



Royal Canadian Mounted Police
External Review Committee

ANNUAL
2000-2001
REPORT



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Cat. Number JS74-1/2001
ISBN 0-662-65907-4



June 29, 2001

The Honourable Lawrence MacAulay, P.C., M.P.
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Ottawa, Ontario
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Dear Minister:

Pursuant to section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit the annual report of the Royal Canadian Mounted Police External Review Committee for the fiscal year 2000 – 2001 in order that a copy be laid before the House of Commons and the Senate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philippe Rabet'.

Philippe Rabet
Acting Chair

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The Chair's Message

The year just ended has illustrated the increasingly important role that the application of the RCMP Code of Conduct plays in the work of our Committee. When I undertook a thorough review of disciplinary procedures in the RCMP, as proposed by former RCMP Commissioner Phillip Murray, I had occasion to note the necessity of corrective measures. The time it takes to complete internal investigations, as well as Adjudication Board hearings on allegations of serious misconduct under the Code of Conduct, must be reduced. The preliminary report that I submitted in February to the new Commissioner, Giuliano Zaccardelli, identifies a number of options that I believe could greatly improve the situation in the short term.

Under the *RCMP Act*, the Committee is empowered to hold hearings but it is not obliged to do so in every case. This power has been exercised infrequently since the Committee was established in 1988. Usually, there is sufficient information in the grievances and appeals that are referred to the Committee, but sometimes the Committee must request additional information from the parties, in writing. This past year, I ruled in a disciplinary matter before the Committee that a hearing was necessary. As a result of this decision, a member of the RCMP, whom an Adjudication Board had ordered to resign from the RCMP, had a chance to more amply explain his aggressive conduct toward a person whom he had just

arrested. During this hearing, it was established that the facts differed from those presented to the Adjudication Board and that the sanction was excessive.

In January, the Committee chose a new Executive Director and Senior Counsel, Norman Sabourin. His predecessor, Garry Wetzel, had been performing these duties for nearly a year, and I would like to thank him for his excellent work.

Lastly, I would like to say how much I appreciate the cooperation I have always received from Phillip Murray, who retired as RCMP Commissioner in September. Commissioner Murray not only took a lively interest in labour relations; he had the rare but indispensable ability to

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understand and empathize with the feelings of the RCMP rank and file when they objected to positions adopted by management. I discovered these same qualities in Deputy Commissioner Curt

Allen, who retired at year-end. While serving as acting Commissioner, which he did from time to time, he often had occasion to rule on cases referred to the Committee.

Introduction

The RCMP External Review Committee is an independent body whose powers and functions are established under the *Royal Canadian Mounted Police Act*. The Committee's overall responsibility is to examine cases of members who feel they have been prejudiced by a decision on a grievance or by a disciplinary measure. While for grievances only certain specific issues may be referred to the Committee, any member has the right, in a disciplinary case against them, to ask to have the case examined by the Committee if the member disagrees with the decision made as a result of the disciplinary process. The categories of grievances that may be referred to the Committee, as well as the disciplinary appeal process, are described in Appendix 1 of this Annual Report.

It should be noted that either a member or the appropriate officer may appeal the original decision in a disciplinary case and have the case referred to the External Review Committee. The appropriate officer is not permitted to appeal the sanction, however: only the member concerned has that right. The statutory provisions relating to the Committee and to the process generally are reproduced in Appendix 3.

After reviewing a case, the Committee does not hand down a decision as such: it submits recommendations to the RCMP Commissioner, who holds final decision-making authority within the RCMP.

The Commissioner is not bound by the Committee's findings. The Act provides, however, that reasons must be provided, in writing, if the Commissioner does not accept the recommendations of the Committee in a specific case. This obligation was clarified in a recent Federal Court decision, *Girouard v. Canada*, which is summarized in Part II.

The grievance and disciplinary review system is intended to increase the transparency of the RCMP's decision-making process while ensuring that the examination of decisions that affect RCMP members will be impartial and free from bias. The RCMP is not unionized and its members

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do not negotiate their conditions of employment, so the Canadian public needs to know that the management of labour relations in the RCMP is fair and equitable, in keeping with the spirit of the *RCMP Act* (see relevant excerpts in Appendix 3).

In addition to making recommendations on specific cases, the Committee may make general recommendations on matters relating to its mandate. Moreover, it may conduct research or consultations to

encourage discussion and thought on important issues. An example is the recently published preliminary report entitled *Disciplinary Processes and Dispute Resolution Techniques in the RCMP*. It is described in Part I of this Annual Report.

Part I – The year under review

INTRODUCTION

The Committee, aware of the importance of sharing information with its partners, continued with its efforts to ensure good two-way communication this year. In addition to informal exchanges, distribution of the quarterly newsletter, the *Communiqué*, was extended to all RCMP detachments in Canada. The *Communiqué* summarizes the Committee's work during the quarter and provides case updates, reporting decisions by the Commissioner or Federal Court. The *Communiqué* has also been changed to a more reader-friendly format. In addition to the case summaries, this year the *Communiqué* featured an article by a legal advisor analysing the issue of information-sharing under subsection 31(4) of the *RCMP Act*. The issue concerns the RCMP's obligation to share information when a member presents a grievance. The analysis appears in the April-June 2000 issue of the *Communiqué*, and may be accessed at the Committee's website.

In addition to keeping the members abreast of developments, in writing, information sessions were organized by the Committee for selected groups on issues of common interest. Members' representatives and divisional representatives were among these groups. A member's representative is a lawyer who is retained to represent a member who is the subject of a disciplinary proceeding or a dismissal on medical grounds.

A divisional representative is elected by the members in the division, usually to advocate the members' point of view to RCMP management. In addition, the representatives advise and assist members on labour relations issues, grievances in particular. They also sit on Grievance Advisory Boards, which issue opinions on grievances presented by members (see the notes on this subject in Appendix I).

