



Commission for
Public Complaints Against the
Royal Canadian Mounted Police

Commission des
plaintes du public contre la
Gendarmerie royale du Canada

Commission for
Public Complaints
Against the RCMP

review

2004/2005

annual report

The Honourable Anne A. McLellan, P.C., M.P.
Minister of Public Safety and Emergency Preparedness Canada
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ms. McLellan,

Pursuant to section 45.34 of the *Royal Canadian Mounted Police Act*, I hereby transmit the annual report of the Commission for Public Complaints Against the RCMP for the 2004–2005 fiscal year, for tabling in Parliament.

Yours very truly,

Shirley Heafey
Chair
June 2005

Minister of Public Works and Government Services
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VISION Excellence in policing through accountability.

MISSION To provide civilian review of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

MANDATE The mandate of the CPC is set out in Part VII of the *RCMP Act* and can be summarized as follows:

- / receive complaints from the public about the conduct of RCMP members;
- / conduct reviews when complainants are not satisfied with the RCMP's handling of their complaints;
- / hold hearings and investigations; and
- / report findings and recommendations.

CORE VALUES The following core values guide our work and reflect the work environment for which we strive:

- / Independence
- / Fairness
- / Effective communication
- / Respect
- / Professionalism
- / Objectivity
- / Timeliness
- / Excellence
- / Integrity
- / Teamwork

MESSAGE FROM THE CHAIR



New challenges emerge and old ones persist. That is certainly the case here at the CPC. But each one presents an opportunity.

In the dark days that followed 9/11, the RCMP assumed a major role in the protection of national security.

The *Anti-terrorism Act* provoked much public debate over the appropriate balance to strike between rights and security. As the RCMP undertook its expanded role, rumblings were heard about “racial profiling” and other alleged inequities said to have occurred in the pursuit of national security. This highlighted the need for effective review of the national security activities of the RCMP and the Government of Canada committed itself to the establishment of an appropriate mechanism. To this end, Mr. Justice Dennis O’Connor was asked to make such recommendations as he saw fit in conjunction with his factual inquiry into the circumstances leading to the deportation of Canadian citizen, Maher Arar, from the United States to Syria.

The CPC devoted much time and effort this year to formulating our submission to Mr. Justice O’Connor because effective civilian review of national security activities is so critical to the maintenance of our human, civil and constitutional rights. We proposed a comprehensive solution that reflects the integrated nature of security and intelligence operations in the modern world. Specifically, we proposed the creation of a permanent commission, in addition to our CPC, that could review the national security activities of federal officials generally. Alternatively, if a less comprehensive solution is preferred and if this CPC is to continue to exist, we strongly suggested that it be properly empowered and resourced to do its job effectively. This would entail, for example, the power to conduct random audits of RCMP files as well as new investigatory powers that would make CPC investigations meaningful.

Old challenges persist. Our access to information necessary to a proper review of RCMP conduct remains problematic. The myriad of reasons given by the RCMP for not disclosing relevant information suggests a general reluctance to share information with the CPC and this reluctance is enabled by legislation that is inadequate to discharge the mandate.

In a recent court decision, where the CPC had requested access to information subject to the police informer privilege, the Federal Court acknowledged that RCMP assertion of the “informer privilege...will seriously impede the ability of the Complaints Commission to review complaints...”¹ but concluded that Parliament, not the Courts, had to remedy the

¹ Canada (Royal Canadian Mounted Police Public Complaints Commission) v. Canada (Attorney General) (2004), 255 F.T.R. 270, 2004 FC 830.

problem. I am calling on Parliamentarians to heed the words of the Court and to take the steps necessary, whatever form that takes, to ensure that Canadians enjoy effective civilian review of their national police service.

In the face of these challenges, we look for innovative and constructive ways to get the job done and to serve the Canadian public. I can fairly say that no differences between the CPC and the RCMP have been aired in public before private attempts at resolution have failed. In this respect, our efforts have not been as fruitful as we would have liked. As the Federal Court of Appeal and the Chair of the Commission have recently pointed out, certain actions of the RCMP did "...not help foster a good trust-based relationship" and "[t]he system put in place by Parliament requires the mutual trust and cooperation of the two principal actors in the process: the Commissioner and the Commission Chairperson."²

I am committing the CPC to a renewed dialogue with the RCMP and am calling on its leadership to more fully embrace the concept of civilian review so we can work together to cultivate the trust Parliament expects from the people entrusted with giving effect to the RCMP public complaint process.



Shirley Heafey
Chair

² Royal Canadian Mounted Police Public Complaints Commission v. Attorney General of Canada, 2005 FCA 213.

PART I : About the CPC

OUR ROLE

The Commission for Public Complaints against the RCMP (CPC) is an independent body. It is not part of the RCMP. Parliament established the CPC in 1988 to provide civilian review of RCMP members' conduct in performing their policing duties so as to hold the RCMP accountable to the public.

The CPC ensures that complaints made by the public about the conduct of RCMP members are examined fairly and impartially.

When it is appropriate, the CPC attempts to resolve public complaints informally. It conducts reviews when complainants are not satisfied with the RCMP's handling of their complaint. The CPC does not act as an advocate for either the complainant or the RCMP member(s). Nor is the CPC a disciplinary body. The complaint process is not meant to accommodate complainants who want to pursue restitution or compensation.

The CPC makes findings and recommendations aimed at identifying, correcting and preventing recurring policing problems. These findings and recommendations may address the conduct of specific RCMP members or may deal with broader issues involving RCMP policies and practices.

JURISDICTION OF THE CPC

The CPC has jurisdiction over a complaint from a member of the public that concerns the conduct of an RCMP member while performing a policing duty or function. Jurisdiction may, in limited circumstances, extend to complaints about the off-duty conduct of members. When the off-duty conduct of an RCMP member is at issue, the CPC has jurisdiction over the complaint only if it is determined that the alleged conduct is likely to adversely affect the member's performance as an RCMP member and/or the RCMP's reputation.

The CPC does not have authority to review matters falling within the administration of the affairs of the RCMP. In other words, managerial or administrative concerns cannot be dealt with pursuant to Part VII of the public complaint process under the *RCMP Act*.

