

RCMP External Review Committee

Annual Report--1994-95

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INTRODUCTION

BACKGROUND

The RCMP has approximately 18,500 employees - both regular and civilian members. Tasked with preventing crime, enforcing law and preserving peace federally, provincially and municipally, it is a complex paramilitary institution whose most important asset is its human resources. As many other institutions in the 90's, it is undergoing organizational renewal while still successfully instilling in its employees important values: the need to respect human dignity, the rights under common law and the *Charter of Rights and Freedoms*. In every institution - and the RCMP is no exception - administrators each day are confronted with a myriad of problems. Each day, decision-making is of necessity often made under considerable pressure. There therefore exists the potential for human error when dealing with Force employees who, even when proceeding with the greatest degree of care, may find themselves in circumstances which put their own rights at issue. It is therefore crucial for a member who perceives injustice in the Force which affects him or her to be treated with dignity and understanding, and to have the same protection that the Courts enjoy with respect to those who are alleged to have breached the law.

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

By amending the *Royal Canadian Mounted Police Act* (the "*RCMP Act*") in 1986 and creating the Public Complaints Commission and the External Review Committee, legislators felt that the Canadian public had a vested interest in the establishment of outside bodies which would oversee the operations of the Force, both internally and externally. In reviewing Force activity in matters coming under its jurisdiction, the Committee is not only ensuring that the interests of members are protected vis-à-vis the Force; it is also balancing the interests of the Force with those of the public. The Force exists to serve and protect the public, and the public has a right to expect that the Force will act in the way in which it provides this service. By providing external review, the Committee serves the public as a visible agent of public accountability; a way to introduce civilian participation into the process of balancing public interest in the maintenance of civil liberty and a way to provide civilian input to the administrative management of the Force. In playing the role of a balancing agent, the Committee contributes, through its reviews, ingredients essential to preserving and maintaining the integrity of the Force by ensuring that the rights and welfare of its members are safeguarded, while at the same time maintaining the "let-the-manager-manage" principle.

MANDATE

The RCMP External Review Committee was created by Part II of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, as amended, as an independent and impartial, quasi-judicial body to review appeals of formal discipline, appeals of discharge or demotion, and certain types of grievances involving regular and civilian members of the RCMP. The Committee independently reviews grievances and appeals referred to it and submits recommendations to the RCMP Commissioner. In its review, the Committee may hold hearings, summon witnesses, administer oaths and receive and accept such evidence as it sees fit.

PROGRAM DESCRIPTION

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

Under the *RCMP Act*, the RCMP Commissioner refers all appeals of formal discipline and all discharge and demotion appeals to the Committee unless the member requests that the matter not be so referred. In addition, pursuant to s. 33 of the *RCMP Act*, the 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* lists the kind of grievances that the RCMP Commissioner has to refer to the Committee. They are as follows:

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

In each case, the member may request that the matter not be referred to the Committee, in which case, the RCMP Commissioner has the discretion whether to refer the matter or not.

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

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

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

In conducting its review of matters referred to it, the Committee attempts to achieve a balance between the different interests referred to above while ensuring that the principles of administrative law are respected and the remedial approach suggested by the *RCMP Act* is followed. In each case, the interests of the individual member of the Force must be balanced against those of the Force's management, of other members and of the Force's clients, the public, as represented by Attorneys and Solicitors General.

PROGRAM ORGANIZATION FOR DELIVERY

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

PROGRAM PERFORMANCE

A few years ago, the Committee conducted a review in order to determine the effectiveness of its procedures. In his presentation, the author of the study said: "there is a remarkable consistency of generally favourable impressions as to the effectiveness of the ERC in serving its various interest groups. The impression is conveyed by all groups providing input, and it is difficult to suggest that the Committee might reasonably have been expected, at this stage of its existence, to have received a better effectiveness rating".

The review also highlighted some areas which required attention. For example, there

was a substantial feeling that the Committee's role was not well understood by the majority of the members of the Force. There also existed, in some quarters, a perception that the Committee should be receiving grievances which it was not receiving.

The Committee has, since then, taken measures to proactively inform members of the Force about its role and mandate by publishing brochures, issuing "communiqués" summarizing cases examined by the Committee, distributing the Committee's annual reports widely both within and outside the Force, and taking advantage of all available opportunities to meet management and members of the Force. The Executive Director and the Acting Chairperson have developed a comprehensive communications plan which includes close liaison with RCMP Academy at Regina and regular meetings with RCMP management and members' representatives.

As to the second observation, the Committee is currently examining institutional questions such as the Committee's mandate and the type of grievances which should be referred to it in cooperation with the Force.

An on-going issue is the length of time that it takes to process a member's grievance or a discipline matter from beginning to end. Often this process can take years. The period of time that a matter remains at the Committee is one of the components of this process. Management, Divisional Representatives and the Committee are communicating and cooperating fully in an attempt to re-engineer the process, wherever possible, to reduce delays and render the process more efficient. In addition, the Committee itself is taking this concern very seriously and is implementing ways of dealing with its own workload in a more expeditious manner while maintaining a high level of quality in the delivery of its services.

