

## MILITARY POLICE COMPLAINTS COMMISSION

IN THE MATTER OF a hearing before the Military Police Complaints Commission (MPCC), pursuant to subsection 250.38(1) of the *National Defence Act*, R.S.C. 1985, c. N-5, as amended, in connection with a complaint under section 250.18 of the *National Defence Act*, R.S.C. 1985, c. N-5, as amended.

### AFFIDAVIT

I, **Richard James Colvin**, of the City/Territory of Washington, District of Columbia,  
MAKE OATH AND SAY AS FOLLOWS:

1. I have been served with a summons to attend as a witness herein and I have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information or belief.
2. The summons requires me to give evidence at the MPCC hearings and to produce “any relevant documents or other things under [my] control.” Pursuant to the summons, I am required to produce “documents or other things”, including “all calendars and agendas,” “all personal notes and notebooks,” and “all relevant memoranda, reports, site visit reports from visits to detention facilities in Afghanistan, and follow-up reports on same” for the period April 2006 to June 12, 2008.
3. On the face of the summons is a warning that failure to attend and give evidence at the hearing, or to produce the required things and documents, can lead to liability and imprisonment of a term of not more than six months.
4. In the letter of Alain Préfontaine dated July 28, 2009 addressed to me and numerous other witnesses served with a subpoena, I was provided with reassurance that the Government of Canada is “cooperating with the Commission to the fullest extent possible in accordance with its mandate.” In the letter, all summoned witnesses were urged to seek legal representation, which I have done.
5. I was posted in Afghanistan from the end of April 2006 until the beginning of October 2007, first in Kandahar and then Kabul. Details of my roles while in Afghanistan are provided below, but during the 17-month period of my posting, I spent considerable time on the detainee file, and sent many reports on detainee-related issues to Canadian officials. I have in my possession three sets of documents from that time.
6. The first set of documents consists of two files containing my “Diary,” which consists of every

formal diplomatic report that I sent from Kabul. While it is possible that a few reports were not printed and placed in these files, I believe that the files are substantially complete. However, the "Diary" covers only Kabul. These files do not contain any of the reports that I sent from the Provincial Reconstruction Team ("PRT") in Kandahar.

7. The second set of documents consists of two files, labelled "Detainees 1" and "Detainees 2." The 'Detainees 1' file consists of Canadian diplomatic reporting on detainee issues that I judged at the time was relevant or of interest, and therefore printed and placed in the file. It includes two reports on detainees, titled "KANDH-0029" and "KANDH-0032," that I authored in the course of my duties while posted in Kandahar and sent from the PRT. Details of the distribution of each such report are provided below. To my recollection, these are the only detainee-related reports that I sent from Kandahar during my two months there. The 'Detainees 2' file contains other reports, from non-DFAIT sources, that I found of sufficient interest and relevance during my posting to Kabul to warrant filing. As there was considerable overlap between the 'Detainees 1' file and the 'Diary,' I have compared the two and purged duplicates.
8. The third set of documents is five black, hard-bound A5 notebooks, which contain my hand-written notes from meetings during my posting in Afghanistan. There are also some additional notes, written on loose paper. These notes cover my entire period in Afghanistan, both in Kandahar and Kabul. There are probably some additional notes that I do not have in my possession. During a meeting held September 11, 2009 with legal counsel for the Department of Justice and the MPCC, I advised the MPCC that any information on detainees that I judged important would have been included in the reporting that I sent from Afghanistan, and that there was likely nothing of significance in the notes that is not in my reports. MPCC therefore agreed that it did not require the notebooks. I do not have any calendars or agendas in my possession.
9. Since April 1994, I have been a career foreign-service officer of the Government of Canada, employed by the Department of Foreign Affairs and International Trade ("DFAIT"). All foreign-service officers at DFAIT are either political or trade officers. I am in the political stream. While ordinarily resident in Ottawa, Ontario, I presently serve as Deputy Head of the Intelligence Liaison Office at the Canadian embassy in Washington, D.C.
10. While posted overseas as diplomats, political officers have two core functions: a) 'state-to-state' interactions/ transactions with the host government, for example to deliver official Canadian messaging (a 'demarche'); and b) reporting on issues that are relevant to Canada's interests in that country. A report could describe a meeting with an important contact or a visit within the mission's territory, offer an analysis of political, economic or security developments, and/ or recommend action by DFAIT Headquarters ("HQ"). The reporting generated by political officers outside of Canada is sent to HQ, other Canadian diplomatic missions abroad, and other government departments.
11. In order to be in a position to produce effective and meaningful political reporting, political

officers are required to cultivate and maintain a wide network of contacts. In Afghanistan, such contacts would include Government of Afghanistan (“GoA”) officials; diplomats from other embassies; representatives of the United Nations Assistance Mission in Afghanistan (“UNAMA”) and NATO’s International Security Assistance Force (“ISAF”); journalists; employees of non-governmental organizations (“NGOs”); businesspeople; parliamentarians and politicians; and so on. While in Afghanistan, I cultivated and maintained such a network of contacts.

