



ANNUAL REPORT

1995-1996

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

EXTERNAL
REVIEW
COMMITTEE

10

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

May 12, 1996

The Honourable Herb Gray
Solicitor General of Canada
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Mr. Minister:

Pursuant to Section 30 of the *Royal Canadian Mounted Police Act*, I hereby transmit to you the Annual Report of the Royal Canadian Mounted Police External Review Committee for fiscal year 1995-96 for transmission to Parliament.

Yours sincerely,

A handwritten signature in cursive script that reads "Jennifer Lynch, Q.C.".

F. Jennifer Lynch, Q.C.
Acting Chairperson

COMMITTEE MEMBERS

Chairperson (Acting) and Vice-Chairperson
F. Jennifer Lynch, QC

Member
William Millar

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OVERVIEW

BACKGROUND

The Royal Canadian Mounted Police (the "RCMP") is the only police force in Canada whose membership is not unionized and able to bargain collectively; consequently, its membership is not subject to the grievance resolution procedure established under the *Public Service Staff Relations Act* or the *Canada Labour Code*. There exist, within the RCMP, informal and formal processes which deal with employee/employer relations. The RCMP External Review Committee ("the Committee") is, with the exception of the court system, the only legislative mechanism available to the members of the RCMP and capable of conducting independent reviews of members' concerns.

By amending the *Royal Canadian Mounted Police Act* (the "*RCMP Act*") in 1986 and creating the RCMP Public Complaints Commission and the RCMP External Review Committee, legislators recognized that the Canadian public had a vested interest in the establishment of outside bodies which would oversee the operations of the RCMP, both internally and externally. In reviewing RCMP activity in matters coming under its jurisdiction, the Committee is not only ensuring that the interests of members are protected vis-à-vis the RCMP; it is also

balancing the interests of the RCMP and its members with those of the public.

The RCMP exists to serve and protect the public, and the public has a right to expect that the RCMP will account for the way in which it provides this service. By providing external review, the Committee serves the public as a visible agent of police accountability; a way to introduce civilian participation into the process of balancing public interest in the maintenance of civil liberty and a way to provide civilian input to the administrative management of the RCMP. In playing the role of a balancing agent, the Committee contributes, in its reviews, ingredients essential to preserving and maintaining the integrity of the RCMP by ensuring that the rights and welfare of its members are safeguarded, while at the same time maintaining the "let-the-manager-manage" principle.

MANDATE

The RCMP External Review Committee was created by Part II of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, as amended, as an independent and impartial, quasi-judicial body to review appeals of formal discipline, appeals of discharge or demotion, and certain types of grievances involving regular and civilian members

of the RCMP. The Committee independently reviews grievances and appeals referred to it and submits recommendations to the Commissioner of the RCMP. In its review, the Committee may hold hearings, summon witnesses, administer oaths and receive and accept such evidence as it sees fit.

PROGRAM DESCRIPTION

The RCMP External Review Committee is a component of a two-level redress mechanism available to members of the Royal Canadian Mounted Police who are not satisfied with disciplinary actions, discharges or demotions, or with other RCMP decisions, acts or omissions which impact upon their employee rights and in respect of which no other redress process is provided by the *RCMP Act* or its *Regulations*. The Committee independently reviews grievances and appeals referred to it and submits recommendations to the Commissioner of the RCMP who acts as the second and last level of the review process. The Commissioner of the RCMP is not required to accept the recommendations of the Committee, but when he chooses not to do so, he is required to provide his reasons. His decision is final although it is subject to judicial review by the Federal Court.

Under the *RCMP Act*, the Commissioner of the RCMP refers all appeals of formal discipline and all

discharge and demotion appeals to the Committee unless the member requests that the matter not be so referred.

In addition, pursuant to s. 33 of the *RCMP Act*, the Commissioner of the RCMP refers certain types of grievances to the Committee in accordance with regulations made by the Governor in Council. Section 36 of the *RCMP Regulations* lists the kind of grievances that the Commissioner of the RCMP must refer to the Committee. They are as follows:

- 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 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.

Just as with appeals of discipline cases, in grievance cases, the member may request that the matter not be referred to the Committee; however, in the grievance process, the RCMP

Commissioner then has the discretion whether to refer the matter or not.

The Chairperson of the Committee makes a comprehensive review of all matters referred to it. Where the Chairperson is dissatisfied with the RCMP's disposition of the matter, he or she may:

- a) issue *Findings and Recommendations* resulting from his/her review of the case, and advise the RCMP Commissioner accordingly; or
- b) initiate a hearing to consider the matter. At the end of the hearing the Committee member(s) designated to conduct the hearing will advise the RCMP Commissioner and the parties of the Committee's Findings and Recommendations.

In practice, even when the Chairperson is satisfied with the original disposition, he or she provides an analysis and advises the RCMP Commissioner and the parties of the reasons by means of *Findings and Recommendations*. The RCMP Commissioner may accept or reject the Committee's recommendations but if the recommendation is rejected, written reasons must be provided to the member involved and to the Committee.

In conducting its review of matters referred to it, the Committee attempts to achieve a balance between the different interests referred to above while ensuring that the principles of administrative law

are respected and the remedial approach suggested by the *RCMP Act* is followed. In each case, the interests of the individual member of the RCMP must be balanced against those of the RCMP's management, of other members and of the RCMP's clients, the public, as represented by Attorneys and Solicitors General.

PROGRAM ORGANIZATION FOR DELIVERY

The Committee is currently operating with two members: the Vice-Chairperson who acts as Chairperson and another part-time member. The Vice-Chairperson is authorized by the Solicitor General to exercise the powers and perform the duties of Chairperson, pursuant to subsection 26(2) of the *RCMP Act*. Case review and administrative support are provided by staff who report to the Chairperson through the Executive Director. The Committee's offices are located in Ottawa.

The Committee has, since 1992-93, undergone significant re-engineering. It undertook several initiatives which have resulted in a significant downsizing of its organization and a major restructuring of its activities. These initiatives have allowed a reduction of its operational expenditures by over 50%.

Several activities or program components are provided in whole or in part to the Committee by the private sector and other government agencies.

For example, the Committee uses the services of partners such as the RCMP Public Complaints Commission and the Solicitor General Secretariat for the sharing of facilities and equipment, or the provision of services which would otherwise have to be obtained through Committee resources. When in need of other more specialized types of services, the Committee always looks at alternatives such as contracting with the private sector or obtaining services from another department rather than creating its own expertise in those areas.

PROGRAM PERFORMANCE

While following the trends evident in Canadian labour relations cases generally, the Committee's recommendations must be relevant to the RCMP if they are to be useful. One criterion which could be used to evaluate the outcome is the fairness of the process by which files are reviewed and recommendations made. Although it is not easy to test this, an indicator of the degree to which the members of the RCMP perceive the Committee's work to be fair is the fact that to the best of the Committee's knowledge, only one member has, so far, requested that a matter not be referred to the Committee, and this was during the second year of the Committee's mandate. This can be taken as evidence that the Committee's work is perceived by members of the

RCMP as being fair to them. On the other hand, the degree to which the Committee's recommendations are deemed to be fair to the RCMP can be inferred from the number of times the RCMP Commissioner accepts the Committee's recommendations. In over 90% of the grievances reviewed by the Committee since its creation, the RCMP Commissioner has either agreed with the Committee's recommendations and reasons or agreed with the recommended action albeit for different reasons. This can be taken as evidence that the Committee's work is perceived by management of the RCMP as being fair.

To date, the Committee has received grievances or appeals representing the direct interests of close to three hundred members of the RCMP from the rank of special constable up to chief superintendent. Furthermore, when the Committee deals with a grievance or appeal of one member, it has often resolved the concerns or questions of hundreds of other members, and some recommendations have resulted in the revision of RCMP policies and procedures. The Committee's recommendations are not limited to solving immediate problems. Hence, they can and have served the more profound purpose of influencing the RCMP as a whole in the improvement or elaboration of new human resource policies and systemic change.

ENVIRONMENT

The Committee has no control over the number or the nature of cases referred to it in both major areas of grievance and discipline. The number of grievances referred to the Committee depends, in part, on the number submitted by the membership, and on the number which, once filed, are not resolved informally at an early stage. Further, the RCMP Commissioner (or his delegate) interprets whether a grievance fits within the list of subject matters referable to the Committee. A decision by the RCMP Commissioner to extend the number and nature of referable grievances would increase the Committee's workload. In the discipline area, there are similar variables. The decision to impose formal discipline is one that is taken within the RCMP and the decision to appeal any discipline imposed is taken by the members involved. In both areas (grievance and discipline), there has been a growing complexity in the cases, with issues such as harassment, Charter of Rights, suspensions and official languages requiring more and more complicated analyses. Another variable is whether the Committee will opt for a full-blown hearing in any given case as opposed to limiting itself to a file review; this is also unpredictable, as these decisions are made on a case by case basis. The RCMP are also presently reviewing their appeal and grievance

system as well as their employer status. Any future amendments to the *RCMP Act* or changes to the RCMP's employer status would necessarily also impact on the Committee's workload. Consequently, it is quite difficult for the Committee to predict what its workload will be in the future.

THE YEAR UNDER REVIEW

WORKLOAD

A priority for the Committee has been to deal with the backlog of cases which had accumulated (the massive reduction of the Committee's resources in 1993-94 unfortunately and unpredictably coincided with a tripling of its referrals during that same year). While maintaining high standards of performance, the Committee undertook several initiatives to deal with it, e.g., through temporarily shifting financial resources to allow for the hiring of temporary additional staff, a further streamlining of the case review process, an enhanced communication and planning with the RCMP, the promotion of modern solutions such as recommending and facilitating mediation in some cases, and the elimination of certain program activities which are deemed desirable but not absolutely necessary. As a result, this year, the Committee successfully completed 44% more cases than the previous year.

It is worth mentioning that the type of cases referred to the Committee during the last year has shifted from relatively simple grievances involving matters such as basic policy interpretation to more complex and sensitive matters such as discipline and discharge, which account for an unusually high percentage of the

total number of referrals received by the Committee during the year.

ACTIVITIES

The Committee was also involved in a variety of other activities, such as the creation of a joint working group involving representatives of RCMP policy centres and member representatives whose task is to reexamine the Committee's mandate and make recommendations as to how it can be made more relevant to the RCMP's new realities and in line with the general trends in labour relations. The Committee also worked on a revamping of its Rules of Practice and Procedure and is preparing to submit specific proposals to the Privy Council in that respect. Other activities include the Committee's involvement in a project with the National Archivist aimed at a complete review of the Committee's *Records Retention and Disposal* policies and procedures; its involvement in mediation; a comprehensive communications plan with RCMP management and membership via formal and informal meetings; through its *Communiqués*; and broader dissemination throughout the RCMP of the Committee's *Findings and Recommendations*.