COMPOSITION OF THE CPC

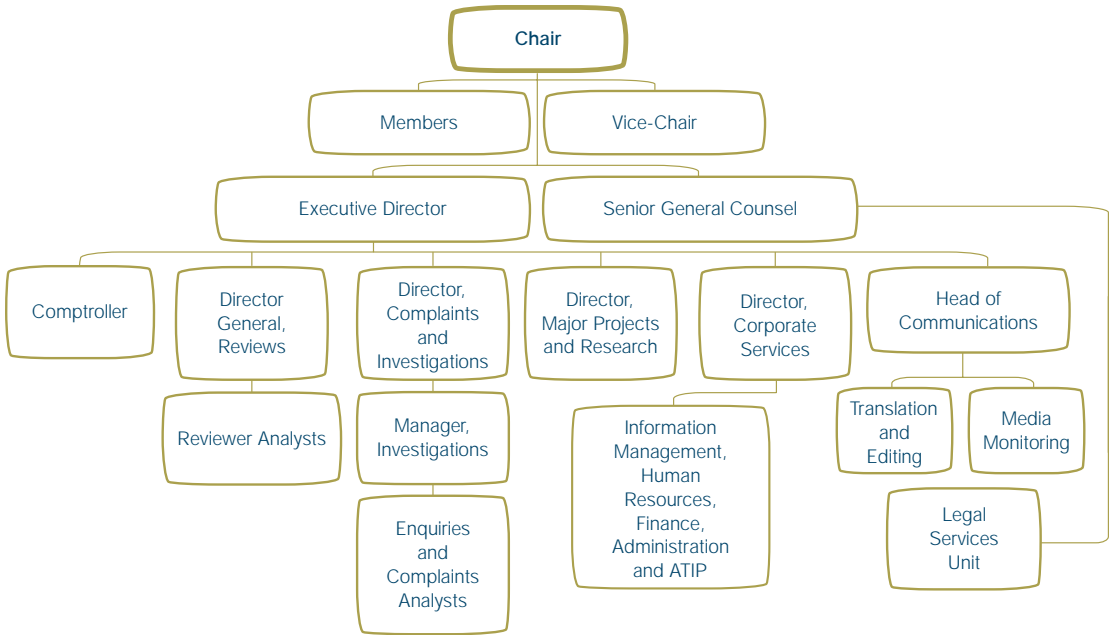
CPC Members

The legislation establishing the CPC provides for a Chair, a Vice-Chair and the possibility for other members and alternates from all provinces and territories that contract with the RCMP to provide policing services. The Chair serves full time; other members may serve full time or part time to sit on hearings, if called. The Governor in Council appoints the Chair and Vice-Chair for a term of up to five years. The members of the CPC representing each province or territory are also appointed by the Governor in Council following consultation with the minister responsible for policing in that province or territory.

CPC Staff

The CPC complaints analysts are the first point of contact for the public and they are responsible for receiving all enquiries and complaints in either official language. When a complainant requests a review of his or her complaint, CPC reviewer analysts engage in a review of all relevant materials relating to the complaint. CPC staff carry out a number of duties associated with hearings, investigations and reviews.

CPC Structure



PROCESS OVERVIEW

A member of the public can make a complaint directly to the RCMP, the CPC or a provincial policing authority. Ultimately, the complaint is sent to the RCMP for resolution. The Chair of the CPC may also at any time initiate a complaint if she is made aware of the matter from an outside source, undertake a public interest investigation or conduct a hearing. The CPC has relied heavily on the media in identifying critical cases since it has no power to audit RCMP activities.

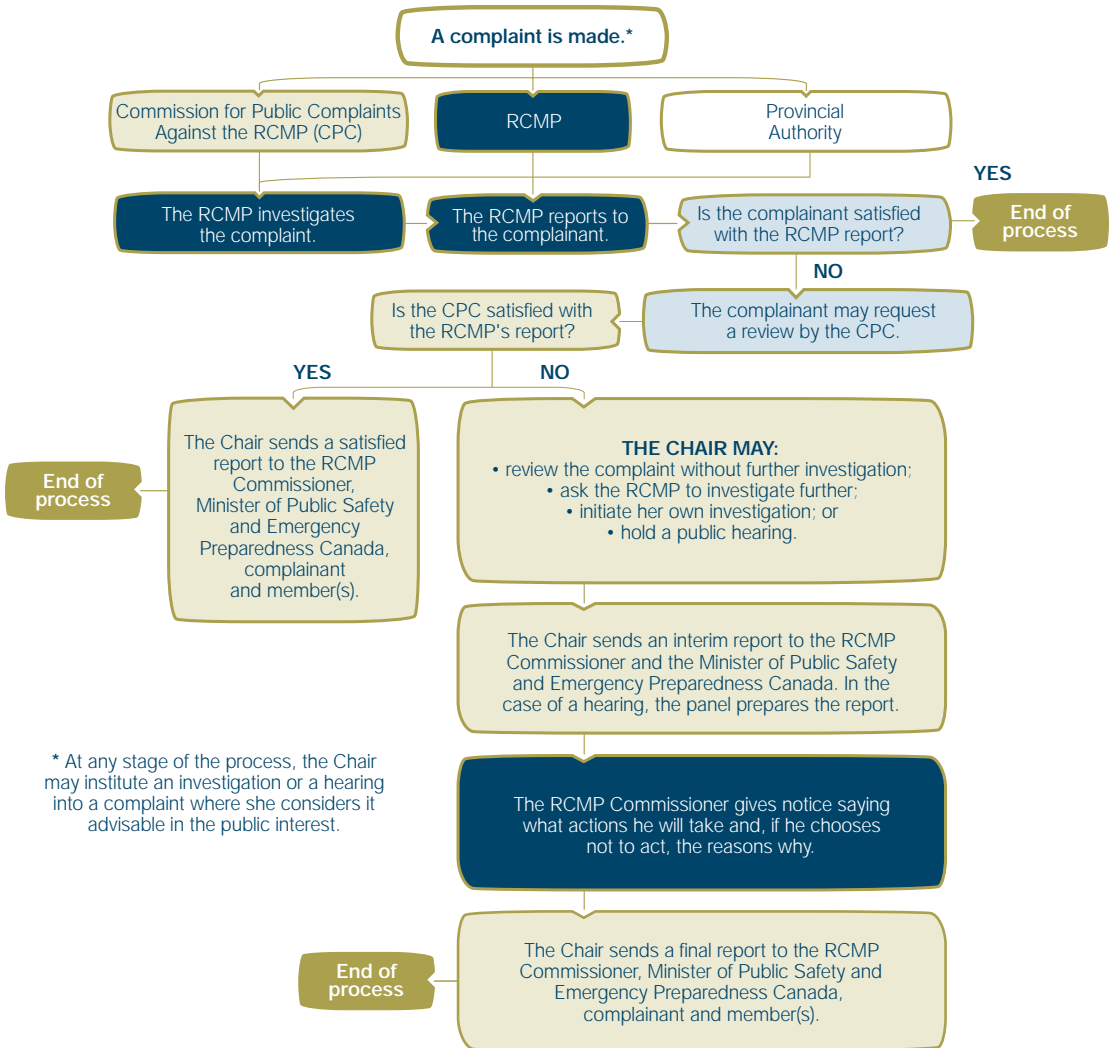
Where appropriate, CPC staff facilitates the resolution of complaints through Alternate Dispute Resolution (ADR). Otherwise, complaints are forwarded to the RCMP which may also attempt to resolve the complaint informally. If informal resolution fails, the RCMP conducts an investigation and then reports its results to the complainant and the RCMP member(s) involved.

If the complainant is not satisfied with the RCMP's handling of the matter, he or she may refer the complaint to the CPC for review. Each CPC review of a complaint involves a thorough analysis of all materials relating to the complaint, including, but not limited to, the RCMP operational file, the RCMP public complaint investigation, the relevant law and policy, and all material provided by the complainant.

Following this review, if the Chair is satisfied with the RCMP's handling of the complaint, she sends a final report to all parties involved, including the RCMP Commissioner and the Minister of Public Safety and Emergency Preparedness Canada.

