



2000-01 *Annual Report*

ROYAL CANADIAN MOUNTED POLICE
EXTERNAL REVIEW COMMITTEE





CANADA

Chairman Président

May 30, 2000

The Honourable Lawrence MacAulay, P.C., M.P.
Solicitor General of Canada
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Ottawa, Ontario
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Dear Mr. MacAulay:

Pursuant to Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit the Royal Canadian Mounted Police External Review Committee's annual report for the fiscal year 1999-2000 in order that a copy be laid before the House of Commons and the Senate.

Yours very truly,

Philippe Rabot
Acting Chair

Annual Report

RCMP EXTERNAL REVIEW COMMITTEE

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Overview

OVERVIEW

Mandate, roles and responsibilities

The RCMP External Review Committee is an independent tribunal established under the RCMP Act. Its statutory mandate is to provide recommendations to the RCMP Commissioner concerning second-level grievances, appeals against disciplinary measures imposed by adjudication boards, and appeals of discharge and demotion decisions. If the Commissioner does not accept the recommendations of the Committee, reasons must be provided.

Under the *RCMP Act*, the RCMP Commissioner refers all appeals of formal discipline and all discharge and demotion appeals to the Committee unless the member of the RCMP requests that the matter not be referred. In addition, pursuant to section 33 of the *RCMP Act*, the RCMP Commissioner refers certain types of grievances to the Committee in accordance with regulations made by the Governor in Council. Section 36 of the *RCMP Regulations* specifies the grievances which the RCMP Commissioner must refer to the Committee. These are grievances respecting:

- 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.

The Committee Chair can dispose of matters referred to the Committee either on the basis of the material in the record or following a hearing.

In conducting its review of matters referred to it, the Committee attempts to achieve a balance amongst the many complex and different interests involved while ensuring that the principles of administrative and labour law are respected and the remedial approach indicated by the *RCMP Act* is followed. In each case, the Committee must consider the public interest, ensure respect for the right of RCMP members to fair treatment in accordance with the spirit of the Act and provisions of Public Service regulations and directives applicable to the RCMP, and ensure that RCMP management is in a position to manage its labour relations in a way that helps to maintain public confidence.

History

Established in early 1987, the Committee was one of two tribunals created as civilian oversight agencies for the RCMP. The other was the RCMP Public Complaints Commission. The first Chair of the Committee was The Honourable Mr. Justice René Marin, who from 1974 to 1976 had chaired the Commission of Inquiry relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police. In 1992, the Vice-Chair, F. Jennifer Lynch, Q.C., became Acting Chair of the Committee, a position which she held until 1998. Ms. Lynch made a major contribution to the establishment within the RCMP of alternative dispute resolution (ADR), which has enjoyed great success. The current Vice-Chair and Acting Chair, Philippe Rabot, has held these positions since July 27, 1998. Mr. Rabot was formerly Vice-Chair of the Assessment Review Board of Ontario, Secretary of the Copyright Board of Canada, and Assistant Director General of Appeals at the Public Service Commission of Canada.

Program organization

The reason the Chair's position has been left vacant since 1992 is that it was determined that the requirement for a full-time Chair no longer existed. Legislation introduced in

1996 (Bill C-49) would have eliminated the requirement, in section 25 of the RCMP Act, that the Chair be appointed on a full-time basis. However, the legislation was not enacted and has not been re-introduced in the current session of Parliament. Currently, the Committee operates with only one member, the Vice-Chair, who is authorized by the Solicitor General (pursuant to subsection 26(2) of the *RCMP Act*) to perform the duties of the Chair. Case review and administrative support are provided by a staff of five who report to the Chair through the Executive Director. The Committee's offices are located in Ottawa. The Committee reports annually to Parliament.

The Committee receives assistance, in the form of services such as Human Resources and financial control, from the Ministry of the Solicitor General and the RCMP Public Complaints Commission.

E n v i r o n m e n t

Several factors can influence the workload of the Committee in any given year. Most importantly, the number of referable grievances and disciplinary appeals can fluctuate significantly from one year to the next. In recent years, the number of grievances referred to the Committee has declined significantly, while the number of disciplinary appeals appears to be stable.

Policy Changes

In the past three years, the RCMP has taken several initiatives to bring about a change in its organizational culture. One key initiative was the increased use of mediation and conciliation. This initiative has enabled many disputes that would otherwise have been grieved at the second level to be resolved to the mutual satisfaction of the parties.

Other initiatives undertaken by the RCMP to change policy in the area of labour relations could have a significant impact on the

Committee's workload. For example, under section 31 of the Act, a decision cannot be grieved if some other process for redress is provided by a standing order of the Commissioner.

Complexity of Cases Referred to the Committee

While the number of cases referred to the Committee has declined over the past four years, those that the Committee has received often raised new and complex legal issues that had ramifications for other members. Furthermore, in the majority of disciplinary appeals reviewed by the Committee in 1999-2000 the sanction imposed by the adjudication board was an order to resign.

J u d i c i a l R e v i e w

The RCMP Act specifies that the Commissioner's decision on a grievance, discipline appeal or discharge or demotion appeal is ... "final and binding and, except for judicial review under the Federal Court Act," is not subject to appeal or review by any court (subsections 32(1), 45.16(7) and 45.26(6) of the *RCMP Act*). The Act does not contain an equivalent provision with respect to the Committee's findings because the Committee makes recommendations to the Commissioner, whereas the Commissioner makes the "final and binding" decision. Consequently, the findings and recommendations of the Committee are not appealable directly to the Federal Court. Nonetheless, when there is an application for judicial review of a Commissioner's decision which adopts the Committee's findings and recommendations, the Federal Court may scrutinize those findings and recommendations. The case described below, which was decided by the Federal Court of Appeal on March 2, 2000, illustrates this situation.

Canada (Attorney General) v. Millard¹

In 1994 Corporal Millard applied for compensation pursuant to the Home Equity Assistance Program (HEAP) provisions of the RCMP

1.[2000] F.C.J. No. 279.

Relocation Directive. This kind of financial assistance may be granted to RCMP members who are posted to a new place of duty and incur equity losses, in excess of a specified level, when selling a principal residence at the post that they are leaving. Corporal Millard's application was denied because, in the view of RCMP officers who responded to it, the decline in general market value of residences in the relevant area during the time that Corporal Millard occupied the home as his principal residence did not exceed the level specified by the policy. Corporal Millard's Level I grievance of this decision was not successful. His Level II grievance submission was referred to the Committee.