ISSUES

The time that it takes to process a member's grievance or a discipline matter through the various stages of the process (within the RCMP and at the Committee) continues to be an on-going concern for the Committee. Management, Divisional Representatives and Committee staff continue to communicate and cooperate fully to reduce delays and render the process more efficient. The Committee is implementing ways of dealing with its own workload in a more expeditious manner while maintaining a high level of quality in the delivery of its services. The above-mentioned increase of 44% in the number of cases completed by the Committee this year over the preceding year is clearly an indication of success in that regard.

Another issue continues to be of particular concern to the Committee; it relates to the Committee's restricted jurisdiction in relation to grievances. As previously mentioned, not all grievances are referable to the Committee. In fact, the Committee is not involved in the decision as to whether a matter should be referred to it, neither is it possible for the Committee to monitor, of its own motion, whether certain grievances were not referred to it which ought to have been. Section 36 of the *RCMP Regulations* provides that grievances relating to a number of matters are to be referred to the Committee. While sub-paragraphs

36(b) through (e) are specific, this is not so with sub-paragraph 36(a) - the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members.

Whether or not a matter is referable to the Committee under this provision requires an interpretation in each case. In the past, the decision as to which cases should be referred was made by the Commissioner's delegates at RCMP Headquarters; it is now delegated to RCMP Divisions, which makes sub-paragraph 36(a) even more subject to interpretation. As is understandable, there have been indications of inconsistent interpretation of this section; the vagueness of its wording has much to do with this. While the vague wording of sub-paragraph affects only this one paragraph, it has disproportionate effect given that it accounts for a large part of the Committee's grievance referrals.

Early in the Committee's mandate, the former Commissioner gave direction to his staff in terms of how this section should be interpreted. In this respect, he provided a list of 16 items which, in his view, fall within the ambit of sub-paragraph 36(a). Although it does not have the status of law, the list continues to be used by those involved in the grievance process as the guideline for referrals under this sub-paragraph. However, questions have been raised in the past about certain items appearing on

the list given the actual wording of sub-paragraph 36(a); on the other hand, other items which might have been more clearly referable under its wording may have been ignored simply because they were not on the list.

The Committee wishes to emphasize that the RCMP grievance administration has acted carefully and in good faith in its referral decisions, yet the Committee continues to be of the opinion that, where difficulties have arisen, the efficiency and accountability of the system have been hampered. As indicated before, the Committee has recently instituted a working group to review its mandate and anticipates that these discussions will lead to modifications being made to the system - legislative or otherwise - which will further improve its efficiency, openness and accountability.

RELATIONSHIP WITH THE RCMP

The Committee and the RCMP continue to entertain an excellent relationship; a clear demonstration of this is the tremendous support which the Committee continuously receives from the Commissioner, the members of his management team, the Divisional Staff Relations Representatives and all of those who participate in the preparation and presentation of cases referred to the Committee.

The Committee would like to take this opportunity to commend the

Commissioner, his management team and the Divisional Staff Relations Representatives for their laudable efforts at strategically attempting to improve the working relationships within the RCMP.

A LOOK AT THE FUTURE

As the Commissioner's 1995 "Directional Statement" emphasized, a major objective of the RCMP is to adapt to a rapidly changing world. One area of concern and priority to the Commissioner is with regard to the management of the RCMP's own human resources. In that respect, he put forward a strategic plan which, in part, is aimed at addressing morale issues, improving internal communications and streamlining the grievance process. Internally, the RCMP is taking proactive steps to encourage the resolution of disputes at the lowest possible level and as informally as possible. One of its major initiatives in that regard is the "Alternate Dispute Resolution" project which is testing and implementing alternate dispute resolution mechanisms such as mediation in grievances, discipline and discharge, including all subject matters referred to ERC.

The Committee wholeheartedly supports this approach, and is itself looking into mechanisms it could implement with its own processes. Already some of the cases before the Committee have been successfully and speedily resolved through mediation. The Committee strongly believes that most conflicts are more appropriately resolved at the "local level", by the parties themselves albeit sometimes with

the help of someone else, e.g., a mediator.

When reviewing its mandate, the Committee seriously intends to look at alternatives which will permit it to play a more effective and efficient role which could assist the RCMP in improving its internal working relationships while continuing to ensure that members' rights are fully protected.

CASES

This year again, the issues dealt with by the Committee were varied. Grievances referred to the Committee are often decided on different grounds than those identified by the grievors and/or Level I adjudicators. This is particularly the case with procedural issues such as time limits and standing, which cut across all grievances.

The case numbers in bold print at the beginning of each case refer to the number in the Committee's Decisions binder. At the end of each case, the Commissioner's decision is summarized, except in those cases where he has not yet issued a decision.

A) GRIEVANCES - PART III OF THE RCMP ACT

The Committee dealt with the following issues: i) harassment; ii) legal fees; iii) same-sex benefits; iv) discrimination; v) language requirements; vi) travel expenses; vii) relocation expenses; viii) access to information; ix) classification; x) workforce adjustment; xi) residency; xii) living accommodation charges.

i) Harassment in the Workplace

G-137 A member filed nine grievances which the Committee has studied jointly. In a grievance pertaining to the inaccuracy of the member's personnel file, a copy of which was provided to him

following an access-to-information request, the Committee stated that in accordance with decisions made at levels I and II in previous grievances, certain documents should be removed from the file, as requested by the member. The Committee recommended that the member's file be examined by the RCMP so as to remove the documents which should already have been removed and add to the file the ones that were missing.

Another grievance concerned the RCMP's refusal to interview the member following an internal investigation concerning him. The Committee concluded that, in this case, the member had not established that he had the right to an interview and that, since the matter was of a disciplinary nature, he should present his arguments through a process other than that of a grievance. The Committee recommended that this grievance be denied.

Five other grievances concerned the RCMP's decision to forbid the member from preparing his grievances while at work. The RCMP had so decided for it felt that the member was abusing his privilege; the Committee concluded that the RCMP had not infringed on the member's rights under the *RCMP Act*. Judging by the amount and nature of the documentation submitted by the member, the Committee found that the RCMP had not acted in an unreasonable way. The

Committee recommended that the *grievances be denied.*

Another grievance was in relation to a letter that was sent by RCMP management to the assistant chief of a municipal police force, in which apologies were presented for the alleged arrogant, impolite and unprofessional attitude displayed by the member toward two police officers while he was visiting their police centre. The Committee found that, based on the information on file, there was no evidence of harassment or bias on the part of the RCMP. The Committee recommended that the grievance be denied.

The last grievance submitted by the member was in relation to his being *served with documents at his residence while off-duty sick.* There was no evidence that the member's physical condition prevented him from receiving the documents; they had been appropriately served on him. The Committee concluded that there was no basis for this grievance and recommended that it be denied.

The member had alleged throughout these nine grievances, that because he is a Francophone, he suffered prejudice, harassment and abuse of authority on the part of the RCMP. After reviewing the numerous documents forwarded to the Committee and which pertained not only to these nine grievances but also to many incidents which had occurred over the last thirteen years, the Committee

concluded that both parties were at fault in this matter. Some of the member's supervisors and co-workers had acted in a malicious way and in bad faith towards the member and some of their behaviours clearly had a hint of harassment. The Committee indicated that the RCMP had its share of responsibility in this sad story; the fact that this conflict has been going on for such a long period of time was proof that it had not been able to find a valid solution for the member. However, the Committee believes that the member is also at fault; on many occasions he brought it on himself by his own provoking behaviour towards his superiors. The Committee found that this matter should be brought to an end, that the member's transfer to another division was a new beginning for him and the Committee encouraged the parties to put the past behind and start anew.

G-138 A member claimed that he had suffered harassment at the hands of his supervisor, having allegedly been falsely accused by the supervisor, in the presence of others, of negative and demoralizing behaviour. An internal investigation report had determined that there had been no harassment. The grievance became tied up from the start with procedural issues. The grievance was denied at Level I on the issue of time limits. The member sought to present the grievance to Level II and sought an extension of the time limit for

presentation at that level; he was informed, however, that his request for an extension had itself been made too late. Eventually, Internal Affairs Branch issued an opinion that the time limits decision at Level I had been in error. The matter was referred to Level II. The Committee found that the member had respected the time limit at Level I - the 30-day time limit is a limit for the commencement of the grievance process, not a limit for completing all submissions. The Committee also found that time limits were respected at Level II. As the record only dealt with the procedural issues, and not with the merits, the Committee recommended that the grievance be returned to Level I for a decision on the merits. The Committee also observed that the parties should not lose sight of the possibility of a negotiated or mediated solution to this matter.

The Commissioner agreed with the Committee's recommendations and ordered that the matter be returned to Level I while strongly encouraging sincere efforts to resolve the dispute informally.

G-152 A member submitted a harassment complaint against two of his supervisors. An investigation was conducted as a result. After receiving the conclusions of the investigation report with which he was dissatisfied, the member presented a formal grievance, questioning the

RCMP's decision in choosing the investigator in question, and criticizing the way the investigation was conducted. In the presentation of his harassment complaint, the member alluded to a number of specific incidents. These incidents were ultimately grouped by the investigator into eleven specific allegations. In his grievance, the member submitted that the investigator's superior was a friend of one of the two respondents and that, consequently, the investigator could not have been unbiased in the conduct of his investigation.

Contrary to what had been decided at Level I, the Committee concluded that the test to be met by the member was not to demonstrate that the investigator had actually displayed bias but only to demonstrate that there existed a "reasonable apprehension of bias". In light of the information before it, the Committee concluded that a reasonable and informed person could not conclude that there existed a reasonable apprehension of bias simply on the basis of the alleged friendship between the investigator's superior and one of the alleged harassers. As a matter of fact—and this addresses the second concern of the member—the Committee found that the investigation was conducted in an adequate manner and this, even though the investigator had occasionally made personal comments which, in the Committee's opinion, were

difficult to justify. The Committee also examined each of the eleven specific incidents giving rise to the member's original complaint and concluded that there had been no clear demonstration of harassment on the part of the alleged harassers against the member. However, the Committee did comment on the poor choice of words on the part of one of the two alleged harassers when talking about the member to one of his colleagues on one occasion. The Committee used this opportunity to reiterate to the parties a message which it had previously communicated via another case with regard to the need for the members of the RCMP to work in an atmosphere of mutual respect.

ii) Legal Fees

G-134 A member was charged and convicted of criminal fraud in connection with a fraudulent expense claim for meals taken during an investigation. The member sought RCMP payment of his legal defence fees. This was denied on the grounds that the actions leading to the criminal charge - the submission of the fraudulent claim- was not within the member's scope of duties. It was also noted that, given that the filing of an expense claim was only an administrative act and not a policing act, the member's misperformance was not the sort which warranted defence at public expense.