If the Chair is not satisfied with the way the RCMP handled the complaint, she may review it without investigating further, ask the RCMP Commissioner to investigate further, initiate her own investigation or hold a public hearing. When this review is complete, the Chair sends an interim report to the RCMP Commissioner and to the Minister setting out her findings and recommendations.

The Complaint Process



* At any stage of the process, the Chair may institute an investigation or a hearing into a complaint where she considers it advisable in the public interest.

On receipt of the interim report, the RCMP Commissioner reviews the complaint in light of the Chair's findings and recommendations. He must then notify the Chair and the Minister, in writing, of any further action that has been or will be taken with respect to the complaint. Should the RCMP Commissioner reject any findings or recommendations, the RCMP Commissioner must include in this notice the reasons for the rejection. After considering the RCMP Commissioner's notice, the Chair prepares and sends, to everyone involved, a final report that includes her final findings and recommendations.

PART II : Complaints

COMPLAINTS

When a complaint is made directly to the CPC, a complaints analyst obtains the details of the complainant's concerns, formulates the concerns into a clear complaint, determines whether the complaint falls within the jurisdiction of the CPC, and, if so, forwards it to the RCMP. During 2004–2005, the CPC received 825 formal complaints.

The following summaries provide an overview of complaints the CPC received during this past fiscal year. They highlight key issues that warrant continuing CPC concern.

The summaries are based on allegations provided solely by complainants; the source complaints have been sent to the RCMP for their investigation and determination.

Persons in a Mental Health Crisis

- / Complainants have alleged a serious lack of understanding and training in dealing with the needs of citizens in a mental health crisis. They have alleged mistreatment of persons with bipolar affective disorder, epilepsy, and grand mal and psychomotor seizures.
- / There have been complaints of inappropriate deployment of police dogs, emergency response teams and Tasers by the police in their dealings with persons in a mental health crisis.

/ Complainants have demanded:

// increased police training and sensitivity in dealing with citizens with mental illness(es);

// greater police capacity to recognize identifying characteristics (appearance and behaviour) of persons in a mental crisis; and

// more humane dealings by using proven tactics that more effectively permit police control of a situation while minimizing harm inflicted.

Excessive Use of Force, Tasers

/ Complainants frequently allege excessive and improper use of force by police.

/ There have been complaints that cite unnecessary tackling, punching, kicking and striking with a nightstick. Other complaints reference excessive use of force administered on one individual by two or more members at one time.

/ There have also been several complaints related to the inappropriate and excessive use of Tasers.

/ Complainants have demanded more responsible use of the Taser, specifically in terms of:

// the circumstances in which it is used;

// how often police explore alternate means of using force;

// whether it can be used without seriously risking long-term injury or death (e.g., *How many times can a Taser be used on an individual on one occasion? Are "safe" distances respected when the Taser is administered?*); and

// whether paramedics, doctors, nurses or other appropriate medical personnel are alerted when Tasers are deployed.

Aboriginal Peoples

- / Complainants frequently allege that citizens (particularly youth) from Aboriginal communities are not treated by police in a respectful manner.

- / There are complaints related to:
 - // excessive and unnecessary pepper sprayer and Taser use;
 - // unwarranted stops, suspicion of wrongdoing and questioning of individuals;
 - // low priority assigned to Aboriginal citizens and their calls;
 - // unwillingness of police to identify themselves upon request; and
 - // insensitivity regarding Aboriginal traditions, culture and spirituality.

Members of Visible Minorities

- / Complainants allege inappropriate treatment (related to their race, ethnicity or appearance) that includes:
 - // unnecessary stops, questioning of individuals, suspicion of wrongdoing; and
 - // excessive use of force (shoving, punching, pepper spraying); and
 - // offensive language (racial slurs, threats).

CHAIR-INITIATED COMPLAINTS

The Chair has the authority to initiate a complaint, pursuant to subsection 45.37(1) of the *RCMP Act*, in cases where she is satisfied that there are reasonable grounds to investigate the conduct, in the performance of any duty or function under the Act, of any member or other person appointed or employed under the authority of the Act. In order to trigger this process, the Chair must be made aware of the incident from an outside source. To that end, the CPC must rely heavily on the media to identify cases where intervention is needed since it has no power to randomly audit RCMP activities. In the following case, the Chair became aware through news reports.

/ On January 6, 2005, the Chair initiated a complaint into the RCMP shooting death of an Aboriginal man from Norway House, Manitoba. In making the complaint, the Chair of the CPC has initiated a process set out in the *RCMP Act* that requires the RCMP to then disclose all of its investigative findings to the CPC so that the CPC can conduct an effective review of the RCMP's involvement in this incident. The RCMP is currently investigating the shooting and is keeping the CPC aware of the progress of the investigation. After reviewing the results of the RCMP investigation and undertaking any other investigation she considers necessary, the Chair will issue a report setting out her findings and recommendations.

Complaints Made Directly to the CPC in 2004–2005

Pacific Region	Yukon	5
	B.C.	460
	TOTAL	465
Prairie Region	Alberta	97
	Saskatchewan	75
	Manitoba	51
	Northwest Territories	10
	Nunavut	7
TOTAL	240	
Central Region	Ontario	14
	Quebec	11
	TOTAL	25
Atlantic Region	New Brunswick	48
	Newfoundland	10
	Nova Scotia	32
	Prince Edward Island	0
	TOTAL	90
Other		5
GRAND TOTAL		825

REVIEWS

When the RCMP receives and deals with a complaint it is required to document all the steps in its handling of the complaint. This is an important step because complainants can ask the CPC to review the RCMP's disposition of their complaints.

When a request for review is received by the CPC, a letter is sent to the RCMP requesting disclosure of all relevant materials associated with the complaint. Relevant materials include, but are not limited to, the letter of disposition, the investigation report prepared by the RCMP public complaint investigator, the RCMP operational file, any notes taken by the subject member, statements obtained during the public complaint investigation, and photographic, video and audio records pertinent to the complaint. When the relevant materials are received from the RCMP and the complainant, an assessment is made of the complexity of the request for review and the completeness of the relevant materials provided by the RCMP.

Once the CPC reviews the complaint, it may issue a **satisfied** report wherein it supports the disposition of the public complaint by the RCMP or an **interim** report wherein the CPC disagrees with the RCMP disposition of the complaint and makes findings and recommendations. The following case summaries serve to highlight issues of concern addressed by the CPC and to underscore the impact this agency has on RCMP accountability.

Use of Force

/ The complainant was arrested by two RCMP members for assaulting his spouse with a knife. Upon arrival at the RCMP detachment, a physical confrontation ensued, which resulted in one of the RCMP members using his Taser weapon on the complainant, who fell to the ground. The complainant alleged that, once he was on the ground, one of the officers kicked him twice in the face and he fell unconscious. The evidence of the RCMP officers was inconsistent as to how the complainant received his injuries. One officer stated the injuries occurred as a result of the other officer being off balance and falling on the complainant; and the other officer stated the injuries were the result of the complainant falling. The complainant suffered serious injuries to his head and eye as a result of the incident. In the RCMP's initial disposition of the complaint, the RCMP accepted the evidence of one of the subject members that he was off balance and fell on the complainant and concluded no excessive force had been used.