The Committee recommended that the grievance be denied because, taking into account the date on which the residence became Corporal Millard's principal residence, the decrease in general market values did not exceed the level specified by the HEAP rules. The Commissioner concurred with the Committee's recommendation and its reasons. The grievor applied to the Federal Court Trial Division for review of the Commissioner's decision. The Trial Division concluded that the Committee's findings and recommendations on the grievance contained errors with respect to the interpretation of the HEAP rules and, therefore, ordered that the Commissioner's decision be set aside. This order of the Trial Division was then appealed to the Appeal Division of the Court.

In its review of the case, the Court of Appeal described the legislative scheme established to deal with grievances of RCMP members. The Court pointed out that the decision-making process established for a grievance of this nature included Level I adjudication, review by the Committee, and a decision by the Commissioner following consideration of the report from the Committee. The Court stated, "Only in the most unusual circumstances should a reviewing Court intervene in decisions of a *series of tribunals* that have been specifically designed for the task". Consequently, a Commissioner's decision based on "reasoned and detailed findings" by the External Review Committee should be subject to minimal judicial scrutiny. In view of these circumstances and the facts of the grievance, the Court of Appeal restored the Commissioner's decision.

What is particularly interesting about the Court of Appeal's decision is its determination that the Commissioner's decision on a grievance should be set aside only if it is "patently unreasonable". The Trial Division had concluded that the decision of the Commissioner was reviewable on a standard of "correctness". These two criteria and a third - "reasonableness" - have been established by judgements of the Supreme Court of Canada. Any one of these criteria may be applied, depending on the issues in dispute and the characteristics of the tribunal that made the decision being reviewed, to judicial review of decisions of administrative tribunals. The Court of Appeal reviewed the institutional characteristics of the Committee. It stated that the Committee was "entitled to a measure of deference" because of its expertise in matters that come before it. In the view of the Court, the Committee's interpretation of the HEAP rules was reasonable. Although an alternate interpretation, such as that of the grievor, might also be reasonable, the Commissioner's adoption of the Committee's analysis and findings was reasonable and the Federal Court should not change his decision.

THE YEAR UNDER REVIEW

Cases Reviewed and Considered

At the outset of the year, 13 grievance files and 5 disciplinary appeal files were carried-over from the previous year. During the year, the Committee received 13 additional grievance files and 5 disciplinary appeals. Findings and recommendations were issued for 21 grievances and 8 disciplinary appeals. Three grievances were determined not to be within the Committee's jurisdiction. Two grievances and two disciplinary appeals have been carried-over into 2000-2001.

Amongst the grievances received, the following were some of the matters that required consideration:

- a claim that a decision to issue a Notice of Medical Discharge had been improperly influenced by bias, that the Medical Board's findings were unsubstantiated, that the grievor was not interviewed in accordance with policy before the discharge decision was made, and that the RCMP had not made reasonable efforts to find a suitable position for the grievor (G-233);
- the decision to not authorize legal counsel at public expense to represent a member whose behaviour toward a member of the public prior to that person's death was the subject of questioning at the coroner's inquest into the death (G-234);
- the decision to not investigate a complaint of harassment arising from the manner in which a member was removed from United Nations civilian police duties in Haiti (G-237);
- the decision to not reimburse meal expenses for travel to the location of a promotion examination (G-238); and
- the Force's obligation to disclose, to the grievor, documents related to the grievance (G-234, G-247).

Issues raised by the disciplinary appeal cases included the following:

- Whether an agreement, between a member and a supervising officer, specifying that the member would accept certain

corrective measures as a consequence of his allegedly improper behaviour constituted a "reprimand", and thereby precluded the appropriate officer from initiating formal disciplinary action.

- The question of whether hearings had been initiated within the one- year time limit. The answer to this question required assessment of the degree of knowledge required, on the part of an appropriate officer, before deciding to institute a hearing. In two cases the Committee found that the appropriate officer's initiation of hearings occurred 21 months after the time that he had sufficient knowledge to be aware of the alleged contraventions of the Code of Conduct.
- The procedural requirements of a hearing when the adjudication board does not accept a joint submission on sanction.

Other Activities

The fact that certain types of important grievances cannot be referred to the Committee has been a cause of concern. From 1996 to 1999 these concerns were studied by a Working Group made up of representatives from the Division Staff Relations Representatives, RCMP Internal Affairs Branch and the External Review Committee. The discussion paper prepared by the Working Group in 1996 was submitted to the Commissioner, the National Executive Committee of the Division Staff Relations Representatives, and the Acting Chair of the Committee. These parties' consideration of the discussion paper led to the Working Group's 1999 task of creating specific proposals for the future grievance mandate of the Committee. In October, 1999, the Working Group recommended that section 36 of the *RCMP Regulations* be amended and that consideration be given to amending the *RCMP Act* to allow further modification of the category of grievances that would be referred to the Committee.

During the year the Committee established a Website (www.erc-ccc.gc.ca) that includes information about cases reviewed, annual reports, quarterly reports (the *Communique*) and the Committee's research work carried out from 1988 to 1992. The data-bank revision that was commenced in 1998 was completed in 1999.

Historical statistics on case reviews

Discipline

Year	Appeals Received	Recommendations Issued	Withdrawn
1995-1996	13	2	0
1996-1997	5	12	4
1997-1998	6	7	0
1998-1999	7	3	2
1999-2000	5	8	0

Grievances

Year	Appeals Received	Recommendations Issued	Withdrawn/ No Jurisdiction
1995-1996	18	36	18
1996-1997	30	21	4
1997-1998	17	16	3
1998-1999	17	19	9
1999-2000	13	21	3

Discharge and Demotion

Four discharge appeal cases have been referred to the Committee since its creation: one in each of years 1992-93, 1994-95, 1995-96 and 1996-97. Three of these appeals were withdrawn. There have been no appeals of demotion referred to the Committee.



Cases

What follows is a short description of some of the cases reviewed by the Committee during the year. The number in bold print at the beginning of each summary is the reference number assigned by the Committee upon completion of the case. At the end of each summary, the disposition of the case by the Commissioner is provided. Cases that have not been summarized are identified by reference numbers to allow readers to locate the case through either the website or the Communique.

A) Discipline - part IV of the *RCMP Act*



This case was an appeal by the appropriate officer. The member's off-duty conduct led to criminal and Code of Conduct investigations into an alleged assault. The member and the officer in charge of the member's section signed an agreement stipulating that the member accepted certain disciplinary sanctions as an alternative to those listed in sub-section 41(1) of the *RCMP Act*. After this agreement was made the appropriate officer initiated a hearing, pursuant to section 43 of the Act, into one allegation based on the alleged assault that had been the subject of the agreement. At the outset of the hearing, the member challenged the jurisdiction of the Adjudication Board to conduct the hearing. He argued that he had previously been reprimanded for the same conduct as that set out in the allegation. According to subsection 43(7) of the *RCMP Act*, no formal discipline may be initiated where there has been a reprimand in relation to the same conduct. The Board found that there had been a reprimand delivered in relation to the conduct alleged, and that it therefore did not have jurisdiction to conduct a hearing into the allegation. The Appropriate Officer appealed, arguing that the measure taken had not been a reprimand.