While following the trends evident in Canadian labour relations cases generally, the Committee's recommendations must be relevant to the RCMP if they are to be useful. One criterion which could be used to evaluate the outcome is the fairness of the process by which files are reviewed and recommendations made. Although it is not easy to test this, an indicator of the degree to which the members of the RCMP perceive the Committee's work to be fair is the fact that to the best of the Committee's knowledge, only one member out of more than 250 who have submitted their case through the Committee has, so far, requested that a matter not be referred to the Committee - and this, in the second year of the mandate. This can be taken as evidence that the Committee's work is perceived by members of the RCMP as being fair to them. On the other hand, the degree to which the Committee's recommendations are deemed to be fair to the RCMP can be inferred from the number of times the RCMP Commissioner accepts the Committee's recommendations. In well over 90% of the grievances reviewed by the Committee since its creation, the RCMP Commissioner has either agreed with the Committee's recommendations and reasons or agreed with the recommended action albeit for different reasons. This can be taken as evidence that the Committee's work is perceived by management of the RCMP as being fair.

To date, the Committee has received grievances representing the direct interests of over two hundred and fifty members of the Force from the rank of special constable up to chief superintendent. As well, often, when the Committee deals with a grievance of one member, it can resolve the concerns or questions of hundreds of other members, and Committee decisions have also resulted in modifications to Force policy and procedures. The Committee's recommendations need not limit themselves to solving immediate problems. They can serve the more profound purpose of influencing the RCMP as a whole in the improvement or elaboration of new human resource policies.

ENVIRONMENT

The Committee has very little control over the number or the nature of cases referred to it. The number of grievances referred to the Committee depends, in part, on the number submitted by the membership. Further, the RCMP Commissioner (or his delegate) decides which grievances are to be referred to the Committee. A decision by the RCMP Commissioner to extend the number and nature of referable grievances would increase the

Committee's workload. Similarly, the decision to impose formal discipline is one that is taken within the RCMP and the decision to appeal any discipline imposed is taken by the members involved. Whether the Committee will opt for a full-blown hearing in any given case as opposed to limiting itself to a file review is also unpredictable, as these decisions are made on a case by case basis. The RCMP are also presently reviewing their appeal and grievance system as well as their employer status. Any future amendments to the *RCMP Act* or changes to the RCMP's employer status would necessarily also impact on the Committee's workload. Consequently, it is quite difficult for the Committee to predict what its workload will be in the future. It is safe to say that it will not decrease, at least.

ISSUES

One issue has been and continues to be of particular concern to the Committee, in view of the fact that it reflects negatively upon the system's efficiency and accountability. This relates to the restricted jurisdiction of the Committee in relation to grievances. As previously mentioned, the Committee does not have the power to monitor the processing by the RCMP of all grievances. Section 36 of the *RCMP Regulations* provides that certain grievances relating to a number of matters are to be referred to the Committee (please refer to the list under the section "Program Description"). While sub-paragraphs 36(b) through (e) are specific, sub-paragraph 36(a) is not. Whether or not a matter is referable to the Committee under this provision requires an interpretation in each case. The Commissioner has, in the past, given direction to his staff in terms of how this section should be interpreted and provided them and the Committee with a list of 16 subjects that fall within the ambit of this section; however, that interpretation was made by the Force, and the Committee is not informed of the decisions that are made in relation to its application.

The Committee has, through informal channels, come to learn of matters that might have fallen within its mandate, but which have not been referred to it. The Committee is in the somewhat unusual position of having little control over, or awareness of, decisions concerning its mandate. Generally, bodies such as the Committee have a direct role in interpreting, on a case-by-case basis, whether matters fall within its mandate. Also, and more importantly from the point of view of the Force and its members, the current situation can prevent the Force from receiving full advice on grievances. Such a situation can affect members' confidence in the system.

Although the Committee wishes to emphasize that the Force grievance administration has acted carefully and in good faith in its referral decisions, it is of the opinion that, where difficulties have arisen, the efficiency and accountability of the system have been hampered.

The Committee has recently reopened the debate with representatives of the Force. These discussions will hopefully result in modifications being made to the system - legislative or otherwise - which will further improve its efficiency, openness and accountability.

THE YEAR UNDER REVIEW

RESOURCES

In keeping with the government's objective to reduce its spending, the Committee has, since 1992-93, undergone significant re-engineering. It has undertaken several initiatives which resulted in a significant downsizing of its organization and a major restructuring of its activities. Its successful efforts to restrict the number of formal Committee hearings to the minimum, the reduced costs of having the duties of the Chairperson performed part-time, as well as a further effort to streamline the Committee's review process resulted in a reduction of the Committee's operating expenditures by over 50%: from \$1.5 million and 14 full-time equivalents in 1991-92 to \$0.7 million and 5 full-time equivalents in 1994-95.