The Vice-Chair's interim report concluded that the officers had used excessive force against the complainant, including kicking him in the head, thus causing serious injuries to the complainant. The Vice-Chair noted that a reasonable person, having reviewed the evidence, would conclude that an off-balance fall onto the complainant would not have caused the serious injuries suffered by the complainant. The Vice-Chair recommended the RCMP consider appropriate disciplinary sanctions against the two RCMP members and that the complainant receive an apology.

The RCMP Commissioner disagreed with the finding and recommendations of the CPC, claiming that the interim report was selective in the information used to support its finding. However, the Commissioner noted that the public investigation conducted by the RCMP was superficial and of no assistance in making a determination because the RCMP members did not take adequate contemporaneous notes of the incident as required by policy. On that basis, the Commissioner stated he was unable to make a finding in favour of either the complainant or the RCMP members.

The Vice-Chair responded to the RCMP Commissioner's suggestion of lack of impartiality by confirming that the Vice-Chair's conclusions were based upon the available evidence, which indicated that the subject members' version of events was implausible. The Vice-Chair also observed that the failure of the RCMP members to take contemporaneous adequate notes undermined the quality of the evidence obtained during that investigation. The Vice-Chair took issue with the Commissioner's statement that he could not make a finding in favour of the complainant or the members. By reaching such a conclusion, the Commissioner allowed the officers to avoid being held to account because they took poor notes and were the subject of a superficial public investigation.

- / The complainant was driving his mother's vehicle, accompanied by his wife, daughter, father and mother, when he hit a rock and the muffler came off. He pulled over and an RCMP member stopped to investigate. The member determined that the vehicle was unregistered and attempted to give the complainant a ticket. The complainant refused to take the ticket and the RCMP member shoved it into the complainant's pocket. The complainant removed the ticket and threw it to the ground, and was charged with obstruction of justice. The member used inappropriate force, including dragging the complainant by his ponytail, to arrest him. The complainant alleged that the RCMP used excessive force during his arrest.

The Chair's interim report noted that the applicable statute did not confer authority on a peace officer to compel acceptance of a summary offence ticket. Several methods of service were available to the RCMP member, he was not authorized to force service of the ticket, and the complainant was under no obligation to accept service of the ticket. Therefore, the complainant's arrest for obstruction for refusing to accept service was unlawful, and, consequently, any use of force was excessive. The Chair's interim report also noted that, even if the complainant's arrest had been lawful, the RCMP member used excessive force by dragging the complainant across the road by the hair without first giving him an opportunity to comply. The Chair's interim report recommended that the member be provided with operational guidance concerning his lawful authority to arrest and his excessive use of force in this situation.

The RCMP Commissioner fully supported the CPC's findings and recommendations.

- / The sister of a man arrested for impaired driving alleged that an RCMP member used his baton to strike and injure the man while he was secured in the rear of a police vehicle; that the member then removed the man from the police vehicle, hit him repeatedly and pepper sprayed him; and that, for an improper purpose, the member had the man's common-law wife arrested for impaired driving.

The Chair's final report concluded that, while the member had struck the complainant's brother's hand with his baton while in the police vehicle, he had done so only after a gradual escalation in the amount of force used and out of concern for his own safety. The member was alone in the car, and the complainant's brother would not stop reaching for the officer through the glass partition. In addition, although the member did injure the complainant's brother's arm, side, eye and head with his baton strikes, he did so only after being faced with an intoxicated adversary who was acting irrationally, who would not be dissuaded, and who had kicked him and then advanced upon him. Under the circumstances, the force used was reasonable.

Treatment of Persons in Custody

- / During the investigation of a single-vehicle accident, a witness provided vague information about a person driving while impaired and reported this to two RCMP members. In this case, the driver of the suspect car was one of the two complainants. As part of their investigation, the two RCMP members

attended at the residence of the two complainants, a husband and wife. One of the RCMP members accompanied the female complainant into the residence; however, he did not request permission to enter the residence and was told by the female complainant that he was not allowed inside. The female complainant also stated that she had tried to close the door on the RCMP member. Once inside the residence, one of the members attempted to arrest the male complainant for impaired driving. The female complainant interceded and was arrested for obstruction. While in the police vehicle, on her way to the detachment, the female complainant kicked the vehicle and one RCMP member responded by sitting on her to restrain her. During her first night in custody at the detachment, the female complainant had her pants removed by the female RCMP member and was not given a blanket to cover herself.

The complainants, First Nations people, complained that the RCMP members unlawfully entered their residence, used excessive force, improperly arrested the female complainant and did not provide the female complainant with proper care while in custody.

The Chair's interim report concluded that, given the vague information provided to the members regarding the alleged impaired driver, no reasonable grounds existed for the arrest of the male complainant. Therefore, the members could not rely on *Criminal Code* provisions allowing a peace officer to enter a dwelling-house without a warrant. Without the consent of either complainant, the members' entry was unlawful; therefore, the female complainant's arrest and any use of force were improper. The Chair's interim report recommended that the RCMP member who entered the residence receive operational guidance concerning the requirements to enter a dwelling-house.

The Chair's interim report also concluded that, although the handcuffed female complainant yelled, screamed and kicked the window of the police vehicle, she did not cause any damage to the vehicle or to herself. Accordingly, the actions of the RCMP member who sat on the female complainant were unacceptable. RCMP policy requires that detainees be treated with decency, and that the least intervention necessary be used to manage the risk. The Chair's interim report recommended that the RCMP members receive operational guidance regarding the proper transportation of persons in RCMP custody.

Finally, the Chair's interim report concluded that, while it was reasonable for the female member to remove the female complainant's pants in order to search them, they should have immediately been returned to her. In addition, she should have been provided with a blanket at the point at which she became cooperative. The members did not take proper care of the female complainant while she was in custody or treat her with the decency required by RCMP policy. The Chair's interim report recommended that the members be provided with operational guidance concerning the proper treatment of persons while in RCMP custody.

The RCMP Commissioner fully supported the Commission's findings and recommendations.

Cell Death

- / The mother of a man who had died from asphyxia by hanging while lodged in cells at an RCMP detachment complained to the CPC that unidentified RCMP members failed to properly monitor him while he was in RCMP custody, murdered her son, failed to conduct an adequate investigation into his death and tampered with evidence in his cell area. The complainant submitted a number of photographs in support of her allegations.

The Chair's final report concluded that there was no compelling evidence that unidentified RCMP members did anything that led to the death of the complainant's son. The RCMP's version of events was supported by the observations of the complainant's son's cellmate and other inmates, and by the autopsy report. The Chair's final report also concluded that the complainant's son appeared to be monitored in accordance with the RCMP policies in force at the relevant time, but emphasized the importance of making detailed notes in the prisoner's guard log book and of making a physical check of each cell as opposed to a visual glance at the outside of the cell. Finally, the Chair's final report concluded that the investigation conducted into the death of the complainant's son was adequate, and that there was no compelling evidence of improper tampering of evidence in the complainant's son's cell.