The Committee examined the statutory context in which "reprimand" and other disciplinary measures were placed in the *Act* as well as the legislative history of informal and formal discipline in the RCMP. It found that anyone administering informal discipline must first be satisfied that the conduct at issue amounts to a contravention, and must then determine what measure is sufficient to address that contravention. An officer administering a reprimand must be satisfied that a reprimand is the appropriate action, in light of the conduct at issue, and so must appreciate the differences between the various disciplinary actions, as well as the conduct at issue. The nature of the misconduct being sanctioned and the provision of the *Code of Conduct* violated must be communicated to the member being sanctioned. An officer administering a reprimand ought also to inform the member that the disciplinary action being taken is a reprimand. This makes it known to the member what rights and consequences arise from the discipline, such as a right to appeal and the consequence that no further disciplinary action can be taken.

The Committee found that the action taken in this case did not amount to a reprimand. The Committee recommended that the Commissioner allow the appeal and order a new hearing to be conducted into the allegation.

The commissioner agreed with the Committee and ordered a new hearing.



D-61

The appellant was alleged to have amended an RCMP document, thus violating section 43 of the *Code of Conduct*. His intention was to replace a report that had disappeared, on which was based part of an affidavit supporting a request for an authorization to intercept communications. He had fabricated an investigation report and supporting notes. He had also written a false date on these documents to indicate that they had been made prior to the preparation of the affidavit.

The appellant admitted the allegation. A joint statement of facts was submitted to the Adjudication Board and the parties made a joint representation concerning the sanction, i.e., a forfeiture of five days' pay and a reprimand. The Board found that the allegation was established, but did not accept the joint representation on sanction. Instead it ordered the appellant to resign. The appellant appealed the decisions on the allegation and the sanction. The respondent agreed with the first reason for the appeal, but left it to the Commissioner to establish the appropriate sanction.

The issue in the appeal was the manner in which the Adjudication Board proceeded in the hearing on the sanction. Before hearing the parties, it asked them what they intended to propose as a sanction. When it learned that they recommended a forfeiture of five days' pay and a reprimand, it said that it wanted to hear witnesses because it considered the matter to be "*very serious*". After an adjournment of a few hours only, the appellant's representative called upon the appellant's line supervisor and the appellant to testify. The representatives of the parties then pleaded the reasonable nature of their joint representation on sanction.

According to the appellant, if the Adjudication Board had notified him that it was contemplating rejecting the joint representation on sanction, he could have asked for leave to withdraw his admission; this would have led to a new hearing on the allegation. The Committee did not subscribe to the argument that the Board's decision on the allegation had to be reversed. The Board did not have to allow the appellant to withdraw his admission simply on the basis that it had rejected the joint representation on sanction. The appellant did not show that his admission had not been given of his own free will, or that he now had a defense to put forward. The Committee found that the Board's decision concerning the merits of the allegation was valid.

The Committee nonetheless found that basic errors had been committed within the context of the hearing on the sanction. The Adjudication Board should have clearly notified the parties that it intended to reject their suggestion and that the sanction to which

the appellant was exposed could be as severe as an order to resign. The comments of the Board were too ambiguous for the parties to realize this and to make representations accordingly. As well, the Board should have given the parties an opportunity to be heard with regard to the sanction it intended to impose. To do this, it should have adjourned the hearing for at least a few weeks so that the parties could make adequate preparation. The appellant's right to make full answer and defense was not respected. The sanction must therefore be rescinded.

The Committee then proceeded to determine the appropriate sanction, since the *RCMP Act* does not provide the possibility of ordering a new hearing before an adjudication board if the appeal is allowed solely in regard to the sanction. The Committee pointed out that the determination of a sanction necessarily includes the fact that there is a joint representation by the parties. A tribunal is not bound by a joint representation on the sanction. However, unless it finds that the recommendation is not reasonable, such a sanction should be endorsed. The Committee therefore reviewed all the circumstances of this matter and compared it with other disciplinary cases. It found that the appellant merited severe punishment, but not dismissal from the RCMP. According to the Committee, the forfeiture of five days' pay and a reprimand suggested by the parties was a reasonable sanction to recommend to the Commissioner. The Committee therefore recommended that the Commissioner allow the appeal from the sanction and impose the sanction recommended by the parties.

The Commissioner agreed with the recommendation of the External Review Committee ("ERC") on the withdrawal of the admission. He maintained that the failure of the Adjudication Board ("the Board") to adhere to the sanction proposed by the parties did not oblige him to allow the appellant to withdraw his admission with regard to his conduct. On that basis, the Commissioner dismissed the appeal as to the merits of the allegation. As to the sanction, the Commissioner set aside the dismissal order because the Board had not given the appellant the opportunity to adequately prepare and make his submissions and ordered

that the appellant be given a reprimand and a forfeiture of ten days' pay.

The Commissioner commented on the Board's conduct in this matter, emphasizing that it is the duty of adjudication boards to act in accordance with the principles of natural justice and to allow the parties to be heard and to prepare adequately for the hearing.



D-65

D-66

Two members had to answer to a series of disciplinary allegations the main thrust of which was that they had appropriated goods seized during searches and that they had allowed some colleagues to do the same. In both cases, the members submitted a motion to the Adjudication Board seeking to have the allegations quashed, for the reason that the Appropriate Officer, who was the same person in both cases, had not initiated the disciplinary hearings within the limitation period of "*one year from the time the contravention and the identity of that member became known to the appropriate officer,*" according to sub-section 43(8) of the *RCMP Act*. The hearings had been initiated in September 1997. The members claimed that the Appropriate Officer had become aware of the facts in the allegations 21 months earlier, when he had suspended them from their duties, in December 1995. The Adjudication Board responsible for studying the first case granted the motion finding four of the five allegations against the first member to be time-barred. The Adjudication Board responsible for the second case granted the motion for five of the seven allegations against that member. Both Boards found that the documentation that had been forwarded to the Appropriate Officer for him to determine whether there were grounds for suspending the members had included the principal information on which most of the allegations were based. However, in the first case, the Adjudication Board concluded that this documentation said nothing about one of the allegations and that it was therefore not time-barred, the Appropriate Officer having been made aware of the facts of this allegation only upon receipt of the final report of the internal investigation. The

Adjudication Board in the second case came to a similar conclusion with regard to two of the allegations.