In deciding not to further reduce the Committee's resources for 1995-96, as a result of the Program Review, the Treasury Board recognized that the Committee is playing an essential role, that it has done its share in assisting the government in reducing its operating expenditures, and that there is very limited scope for a further reduction of its resources, especially in light of the Committee's increasing workload. No changes were therefore made to its program and resources.

WORKLOAD

As indicated earlier, the Committee's workload has almost doubled in the last three years. The Committee's first priority during 1994-95 was to deal with its backlog effectively and efficiently with a backlog of cases which had accumulated as a result of the increased workload and the resource reduction. It has been able to maintain its new streamlined operation and continue to submit high-quality Findings and Recommendations to the RCMP Commissioner.

ACTIVITIES

Although the case review has been given utmost priority, the Committee nevertheless participated in several other activities during the year under review.

Measures were taken to proactively inform members of the Force about the Committee's role and mandate by issuing "communiqués" summarizing cases examined by the Committee, distributing its annual reports widely both within and outside the Force, and taking advantage of all available opportunities to meet management and members of the Force.

The Committee is also proactively encouraging the introduction of mediation as a modern alternative dispute resolution mechanism to be used in certain cases.

PARTNERSHIP

Several activities or program components are provided in whole or in part to the Committee by the private sector and other government agencies. For example, instead of creating its own expertise and hiring its own resources in the area of technology, the Committee obtained services in that area from a private firm which is available on an "as-needed" basis only. A similar type of arrangement was made with a librarian who comes in on a once-a-week basis to provide the Committee with library-related services. The Committee also uses the services of other partners such as the Public Complaints Commission and the Solicitor General Secretariat for the provision of other types of services which would otherwise have to be obtained through Committee resources.

When in need of other more specialized types of services, the Committee always looks at alternatives such as contracting with the private sector or obtaining services from another department rather than creating its own expertise in those areas.

RELATIONSHIP WITH THE FORCE

The relationship between the Force and the Committee continues to be excellent. The Commissioner, his Deputy and Assistant Commissioners met often with the Acting Chairperson. She and the Committee staff also held regular meetings with members' representatives and RCMP Headquarters; in particular, representatives of the Internal Affairs Branch and the External Review and Appeals Section. The result was one of frank and constructive discussion. The high level of cooperation which the Committee received from these people throughout the year is greatly appreciated.

The Committee would also like to acknowledge the high degree of professionalism and skill shown by members, Divisional Representatives, members of Grievance Advisory Boards, and members of first level Adjudication Boards in the preparation and presentation of cases referred to the Committee. The work done in preparing, presenting and reviewing cases is all the more impressive as the vast majority of these persons are not legally trained.

CASES

As can be seen from the following selection of cases reviewed by the Committee during 1994-95, the issues dealt with by the Committee are varied. The case numbers in bold print at the beginning of each case refer to the number in the Committee's Decisions Binder.

A) GRIEVANCES - PART III OF THE RCMP ACT

i) *Medical Discharge*

G-115 A member was served with a Notice of Medical Discharge. The member grieved and requested an extension for presenting arguments in support of his grievance. The request was granted but the member was late in providing his arguments.

The Level I decision denied the grievance on the basis that the member had not presented his grievance within the statutory limitation period.

The Committee found that a grievance presentation form, indicating the decision being grieved, the date on which the member learned of the decision, and the redress sought, was sufficient to constitute a grievance under the *Act*. The statutory time limit under the *Act* applied to presentation of the grievance, not to providing argument in support. The member had presented his grievance within the statutory time limit at Level I. The Committee therefore recommended that the grievance be returned to the Level I adjudicator so that a decision on the merits could be made at this level.

The Commissioner agreed and ordered that the grievance be returned to Level I.

G-127 A special constable was promoted to the rank of constable as part of the special constable conversion program. After several attempts, the member was found to be unable to function effectively as a regular constable. A Notice of Discharge on the ground of mental disability was then served on the member. The member grieved against the Notice of Discharge and alleged that there were errors in the Medical Board process, that not all members of the Board were mental health experts and that the Medical Board failed to refer to any mental condition suffered by the member.

The Level I adjudicator denied the grievance and found that the Medical Board process was properly conducted.

The Committee found that the medical board had failed to provide an adequate report, the board having failed to include an analysis of the member's medical situation. Without an adequate medical board report, the Appropriate Officer could not be in a proper position to make the medical discharge decision. The Committee also noted other problems: the Force's Health Services Officer sat as president of the Medical Board, despite having been previously involved in the member's case; another member of the Board continued to sit despite indicating that he did not feel qualified to evaluate mental health. The Committee recommended that the grievance be upheld and that the Notice of Discharge be cancelled. Further, the Committee took into account a number of considerations particular to the member's situation, including the member's apparent ability to perform light duties. The Committee recommended against immediately convening a new medical board and in favour of additional efforts being made to find a suitable position for the member.