12. During my time in Afghanistan between late April 2006 and early October 2007, Canadian foreign-service officers in Afghanistan were stationed in one of three locations: The Canadian embassy in Kabul; the PRT in Kandahar city; or Kandahar airfield (“KAF”).
13. My first position in Afghanistan was Political Director at the PRT. I served in that role from roughly April 28, 2006 until roughly June 30, 2006. Afghanistan is currently covered by 26 PRTs, each led by one foreign government, but often including representatives of other governments. PRTs were developed by the US in 2003 as a way to bring together military, diplomatic and development actors to assist in stabilizing and reconstructing the provinces. In late 2005, Canada replaced the US as the lead nation for the PRT in Kandahar. It is our only PRT. Kandahar is generally considered the most important province in Afghanistan – arguably, even more critical to stabilization of the country than is the capital, Kabul. It is also considered the birthplace of the Taliban. Kandahar is in southern Afghanistan, in a zone where mountains give way to the southern desert. The Kandahar PRT is a Canadian-led institution, and the principal ‘whole-of-government’ platform for the province. ‘Whole of government,’ also known as ‘3D’ (diplomacy, development and defence), is a concept used by countries such as the US, Canada and UK, especially in the context of failing states. It is based on the recognition that addressing the needs of failing states requires the use of the full range of state instruments, including development and humanitarian assistance, diplomacy, security, military, justice and financial tools. The Kandahar PRT is inside Kandahar city, in a converted fruit-canning plant that is heavily fortified. In the April-July 2006 period, when I was resident at the PRT, it housed representatives from DFAIT and CIDA (one officer each), Canadian civilian police (five officers) and the Canadian Forces (roughly 100 soldiers). Canadian Military Police were based at KAF.
14. KAF is located in the desert outside Kandahar city, about a 30 minute drive from the PRT. KAF has a functioning airfield as well as a vast, multinational base. In 2006/7, it housed roughly 7000 soldiers, from Canada, the UK, US, Australia, the Netherlands, Romania and other ISAF contributing nations, as well as some civilian government officials, and many civilian contractors. Supplies reach KAF overland via convoys from Pakistan. Troops and other personnel generally fly in to Kandahar airfield from Kabul or other locations.
15. In the April-July 2006 period, there was one DFAIT officer, Pamela Isfeld, at KAF. She was the Political Advisor to the Canadian commander, Brigadier-General David Fraser. Ms. Isfeld worked for, reported to, and could be tasked by both BGen. Fraser and DFAIT HQ. She would

also draft and send reports on developments in Kandahar from a KAF perspective.

16. KAF was the main base for Task Force Afghanistan, the Canadian military deployment to Afghanistan. KAF housed various Task Force Afghanistan structures, including the National Command Element (the 'brain'), the National Support Element (the 'stomach,' i.e. logistics) and Task Force Orion, the Canadian battle group (the 'pointy end'). In April 2006, I went from Kabul to the PRT via KAF. I went to KAF twice in May/ June 2006, on my way to and from a 4-day leave, and left Kandahar via KAF in early July 2006. On each visit, I met with Canadian officials and officers. Between August 2006 and October 2007, while posted in Kabul, I went to KAF many times on official visits. I also dealt frequently with officials at KAF through email or over the phone -- usually, but not always, the Political Advisor (the DAIT officer at KAF).
17. BGen. Fraser was, in military parlance, 'double-hatted.' From February 2006 to October 2006, he commanded both Task Force Afghanistan and ISAF's Regional Command –South ("RC-South"). Command of RC-South rotated among Canada, the UK and the Netherlands, who at the time were the major troop-contributing nations to southern Afghanistan. The RC-South multinational command was called Combined Task Force Aegis. At first, both BGen. Fraser and his command were under the US-led Operation Enduring Freedom, which was primarily a counter-terrorism mission. On 31 July, 2006, as part of ISAF 'phase three' expansion to southern Afghanistan, command of RC-South passed to ISAF.
18. As an expeditionary mission, Task Force Afghanistan reported to Canadian Expeditionary Forces Command ("CEFCOM"), which was established -- in military parlance, 'stood up' -- on 1 February, 2006. For the entirety of my posting in Afghanistan, CEFCOM was commanded by Lieutenant-General Michel Gauthier. LGen. Gauthier reported to Chief of the Defence Staff Gen. Rick Hillier.
19. Until January 2006, there were two DFAIT political officers at the PRT. On January 15, the then Political Director, Glyn Berry, was killed by a vehicle-borne Improvised Explosive Device. His deputy was on leave at the time and never returned to Kandahar. For around three months, while DFAIT reviewed security protocols, there was no DFAIT officer at the PRT. It is my understanding that the first replacement at the PRT following Mr. Berry's death arrived in Kandahar in March or April 2006. He spent about one week at the PRT. He was followed by a second officer, in April 2006, who was deployed for about two weeks. I was the first longer-term Political Director to replace Mr. Berry. I arrived at the PRT at the end of April, 2006.
20. As any Canadian diplomat posted to any of Canada's missions abroad, I had transactional and reporting responsibilities at the PRT. For example, I represented Canada with Afghan officials and other interlocutors, including at public events such as the launch of projects funded by the Canadian International Development Agency ("CIDA"). I was also responsible for reporting on any issue that in my judgment was relevant to the Canadian mission. This included the usual DFAIT mandates of political, security and human-rights reporting. Given the nature of

the 'whole-of-government' effort in Kandahar, with CIDA, the Canadian Forces and civilian-police officers working alongside DFAIT, I was also required to focus on development activities, issues related to the Afghan and Canadian militaries, and policing issues. The detainee issue encompassed both the human-rights and military/ security domains, and was also very relevant to Canada. It thus clearly fell within the scope of DFAIT's mandate at the PRT.

