



**ANNUAL
REPORT**

1991-1992

R O Y A L
C A N A D I A N
M O U N T E D
P O L I C E

**EXTERNAL
REVIEW
COMMITTEE**

6

Canada



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Canada

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Royal Canadian Mounted Police
External Review Committee



Comité externe d'examen de la
Gendarmerie royale du Canada

CANADA

Chairman Président

June 23, 1992

The Hon. Doug Lewis, P.C., Q.C.
Solicitor General of Canada
13th Floor
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Mr. Minister:

The Government announced in the February 1992 Budget that it proposes to merge the RCMP External Review Committee and the RCMP Public Complaints Commission.

It appears that the Committee has, during its few years of existence, gained the respect of those dealing with it. Credit must be given to the Committee and to the exceedingly devoted personnel whose names appear in Annex I.

I hereby submit, for tabling in Parliament, the Annual Report of the RCMP External Review Committee for the fiscal year 1991-92, pursuant to section 30 of the *Royal Canadian Mounted Police Act* and your delegation to appoint me to act as Chairman.

Yours truly,

A handwritten signature in cursive script, reading "F. Jennifer Lynch, P.C.".

F. Jennifer Lynch, Q.C.
Acting Chairman



COMMITTEE MEMBERS

Chairman

The Honourable René J. Marin, OMM, QC, LLD*

Vice-Chairman

F. Jennifer Lynch, QC

Members

Joanne McLeod, CM, QC

William Millar

Mary Saunders, QC**

* The Honourable René J. Marin completed his term as Chairman on March 27, 1992.

** The Honourable M. Saunders was appointed to the Supreme Court of British Columbia on December 31, 1991.



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I INTRODUCTION

JURISDICTION

The RCMP External Review Committee was created to provide independent, impartial recommendations to the Commissioner of the RCMP on grievances, formal discipline and discharge and demotion. Under the provisions of the *RCMP Act* (1986), any case resulting in formal discipline, discharge and demotion is referred to the Committee by the Commissioner, unless the member involved requests that it not be referred. In the case of grievances, the legislation is less clear; section 36 of the *RCMP Regulations* provides that grievances relating to the following matters are to be referred to the Committee:

- a) the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;
- b) the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the *RCMP Act*;
- c) the Force's interpretation and application of the *Isolated Posts Directive*;
- d) the Force's interpretation and application of the *RCMP Relocation Directive*; and
- e) administrative discharge on the grounds of physical or mental disability, abandonment of post or irregular appointment.

As reported in previous annual reports, the Commissioner recognized that the RCMP's interpretation of

paragraph 36(a) should be broadened, and advised the Committee that henceforth grievances relating to 17 subjects would be referred; subsequently that was reduced to 16 subjects.

After reviewing a matter, the Chairman of the Committee has the following options:

- a) to agree with the disposition of the matter by the RCMP and so advise the parties and the Commissioner of the RCMP;
- b) to disagree with the disposition of the matter by the RCMP and advise the parties and the Commissioner of the Chairman's findings and recommendations; and
- c) to initiate a hearing to consider the matter. The Committee, following a hearing, will provide its findings and recommendations to the parties and to the Commissioner.

In practice, even when he was in agreement with the disposition of the matter by the RCMP, the Chairman provided the parties and the Commissioner with detailed findings and recommendations.

RELATIONSHIP WITH THE FORCE

As in previous years, the senior management of the Force was cooperative in working with the Committee and Chairman to resolve issues of common concern. The Honourable René J. Marin was

Chairman throughout the reporting year until March 27, 1992.

The former Chairman met regularly with the Commissioner and the two Deputy Commissioners (Administration) who served during the year. The Committee would like to express a special word of thanks to Deputy Commissioner (retired) R.G. Moffatt for his assistance over the past five years. Deputy Commissioner Moffatt devoted considerable time to handling issues relating to the Committee. The Committee would also like to welcome the new Deputy Commissioner (Administration) J.P.R. Murray and to wish him well in his new position.

As it had previously, the Force, through the Deputy Commissioner (Administration), provided assistance to the Committee in distributing copies of its brochure to all Force members. The Committee appreciates this help. The brochure provides members with information which assists them in better understanding the work done by the Committee. It also explains to them how the grievance and appeal processes work, as well as the elements to be included in cases referred to the Committee.

OFFICES OF THE MINISTER AND DEPUTY MINISTER

Throughout the year, the former Chairman consulted with the Solicitor General, the Deputy Solicitor General and their respective senior staffs. Their prompt and courteous attention to all requests from the Committee was appreciated.

PROPOSED AMALGAMATION WITH THE RCMP PUBLIC COMPLAINTS COMMISSION

On February 25, 1992, the Minister of Finance announced in his Budget Speech that the RCMP External Review Committee and the RCMP Public Complaints Commission will be consolidated and that legislation will be introduced to give effect to this approach. The Budget Papers emphasized that consolidation should be carried out "... to achieve savings in administrative overhead and other efficiencies in program delivery, and to avoid duplication."