The Adjudication Board in the first case then concluded that the timely allegation against the member was founded. This allegation claimed that he had conducted himself in a disgraceful manner by appropriating speakers that had been taken from a seized vehicle. As for the second case, the Adjudication Board found that only one of the allegations was founded. This was an allegation of disgraceful conduct, related to the fact that the member had taken a cart from an exhibits vault and had used it in completing renovations at his home. In both cases the Adjudication Boards ordered the members to resign or they would be dismissed. One of the grounds of appeal raised by the members alleged that the allegations that had been found to have merit had been time-barred.

The External Review Committee found that the two Adjudication Boards had committed an error by distinguishing the allegations that it had judged timely from the others, simply because they were not part of the examples of misconduct mentioned in the report addressed to the Appropriate Officer at the time that the members were suspended. According to the Committee, the Adjudication Board had required a much too detailed knowledge on the part of the Appropriate Officer of the pertinent facts. If it weren't for the fact that these allegations all related to facts that regarded related activities, the Adjudication Boards' findings could be considered quite logical. However, these particular cases included very special circumstances in that the allegations all concerned actions of the same nature. The actions of which the members were accused were all known to the RCMP at the time of the suspension. The actions underlying the allegations judged by the Adjudication Boards to not be time-barred had, no doubt, not been reported because they were judged to be too trivial at the time that suspension was recommended. It would be paradoxical if the absence of details judged to be of little importance at the time were sufficient to extend the period available to the Appropriate Officer to initiate a hearing. Parliament's intention to provide procedural protection to members would be thwarted in such a case.

The Committee found that the delay in convening the two disciplinary hearings had nothing to do with the fact that the information provided to the Appropriate Officer at the time of the suspensions did not state the allegations at issue. The delay was rather related to the fact that the disciplinary investigations had taken more than a year to be completed. The Committee therefore recommended to the Commissioner that he allow the appeals and reverse the decisions of the arbitration boards.

The Commissioner agreed with the Committee. He also ordered an administrative investigation into the reasons for the delay in initiating a hearing.

Information on the following discipline appeals may be found in the Committee's *Communique* and at its Internet website:

- D-60 Allegation of abusing sick leave by playing hockey while on sick leave
- D-62 Allegations relating to impaired driving, evading a stop-check barrier and driving in an unsafe manner
- D-63 Allegations relating to impaired driving and improper handling of a RCMP-issued firearm
- D-64 Allegation of excessive force during an arrest.

B) Grievances - Part III of the *RCMP Act*



G-228

The important issue in this case related to the parties' opportunity to provide information to the Committee. Prior to its review, the Committee asked the Grievor to provide an affidavit indicating when he became aware of the Level I decision and when he had filed his Level II grievance. The Grievor was also invited to submit the reasons why he had waited two years before contacting the Grievance Unit in this matter. The Grievor responded that the decision had been left in his assigned mail slot on the date indicated on the form 3081. He submitted that a grievance presentation had been prepared and put in

the detachment's outgoing mail slot. Finally, the Grievor indicated that the reason for the two-year wait was that he had been aware that the grievance process was "quite slow". The Committee found that the Grievor had not established that his Level II grievance had been presented within the prescribed time and recommended denying the grievance on time limits. The Committee also found it unreasonable that the Grievor waited two years before enquiring about the status of his grievance and recommended to the Commissioner that he not extend the time limit.

The Commissioner agreed with the Committee that the Level II time limit had not been respected and that there was insufficient justification to warrant an extension.



One of the unusual features in this grievance case was the nine-month delay between submission of the grievance by the member and receipt of it by the RCMP. The Grievor submitted a grievance against the rejection of his application for compensation under the Home Equity Assistance Program (HEAP). The Force received the grievance nine months after the Grievor signed it. During the 30-day time period for presentation of Level I grievances, the Grievor had sent the signed grievance form to a Division Staff Relations Representative (DSRR) with whom he had been talking. He believed that the DSRR would take care of it. The DSRR later indicated that he may have given the Grievor that impression. The Grievance Advisory Board recommended that the grievance be denied because it had not been submitted to the Force within the statutory 30-day time limit. It did not believe that the DSRR had undertaken to forward the grievance to the proper recipients because if he had, he would have done so.

The Committee found that the submission of the grievance to the DSRR did not constitute submission of the grievance to the Force, as contemplated by Force policy and therefore, the grievance presentation was not timely. The DSRR was not in the Grievor's chain of command and there is no evidence that DSRRs are responsible

for initiating the grievance process on behalf of the Force. DSRRs are more akin to agents for aggrieved members when they agree to assist in the presentation of grievances. However, in view of the evidence of a misunderstanding between the Grievor and the DSRR regarding the presentation of the grievance, the Grievor should not be penalized for the fact that the DSRR did not present his grievance to the Force within the 30-day time limit. The circumstances in this case were exceptional and the Committee recommended that the Commissioner exercise the authority under subsection 47.4 of the Royal Canadian Mounted Police Act and extend the time limit for the Level I grievance so that it would be considered timely.

The Acting Commissioner granted an extension of time for acceptance of the grievance.



The Grievor submitted a grievance against a Notice of Medical Discharge. She argued that the bias of the Health Services Officer (the "HSO") had led to the medical discharge process, that the Medical Board's findings were unsubstantiated and based upon invalid job requirements, and that the Force had not made reasonable efforts to find another position for the grievor.

The Grievance Advisory Board recommended that the grievance be denied, finding that the Grievor had been treated fairly in the medical discharge process and that there was no evidence that the HSO had changed her medical profile because of her harassment complaint against him. The Level I adjudicator agreed, and denied the grievance.

The Committee found that the process of determining whether a member ought to be medically discharged could not be reduced to a mere computation of the amount of time the member has been absent from work. In this case, the Medical Board report suffered from critical failings. Firstly, it did not identify the medical condition from which the Grievor suffered. This was significant as the record did not clearly indicate why the Grievor had been off-duty

sick for such a long period of time. It failed to establish a basis for finding that the Grievor's condition, whatever it was, was of a permanent nature. Thirdly, the report was based on medical evidence that was not current. Fourthly, it was based on an outdated Task Bank. The Committee found that the Medical Board report did not contain a sufficiently detailed analysis from which the Appropriate Officer could have made a proper, well-informed decision to medically discharge the Grievor. Therefore, the grievance should be upheld.