These representatives have a big job to do when it comes to communicating with the members of the RCMP, but they are also thoroughly conversant with the members' concerns. So, everyone benefits from information sharing: the members, their representatives and the Committee.

With the aging of the RCMP population, the Force has seen a high turnover, with the retirement of numerous members and the hiring of many new recruits. This makes information sharing increasingly important, by enabling all those concerned to better understand the Force's labour relations system and the obligations that arise from it.

Report on disciplinary processes

A report published early this year, *Disciplinary Processes and Dispute Resolution Techniques in the RCMP*, examined disciplinary processes with a view to fostering discussion on appropriate ways to deal with misconduct by members of the Force.

This review was undertaken when serious difficulties with the Force's disciplinary processes became apparent. An alternative mechanism for resolving disciplinary cases was piloted in 1998 by the Commanding Officer of "E" Division in British Columbia. The mechanism seems to have improved processing times, but it raises other concerns, most seriously its fairness to members of the Force and its transparency to Canadians.

The *Report* takes stock of the situation and initiates a dialogue. It reviews the obliga-

tions of the parties in disciplinary matters, describes the process established in "E" Division, and makes suggestions for possible changes. The options include: administrative time limit to complete disciplinary investigations and hearings; an expedited process for uncontested matters; wider publicity for regulations issued as the outcome of an ADR (Alternative Dispute Resolution) process. The *report* also discusses many other ideas for change, including possible amendments to the *RCMP Act* or its Regulations.

During this period, the Committee also met with members of the RCMP to discuss these issues. Their feedback was solicited to help the Committee more accurately determine the RCMP's specific concerns around disciplinary processes so that suggestions and recommendations could be prepared.

Summary of cases heard by the Committee

As mentioned above, all cases finalized by the Committee during the reporting year are summarized in the *Communiqué* and may be accessed on the External Review Committee's Internet site, at:

<http://www.erc-cee.gc.ca/Communiques/eCommList.htm>

The Committee handled a small number of cases in the 2000-2001 fiscal year. Five of them were disciplinary appeals and twelve were grievances. A brief summary of some of these cases is provided in this section. A thirteenth case was sent

back to the Commissioner without any recommendations because the Committee did not believe it had jurisdiction to hear it. This grievance in question did not fall within one of the categories listed in section 36 of the *RCMP Regulations (1988)*, which is conclusive on this subject (this section of the Regulations is reproduced in Appendix 3).

This year again, the issues under review have been complex. That is because the simpler problems are usually resolved within the Force and the member concerned does not consider it necessary to appeal. Also, the RCMP has been striving to use alternative dispute resolution techniques (ADR) more frequently to resolve internal conflicts, thereby reducing the number of formal appeals.

In its recommendations on disciplinary cases, the Committee recalled the importance of parity of sanctions. In three specific cases, the Committee found that the punishment meted out to the members concerned had been much harsher than that received by other members for similar misconduct. Although the Committee recognized that the Commissioner was not bound by decisions of lower levels, it emphasized that a fundamental principle of disciplinary law is that similar cases should be handled in a similar manner. The Committee held that the members of the RCMP should expect to receive the same treatment as their peers for violating the Code of Conduct.

The Commissioner of the RCMP believes social change has led to certain kinds of behaviour being judged much more critically than in bygone days. Spousal abuse and drunk driving are two examples of behaviour that Canadians will simply not condone. For that reason, the Commissioner believes, harsher sanctions for such misconduct can be justified.

The Committee recognizes that sanctions should take into account the evolution of social opinion. However, to ensure that the process is fair to RCMP members, it is necessary to ensure that a member in one region of the country will not be punished more severely than another member who lives in a different region, for the same misconduct. Sanctions must not vary from one division to the next on the basis of the Division Commanding Officer's view of what is appropriate.

In the spirit of these principles, the Committee recommended reducing the sanctions in the disciplinary cases concerned but in only one of these did the Commissioner accept the Committee's recommendation. In that case, the Adjudication Board had decided to order the member to resign, whereas the RCMP had initially asked for the forfeiture of 10 days' pay. The alleged misconduct involved an assault by a member who was in a position of authority over the victim. When the Committee began to review this case (D-69, summarized in greater detail in Part II), it appeared that evidence

seemed to have been neglected by the Adjudication Board at the disciplinary hearing. Therefore, the Committee deemed it appropriate to hold a hearing to ensure that it had all the evidence before it. After the hearing, the Committee found that an order to resign was too harsh a sanction under the circumstances, and the Commissioner accepted the Committee's recommendation.

In the other two cases, D-67 (domestic violence) and D-71 (sexual assault), the Commissioner stated that the RCMP should severely reprimand the members concerned as a clear signal that the Force will not tolerate such misbehaviour. The Commissioner expressed the view that standards of punishment could change to reflect the evolution of awareness and knowledge and the willingness to accept certain behaviour within an organization, and in society. It should be noted that the Commissioner's ruling in one of these cases is the subject of an application for judicial review in the Federal Court of Canada.

In another disciplinary case, D-70, domestic violence was again at issue. Allegations of misconduct had been made about the member. He pleaded at his hearing that he had acted involuntarily, because of an adverse reaction to his medication. Issues of admissibility of evidence were raised before the Adjudication Board and the External Review Committee. The appropriate

officer had requested the member's dismissal, but the sanction that eventually was imposed was forfeiture of 10 days' pay and additional conditions (warning, transfer, continued psychological counselling). The case is summarized in Part II.

Turning now to grievances, three of the cases that were heard were rejected for untimeliness because they had not been presented at the first level within the stipulated time frame. The *RCMP Act* provides that a member must present a grievance within 30 days of being made aware of the decision, act or omission giving rise to the grievance. The Committee has consistently held the view that the Act permits no exceptions to this rule. Thus, a member who fails to present a grievance within thirty days, even on solid grounds, will see the grievance rejected. Obviously, the member must have *knowledge* of the facts that give rise to the grievance. It is from the moment that the member obtains this knowledge that the thirty-day period begins to run.