21. In the Government of Canada system, DFAIT has the role and obligation to provide information, reporting and advice on human-rights concerns, including human-rights issues as they relate to detainees. For example, DFAIT political officers at embassies are responsible for producing the annual Human Rights Report for each country of the world. This is a major, authoritative product that summarizes DFAIT's human-rights analysis for that country, and which all of the Canadian government relies upon. The annual human-rights report is supplemented by information on human rights obtained in ongoing meetings, reporting and other activities throughout the course of the year by DFAIT political officers. In Kandahar, as the DFAIT representative at the PRT, it was my specific duty to gather such information and to send it through channels to the full range of recipients, including DND and CEFCOM. In the division of responsibility among Canadian government departments, DFAIT has the lead on human rights, and is specifically tasked with providing reporting on human rights for the entire government. Other government departments, such as DND and the Provost-Marshal within DND, would be entitled to rely on DFAIT for such reporting, and for the purposes of this flow of information, there is no separation between DFAIT and DND. On human rights and other issues, various agencies within government form a coherent whole, with DFAIT mandated to inform the government in its entirety, including CEFCOM, the Provost-Marshal (who is part of CEFCOM and falls within its direct chain of command), and the Military Police (who report to the Provost-Marshal). As detailed below, CEFCOM HQ in Ottawa was in regular and direct two-way communication with the Provost-Marshal and Military Police.
22. When I arrived at the PRT, I already knew that I would be starting a 12-month posting in July/August 2006 as head of the political section in Kabul, and that I would only work at the PRT for two months (on a "Temporary Duty" assignment). My intention in offering my services at the PRT in late spring 2006 was to better understand the 'whole-of-government' Canadian effort in Kandahar as preparation for my eventual posting in Kabul.
23. On arriving at the PRT, I was immediately struck by the enormity of the challenge faced by Canada's diplomatic, development and military effort in stabilizing and reconstructing Kandahar. For example, large Taliban formations were massing at the time outside Kandahar city. Aside from the military threat presented by the insurgency, I soon became aware of a number of what in my judgment were problems in Canadian policy and/ or practice, including regarding Afghan detainees. Specifically, within a month of arriving at the PRT, I became aware of procedural concerns regarding the transfer of Afghans detained by Canadian Military Police ("MPs") to Afghan authorities, and also substantive concerns about the treatment of the detainees following their transfer. Judging these problems regarding Afghan detainees to be serious, imminent and alarming, I made investigations and detailed my findings formally in my

reporting from the PRT.

24. In the period April 2006 to October 2007, DFAIT used two computer networks, SIGNET and C4, to link HQ with DFAIT staff in diplomatic missions around the world. SIGNET was considered an insecure network. It was intended for emails and reporting that was either unclassified or 'Protected' (the lowest level of classification). It also offered an internet connection. C4 was considered a secure network. It was the primary mechanism for distribution of diplomatic reporting. It is my understanding that every Canadian embassy and diplomatic mission around the world had C4 connectivity. In addition, C4 terminals were located in a number of other government departments, including the Department of National Defence. In April-July 2006, there were two C4 terminals in Kandahar. One was on my desk at the PRT. The other was on the desk of the Political Advisor at KAF.
25. Every diplomatic report sent on C4 had a tag identifying the originator (e.g. KANDH-), a unique number (e.g. KANDH-0029), and a distribution list that showed who had received the message. Within DFAIT, C4 messages could be sent to individuals, such as 'SMITH Joe -IDR -C4'; to everyone in a division, such as 'EXTOTT -IDR -C4' (the division at DFAIT responsible for detainees); and to embassies abroad, such as 'KABUL -GR -C4R' (the political section in the embassy in Kabul). There were hundreds of C4 addresses within DFAIT.
26. With other government departments, the main constraint was the number of "mailboxes." For CIDA, there was only one C4 address for the entire department ('CIDA -C4R'). For the Department of National Defence, in 2006/7, there were perhaps one or two dozen. There was no C4 mailbox specifically for the Provost-Marshal or Military Police. There was only one C4 mailbox for KAF: 'KANDH -KAF -C4R.' This was the electronic mailbox for the Political Advisor at KAF, and all messages to that mailbox were opened only by her. Similarly, there was one C4 address for the PRT: 'KANDH -C4R.' This was for the Political Director of the PRT, and all messages to that address were opened by him. The methodology for distribution was therefore low-tech: The Political Director at the PRT, or Political Advisor at KAF, would print up the report and hand-carry it to relevant officials.
27. On May 16, 2006 a Canadian delegation visited Sarpoza prison, the main jail in Kandahar, which was run by the Afghan Ministry of Interior. The delegation consisted of officials from Ottawa and officials from the PRT. I also participated. Sarpoza contained both criminals and 'security' detainees, including detainees transferred to Afghan authorities after detention by Canadian MPs. Following that visit, I took appropriate steps to investigate the conditions for Afghan detainees.
28. Around the same time, I met with Major Erik Liebert, the deputy commander of the PRT, to discuss reporting protocols regarding Afghan detainees. As a result of our meeting, Major Liebert made some investigations on such issues and then reported back to me.
29. My first C4 report from Afghanistan on detainees was entitled "KANDH-0029," and sent on 26

May, 2006. Details of its distribution are provided below. It dealt with issues related to the transfer of Afghan detainees.

