deschamps conducted an external review on sexual misconduct and sexual harassment in the Canadian Armed Forces (CAF) and subsequently released her report on March 27, 2015. The report outlined the existence of “an underlying sexualized culture in the CAF that is hostile to women and LGBTQ members and conducive to more serious incidents of sexual harassment



RAAdm Jennifer Bennett and her team with MPCC Chairperson and staff

and assault.”³ She provided several recommendations to National Defence Leadership. As a direct result of the Deschamps report, the Chief of the Defence Staff released an Operational Order called Operation (Op) HONOUR. Op HONOUR, among other orders, called for the use of the CAF Strategic Response Team – Sexual Misconduct (CSRT-SM) to coordinate the development of policies, education, training, and additional member support.

On April 26, 2016, MPCC invited the CSRT-SM to provide staff with a presentation of its mandate in dealing with sexual misconduct in the Canadian Forces as part of Op HONOUR, and progress to date.



Commission Member Michel Séguin delivering outreach program

“Good presentation. The case studies helped provide better understanding of how the MPCC reviews complaints and develops recommendations”

– MP Academy participant

Visits to Canadian Armed Forces Locations across Canada

The MPCC’s outreach program is key to building relationships with the Military Police, the community they serve and the Canadian Armed Forces at large. The value of meeting people face-to-face cannot be overstated.

These annual visits to military locations across Canada are meant to increase awareness of the MPCC’s mandate and activities, build relationships with the client base and to respond to questions and concerns about the complaints process. The primary audiences are:

- members of the MP who may be directly affected by the process, whether as subjects, complainants or witnesses of conduct complaints or as complainants and witnesses in interference complaints;
- the military chain of command, which relies on the services of members of the MP to maintain military discipline, but cannot interfere with police investigations; and
- those who may interact with the MP because they live, work, or visit a CAF base. The MPCC’s connection to this group is often made through the executive directors and staff of the Military Family Resource Centre (MFRC) at each base.

The MPCC’s goal is to reach as many members of the military family as is possible, while respecting the operational realities of CAF bases and wings across the country.

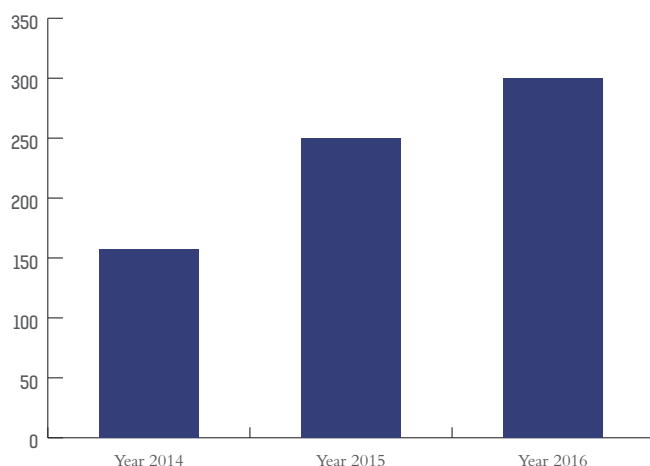
“Very informative. Thank you for the personal visit”

– Command Team participant

3 Marie Deschamps, C.C.Ad.E., External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces report, March 27, 2015.

The graph below shows an increase of 83% in attendance participation for the MPCC's outreach program over three years. This is partly due to the MPCC's efforts to target MP members while in training at the MP Academy.

Attendees per year (Bases & MP Academy)



In 2016, MPCC staff visited Saint-Jean Garrison and CFB Montréal; CFB Halifax, 12 Wing Shearwater, 14 Wing Greenwood, CFB Borden and the MP Academy.

The feedback provided by participants who attended the 2016 information sessions remained positive. Based on feedback, after each visit, the presentations are tailored on an ongoing basis to suit the needs of the various participants.

The MPCC greatly appreciates the efforts of the many individuals who organized, supported and participated in its outreach activities at the bases and the Canadian Forces Military Police Academy.

Military Police Academy

This year, the MPCC continued to make particular efforts to enhance its relationship with the Canadian Forces Military Police Academy. Discussions and meetings with the Commandant of the MP Academy have been fruitful and have assisted with the revitalization of the MPCC outreach presentations for the various levels of MP training courses. Throughout the year, MPCC counsel and Academy staff have continued to collaborate to maintain the MPCC enhanced presence in MP training courses and to assist the MPCC in developing presentations targeted to the specific duties and skills being taught in each course. The MPCC looks forward to continuing this interaction with MP Academy staff and students.

Canadian Association for Civilian Oversight of Law Enforcement (CACOLE)

CACOLE is a national, non-profit organization of individuals and agencies dedicated to advancing the concept, principles and application of civilian oversight of law enforcement organizations across Canada and abroad. CACOLE is recognized worldwide for its oversight leadership. The MPCC's Chairperson is a member of the CACOLE Board of Directors.

CACOLE's annual meeting was held this year in Saskatoon, Saskatchewan, May 8 – 11 and was well attended by MPCC staff. This year's theme was "Civilian Oversight: In An Evolving Future". Panel discussions focused on a wide range of topics, including Police Pursuits; Comparison and Concerns on Legal Decision Making Criteria for Oversight; Criminal Investigative Oversight and the Police; Citizens, Police and Mental Health; Comparative and International Perspectives; Management/Control of Crime Scenes; and Use of Force.