The Commissioner agreed that the medical board process was flawed and allowed the grievance. However, the Commissioner did not agree with the second recommendation and ordered that a new board be convened. He also ordered that before another board was convened, Medical Board policy be modified in order to address the flaws identified in this case.

ii) *Harassment at Work*

G-121 A member claimed harassment on the basis of harsh language directed at him by his supervisor while in the presence or hearing of other persons.

The Level I adjudicator denied the grievance and found that the supervisor had merely given the member "forceful, specific directions" and that the Force has the right to direct members in tasks.

The Committee found that there was not enough evidence to justify a finding of harassment. However, the Committee found that this was a borderline case. The Committee observed that society is changing, and that the rough and ready speaking styles which may have been common in the ranks of the RCMP are perhaps becoming a thing of the past.

The Commissioner agreed that there was insufficient evidence of harassment and he denied the grievance. However, he added that supervisors must ensure that thoroughly professional work environments are maintained. He also added that, at the same time, subordinates have an obligation to perform their duties and respond to managerial direction in an atmosphere of mutual respect.

iii) *Legal Fees at Public Expense*

G-116 A member was duck hunting for recreational purposes while off-duty. He was accused of contravening a regulation of the *Migratory Birds Convention Act*. RCMP members are considered game officers under that *Act* and the member here was accused under a provision setting out especially severe penalties for infractions committed by game officers. The member requested legal fees at public expense. After the Force denied the request, the member grieved. He submitted that he was acting within the scope of his duties because the charge was related to his status as a game officer.

The Level I adjudicator denied the grievance, finding that the member was not acting within the scope of duties and that the member's actions were not in furtherance of Force

work.

The Committee found that although the member was charged as a game officer, he was not acting within the scope of duties as required under the Treasury Board policy given that he was not acting in furtherance of Force work. Thus, the member was not entitled to legal fees at public expense. The Committee explained that it was acts giving rise to the accusation which had to be examined and not the wording of the charge. The Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation and denied the grievance.

G-122 A member was charged with offences stemming from the removal of drug exhibits from a vault of which he was the custodian. He grieved the Force's refusal to provide him with legal services at public expense for his defence.

The Level I adjudicator denied the grievance and found that by taking exhibits for which the member was responsible and converting them to his own use, the member was not acting in furtherance of Force work.

The Committee found that the member's actions were not in furtherance of Force work and were personal in nature. The member had not acted within the scope of his duties and was thus not entitled to legal services at public expense. The Committee recommend that the grievance be denied. The Commissioner agreed with the Committee's recommendation and denied the grievance.

iv) *Correct Interpretation of the Travel Policy Applicable to the RCMP*

G-128 A member claimed reimbursement for mid-shift meals taken while on surveillance duties. The claims were denied under divisional policy. The member grieved the Force decision and argued that the meal claims were in accordance with exceptions allowed under Treasury Board travel policy and that the nature of the surveillance duties had made preplanning a mid-shift meal impossible. The grievance was one of many submitted by members of the division on the subject of the applicable travel policy and its interpretation.

The Level I adjudicator denied the present grievance and found that the divisional meal policy was valid as it was in accord with national RCMP policy and Treasury Board policy.

The Committee found that the analysis in G-86 applied: the divisional policy used in the denial of the claims was not in accordance with the applicable Treasury Board policy. Unlike G-86, however, the Committee did not recommend returning the matter to the administrative level for application of the correct policy. The Force was now aware of the need to apply Treasury Board policy for these claims; the issue had evolved into a dispute about the interpretation of exceptions under the Treasury Board policy. The Committee rejected a restrictive interpretation of the "travelling on patrol" exception in the policy. The Committee found that: the "worksites" are the regular home office locations of members; members are not at the "worksites" when "on the road" for regular surveillance duties; and members in such situations are entitled to meal reimbursement if duties prevent them from having normal, regularly-scheduled meals and they thereby are required to purchase meals while "on the road". The Committee recommended that the grievance be upheld and that, subject to administrative verification, the member's meal claims be paid.

The Commissioner agreed that the member's "worksites" were his regular home office locations and that he was entitled to reimbursement if duties prevented him from having normal regularly-scheduled meals, thus requiring a meal purchase "on the road". The Commissioner upheld the grievance and ordered that, subject to administrative verification, the member's meal expenses be paid.

It is the Committee's hope that this grievance will serve as a precedent for the resolution of the numerous similar grievances which have been submitted by members of the same division.

v) *Relocation Policy*

Home Equity Assistance

G-114 A member was relocated and sold his residence at a loss. The member claimed reimbursement under the Home Equity Assistance Plan. The member grieved after the Force denied reimbursement under the Plan on the ground that the 10 percent-market-decline criterion had not been satisfied and alleged that he had to sell his residence under pressure.

The Level I adjudicator denied the grievance on the basis that there was no irrefutable evidence of a 10% market decline.