II THE YEAR UNDER REVIEW

CASES — ISSUES AND CONCERNS

In the 1991-92 fiscal year, the Committee's workload increased by seven percent over the preceding year.

The cases considered by the Committee dealt with: the RCMP Travel Directive; the RCMP Relocation Directive; the RCMP official languages policy; the RCMP policies on reimbursement of legal fees and confidentiality of medical information; the RCMP dental care plan for civilian members; the application by the RCMP of government policies relating to income tax; harassment in the work place; and off-duty conduct. A more detailed discussion of some of the issues arising out of the Committee's review follows.

Under subsection 34(1) of the *RCMP Act*, the Chairman of the Committee reviews each matter referred to the Committee in order to determine whether the RCMP's disposition of the matter was satisfactory. Where he or she is not satisfied with the Force's disposition, the Chairman may decide to institute a hearing to inquire further into the matter (s.34(3)(b)). During the year under review, the Committee held hearings on five grievances. These hearings, relating to the RCMP official languages policy and staffing, had been called in the previous year. In addition a sixth hearing had been called. The recommendations on the RCMP policies on official languages and staffing have been sent to the Commissioner.

a) *Grievances*

The Committee reviews only a fraction of the grievances presented in the RCMP. Only those grievances prescribed by the Governor in Council pursuant to subsection 33(4) of the *RCMP Act* are referred. The Committee has found that the processing of these grievances in the RCMP generally enjoys the benefit of compliance with the *RCMP Act* and principles of procedural fairness; it is unable to say whether grievances not referred for review enjoy the same benefits.

The following issues were addressed by the Committee during the year.

i) *Time Limits*

A number of cases during the year confirmed that the mandatory nature of the time limits for presenting a grievance, set out at subsection 31(2) of the *RCMP Act*, has yet to be understood. Members often waited past the 30 day period to present their grievances at the initial level, while Grievance Advisory Boards and Adjudicators often failed to recognize that fatal flaw. This led to the unnecessary expenditure of resources on invalid grievances. The Committee's Findings and Recommendations and their approval in the Commissioner's decisions on these matters should help drive the point home to all involved in the process.

Elaborating on the aspect of timeliness, the Committee has noted

that the time limits cannot be circumvented by antedating a grievance presented late, and that a grievance is late where it is presented more than 30 days after both the initial decision and the end of the informal resolution process. The Committee, however, found on a balance of probabilities that the time limits had been met where the record was silent as to the exact date the grievance was presented, but showed that it was possibly presented within delays and the Force made no objection as to timeliness. The Committee also has been unwilling to apply time limits against grievors where the record indicates that all or most of the delay was due to the Force or arose as a result of a request from grievors for additional information.

ii) *Language Grievances*

The Committee this year again dealt with a number of language grievances, and continued to stress the need for the Force to follow its policy when determining language requirements, particularly at the preliminary staffing stages, when job opportunity bulletins are being drafted. In last year's report, the Committee commented that both Force management and members had difficulty understanding the policy. Similar comments were made this year. The Committee questioned the clarity and logic of certain parts of the policy and recommended that more information be provided to members. The Committee is happy to report that this has led to improved communications, as it understands that the Force now provides information on language profiles. The Committee has

not hesitated to deny language grievances based on the application of the policy, where the record did not show it had been incorrectly applied. The Committee also noted that bilingualism is a personal asset which can facilitate promotion and that the official languages policy does not discriminate on the basis of ethnic origin.

iii) *Burden of Persuasion*

From its very first grievance, the Committee has taken the position that, in accordance with general principles of labour arbitration, the burden of persuasion rests upon the grievor. Where grievors have failed to establish the central assertions of their grievances, the Committee has recommended that the grievances be denied. However, the Committee has commented that it may be appropriate to reverse this onus in certain circumstances; it may be appropriate to do so, for example, where grievors request from the RCMP information to which they are entitled pursuant to the *RCMP Act*, but the Force does not adequately respond.

iv) *"Aggrieved" Member*

In numerous grievances, members have not established that they were "aggrieved". The Committee noted that subsection 31(1) of the *Act* requires that members have sufficient interest in a matter in order to present a grievance. This interest must be legal, direct and personal. Members must demonstrate that they suffered personally; mere disagreement with policy is not sufficient. The Committee

also found that in order to be aggrieved it is not necessary that a member be in a situation different from other members. All members may be aggrieved when a decision, act or omission is applied to them to their prejudice; that other members did not grieve does not remove the prejudice suffered by the member who does.

v) *The Relationship Between Force Policy and Government-wide Policy*

Grievance decisions in previous years have addressed the relationship between RCMP policy and government-wide policy. As noted in the 1990-91 annual report, the Force has adopted distinct administrative policies in parallel to government-wide policies which apply to the RCMP and which address the same subject areas. This situation leaves the Force open to grievances arising from substantive and textual differences between the RCMP policy and the government-wide policy from which it is derived. This year the opposite problem arose when members claimed the application of the government-wide policy where the Treasury Board had approved a separate policy for the Force. The Committee pointed out that the two policies specifically recognized that there was no overlap in their respective fields of application, with the result that only the policy specifically approved for the RCMP applied to RCMP members. The Committee also found that limiting the examination of each policy to one clause where they differed was not a proper way to assess their relative value.