Canadian Bar Association (CBA)

The CBA is a professional, voluntary organization which represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practising lawyers in Canada belong to the CBA. Through the work of its sections, committees and task forces at both the national and branch levels, the CBA is seen as an important and objective voice on issues of significance to both the legal profession and the public. The MPCC's lawyers are members of various sections of the CBA such as Military, Administrative, Privacy and Criminal Law Sections. One of its lawyers serves as an executive member of the CBA's Criminal Justice Section.

Council of Canadian Administrative Tribunals (CCAT)

The CCAT is a national organization that supports the work of administrative tribunals and supports excellence in administrative justice. This year, the MPCC's Chairperson participated in the training course for CCAT adjudicators. In addition one of the MPCC lawyers attended the CCAT Annual Symposium and is a member of the Outreach Committee of this organization.

V COLLABORATION

COLLABORATION

Throughout the year, the MPCC has worked closely with the National Defence leadership, the Canadian Forces Provost Marshal (CFPM), the Military chain of command and the Military Police Community on a number of complex and challenging matters.

Progress on resolving outstanding issues between the MPCC and CFPM continued during 2016.

MPCC-CFPM Working Group

Established in 2015, the MPCC-CFPM Working Group is an MPCC initiative to establish an ongoing forum to discuss and clarify issues regarding disclosure of Military Police information to the MPCC – specifically regarding what categories of information may properly be exempt from disclosure to the MPCC (e.g. solicitor-client privilege) and how those categories are defined. In 2016, the Working Group met on a periodic basis and, along with productive discussions between the leadership of the MPCC and the CFMP Gp, greater common understanding of the key issues has already been achieved.

Update on MP Group Orders

On April 1, 2011, the Canadian Forces Military Police Group was created, bringing all members of the Military Police involved in policing directly under the command of the CFPM. A subsequent internal review of *MP Policies and Technical Procedures* (MPPTP), the standing directives on MPs' performance of policing duties and functions, led to the creation of the new *MP Group Orders*.

With the MPPTPs, the MPCC had been provided with direct access to the complete set of policies, as well as real time updates and modifications. With the conversion to the *MP Group Orders*, this access was discontinued and the MPCC was instead provided, on a case-by-case basis, with those orders the CFPM considered relevant to the complaint before the MPCC.

The MPCC found this arrangement to be unsatisfactory, and raised the issue a number of times with the CFPM and past Ministers of National Defence between 2013 and 2015. As reported in our previous Annual Report, the MPCC was advised, in August 2015, that access to the set of MP Group Orders would be provided. In March 2016, the MPCC and the CFPM signed a protocol setting out agreed terms and conditions of access, and so direct MPCC access to the standing directives for the performance of MP duties has now been fully restored.

VI IMPACT ON MILITARY POLICING – CASE SUMMARIES

The following section provides summaries of selected conduct and interference cases completed by the MPCC in 2016.

A. Conduct Complaint – Unfair Testimony at Bail Hearing

A few months prior to the complainant's deployment to Afghanistan, an incident occurred while the complainant was outside Canada for training that resulted in a sexual assault allegation against him. According to the foreign police detective investigating that case, he agreed to allow the complainant to return to Canada based on assurances from the complainant and his superior officer that the complainant would return to face charges should he be indicted in the matter.

However, the complainant was deployed to Afghanistan just a few days before the grand jury hearing in the foreign country that resulted in the complainant being indicted on a number of sexual assault related charges. Moreover, on the very day of the complainant's departure on deployment, Canadian Forces National Investigation Service (CFNIS) investigators met with him and sought to convince the complainant that he should remain in Canada pending the completion of the grand jury process, adding that, if he chose to deploy and was indicted, he would be arrested and returned to Canada from Afghanistan. The CFNIS members however advised the complainant that they had no authority or basis to order the complainant not to deploy at the time. The complainant felt that, as he had orders from his chain of command to deploy, and as neither the military police (MP) members, nor anyone in the chain of command, were issuing him with contrary orders, he should proceed to his deployment, which he then did. The complainant and members of his chain of command appeared to believe that any criminal proceedings against the complainant in a foreign country could be put on hold pending his five-month operational deployment.

After the complainant returned to Canada from his deployment, he was involved in an alleged incident of domestic violence resulting in him being criminally charged. The complainant was released on bail under a recognizance which, among other things, stipulated that he not consume alcohol.

A few weeks later, the complainant was arrested and charged in another alleged sexual assault incident. As the complainant had been drinking at the time of this incident, he was also charged with a breach of the outstanding recognizance from the earlier domestic assault charge. The complainant was remanded in custody pending a bail hearing.

The complainant's bail hearing on the Canadian sexual assault charges took place four months after his arrest. The complainant alleged that one or more MP members wrongly testified at this hearing that his decision to proceed on his deployment to Afghanistan while the foreign sexual assault case was ongoing was evidence that the complainant represented a 'flight risk'; and that this evidence led to the complainant being denied bail.

The MPCC appreciates the complainant's position that, in the absence of any judicial or military orders to the contrary, he should not be blamed for deploying on a mission in compliance with orders from his chain of command, especially given that the chain of command had at least some awareness of his outstanding foreign criminal proceedings.