The HSO's involvement in the Grievor's medical profiles was inappropriate, given that the investigation of a harassment complaint had just recently concluded that a "*personality conflict*" existed between himself and the Grievor. While the HSO was not a member of the Medical Board, it was clear that the Medical Board based its recommendations, at least in part, on his medical profiles, and the process was tainted by his involvement.

The Committee found that Force policy had not been followed in that the Grievor was never given a staffing interview. The Force's argument that there weren't any administrative positions open for the Grievor, and that she had to be a fully operational constable in order to be considered for any position, appeared to be inaccurate in light of the evidence that another member, with a worse medical profile than the Grievor's, had worked in an administrative position.

The Committee recommended that the Commissioner allow the grievance, that a new medical board be convened and that, in the event that the Grievor was found not to be able to continue as an operational police officer, a proper procedure be undertaken to attempt to find her another position within the Force.

The Commissioner did not accept the Committee's recommendation. He concluded that the critical issue was whether the member could reasonably be expected to return to operational duty. The medical board, in his opinion, had made this determination properly. Although the Commissioner found that there were errors in the assessment and discharge process, the Commanding Officer's decision to discharge the member was the right one.



The member made a request to obtain the services of a lawyer to represent him during the Coroner's public inquiry into the circumstances surrounding the death of a woman whose body had been retrieved from a river.

The member was one of the last persons to have seen her alive. His request was rejected for the reason that the Department of Justice had found that he had not met the eligibility criteria set out in the Royal Canadian Mounted Police's Administration Manual, i.e., "*if the employee was acting beyond the scope of his/her duties, he/she is not entitled to legal counsel at public expense.*" Consequently, the member submitted a grievance. He also requested to have access to the request for study by the Department of Justice and their written opinion as to his eligibility for the services of counsel at government expense and any other documents that related to the internal investigation.

Two years went by before a Grievance Advisory Board (GAB) was able to meet to review this grievance. The majority of the GAB found that the grievance should be denied because the member had not shown that he had acted within the scope of his duties or responsibilities, in conformity with the RCMP's expectations. The dissenting member of the GAB found that the grievance should be allowed because, essentially, he believed that the RCMP had an obligation to establish that the member was not acting within the scope of his duties. The member received the GAB's reports and asked for a period of three months to prepare his reply. He was granted a one-week period, but the Level I arbitrator had already made his decision.

The adjudicator rejected the grievance for the reason that the member had not shown that his actions could be considered as being part of his duties. The member presented his grievance at Level II. He asked how the adjudicator could have made a decision without having reviewed all the files in this matter.

The Committee agreed with the point made by the GAB's majority report to the effect that the member was best placed to describe his actions and explain his perception that his actions could rea-

sonably be considered within the scope of his duties. Although there may well have been pertinent documents that the RCMP ought to have made available to the member, the member himself was not very talkative. Not having the documents requested did not prevent him from explaining the facts surrounding his meeting with the woman who died shortly afterward. It was the member's responsibility to explain why he had met this woman and how this was part of his duties. Therefore the Committee recommended that the Commissioner reject this grievance.

As well, the Committee found that it was not reasonable to take such a long time (almost three years) to establish a GAB to review this grievance. The Committee also found that not having given the member more than a few weeks to respond to the GAB's report was unreasonable, especially in view of the difficult circumstances the member was experiencing at the time. The principle of *audi alteram partem* requires that the member have a right to respond. The Committee therefore also recommended that light should be shed on the reasons that the Level I adjudicator had not waited for the member's response to the GAB's report before making his decision despite the fact that an extension had been granted.

The Commissioner agreed with the findings and recommendations of the External Review Committee (ERC). The Commissioner acknowledged that the Officer in charge, Administration and Personnel had acted unreasonably in refusing the member's request for documents other than the legal opinions, and in this regard, he emphasized subsection 31(4) of the RCMP Act. Regarding the payment of legal fees, the Commissioner noted that it is the taxpayers who are called upon to pay legal fees, and he emphasized the importance that had to be accorded to the perception that taxpayers may have of the actions of members of the RCMP. In denying the grievance, the Commissioner took into consideration the fact that no evidence demonstrated the nature of the member's involvement in the incident, nor showed that he was acting within the scope of his duties at the time. The Commissioner added that he found the time it had taken the division to deal with the grievance to have been too long and he indicated that he would

ask the Director of Human Resources to advise the divisions in this regard. The Commissioner also asserted that he would obtain an explanation for the fact that the Level I decision had been rendered before the member had been able to avail himself of the extension of time to respond to the report of the GAB.



The Grievor was an RCMP member posted with the United Nations Civilian Police Corps in Haiti. She was sent back to Canada a few days following the receipt of two complaints against her by UN foreign officers. The RCMP did not investigate these complaints. According to the RCMP, the reason for returning the member to Canada was her refusal to accept a transfer. The Force maintained that she preferred to leave the mission of her own accord. The member denied having refused the transfer and asserted that she was sent back to Canada against her wishes. According to her, the true reason for her transfer was the complaints against her. Having tried unsuccessfully to clear up the situation, the member then filed a harassment complaint against three members. She alleged that two of the members had used the complaints against her as an excuse to have her repatriated to Canada without ascertaining that the complaints were well founded. She accused the other member of having tried to get her transferred to a different detachment, having threatened her, and having made disparaging remarks about her in front of her peers.

The RCMP refused to investigate her complaint except for the allegation concerning the threats. According to the appropriate officer, there were no "*reasonable or probable*" grounds for believing that these allegations were well founded. Consequently, the member presented a grievance against the refusal to investigate her complaint of harassment.

The Grievance Advisory Board ("GAB") found that the grievance should be dismissed because the member had failed to show that the decision to send her back to Canada had been made for any reason other than her refusal to accept her transfer and that there

were insufficient grounds for investigating the complaint of harassment against the third member. The GAB recommended that the complaints against the member be expunged from her personnel file because they should first have been investigated by the appropriate authorities. The adjudicator concurred in the opinion of the GAB, and dismissed the grievance.

The Committee found that the refusal to investigate the complaint of harassment was a fundamental error. An investigation was required in accordance with the RCMP's policy on harassment at the time, as well as by the Treasury Board's policy on harassment. In this case, the member's allegations, if true, were likely to reveal that harassment had occurred. An investigation of this nature must be far more thorough than a mere reading of the complaint, which is what occurred in this case. At the very least, the investigating authorities must meet with the complainant and any persons against whom the complaint was made.