The Committee found that the determinative question was whether the member's actions were in furtherance of RCMP work. Unlike a previous legal fees case before the Committee, the particular nature of the charge in this case called into question whether the member had acted in furtherance of RCMP work; this type of fraud, if established, will generally firmly put the activity in the category of an entirely personal act. The Committee thus found that the member was not acting within the scope of his duties. Furthermore, the Committee found that under the additional discretionary aspect of the policy it was open to the RCMP to decide that the particular administrative act of submitting a meal claim in this case did not merit payment of legal fees at public expense. The Committee recommended that the grievance be denied.

G-142 A member was charged and convicted of a criminal offence and, subsequently, served a term of imprisonment. The member sought the payment of legal fees for counsel to aid in his defence of administrative discharge proceedings commenced by the RCMP. Legal fees were denied on the ground that policy does not allow for payment of legal fees at public expense for internal or disciplinary proceedings. The member grieved. The Level I adjudicator denied the grievance, finding that the member

had failed to provide any support for his grievance.

Reviewing the Level II request, the Committee indicated that it was satisfied with the RCMP's disposition of this matter. The member failed to persuade the Committee that payment of legal fees at public expense was available for the administrative discharge proceedings. *Furthermore, even if legal fees were available in such proceedings, the member failed to convince the Committee that his situation satisfied a basic criterion of the legal fees policy: that the actions for which the member found himself in difficulty were undertaken within the scope of his duties.* The Committee observed that in G-134, it had already found that the member had not acted in the scope of his duties; this was with respect to a request for legal fees to aid in the defence of the criminal charge arising out of the same incident. The Committee recommended that the grievance be denied. The Committee observed, finally, that the member had also requested that a legally-trained member assist him in the defence of the administrative discharge proceedings; the Committee made no comment about the RCMP's denial of this alternative request, given that it was the subject of a separate grievance not then before the Committee. The Commissioner agreed with the recommendation of the Committee and denied the grievance.

G-153 A member was criminally charged for sexual assault, obstruction of justice and corruptly accepting a valuable consideration with intent to protect from punishment a person that has committed an offence. The charges were related to the fact that the member had allegedly engaged in sexual activity with a member of the public in a marked police vehicle while on duty and in the course of driving her home after having stopped her for driving under the influence. Although he admitted having been involved in sexual activity with the person in a marked police car that night, the member maintained his innocence with respect to the charges. He requested that his legal fees related to the criminal charges be paid by the RCMP. His request was denied. The member grieved, arguing that he was entitled to such a payment because he was on duty when the events occurred. The Level I adjudicator denied the grievance on the basis that the member was not acting within the scope of his duties when he engaged in sexual activity with the person. The member presented his grievance to the second level of the grievance procedure, arguing that the charges arose out of the fact that he had been driving the person in his patrol car just prior to the sexual relations and was then acting within the scope of his duties.

The Committee noted that in this case, it had been the sexual activity which had led to the charges. The

Committee found that the member had not been acting in furtherance of RCMP work and thus not in the scope of his duties. The test, in law, is often expressed as "did the employee go off on a frolic of his own?". This is what the member did when he engaged in an activity that had no other goal than his own personal benefit. The Committee thus recommended that the grievance be denied.

G-156 A woman accused a member (the Grievor) of having sexually assaulted her on numerous occasions when she was a child. In a first statement made to investigators, she claimed that other members, whom she could not identify, were involved in some of the assaults which occurred while they were on duty and in uniform. Two months later, she changed her allegations in a second statement. This time, only the Grievor was mentioned and for assaults that took place in his home, at night. At the time of the alleged offences, the complainant was living in the Grievor's home pursuant to a Foster parent program. The Grievor and the RCMP agreed that the complainant's story was a fabrication. No charge was laid against the Grievor. The Grievor requested the payment of his legal fees at public expense for the legal representation he needed during the criminal investigation. The RCMP refused his request because it determined that the criminal inquiry did not arise out

of the Grievor's performance of his duties. The Grievor grieved that decision and the Level I adjudicator confirmed the RCMP's decision.

The Committee found that the fact that the Grievor was a police officer was a factor, although not the predominant one, which led to the false allegations against him. The Committee found that, until the second statement was given by the complainant, there was evidence that she was 'going after' the Grievor in both his personal capacity and in his capacity as a police officer. As such, the Committee determined that the Grievor should be reimbursed for half of the legal costs which he incurred until it was clear and communicated to the Grievor that the complainant was pursuing him in his personal capacity. The Committee thus recommended that the grievance be partially upheld.

G-159 Two Division Staff Relations Representatives (DSRRs) wanted to obtain a legal opinion on *Findings and Recommendations* made by the Committee on a grievance concerning a meal claim. The DSRRs felt that the legal opinion was necessary for the good execution of their duties as DSRRs and requested that the fees for the opinion be paid at public expense. The RCMP denied their request. The DSRRs grieved, stating that the grievance was a collective grievance and that they were representing all the members of their

division who were suffering a prejudice because of the RCMP's refusal and because of the prevailing situation concerning meal claims. The Level 1 adjudicator denied the grievance. He felt that the Grievors lacked standing because they could have asked the Staff Relations Program Officer to intervene.

The Committee found that the grievance was not a collective grievance because only signatory members can be party to such a grievance. Although a member or DSRR can present a grievance in the name of other members and ensure the good conduct of the grievance, the other members must provide their written consent. The Committee thus could only consider the prejudice suffered by the two Grievors. The Committee then proceeded to examine the issue of whether the Grievors had standing to present a grievance in their capacity as DSRRs. The Committee found that they *did not have standing* because, as DSRRs, they had not suffered a personal prejudice. Although the fact that the RCMP did not want to provide them with certain tools or resources might have affected the accomplishment of their duties, this did not personally aggrieve them for the purpose of the grievance process. The Committee did, however, consider the fact that the Grievors had themselves presented grievances on meal claims, the issue which was linked to the legal opinion they were seeking. The Grievors thus held, as individuals, a

personal interest in this matter because the absence of the legal opinion had personally aggrieved them as individual members. Having therefore found that the Grievors had standing, the Committee then examined the merits of the grievance, which concerned the Grievors' admissibility to the payment of legal fees in light of the applicable policy. The Committee first noted that the issue of the relevant legal fees policy applicable to RCMP members was no longer clear. The Committee explained that this issue was currently being examined in another grievance and that it was not necessary to resolve the issue in the current matter because it turned out that none of the policies in play allowed the payment of legal fees for a legal opinion obtained in the course of proceedings undertaken by an employee against his employer. The Committee thus recommended that the grievance be denied.

Under additional comments, the Committee noted that an important underlying issue in this grievance, which was a matter of policy and which could not be resolved through the grievance process, concerned the possibility for DSRRs to obtain legal counsel for miscellaneous issues. The Committee noted that it was aware that the RCMP had recently provided a legal expert to DSRRs in the course of consultations on legislative amendments. The Committee stated that it would be appropriate for the RCMP to continue to consider the

possibility of funding independent counsel for DSRRs.

G-162 A member submitted a travel expense claim pursuant to the Isolated Posts Directive. An inquiry revealed that although the member had travelled, he had not taken the lengthy trip which he claimed to have taken in his expense claim, but had invented it to cover a personal advance received beforehand. Having been advised that fraud charges would be laid against him, the member requested the payment of legal counsel at public expense. The RCMP denied the request on the basis that he had not been acting within the scope of his duties. The member grieved this decision, arguing that it had been his duty to submit his expense claim to account for the monetary advance which he had received. The Level I adjudicator denied the grievance on the basis that the member had not acted within the scope of his duties when he had lied in his expense claim form.

The Committee first found that acts of the administrative category, such as submitting expense claims, could, despite the fact that such acts are taken for personal benefit, fulfil the scope of duties test set out in policy in that they are also supposed to be taken for the good administration of the RCMP. The Committee then turned to the issue of whether the actions of the member in this matter met the scope of duties test. The

Committee explained that this test is met when a member has acted in furtherance of RCMP work; this can be contrasted with 'being on a frolic of one's own'. The Committee found that there was sufficient evidence to infer that the member had intentionally submitted an inaccurate claim by referring to expense which he had not incurred for a trip which never happened. It was clear that the member's actions did not result from a mistake or a misunderstanding of the Directive. The Committee found that the apparent ulterior purposes underlying the member's claim removed his actions from the realm of acts taken in furtherance of RCMP work and placed them in the realm of acts taken on a frolic of one's own. The Committee therefore recommended that the grievance be denied.

iii) Same-Sex Benefits

G-135 A member was relocated and sought the equivalent of "married" benefits for the member and the member's same-sex partner; the member observed that her same-sex partner had already been accepted by the RCMP as her spouse for the purpose of administrative, personnel, security and medical matters. The benefits requested by the member were denied on the ground that benefits for same-sex partners for relocation and related matters are not provided under Treasury Board (TB) policy. The

member grieved, arguing that her rights under Treasury Board policy were superseded by her rights under the *Canadian Human Rights Act (CHRA)*.

The Committee found that the member could not contest the benefits through a grievance under the *RCMP Act*. Grievances under the *RCMP Act* are limited to decisions, acts or omissions made by the RCMP in the administration of its affairs. In this case, however, the member was not contesting the RCMP's interpretation or application of Treasury Board policy, but was directly challenging the content of TB policy itself. The grievance, therefore, was outside the scope allowed under the *Act*. The Committee therefore recommended that the grievance be denied. The Committee did comment, however, that the denial of the grievance does not imply that the policy challenged by the member is either fair or consistent with the *CHRA*. The Committee also noted that whether "married" benefits should be extended to same-sex couples is the matter of a current policy debate in our society. While these questions cannot be resolved through this grievance, the RCMP should monitor the situation. In particular, it should make enquiries with Treasury Board about the current status of these legal and policy questions and it should ensure that any changes are immediately applied within the RCMP.

iv) *Discrimination*

G-139 A member grieved a job opportunity bulletin which stated that the competition was available only to qualified female members of a certain rank: the bulletin stated that the staffing with a female member was being done pursuant s.16(1) of the *Canadian Human Rights Act (CHRA)*, which allows special programs for disadvantaged groups. The member claimed gender discrimination. In response, the RCMP suggested that the member was not aggrieved because he did not even meet the rank requirement for the position. The member meanwhile argued that he was aggrieved because, if no qualified candidates were found at the higher rank, the RCMP could consider candidates at his rank; the member suggested that this, in fact, had happened in this staffing action. The Level I adjudicator denied the grievance, finding the member was not aggrieved and that, in any case, a staffing action of this type was specifically allowed by s.16(1) of the *CHRA*. In its review, the Committee agreed that the grievance should be denied on the basis of the "aggrieved" requirement, although not for the same reasons suggested by the RCMP. It appeared inappropriate to deny the grievance because of the ostensible rank requirement, given the RCMP's apparent willingness to consider members of the grievor's rank if qualified members of the higher rank were not

found. Nevertheless, the grievor himself had indicated that he was not aggrieved based on other considerations: in his Level II submissions the grievor had not requested that the female-only requirement be removed, but only that it be slightly redrafted; the redrafted requirement suggested by the grievor would still leave him ineligible for the position; the grievor thus indicated that he was no longer seeking a personal remedy. In other comments, the Committee observed that, in the future, the RCMP should take more care in explaining special programs under s.16(1) of the *CHRA* to its membership.