30. My PRT colleague Maj. Liebert provided input into the report, including the wording of some portions of the text, for which I listed him as 'consulted' in the signature block. (Within DFAIT, a report is "consulted" when the author provides a draft to another and solicits and incorporates their comments. "Consulted" is only permitted to be used on a report when the "consultee" agrees with its content.) KANDH-0029 reports on, *inter alia*, the results of my investigations on the transfer of Afghan detainees, including Maj. Liebert's informal investigation within KAF. KANDH-0029 included a 'comments' section and two recommendations. I have this report in my possession, and judge that it is relevant to MPCC, given what I understand to be its jurisdiction following the Federal Court ruling.
31. For KANDH-0029, I included on the 'to' line the four DFAIT divisions that I judged most relevant to the detainee issue: "IRP" (the peacekeeping division and my 'home' division); "IDR" (the defence-relations division, which had the 'lead' on detainee questions at DFAIT); "IRH -GHA" (the human-rights division); and "JLH" (a division dealing with international law).
32. The four divisions on the 'to' line, according to DFAIT protocol, would be considered as the 'action addresses' who could be expected to respond to my message. KANDH-0029 was not an 'informational' message, simply reporting on an event, but an 'action' message that recommended actions and/ or requested a response. As a DFAIT employee, I could not properly 'task' other government departments in this way, and so it would have been inappropriate to include parts of other government departments on the 'to' address line. Nor could I task Pamela Isfeld, the Political Advisor, as she was a peer, reporting back separately to IRP. However, IRP could formally task her, as could other HQ divisions.
33. Notwithstanding internal protocols on communication, it was very important to me that KANDH-0029, and subsequent C4 messages on detainees, reach the appropriate personnel responsible for a) policy toward detainees, and b) the management in the field of detainee issues. For KANDH-0029, I therefore included 76 additional addresses on the 'cc' line. These included CEFCOM commander LGen. Gauthier (the "CEFCOM Comd" C4 address) and four functional departments (J2, J3, J5, J9) within CEFCOM (the C4 addresses "NDHQ +CEFCOM J2," "NDHQ +CEFCOM J3," "NDHQ +CEFCOM J5" and "NDHQ +CEFCOM J9"). My understanding at the time and today is that the Military Police fall under several 'J' branches. Also included on the 'cc' line was "KANDH -KAF," that is, Pamela Isfeld, the Political Advisor at KAF. As the military's chain of command in Afghanistan was very complicated, and it was not always clear where responsibility for a given issue lay, I sent KANDH-0029 and other reports on detainees to every possible relevant address at DND, on the principle that if one channel for whatever reason did not work, then another would.
34. I specifically intended for KANDH-0029, and other messages on detainees, to be received by

four key recipients: a) The policy shop at DFAIT responsible for detainee policy (“IDR”) under ADM Colleen Swords; b) The senior military chain of command, both in Ottawa (CEFCOM under LGen. Gauthier) and Kandahar (Task Force Afghanistan under BGen. Fraser), who had overall responsibility for management of detainees; c) The officials in National Defence Headquarters specifically responsible for detainees; and d) The officials at KAF specifically responsible for detainees. To reach all these addressees, I used the protocols and mechanisms that the government’s confidential communication system, C4, provided to me to communicate to them.

35. Firstly, I specifically intended that the message reach IDR. I therefore put IDR as one of the ‘action addressees’ on the C4 message, which ensured it would not only be received and read, but should be acted on. IDR was the DFAIT division responsible for interfacing with the Department of National Defence. As part of this mandate, officials from IDR talked and met regularly -- probably every day -- with DND. IDR also dealt with issues of concern to both departments, such as Ballistic Missile Defence, Canada-US defence relations and Canadian military deployments overseas, including in Afghanistan. (I had worked for IDR in 2001 and 2002, and thus was very familiar with the division and the nature of its interactions with DND). As part of this ‘defence relations’ mandate, IDR had the ‘lead’ in DFAIT on detainee issues.
36. Secondly, I specifically intended that KANDH-0029 reach the military chain of command. I aimed to achieve this objective by using two channels. First, by sending the report to IDR, I could be confident that IDR would raise the issues with NDHQ, as per standard procedure. Second, I copied relevant NDHQ addressees directly. As noted above, this included the CEFCOM commander LGen. Michel Gauthier and the relevant functional directorates in CEFCOM: J2, J3, J5 and J9. (Each “J” directorate is led by a senior officer or civilian and is responsible for a particular area of military capability. ‘J2’ is intelligence. ‘J3’ is operations. ‘J5’ is planning. ‘J9’ is policy and legal.) Additionally, in the text of KANDH-0029 is a distribution request, “J9 – pls pass to Rebenchuk.” Kim Rebenchuk seemed to be the appropriate point of contact on detainees within J9, which within CEFCOM seemed to have a leading role on detainee-related matters; I corresponded with him/ her separately on detainee-related questions, and have some of this correspondence in my possession.
37. I note that the Department of National Defence is vast (110,000 employees), highly complex and geographically diffuse. For the Afghanistan mission, there are at least four relevant military command nodes: NDHQ in the George R. Pearkes building in downtown Ottawa; CEFCOM on Startup Road in eastern Ottawa; Task Force Afghanistan, based in KAF, but operating across Kandahar, with elements in Kabul and sometimes other Afghan provinces; and ISAF, headquartered in Kabul, with contributions from 38 countries, and reporting back to Brunssom and Brussels. Within each, there are nine ‘J’ departments, plus a profusion of other command, operational, intelligence and logistics elements, split among three services (army, air force and navy). During my time in Afghanistan, comments made by military officials in verbal and written communications to me suggested that at the time, even professional Canadian officers were sometimes confused about lines of responsibility.