The Committee found that the policy did not require irrefutable evidence of a 10% market decline. However, the Committee agreed that there was no sufficient indicator of a 10 percent market decline. The Committee also noted that due to options provided by the Relocation Directive, RCMP members cannot normally be considered as being under special pressure to sell. The Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation and denied the grievance.

G-118 A member was relocated and sold his residence at a loss. The member claimed reimbursement under the Home Equity Assistance Plan. The member grieved after the Force denied reimbursement under the Plan on the ground that the 10 percent-market-decline criterion had not been satisfied. The member argued that Force has made an error in calculating market decline by using data from only the six months preceding his purchase. The member alleged that the market was rising at the time of his purchase and that the six-months-preceding approach unfairly disadvantaged him as it underestimated market prices at the time of his purchase.

The Level I adjudicator denied the grievance and found that the six-months-preceding approach was reasonable and that the 10-percent market decline was not met.

The Committee found that the Force had committed an error in process. The determination of the appropriate sampling period depends on the circumstances of each case. In the case of a rising market, the use of data from only the six months preceding the date of purchase or sale underestimates market prices as of this date. The Committee recommended that the Commissioner uphold the grievance and either reassess the member's application under the market decline criterion or, alternatively, directly decide that the 10% criterion was met based on the information already on file.

The Commissioner agreed with the Committee's recommendation. He upheld the grievance and decided that the 10% criterion was met.

Mortgage Default Insurance

G-130 A newly-engaged member purchased a residence immediately after completing his training and claimed reimbursement for the purchase of mortgage default insurance. Although he recognized that policy appeared to disallow such a claim for newly-engaged members, he argued that he had been told in a telephone conversation with Financial Services that he was eligible and had purchased the insurance as a result of that advice.

The Level I adjudicator found that the member's account of this very short telephone conversation was not convincing, especially in the face of clear written policy denying him coverage. The grievance was denied.

The Committee found that there was insufficient evidence of the provision of the advice alleged by the member. There was also no indication that the member would not have had to purchase the insurance, had he not relied on the alleged advice. The Committee recommended that the grievance be denied.

The Commissioner found that the onus was on the member to fully explain his circumstances to Financial Services; this could not have happened, given the brief duration of the telephone call. This grievance was denied.

Other Relocation Issues

G-117 After relocation, a member rented accommodations at his new post. The post was in a rural area and the member was told that the Force would acquire government-owned accommodations for which the member would be eligible; this did not materialize. The member remained in the rented accommodations, but eventually, the owner retook possession and the member was forced to vacate the accommodations. There were no other accommodations to rent in the area and the member therefore purchased a residence. The member requested a waiver of the two-year limitation period to acquire a residence at the new post. The Force denied the request on the ground that it was filed after the expiration of the two-year period. The member grieved.

The Level I Adjudicator ruled that the request had to be filed within the two-year period. The grievance was therefore denied.

The Committee found that the member faced exceptional circumstances arising out of employer-created impediments. The Committee further found that the member filed his request for an extension as soon as he reasonably and possibly could. The Committee therefore recommended that his grievance be upheld.

The Commissioner agreed and granted an extension to the two-year limit.

G-119 A member received a residency exemption for a transfer to a nearby detachment; the member was thus able to maintain his residence at the previous detachment. Afterwards, the member informed the Force that he was researching the prospect of moving to the new detachment. The Force responded that the residency exemption precluded consideration of a paid relocation. The member grieved the Force's decision. He alleged that he was not informed of this restriction and that the restriction is not set out in the policy.

The Level I adjudicator denied the grievance, finding that if the member had concerns about the residency exemption, he should have raised them before accepting the exemption.

The Committee found that the member had no standing to present the grievance because he had, as yet, made no relocation request. The member had not set out the particular duty or personal circumstances that would be at the basis of such a request. Rather, the member had merely indicated that he was researching the prospect of relocating. The particular duty or personal circumstances would have been vital to the consideration of the grievance. The grievance could not be considered in the abstract. The Committee recommended that the grievance be denied. In additional comments, the Committee observed that, in general, a residency exemption will not necessarily preclude a paid relocation, but payment will depend on an exercise of discretion based on the particular facts of each case.

The Commissioner agreed that the member had no standing to grieve and denied the grievance. The Commissioner also apologized to the member for the delays in processing the grievance.

G-120 After his relocation, a member without dependents was given the relocation allowance for "single" members ($\frac{1}{24}$ annual salary). The member submitted a grievance on the grounds of discrimination, alleging that he was entitled to the same relocation allowance given to "married" members ($\frac{1}{12}$ annual salary).

The Level I adjudicator denied the grievance on the basis that the member had received the same allowance given to other single members.