The Commissioner denied the grievance on the basis of standing. The Commissioner also noted that he had considered the concerns raised about misunderstandings which might occur with respect to the sensitive issues relating to the use of special programs under subsection 16(1) of the *CHRA*. The Commissioner stated that he would refer the matter to the appropriate policy centre.

v) *Language Requirements in Staffing Actions*

G-140 A member placed runner-up in a promotional competition in which the language requirements were CCC/CCC, priority II. The successful candidate did not meet the CCC requirements in English and was thus, under the official languages policy, granted a two year

exemption period to acquire that level. After two years, the runner-up presented a grievance, alleging that he should be promoted because the successful candidate had not acquired the required linguistic proficiency level. The Level I adjudicator denied the grievance on the basis that the only requirement had been that the successful candidate be found as being language trainable and not that he attain the required level. As well, the adjudicator noted that the Unit Bilingual Complement (*UBC*) had been met and the language requirements had been reduced prior to the end of the exemption period. The member presented his grievance to Level II, arguing that the adjudicator had erred in his interpretation of the competition requirements and that the exemption period had ended on an earlier date than that which the adjudicator had referred to.

The Committee found that the grievance had been presented outside the time limits at Level II but it recommended that, due to exceptional circumstances, the Commissioner retroactively extend the time limits, as permitted by the *RCMP Act*. On the merits, the Committee found that the member was correct in his assertion regarding the date on which the exemption period ended. In fact, the changes to the *UBC* and the language requirements were only made after the date on which the exemption period ended. The Committee also found that

according to the file, no UBC had been identified before this date for the unit to which the position belonged. The situation was thus one where requirements were identified for the position and not the UBC. Based on the relevant policies on priority II staffing, the Committee found that in a position designation situation, the person occupying a position must be removed if the required language ability is not attained. The RCMP should thus have transferred the successful candidate to offer the position to the grieving member. Because the language requirements had since been changed and the grieving member had since been promoted, the Committee recommended that the successful candidate not be removed but that the member's promotion have a retroactive effect to the date on which he should have been promoted.

The Commissioner agreed with the recommendation of the Committee and upheld the grievance. The member's promotion is therefore to have a retroactive effect.

G-160 A member's application for a promotional job opportunity was rejected on the basis that a performance evaluation had rated the member as non-promotable. The member grieved the performance evaluation and his grievance was upheld. The member requested that his application for the job opportunity be reconsidered and that it be assessed

against the original candidates considered for the staffing action. The RCMP denied this request, this time noting that the member did not meet the language requirements for the position at the time of the staffing action (CCC/CCC, priority I). The member grieved this decision; in essence, he maintained that the relevant time for evaluation of his language qualifications was on or after his request for reconsideration under the staffing action and that policy changes and improvements in his linguistic rating led to him meeting the language requirements at this later time. Much later in the grievance process, the member contested the actual language requirements of the position, as they had been determined at the time of the staffing action. The Committee agreed with the Level I adjudicator and found that the member had initially submitted a grievance concerning only the first issue—the issue of the relevant date, in terms of policy and qualifications—for the reconsideration of his application; later on during the grievance process, he had effectively presented a new grievance challenging the language requirements of the position. The Committee found that, from a jurisdictional viewpoint, the Committee could and should deal with both grievances. With regard to the initial grievance, the Committee found that a logical interpretation of RCMP policy required that the relevant date, in terms of policy and qualifications, be the

time of the original staffing action. The member had not met the language requirements at that time and the Committee therefore recommended that this grievance be denied. With regard to the new grievance challenging the language requirements, the Committee found that it had been submitted well after the 30-day time limit set out in the *RCMP Act*. The Committee therefore recommended that this second grievance also be denied.

G-164 A member grieved the linguistic requirements (BBCC, priority I) attributed to a staffing action for a supervisory position in a bilingual region. The member claimed that the RCMP had identified a need for too many bilingual supervisors in the Unit Bilingual Complement (UBC) to which the position in question belonged. The member also claimed errors in the language requirement determination and questioned the experience of one of the candidates to the competition. The Level I adjudicator denied the grievance on the basis that the evidence presented by the member had not established an error in fact, process or the presence of bias.

The scope of the Committee's review on the merits of this grievance was confined to the issues related to the language requirements of the contested staffing action. The Committee found that on the face of the record and in light of the lack of any justification provided

by the RCMP, the number of bilingual supervisors identified in the UBC was not reasonable. Although the UBC policy is no longer in effect, the Committee recommended that the UBC for the section be redetermined in light of the policy in force at the time of the staffing action. The Committee also recommended that if the redetermination were to result in the identification of requirements which the member could have met, his candidacy should be compared to that of the successful candidate. As well, although the Committee did not have to determine whether the identification of the language proficiency level and the priority level were unreasonable, the Committee noted that these will have to be re-examined in light of the redetermination of the UBC and that detailed justification should be provided for the result of this re-determination.

*vi) Interpretation of the Travel Policy
Applicable to the RCMP*

G-144 Certain members from a Division attended a course held in another province. Accommodation was provided, but not all meals were available on site; the members were told that certain meals would have to be purchased and that this could be done at reasonable rates at a nearby Canadian Forces Base (CFB). The members were told by their Division that they were on travel status and entitled to full meal allowances for

purchased meals. Upon arriving at the course, members were told that *purchased meals at the CFB were part of the required arrangements* and that if they chose to eat elsewhere they would be limited to the CFB mess rates. The members responded that policy entitled them to eat where they wanted unless meals were provided free of charge; they submitted meal claims at the full rate. The claims were reduced to the mess rate by the RCMP; the members grieved in a joint grievance. They argued that the meal arrangements were particularly unsuitable for weekends during which members were on regular time-off. They also submitted that another similar course had recently taken place and that the RCMP had decided to pay full meal rates when the members attending that course had objected to the same meal arrangements. The grieving members requested equal treatment.

The Committee found that the applicable policy in this case was the Treasury Board travel policy as modified by certain Treasury Board minutes applicable to the RCMP. This policy required that, when members reside in government accommodation and meals are not provided free of charge, members are entitled to claim meals at actual cost up to the established meal allowances. There was, however, no restriction on where such meals could be taken in this situation; nor was there any rate restriction other than the meal allowances

established by Treasury Board. The RCMP was to be congratulated for making low-cost meals available; this arrangement had saved money since members apparently had sometimes or often taken advantage of these meals and their claims were limited to actual cost. Nevertheless, these meals were not obligatory under policy and the members were entitled to actual costs up to Treasury Board allowances for those meals taken elsewhere. The Committee recommended that the grievance be upheld on this basis.

The Commissioner agreed with the recommendation of the Committee. The Commissioner found that the members were entitled to the actual cost of meals which were taken elsewhere than at the CFB. The Commissioner noted that because of the elapsed time since the claims, it would be difficult to expect the members to produce receipts. He therefore ordered that full meal rates be paid where receipts were not available. The Commissioner also commented on the delays in the treatment of this file. He stated that a six year delay to resolve such a simple issue was absolutely unconscionable and that the members deserved an apology for the blatant lack of attention to the file.

G-165 Two members presented a grievance when the RCMP denied them reimbursement of their meal expenses. Their claim was for meals taken during

12-hour night shifts. They cited one of the exceptional circumstances set out in paragraph 4(3) of Treasury Board decision 704761. The grievors felt that the general principles governing meals taken normally did not apply to night shifts worked between two normal rest periods. The RCMP refused to reimburse the costs, alleging that the grievors had not demonstrated an exceptional circumstance and that a reimbursement of this kind cannot be made on a regular basis. The RCMP claimed that night shifts are now common and are normal practice. The Level I adjudicator denied the grievance and explained this decision on the basis that the grievors had made the claim only to cause a grievance. The adjudicator believed that they did not have the interest required to initiate such a procedure. The grievors brought their grievance to Level II.

The Committee dealt first with the sufficient interest issue. In its opinion, the grievors had sufficient interest to initiate the grievance because they suffered personal prejudice by not receiving reimbursement for their meal expenses. Even if they wished to create a precedent that might affect other claims in the future, this type of consideration is quite legitimate and is part of the quasi-judicial procedure. The Committee also found that the grievors had respected the grievance procedure limitation periods.

As for the substance of the grievance, the Committee found that the

situation described in sub-paragraph 4(3)(iii)(d), i.e., night shifts of over 11 hours, is already considered exceptional by decision TB 704761. The Committee pointed out that the grievors therefore did not have to show the existence of exceptional circumstances since they already met the criteria of this sub-paragraph. Regular use of this type of shift by the RCMP does not change the Treasury Board decision, which still considers it exceptional. However, this conclusion is insufficient to end the debate. Meeting the terms of one of the sub-paragraphs of provision 4(3)(iii) does not result in an automatic reimbursement. Paragraphs 4(3)(i) and 4(3)(ii) set out general principles prerequisite to the application of the exceptions in 4(3)(iii). Normally, a member must assume the cost of a meal that he consumes during his work shift. The Committee found that this principle applies to 12-hour night shifts and that the grievors should normally pay the cost of the meals that they consume during a work shift. Reimbursement of the cost of taken during a 12-hour work shift is not automatic. The member must not have been able to take his meal at the usual time and place due to his work. However, it is possible that the grievors, even on a regular basis, are not able to eat at a normal time and in a place with appropriate facilities for keeping and consuming a meal. If this were the case, then the RCMP should reimburse them

for their meals. Unfortunately, the facts on file do not allow drawing such a conclusion about the circumstances surrounding the grievors' meals. The Committee therefore recommended that the file be returned to the administrative office that took the initial decision so that it might rule again based on the criteria set out above and the circumstances surrounding the grievors' meals.