38. I sent KANDH-0029 to LGen. Gauthier for two reasons. First, as CEFCOM commander, he had overall responsibility for the Canadian military deployment to Afghanistan. Second, he presented himself both internally within government, and externally to the public, as the authority in the Canadian Forces on detainee issues. For example, in an article published 29 May 2006 in the *Globe and Mail* entitled, 'Troops Told Geneva Rules Don't Apply to Taliban,' by Paul Koring, LGen. Gauthier provides an apparently authoritative statement on Canadian policy toward detainees. The article suggests that LGen. Gauthier considered himself to have responsibility for Afghan detainee issues in Kandahar, including the MPs, and held himself out publicly as having such responsibility. He also held himself out as the Canadian Forces authority on detainee management in Afghanistan for Government of Canada interagency purposes. For example, in the period May to June of 2007, while I was in Kabul, I participated in several conference calls regarding detainees, in which LGen. Gauthier spoke from Ottawa as the Canadian Forces' empowered and authoritative representative on the subject. I had good reason to believe that he had jurisdiction within the Canadian government to manage detainee issues, and indeed there was no other government official or organization that claimed jurisdiction over detainee management in Afghanistan, except arguably LGen. Gauthier's superior, Gen. Hillier. I note that the Canadian MPs were under Task Force Afghanistan, which fell under CEFCOM, which LGen. Gauthier headed.
39. Thirdly, I specifically intended that KANDH-0029 be delivered to the senior Canadian field commander in Afghanistan, BGen. Fraser, and his key staff. To ensure this happened, Task Force Afghanistan's senior leaders were identified by name in a "distribution line" that I placed within the text of KANDH-0029. (A "distribution line" is text placed within the body of a C4 message, usually at the very beginning, to indicate specific individuals to whom they should be handed. The "distribution line" thus serves as a "to" or "cc" function for Canadian officials who do not have their own C4 mailbox or access to same.) For KANDH-0029, the purpose of including the distribution line was to ensure that Pamela Isfeld would deliver the report to the officials named on the distribution line. Because the subject matter (detainees) might not directly relate to their specific area of responsibility, absent the distribution line, Ms. Isfeld might not understand the intent that those individuals should also receive the report. The distribution line for KANDH-0029 stated the following: "KANDH-KAF – pls pass to Fraser/ Putt/ Basinger/ Hope/ Isfeld." Fraser is BGen. David Fraser. 'Putt' is Colonel Putt, the Canadian deputy commander under BGen. Fraser, who had day-to-day responsibility for the management of Task Force Afghanistan. 'Basinger' is Derrick Basinger, Task Force Afghanistan's chief of staff under Col. Putt. 'Hope' is Lieutenant-Colonel Ian Hope, the commander of the Canadian battle group, Task Force Orion. (In practice, most detainees taken by Canadian forces would probably have been detained in operations conducted by Task Force Orion). 'Isfeld' is Pamela Isfeld.
40. Fourthly, I specifically intended for KANDH-0029 to be received by the key officials at KAF who were responsible for detainee management. From conversations with Major Liebert and others, I understood that these were the Provost-Marshal, who was in charge of the Military

Police, and also the military and/ or civilian legal advisors (“LEGADs” or “JAGs”), who were responsible for legal aspects of detainee management. I intended for reporting on detainees, including KANDH-0029, to reach these officials through two channels. First, Ms. Isfeld would physically print the report and hand-carry it to them, as per her DFAIT mandate at KAF to distribute C4 reporting to Canadian officials at KAF relevant to the subject matter of that report. Second, the reporting would be passed down the military chain of command from NDHQ, via CEFCOM commander LGen. Gauthier and/ or CEFCOM–J9 (which had apparent principal responsibility for detainee issues).