The Committee allowed that the Treasury Board Policy discriminates between members, but found that this discrimination is not based on unfair grounds. The Committee therefore recommended that the grievance be denied. In additional comments, the Committee noted that the Administration & Personnel Officer had originally decided not to process the grievance because of limitation periods and standing. The Committee reaffirmed that the Administration & Personnel Officer has no authority, as an administrator in the grievance process, to rule on the validity of a grievance and thus prevent a grievance from being reviewed by the Committee and, ultimately, decided upon by the Commissioner.

The Commissioner agreed and denied the grievance. He stated that the matter raised in the Committee's additional comments had been brought to the attention of the appropriate authorities.

G-123 Nine years after having made an optional move into Force-owned accommodations, a member claimed reimbursement of the moving expenses, alleging that another member was reimbursed in the same circumstances in the previous few years.

The Level I adjudicator denied the grievance, finding that there was no operational need for the member to move into Force-owned accommodations.

The Committee found that the member had not shown entitlement to reimbursement, independently of the fact that another member moved into Force-owned accommodations at the Force's expense. The Committee reaffirmed the principle that an error made in the past does not require the Force to keep making this mistake. As the member did not qualify within the terms of the Relocation Directive, the Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation and denied the grievance. In additional comments, the Commissioner noted that even though the reimbursement of the other member's moving expenses was not relevant to the present case, sufficient questions had been raised about its validity to require that this previous reimbursement be reviewed.

G-126 A member was transferred and relocated from the old post to his new post. He had a child who was attending university at a third location. In accordance with policy, the member received a transfer allowance equal to $\frac{1}{24}$ of his annual pay. He grieved, seeking $\frac{1}{12}$ of his pay, which is the allowance for members moving with dependents; he argued that the child should be treated as a dependant for the purpose of the move given that the member was paying his child's living expenses.

The Level I adjudicator denied the grievance, finding simply that there was no error in the policy application.

The Committee found that the policy on transfer allowances should not be interpreted to provide members with compensation for costs which were not incurred as a result of the relocation. The member's costs of paying his child's living expenses were not affected by the relocation as the child had remained at the third location. The Committee therefore recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation and denied the grievance.

G-131 A member was transferred to a new location and listed the family residence for sale at the old post. The residence was sold, but the family later decided, for reasons related to a business interest, to remain at the first post while the member would commute from the second post on weekends; the family purchased a new residence at the first post. The member applied for and received relocation reimbursement for expenses incurred as a result of these arrangements. Three years later, the member received a transfer order to a third post. The member submitted to the Financial Services and Supply Branch his transfer plans for this second transfer. It was only at this time that the Financial Services and Supply Officer learned about the accommodation arrangements surrounding the previous transfer. The Financial Services and Supply Officer informed the member that all of the relocation expenses paid for the previous transfer had to be repaid to the Force. The member grieved.

The Level I adjudicator found that since the member did not relocate his residence when he was transferred, he was not entitled to the relocation expenses he had received.

The Committee found that the member was entitled to keep most of the relocation expenses he received because these expenses had been prompted by the original transfer order and had not been affected by the family's eventual decision to maintain a residence at the first post. The Committee therefore recommended that the grievance be upheld. The Committee did note, however, that the effective result of the arrangements was that the member had received relocation reimbursement for the move to the second post; the second post became the member's residence for the purpose of the subsequent transfer to the third post, thus serving to disallow certain of the member's claims for this last transfer.

The Commissioner had not issued his decision in this matter by 31 March 1995.

G-132 A member was transferred from Regina to Vancouver. She chose to drive her private vehicle to the new location, afraid that the vehicle might be damaged if she shipped it. The member's spouse, who lived in Vancouver, flew to Regina in order to assist in the drive. In her Travel Expense Claim, the member claimed her spouse's airfare, explaining that the total of the travel expenses and his airfare actually cost less than shipping the vehicle. The claim for the airfare was denied on the basis that there existed no provision in the RCMP Relocation Directive to allow it. The member grieved.

The grievance was denied at Level I on the basis of time limits.

The Committee found, based on information which had not been available to the Level I adjudicator, that the grievance was in time. On the merits, the Committee found that the airfare in this case was not an expense provided for in the Treasury-Board-adopted RCMP Relocation Directive. The Committee noted that, although the total expenses for driving the vehicle, including the airfare, was less costly than shipping the vehicle, the Force does not have the authority to expend funds for reasons not specifically covered in the Directive. The Committee also found that the expense should not be given consideration under the Directive's provision which allows the Commissioner to seek payment from Treasury Board for expenses not specifically covered by the Directive. The Committee found that this provision did not apply because the expense did not fall within the general limits or intent of the Directive. The Committee thus recommended that the grievance be denied.

The Commissioner had not issued his decision in this matter by 31 March 1995.

vi) Access to Information: Personnel File

G-124 A member was refused full access to his personnel file on the basis that certain portions contained information about a third party. The member grieved, arguing that the vetted information also concerned him.

The Level I adjudicator denied the grievance, stating that if the member's concern was with excessive vetting, he had a method of redress through a complaint to the Privacy Commissioner pursuant to the *Privacy Act*.