As an additional comment, the Committee dealt with sub-paragraph 4(3)(iii)(b), which provides that a member may be reimbursed for his meal costs when his work shift extends over more than 11 hours and he must remain at his post. The Committee indicated that, in its opinion, this sub-paragraph does not apply to regular 12-hour work shifts, but to shifts of less than 11 hours that must be extended due to unforeseen circumstances.

G-166 A divisional staff representative travelled approximately 30 km from his worksite to meet some members. After this journey, which took less than a day, he claimed his meal expenses, which the RCMP refused to reimburse. He then presented a grievance. The grievor alleged that his travel had taken him outside his 16-km headquarters area and that this entitled him to a reimbursement under chapter 370 of the Treasury Board Personnel Management Manual. The Level I adjudicator applied the principles set out by the Committee in file G-86

concerning the applicable policy. After upholding the grievance, it returned the file to the administrative office responsible for the initial decision so that it might rule again in light of these principles. The grievor disagreed with the Committee's conclusions and recommendations in file G-86. He therefore presented his grievance to Level II, alleging that he had been unable to take his meal at the predetermined time and that, contrary to the Committee's findings in file G-86, the criterion of the 16-km area did not apply to his case.

In this case, the Committee first found that the grievor had sufficient interest to present his grievance to Level II, even though the Level I adjudicator had upheld it. In its view, when a grievance is upheld but a dispute subsists as to the appropriate remedy, the parties have the required interest to continue the procedure. On the substance, the Committee indicated that the general principles set out in files G-86 and G-128, concerning the policy applicable to meal expenses, applied in this case. It was therefore necessary to apply the general Treasury Board policy in force at the time of the grievance (chapter 370), subject to the exceptions set out in two Treasury Board decisions adopted specifically for RCMP members, namely, decisions TB 704761 and TB 710531. The Committee made reference to file G-167, the conclusions and recommendations of which were made on

the same day as those in the present file. In file G-167, the Committee explained that the 16-km area was not a criterion for reimbursement of meal expenses included in decision TB 704761, concerning meals taken in the vicinity of the worksite or during a journey of less than one day. The Committee also made a clarification concerning its findings in files G-86 and G-128. In those grievances, the Committee had found that the headquarters area criterion did not apply to meals taken in the vicinity of the worksite or during a patrol. In file G-167, the Committee reached the same conclusion for meals taken during travel of less than one day. The provisions of decision TB 704761, concerning the costs of meals taken during a journey of less than one day, replace the similar provisions of the general policy, which is concerned with the 16-km headquarters area. The Committee also explained that, in its opinion, a member is outside the vicinity of his worksite when it would be unreasonable to expect him to return to take his meal at the usual place and time. In such circumstances, the member is instead on a journey of less than one day. The question of whether a member could return to his worksite should be decided in accordance with the circumstances of each case, and not on the basis of a pre-determined distance. The person deciding might take into account the condition of the roads, weather, traffic,

the nature of the work to be performed, etc.

Having established the parameters for reviewing a claim for meal expenses, the Committee found that the file should be returned to the administrative office that took the initial decision so that it might rule again in light of these principles. The facts on file did not allow the Committee to evaluate the circumstances surrounding the grievor's meal. It therefore was unable to rule on this grievance definitively.

G-167 A divisional staff representative travelled approximately 25 km from his worksite to meet some members. After this journey, which took less than a day, he claimed his meal expenses, which the RCMP refused to reimburse. He then presented a grievance. The grievor alleged that his travel had taken him outside his 16-km headquarters area and that this entitled him to a reimbursement under chapter 370 of the Treasury Board Personnel Management Manual. The Level I adjudicator applied the principles set out by the Committee in file G-86 concerning the applicable policy. After upholding the grievance, it returned the file to the administrative office responsible for the initial decision so that it might rule again in light of these principles. The grievor disagreed with this decision. He therefore presented his grievance to Level II.

In this case, the Committee first found that the grievor had sufficient interest to present his grievance to Level II, even though the Level I adjudicator had upheld it. In its view, when a grievance is upheld but a dispute subsists as to the appropriate remedy, the parties have the required interest to continue the procedure.

On the substance, the Committee felt that the general principles set out in files G-86 and G-128, concerning the policy applicable to meal expenses, applied in this case. It was therefore necessary to apply the general Treasury Board policy in force at the time of the grievance (chapter 370), subject to the exceptions set out in two Treasury Board decisions adopted specifically for RCMP members, namely, decisions TB 704761 and TB 710531. The Committee analyzed the grievor's arguments as follows: first, the grievor alleged that the Committee and the Commissioner had never officially found that the headquarters area criterion did not apply in this type of situation and that the subject required clarification. The grievor added that the Treasury Board decisions did not explicitly rule out application of the headquarters area criterion. Further, he submitted that decisions TB 704761 and TB 710531 are improvements made to the general policy and cannot restrict its application. In his opinion, the Level I adjudicator erred in

considering only decision TB 704761 and not applying the general policy.

In response to these arguments, the Committee found that the grievor was correct when he stated that the Committee had never explicitly found that the headquarters area criterion does not apply to a journey of less than one day. In the present grievance, the Committee nevertheless found that it could be deduced from the conclusions and recommendation in files G-86 and G-128 that the 16-km headquarters area does not apply to the RCMP with respect to meal expenses. The Committee found in those files that articles 6.2 and 6.3 of chapter 370 were replaced by the provisions of decisions TB 704761 and TB 710531. These two articles are the provisions that establish the headquarters area criterion. If articles 6.2 and 6.3 did not apply to the RCMP, then, necessarily, the 16-km area criterion did not apply either.

The grievor also alleged that 'C' Division does not have the authority to create or modify a headquarters area. He cited the case of *Gingras v. Canada*, where the Federal Court confirmed the Treasury Board's status as employer of the members of the RCMP in a case concerning the bilingualism bonus. This case did not involve the same subject as the grievance at hand. The Committee nevertheless found that there is no doubt about the Treasury Board's status as employer and that, as such, it has the

authority to make exceptions with regard to the RCMP which will replace certain provisions of the general policy.

The Committee made a clarification of its conclusions in files G-86 and G-128. In those grievances, it concluded that the headquarters area criterion did not apply in the case of meals taken in the vicinity of the worksite or during a patrol. In this grievance, the Committee reached the same conclusion for meals taken during a journey of less than one day. The provisions of decision TB 704761, concerning the costs of meals taken during a journey of less than one day, replace the similar provisions of the general policy. The Committee examined the circumstances in which a member ceases to be within the vicinity of his worksite and makes a 'journey' of less than one day. In the Committee's view, a member is outside the vicinity of his worksite when it would be unreasonable to expect him to return to take his meal at the usual place and time. In such circumstances, the member may be on a journey of less than one day. The question of whether a member could return to his worksite should be decided in accordance with the circumstances of each case, and not on the basis of a pre-determined distance. The person deciding might take into account the condition of the roads, weather, traffic, the nature of the work to be performed, etc.

Having established the parameters that should govern the review of such a claim for meal expenses, the Committee found that the file should be returned to the administrative office that took the initial decision so that it might rule again in light of these principles. The facts on file did not allow the Committee to evaluate the circumstances surrounding the grievor's meal. It therefore was unable to rule on this grievance definitively.

G-168 A member who worked from 0730 hrs to 1530 hrs was assigned temporarily to another department to work seven night shifts between 1830 hrs and 0630 hrs. Following this assignment, he claimed his meal expenses from the RCMP, which refused to reimburse him for them. The member presented a grievance. He principally alleged that he was entitled to reimbursement because it had been impossible for him to eat at home or at the divisional cafeteria because of his assignment. He cited Treasury Board decision 704761. The Level I adjudicator denied his grievance, explaining that there were no exceptional circumstances in this case and that a temporary transfer did not automatically entail reimbursement. He added that, in normal circumstances, a member had to assume the cost of his meals and that it was normal to transfer a member temporarily for operational reasons. The grievor presented his grievance at

Level II. He alleged that the adjudicator had erred in his interpretation of the definition of the term 'worksite' in the policy and that he was entitled to a reimbursement because his assignment had caused him to work in a building other than the one in which he normally performed his duties. In his opinion, this move constituted an exception within the meaning of the policy on meal expenses.

The Committee found that the general principles set out in files G-86 and G-128, concerning the policy applicable to meal expenses, applied to this case. It is therefore necessary to use the general Treasury Board policy in force at the time of the grievance, subject to the exceptions provided for in two Treasury Board decisions adopted specifically for the members of the RCMP, namely, decisions TB 704761 and TB 710531. The Committee made reference to the recommendations made in file G-165 and, as in the case of that grievance, found that the grievor could be reimbursed for his meal expenses under sub-paragraph 4(3)(iii)(d) of Treasury Board decision 704761. As in file G-165, the Committee found that the situation described in sub-paragraph 4(3)(iii)(d), i.e., 12-hour night shifts, is already considered exceptional by decision TB 704761. In grievance G-165, the Committee pointed out that the grievors therefore did not have to show the existence of exceptional circumstances since they already met the

criteria of this sub-paragraph. Regular use of this type of shift by the RCMP does not change the Treasury Board decision, which still considers it exceptional. However, this conclusion is insufficient to end the debate.

Paragraphs 4(3)(i) and 4(3)(ii) set out general principles prerequisite to the application of the exceptions in 4(3)(iii). Normally, a member must assume the cost of a meal that he consumes during his work shift. The Committee found that these principle apply to night shifts.

This grievance posed an additional problem. The grievor was assigned temporarily to this position, and another provision of decision TB 704761 deals with temporary assignments. In addition, provision 4(3) seems to be reserved for members who are on patrol or at their regular post. The Committee found that provision 4(3) concerning temporary assignments cannot apply to the case of a member assigned to temporary duties in the vicinity of his worksite because the member is obliged to provide his own meal. The Committee found that the member's situation met the definition of a temporary assignment. By reaching the conclusion that the grievor had been transferred within the vicinity of his worksite, the Committee was unable to conclude that provision 4(3) (temporary duties) entitled him to a reimbursement, since he was obliged to assume the cost of his meal. However, the grievor, being in the vicinity of his worksite, could

benefit from the application of subparagraph 4(3)(iii)(d) (night shifts), which deals with meals taken in the vicinity of the worksite or during a patrol.

As the Committee explained in connection with file G-165, reimbursement of the cost of a meal taken during a 12-hour work shift is not automatic. The member must not have been able to take his meal at the usual time and place due to his work.