Notwithstanding, the MPCC's investigation determined that, contrary to the complainant's recollections, court records indicated that no MP members testified at the complainant's bail hearing. The term 'flight risk' was not used in the proceeding. While the issue of the timing of the complainant's deployment relative to the outstanding criminal matters outside Canada was raised by the Crown prosecutor in her submissions, it was not a significant part of her representations to the court. Finally, the court's reasons for decision indicated that the deployment issue had little if any effect on the decision to deny bail.

Rather, the court was motivated by concerns about: the accumulation of charges against the complainant involving violence against women; the complainant's breach of his pre-existing recognizance by drinking; and concerns about the adequacy of the sureties proposed by the complainant. Also, the fact that the onus was on the complainant, and not the Crown, in the bail was an important factor.

As a result, the MPCC determined the complaint was not substantiated.

With a view to avoiding such situations in the future, the Commission recommended that the CFPM consider proposing that the chain of command check with the CF MP Gp as part of selection and screening for deployments.

In response to the MPCC's report, the CFPM accepted the MPCC's finding, but did not accept its recommendation. In the CFPM's view, the question of selection and screening for deployments is outside the purview of the MP, and by extension, is not a proper subject on which the Commission should make recommendations. In this instance, at least some members of the complainant's chain of command were aware of the pending foreign criminal proceedings against the complainant, but nonetheless approved his departure.

B. Conduct Complaint – Compromising A Suspect Interview

In 2012, an individual entered the Military Police (MP) Detachment on a Canadian Forces Base (CFB) looking for assistance because he had locked his keys in his vehicle. The MP members suspected the individual was impaired, and had reasons to believe he had been driving the vehicle. He failed a roadside test and was arrested and transported to a nearby Royal Canadian Mounted Police Detachment.

Two individuals who had been passengers in the vehicle were brought to the MP Detachment to be interviewed. Due to the contradictory information they provided about who was driving the vehicle and where the passengers were seated, the MP member who conducted the interviews began to suspect that one or both of the passengers were providing false information. After consultation with the Detachment Warrant Officer (WO), the MP member brought one of the passengers back to the interview room for a second interview. She confronted him with the contradictions and told him he could be charged with an offence for lying to the police. He eventually admitted he had lied and that the individual already arrested had in fact been driving the vehicle. No charges were laid against either of the two passengers. The impaired driving charges laid against the driver were later withdrawn by the Crown Attorney's Office.

The complainant became aware of the incident in the course of his duties and, in 2013, he transmitted a complaint to the MPCC. He alleged that the Detachment WO misled the MP member who conducted the interviews and caused her to conduct the interviews in an inappropriate manner, including by forcing the individual interviewed to provide a written statement and by failing to advise him of his rights and jeopardy. The complainant also alleged that the Detachment Lieutenant inappropriately failed to impose a remedial measure on the WO when he decided to impose the remedial measure on the MP member involved, and failed to refer the matter to the CF MP Group Professional Standards (PS) Section or to the MPCC for investigation.

The Deputy Commander for the CF MP Group conducted a preliminary review of the complaint and determined that the matters complained about did not involve policing duties or functions, and directed that no PS investigation be started.

The complainant requested a review of his complaint by the MPCC pursuant to section 250.31 of the *National Defence Act* (NDA).

The Commission identified five separate allegations of misconduct brought by the complainant, three relating to the conduct of the interview, one relating to the alleged involvement of the WO and one relating to the Lieutenant's response. The Commission conducted an investigation and interviewed several witnesses, including the complainant and two of the subjects of the complaint.

The Commission concluded the allegation about the Lieutenant's conduct does not relate to the performance of policing duties or functions and, as such, cannot be considered as part of a conduct complaint. As a result, the Commission made no finding or comment with respect to this allegation. However, the Commission found all of the other allegations substantiated. In particular, the Commission found that the individual interviewed should have been treated as a suspect when he was brought back for a second interview, as there were reasons to believe an offence had been committed, and one of the purposes of the second interview was to ascertain whether the individual was involved in that offence. As such, he should have been immediately cautioned and advised of his rights and jeopardy, and the MP member should not have been wearing her side arm during the interview. In addition, the individual should not have been told he had to provide a written statement.

The Commission found that these failures were largely the result of advice and guidance provided by the Detachment WO. While the MP member involved does retain some responsibility for the manner in which they approached the interview, they cannot be completely faulted for following their superior's advice. The WO provided faulty guidance and also failed to intervene to correct the situation, even though the WO was monitoring the interview and could see the conduct unfold.

To address these issues, the Commission recommended that the WO receive additional training related to the conduct of interviews and applicable MP policies. The Commission also recommended that the WO receive specific guidance about the circumstances when individuals being interviewed need to be treated as suspects. The Commission concluded that no recommendations were necessary to address the conduct of the MP member directly involved in the interviews, because training and coaching had already been received to address the issues.

In response to the Commission's Report, the Canadian Forces Provost Marshal (CFPM) noted all of the Commission's findings, and stated that the actions of the MP members involved were not in accordance with existing policies or procedures. The CFPM also accepted all of the Commission's recommendations, and stated they will be implemented.