In hearing three other grievances, the Committee looked at whether the member had standing to present a grievance. In particular, the Committee noted that this issue was sometimes misunderstood or misinterpreted within the RCMP. The Act provides that a member of the RCMP may present a grievance where the member is "*aggrieved by any decision, act or omission in the administration of the affairs of the Force*". In other

words, if a member suffers prejudice due to 'the administration of the affairs of the Force', that member has standing to present a grievance.

How should this expression be interpreted? In one case, the adjudicator found that the impugned decision could not be grieved because the RCMP had respected the Treasury Board guidelines. This is case G-251, which concerns a complaint of sexual harassment and is summarized in Part II. The adjudicator reasoned that because the application of Treasury Board guidelines was not a matter within the RCMP's discretion, the impugned decision was not related to "*the administration of the affairs of the Force*". The Committee interpreted this differently, explaining that the decision which was the subject of the grievance really was related to 'the administration of the affairs of the Force', because the member was not disputing the Treasury Board directive itself, but the way in which it had been interpreted and applied by the RCMP. Thus, any RCMP decision that applies a Treasury Board directive could become the subject of a grievance. The Commissioner accepted the Committee's recommendation and upheld the grievance.

In another grievance (case G-254), the adjudicator had taken a similar line of reasoning on the issue of the member's standing. He held that the member was not aggrieved because the decision not to award him the compensation he had

requested was based on a Treasury Board directive, and the RCMP had no alternative. The Committee felt that the member had clearly been aggrieved because he had been refused compensation to which he thought he was entitled. The Committee stated that the issue of whether the member was *entitled* to the compensation concerns the *merits of the grievance*, not to the member's standing or lack of standing. In other words, a grievance cannot be rejected simply on the basis of a belief that the decision complied with the Treasury Board directives. The grievance must be examined on its merits to establish whether it respects the obligations of the RCMP, including the applicable directives.

In case G-249, the Committee observed that the member was unaware of the criteria established in the *RCMP Act* for determining standing. In that case, the member definitely suffered prejudice because of the shortage of housing available at his new posting. However, he presented his grievance before he had actually raised the issue with the RCMP, so the Force did not have the opportunity to try and solve the problem. Therefore, a specific decision, act or omission by the RCMP on which the grievance was based could not be identified. The grievance was therefore rejected because the member had no standing to present it.

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Part II – Cases

Some of the cases reviewed by the External Review Committee are summarized in greater detail in this Part because of their interest. In disciplinary case D-69, a hearing was held before the External Review Committee to receive additional evidence. In disciplinary case D-70, the ERC examined the issue of the state of mind of a member who had exhibited violent behaviour but claimed not to remember his actions. Grievance cases G-251 and G-253 concern complaints by members of harassment at the hands of a superior officer.

In two other cases, G-219 and G-233, the Federal Court handed down decisions in applications for judicial review. In cases D-67 and D-68, applications were filed in the Federal Court for judicial review of the Commissioner's decision. Another case, *Jaworski*, was commented on in the April-June 2000 edition of the *Communiqué*. The highlights of that case, and an update on the court proceedings, are summarized in Part II.

As mentioned earlier, the steps in the grievance and disciplinary procedures are summarized in Appendix I.

Disciplinary Case D-69

Facts:

The member was the subject of one allegation of disgraceful conduct arising from his use of force on a person in

custody. The member and another, more junior, female member had responded to a call about damage to property. On the way, they arrested a man for being intoxicated in a public place. The man was handcuffed and placed in the back of the police car. Upon arrival at the location of the damage, they realized that the call arose from a domestic assault incident and that the man in their custody was the suspect in this assault. Due to limitations relating to search of a prisoner by a RCMP member of the opposite sex, the suspect had to be searched by the senior member before being driven to the station. While attempting to carry out the search, the member hit the prisoner in the stomach two times, jabbed him in his left eye and jerked his head back and forth, while shouting profanities and words to the

effect that the suspect "should not do that to women". The member then released pepper spray in the prisoner's face.

Adjudication Board:

The member admitted the allegation before the Adjudication Board. The Appropriate Officer recommended a sanction of forfeiture of ten days pay, a reprimand and a recommendation for counselling.

The member argued that forfeiture of ten days pay was excessive. The Adjudication Board informed the parties that it would consider imposing a sanction higher than forfeiture of ten days pay and would not be bound by the Appropriate Officer's recommendation. The member submitted that the possibility of a sanction of dismissal required different preparation than that which had been done and suggested that the proceeding be adjourned to allow adequate preparation. The Board allowed an adjournment of 90 minutes and the member then completed his presentation of evidence on the sanction. The Board found that the Appellant had acted with a degree of premeditation and with the intent to punish the prisoner, and ordered the Appellant to resign. The member appealed the sanction.

Committee's Findings and Recommendations:

In his appeal, the member argued that the quality of his legal representation fell below the acceptable standard, that the

Adjudication Board had breached natural justice by not clearly advising him that it was seriously contemplating dismissal as a sanction and by not adjourning the hearing to allow him to adequately prepare for that possibility. He also argued that the sanction was too severe, given previous similar cases, none of which resulted in dismissal.

The Committee determined that the record did not contain sufficient evidence as to whether the member's actions were premeditated and intended as punishment. For this reason, the Acting Chair conducted a hearing into the matter. The Committee's hearing received additional evidence relating to the member's behaviour while attempting to search the prisoner and the circumstances that might have caused the member to resort to the particular force that he employed. The Committee found that the Adjudication Board's decision to adjourn the proceeding for only 90 minutes was unfair because it did not allow the member to adequately prepare in regard to the appropriate sanction. On the basis of all of the evidence received at the two hearings, the Committee also found that the evidence did not support a conclusion that the member acted with premeditation and intent to punish the prisoner. In the Committee's view, the member's use of force was a spontaneous outburst that arose primarily from frustration in attempting to safely carry out a search of

a prisoner who, although not clearly unco-operative, was presenting some difficulties for the member.