Civil Dispute

- / The complainant and her husband sold a used truck to another couple. A down payment was given to the complainant's husband. The purchasers were to make monthly payments on the truck until the balance owing was paid. The complainant's husband provided the vehicle registration to the

purchasers and gave them permission to drive the truck. The purchasers subsequently became the subject of an immigration investigation by two RCMP members. One of the RCMP members volunteered to assist the purchasers in having the truck registration transferred to them, including having the complainant sign the transfer portion of the truck registration. The member then went to the complainant's place of employment and convinced her to sign the transfer portion of the truck registration thereby transferring ownership to the purchasers by deceitful means. The complainant alleged that the RCMP member tricked her into signing the transfer of ownership.

The Chair concluded that the RCMP member should not have involved himself in a civil dispute. She found that the RCMP member deceived the complainant into signing the truck registration by asking the complainant to prove that a signature at the front of the truck registration was a forgery by signing the back of the registration, which was the transfer portion. The RCMP did agree that the RCMP member had improperly involved himself in a civil dispute and stated that this member would be dealt with accordingly by his superiors. The Chair was of the view that the RCMP had not gone far enough in dealing with this complaint and strongly recommended that the RCMP also apologize to the complainant for the deceit perpetrated against her.

The RCMP Commissioner fully supported the CPC's findings and recommendations.

Requests for Review Received by the CPC in 2004–2005

Pacific Region	Yukon	0
	B.C.	63
	TOTAL	63
Prairie Region	Alberta	21
	Saskatchewan	18
	Manitoba	10
	Northwest Territories	2
	Nunavut	1
	TOTAL	52
Central Region	Ontario	12
	Quebec	3
	TOTAL	15
Atlantic Region	New Brunswick	5
	Newfoundland	5
	Nova Scotia	11
	Prince Edward Island	0
	TOTAL	21
GRAND TOTAL		151

PUBLIC INTEREST INVESTIGATIONS, FURTHER INVESTIGATIONS AND HEARINGS

The CPC is committed to raising public awareness about important policing issues and is dedicated to providing a complaint process that is both accessible and transparent. This process must maintain the confidence of the public, members of the RCMP and Parliament, and must reflect a clear understanding of the diversity and complexity of Canadian society. Public interest investigations are intended to serve these purposes. As such, the CPC Chair can launch a public interest investigation into any complaint as a result of a review or when she considers it advisable in the public interest. When she takes this step, the RCMP does not have to conduct an investigation.

The Chair initiated two new public interest investigations in the year 2004–2005.

Kingsclear Public Interest Investigation

- / In May 2004, the Chair initiated a public interest investigation into complaints received relating to RCMP investigations of alleged sexual abuse at the Kingsclear Youth Training Centre in New Brunswick. The investigation was convened to examine allegations that the RCMP did not properly investigate alleged criminal conduct by an RCMP Staff Sergeant, Kingsclear custodial staff and Kingsclear residents and that the RCMP engaged in activities designed to cover up this alleged criminal conduct.

When announcing this investigation, the Chair stated, “It is alleged that vulnerable young people were abused by people in positions of authority and the RCMP failed to respond appropriately. I believe that, as a society, we are judged by the manner in which we treat the most vulnerable among us. I am launching this investigation to ascertain the facts surrounding these allegations. As the investigation proceeds, I will be continually assessing the need for a hearing in the public interest. In proceeding in this way, I hope to ascertain the facts in the most efficient, expeditious way. It is only by making the facts of this case known, that both complainants and members of the RCMP will be able to move forward.”

This investigation is the largest ever undertaken by the CPC, encompassing almost 15 years of RCMP investigative work. In order to commence the investigation, internal staff of the CPC were seconded to this project while additional resources were sought from Treasury Board to enable the CPC to obtain further investigative assistance. Obtaining additional resources is a time-consuming process and has caused some delays in the investigation.

The CPC, a small agency, has had to operate within the constraints of its existing staff and budget until such time as further funds were approved and made available.

The RCMP immediately cooperated with this public interest investigation by providing the CPC with more than 27,000 relevant documents to assist in the CPC's review of the allegations. CPC staff have been reviewing the relevant material provided by the RCMP.

In addition, the CPC has been pursuing access to other relevant materials necessary to its review. The Provincial Archives in New Brunswick as well as the New Brunswick Attorney General have fully cooperated.

It is currently anticipated that this public interest investigation will require examination of some 50,000 to 75,000 documents. This number of documents, in conjunction with the hundreds of personal interviews that are considered necessary, illustrate the substantial magnitude of this investigation.

With the Minister's support, the CPC recently obtained the requested funding from Treasury Board to enable the CPC to hire additional staff and services to expedite the investigation currently under way. In addition, the CPC now has the resources to acquire the technological support and services for a project of this size and complexity and is in the process of acquiring additional physical space to house these new resources.

A future annual report will provide an update on the progress of this investigation.

- / In July 2004, the Chair initiated a public interest investigation into a complaint of sexual assault and intimidating conduct. The complainant alleged that, during a vehicle check, she was improperly subjected to a body search by a male member of the RCMP. This member also allegedly tried to intimidate the complainant on an earlier occasion. The RCMP conducted a criminal investigation and found that no charges were warranted. The CPC investigation is awaiting the results of the RCMP criminal investigation and will resume in 2005–2006. A report will be provided in a future annual report.

A number of public interest investigations undertaken by the CPC were concluded in the year 2004–2005. These investigations highlighted two important issues: allegations of excessive use of force by RCMP members in the performance of their duties and the carrying-out of inadequate investigations.

- / The CPC concluded its public interest investigation of RCMP conduct in the investigation into the disappearance and murder of a young child. The RCMP acknowledged that there were serious weaknesses in the criminal investigation and recommended numerous corrective measures. The CPC agreed that the criminal investigation was seriously flawed and focused its investigation on the extent to which the 23 recommendations made by the RCMP internal review addressed the problems and were implemented. Based on the CPC's investigation, the CPC found that the RCMP had taken steps to fully implement the recommendations with a view to preventing such serious problems from recurring.

- / The CPC investigation into allegations of excessive use of force by an RCMP member against two Aboriginal youths was concluded. The incident involved two youths suspected of throwing objects off of an overpass onto cars travelling below. During the CPC investigation into the matter, it was determined that the youths were detained in a cell and questioned without sufficient grounds and that the RCMP member failed to provide them with their right to counsel. The CPC was unable to make a finding with respect to the allegation of excessive use of force because the video tape contained in the cell video surveillance camera, which would normally provide crucial and independent evidence, had run out and had not been replaced. This glaring oversight on the part of the RCMP prevented the CPC from making determinations with respect to the RCMP's and the complainant's version of events. Further, the available medical evidence was insufficient to conclusively determine the degree of force used.

The RCMP Commissioner agreed with the CPC's recommendation that the subject member be provided with relevant operational guidance with respect to the limits of investigative detention. He also agreed that the member failed to provide the youths with their right to counsel and that this failure would be adequately addressed by the RCMP.