C. Conduct Complaint – Investigation of Aggravated Sexual Assault by Deliberate Infection with Virus

The complainant alleged that her former partner deliberately infected her with the Hepatitis C (Hep C) virus during sexual activity. She discovered she was Hep C positive through a blood test. Her former partner did not himself have Hep C. However, it was her contention that her former partner, who worked in the medical field, transmitted the virus to her during intercourse. The complainant also alleged that her former partner had removed records from her CF medical file, and that through psychological abuse, he tried to provoke her to commit suicide. She considered that his motive was to benefit financially from her death through her CF benefits.

The Canadian Forces National Investigation Service (CFNIS) investigated the complaint and determined that there was no basis to proceed with charges against the complainant's former partner. The lead CFNIS investigator debriefed the complainant on the results of their investigation during a video-recorded meeting.

As a result of being dissatisfied with the debriefing and the thoroughness of the investigation, the complainant filed a conduct complaint against the lead CFNIS investigator. More particularly, the complainant alleged that the investigation and debriefing suffered from the investigator having incorrect factual and medical information; failing to consult with a medical expert (other than the subject of the investigation); ignoring the complainant's concerns about her current safety vis-à-vis her former partner; failing to interview witnesses suggested by the complainant; and failing to interview her psychologist because the CFNIS did not want to pay the psychologist for her time.

The Deputy Commander, CF MP Gp, investigated the complaint and determined the allegation of misconduct was not substantiated. The complainant requested a review of her complaint by the MPCC pursuant to section 250.31 of the NDA.

The MPCC concluded that the complainant's conduct complaint allegations were unsubstantiated. The purpose of the investigative debrief to the complainant by the CFNIS investigator was to explain to her the results of the investigation and reasons for not proceeding with the laying of charges. It was not to provide medical and scientific details about the Hep C virus. It was clear from the available factual and medical information that the complainant was most likely infected at an earlier time and in a different manner than what she was alleging and that the available information provided no basis to conclude that the complainant's former partner had access to Hep-C tainted blood during the relevant time period.

For the foregoing reasons as well, it was reasonable for the CFNIS not to conduct interviews with the witnesses suggested by the complaint or with her psychologist. Pertinent reports from these individuals were already contained in the complainant's medical records provided to the CFNIS, and any additional information these witnesses may have had regarding the specific criminal allegations of the complainant against her former partner would only be, at best, second-hand information given to them by the complainant.

Finally, a review of the video-recorded debrief meeting between the complainant and the CFNIS investigator indicated that, though perhaps nervous, the investigator did not show impatience toward the complainant. Moreover, the recording shows that the investigator did not ignore the complainant's expressed concerns for her safety vis-à-vis her former partner. Rather, based on the investigation and in particular her interview with the former partner, the investigator simply did not agree with the complainant that there was reason for such concerns. Nonetheless, the investigator still took some precautions by notifying the MP at the former partner's current location of the situation.

In response to the MPCC's report, the CFPM agreed with the MPCC's findings.

D. Interference Complaint – Interfering with Release Conditions for Suspect Accused of Sexual Assault and Exploitation

The MP Detachment received a call from the wife of a soldier, indicating her husband had sexually assaulted her young sister. Two MP members attended the residence in response to the call. One went inside and spoke with the victim and the soldier's wife. During this time, the other MP member remained outside the residence and spoke with the soldier. The suspect spontaneously began making statements admitting he had touched his sister-in-law. The MP member arrested him and brought him to the MP Detachment. At the Detachment, the MP member conducted an interview with the suspect. The suspect provided details of the incident, and admitted to the inappropriate touching. After the interview was concluded, the suspect was placed in an open cell to sleep while the MP members determined next steps.

The next morning, the arresting MP member released the suspect to the Unit Duty Sergeant. He advised the suspect and the Duty Sergeant that the suspect was not to return to his residence, that accommodations would be provided for him by the Unit, and that Unit personnel would retrieve any personal items for him at his residence. No charges were laid, and no legal release conditions were imposed on the suspect at that time.

Two days later, the suspect was called into the Detachment for an interview. After the interview, the suspect was arrested again and was charged with sexual assault and sexual exploitation. He was then released on a Promise to Appear with numerous release conditions, including not to communicate with the victim nor his wife, and to stay away from his residence.

The complainant alleged that the WO interfered in the investigation and improperly allowed the suspect to be released after his initial arrest without any legal release conditions being imposed; and that when another MP member attempted to assist the two MP members involved in the investigation and suggested release conditions be imposed, the WO told him not to get involved and prevented him from providing assistance.

The MPCC held the investigation in abeyance while the CF MP Group Professional Standards Section investigated a complaint related to the conduct of the Detachment WO in relation to the same incident. The MPCC then conducted an investigation and interviewed several witnesses, including the complainant and the subject of the complaint.

The MPCC concluded that the complainant could bring an interference complaint in this case, as he was involved in supervising the investigation, due to his position and duties. However, the MPCC found that the allegation that the Detachment WO interfered in the conduct of the investigation was unsubstantiated. While the evidence obtained by the MPCC was inconclusive as to whether the WO was responsible for the decision to release the suspect without charge or legal release conditions, the MPCC found that the release was not improper. No policies were breached, and the exercise of policing discretion by the MP members involved was reasonable in the circumstances. It was reasonable, in making a discretionary decision about whether and when to charge an individual and impose release conditions, to take into account the reality on the ground and all circumstances. In this case, the suspect was released to his Unit and, during the two days prior to his re-arrest, the conditions imposed through the Unit achieved all the same purposes as legal release conditions.