The Committee also found that the sanction imposed did not respect the principle of parity of sanction. According to the Committee, it was not only inappropriate for the Board to seek dismissal, it was also excessive for the Appropriate Officer to ask for the maximum possible sanction, short of dismissal. The Committee based its view on the fact that sanctions in comparable cases in the past were less severe. The Committee therefore recommended that the Commissioner rescind the sanction of ordering the Appellant to resign and impose a sanction of forfeiture of seven days pay and a reprimand.

RCMP Commissioner:

In his decision on this case, the Commissioner agreed entirely with the Committee and imposed the sanction it recommended. The Commissioner mentioned that since there was no evidence of premeditation, the forfeiture of ten days pay was too severe when compared to past cases.

Disciplinary Case D-70

Facts:

In this case, it was alleged that the member had broken the front door of his girlfriend's residence, entered and physically attacked her, and later resisted his arrest and breached the terms of his release from custody.

Adjudication Board:

Before the Adjudication Board, the member testified that due to an adverse reaction to his medication he could not recall the events that had occurred at the residence. The representative of the appropriate officer presented rebuttal evidence from the victim as similar fact evidence, to rebut expert evidence concerning the member's state of mind at the time of the incident. The victim related that the member had exhibited aggressive behaviour toward her on at least four previous occasions.

The Adjudication Board admitted the similar fact evidence, rejected the member's defence and found three allegations to have been established. It rejected the appropriate officer's request that the member be dismissed, and imposed the following sanction: forfeiture of pay for 10 days, a reprimand and recommendations for a transfer and for continued counselling. The member appealed the Board's finding that three allegations of misconduct had been established.

Committee's Findings and Recommendations:

The member argued that the victim's rebuttal evidence presented by the respondent as similar fact evidence should have been found inadmissible by the Board. He also argued that the evidence of his two expert witnesses was misapplied by the Board and was not given enough weight.

For the External Review Committee, the most important issue was the member's state of mind when he broke into his girlfriend's residence. The Committee noted that in view of the defence presented by the member, the onus was on him to prove that his actions were involuntary, not on the appropriate officer to prove intent. The Committee also found that the rebuttal evidence did not constitute similar fact evidence. This evidence established that the member was a difficult person, but since it established nothing concerning the alleged incident it should not have been admitted by the Adjudication Board. However, the Committee found that the rebuttal evidence was not a significant factor in the Board's decision to reject the appellant's defence.

The Committee found that the Adjudication Board had properly assessed the evidence of the first expert witness. The witness had testified that the appellant was suffering from post-traumatic stress disorder, but did not state that the appellant's misconduct was attributable to this disorder. Moreover, the Committee found no error in the Board's use of this expert witness's testimony in assessing the member's credibility.

The Committee also found that the Board made reasonable findings with regard to the second expert witness. The Committee found that while this expert concluded that the member had suffered

an adverse reaction to the medication he was taking, his evidence did not establish that, the night of the incidents, the member probably had no control over his actions because of the medication.

RCMP Commissioner:

The Committee recommended that the appeal be dismissed, and the Commissioner ruled in accordance with this recommendation.

Grievance case G-251

Facts:

A member had informed his Division Commanding Officer that he felt his superior officer was harassing him, but he did not want to file an official complaint against her: he just wanted the harassment to stop. He was told that the RCMP had to investigate all complaints, so he was asked for details, which he declined to provide. The appropriate officer, concluding that the complaint was unfounded, decided not to investigate it further.

Five months later, the member still felt he was being harassed, so he made a formal complaint of harassment. He alleged, among other things, that his superior had made several decisions, which he had grieved, to force him to accept a transfer. In his view, this constituted abuse of authority on her part. The appropriate officer refused to conduct an official investigation, believing that the issues raised by the member had been addressed

in the member's grievances against his superior's decisions. The member then grieved the decision not to conduct an official investigation.

Grievance:

The Level I adjudicator found that the appropriate officer had been correct in refusing to conduct an official investigation for breach of the Code of Conduct with regard to the complaint. The adjudicator indicated that the member had not established that he was being harassed. In his conclusions, the adjudicator expressed the opinion that the member could not seek redress through two channels simultaneously, namely the complaints mechanism and the grievance procedure.

Committee's Findings and Recommendations:

In its recommendations, the External Review Committee clarified the definition of 'harassment', specifically that abuse of authority does constitute a form of harassment. The Committee also made two significant findings.

First, the obligation to investigate a complaint of harassment exists even if the complainant does not provide evidence or give testimony to attempt to establish that harassment had occurred. Therefore, when the member came to him to complain the first time, the appropriate officer ought to have conducted his own investigation.

Second, the Committee emphasized that the superior officer's decisions could be grieved on their merits but that the member also had the option of complaining that in making her decisions his superior had abused her authority intentionally and on that basis had harassed him.

The External Review Committee recommended that the grievance concerning the refusal to conduct an investigation should be allowed and that a fresh investigation should be made to determine if the member had been harassed.

RCMP Commissioner:

The Commissioner concurred in these findings and recommendations and ordered that a fresh investigation be made concerning the complaint of harassment.

Grievance case G-253

Facts:

This case revolved around a complaint of harassment by a member against her supervisor. The member considered that she had been harassed, especially when her superior had taken her aside and reprimanded her. Under the circumstances, and considering that the incidents in question took place in Haiti, the member had taken her superior's words to her as threats. This had a very negative impact on the member.

The RCMP investigated what the supervisor had said to the member. The supervisor admitted having told the member that nobody would come to her aid if she was in danger. However, he claimed that this was not a threat but rather a warning that the member's peers wanted nothing more to do with her. The appropriate officer agreed that the supervisor had not intended to threaten the member. It is this decision that the member grieved.