41. I received both verbal and written confirmation that KANDH-0029, in accordance with my intention, reached the Provost-Marshal. As to verbal confirmation that my report had reached the Provost-Marshal, I followed up with Ms. Isfeld, with whom I spoke frequently during the course of my duties in Kandahar, and with whom I had several discussions on detainee-related issues. Ms. Isfeld confirmed to me that she had reviewed and discussed KANDH-0029 with the Provost-Marshal. I have a clear recollection of that discussion, including some of the content, as it was very important to me to ensure that the Provost-Marshal was fully aware of the contents of the report. As described earlier, protocol would prevent me from tasking the Provost-Marshal directly with a response to KANDH-0029, but by providing a copy to Ms. Isfeld and following up with her, I could ensure that delivery to the Provost-Marshal was made, all of which in fact occurred.
42. As to written confirmation that my report, KANDH-0029, had been discussed with the Provost-Marshal, such confirmation took place in the response from DFAIT to that report, their “IDR-0512,” sent June 2, 2006. Without divulging any of the content of IDR-0512, the response identifies Provost-Marshal Major James Fraser as the Canadian point of contact for relevant third parties on detainee matters. The signature line provides confirmation that DFAIT consulted widely in making the response, and that such consultation involved CEFCOM, which as noted above was responsible for the Canadian military deployment to Afghanistan, including the work of Canadian Military Police in Kandahar. Other detailed content in the body of IDR-0512 could only have been provided by KAF, as there are references to phone calls and conversations between relevant third parties and officials at KAF responsible for detainees.
43. Through my verbal communications with Ms. Isfeld and written correspondence with IDR, I was thus able to confirm that the C4 distribution chain I had devised on detainee issues was successful in ensuring proper distribution of my reporting, and that KANDH-0029, the report on this urgent and serious matter, had reached the appropriate recipients. I can thus confirm that my reporting on detainee issues, through a combination of a) IDR-CEFCOM and b) the PRT-KAF channel, reached the Provost-Marshal and Military Police in Kandahar.
44. On June 2, 2006 -- the same day that IDR replied to KANDH-0029 with its IDR-0512 -- I sent from the PRT a second C4 report, “KANDH-0032.” This dealt with two issues, one of which concerned the risk of torture and/ or actual torture of Afghan detainees. The signature block for KANDH-0032 shows that it was ‘consulted’ with both Maj. Liebert and Superintendent Martin,

the head of the civilian police unit at the PRT, and that it therefore represented a consensus PRT 'whole-of-government' view. (The fourth Canadian government department represented at the PRT, CIDA, had no involvement on detainee matters.) I used the same distribution list for KANDH-0032 as I had for KANDH-0029, plus a few more addresses. The c.c. line included the 'CEFCOM-COMD' mailbox for LGen. Gauthier, the mailboxes for CEFCOM J2, J3, J5 and J9, and the mailbox for Pamela Isfeld at KAF. I have KANDH-0032 in my possession and judge it to be relevant to the MPCC and within its jurisdiction.

45. The section of KANDH-0032 that dealt with the risk of torture and/ or actual torture of Afghan detainees transferred by Canada was based on a source or sources that I assessed at the time, and assess today, as highly credible. In general, during my 17 months in Afghanistan, I obtained information on detainee issues from a wide range of sources. This included diplomats from other embassies, NGOs, officials from UNAMA, military officers at ISAF, human-rights organizations, journalists and intelligence sources. It would be normal, appropriate and necessary for me in the context to rely on such sources in the course of my duties. All this information was provided on a confidential basis, and the specific sources cannot be disclosed in an Affidavit. As described later, I also obtained first-hand reports of torture and personally saw evidence of injuries related to torture suffered by detainees.
46. DFAIT diplomatic reporting typically opens with a one-paragraph summary. In the summary for KANDH-0032, I alerted the reader to a judgment that the information contained in the report relating to the treatment of detainees was of particular importance for Canada in Kandahar. To ensure that this critical message was not overlooked, unusually for a C4 report I added at the end of the report an additional 'Conclusions' section, which reiterated the importance of the issue to Canada. In other words, I highlighted the substance and also the importance of the issue at the beginning of the report; spelled out the issue in detail in the text of the report; and then again highlighted the substance and importance at the end.
47. KANDH-0032 would have followed the same distribution channels as the earlier report – a) up to IDR, across to CEFCOM, and then down to appropriate addressees within KAF, while also b) travelling sideways, from the PRT to KAF, where it would reach appropriate officials via the Political Advisor distribution channel. In the final section of KANDH-0032, entitled 'Follow-up,' I noted that, through Ms. Isfeld, I had already made contact with the Canadian Forces' legal advisor at KAF, Lieutenant-Colonel Randy Smith, to ensure that action was taken on the concerns raised in the report.
48. I left the PRT at the very end of June 2006. After a month in Canada, I returned to Afghanistan in early August, 2006, this time to Kabul as head of the political section and de facto Deputy Head of Mission. In those capacities, I was responsible for all Canadian policy files -- and any issues that I judged relevant to Canada -- across Afghanistan, especially as they related to Canada's engagement in Kandahar. In the absence of a dedicated political/military-issues officer at the embassy, I also directly handled security, military and intelligence files. This included detainee issues, which across ISAF embassies would be categorized a

political/military responsibility. I also supervised Catherine Bloodworth, a DFAIT political officer who handled three files at the embassy: Human rights, justice and counter-narcotics. In that capacity, for example, I signed off on (and added additional text to) the embassy's 2006 human rights report, the bulk of which was drafted by Ms. Bloodworth.