The MPCC found that another MP member did attempt to provide assistance to the members involved in the investigation and expressed disagreement with the proposed course of action discussed, but then did not get involved further when he saw that his intervention was not welcomed by the WO. Due to the contradictions in the evidence and the lack of records, the MPCC could not conclude that the WO was specifically aware of the decision to release the suspect without charge or legal release conditions, or that his response to the MP member who attempted to get involved was specifically related to this issue. However, since the MPCC found the decision to release the suspect was not improper, it was not necessary to make a determination on this point.

The MPCC found that any decisions made by the WO in relation to the release of the suspect did not result in errors or inappropriate conduct in the investigation. Further, the MPCC found there was no evidence indicating the WO was acting for an improper purpose or outside of his role and duties as an MP supervisor. As a result, his conduct did not amount to improper interference under the *National Defence Act*. In light of this finding, the MPCC made no recommendations in this Report.

In response to the Commission's report, the Chief of the Defence Staff agreed with the Commission's finding.

E. Conduct Complaint – Traffic Stop of Disabled Driver

Following a fire alarm at a nearby motel where the complainant was staying, the complainant, a civilian contractor, decided to drive around a Canadian Forces Base while waiting to be allowed back into his motel room. Due to the haste with which he left his room for the fire alarm, the complainant was not wearing a coat despite the freezing temperature. The complainant suffers from a medical condition whose symptoms mimic signs of impairment.

The complainant was observed driving approximately 20 km/hr below the posted speed limit by one of the subject military police (MP) members, who executed a traffic stop for suspicious driving. During the course of his investigation the MP member noted several signs of impairment and arrested the complainant for impaired driving. He called for a second MP member to assist. The second MP member noted a cane in the front seat of the complainant's car.

At some point during the encounter the complainant stated that he had a medical condition and had a letter to prove it. The subject MP members completed the arrest and transported the complainant to the Military Police Unit (MPU).

Once at the MPU the MP members, with the assistance of a breath technician, verified the complainant's medical condition and released him. The arresting MP member drove the complainant back to his vehicle and gave him directions off the base.

Subsequent to this episode, the MP member's superior, reviewed the file and requested the MP member follow-up with the provincial driver licensing agency regarding the driver's medical condition. The MP member then exchanged emails with the provincial agency about the complainant's medical condition, and the signs of impairment and driving ability observed on the night of the arrest.

A few months later the complainant received a request from the provincial driver licensing agency to submit to a driver's examination. His licence was also temporarily suspended. The complainant submitted to the examination and passed, regaining his licence.

The complainant submitted two MP conduct complaints in relation to these events.

In the first complaint, the complainant alleged that his arrest was unlawful, that the MP members were discourteous and discriminated against him because of his medical condition, that excessive force was used during the arrest, and that the MP members failed to investigate and accommodate his medical condition.

In the second complaint, the complainant alleged that the military police breached his privacy by submitting his medical information to the provincial agency.

The Deputy Commander, Office of Professional Standards determined that all allegations were unsubstantiated as there was insufficient evidence to support the allegations and the MP members' conduct was appropriate given the situation.

Following a request for review of the Deputy Commander's decision and its own investigation, the MPCC also found all the allegations to be unsubstantiated.

In particular, the MPCC found the MP member's decision to arrest the complainant was reasonable in the circumstances, that the comportment of both subject MP members towards the complainant was reasonable and a direct reaction to perceived resistance on the part of the complainant. Further, the MPCC found that the MP members were not aware of the complainant's medical condition prior to the arrest and therefore were not discriminating against him on the basis of any medical condition.

In addition, the MPCC found the allegation of failure to investigate and accommodate a medical condition to be unsubstantiated. The MPCC concluded that regardless of when the MP members were advised by the complainant of his disability, the MP members were unable to confirm the legitimacy of his disability at the roadside stop. However, certain issues of concern were noted. The MPCC noted that although the complainant did not advise of his medical condition in a timely way, the MP members should also have been more inquisitive at the roadside stop and followed up with specific questions. Further, the MPCC noted that the complainant's medical aids were readily visible in the vehicle but were not noticed by the first MP member.

While the second MP member did notice the medical aids, she did not collect them for the complainant's use or ask the complainant if they were needed. The MP members should have offered the complainant the use of medical aids, once those aids had been discovered in the complainant's vehicle. As such, the MPCC made a recommendation to the Canadian Forces Provost Marshal (CFPM) to ensure through training that military police understand the importance of asking the proper questions during traffic stops to determine if the person has a medical disability and to ensure proper accommodation when one is discovered.

The MPCC also determined that it was reasonable for the MP members to report the complainant's medical condition based on their concern for the safety of road users as set out in the relevant MP standard operating procedures.

The MPCC's recommendation and findings in respect of these complaints were all accepted by the CFPM.



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PART 3 – STEWARDSHIP EXCELLENCE



MENTAL HEALTH AND WELLNESS

The Clerk of the Privy Council stated in its 23rd Annual Report on the Public Service of Canada to the Prime Minister, the importance of wellness and mental health in the workplace. Through various initiatives, including Blueprint 2020, the Clerk of the Privy Council plans to remain collectively focused on mental health issues in the Public Service.