Grievance:

The Level I adjudicator found that a reasonable person might have perceived the supervisor's words as threatening and intimidating. He therefore allowed the grievance and asked the member to regard his decision as an official apology from the RCMP. The member presented a Level II grievance because she was dissatisfied with the remedy she was offered.

Committee's Findings and Recommendations:

The External Review Committee found that the complaint of harassment was well founded. The supervisor's words were threatening and even if he claimed that he had not intended to threaten the member, he ought to have known that his words would be construed as a threat. The Committee recommended that the grievance be upheld and that a letter of apology be sent to the member, with copies to her supervisor and to the

supervisor's supervisor. The Commissioner accepted the Committee's recommendations and ordered them implemented.

Rendell

Facts:

Cst. Rendell and his spouse attended a party at a licensed lounge. The appellant became upset with his spouse upon seeing her speaking to one of his male co-workers. Consequently, Cst. Rendell spoke rudely to his spouse and bent two of her fingers backward. Cst. Rendell and his spouse then left the establishment in a taxi.

While in the taxi, Cst. Rendell kicked his spouse's legs, bent her fingers backward, and bit her nose. Upon arriving at their home, the member seized his spouse by the coat to prevent her from leaving.

Cst. Rendell then threatened to kill himself and his spouse. Eventually, the member began to calm down. Furthermore, Cst. Rendell, before leaving for the party, had hung his holstered sidearm behind the washroom door in his home.

Three allegations of disgraceful conduct were brought against Cst. Rendell which included: a series of physical assaults against his spouse on the one occasion, uttering of a death threat, and failing to properly secure and store his service revolver. Cst. Rendell was convicted of one criminal offense regarding this misconduct.

Adjudication Board:

The member admitted to the particulars of the three disgraceful conduct allegations. The adjudication board found the three allegations to have been true. Consequently, the adjudication board imposed upon Cst. Rendell an order to resign, a reprimand and a pay forfeiture of three days. Cst. Rendell appealed, to the Commissioner, the sanctions imposed by the adjudication board. The Commissioner then referred the matter to the Committee as he is required to do under the *RCMP Act*.

Committee's Findings and Recommendations:

The Committee found that an order to resign was an inappropriate penalty in the circumstances. The Committee found that the adjudication board erred on a number of issues.

First, the adjudication board failed to provide justification as to why Cst. Rendell's evidence was not credible in that the board did not indicate any conflict in Cst. Rendell's testimony with that of other witnesses nor did the board draw reasonable inferences based upon Cst. Rendell's testimony.

Second, the adjudication board erred in its conclusion that the circumstances demonstrated a "cycle of violence" in that the evidence only established misconduct of an isolated incident rather than one stage in a cycle of violence.

Third, the adjudication board erred in its assessment of the similarities of the case with previous cases where a less severe sanction had been imposed by adjudication boards and thus the adjudication board disregarded the principle that like cases be treated in like fashion. In previous cases, which were relied upon by the adjudication board in rendering its imposition of an order to resign, the members' violent conduct continued subsequent to treatment; however, Cst. Rendell, in this case, ceased his violent behaviour and sought out treatment. Moreover, in previous cases that involved an isolated incident of domestic violence committed by a member, the sanction was merely a forfeiture of pay for ten days, a reprimand and a recommendation for counselling.

Based on the evidence, it was found by the Committee that Cst. Rendell's conduct was out of character and hence that Cst. Rendell had promising rehabilitative potential. Cst. Rendell's actions were out of character in that the evidence suggested that Cst. Rendell's misconduct was directly influenced by alcohol and by depression. Therefore, the Committee found that an order to resign was an inappropriate sanction in the circumstances.

The Committee acknowledged that an act of domestic violence by a RCMP member must be treated very seriously; however, not every case of domestic violence

should result in dismissal. The Committee recommended, to the Commissioner, that the appeal be granted and that the sanction be altered to include a forfeiture of ten days' pay, a reprimand and continued professional counselling.

RCMP Commissioner:

The Commissioner disagreed with the Committee's recommendations and concluded that the circumstances justified the penalty of dismissal and he ordered Cst. Rendell to resign.

Cst. Rendell's state of mind at the time of the incident was of less importance with respect to the impact of Cst. Rendell's actions on the victim, the integrity of the RCMP and societal expectations regarding domestic violence. Accordingly, the credibility of the appellant was found to be of little value in choosing the appropriate sanction.

Furthermore, public and organizational concerns raised the issue of whether police officers convicted of assault in a criminal court can continue to be employed as police officers. The Commissioner found the answer to this issue to be "no." The RCMP has a zero-tolerance prosecution policy in domestic violence situations and the RCMP must send a strong message that this kind of behaviour will not be accepted.

Moreover, the Commissioner found that the prolonged series of attacks and the physical, emotional and psychological abuse of the victim, took precedence in consideration over Cst. Rendell's abstinence from alcohol and Cst. Rendell's voluntary participation in counselling regarding his personal and professional problems, subsequent to the incident. In addition, the Commissioner stated that if less severe sanctions were imposed in other cases with equivalent aggravating circumstances, then those less severe sanctions were inappropriate and insufficient.

Federal Court:

Cst. Rendell has applied to the Federal Court (Trial Division) for judicial review of the Commissioner's decision under the *Federal Court Act*.

MacQuarrie

Facts:

Cst. MacQuarrie was identified by the Health Services Officer (HSO) as a member who should take the Physical Ability Requirement Evaluation (PARE) Test. The rationale for the identification was given in a medical examination report completed by the HSO which indicated that Cst. MacQuarrie was obese.

Cst. MacQuarrie submitted a complaint of harassment against the HSO for making derogatory comments regarding her appearance and for being singled out to take the PARE Test. The HSO claimed that

the general public made comments about the unacceptable appearance of uniformed members, that Cst. MacQuarrie misunderstood or misinterpreted comments made to her and that she was identified to take the PARE Test merely based upon a medical examination report. The harassment claim against the HSO was dismissed. Cst. MacQuarrie did not undergo the PARE Test but was subject to further medical examinations and was ultimately given a medical discharge based upon, in the Medical Board's view, her physically impairing condition.