49. In Kabul, the first report I sent on detainee issues was a report of 28 August, 2006. It did not have a number, but was signed and sent by me as chargé d'affaires – in other words, in the ambassador's absence, as acting head of mission and thus the most senior Canadian in Afghanistan. It dealt with procedural issues on detainees, such as notification, and included requests and recommendations to address such procedural issues. As this 28 August message was informal in tone and style (for example, it had no C4 reference number), and also replied to an earlier, informal CEFCOM-J9 message on a detainee-related issue, I included CEFCOM-J9 on the 'to' line, as well as additional other addresses. I have in my possession that chain of messages, which started on August 21, 2006 and concluded on 19 September, 2006 and judge it relevant as per the MPCC criterion. In this chain of communications, CEFCOM-J9 presented itself to DFAIT as a) the CEFCOM 'lead' for detainee issues, as well as b) a functioning channel for raising questions coming from Task Force Afghanistan related to detainees, which in practice must have meant the Provost-Marshal and Military Police. I note that in its responses, CEFCOM-J9 cc'd CEFCOM-J3. This suggests that CEFCOM -J3 (operations) also had responsibilities within CEFCOM for detainee matters. As noted in Paragraph 39, above, it would probably be during operations that suspected insurgents were actually detained.
50. On September 19, 2006, after meeting with two highly credible sources in Kabul, I sent a C4 message following up on the more informal 28 August message. This was a more formal message and was accordingly assigned a number, "KBGR-0118." ('KBGR' signified reports originating from the Canadian embassy in Kabul. Only formal reports were assigned a number.) KBGR-0118 was sent to IDR as the sole "action addressee." In it, I communicated detailed and directed concerns expressed by those sources regarding current Canadian practice on detainee notifications and transfer. The report made reference to both procedural issues and substantive concerns regarding treatment of Afghan detainees. Because this report was very direct and critical of Canadian practices, I removed National Defence Headquarters (NDHQ) and other Canadian Forces addresses off the C4 distribution list, limiting it to DFAIT addresses only. However, as noted above it was sent to IDR, which had the DFAIT lead on detainee issues, with the explicit request that IDR follow up with NDHQ. Following established IDR-NDHQ channels, these concerns would have been passed down the NDHQ chain to the Provost-Marshal and Military Police in the field.
51. Nine days later, on September 28, 2006, following a meeting with a third interlocutor, and having received no response to KBGR-0118, I sent a follow-up report, "KBGR-0121," to the same DFAIT addressees, including IDR. This report dealt with procedural issues only, but was even more direct in content than was KBGR-0118. I have both KBGR-0118 and KGBR-0121 in my possession and judge them to be relevant to MPCC. Following established IDR-NDHQ channels, these concerns would have been passed down the NDHQ chain to the Provost-

Marshal and Military Police in the field.

52. On December 4, 2006 I sent another report, "KBGR-0160," on detainee policy issues, including concerns about treatment of detainees. That report was sent to IDR, cc'ing 45 addressees, including CEFCOM-J9 and KAF. I have that report in my possession and judge it to be relevant as per MPCC's criterion. Following established IDR-NDHQ channels, plus the KAF and CEFCOM-J9 routes, the report would have been passed to the Provost-Marshal and Military Police in the field.
53. At the end of December 2006 or in January 2007, the embassy submitted its annual human rights report. It deals in part with detainees. I do not have it in my possession, and cannot provide comments on the distribution list, but recall some of its content (I wrote parts; parts were published in the *Globe and Mail*) and judge it to be relevant to MPCC.
54. In approximately March 2007, during a visit to Ottawa, I participated in an interagency meeting on detainees. During that meeting, I spoke very directly to the issue of the treatment of detainees by Afghan authorities. A CEFCOM-J9 representative was present at that meeting, and took notes. At one significant point in my comments, I observed her put down her pen and cease taking notes. IDR also took part in that meeting, as did representatives from a range of other government departments.
55. On April 20, 2007, I sent a C4 report, "KBGR-0258," on detainees. It dealt with a range of issues, including their treatment. The four DFAIT "action addressees" were IDR (detainee policy), "FTAG" (the new Afghanistan Task Force), IRH -GHA (human rights) and JLH (international law). Among the 71 addresses on the 'cc' list were CEFCOM-J9; "NDHQ +CEFCOM HQ," which seems to have replaced "NDHQ +CEFCOM Comd" as the C4 mailbox for CEFCOM commander LGen. Gauthier; David Mulroney, the new DFAIT Associate Deputy Minister, Interdepartmental Coordinator on Afghanistan and head of the Afghanistan Task Force (FTAG); and KAF. I have KBGR-0258 in my possession and judge it relevant as per MPCC's jurisdiction. Following established IDR-NDHQ channels, plus the KAF and CEFCOM routes, the report would have been passed to the Provost-Marshal and Military Police in the field.
56. On April 21, FTAG sent me a 'Detainee Diplomatic Contingency Plan,' developed by FTAG and approved by National Security Advisor Margaret Bloodworth.
57. On April 23, the *Globe and Mail* published its investigative report by Graeme Smith on the treatment of Afghan detainees, including detainees transferred from Canadian custody. In response, the Government of Canada provided instructions to me as chargé that drew on the 'Detainee Diplomatic Contingency Plan.'
58. On April 24, 2007, I sent a formal C4 message, "KBGR-0261," which I signed as chargé d'affaires. Two embassy officers were listed as 'consulted': Philip Hannan, our communications officer, and Catherine Bloodworth, the human rights officer. KBGR-0261

was sent as a response to, and commentary on, the 'Detainee Diplomatic Contingency Plan.' It contained four paragraphs. The first was a preamble; the second and third, analysis; the fourth, three concrete recommendations. It was sent to the same four DFAIT action addresses as KBGR-0258. The 34 'cc' addresses included officials within DFAIT, CEFCOM-J9 and KAF. I have this message in my possession and judge it to be relevant to MPCC. Following established IDR-NDHQ channels, plus the KAF and CEFCOM routes, the report would have been passed to the Provost-Marshal and Military Police in the field.