vi) *Information Problems on Relocation*

Numerous grievances have arisen because members lacked sufficient information to make informed decisions respecting relocation. The Committee recommended that grievances be upheld where the Force failed to comply with a policy requirement to provide complete and accurate information to members. In other instances, however, the Committee recognized that the grievors were responsible for obtaining the information necessary to exercise their options and recommended the denial of grievances resulting from poor choices.

vii) *Jurisdiction of the Committee on Grievances*

In previous annual reports the Committee has commented on a document issued by the Force providing a list of issues it considered to fall within paragraph 36(a) of the *RCMP Regulations*. Last year the Committee affirmed its jurisdiction over grievances arising under the Force's official languages policy. This year the Committee declined to consider a portion of a grievance dealing with the job description of a staffing action because there was no indication that this issue fell within the scope of section 36 of the *RCMP Regulations*. That part of the grievance was severed from the rest and returned to the Force for adjudication.

viii) *Protection of Medical Information*

The Committee had occasion to review a grievance in which serious concerns

were raised as to the confidentiality and protection of medical information. It found that a member had been screened out of a Promotion Board by an interviewer who had misused medical information to which he did not have authorized access. The Committee stressed that the personal information in need of protection was not merely that contained in the medical file, but all medical information wherever found. The Committee consequently recommended that such information be purged from all files considered by the Board if it did not have authorized access, and that the RCMP review the protection it provided to such information.

ix) *Reasonable Apprehension of Bias*

A number of matters reviewed by the Committee so far have raised the issue of bias, generally as a result of the internal review or appeal of a decision made in the Force. The issue arose again this year in relation to the reconsideration by a newly-constituted Board of a prior decision which had been struck down. The Committee found that there was no general principle preventing the return of a matter to a new Board at the same level; if the grievor claimed there was a reasonable apprehension of bias, the grievor had the onus to lay the foundations for such a claim because mere conjecture or surmise did not suffice. The test to be met was found to be that of the realistic and practical conclusions which would be reached by a well-informed, reasonable person.

x) *Mootness*

A grievance or issue is moot when the situation it relates to no longer exists. As a general rule, review bodies like the Committee do not review moot cases as no effective remedy can be provided.

The issue of mootness was further explored this year in the context of grievances on staffing actions. The Committee found that where the subject matter of a grievance had ceased to exist, for instance the staffing action which was grieved had been cancelled, or the redress sought had already been awarded, the grievance was moot unless there continued to exist a question of great importance and of continuing effect. It was important in determining mootness whether the issue had truly been resolved or whether members remained aggrieved.

xi) *Discretionary Decisions*

In every situation where discretionary powers are exercised, the exercise of the discretion can give rise to claims of abuse, arbitrariness or bias. The RCMP is no exception. The inadequate justification of discretionary decisions is a perennial issue, be it in relation to staffing, expense claims, relocations, etc. In many cases reviewed by the Committee it was the absence of information regarding the exercise of discretion which gave rise to grievances; these could have been avoided. In other cases reasons were given which did indicate errors in the exercise of the discretion. There the

Committee stressed the need not only to consider all relevant matters but more importantly to disregard irrelevant ones, relevancy to be determined in light of the provision structuring the exercise of the discretion.

b) *Discipline*

i) *Intent (Mens Rea)*

During the past year, the Committee reviewed at length the standard of intent or *mens rea* required to establish an allegation under section 39 of the *RCMP Regulations*, namely disgraceful or disorderly conduct bringing discredit on the Force. In the past, because of the provisions of the *RCMP Act* prior to the amendments of 1986, adjudication boards had frequently continued to import the criminal standard of intent for such allegations. The Committee found that it is necessary to prove *mens rea* to establish an allegation under section 39 only where intent is specifically referred to in the particulars and is considered an essential particular. In other cases intent may be one of the relevant considerations but conduct involving a mental element less than legal *mens rea* could amount to conduct contrary to subsection 39(1). It was hoped that this principle would be observed by future adjudication boards. There was no decision from the Commissioner because the member appealing the Adjudication Board decision withdrew his appeal upon receiving the Findings and Recommendations of the Committee.

ii) *Re-Assessment of Credibility*

The Committee confirmed its position regarding findings of credibility of witnesses before an Adjudication

Board. The Committee will review the findings and make appropriate recommendations where the findings are not supported by the evidence led before the Board, constitute an error of law or breach of the principles of natural justice or equity.

iii) *Admissibility of Evidence*

The Committee reaffirmed that paragraph 24.1(3)(c) of the *RCMP Act* sets out the standard of admissibility for evidence at an adjudication board hearing: the evidence must be relevant and deemed fit. The Committee noted that this provision expands the scope of evidence allowed before adjudication boards beyond that which would be allowed before a court of law. The strict application of standards regulating admissibility in court is not appropriate in adjudication board hearings. That is not to say, however, that all evidence should be admitted. For example, an adjudication board may refuse to accept character evidence where it is irrelevant, or limit it where it consumes an inordinate amount of time and confuses the issues to be determined by the board.