The Committee found that even if the member could also make a complaint to the Privacy Commissioner, the *RCMP Act* gave him the right to seek relief through the grievance process. The Committee noted that the adjudicator had not reviewed the unvetted

documents to examine the validity of the member's argument and had therefore not dealt with the merits. The Committee recommended that the grievance be returned to Level I for adjudication of the merits.

The Commissioner agreed with the Committee's recommendation and returned the grievance to Level I.

vii) *Periodic Medical Examination*

G-125 A member challenged the Force's right to designate a physician for the purpose of a periodic medical examination.

The Level I adjudicator denied the grievance and found that there was a general requirement of medical fitness and that the Force had a right to require that a periodic medical examination be performed by a Force-designated physician. The Level I adjudicator also questioned whether the member was aggrieved, arguing that a member cannot be aggrieved if he is prevented from exercising a right that he does not have.

The Committee disagreed with the Level I decision and found that the member was aggrieved because his personal rights were at stake. The Committee also found that the member was correct in arguing that, without statutory or contractual authority, the Force had no power to require that the member be examined by a Force-designated physician. However, contrary to the member's assertions, statutory authority had been established through a duly-promulgated Commissioner's Standing Order. The Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee's analysis and denied the grievance.

viii) *Adoption Allowance Equivalent to the Maternity Allowance*

G-129 A member intended to adopt a newborn child and requested payment of an allowance equivalent to the maternity allowance. The request was denied because policy does not provide for an adoption allowance. The member grieved, citing treatment contrary to the *Canadian Human Rights Act*.

Agreeing with the Level I adjudicator, the Committee found that the grievance was not valid under the *RCMP Act*. Section 31(1) of the *Act* only allows challenges to decisions made in the administration of the affairs of the Force. The member, however, was not challenging Force policy, nor the Force's interpretation and application of Treasury Board policy, but was directly challenging the establishment of pay and allowances—a Treasury Board decision. The Committee recommended that the grievance be denied. However, in extensive additional comments the Committee observed that the legality of the present policy had not yet been established and that even if it were legal, the policy appeared unfair. The Committee urged the Force to seek a Treasury Board review from both a legal and policy perspective.

The Commissioner agreed with the Committee's recommendations and denied the grievance. The Commissioner also stated that he would request Treasury Board to review the policy. He noted that even though the federal government's "freeze" legislation is still in effect, the matter could be pursued for potential implementation when the "freeze" is over.

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

i) *Disgraceful Conduct*

D-30 An allegation of disgraceful conduct was brought against a member for having failed to declare to customs certain goods that he was importing into Canada. The member appealed the Adjudication Board's finding that the allegation had been established. The member also appealed the forfeiture of 3 days' pay and reprimand imposed by the Adjudication Board.

The Committee concluded that: the fact that the member had already paid a customs fine did not preclude his being disciplined by the Force; the member did not demonstrate that

the admission of the evidence to which he objected would bring the administration of justice into disrepute; the Board did not err in determining that the member's conduct had been disgraceful and that it brought discredit on the Force. The Committee also disagreed with the member's position that the sanction was too harsh. The Committee, therefore, recommended that the appeal be denied.

The Commissioner agreed with the Committee's recommendation and denied the member's appeal.

D-31 An allegation of disgraceful conduct was brought against a member for having failed to declare to customs certain goods that he was importing into Canada. The member appealed the Adjudication Board's finding that the allegation had been established.

A first issue concerned the admissibility of photocopies of Customs documents into evidence. The Committee found that the documents were not so unreliable as to be inadmissible under the best evidence rule, given that this rule should not be strictly applied in matters before adjudication boards. A second issue concerned the Board's assessment of the witnesses' credibility. The Committee found that there was no evidence of a patently obvious error by the Board. A third issue was with the Board's finding of disgraceful conduct. The Committee found that the factors considered by the Board were sufficient and its decision was not unreasonable in light of all the circumstances. The Committee recommended that the appeal be denied.

Subsequent to the Committee's recommendation, the member withdrew the appeal. The matter was therefore not adjudicated by the Commissioner.

D-32 Two allegations of disgraceful conduct were brought against a member: the first for having declared to customs an amount which was lower than what had been paid for a vehicle he was importing; the second for declaring a false value when applying for vehicle registration. The Adjudication Board found that the allegations were established. The member appealed.

The Committee found that there was clear and uncontested evidence to the effect that three months before it was imported, the professional car locator who sold the vehicle to the member had purchased it for more than twice the amount the appellant declared to customs. There was also clear and cogent evidence to the effect that the bill of sale the member presented to customs was a false document. The Committee found that based on this evidence and the fact that the member did not testify, the Board did not commit a manifest error in inferring that the Appellant had declared a lower value than what he had paid. The Committee recommended that the appeal be denied.

After the Committee's recommendation, the member withdrew the appeal. The Commissioner therefore did not adjudicate the matter.