Cst. MacQuarrie grieved against this medical discharge. She submitted that the HSO, who had led the medical discharge process, was biased against her, that the Medical Board's findings were incorrect and had been based on an obsolete Task Bank and that the Force had failed to make reasonable attempts to find her an alternative position.

Grievance Advisory Board:

The Grievance Advisory Board (GAB) concluded that the grievance should be denied. The GAB found that Cst. MacQuarrie had been treated fairly in the medical discharge process and that there was no evidence that the HSO had altered her medical profile because of her harassment complaint against him. The Level I adjudicator agreed and denied the grievance. Cst. MacQuarrie then appealed the Level I adjudicator's

decision to Level II (the Commissioner). The Commissioner then referred the matter to the Committee as required by the *RCMP Act*.

Committee's Findings and Recommendations:

The Medical Board's report was found to have substantial flaws. First, the Medical Board did not identify the medical condition from which Cst. MacQuarrie was suffering. Second, the medical report did not present a basis for finding Cst. MacQuarrie's condition to be permanent in nature. Third, the medical report was based upon dated medical evidence and dated Task Banks.

In addition, although the HSO was not a member of the Medical Board, it was evident that the Medical Board had based its recommendations, at least in part, on the HSO's medical profiles. Consequently, the medical discharge process was tainted by the involvement of the HSO in that the investigation of the harassment complaint suggested the existence of a personality conflict between Cst. MacQuarrie and the HSO.

Furthermore, the Committee found that Force policy had not been followed in that Cst. MacQuarrie was never given a staffing interview. Moreover, administrative positions were in fact available for Cst. MacQuarrie, despite the Force's contention that only positions for fully

operational constables were available. Evidence indicated that another member, with a worse medical profile than Cst. MacQuarrie's, had worked in an administrative position.

The Committee recommended, to the Commissioner, that the grievance be allowed, that a new medical board be convened and that, in the event that Cst. MacQuarrie was found unable to continue as an operational officer, a proper procedure be undertaken to attempt to find her another position within the Force.

RCMP Commissioner:

The Commissioner denied the grievance and medically discharged Cst. MacQuarrie. The Commissioner found that the Appropriate Officer lacks the expertise to review and to reassess medical information relating to limitations and to restrictions.

In the Commissioner's view, the issue before the decision-maker was whether the member could reasonably be expected to return to operational duty. The Medical Board was to make that determination based on the medical evidence before it. The Commissioner concluded that the Medical Board fulfilled its function, according to the medical discharge board guidelines, and provided sufficient information to permit the Appropriate Officer to make an informed decision.

The Commissioner found that the use of obsolete Task Banks was insignificant. The Commissioner found that the use of an older Task Bank was not a procedural error nor did its use invalidate the medical discharge process.

Although the HSO's integrity was called into question, there was no supporting evidence to conclude the HSO's integrity had been compromised. There was no evidence to suggest the HSO was unprofessional in developing Cst. MacQuarrie's profile.

The Commissioner concluded that, on balance, errors in the process did not cause the outcome to change and that the decision to discharge Cst. MacQuarrie was ultimately the correct one.

Federal Court:

Cst. MacQuarrie has applied to the Federal Court (Trial Division) for judicial review of the RCMP Commissioner's decision.

Girouard

Girouard v. Canada (Royal Canadian Mounted Police), [2001] A.C.F. no. 63.

Facts:

Supt. Girouard was in charge of an administrative service with the Force. Supt. Girouard's position was merged with another. Consequently, the responsibilities of Supt. Girouard's position increased.

The superior officer of Supt. Girouard asked that the amalgamated position be reclassified. The classification officer decided not to raise the classification level. The classification officer's decision was based upon the findings of classification evaluators and his impression that the amalgamation had not really increased the position's management responsibilities.

Supt. Girouard grieved against the refusal to raise his position's classification level. The two grounds of Supt. Girouard's grievance were:

1. The evaluation of his position, upon which the decision was based, was erroneous in that the comparison of his position with the benchmark positions in the classification standard did not take into account several duties in his position.
2. The comparison that had been made of his position with a position in another division with a higher classification level also did not take into account several duties required of his position.

Grievance Advisory Board:

The grievance was rejected because the evaluation report of the position was sufficiently documented; therefore, to reject the findings of the evaluators would mean ignoring their classification expertise.

Subsection 31(1) of the *RCMP Act* requires that a member have a cause for grievance as a result of a decision, an act or an omission in the administration of the affairs of the Force (see Appendix 3). The Grievance Advisory Board (GAB) rejected the grievance because it believed that Supt. Girouard was not aggrieved, as required under subsection 31(1) of the *RCMP Act*, in that nothing guaranteed that Supt. Girouard would remain in the position or that he would necessarily be promoted if the classification level were raised. In other words, Supt. Girouard had no reason to grieve.

The GAB submitted its findings and recommendations to the Level I member (hereinafter, the adjudicator). The adjudicator agreed with the GAB's findings and recommendations.

Consequently, Supt. Girouard appealed the Level I decision to Level II (the Commissioner). The Commissioner, as mandated by the *RCMP Act*, referred Supt. Girouard's appeal to the RCMP External Review Committee.

Committee's Findings and Recommendations:

First, the adjudicator's decision was found to be erroneous. Position classification is meant to recognize the work value of its incumbent; therefore, underclassifying a position means that the work is not recognized at its true value.

Furthermore, by the adjudicator's logic a member would never have grounds to grieve against his classification level. The adjudicator's logic may be summarized as follows: if there is no guarantee that a member will remain in a position or if there is no guarantee that a member will be promoted as a result of the classification increase of the member's position, then there are no grounds for contesting the classification level of a member's position. The mere loss of an opportunity for Supt. Girouard to advance his career was sufficient to aggrieve the member for the purposes of subsection 31(1) of the *RCMP Act* (see Appendix 3). In other words, the decision not to reclassify Supt. Girouard's position deprived him of the opportunity to further his career thereby giving him cause to grieve. Since Supt. Girouard had grounds to grieve, then the adjudicator, pursuant to the *RCMP Act*, should have reviewed his grievance. Consequently, the Committee examined the merits of Supt. Girouard's grievance.