For these reasons, the Committee recommended that the Commissioner allow the grievance. The ERC did not recommend an investigation at this point because the incidents that gave rise to the complaint had occurred more than four years earlier. Instead, the Committee recommended that the RCMP apologize to the member for having failed to conduct an investigation, and admit that there was insufficient evidence to support the complaints made by the foreign UN officers, that the member had been returned to Canada against her will, and that there was insufficient evidence to establish that she had refused a transfer.

The Commissioner agreed with the Committee. He also ordered that the Appropriate Officer for Human Resources in the region confirm to the grievor the lack of merit in the complaints made against her, apologize to her for not having conducted an investigation and acknowledge that she had been sent back to Canada against her will.



The member submitted a claim for reimbursement of two meals, taken during a trip of less than a day to write a promotion examination. His claim was rejected for two reasons. First, the policy on the promotion process stated that this process was a voluntary one and that members should participate in it outside of work hours. The member had therefore not been travelling as part of his duties and could not claim expenses. Second, since the trip covered only 80 kilometres, it did not meet one of the criteria of a reimbursement system regarding promotion examinations set up by the Commanding Officer of the Division. In general, the system provided reimbursement for one meal when members had to travel more than 100 kilometres to reach the examination site; it also provided that all expenses would be paid for those who had to travel more than 200 kilometres. The member contested the refusal by submitting a grievance.

The Grievance Advisory Board issued a majority report in which it recommended that the grievance be denied for the reason that the Travel Directive did not apply to the member's situation, given the voluntary nature of the trip. According to the majority members, it was the system set up by the Commanding Officer by virtue of his exceptional discretionary power that applied to the matter. They found that the member did not meet the criteria of this system. The minority member of the GAB recommended that the adjudicator allow the grievance for the reason that the member was basically on duty and therefore in travel status. The Level I adjudicator rejected the grievance, based on the voluntary nature of the member's participation in the examination, and on the parameters established by the Commanding Officer.

The External Review Committee found that the member's trip represented travel on duty under the terms of the Treasury Board's Travel Directive and the applicable Treasury Board minutes. The Committee first explained that the parameters set by the Commanding Officer, on the basis of which the member was refused reimbursement, were not valid. To begin with, the Commanding Officer had no power to authorize the reimbursement of travel costs incurred during travel that was not duty-related.

Neither could he limit the application of the Travel Directive.

The Committee found that the Travel Directive was applicable since the member's trip represented duty-related travel. In the Committee's view, the RCMP had a considerable interest in having the member write the promotion examination. Allowing members to write promotion examinations is not simply a favour that is done for them; rather it is the manner in which the organization chooses to plan its future. The Committee recommended that the grievance be allowed and that the member be reimbursed for his meal expenses.

The Acting Commissioner agreed with the Committee. In view of the benefit of attracting the best candidates for promotion, he also directed that RCMP Bulletin CMM 134 be reviewed to take into account the question of whether it was preferable that travel for promotion examinations continue to be considered as outside the scope of duties.



The member submitted a grievance concerning the manner of enforcing a disciplinary sanction of forfeiture of ten days' pay imposed by an Adjudication Board. What the member was contesting was the decision not to have the amount of the forfeiture treated as a reduction of his gross income. A question raised by this grievance was whether the Committee had the jurisdiction to consider it.

The only grievances that may be referred to the Committee are those prescribed by section 36 of the *RCMP Regulations*. In this case, it was clear that none of the categories described in paragraphs (c) to (e) of section 36 of the *Regulations* related to this grievance. Paragraph (b) concerns stoppage of pay, which is an administrative measure taken in accordance with subsection 22(3) of the *Act*, and not forfeiture of pay, which is a disciplinary measure taken pursuant to subsection 45.12(3) of the *Act*. Thus, the Committee found that the grievance did not relate to the category described by paragraph 36(b) of the *Regulations*.

The question as to whether the grievance was part of the category described in paragraph 36 (a) of the *Regulations* was more difficult to determine. There were three requirements that had to be met. First, the grievance must pertain to the interpretation of a government policy. Second, the policy must apply to government departments. Lastly, the government policy must have been applicable to the RCMP.

There was a government policy that covers the administration of penalties imposed by an RCMP adjudication board. It was found in section 80 of the *Regulations*. The section classed penalties imposed by adjudication boards in third place in the order in which they were to be deducted from the pay of a member. However, this policy concerned only the RCMP. Therefore it did not meet the second requirement set out above.

There was also a government policy concerning the administration of "*financial penalties*" within the public service, including the RCMP. It was contained in the chapter of the Treasury Board Manual entitled *Recovery of amounts due the Crown*. However, forfeitures of pay established under subsection 45.12(3) of the Act did not represent "*financial penalties in lieu of suspensions*" that were covered by the Treasury Board policy. First, section 80 of the *Regulations* addressed more directly and specifically the processing of a sanction imposed under section 45.12 of the Act. Further, an adjudication board did not have the power to impose a suspension as a disciplinary measure. Consequently, a forfeiture of pay was not an "*added disciplinary option where it is considered preferable to suspension*" within the meaning of the Treasury Board policy.

The Committee found that it did not have jurisdiction to consider this grievance and declined to make a recommendation on the merits to the Commissioner.

Information on the following grievances considered in 1999-2000 may be found in the Committee's *Communique* and at its Internet website:

- G-225, G-226 and G-227 - Compensation for use of personal vehicle
- G-229 - Linguistic profile of position
- G-230 - Recovery of pre-retirement relocation benefits when member has changed his mind about retiring
- G-231 - Bilingualism bonus
- G-235 - Harassment
- G-236 - Transfer notice made pursuant to the RCMP Workforce Adjustment Directive
- G-239 - Guaranteed Home Sale Plan benefits
- G-240.1, G-240.2, and G-246 - Relocation benefits
- G-241 - Refusal to pay compensatory time off credits not used before retirement
- G-242 and G-244 - Home Equity Assistance Plan benefits
- G-245 - Payment of full cost of sunglasses
- G-247 - Legal assistance at public expense in regard to public complaint investigation.

Appendix A

APPENDIX A

RCMP Act

PART II

Royal Canadian Mounted Police External Review Committee

Establishment And Organization Of Committee

25. (1) There is hereby established a committee, to be known as the Royal Canadian Mounted Police External Review Committee, consisting of a Chairman, a Vice-Chairman and not more than three other members, to be appointed by order of the Governor in Council.
- (2) The Committee Chairman is a full-time member of the Committee and the other members may be appointed as full-time or part-time members of the Committee.
- (3) Each member of the Committee shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed for cause at any time by order of the Governor in Council.
- (4) A member of the Committee is eligible for re-appointment on the expiration of the member's term of office.
- (5) No member of the Force is eligible to be appointed or to continue as a member of the Committee.
- (6) Each full-time member of the Committee is entitled to be paid such salary in connection with the work of the Committee as may be approved by order of the Governor in Council.
- (7) Each part-time member of the Committee is entitled to be paid such fees in connection with the work of the Committee as may be approved by order of the Governor in Council.
- (8) Each member of the Committee is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the Committee.