iv) *The Charter of Rights and Freedoms: sections 8 and 24*

In a disciplinary referral, the Committee applied two principles set out in *R. v. Collins*, [1987] 1 S.C.R. 265. The first is that consent searches conducted in a reasonable manner and within the scope of the consent do not violate section 8 of the *Charter*, and evidence obtained thereby will be admissible. The second principle is that the party seeking to exclude the evidence has the burden of persuading a tribunal

that evidence obtained in violation of the *Charter* should be excluded.

v) *Disciplinary Law vs. Criminal and Civil Law*

The Committee emphasized that disciplinary law is distinct from criminal law and civil law. While it may share certain common principles with these other areas of law, the context in which these principles are to be applied is quite different. It is important for adjudication boards to keep in mind that the question whether a disciplinary allegation is established against a member is quite independent from the member's liability in criminal or civil law. The concepts of "accused", "charge", "crime", "offence" and "guilt" have no place with respect to the issues to be determined in disciplinary proceedings and their use could well lead to the application of inappropriate standards.

vi) *Sanctions*

The issue of sanctioning standards to be used in disciplinary cases has been examined in the past, and arose again in two cases this year.

In the first case the member appealed only the finding that the misconduct had been established, thus not raising the issue of the adequacy of the sanction. In finding that the misconduct had been established, the Committee was of the view that the sanction imposed was totally inadequate in relation to the seriousness of the established misconduct. It is to be noted that the *RCMP Act* does not allow the Appropriate Officer to appeal a sanction unless it is a sanction which is

not provided under the *Act*. The appellant withdrew his appeal upon receiving the Committee's Findings and Recommendations.

In the second case, where the sanction was overly severe in light of the misconduct, the Committee found it useful to review the applicable principles, conveniently set out in Discussion Paper 8, "Sanctioning Police Misconduct — General Principles". Of particular interest were recognizing the value of trained and experienced human resources, and the requirement to ascertain that a person could no longer function as a police officer before a discharge is ordered.

RESEARCH AND COMMUNICATIONS

During the 1991-92 fiscal year the Committee carried out a research program under the direction of the former Chairman.

The research program consisted of the production of discussion and consultation reports on mandate-related issues, an annual information brochure explaining the mandate and issues of concern to the Committee, and a monthly communiqué outlining the activities of the Committee.

The annual Police Human Resource Management Seminar was not held this year due to the spending freeze and the amalgamation announcement.

a) *Discussion and Consultation Papers*

The Committee's Research and Communications Division had a very productive year, preparing the following documents on mandate-related issues:

- i) Disciplinary Dismissal — Consultation Report;
- ii) Off-Duty Conduct — Discussion Paper;
- iii) Off-Duty Conduct — Consultation Report;
- iv) Sanctioning Police Misconduct — Discussion Paper;
- v) Sanctioning Police Misconduct — Consultation Report;
- vi) Occupational Health and Safety — Discussion Paper;
- vii) Conflict of Interest — Discussion Paper;
- viii) Secondary Employment — Discussion Paper;
- ix) Reflection on Police Management Practices — Discussion Paper.

i) *Disciplinary Dismissal — Consultation Report*

During 1990-91 the Committee published its sixth discussion paper, "Disciplinary Dismissal — A Police Perspective". It examined the characteristics and practices of disciplinary and non-disciplinary dismissal in Canadian police forces. Further, it commented on the labour relations issues involved and outlined a range of options and models available for the development of future policies relating to police dismissal.

This year the consultation report on disciplinary dismissal was published. Many respondents provided a considerable amount of detail on the practices and procedures in their organizations. Many also commented on the usefulness of the paper to their organizations and to others.

ii) *Off-Duty Conduct — Discussion Paper 7*

The Committee's discussion paper, "Off-Duty Conduct", examines the wide range of off-duty police conduct which has been the subject of regulation and discipline in police forces in Canada. It also examines the general areas of conduct which have been the object of such attempts at regulation and discipline. Further, the paper compares police officers' situations to those of other public and private sector employees.

In addition, the discussion paper examines changes occurring in relation to the regulation of off-duty conduct in recent years and points out some trends. Two definite ones emerge. One is the replacement of vaguely defined prohibitions by detailed policies. The other is the elimination or relaxation of the total prohibition of secondary employment, which was once thought appropriate.

The discussion also focuses on the reliance of police forces on the concept of "discreditable conduct" as the basis for regulating off-duty conduct. This leads to questions regarding the extent to which a police officer is permitted to have a private life over which the police force does not have jurisdiction, and the limits of supervision and intervention from police forces into the private lives of their officers.

The discussion paper concludes that what currently appears to be missing is the adoption of a fundamental principle which underlies legally authorized intervention with respect to off-duty employee conduct in the private sector. This principle is

that such intervention can only be justified if the employer can demonstrate a rational connection or nexus between the off-duty conduct and the legitimate interests of the employer.

iii) *Off-Duty Conduct — Consultation Report*

The consultation report on off-duty conduct reflects an excellent response to the discussion paper, both in terms of the number of replies and of the quality of responses.