The comparison made of Supt. Girouard's position with the benchmark positions had substantial flaws. First, the lack of explanations regarding why the group of duties encompassed by Supt. Girouard's position was less important than that in the benchmark positions, was such that it represented a fundamental error in procedure. Second, flaws were present in the relativity study which led the evaluators to

find that Supt. Girouard's position should have had a lower classification level than the other division's position. These flaws consisted of significant details and of explanations omitted from the study.

Furthermore, to conform with the classification standard and with the applicable precedents, the relativity study of a position must be made with other positions at a higher, lower, or comparable level. Hence, the selection of merely one position in the organization was insufficient for conducting an equitable comparison.

The Committee recommended that the Commissioner set aside the Level I adjudicator's decision to not consider Supt. Girouard's complaint and that a new process to classify Supt. Girouard's position be commenced.

RCMP Commissioner:

The Commissioner found that Supt. Girouard had standing to bring forth his complaint. However, the Commissioner stated that no factual error or procedural error had occurred. Hence, the Commissioner found that the decision not to raise the member's classification level contained sufficient reasons and explanations. Therefore, the Commissioner declared the grievance denied. Supt. Girouard subsequently applied to the Federal Court (Trial Division) for a review of the Commissioner's decision.

Federal Court:

The Court held in favour of the Committee's findings and recommendations. It was found that the incompleteness of the relativity study had a detrimental impact upon the value of the study's findings. The Court further ruled that the Commissioner's reasons against the Committee's recommendations were insufficient and thus in contravention of subsection 32(2) of the *RCMP Act* (see Appendix 3). Ultimately, the Court upheld the recommendation by the Committee that a new classification procedure be undertaken for Supt. Girouard's position.

Disciplinary case D-68

Facts:

The complainant knew the member because she had seen him driving around town on duty and off duty over an extended period of time. Sometimes in the Spring of 1997, the complainant made arrangements to meet with the member at his residence as she wished to report a sexual assault upon her that had occurred some fifteen years previous. The night the complainant attended the residence of the member to discuss the incident, they went to his bedroom and had sexual intercourse. The complainant later called the member's Detachment to report a sexual assault.

The member was alleged to have sexually assaulted the complainant while he was in a position of trust and authority.

Adjudication Board:

An Agreed Statement of Facts was submitted in which the member admitted to having sexual intercourse with the complainant. In his testimony before the Adjudication Board, the member indicated that the sexual intercourse was consensual. The Adjudication Board found that the allegation of misconduct had been established. It found the complainant to be credible. Particularly, it found that her description of her conduct, at the time, to be consistent with her claim of non-consent. The Adjudication Board ordered the member to resign from the Force within 14 days or be dismissed.

Committee's Findings and Recommendations:

The member appealed against the finding that the allegation of misconduct was established and against the sanction. The Committee found that there were major aspects of the evidence which the Board completely failed to address, some of its conclusions did not appear to be supported by the evidence and there were comments in the decision which indicated that the Board misunderstood what some of the witnesses stated. The Committee also found that the Board misinterpreted the evidence provided by

the alleged victim and failed to address some critical weaknesses in her evidence, leaving the impression that it had not fully considered the evidence and arguments of the parties before reaching its decision.

The Committee recommended that the appeal be allowed against the Board's finding that one allegation of misconduct was established.

RCMP Commissioner:

The Commissioner considered that the Appellant had an obligation to respect the relationship of trust and to ensure that he did nothing to take advantage of it. However, he failed to do so. Even if the alleged victim consented to the sexual relations as the Appellant alleged, it was a consent induced as a result of his position of trust and authority. The Commissioner maintained the decision of the Adjudication Board and ordered the Appellant to resign.

Federal Court:

The member filed a judicial review application of the Commissioner's decision.

Jaworski

Jaworski v. Canada (A.G.), [1998] 4 F.C. 154 (F.C., Trial Division) confirmed by A-508-98; [2000] 255 N.R. 167 (F.C., Appeal Division).

This case goes back to 1996, when an Adjudication Board found that Cst. Alexander Jaworski had conducted himself in a disgraceful manner and ordered him to resign. A full summary of this case is available in the April-June 2000 edition of *Communiqué*. It may be accessed on the Internet at:

<http://www.erc-cee.gc.ca/Communiques/2000/e200006.htm>

The Committee's recommendations in this case hinged on its finding that the Adjudication Board had committed a number of errors. The Commissioner, however, dismissed the member's appeal and upheld the order to resign. Mr. Jaworski took the case to the Federal Court. The Trial Division found against him, and he appealed to the Appeal Division. The Appeal Division conducted a full review. It examined two crucial questions, the first being whether the Commissioner had erred in upholding the Adjudication Board's decision and the second being whether the Commissioner's reasons were sufficient to satisfy his statutory duty to give reasons. The Court answered both questions in the negative, and in September 2000, handed down its decision dismissing the appeal. An application for leave to appeal to the Supreme Court was denied in January 2001.

Appendix 1

MANDATE AND HISTORY OF THE COMMITTEE

Established in early 1987, the Committee was one of two entities 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. The current Vice-Chair and Acting Chair, Philippe Rabot, has held these positions since July 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.

The RCMP External Review Committee is an independent, neutral administrative tribunal established under *the Royal Canadian Mounted Police Act*. Its main 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; 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 rights 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.

Steps in the grievance and discipline processes

There are two avenues by which a case may be referred to the External Review Committee: the formal disciplinary process and the grievance process. In both instances, decisions are first made within the Force and are "Level I". A final decision can be made on appeal to the Commissioner, who is considered "Level II". The decision of the RCMP Commissioner is final and binding, subject only to judicial review by the Federal Court. However, the Commissioner must refer the matter to the Committee before making a decision.