However, it is possible that the grievor, even on a regular basis, is not able to eat at a normal time and in a place with appropriate facilities for keeping and consuming a meal. If this were the case, then the RCMP should reimburse him for his meals. Unfortunately, the facts on file did not allow the Committee to draw a conclusion about the circumstances surrounding the meals in question. The Committee therefore recommended that the file be returned to the administrative office that took the initial decision so that it might rule again based on the criteria set out above and the circumstances surrounding the meals in question.

vii) Relocation Directive

Home Equity Assistance

G-133 A member who had been transferred claimed the reimbursement of a financial loss which he claimed to have suffered from the sale of his old-post residence. The member argued that the

loss resulted from having been compelled to sell his home because the RCMP had decided to cease paying him Temporary Dual Residency Assistance (TDRA). The Committee found that the grievance had not been submitted within the 30-day time limit at Level I of the grievance process. The Committee thus recommended that the grievance be denied. The Commissioner agreed.

G-136 A member who was to be transferred, and who anticipated an important financial loss if he sold his home, requested assistance under the Home Equity Assistance Program (HEAP). His request was denied on the basis of the 10% market-decline criterion. The Committee found that the member did not have standing to grieve: the home had not yet been sold and the grieved decision, with time, lost its effect and did not aggrieve the member. The Committee thus recommended that the grievance be denied. Although the Committee recommended denying the grievance, it expressed its disagreement with the RCMP's approach in deciding that there had not been a 10% market decline. The Committee also noted that nothing prevented the member from re-applying for HEAP if and when he decides again to sell his residence.

The Commissioner felt that the member was aggrieved and thus had standing to present his grievance. The Commissioner agreed that the RCMP's

decision to the effect that there had not been a 10% market decline was erroneous. The Commissioner then presumed that had the RCMP not so erred, the member would probably have accepted the offer of purchase which he had received and which, after compensation under HEAP, would have caused him a personal loss of \$3500. The Commissioner upheld the grievance and decided that the member should have a new evaluation done and that if this evaluation demonstrates a loss of at least 10%, the requirements for HEAP would be met.

G-158 The RCMP denied a member's HEAP application because the adjusted purchase price of his residence was not higher than the sale price, as the policy required. In calculating the purchase price of the residence for the purposes of HEAP, the RCMP chose to disregard substantial home renovation expenses incurred by the member on the theory that the renovations in question did not qualify as admissible improvements under the policy. The member grieved this decision.

The Committee found that although most of the member's renovations could not be deemed to be admissible improvements under the policy, their value could still be included in the calculation of purchase price as basic renovations necessary to the integrity or livability of a residence; for this reason

the Committee recommended upholding the grievance. The Committee felt that not recognizing the value of basic renovations in a member's HEAP application introduces an inconsistency in the administration of the policy: a member who paid a lower purchase price for a house which needed work and capitalized the renovation expenses him or herself would be denied HEAP reimbursement if the majority of the expenses were not on the list of eligible improvements. Another member, however, who paid more for a house which had received these same basic renovations by the previous owner, could claim HEAP reimbursement because the expenses, although ineligible, had been pre-capitalized. Such a distinction did not appear to the Committee to have been intended by the drafters of the policy. So long as basic renovations were not merely carried out to maintain the value of the residence at a level reflective of its approximate condition at the time of purchase, the Committee found that it is not advisable to administer HEAP in a manner which disregards basic equity when it is added by a HEAP applicant but implicitly recognizes it if added by a former owner. The Committee also observed that expenses capitalized by a member might often be lower, resulting in a smaller HEAP claim, since many members do not factor their own personal labour costs into their claim. Finally, the Committee noted that the admonition in

the Home Buyer's Guide against buying handy-man's specials should not be used to penalize HEAP applicants who may not have had a large selection of homes from which to choose at the time of purchase.

G-161 The RCMP denied a member's HEAP application because housing market prices had not declined by 10% from the time he purchased his residence to the time of sale. The member grieved this decision. He conceded that the 10% market decline criterion had not been met, but claimed that the policy nevertheless permitted a reimbursement in his case given the difficult and unusual circumstances surrounding his transfer. In this regard, the member relied on the policy provision formerly contained in HEAP which allowed the Commissioner to authorize reimbursements in exceptional cases of hardship where a member's circumstances did not meet the formal criteria of the policy.

It was the opinion of the Committee that the exceptional hardship provision of HEAP could be successfully invoked in cases where the market had not declined at all and in cases of exceptional combinations of facts such as where a member had substantially invested in a home only to be suddenly and unexpectedly transferred. The Committee also found, however, that any HEAP reimbursement, even that under the exceptional cases of hardship

provision, should only seek to repair a loss which has as its origin the employer's requirement that the member relocate. In the present case, the Committee noted that the member made a decision to buy a particular dwelling at a particular time, as part of his divorce settlement. The Committee also noted that he invested a certain amount in renovations, the cost of which was apparently not fully reflected by an increase in the house's overall value. Such a loss is indeed unfortunate, however, the Committee found that it was basically the result of the member's decision to invest in the particular renovations and was not caused by the RCMP-ordered transfer. Had the record shown that the member had only been at this place of duty for a few months and that he had invested in extensive improvements after being told that he would remain there for several years, the Committee would have found that his subsequent transfer was truly unexpected and consequently merited exceptional consideration. The member only argued, however, that he was ordered to transfer shortly after purchasing the house; this fact, without any additional details, was not enough to demonstrate exceptional hardship and the Committee thus recommended denying the grievance.

Mortgage Repayment Penalty

G-145 and G-146 These were two grievances dealing with the same issue. In each case, the members were, upon relocation, denied reimbursement of a portion of the mortgage repayment penalty on their residence. The portion for which reimbursement had been denied was the amount exceeding the 12 months of interest payable under the RCMP Relocation Directive. The members grieved, arguing that the amount they were claiming was payable under the policy regarding *ex gratia* payments. The Level I adjudicator, who was the same person in both cases, denied the grievances, stating that an *ex gratia* payment is not possible when payment can be made under other existing means of compensation. The Level I adjudicator also found that the Grievors had been granted the maximum amount allowable under the provisions of the Relocation Directive addressing mortgage penalty repayment.

The Committee found that mortgage penalty repayment is a relocation expense already covered by the Relocation Directive and is thus not reimbursable as an *ex gratia* payment. The *ex gratia* process is not intended to fill perceived gaps or compensate apparent limitations in a policy. Consequently, reimbursement could not be sought by the Grievor by means of an *ex gratia* payment. The Committee also concluded

that reimbursement was not available under the provision of the Relocation Directive providing for exceptions, as this provision only applies when Treasury Board has not addressed the possibility of payment in the Directive either by providing for or against payment. The Committee further commented that while the RCMP recognized the interest of members in purchasing housing and the difficulties they face due to the mobility requirement, and while generous support has been given to members to assist them in this regard, it also has an interest in good fiscal management and in seeing that it does not become the full guarantor of members' housing investment decisions. The Committee stated that the limit of 12 months of mortgage interest was a fair and reasonable recognition of the maximum amount to which the RCMP should be liable. The Committee recommended in both cases that the grievance be denied.

The Commissioner agreed with the recommendations of the Committee and denied the grievance in both cases.

Other Relocation Issues

G-154 In a grievance involving the Relocation Directive, a member claimed reimbursement of premiums paid for mortgage default insurance (MDI) which the RCMP had refused him since it had not been paid in lump sum as prescribed

by the policy. The member claimed that he had made a lump sum payment within the meaning of the policy; alternatively, he claimed that the RCMP should have specifically warned him about the method of payment. The Grievor noted that the relocation documentation given to members in other divisions specifically referred to the issue of the MDI payment.

The Committee found that the term “lump sum” did not refer to the manner in which Central Mortgage Housing Corporation (CMHC) received payment of the MDI premiums but rather to the method by which the member chose to pay them; this stipulation explicitly denied reimbursement where a financial institution had paid the MDI premium on the member’s behalf and then added an equivalent amount to the principal owing on the member’s mortgage. Given the above, the Committee could not accept the member’s argument that he had effected “lump sum” payment of MDI as soon as his mortgage principal outstanding had been reduced by an amount equivalent to that of the premium paid; the premium would have still been paid through monthly amortized instalments, and not “in lump sum”. Furthermore, there was no proof that the paid-off portion of the debt principal corresponded to the amount advanced under the mortgage for MDI, as opposed to equity in the member’s home. Accordingly, the Committee found that the member had not complied with the

policy. In the alternative, the member had contended that he had not been specifically warned about the “lump sum” restriction for MDI premium reimbursement, and thus should not be penalized by its effect. The Committee found that the RCMP could not be obliged to forewarn the member regarding the conceivable effect of every pertinent provision in the Relocation Directive; the absence of such a warning did not constitute misrepresentation on the part of the RCMP. In the present case, the RCMP had fulfilled its duty by directing the member, in the divisional relocation booklet, to the Relocation section of the Administration Manual which referred extensively to the applicable provisions of the Relocation Directive. The Relocation Directive, itself an extremely well laid-out document, contained the MDI policy provisions. In the absence of any attempt by the member to make inquiries or obtain policy clarifications, the Committee was thus forced to conclude he was the author of his own misfortune and deny the grievance. In additional comments, the Committee recognized that the lump-sum restriction is imposed by Treasury Board but noted that the basis for this restriction is not entirely clear. The Committee thus suggested a quick policy review in this area to determine whether policy changes might be necessary.

The Commissioner agreed with the recommendations of the Committee and denied the grievance. However, he also noted the Committee's observations regarding the possibility of amending the MDI policy. In this regard, the Commissioner undertook to seek a clarification from Treasury Board concerning the justification behind the lump sum restriction; he expressed a willingness to amend the policy, if possible, in order to provide for alternative premium payment arrangements.

G-141 Three months prior to his relocation, a member travelled to his new post with his common law spouse to find accommodation. The member signed a lease on a house for which he had to take possession two months before his relocation. The member thus requested and received reimbursement of two months' rent in advance from the RCMP. The lease included a clause providing that if either tenant vacated the premises, the other would also have to leave unless permission was granted by the landlord. After his relocation, the member advised the RCMP that he had not moved into the house he had originally rented. He explained that his spouse had not followed him in the relocation and the clause in the lease thus prevented him from remaining at that house. The RCMP requested the reimbursement of the rent in advance. The member

grieved. The Level I adjudicator denied the grievance on the basis of time limits.

In its review of the grievance, the Committee found that the circumstances indicated that the member had presented his grievance in time. With respect to the merits, the Committee noted that the Relocation Directive provides the decision maker, who receives a request for rent in advance, with the prerogative to determine whether the arrangement is reasonable and justifiable. In this case, the decision maker, having the lease in hand, had originally decided that the arrangement was in fact reasonable. New facts must come to light for the rent in advance to be retroactively unreasonable. The Committee found that the fact that the factual situation provided for in the clause simply arose did not constitute a new factor. The decision maker had thus erred in requesting the member to reimburse the rent in advance. The Committee recommended that the grievance be upheld.