The MPCC continued to raise awareness about the importance of mental health and wellbeing, at work and at home, as well as to provide staff with important strategies to support a psychologically safe and healthy workplace. Contact cards were provided to staff with a list of mental health services in the event assistance is required. The MPCC also launched the “Elephant in the Room” anti-stigma campaign by placing blue elephants in various common areas to send the message that the MPCC is a safe place to talk about mental illness.

On November 10, 2016, the MPCC held its official launch of Mental Wellness to better educate staff, supervisors and managers on this very important topic. A guest speaker from the Mental Health Commission of Canada (MHCC) provided a presentation to staff. The MHCC is a catalyst for improving the mental health system and changing the attitudes and behaviors of Canadians around mental health issues. A second presentation was given to staff on the services and benefits of the Employee Assistance Program.

Through new initiatives, events and communication strategies, the MPCC continues to build on the positive feedback received from employees indicated in the 2015 Public Service Employee Survey.

“We want to stress the importance of mental wellness and mental health in the workplace”

– Julianne Dunbar, General Counsel and MPCC Mental Health Wellness Champion



Julianne Dunbar, General Counsel and MPCC Mental Health Wellness Champion (left) with Louise Chénier from the Mental Health Commission of Canada (right)

In partnership with the Clerk of the Privy Council, the Deputy Clerk of the Privy Council and the Chief Human Resources Officer, the MPCC Chairperson formally pledged to “strive to create a culture that enshrines psychological health, safety and well-being in all aspects of the workplace.”

II FINANCIAL MANAGEMENT

In 2016, the MPCC continued to demonstrate sound management of its financial resources. It effectively planned, managed and controlled its budget and expenditures to meet operational requirements and increased central agency requirements including timely and accurate financial reporting. Throughout 2016, regular financial updates were provided internally to the MPCC Executive Committee and externally to central agencies in order to reinforce rigorous financial management and control.

Operating Budget: The MPCC’s ongoing annual budget of \$4.2M supports the delivery of the MPCC’s legislative mandate under Part IV of the *National Defence Act*. This includes complaints resolution, internal services and all other activities to support central agencies’ requirements, including reporting demands by central agencies and Parliament (Reports on Plans and Priorities, Departmental Performance Reports, Annual Reports, Financial Statements, Quarterly Financial Reports and Departmental Staffing and Accountability Reports).

Special Funding: The MPCC did not receive any new funding in 2016 for the multi-jurisdictional conduct complaint review which concluded in 2016. Rather, the expenditures related to the work completed on this file was absorbed in its operating budget.

Additional Financial Information: Additional financial information about the MPCC’s financial and expenditure management can be found in the Publications Section of the MPCC’s website in the Report on Plans and Priorities, the Departmental Performance Report, Quarterly Financial Reports, Annual Financial Statements and Proactive Disclosures.

III GOVERNMENT INITIATIVES

Blueprint 2020: Since the launch of the Blueprint 2020 vision three years ago, the MPCC continued to make progress in Blueprint initiatives and will continue to engage its employees through various projects and events. In 2016, the MPCC focused on Respectful Workplaces, Recruitment and Onboarding as well as Information Technology. Mandatory online self-paced training for Fundamentals of Information Management and Access to Information and Privacy Fundamentals was implemented for all staff in order to support Blueprint 2020 as well as the MPCC’s obligations in Information Management and Access and Privacy legislation.

Phoenix pay system: The MPCC was part of phase two roll-out of the Phoenix pay system in April 2016. Staff received online self-paced training offered by the Canada School of Public Service. Despite planning and preparation, the roll-out caused multiple challenges outside the MPCC’s control. MPCC staff worked diligently and in collaboration with external stakeholders in order to address issues to limit any negative impact on employees’ pay. An unusually high proportion of its internal services had to be devoted to managing issues arising from the deployment of the pay system.



MILITARY POLICE COMPLAINTS COMMISSION
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PART 4 – CONCLUSION



In the year ahead, the MPCC will continue to be guided by its mission: to promote and ensure the highest standards of conduct of Military Police in the performance of policing duties and to discourage interference in any Military Police investigation.

To carry out our oversight mandate as Parliament intended, we must have timely access to the essential information we need to monitor and investigate complaints.

An unresolved issue worthy of mention is the MPCC's anomalous absence from the *Canada Evidence Act* (CEA) schedule of designated entities.

Being listed on this Schedule allows an organization to receive records containing sensitive information relating to international affairs or to national defence or security without going through the cumbersome and time-consuming notification and challenge procedures in the Federal Court. This would allow the MPCC to get on with its review or investigation of a complaint in a timely manner. The assessment and debate as to what information might be injurious to diplomatic, military or national security interests would only need to occur at the Final Report stage of the MPCC's process, and only in respect of information which actually needed to be referenced in our Final Report. (In the case of an MPCC public interest hearing, it might be necessary to assess the degree of sensitivity of the information sooner, but even then, the quantity of truly relevant information of a sensitive nature would have been reduced significantly.) Of course, the relevant MPCC personnel are already security cleared to "Top Secret", and we have the necessary facilities to securely store such information.