As mentioned earlier, relevant legislative provisions are reproduced in Appendix 3. Below is a description of the steps in both processes.

Level I Process

Adjudication Board (Disciplinary Process)

The "Appropriate Officer" is responsible under the *RCMP Act* to commence formal disciplinary action against the member in the form of an adjudication board when it appears that the member has contravened the Code of Conduct. Typically,

three officers are appointed to adjudication boards. One of the officers appointed to the adjudication board must be a graduate from a law school recognized by the law society of any province. Formal disciplinary action, in the form of an adjudication board, occurs when the alleged contravention is serious in nature and the informal disciplinary instruments available (i.e.: training, counseling, transfer, closer supervision) would be insufficient corrective measures in the circumstances.

The adjudication board then holds a hearing to investigate whether the events in fact occurred and if the allegations are proven. If they are, the board then determines the appropriate sanction.

Grievance Advisory Board (Grievance Process)

The RCMP Commissioner is authorized under section 36 of the *RCMP Act* to generate rules regarding grievance presentation and consideration. The Grievance Advisory Board (GAB) is created pursuant to these rules or Standing Orders.

The grievance procedure is composed of two stages. The primary step in the grievance presentation process is deemed as Level I. Generally, Level I will constitute an officer designated by the Commissioner. The Commissioner constitutes Level II

of the grievance process as defined under subsection 32(1) of the *RCMP Act* (see Appendix 3).

The Level I officer assesses whether the incident grieved was of substance. The Level I officer first receives the grievance from the member to assess whether the grievance complied with the criteria outlined in subsection 12(2) of the Commissioner's Standing Orders. All the criteria in subsection 12(2) of the Standing Orders must be met to permit the Level I grievance officer to direct a GAB to be convened. Under subsection 12(2) of the Standing Orders, a board shall not be convened where the member who constitutes Level I decides that:

1. the member was not aggrieved (subsection 31(1) of the *RCMP Act*) and the grievance was not presented within 30 days of the incident giving rise to the grievance (subsection 31(2)(a) of the *RCMP Act*) (see Appendix 3);
2. the subject of the grievance is a position expressly excluded from the grievance process (subsections 31(3) and 31(7) of the *RCMP Act*) (see Appendix 3);
3. the subject of the grievance is a job opportunity bulletin;
4. the grievance shall be allowed; or
5. the request, from the grieving member, not to convene a gab be granted.

The Level I member appoints two officers and one Division Staff Relations Representative to the GAB. Hence, the GAB is composed of three individuals in total. The GAB convenes to consider the member's grievance. The GAB presents its findings and recommendations to the member who constitutes Level I (the officer appointed by the Commissioner) or Level II (the Commissioner). The Level I member or Level II member is not bound by the GAB's findings and recommendations.

Level II Process

RCMP Commissioner and Role of the External Review Committee

If the member or the Appropriate Officer is dissatisfied with the decision from the Level I bodies, then the member or the Appropriate Officer may appeal the decision to the RCMP Commissioner (Level II). The final and binding stage of appeal for a member or for the Appropriate Officer is the decision rendered at Level II (the Commissioner), subject only to judicial review.

Prior to making a decision, the Commissioner is required to refer the matter to the Committee. The findings and recommendations submitted to the Commissioner by the Committee may or may not be accepted by the Commissioner. However, if the Commissioner does not accept the findings and recommendations

from the Committee, then the Commissioner must provide sufficient reasons for not accepting as stated by the Federal Court's interpretation of subsection 32(2) of the *RCMP Act* (see Appendix 3).

The Judicial Process

Judicial Review by the Federal Court of Canada

The RCMP Commissioner is an agent created by a federally enacted statute and, as such, falls under the jurisdiction of the Federal Court pursuant to the *Federal Court Act*. If a member of the RCMP has gone through the process of presenting his complaint to Level II and remains dissatisfied with the final ruling of the Commissioner (Level II), then the member may apply to the Federal Court (Trial Division) for a review of the Commissioner's decision. Therefore, although the RCMP Commissioner's decision is binding over the adjudication board, the GAB, the Appropriate Officer (Level I) and the Committee, the Commissioner's decision can still be either upheld or overturned by the Federal Court.

Appendix 2

INTERNAL STRUCTURE OF THE ERC

During the reporting year, the Committee operated with only one member, who served as Acting Chair and reviewed all cases referred by the RCMP. Administrative support was provided through an Executive Director, who directs the work of counsel and serves as Senior Counsel. Systems, financial administration and public enquiries are handled by the Office Manager.

Members and staff of the Committee

ACTING CHAIR AND VICE-CHAIR	Philippe Rabot
EXECUTIVE DIRECTOR AND SENIOR COUNSEL	Norman Sabourin
COUNSEL	Odette Lalumière
COUNSEL	Caroline Maynard
OFFICE MANAGER	Lorraine Grandmaitre

Addresses

While the Committee has its offices in Ottawa, it may hold hearings elsewhere if the need arises. The Committee's address is:

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Appendix 3

STATUTORY PROVISIONS

(Excerpts from the *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. 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) 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.
- (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.

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 4I(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.

EXCERPT FROM THE RCMP REGULATIONS (1988)

(Section 36: grievances that can be referred to the Committee)

36. For the purposes of subsection 33(4) of the Act, the types of grievances that are to be referred to the External Review Committee of the Force are the following, namely,
- (a) the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members;
 - (b) the stoppage of the pay and allowances of members made pursuant to subsection 22(3) of the Act;
 - (c) the Force's interpretation and application of the *Isolated Posts Directive*;
 - (d) the Force's interpretation and application of the *R.C.M.P. Relocation Directive*;
and
 - (e) administrative discharge for grounds specified in paragraph 19(a), (f) or (i).