The quantity and quality of the letters received make it clear that off-duty conduct is a topic of great importance to the police community. In addition to sharing their views on the concerns regarding the regulation of off-duty conduct, many respondents advised that they found this consultation phase to be a useful way to share their experiences with others throughout the Canadian policing community.

iv) *Sanctioning Police Misconduct — Discussion Paper 8*

The discussion paper, "Sanctioning Police Misconduct — General Principles", examines the general principles which should apply in sanctioning police officers for misconduct. It surveys the sanctioning practices in Canadian jurisdictions, and concludes that there are a number of aspects of police disciplinary sanctions worthy of further study and discussion by police administrators.

The paper suggests that more thought, time and resources should be spent on finding ways to avoid the need for discipline. When discipline is

necessary, it is preferable to use that which is affirmative, remedial and reparative.

Further the paper suggests that, in the absence of a legislative statement of the aims and purposes of disciplinary sanctions, it would be useful for individual police departments to develop their own statements. It is suggested such statements might include a number of common principles which include such items as the following:

- the main purpose of police discipline is to assist a police force to achieve its organizational objective of delivering effective and efficient police services to the community, also remembering that any disciplinary sanction imposed must be fair and just in the circumstances;
- where organizational or administrative factors are a significant contributing factor to the misconduct, priority should be given to correcting these factors rather than blaming and disciplining the individual officer;
- a disciplinary sanction should never be disproportionate to the gravity of the conduct being sanctioned;
- disciplinary sanctions should be consistent (similar cases with similar circumstances should receive similar sanctions).

v) *Sanctioning Police Misconduct — Consultation Report*

The consultation phase on the principles of sanctioning discussion paper resulted in some interesting responses.

The Committee received general comments relating to the interest of the subject to the police community, specific comments on issues presented in the paper, and a great deal of valuable information on how the respondents' organizations handle sanctioning.

The commentary received makes it clear that discussions on the principles of sanctioning are important to the police community, and that such discussions will continue for a long time.

It is clear from the responses received that, while there is general agreement that a degree of standardization in sanctions imposed for the misconduct of police officers is a worthwhile goal, much more discussion is necessary and there are many issues to be sorted out before any general standardization could become a reality. There is support from a number of police respondents for the idea that, as a first step in the process, individual police services should develop their own statements of principles.

vi) *Occupational Health and Safety — Discussion Paper 9*

The discussion paper, "Occupational Health and Safety — An Employer Perspective", was commissioned because of requests from the police community. Health and safety issues are increasingly of concern to police officers. More and more, they encounter spills and toxic waste, and fear contact with AIDS and other contagious diseases. The police community has become concerned about a lack of planning in this area.

Employers are also becoming more aware of the cost of ill health and the benefits of having a healthy workforce. Federal and provincial governments, through a complex web of laws, are making it more necessary for employers to be concerned with employee health and safety.

The discussion paper examines occupational health and safety issues affecting the police community from the employer's perspective. In addition to discussing legal considerations relating to occupational health and safety and critical issues in the police environment, the paper examines strategies and guidelines for improvement. The paper also points out that health and safety activities are still relatively undeveloped in spite of the fact that there have been legal incentives for more than a decade and researchers and practitioners have been expressing their opinions on the urgency and importance of health and safety programs.

vii) *Conflict of Interest — Discussion Paper 10*

The discussion paper on conflict of interest was also undertaken because of concerns expressed within the police community.

The discussion paper examines the important elements of conflict of interest in private employment, the public sector and the police environment. It discusses the reasons for the regulation of conflicts of interest and examines codes to regulate conflicts of interest. Specific examples of conflicts of interest within the police environment are outlined.

In relation to conflict of interest and secondary employment, the paper identifies a trend towards the liberalization of the traditional rules applicable in police forces. This trend follows developments in both the private sector and the public sector, and may also be at least partly influenced by the increasing trend toward the philosophy of community policing.

The paper concludes that developing new compliance structures to respond to more sophisticated ethical codes in police forces, making them work and keeping their costs within bounds are important challenges for police management, just as they are for management in the private and public sectors. The goal to be attained, however, is a police community in which ethical behaviour is a part of the culture, voluntarily pursued, and sensitively understood by police officers and police managers alike.

viii) *Secondary Employment — Discussion Paper 11*

While work on this discussion paper was near completion when the amalgamation was announced, it has not been finished. As there is some question about the future of the research program in the new agency, this paper has remained in draft form.

This discussion paper was undertaken as a result of requests from the police community; the issue of secondary employment has been a contentious issue for some time, both in the public sector and the private sector. Police officers have been increasingly questioning the limits on secondary employment as an

unwarranted intrusion into their personal lives.

The draft discussion paper points out the large variation in policies on secondary employment in the Canadian police community, ranging from complete prohibition in some jurisdictions to the absence of any policy regulating secondary employment in other jurisdictions. The draft paper reports the results of a survey of Canadian police management and labour representatives, as well as of human resource managers of selected private sector companies, on the subject of secondary employment.