Also, as we noted in last year's Annual Report, the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police, the other federal police oversight body, on which the MPCC was modelled, has already been added to Schedule in 2013 by Bill C-42. I therefore ask Parliament to seriously consider this important amendment.

At the end of 2015, we only had one half of the complement of Commission Members. We look forward in 2017 to the appointment of two new Commission Members to assist with the case load.



As much as this annual report is an overview of the MPCC's activities, it is also a testimony to our staff for their expertise, diligence, and commitment to excellence, not only in our review and investigation of complaints, but also to the highest standards of administration and financial management. Our investigators and lawyers could not do the work they do without the solid support of their colleagues in the organization as a whole.

We will continue to strive to meet the expectations of the Canadian public who depend upon the MPCC to provide oversight, and to ensure fairness, transparency, and accountability in its thorough review and investigation of conduct and interference complaints.

I am grateful for the support and collaboration of our partners, the National Defence leadership, the CFPM, the chain of command and the Military Police community on the challenging and sometimes difficult matters that are part of the oversight process.

Hilary C. McCormack, LL.B.
Fellow Litigation Counsel of America
Chairperson

OUR ORGANIZATION

BIOGRAPHY OF THE CHAIRPERSON

Hilary C. McCormack, LL.B.

Chairperson

Hilary McCormack was appointed Chairperson of the Military Police Complaints Commission of Canada (MPCC), effective October 5, 2015.

Prior to her appointment, Ms. McCormack was Director of Crown Operations (East Region) at the Ontario Ministry of the Attorney General, a position she had held since 2009. As Regional Crown Attorney, she supervised 10 Crown Attorney offices and was responsible for criminal prosecutions and summary conviction appeals in Eastern Ontario. In addition to her management duties, Ms. McCormack continued to prosecute many high profile and complex trials. She received the Ministry of the Attorney General Excelsior Deputy's Award in 2010.

Ms. McCormack graduated from the University of Western Ontario's law school. Following her call to the Ontario Bar in 1980, she was in private practice for three years before joining the Ontario Ministry of the Attorney General as Assistant Crown Attorney in 1983. She was seconded to the federal Department of Justice in 1992. Her work as General Counsel, Criminal Law and Policy, resulted in amendments to the *Criminal Code of Canada* which enhanced the general protection of women and children from sexual and physical violence for which she received the Department of Justice Deputy Minister's Merit Award in 1994.

She returned to the Ontario Ministry of the Attorney General in 1994 where she continued to prosecute complex homicides and to develop her expertise in a number of criminal justice issues: child abuse, sexual assault and domestic violence; best practices in case management and trial processes and mental health. Over the course of her career, she travelled to Thailand and Kosovo to provide legislative and policy advice in

these areas and frequently hosted many foreign delegations, including delegations from Russia, China, Afghanistan and the Palestinian Authority, on systemic issues and best practices.

Ms. McCormack prosecuted the first case in Canada to successfully use DNA evidence. She subsequently established an ad hoc committee to provide advice about the use of DNA evidence to Crown prosecution services and police services across Canada and internationally. She also worked on policy and legislative initiatives for both the DNA warrant provisions and the DNA data base which have transformed policing and prosecutions in Canada. This interest in facilitating transformative change also prompted her to implement a Drug Treatment Court, an Adult Mental Health Court and, for the first time in Canada, a Youth Mental Health Court while she was the Crown Attorney for Ottawa, an appointment she received in 2000, and the first woman to ever hold that position.

Between 2000 and 2005, Hilary McCormack was a member of the Department of National Defence's Military Police Advisory Committee which provided advice to senior military leadership about significant changes to the military police and their investigative capacity. The committee's recommendations improved the military police's relationship with civilian courts and prosecution services, and provided opportunities for enhanced police training and education. In April, 2016, she was formally inducted into the Litigation Counsel of America at the LCA's 2016 Spring Conference & Celebration of Fellows.

Hilary McCormack has taught criminal law at the University of Ottawa, at the Bar Admission course, and served on the faculty of the Federation of Law Societies Criminal Law program. She is a frequent speaker at judicial, legal and police conferences, helped develop instructional material for the National Judicial Institute, and written and published extensively on various legal issues. She has served as a volunteer on the boards of directors and committees of not-for-profit organizations.

BIOGRAPHIES OF THE COMMISSION MEMBERS



Troy DeSouza (October 2015 – present)

Commission Member

Troy DeSouza was appointed as a Commission Member for a four-year term on June 22, 2015.

A long-time resident of Victoria, British Columbia, he has practiced law in B.C. for the past 17 years, providing legal advice to local government clients. He has conducted litigation before administrative tribunals, appeal boards, and at all levels of courts in British Columbia.

Mr. DeSouza is also an educator. He has created several courses for local government staff and elected officials. He is a member of numerous professional organizations, and is Co-Chair of the Municipal Law Section of the Canadian Bar Association, B.C. Branch.

Troy DeSouza is a graduate of the University of Windsor's law school. He had a diverse career before being called to the Bar in 1998. He worked as a consultant for the Attorney General of Ontario, and served seven years in the Canadian Armed Forces where he obtained the rank of Captain.