D-34 A member was criminally charged with two counts of assault and one count of breach of an undertaking in connection with incidents involving the member's spouse. At trial, the member initially pleaded guilty and admitted the alleged facts, but during sentencing he provided explanations which amounted to a defence. Although the Crown itself pointed out the member's defence, the court nevertheless refused to let the member withdraw his guilty plea; the member was convicted and given a light sentence. The member was not represented by legal counsel. Three RCMP disciplinary allegations of disgraceful conduct were subsequently brought against the member. At the disciplinary hearing, the Appropriate Officer's case proceeded on the basis of proving that the facts underlying the three disciplinary allegations were the same as those of the three criminal convictions; the Appropriate Officer then relied upon s. 39(2)(b) of the *RCMP Regulations*, arguing that this provision made the criminal convictions conclusive in establishing disgraceful conduct. The member meanwhile provided a defence on the facts and merits of the allegations.

The Adjudication Board found that s.39(2)(b) did not have the conclusive effect argued by the Appropriate Officer. It found the member's defence to be credible and dismissed the two allegations of assault. However, it found that the breach of undertaking allegation was

established as it was supported by the member's own evidence. The issue of sanction was then addressed at the disciplinary hearing. The Appropriate Officer declined to provide evidence or submissions on sanction. The member, meanwhile, provided evidence and submissions and argued for a minimal sanction. The Board, nevertheless decided upon a sanction of a direction to resign.

The Appropriate Officer appealed the dismissed allegations; the member appealed the sanction.

The Committee dealt first with the Appropriate Officer's appeal. After an extensive review of the law in this area, the Committee found that criminal convictions provide *prima facie* proof of facts in subsequent non-criminal proceedings, but this proof was subject to rebuttal. Contrary to the Appropriate Officer's arguments, the Committee found that such a rebuttal did not amount to abuse of process in this case. Further, the Committee found that s.39(2)(b) did not have the effect of deeming the conduct to be established, but only of deeming the conduct to be disgraceful, if established. The Adjudication Board therefore had made no error in assessing the applicable law. Furthermore, the Adjudication Board had made no manifest error of fact in finding that the allegations of assault were not established. The Committee recommended that the Appropriate Officer's appeal be dismissed. In dealing with the member's appeal on sanction, the Committee noted that the Appropriate Officer had put the Adjudication Board in a difficult position by declining to make submissions or provide evidence on sanction. The Adjudication Board had thereby been deprived of evidence and submissions from the party seeking sanction. The Board had nevertheless imposed a severe sanction and had taken extensive "official notice" (akin to judicial notice) of factual considerations that were not in evidence and that, in some cases, contradicted the evidence submitted by the member. The Committee found that it was doubtful if some of the Board's considerations against the member legitimately could be raised in the absence of evidence. In any case, the Board was required to inform the member of the considerations that the Board itself raised and to give the member an opportunity to respond; the Board had not done so. The Committee recommended that the member's appeal be allowed. The *RCMP Act* does not allow a rehearing solely for the issue of sanction; the appropriate remedy was a substituted sanction. The Committee recommended that a proper formal sanction, reflecting the circumstances in evidence, would be the next sanction in declining order of seriousness: a forfeiture of ten days of pay. The Committee further commented that it would be very concerned if the above Findings and Recommendations were interpreted as indicating that the Committee views spousal violence as less than an extremely serious problem. It stated that the scandalous and tragic practice of turning a blind eye to such behaviour must be put behind us as a society, and that the Force's position in enforcing laws within our society gives it special responsibilities in this regard. The Committee strongly emphasized that in cases where spousal violence is established, the Force must view such conduct as extremely grave.

The Commissioner had not issued his decision in this matter by 31 March 1995.

ii) *Disgraceful Conduct and Disobeying a Lawful Order*

D-33 Two allegations of disgraceful conduct were brought against a member for having allegedly struck two persons during an altercation outside a bar. The member, off-duty at the time of the events, also faced one allegation of making a false statement to a member superior in authority after having given a false identity to an RCMP Constable investigating the altercation. The Adjudication Board found that one of the disgraceful conduct allegations was established but that there was insufficient evidence to substantiate the second one. The Board also found the allegation of making a false statement to be established. The sanction imposed was 2¹/₂ days' forfeiture of pay and a reprimand. The member appealed, arguing that there was insufficient credible evidence on the facts of the first allegation and that the board had erred in finding that the investigating constable was superior in authority as he was of the same rank and junior in service.

The Committee found that the Board had not committed a manifest error in finding that

facts of the first allegation were established. With respect to the third allegation, the Committee found that a member can be superior in authority to another due to the official functions that the first might be carrying out, such as a *Criminal Code* investigation. The Committee therefore recommended that the appeal be denied.

The Commissioner stated that upon reviewing all the issues under appeal, he reached conclusions similar to those of the Committee and found no reason to alter the Adjudication Board's decision. The appeal was denied.