The one issue on which there was general agreement amongst all those surveyed was the prohibition of secondary employment that involved a conflict of interest. Beyond that, there were numerous differences amongst the various groups surveyed. The draft paper points out those differences and analyses the results.

ix) *Reflection on Police Management Practices — Discussion Paper 12*

This paper, as the title indicates, reflects on the evolution of police management practices.

- Program Support

The Committee appreciates the time and efforts of all those who assisted consultants in carrying out their research for the discussion papers. Many individuals within the police community and the private sector gave generously of their time and knowledge to provide useful information to be used in writing the discussion papers.

The Committee also thanks the large number of individuals who assisted in the research program by providing comments on a variety of topics and a great deal of extremely valuable information on practices within their areas of responsibility.

b) *Communications*

The Committee updated its annual information brochure, entitled "Your Grievances and Appeals", for 1990-91 and distributed it to all RCMP members. The text provides advice to members on how the grievance and appeal process works, describes specific elements that must be included in cases referred to the Committee and explains some of the issues addressed in the previous year.

The Committee continued to send a monthly communiqué on its activities to RCMP Commanding Officers and Division Staff Relations Representatives. The communiqués provided updates on cases reviewed by the Committee, recommendations emanating from these cases, research documents recently published, conferences and meetings attended by Committee members and staff, as well as addresses given by the Chairman. The Committee is pleased that the Division Staff Relations Representatives reproduced these communiqués in their newsletters which are distributed to all members in their divisions, thus extending the readership of the information. This ongoing communication with Force members proved to be valuable to the Committee. The staff of the Committee received phone calls from many RCMP members as a result of items printed in the communiqués.

Summaries of the cases considered by the Committee were distributed within the police community. These summaries provide the important elements of the cases and a synopsis of the findings and recommendations. The objective of this distribution is to provide information that will be of value to those involved in the consideration of grievances and appeals, primarily within the RCMP. The Committee takes this opportunity to thank those who gave feedback, in writing or at meetings, during this process. This ensured that the summaries meet the purpose for which they were designed: providing useful information in a format which was both readable and concise.

c) *Speeches, Visits and Conferences*

The former Chairman addressed a number of organizations on issues relating to the mandate of the Committee. Audiences included:

- Atlantic Association of Chiefs of Police, Saint John, New Brunswick;
- Ontario Senior Officers' Police Association Annual Conference, Windsor, Ontario;
- RCMP "L" Division Planning Conference, Charlottetown, Prince Edward Island;
- Association des juristes d'expression française et Le programme de common law en français à l'Université d'Ottawa, Ontario.

The former Chairman and staff members met with a representative of the New Zealand Police, and had extensive discussions with the Hong

Kong Police Complaints Committee and the Royal Hong Kong Police.

Members and representatives of the Committee attended the following conferences:

- the International Association for Civilian Oversight of Law Enforcement;
- the 7th Annual Conference of Canadian Administrative Tribunals;
- the 86th Annual Conference of the Canadian Association of Chiefs of Police;
- the National Conference of Ombudsmen;
- 16th Annual Symposium of Provincial Police Commissions;
- National Ombudsmen's Investigators Workshop;
- Atlantic Association of Chiefs of Police; and
- Grievance Training Day, "E" Division, RCMP.

COMMITTEE MEMBERSHIP

In March 1992 the Committee's Chairman completed his mandate, and in April 1992 the Solicitor General authorized the Vice-Chairman to exercise the powers and perform the duties and functions of the Chairman pursuant to subsection 26(2) of the *RCMP Act*. At the end of 1991, one of the Committee's members was appointed to the bench of the Supreme Court of British Columbia. The Committee would like to thank the Honourable René J. Marin and the Honourable Mary Saunders for their contributions to the work at the Committee and wish them both well.

ADMINISTRATION

i) *Rules of Practice and Procedure*

The amendments to the Committee's *Rules of Practice and Procedure* were published in the *Canada Gazette* Part II on 9 October 1991. The amended *Rules* are reproduced in Annex 2.

ii) *Policy Review*

As a result of the Committee's formal Findings and Recommendations in matters referred to it, the RCMP has undertaken reviews of those policies which the Committee had found to have been less than ideal. The Committee does not see its role generally as allowing it to propose specific policy initiatives to the RCMP; however, it does believe that it is in a unique position to identify problems with existing policy, or the lack thereof, and to suggest possible alternatives that the Force might like to consider.

As a result of an ongoing discussion between management and Division Staff Relations Representatives, the Deputy Commissioner (Administration) asked the Committee Chairman to conduct a review of three policy areas: residency requirements, rescheduling and major events. The Chairman met with the National Executive of the Division Staff Relations Representatives program to outline the work plan and to seek their representations on the issues. The review took the form of discussions with policy centres in the RCMP, formal submissions by Division Staff Relations Representatives and a review of *existing and proposed policies in a number of other police forces.*

IV LOOKING BACK

The year under review once again demonstrated the benefits derived from a good working relationship with the Force. A number of meetings were held with representatives of Staff Relations Branch, Professional Standards Directorate, Internal Affairs Branch, External Review and Appeals Section and the Division Staff Relations Representatives (DSRR). Telephone communications with all levels of the Force served to coordinate efforts, streamline initiatives and generally receive and provide feedback on matters of common interest. The informal discussion of initiatives at the earliest possible opportunity served to identify areas of concern or agreement and to remove procedural impediments which would otherwise develop into roadblocks.