- / The CPC investigation was concluded into allegations of excessive use of force on a 13-year-old boy who had his nose broken during his arrest. The CPC found that the youth had been properly questioned after having been found with an open bottle of liquor in his pocket and after acknowledging that he had consumed liquor. When one of the two RCMP members at the scene attempted to seize the liquor, the youth started to flee, and was forced to the ground by the member. The youth, physically mature for his age, was struck in the facial area three separate times by the member as the youth struggled and resisted efforts to be handcuffed. It was unclear whether or not this physical contact or the youth's initial fall to the ground resulted in his broken nose.

Since the youth was aggressive and obstructed the RCMP members in their attempts to seize the liquor, the members had reasonable grounds to arrest him. The Chair found that the force used was reasonable given the situation, but reminded the RCMP that great care should always be taken in the arrest of a child, notwithstanding height and weight.

The RCMP Commissioner fully supported the Commission's findings with respect to this complaint.

- / The CPC investigation of the RCMP's investigation into a fatal motorcycle accident was concluded. A young man died while riding his motorcycle on a decommissioned logging road, and his parents were understandably distressed. The Chair found that the RCMP investigation fell well below the standard required. RCMP policy regarding the investigation of serious motor vehicle accidents requires that certain investigative steps be taken with respect to fatal accidents, including taking adequate measurements and making a sketch of the accident scene. None of the steps necessary to determine the cause of the accident were taken by the RCMP in the course of the investigation. The Chair recommended that the subject member (or the RCMP on his behalf) apologize to the complainants for his failure to conduct a thorough investigation. The Chair also recommended that the member receive operational guidance with respect to RCMP procedures concerning the proper investigation of fatal accidents.

The RCMP Commissioner fully supported the Commission's findings and recommendations and indicated that he would be ensuring that the recommendations be addressed in a timely manner.

- / The CPC concluded an investigation into an RCMP pursuit of a stolen vehicle that led to a collision which left an innocent motorist (the complainant) trapped in his vehicle with a broken pelvis and other serious injuries. The CPC found that, in the circumstances (the stolen vehicle had been under surveillance for some 20 minutes), the suspect vehicle could have been disabled prior to any pursuit. In addition, the CPC found that, once the suspect vehicle was in motion, less risky alternatives open to the pursuing member were not chosen. As a result, the chase, although short in duration, was allowed to continue as the suspect vehicle approached a six-lane intersection, in mid-morning, and the accident occurred.

The CPC found that the RCMP acted without due regard for public safety, contrary to its own policy, by which “[a] pursuit may only be initiated when other alternatives are not available and the seriousness of the situation and the necessity of immediate apprehension is judged to outweigh the level of danger created by the pursuit.”

The CPC further noted that all subject members on the scene, rather than checking on the injured motorist, gave chase to the suspects who were attempting to escape on foot.

The RCMP Commissioner did not support the CPC’s recommendations that one of the subject members receive operational guidance on applying the Incident Management/Intervention Model in any decision to initiate, continue or terminate a pursuit, or that this same member apologize to the bystander for this unfortunate occurrence. The RCMP Commissioner did agree that an apology to the complainant was appropriate for the failure to attend to his well-being following the accident.

In her final report, the Chair expressed her concern about the decision made by the RCMP Commissioner that the actions of the members involved were “within the bounds of the operational discretion of the investigators.” This decision did not seem to be in accord with an RCMP national policy direction that, during pursuits, public safety is paramount. The Chair expressed regret that “[o]nce again, I find myself reviewing a pursuit, predicated solely on the theft of property, which resulted in serious injury to an innocent bystander.”

Most of the CPC’s public interest investigation reports are available on the CPC’s Web site at <http://www.cpc-cpp.gc.ca>.

Further Investigations Conducted by the RCMP or the CPC

A number of circumstances may prompt the CPC to conduct a “further” investigation or request the RCMP to conduct a further investigation. For example, when it is clear that certain aspects of an investigation were inadequate, where the RCMP public complaint investigation failed to address a complaint in its entirety, or when relevant material and information that ought to have been collected was not obtained, a further investigation may be requested.

The CPC will initiate a further investigation as the circumstances dictate. For example, if key witnesses are reluctant to be interviewed by the RCMP public complaint investigator, a CPC investigator may be able to obtain the necessary witness statements rather than ask the RCMP. Many people are afraid to be interviewed by the very people against whom

they have complained and who police their community. When the CPC asks the RCMP to conduct a further investigation, it is often the case that certain key information was not obtained during the RCMP's initial public complaint investigation. The key information required may include additional witness statements, members' notes, continuation reports, medical reports and relevant policies. Sometimes, critical questions are not asked by the RCMP during their initial public complaint investigation. In such instances, the CPC will ask the RCMP to revisit a witness or an issue in order for the RCMP to properly complete its investigation.

In 2004–2005 the CPC did not conduct any further investigations; however, it did request that the RCMP conduct the following three further investigations.

Complaint Not Fully Addressed

- / The complainant alleged that members of the RCMP were harassing her and her family. Among other things she alleged that RCMP officers went to her daughter's home and used a Taser three separate times. The RCMP dismissed the harassment complaint without addressing the allegation that the Taser was used inappropriately on her daughter. The CPC could not review the allegations of excessive force because the RCMP had failed to address this issue. Accordingly, the CPC asked the RCMP to undertake a further investigation. The results of the further investigation have been received and the CPC is currently completing the review of this complaint.

Additional Information Warranted a Further Investigation by the RCMP

- / The complainant, who faced a criminal charge of assault, was advised in court by the Crown attorney that the RCMP had been unable to locate the alleged victim of the assault. The complainant later learned that the alleged victim had been contacted prior to the court date by an RCMP member and had advised him that she could not recall the alleged assault, that she had been drunk and that she had suffered no injuries that would support an assault. In his complaint, the complainant alleged that the RCMP member had misled the Crown attorney and had failed to disclose highly relevant information to the Crown and the defence.

The RCMP public complaint investigator had initially been unable to locate the alleged victim in order to verify the truth of the complainant's allegations. Because there was no statement from the alleged victim, the RCMP public complaint investigator accepted that the RCMP member followed procedures based on the knowledge he had at the time of the court appearance.

Subsequent to the issuance of the RCMP's letter of disposition, the alleged victim was located and interviewed by the RCMP. The statement given by the alleged victim was similar to that given by the complainant. As a result, the CPC requested that a further investigation be conducted. The results of the further investigation have yet to be received.

Adequacy of Relevant Materials

/ The complainant's vehicle collided at an intersection with an RCMP cruiser pursuing another vehicle. She alleged that the RCMP vehicle was being driven without its emergency lights or siren activated. In its response, the RCMP agreed that the member driving the cruiser erred in entering the intersection without stopping and while it was unsafe to do so. The RCMP informed the complainant that the member was provided with operational guidance for failing to follow RCMP policy.