The Commissioner agreed and upheld the grievance.

G-143 Nearly two years after a relocation, a member was advised by the RCMP that a review of his relocation file had been conducted and it had been determined that he had been overpaid for one day's worth of living expenses. The member was asked to reimburse the amount in question (\$197.00). The member replied, asking that the decision

be revisited. He argued that the fact that he had originally been paid for the living expenses was indicative of their legitimacy and that the RCMP's request was in retaliation to his success in another grievance concerning the same relocation. The RCMP replied, stating that there was no new information which would justify revisiting the earlier request for reimbursement. The member was again asked to reimburse the amount. The member grieved. The Level I adjudicator denied the grievance. He felt that the grievable decision had been the RCMP's first request for reimbursement; as the grievance had not been presented within 30 days of that decision, it was out of time. The member pursued the matter to Level II, arguing that the grievable decision was the RCMP's second request for reimbursement.

In its review, the Committee explained that the second decision could have constituted a separate grievable decision if new facts or submissions had been provided which would have put the original decision in a whole new light, and could have raised an expectation that the original decision be reopened. In this case, however, the Committee found that the member's response to the first request for reimbursement did not provide new facts or submissions which would have made the RCMP's second request for reimbursement a separate grievable decision. The only grievable decision was thus the first one. As the grievance

was not presented within 30 days of the first decision, the Committee found that the grievance was out of time and recommended that it be denied. The Committee explained, however, that the fact that the grievance had been presented out of time had unfortunately denied it the opportunity to review the merits of the case and that by recommending that the grievance be denied, the Committee was not commenting, one way or the other, on the RCMP's decision to request repayment from the member.

The Commissioner agreed with the recommendation of the Committee and denied the grievance on the basis of time limits.

G-151 A member grieved his notice of transfer. While awaiting the decision on his grievance, in order to facilitate a speedy relocation, the member sold his residence, stored his household effects and moved with his family into rental accommodation, where he stayed for twelve months. After this series of events, a decision on the transfer grievance was rendered by a Level II adjudicator who ruled in favour of the member and cancelled the transfer. Service of the decision on the member was withheld by his division for 2 ½ months while divisional upper management made a request to the adjudicator to revisit his decision. In the meantime, the member had purchased another residence. The member claimed

reimbursement of real estate, legal, moving and storage fees incurred upon the sale of his first residence. This claim was denied by the RCMP and the member grieved this decision mainly arguing that the expenses claimed were incurred as a result of a transfer notice. The Level I adjudicator denied the grievance, stating that policy provides that a member is not transferred to the grieved position until final adjudication of the grievance. The Committee agreed with the Level I adjudicator and found that, as a result of the member submitting a grievance on his transfer, the transfer and any authority to pay expenses related to that transfer were held in abeyance, pending the outcome of the grievance. The Committee found that in regard to the cancelled transfer, no authorization to relocate was ever issued to the member; consequently, the expenses claimed were not relocation expenses in the sense of the RCMP Relocation Directive. The Committee therefore recommended that the grievance be denied. The Committee also commented that requests for revision of a decision pursuant to section 32(3) of the *RCMP Act* can take place only after the decision has been communicated to both of the main parties to the grievance.

The Commissioner agreed with the recommendation of the Committee. He viewed the member's decision to sell his house and purchase another in the same city as a personal choice. The Commissioner denied the grievance. The

Commissioner also commented on the delay of service on the member of the Level II decision on the transfer grievance. He noted that he has previously commented on interference in the normal functioning of the grievance process and how it may undermine the credibility and integrity of the grievance system. He noted that while such lapses are infrequent, they are nonetheless unacceptable and should not recur.

viii) Access to Information: Personnel File

G-147 A member grieved a decision denying him access to file material which he needed in preparation of another grievance, this one against a performance appraisal. The Grievor was contesting certain remarks made by his supervisor in the appraisal which reflected negatively on his performance. The basis of these negative remarks was apparently the content of internal investigation reports in which the Grievor was criticized for an alleged lack of judgment during an incident in the course of an operational matter. The Grievor had requested access to the investigation reports arguing that Bulletin 1285 which was in force at the time, and Section 31(4) of the *RCMP Act* entitled him to receive the information he was requesting. The reason used to refuse the Grievor access to the information was that he had failed to provide specifics which would show that the information he was looking for was

“relevant or reasonably required to present his grievance” as required by Section 31(4).

The Committee found that the Grievor met the requirement of Section 31(4) in that he did give enough particulars for it to be reasonably concluded that the information which he was requesting was indeed relevant and reasonably required to the presentation of the grievance. For example, he referred to a specific incident, and alluded to another, which gave rise to allegations being made against him; these allegations were referred to in his performance appraisal; there was an investigation into these incidents; the Grievor identified those investigation files he was seeking very specifically by number. In the Committee’s view, these particulars were sufficient to demonstrate, without a doubt, that the investigation files in question were relevant to the grievance against the performance appraisal. The Committee also observed that it would have been practically impossible for the Grievor to provide any more details as he did not know the exact nature and content of these files. The Committee therefore recommended that his grievance be upheld and that the Grievor be provided access to the information which he had identified and this, under the disclosure conditions laid out in Bulletin 1285 which was in force at the time.

The Commissioner agreed with the recommendation of the Committee and

upheld the grievance, providing specific instructions as to what documents should be disclosed to the member.

ix) Classification of Civilian-Member Positions

G-148, G-149 and G-150 The Committee received four grievances involving a total of eight civilian members in relation to the reclassification of their positions. One of these grievances was a collective grievance involving five members. The Committee joined two of the other grievances, submitted by individual members, in one grievance report as the issues were identical. The other grievance was treated separately. The issues in all of these grievances were sufficiently similar for them to be grouped together for the purposes of this Annual Report.

The Grievors were classified within a civilian member sub-group. After consultation with the RCMP, Treasury Board made changes to the classification standard and the pay levels for this sub-group. Among the changes was the elimination of separate levels within the sub-group for the Grievors' positions. Also, instead of receiving a salary-tie to the 'police universe'—a change which was implemented for the other positions within the sub-group—position-holders in the levels being eliminated were to continue to have a public service salary-tie; this was implemented with the intent of granting salary protection to these

position-holders. Pursuant to these changes, the RCMP reclassified the members' positions under the revised classification standard, thus grouping the Grievors within the same levels as other members in the sub-group.

Although the Grievors raised different arguments, the principal reasons why the members felt aggrieved were that they had been given no opportunity for input about the nature of their duties; their new role descriptions—the new common role descriptions for all the members of the sub-group—did not reflect the actual distinct nature of their duties; their standing had been reduced; their career path had been blocked; and the implementation of a different salary-tie had put them at a financial disadvantage.

The Committee determined that the central issue falling within its mandate was the reclassification of the positions and, most particularly, the correct comparison of the Grievors' actual duties against the classification standard. Although Treasury Board established the classification standard, the classification of the positions under the standard, including the correct determination and comparison of the members' duties, was the RCMP's role. The Committee concluded that there had been an error in process in the reclassification: the RCMP had failed to verify that the actual nature of the Grievors' duties corresponded with the role description under the new

classification standard; there had been no operational-level confirmation of the Grievors' duties. The Committee recommended that the grievances be upheld on this ground. The Committee recommended that the reclassification notices for the Grievors' positions be cancelled and that the position classifications be returned to the same status they had prior to the issuance of the notices. The RCMP would have to determine what steps to take at that point; this would include the determination, by the RCMP, of the true nature of the Grievors' duties.

In additional comments, the Committee observed that there had been inadequate consultation with the Grievors about the nature of their duties; while the decisions in this regard must rest with RCMP management, modern management practice emphasizes communication with all stakeholders; the Committee recognized that the RCMP was now taking steps to improve its implementation of such practices. The Committee also questioned the input which had been given to Treasury Board leading to the revision of the classification standard; the review leading to this input appeared to have been lacking with respect to the Grievors' positions. In addition, the Committee observed that despite having duties equal to other members of the sub-group, and apparently having other duties in addition, members at the Grievors' former

level were the only ones denied a salary-tie to the 'police universe'. The Committee pointed out that salary protection for the Grievors could be implemented without depriving them of the salary-tie given to other members of the sub-group. The Committee suggested that the above additional comments be considered in the RCMP's determination of the appropriate steps to take after the recommended cancellation of the reclassification notices.

In two grievances, the Commissioner determined that the manner in which the grievances had been framed prevented two Grievors from having standing. Nevertheless, he observed that the other similar grievances were not constrained by this technical problem and that the two Grievors could take advantage of the effect of the decisions in the other grievances. In the other grievances, the Commissioner concluded that there had been an error of fact and process. The evidence showed that translation continues to be a significant part of the Grievors' duties. Further, the form used to verify the Grievors' duties against the role description was not completed. The Commissioner directed that the classification be redetermined by verifying the actual duties performed against the classification standard.

x) *Work Force Adjustment Directive*

G-155 As a result of operating budget reductions, the RCMP decided to reduce the total complement of one of its detachments. The member's position was identified as one that would be eliminated. During the same time, another process was underway to discharge the member by means of a voluntary medical discharge. The member presented a grievance against the RCMP's decision to deny him discharge benefits under both the Work Force Adjustment Directive (WFAD) and the medical discharge procedure, including the separation benefits provided for by Section 9.7 of the WFAD. In his presentation, the Grievor argued that the RCMP had decided to discharge him on two distinct grounds, namely, the abolishment of his position and for medical reasons. He also argued that the wording of Section 19 of the *RCMP Regulations* is such that it does not preclude the use of more than one ground for discharge and that, accordingly, he should be entitled to both methods of termination.

After a close examination of the wording of Sections 9.7 of the WFAD and 19 of the *RCMP Regulations*, the Committee determined that the different methods of discharge provided by Section 19 of the *RCMP Regulations* are meant to be applied in a singular and exclusive manner, and are not intended to

be cumulative. In the case at hand, the member's employment had been terminated by means of a medical discharge under Section 19(a) of the Regulations. When a member is so discharged, his/her position becomes vacant which eliminates the need to proceed with a work force adjustment measure as there is simply not anyone left in the position to lay off. The Committee therefore recommended that the grievance be denied.

xi) Residency Policy

G-157 A member applied for a promotional transfer to the neighbouring sub-division. During the selection process, he made a verbal commitment to the RCMP that he would comply with the divisional residency policy which obliged detachment members to reside within 40 road kilometres from the workplace. The member won the competition and accepted the promotional transfer. Two months later, however, he asked to be exempted from the application of the residency policy. His request was based on the belief that a relocation would be detrimental to the medical and educational wellbeing of his disabled child. The RCMP denied his request for an exception and, based on his continuing refusal to relocate, cancelled his promotional transfer. The member grieved this decision.