In addition, Committee staff regularly received requests for information and advice from individual members of the Force. To the extent possible without compromising the integrity of the Committee's impartial review of matters before it or ones likely to come before it, members were provided with information.

A special mention must be made of the Grievance Training Day organized by the members of the "E" Division DSRR program, for the benefit of all the representatives of that division. The opportunity to meet the members and discuss issues related to Committee review was welcome and productive.

On January 28 the Minister of Finance and the President of the Treasury Board announced a spending freeze until the end of the fiscal year, and on February 25 announced the amalgamation of the Committee with the RCMP Public Complaints Commission. This amalgamation will result in major cost savings to the public, eradicating duplication in administrative overhead with enhanced efficiencies in program delivery.

Since the announcement, a consolidation team comprised of officials from the two existing organizations and the Solicitor General Secretariat has been working towards this end. The team is proposing a model for the new agency that will effectively carry out the requirements of the two mandates, while bringing about the desired savings.

Until such time as the legislative amendments and the administrative arrangements are made to allow for the amalgamation, the mandatory work of the two existing organizations is continuing to be carried out separately. The Committee is confident that the transition will be smooth and that its excellent relationship with the RCMP will continue.

The Division Staff Relations Representatives have given a clear indication that they would prefer that all grievances be referred to the External Review Committee for review; the Committee recognizes and appreciates this vote of confidence. The Committee has also been made aware of the implications this would

have for the Force. The Committee is ready to receive these grievances: there can only be benefits from the external review of grievances by an impartial third party which has over the years demonstrated its expertise.

In order to further assist the Force in dealing with the types of matters referred for review, the Committee has initiated distribution of depersonalized case summaries to various policy centres and to member representatives. These, along with the monthly communiqué and the Committee brochure, will serve to identify useful precedents which can then be accessed through Force channels. The Committee expects the summaries to lead to an improvement in the cases referred for review and to greater understanding of the grievance process generally. The case summaries will be updated periodically.

The repeated need to apply the mandatory time-frames set out in the Act will likely result in a decrease in the number of grievances presented outside these time-frames. There should be a corresponding increase in the number of substantive reviews of grievances, which can only be beneficial. The Committee prefers to be able to deal with the substantive issues of a grievance rather than having to recommend denial on the basis of time-frames not being respected. It is to everyone's advantage that issues be resolved rather than put aside because members did not meet legislated time-frames.

VI ANNEXES

STAFF MEMBERS

Lynne M. Bennett, Director — Research and Communications

Chantal Bernard, Secretary

Serge-Marc Brazeau, Case Review Officer

Simon Coakeley, Executive Director

Jacques Courteau, Director — Case Review

Céline Deschênes, Administrative Officer

Claire Desmarais, Secretary

Diane Devine, Secretary

Peter Faucher, Administrative and Finance Clerk

Suzanne Gervais, Assistant to Chairman

Yvonne Martin, Research Officer

André Paliquin, Clerk

Shawn Scromeda, Case Review Officer

**OFFICE CONSOLIDATION OF THE
RULES OF PRACTICE AND PROCEDURE OF THE
ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE**

as amended on September 17, 1991

Short Title

1. These Rules may be cited as the *RCMP External Review Committee Rules of Practice and Procedure*.

Interpretation

2. In these Rules,

“Act” means the *Royal Canadian Mounted Police Act*; (*Loi*)

“Committee member” means a person appointed as a member of the Committee pursuant to subsection 25(1) of the Act; (*membre du Comité*)

“interested person” means a person who satisfies the Committee that the person has a substantial and direct interest in a matter being heard by the Committee; (*personne intéressée*)

“record” means the whole or any part of any book, document, paper, card, tape or other thing in or on which information is written, recorded, stored or reproduced. (*pièce*) “registered mail” means trace mail that provides proof of the date of mailing, of signature on delivery and a means of establishing delivery status; (*courrier recommandé*)

“Registrar” means the person appointed pursuant to subsection 27(2) of the Act and designated as Registrar by the Committee Chairman. (*greffier*)

Matters not Otherwise Provided for in these Rules

3. Where any matter arises during the course of proceedings before the Committee not otherwise provided for in these Rules, the Committee may take whatever steps it considers necessary to settle the matter.

Holidays

4. Where a time limit or deadline set out under these Rules falls on a Saturday or statutory holiday, the time limit or deadline shall be extended to the next working day.

Interested Person

5. (1) Except where the Committee considers an application to appear on the day of hearing, a person seeking to appear before the Committee shall, not later than five working days before the date of the hearing of that matter, file with the Committee an application in writing setting out the nature of the person's interest in the matter before the Committee.