The complainant was concerned that the RCMP's response failed to address the severity of the matter and the dangerousness of the member's actions and requested a review by the CPC. The CPC, in its review of the file, discovered that a considerable amount of relevant material had not been provided to the CPC. In particular, the file did not include statements from the RCMP member who was driving the cruiser regarding the accident from the scene of the accident, notebook entries or continuation reports, or statements made by the member during the public complaint investigation. No witness statements were taken, and no interview was conducted with the complainant in order to clarify her initial statement. No continuation reports or notebook entries were provided for the RCMP member who attended the scene of the accident. In addition, no copy of the collision analysis report was included. Accordingly, the Commission requested that a further investigation be conducted, the results of which have yet to be received.

Hearings

Public hearings are another option available to the CPC when it is dealing with complaints. Since its inception in 1988, the CPC has conducted 17 public hearings. There were no public hearings held during this fiscal year.

ALTERNATE DISPUTE RESOLUTION: HOW DOES IT WORK?

It is the responsibility of the analyst who conducts a complaint intake interview to explain the role of the CPC and that of the RCMP, the complaints resolution process and the requirement that the RCMP investigate first.

The nature of the complaint must be clarified and every effort must be made to ensure that the complainant's expectations are achievable within the CPC's mandate. The analyst encourages the complainant to explain his or her perception of the issue, thereby providing the complainant with an uninterrupted opportunity to tell his or her story. Once the relevant facts and the goals of the complainant are understood, the analyst may take a facilitative role in assisting the citizen by providing information about possibilities for dealing with the concern. It may be determined that making a formal complaint may not be the best way to achieve the outcome the complainant is looking for.

The offer of alternate dispute resolution (ADR) represents an invitation by the CPC to the complainant and the RCMP to initiate informal direct contact with a view to resolving the complaint. In the course of an interview, the analyst ensures that the complainant understands that it is his or her right to make a formal complaint and that agreeing to try to resolve the complaint informally does not mean the complainant abandons his or her right to make a formal complaint. ADR is a voluntary process.

When the complainant has an understanding of the options and has decided on a course of action, the analyst obtains whatever additional information is needed for the CPC to follow up on the process.

When the complainant chooses to have a complaint dealt with through ADR, the analyst acts as a facilitator, informally assisting the complainant and the RCMP to exchange information by keeping the channels of communication open, articulating the needs of each party and identifying issues. When facilitating in this manner, the analyst provides the RCMP with a summary of the concern expressed by the complainant, normally on the same day that the citizen raises the concern.

The RCMP has embraced the process of ADR and is a critical player in its success. The citizen and the RCMP voluntarily reach their own mutually acceptable settlement of some or all of the issues. Any outstanding issues may become the subject of a formal complaint if the complainant wishes. ADR is voluntary, creative, practical and timely. Normally such files are completed within a day or two, in contrast to formal complaint files that may take six to twelve months.

This year, the CPC saw an eight-percent increase in the number of cases in which ADR was attempted over the number in the previous last fiscal year. During 2004–2005, ADR was used in 502 cases, 471 of them successfully resolved. Only 31 resulted in formal complaints.

The following examples of successful ADR cases illustrate how the ADR initiative continues to work to quickly resolve complainants' concerns:

- / An individual complained to the CPC that while he was held in a cell for public intoxication, a number was written on his left arm with a black felt marker. A CPC analyst contacted the RCMP Inspector and was advised that, when a member of the public is too intoxicated to identify himself or herself, their effects are given a number and that number is also written on their person. The RCMP practice was explained to the complainant. The RCMP undertook to stop the practice immediately and, as a result, the complainant was satisfied and did not make a formal complaint.

- / The complainant was involved in a family dispute and taken to the local RCMP detachment. He complained that he was fingerprinted and photographed, even though he was never charged. According to law, fingerprints are not to be taken until a person is charged with an offence. A CPC analyst contacted the RCMP officer-in-charge, who arranged for the fingerprints and photos to be destroyed in the presence of the complainant. The complainant was satisfied and did not make a formal complaint.

- / A newly elected band councillor had been encountering a large number of band members who complained about how their concerns were being handled by the local RCMP detachment. Specifically, he was advised by his constituents that it would be unproductive to approach the detachment commander, who was one of the main reasons for the band members' concerns. A CPC analyst contacted the RCMP and arranged for a meeting with the band. As a result of the meeting, a new process was put in place to deal with the band's complaints, and it was agreed that there would be ongoing meetings between the local RCMP and the band. The band councillor was satisfied with the outcome and a formal complaint was not made.

Cases Resolved through ADR Process in 2004–2005

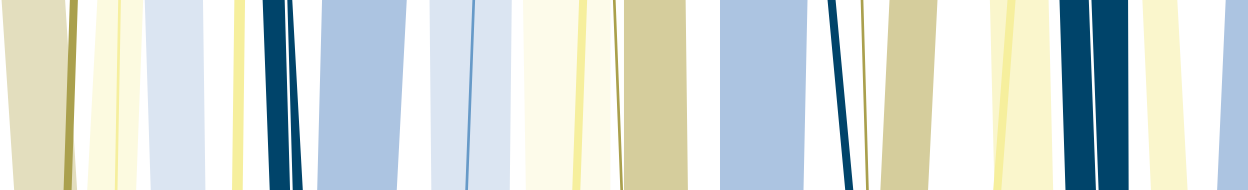
Pacific Region	Yukon	3
	B.C.	256
	TOTAL	259
Prairie Region	Alberta	52
	Saskatchewan	52
	Manitoba	41
	Northwest Territories	5
	Nunavut	3
	TOTAL	153
Central Region	Ontario	12
	Quebec	3
	TOTAL	15
Atlantic Region	New Brunswick	23
	Newfoundland	4
	Nova Scotia	14
	Prince Edward Island	0
	TOTAL	41
Other (Anonymous–Province Unknown)		3
GRAND TOTAL		471

PART III : Challenges and Opportunities

Every case can be seen as presenting a challenge, an opportunity or both. When facilitating the informal resolution of a complaint, complaints analysts take up a challenge and, more often than not, convert it into an opportunity to resolve the complaint quickly to the benefit of the complainant and the member. It is an opportunity to open a meaningful dialogue between the RCMP and the public it serves and to economize on CPC and RCMP resources.

Every review file requires the reviewer analyst to sort out the facts, to understand the demands on members of the RCMP in their daily work and to measure their conduct against known standards (for example, RCMP policy, the criminal law and/or the *Charter of Rights and Freedoms*). Frequently, when the facts are determined by the CPC, the conduct of the member is vindicated and that is an opportunity for the public and members of the RCMP alike to understand the CPC vision, i.e., excellence in policing through accountability.

The following case illustrates the way in which public complaints, and the CPC reports they generate, can have a favourable impact on RCMP operations.



/ A confidential e-mail containing personal information relating to the complainant was found in a residential mailbox. The documentation was identified as originating from the RCMP and an investigation ensued. The e-mail contained information about the complainant's criminal history, which included past convictions for sexual assault. Word spread quickly, and there was a negative public reaction toward the complainant.

The complainant alleged that unknown employees of the RCMP had leaked confidential information to the public. He also alleged that unknown members of the RCMP had improperly released his address.