The Committee noted that discretionary decisions in general are not reviewed unless they can be shown to be arbitrary or unreasonable. In this case, the Committee found that the refusal to grant the member's request for a residency exception was unreasonable because it took irrelevant factors into account as well as disregarding certain relevant concerns. In particular, the Committee found that too much emphasis was placed on the member's alleged undertaking during the selection process to comply with the residency policy. In the opinion of the Committee, the policy did not oblige the member to state his request for a residency exception before obtaining the promotion and in any case, the RCMP in all likelihood always suspected that the member would request an exception from the policy. The Committee acknowledged the need for the RCMP to have its members reside in the detachments they policed, especially in light of the Commissioner's community policing strategy. Nevertheless, the Committee found that in the present case the member had advanced concrete unanswered arguments demonstrating how he could still respect the operational objectives of the residency policy by commuting to the new post from his present residence. Finally, it seemed clear to the Committee that the RCMP had neither answered the member's concerns as to the consequences a relocation might have on

his child's wellbeing nor considered the impact increased family stress might have on the member's job performance which up until the present, had been excellent. In light of these factors, the Committee recommended that this grievance be upheld and that the member be considered for the first available Corporal's position within reasonable commuting distance from his present residence.

xii) Living Accommodation Charges Directive

G-163 A member and his family occupied RCMP accommodation, a portion of which served as an RCMP office. The member was charged for the accommodation and for utilities under the Living Accommodation Charges Directive (LACD). The LACD effectively provides that in cases where the individual metering of a member's utilities is not feasible, the RCMP will pay the utility bills directly to the suppliers, but then will charge the member a monthly utility fee under a formula based on the area of residential floor space the member occupies. In this matter, all of the member's utilities were provided by electricity, including water provided by an electrically-powered pump. The RCMP applied the utility formula because the electricity metered for the member's utilities also included electricity used to provide water to a neighbouring residence and to provide

utilities to that part of the member's residence used as an RCMP office. The member grieved the RCMP's application of this utility formula to his situation; he claimed that it was cheaper for him to pay the entire electricity bill charged to the residence (including that charged for the RCMP office and the neighbour's pump use) than to pay the LACD formula rate. He also claimed that he was entitled to a discount under the LACD since the only utility he received was electricity.

The Committee found that since the cottage received power, water and heating, all utilities specified by the LACD were being provided; the member was thus not entitled to any discount in this regard. Further, the Committee found that, given the shared-metering situation, the RCMP had appropriately applied the LACD utility formula. The Committee acknowledged, nevertheless, that anomalies may sometimes arise in the application of this formula: in the current unusual situation the member could be paying more through the formula than the cost of the actual utility consumption, including the use by the Force office and the neighbouring residence. The Committee observed that payment by an occupant of the entire electrical bill direct to the supplier was not forbidden by the LACD. Thus, in the event it was confirmed that it would have cost the member less to pay the entire electricity bill directly to the supplier, the Committee suggested that he

be permitted to do so. It also recommended that if he paid the entire bill, to assist in a common sense resolution, he be granted a shelter charge abatement in order to indemnify him for the portion of the bill attributable to the neighbouring residence and the RCMP office.

**B) DISCIPLINE - PART IV OF THE
RCMP ACT**

i) Disgraceful conduct

D-35 A member faced an allegation of disgraceful conduct. It was alleged that the member, while on duty and in a marked police vehicle, engaged in sexual activity with a member of the public. The member admitted the allegation at the hearing and an agreed statement of facts was entered. The Board found that the allegation was established. After hearing evidence and submissions on sanction, the Board directed the member to resign. The Board emphasized that the member had encountered the member of the public in the context of professional duties and trust; it noted that previously decided cases indicated that dismissal was the appropriate sanction in this situation; the Board found few mitigating factors in favour of the member. The member appealed on numerous grounds.

The Committee found that there was no reasonable apprehension of bias in the RCMP disciplinary process applied in this matter. The Committee also found

no violation of the member's right to fundamental justice under paragraph 2(e) of the *Canadian Bill of Rights*.

Furthermore, the Committee was not persuaded that section 7 of the *Canadian Charter of Rights and Freedoms (CCRF)* applied to this case or that the result, even if it had applied, would be any different than under paragraph 2(e) of the *Bill of Rights*. Also, in the Committee's view, the adjudication board had not violated the Best Evidence Rule, nor had it reached its conclusions in the absence of evidence. The Committee found, finally, that the sanction imposed by the Board was fair and appropriate. The Committee recommended that the member's appeal be dismissed.

The Commissioner agreed with the Findings and Recommendations of the Committee except for the decision to deal with the issue of bias in the RCMP disciplinary process. This issue had been raised at the appeal stage. The Committee had found that although such an argument should have been raised by the Appellant at the outset of the Adjudication Board proceedings, the issue should be dealt with as the Appropriate Officer had not objected to the raising of the issue on appeal and had himself fully responded on the merits of the issue. The Commissioner decided not to consider the Appellant's arguments on bias in the disciplinary process. The Commissioner felt that the Appropriate Officer did not have to object to the

Appellant's raising of the issue at the appeal stage as the Appellant's right to raise the issue was extinguished by the fact that it had not been raised at the outset of the proceedings.

As noted above, the Commissioner agreed with the rest of the Committee's recommendations and confirmed the sanction imposed by the Board, i.e. that the member resign within 14 days or be discharged.

D-36 Two allegations of disgraceful conduct and one of neglecting or giving insufficient attention to duty were brought against a member; the particulars of the allegations referred to purchase and sale of antiques by the member while he was in uniform and to improper involvement by the member in an investigation into stolen antiques which he had purchased. The adjudication board dismissed the first allegation of disgraceful conduct. They found the evidence did not support the particulars and where it did, the behaviour was not disgraceful. They also dismissed the allegation involving neglect of duty because it was not established that the member was on duty at the time in question. The board found the second allegation of disgraceful conduct was established. The member, in uniform and while driving a police vehicle, contacted a suspect while an investigation into the theft of antiques was ongoing. During this period he too was under

investigation, having purchased the antiques from the suspect. The board determined that his actions had the potential to influence the suspect and were inappropriate. The sanction imposed was a reprimand, a forfeiture of one day of pay and a recommendation for transfer. The member appealed, arguing bad faith in the decision to proceed with discipline against him, a lack of jurisdiction on the part of the board, and that the board erred in their conclusion as well as the sanction imposed. The member also wished to include any grounds uncovered during the appeal.

The Committee observed that the board had considered the argument of bad faith and had concluded this was not proven. The Committee found no reason to disturb the board's findings in this regard. The argument put forth on the issue of jurisdiction was that the matter had been dealt with through informal discipline in the form of negative comments on the member's performance appraisal and as such formal discipline was not an option. The argument put forth on the issue of jurisdiction was that the matter had been dealt with through informal discipline in the form of negative comments on the member's performance appraisal and, as such, formal discipline was not an option. The Committee found that even if this objection to the Board's jurisdiction could be raised for the first time on appeal and that the evidence submitted to

support it could be accepted at this late point—both of which were doubtful in this case—there is no indication that the Appellant had actually previously received the disciplinary action of a reprimand for the conduct subject to the formal disciplinary action. Negative comments in an employee appraisal do not constitute, in and of themselves, the disciplinary measure of a reprimand. It was also found that the board's conclusion that the member's actions had the potential to influence was an entirely reasonable one. Given the circumstances of this case, it was concluded the sanction was appropriate: the member had shown a complete disregard for his status as a member in serious circumstances related to a criminal investigation. The Committee recommended that the appeal be denied.

C) DISCHARGE AND DEMOTION - PART V OF THE *RCMP ACT*

R-02 A member having been served with a Notice of Intention to Discharge under Part V of the *RCMP Act* requested a review of his case by a discharge and demotion board. Before the proceedings on the merits began, a dispute arose with respect to the admissibility of additional evidence and the board rendered an interlocutory decision on the issue. Both parties disagreed, for differing reasons, with the reasons the board provided for its decision; they requested an adjournment of the scheduled hearing

date in order to appeal the decision. The adjournment was denied: the board found that its preliminary decision could not be appealed until the board had come to a final decision on the case. Before the hearing was set to begin, the Appropriate Officer filed a document advising the board that a settlement had been reached between the parties. The settlement provided that the member would be retained in the RCMP and that the Appropriate Officer was withdrawing his notice of intention to discharge and would not present any evidence to the board. Based on the fact that no evidence was presented, the board concluded that the grounds of unsuitability had not been established and directed that the member be retained in the RCMP. Despite the issue of discharge having been resolved by the settlement, the Appropriate Officer appealed the board's decision on the preliminary issue of admissibility of additional evidence. The board's decision had been based on the board's views of its role; it was with these views which the Appropriate Officer disagreed. The Appropriate Officer also requested that direction be provided by the appellate level with respect to the procedure for the appeal of interlocutory decisions. In his response to the appeal, the Respondent agreed that direction was needed with respect to appeals of interlocutory decisions. The Respondent, however, provided his own views on the issue of admissibility of additional

evidence and the role of the board as he disagreed with both those of the board and those of the Appropriate Officer on the issue.

The Committee found that as an agreement had been reached concerning the discharge of the member and no present live controversy existed between the parties, the issue concerning the role of a discharge and demotion board had become moot. The Committee then found that there existed no compelling ground to address the issue despite its mootness. As the issue required extensive interpretation of Part V of the *RCMP Act*, the Committee felt that it would be preferable to await the presence of an adversarial context where a live factual situation with tangible prejudices could be referred to. The Committee thus recommended that this ground of appeal be denied. With respect to the parties' request for direction as to the procedure for interlocutory appeals, the Committee felt that it was also moot but decided to deal with it despite its mootness as it was difficult, because it deals with interlocutory matters, to foresee a situation where it could be raised without always being moot. On this issue the Committee noted that a right to an appeal must be clearly provided by statute. As the *RCMP Act* does not expressly provide the Commissioner with the power to hear appeals of interlocutory decisions, the Committee found that such decisions could not be appealed. The Committee

thus recommended that this ground also be denied. The Committee also provided additional comments and suggestions on the manner in which settlement agreements should be dealt with before discharge and demotion boards. The Commissioner agreed with the recommendations of the Committee and denied the appeal.