59. On April 25, I sent four reports on detainees, including two formal reports, "KBGR-0263" and "KBGR-0265." These reports dealt with a range of detainee-related issues. They were all sent to FTAG and cc'd to a range of C4 addressees, including DFAIT officials and CEFCOM-J9. Following established IDR-NDHQ channels, plus the KAF and CEFCOM routes, these reports would have been passed to the Provost-Marshal and Military Police in the field. I have these reports in my possession and judge them relevant to MPCC.
60. On April 30, 2007, I sent a report on detainees, "KBGR-0267." It dealt with both procedural issues on detainees and substantive issues on their treatment. I have in my possession two versions of that report: The original, which includes more information and a longer distribution list, including CEFCOM-J9 and IDR, and the final version approved by the new Ambassador, which is shorter in content and reduced in its distribution from 75 original addressees to 5, in accordance with the Ambassador's instructions. CEFCOM-J9 and IDR were not on the revised list, although KAF is. It is unclear if this report would have reached the Military Police or Provost-Marshal, although it may have. I judge that it would be relevant to MPCC.
61. On April 30, 2007, I sent "KBGR-0269," on procedural issues and also substantive questions related to treatment of detainees. It had nine addresses on the distribution list, but not NDHQ address or KAF. It is unlikely that it reached NDHQ.
62. On May 3, 2007 I sent two reports on Afghan detainees, one identified as "KGBR-0271," and one that was unnumbered. On May 4, 2007, I sent an additional message on detainees. All three went to IDR and KAF, so should have reached the Provost-Marshal and Military Police. I have all three reports in my possession and judge they are wholly or in part relevant to MPCC in accordance with its jurisdiction.
63. On May 7, 2007 I sent "KBGR-0274" and "KBGR-0275," which dealt with procedural and also substantive issues related to detainees. KNGR-0274 was sent to a limited distribution list, but that list included KAF. It should therefore have reached the Provost-Marshal and Canadian Military Police. I have this report in my possession and judge it relevant to MPCC. KBGR-0275 had a longer distribution list, which included the "CEFCOM HQ" address, which I believe was LGen. Gauthier's address, plus KAF. Following established channels, that report would have been passed to the Provost-Marshal and Military Police in the field. I have that report in my possession and judge it relevant to MPCC as per its mandate.

64. On June 5 and 6, 2007, I headed the embassy team that conducted a monitoring visit to a detention facility in Kabul and interviewed four detainees. As a result of this visit, I acquired first-hand information about the treatment of Afghan detainees transferred by Canada to Afghan authorities in Kandahar. I included this information in "KBGR-0291," dated June 6, 2007. There were ten C4 addresses on the distribution list, including DFAIT officials, IDR, CEFCOM-J9 and the commander of the Canadian Task Force in Afghanistan. Following established channels, that report would have been passed to the Provost-Marshal and Military Police in the field. I have this report in my possession and judge it relevant to MPCC.
65. On June 9, 2007, I sent "KBGR-0292," which dealt with procedural and substantive issues related to detainees. The distribution list included CEFCOM-J9, DFAIT officials, IDR and KAF. Following established channels, that report would have been passed to the Provost-Marshal and Military Police in the field. I have it in my possession and judge it relevant to MPCC.
66. On June 21, 2007, I sent "KBGR-0292," on procedural and substantive issues related to detainees. It was sent to only eight addressees, but these included IDR and KAF. Following established channels, that report should have been passed to the Provost-Marshal and Military Police in the field. I have this report in my possession and judge it relevant to MPCC.
67. On July 17, 2007, I sent "KBGR-0302." It dealt with a wide range of issues, including a section on treatment of detainees. It was delivered to C4 addresses that include the "CEFCOM HQ" mailbox (LGen. Michel Gauthier), KAF and DFAIT officials. Following established channels, that report should have been passed to the Provost-Marshal and Military Police in the field. I have this report in my possession and judge it relevant to MPCC.
68. Finally, on August 27, 2007, I sent "KBGR-0321" on detainees. It was sent to CEFCOM-J9, KAF and a DFAIT official. Following established channels, that report should have been passed to the Provost-Marshal and Military Police in the field. I have this report in my possession and judge it relevant to MPCC.
69. I make this affidavit to clarify issues raised in a Motion made by legal counsel for the Department of Justice to set aside the summons issued to me by the MPCC. I make this affidavit specifically to correct errors contained in the grounds which I understand form the basis of the motion made by the Department of Justice.

SWORN BEFORE ME in City/Territory of )  
Washington, District of Columbia this 5th day )  
of October, 2009. )

*Eddie Palmer* )

A COMMISSIONER FOR OATHS in and for )  
the District of Columbia whose commission )  
expires 09/14/2014 )

**EDDIE PALMER**  
**NOTARY PUBLIC DISTRICT OF COLUMBIA**  
**My Commission Expires 09/14/2014**

T2 E

Subscribed and sworn to before  
me, in my presence,  
this 5<sup>th</sup> day of OCTOBER, 2009