Michel Séguin (March 2014 – present)

Commission Member

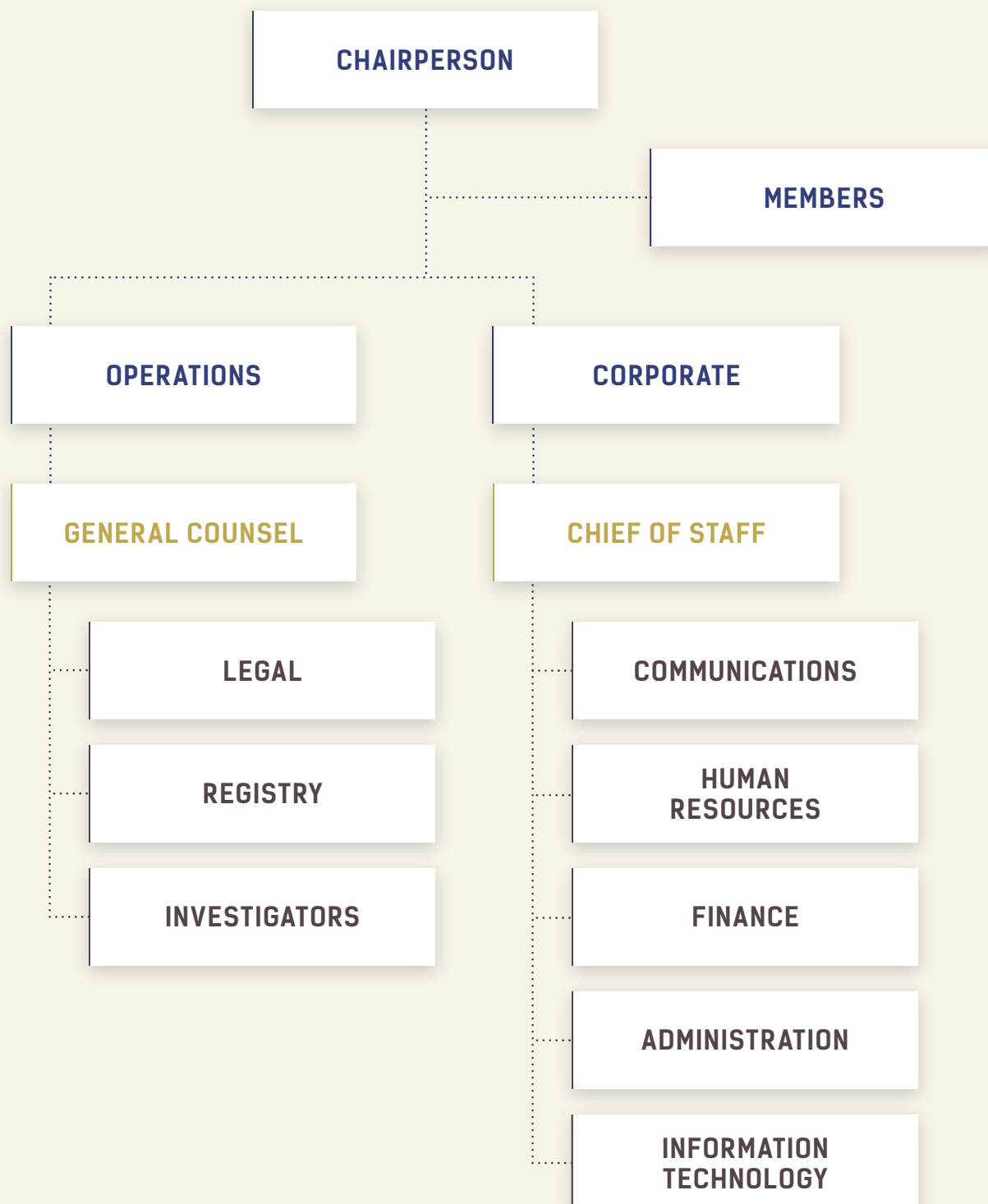
Michel Séguin was appointed Commission Member on March 6, 2014. He was appointed Interim Chairperson after Glenn Stannard's retirement in March 2015 and served in that role until October 2015.

Mr. Séguin has extensive operational policing experience, having spent 33 years with the Royal Canadian Mounted Police (RCMP). During his service with the RCMP, he held the position of Ethics and Integrity Advisor and sat as an adjudicator for Code of Conduct hearings. Mr. Séguin retired from the RCMP in 2008 as Assistant Commissioner and the Commanding Officer of "O" Division (Ontario).

After his retirement from the RCMP, Mr. Séguin joined the House of Commons Administration as Director General, Parliamentary Accommodations Services, a post he held for five years.

Mr. Séguin was invested as an Officer of the Order of Merit of the Police Forces in May 2008.

ORGANIZATION CHART





HOW TO REACH THE MILITARY POLICE COMPLAINTS COMMISSION OF CANADA

Call our information line

613-947-5625 or
toll-free at 1-800-632-0566

Send us a fax

613-947-5713
or toll-free at 1-877-947-5713

Send us a letter

Military Police Complaints Commission of Canada
270 Albert Street, 10th floor
Ottawa, ON K1P 5G8

Visit us at the above address for a private consultation.
An appointment is recommended.

Send us an email

commission@mpcc-cppm.gc.ca

Note: Please do not send confidential information via email.

We cannot guarantee the security of electronic communications.

Visit our website

mpcc-cppm.gc.ca

Media inquiries

613-944-9349 or
media@mpcc-cppm.gc.ca