

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Independence in the Prosecution of Offences in the Canadian Forces Military Policing and Prosecutorial Discretion

a study prepared for
the Commission
of Inquiry into
the Deployment of
Canadian Forces
to Somalia

James W. O'Reilly
Patrick Healy



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Summary of Recommendations

THE ROLE OF THE MILITARY POLICE

Recommendation One

The functions and legal basis of military policing should be set out in the *National Defence Act* or in the Queen's Regulations and Orders.

Recommendation Two

The administrative orders concerning the organization, duties and procedures of military policing should be consolidated into a single source or as few sources as are necessary.

Recommendation Three

Commanding officers should be required to report and refer certain matters or types of incidents to military police for investigation, with appropriate allowance for the exigencies of field operations, and these designated matters should include criminal offences, serious service offences and any matter that has implications with respect to security.

Recommendation Four

Independence in military policing should be strengthened not only by requiring designated matters to be investigated by military police but by limiting the discretion of the commanding officer on completion of the investigation.

Recommendation Five

Contingents of Canadian Forces deployed in field operations should be accompanied by military police in numbers proportionate to the size of the deployed force and the nature of its mission, and clear directives should be given to field commanders that certain types of incident or misconduct must be referred to the military police as soon as practicable for investigation and disposition.

PROSECUTORIAL DISCRETION IN THE MILITARY SETTING

Recommendation Six

Offences falling under section 70 of the *National Defence Act* should be tried by civilian courts in all cases, subject only to a status of forces agreement or the existence of exigent circumstances requiring that the trial take place before a service tribunal.

Recommendation Seven

Commanding officers should retain disciplinary authority in relation to minor service offences. Designated offences, including serious service offences and offences falling under the Criminal Code or other acts of Parliament, should not be the responsibility of commanding officers.

Recommendation Eight

Commanding officers should be required to refer designated offences, including serious service offences and offences falling under the Criminal Code or other acts of Parliament, to military police for investigation. They should not have the power to order military police not to investigate an offence.

Recommendation Nine

Prosecution functions should be discharged by an independent military prosecution authority. This authority should have responsibility for pre-screening charges in respect of serious matters.

Recommendation Ten

Guidelines should be developed to guide the exercise of prosecutorial discretion by the military prosecution authority. Those guidelines should apply to the process of pre-charge screening and to the exercise of prosecutorial discretion before and during trial. The guidelines should emphasize the independence of the legal officers, include a requirement of sufficiency of evidence and address the factors that are relevant, and those that are not relevant, to the decision to prosecute. A starting point for such guidelines should be the federal *Crown Counsel Policy Manual*.