- (9) The full-time members of the Committee are deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

R.S., 1985, c. R-10, s. 25; R.S., 1985, c. 8 (2nd Supp.), s. 16.

- 26.(1) The Committee Chairman is the chief executive officer of the Committee and has supervision over and direction of the work and staff of the Committee.
- (2) In the event of the absence or incapacity of the Committee Chairman or if the office of Committee Chairman is vacant, the Minister may authorize the Vice-Chairman to exercise the powers and perform the duties and functions of the Committee Chairman.
- (3) The Committee Chairman may delegate to the Vice-Chairman any of the Committee Chairman's powers, duties or functions under this Act, except the power to delegate under this subsection and the duty under section 30.

R.S., 1985, c. R-10, s. 26; R.S., 1985, c. 8 (2nd Supp.), s. 16.

- 27.(1) The head office of the Committee shall be at such place in Canada as the Governor in Council may, by order, designate.
- (2) Such officers and employees as are necessary for the proper conduct of the work of the Committee shall be appointed in accordance with the Public Service Employment Act.
- (3) The Committee may, with the approval of the Treasury Board,
- (a) engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Committee to advise and assist the Committee in the exercise or performance of its powers, duties and functions under this Act; and

- (b) fix and pay the remuneration and expenses of persons engaged pursuant to paragraph (a).

R.S., 1985, c. R-10, s. 27; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Duties

- 28.(1)** The Committee shall carry out such functions and duties as are assigned to it by this Act.

- (2) The Committee Chairman shall carry out such functions and duties as are assigned to the Committee Chairman by this Act.

R.S., 1985, c. R-10, s. 28; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Rules

- 29.(1)** Subject to this Act, the Committee may make rules respecting

- (a) the sittings of the Committee;
- (b) the manner of dealing with matters and business before the Committee generally, including the practice and procedure before the Committee;
- (c) the apportionment of the work of the Committee among its members and the assignment of members to review grievances or cases referred to the Committee; and
- (d) the performance of the duties and functions of the Committee under this Act generally.

R.S., 1985, c. R-10, s. 29; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Annual Report

- 30.** The Committee Chairman shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the Committee during that year and its recommendations, if any, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it.

R.S., 1985, c. R-10, s. 30; R.S., 1985, c. 8 (2nd Supp.), s. 16.

PART III

Grievances

Presentation Of Grievances

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.
- (2) A grievance under this Part must be presented
 - (a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and
 - (b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.
- (3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.
- (4) Subject to any limitations prescribed pursuant to paragraph 36(b), any member presenting a grievance shall be granted access to such written or documentary information under the control of the Force and relevant to the grievance as the member reasonably requires to properly present it.
- (5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.
- (6) As soon as possible after the presentation and consideration of a grievance at any level in the grievance process, the member

constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee pursuant to section 33, the Committee Chairman with a copy of the decision.

- (7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

R.S., 1985, c. R-10, s. 31; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1994, c. 26, s. 63(F).

32. (1) The Commissioner constitutes the final level in the grievance process and the Commissioner's decision in respect of any grievance is final and binding and, except for judicial review under the *Federal Court Act*, is not subject to appeal to or review by any court.
- (2) The Commissioner is not bound to act on any findings or recommendations set out in a report with respect to a grievance referred to the Committee under section 33, but if the Commissioner does not so act, the Commissioner shall include in the decision on the disposition of the grievance the reasons for not so acting.
- (3) Notwithstanding subsection (1), the Commissioner may rescind or amend the Commissioner's decision in respect of a grievance under this Part on the presentation to the Commissioner of new facts or where, with respect to the finding of any fact or the interpretation of any law, the Commissioner determines that an error was made in reaching the decision.

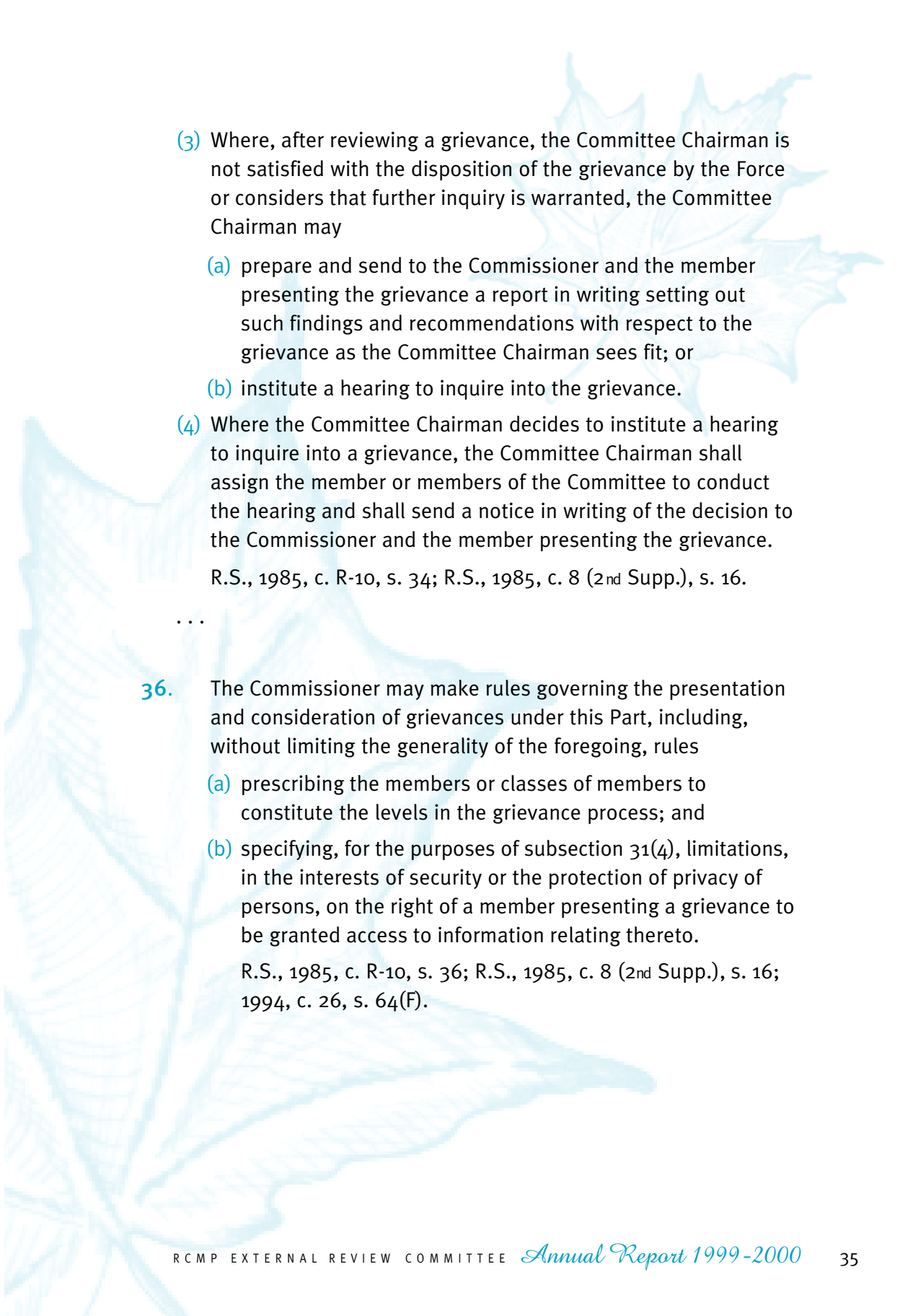
R.S., 1985, c. R-10, s. 32; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1990, c. 8, s. 65.