(2) The Registrar shall send a copy of the application referred to in subsection (1) to the parties to the matter being heard by the Committee.

Meetings by Telephone or Other Means of Telecommunication

6. Committee members may participate in meetings by telephone or other means of telecommunication.

Providing of Records

7. (1) Where the Commissioner refers a matter to the Committee, the Commissioner shall send to the Committee Chairman, as the case may be,
 - (a) with a bound and certified true copy of the record referred to in subsection 33(3) of the Act, including the style of the cause and an index; or
 - (b) with five bound and certified true copies of the record referred to in subsections 45.15(4) and 45.25(3) of the Act, including the style of the cause and an index.
(2) An officer, on behalf of the Commissioner, shall certify by affidavit to the best of the officer's knowledge and belief that all the records required to be provided to the Committee Chairman by the Commissioner in respect of a matter referred to the Committee have been so provided.

Written or Verbal Representations

8. In the course of reviewing a matter referred to the Committee by the Commissioner, the Committee Chairman may permit the parties to file written or make verbal representations relevant to the records provided to the Committee Chairman.

Conflict of Interest

9. (1) A Committee member shall immediately notify the Committee Chairman where the Committee member,
 - (a) apart from any functions as a Committee member, has had previous, or has any current, personal or professional association with a member whose grievance, formal disciplinary appeal or discharge or demotion appeal is before the Committee; or

(b) is an employee, associate, counsel or member of a legal firm that is representing the member referred to in paragraph (a).

(2) Where the Committee Chairman determines that the Committee member has a real or potential conflict of interest, the Committee Chairman shall request the Committee member to withdraw from any further participation in the matter before the Committee.

Filing of Records

10. (1) Any record required by these Rules to be filed with the Committee shall be addressed to the Registrar and either sent by registered mail or delivered by hand to the office of the Registrar.

(2) Where a record is sent by registered mail, the effective date of filing is the date of mailing.

Production of Records

11. (1) Where the Committee Chairman decides to institute a hearing to inquire into a matter, any party to that matter may, at any time before the hearing, request in writing that another party to that matter produce for inspection a record and copies of that record.

(2) The person to whom a request is made in accordance with subsection (1) shall produce the record requested within a reasonable time from the date on which the request is received.

(3) Where a party fails to produce a record in accordance with subsection (2), the party may not present the record in evidence at the hearing, unless the party satisfies the Committee that the party has sufficient cause for failing to produce the record.

Conference or Preliminary Procedures

12. The Committee may, verbally or in writing, direct the parties to appear before the Committee at a specified time and place, or to file submissions in writing to the Committee, for the purpose of formulating issues and assisting the Committee in the consideration of

- (a) the simplification of issues;
- (b) the necessity or desirability of amending an application, answer, intervention, reply or other representation for the purpose of clarification, amplification or limitation;
- (c) the admissibility of certain facts or the proof of them by affidavit, or the use by any party of reports or other matters of public record;
- (d) the procedure at the hearing;

-
- (e) the exchange among the parties of records and exhibits proposed to be submitted at the hearing; and
 - (f) any other matters that may assist in the simplification of the evidence and conduct of the proceedings.

Official Languages

- 13. At a hearing before the Committee, a party or an interested person is entitled to make representations to the Committee, to present evidence and to examine and cross-examine witnesses in either official language.

Arguments

- 14. The Committee may direct a party or an interested person to file a written argument in addition to any verbal argument.

Stay of Proceedings

- 15. Where a party or an interested person has not complied with any requirement of these Rules, the Committee may stay the proceedings until it is satisfied that the requirement has been complied with or take such other measures as it considers just and reasonable in the circumstances.

Postponements

- 16. (1) Where a notice of hearing has been issued, any party may, with the consent of all the other parties to the hearing and after notifying all interested persons, file with the Committee a written request for a postponement of the hearing.
- (2) Where a party does not consent to a postponement, the party seeking the postponement may, after sending a written notice to all the other parties and interested persons, appear before the Committee at a time and place set for the hearing and request that the hearing be postponed.

Adjournments

- 17. The Committee may adjourn a hearing at any time in order to permit a party to the hearing, or an interested person, to obtain such additional information as the Committee deems necessary to a full investigation and full consideration of the matter.

Sittings

- 18. A hearing, once commenced, shall proceed from day to day so far as, in the opinion of the Committee, may be practicable, and, if necessary, may proceed in the evenings and on Saturdays at the discretion of the Committee.

Summons

19. (1) A summons to any person may be issued by a Committee member under the seal of the Committee.
- (2) A summons to any person may be issued on written request.
- (3) No summons to any person shall, without leave of a Committee member, be issued for the production of an original record if the record may, by virtue of a statutory provision or a provision made pursuant to statute, be proved by a copy in a prescribed manner.
- (4) A summons to any person shall be served on the person to whom it is issued in accordance with section 47.2 of the Act.

Submissions of Claims

20. Claims pursuant to subsections 35(12) and 46(3) of the Act are to be submitted to the Registrar for consideration by the Committee Chairman or by a Committee member designated by the Committee Chairman.