Reference to Committee

33. (1) Before the Commissioner considers a grievance of a type prescribed pursuant to subsection (4), the Commissioner shall refer the grievance to the Committee.
- (2) Notwithstanding subsection (1), a member presenting a grievance to the Commissioner may request the Commissioner not to refer the grievance to the Committee and, on such a request, the Commissioner may either not refer the grievance to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the grievance to the Committee.
- (3) Material to be furnished to Committee (3) Where the Commissioner refers a grievance to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with a copy of
- (a) the written submissions made at each level in the grievance process by the member presenting the grievance;
 - (b) the decisions rendered at each level in the grievance process in respect of the grievance; and
 - (c) the written or documentary information under the control of the Force and relevant to the grievance.
- (4) The Governor in Council may make regulations prescribing for the purposes of subsection (1) the types of grievances that are to be referred to the Committee.

R.S., 1985, c. R-10, s. 33; R.S., 1985, c. 8 (2nd Supp.), s. 16.

34. (1) The Committee Chairman shall review every grievance referred to the Committee pursuant to section 33.
- (2) Where, after reviewing a grievance, the Committee Chairman is satisfied with the disposition of the grievance by the Force, the Committee Chairman shall prepare and send a report in writing to that effect to the Commissioner and the member presenting the grievance.

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- (3) Where, after reviewing a grievance, the Committee Chairman is not satisfied with the disposition of the grievance by the Force or considers that further inquiry is warranted, the Committee Chairman may
 - (a) prepare and send to the Commissioner and the member presenting the grievance a report in writing setting out such findings and recommendations with respect to the grievance as the Committee Chairman sees fit; or
 - (b) institute a hearing to inquire into the grievance.
 - (4) Where the Committee Chairman decides to institute a hearing to inquire into a grievance, the Committee Chairman shall assign the member or members of the Committee to conduct the hearing and shall send a notice in writing of the decision to the Commissioner and the member presenting the grievance.
R.S., 1985, c. R-10, s. 34; R.S., 1985, c. 8 (2nd Supp.), s. 16.

...

- 36. The Commissioner may make rules governing the presentation and consideration of grievances under this Part, including, without limiting the generality of the foregoing, rules
 - (a) prescribing the members or classes of members to constitute the levels in the grievance process; and
 - (b) specifying, for the purposes of subsection 31(4), limitations, in the interests of security or the protection of privacy of persons, on the right of a member presenting a grievance to be granted access to information relating thereto.R.S., 1985, c. R-10, s. 36; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1994, c. 26, s. 64(F).

PART IV

Discipline

Appeal

- 45.14.** (1) Subject to this section, a party to a hearing before an adjudication board may appeal the decision of the board to the Commissioner in respect of
- (a) any finding by the board that an allegation of contravention of the Code of Conduct by the member is established or not established; or
 - (b) any sanction imposed or action taken by the board in consequence of a finding by the board that an allegation referred to in paragraph (a) is established.
- (2) For the purposes of this section, any dismissal of an allegation by an adjudication board pursuant to subsection 45.1(6) or on any other ground without a finding by the board that the allegation is established or not established is deemed to be a finding by the board that the allegation is not established.
- (3) An appeal lies to the Commissioner on any ground of appeal, except that an appeal lies to the Commissioner by an appropriate officer in respect of a sanction or an action referred to in paragraph (1)(b) only on the ground of appeal that the sanction or action is not one provided for by this Act.
- (4) No appeal may be instituted under this section after the expiration of fourteen days from the later of
- (a) the day the decision appealed from is rendered, if it is rendered in the presence of the party appealing, or the day a copy of the decision is served on the party appealing, if it is rendered in the absence of that party, and
 - (b) if the party appealing requested a transcript pursuant to subsection 45.13(2), the day the party receives the transcript.
- (5) An appeal to the Commissioner shall be instituted by filing with the Commissioner a statement of appeal in writing setting out

the grounds on which the appeal is made and any submissions in respect thereof.

- (6) A party appealing a decision of an adjudication board to the Commissioner shall forthwith serve the other party with a copy of the statement of appeal.
- (7) A party who is served with a copy of the statement of appeal under subsection (6) may, within fourteen days after the day the party is served with the statement, file with the Commissioner written submissions in reply, and if the party does so, the party shall forthwith serve a copy thereof on the party appealing.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

45.15. (1) Before the Commissioner considers an appeal under section 45.14, the Commissioner shall refer the case to the Committee.

(2) Subsection (1) does not apply in respect of an appeal if each allegation that is subject of the appeal was found by the adjudication board to have been established and only one or more of the informal disciplinary actions referred to in paragraphs 41(1)(a) to (g) have been taken by the board in consequence of the finding.

(3) Notwithstanding subsection (1), the member whose case is appealed to the Commissioner may request the Commissioner not to refer the case to the Committee and, on such a request, the Commissioner may either not refer the case to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the case to the Committee.

(4) Where the Commissioner refers a case to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with the materials referred to in paragraphs 45.16(1)(a) to (c).

(5) Sections 34 and 35 apply, with such modifications as the circumstances require, with respect to a case referred to the Committee pursuant to this section as though the case were a grievance referred to the Committee pursuant to section 33.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