Following its public complaint investigation, the RCMP acknowledged the improper release of confidential information and took immediate steps to prevent further privacy breaches. Every employee and RCMP member in the territory received clear instruction concerning the release of personal information. The Chair's final report supported the RCMP finding and the remedial measures taken in this case.

Conversely, when a review concludes with a finding that the conduct of the subject member was inappropriate in the circumstances, the CPC has an opportunity to make recommendations designed to ensure that the conduct at issue is not repeated. One measure of the CPC's impact on the RCMP is the number of findings and recommendations accepted by the RCMP Commissioner. Over the past year, the RCMP Commissioner accepted 86 percent of all CPC findings critical of member conduct and 78 percent of its recommendations.

The next case illustrates the way in which the RCMP Commissioner takes corrective steps when, as here, deficiencies in the management of criminal and public complaint investigations were identified by the CPC.

/ The complainant reported the theft of her wallet to the RCMP and, the following day, advised the RCMP of the unauthorized use of her credit cards. The RCMP member assigned to the investigation informed the complainant that, since the transactions took place in other jurisdictions, she should report them to the corresponding police agencies. As instructed, the complainant waited for the applicable billing documentation before attending. During the

following weeks, two RCMP members repeated this advice. Two of the three other police departments that the complainant visited refused to take the complaint, referring the complainant back to the original RCMP detachment.

The complainant alleged that the RCMP members neglected the performance of their duties in their handling of her complaint of theft leading to the subsequent fraudulent use of her credit cards.

The Chair's interim report concluded that, while the initial theft report required minimal intervention, since it was a property offence with no suspects and no leads, the failure of the RCMP members to make notes of the complaint in their notebooks was significant. In addition, once the fraudulent use of the credit cards became known, the RCMP members did not communicate to the complainant the requisite urgency of obtaining the billing documentation. Any possible identification of the perpetrators was hindered due to this delay. The Chair's interim report recommended that the members receive operational guidance relating to the proper conduct of a criminal investigation and the proper use and importance of members' notebooks.

The Chair's interim report also commented on the importance of fairness and transparency in the conduct of public complaint investigations. In this case, an e-mail from the RCMP's public complaint investigator to other members demonstrated that he had predetermined the issue. In addition, one member provided a continuation report relating to the incident only following the commencement of the public complaint investigation, and produced no contemporaneous notes concerning the incident. Finally, the RCMP public complaint investigator's conclusions gave rise to a perception of bias, as they focused on the conduct of the complainant rather than on the subject members.

In response, the RCMP Commissioner fully supported the CPC's findings and recommendations. The Commissioner also agreed that the deficiencies in the management of the criminal and public complaint investigations in this case fell far short of RCMP standards. The Commissioner stated that appropriate personnel would be advised of the concerns and would be instructed to take steps to avoid such deficiencies in the future.

Public confidence in the RCMP is enhanced when the RCMP accepts findings of fault and implements recommendations or when the CPC finds that the conduct in issue was right and proper. This enhanced public confidence in the national police force is the real value conferred on Canadians, including the RCMP, by CPC efforts.

A CONTINUING CHALLENGE: OBTAINING ALL NECESSARY INFORMATION

The CPC has 16 years' experience in working with the public complaint process established by Part VII of the *RCMP Act*. In those 16 years, the biggest challenge the CPC has faced, and continues to face, is access to information in the control of the RCMP. The *RCMP Act* states in clear and unequivocal words that, when a complainant requests a review of a complaint by the CPC, the RCMP must provide the CPC with all the materials relating to that complaint. These materials may include, for example, RCMP investigative and operational files, witness statements, RCMP policies and protocols, police notes, search warrants and reports to Crown. The CPC's access to these materials is vital to its ability to piece together the evidence with a view to making impartial findings of fact and determining whether or not a complaint is substantiated.

Over the years, the CPC has often encountered great difficulty in obtaining relevant material from the RCMP. This is most evident at the review stage, when the CPC requests all materials relevant to a complaint under review. In some cases, the RCMP sends materials that have been vetted prior to their delivery without explaining why they felt it necessary to do so and, in others, the RCMP delivers incomplete packages of relevant materials, requiring CPC staff to first identify the missing materials and then make further requests to the RCMP for these materials.

- / The CPC is currently reviewing a complaint whereby the RCMP assisted in the execution of 31 arrest warrants under the *Immigration Refugee Protection Act* and arrested a total of 23 individuals. The complainant alleged, among other things, that the RCMP improperly arrested the 23 Muslim men under suspicion of terrorist-type activities and failed to conduct a complete and thorough investigation into the matter. In this case, the package of relevant materials supplied to the CPC by the RCMP failed to include a large number of crucial documents, such as, to name only a few, operational files, the search warrants and supporting documents, documents and information relating to persons who were arrested as "found-ins" during the execution of the search warrants. Considerable time and effort has therefore been spent by CPC staff in preparing a list of additional materials needed for the review. The CPC is currently awaiting a reply from the RCMP.

Considerable resources are undeniably wasted dealing with this type of resistance, and significant delays to the complaint process are caused, to the detriment of complainants, RCMP members who are the subjects of complaints and the Canadian public.

When relevant materials are withheld, the CPC is led to infer that the withholding is an attempt by the RCMP to frustrate the public complaint process.

/ In a recently completed case, the CPC had to make repeated requests over a two-year period for additional materials, which included unvetted pages of the RCMP public complaint investigation report, correspondence, complete and unvetted copies of the subject member's notes, a video-recorded news clip and the RCMP operational files. When the RCMP finally delivered some of the additional materials, it became obvious that key information that substantiated the complaint had been initially withheld from the CPC. For example, the previously vetted portions of the investigation report concealed a quote of an inculpatory e-mail from the subject member to another member wherein he openly admitted that he had intentionally disclosed information that had given rise to the complaint. A copy of the actual e-mail had also been withheld from the CPC until a further request was made. Clearly, such attempts to thwart the public complaint process are unjustifiable.

On some occasions, the RCMP simply refuses to furnish the materials requested. The reasons for withholding information are wide-ranging and ever-increasing. Over the past few years, they have included the following:

- / the information would identify a young person;
- / the information could disclose police techniques;
- / the information could jeopardize an ongoing investigation;
- / the information would identify a police informant and is, therefore, privileged;
- / the information relates to national security;
- / the information is "considered missing";
- / the information originates from another police force and the RCMP does not have the permission to disseminate or disclose it;
- / the information is not "relevant" to the complaint;
- / the information is not under the control of the RCMP because it was shared with RCMP lawyers for the purposes of litigation;
- / the information relates to a judicial sealing order; and
- / the information relates to a media strategy.

Two cases reported in last year's annual report provide concrete examples of the challenges identified above, with which the CPC continues to grapple in the face of the RCMP's direct refusals to furnish relevant materials.

- / One case involves a complaint that arose in the context of a search executed by two RCMP members and several police officers from a provincial police force. The complainant alleged, among other things, that an RCMP member had improperly obtained the search warrant for his barn. When requested, the RCMP refused to provide the CPC with certain materials on the grounds that they would identify a police informant, and with other materials in their possession they said were covered by a sealing order. These materials include an affidavit sworn by the RCMP member who had obtained the search warrant; an affidavit sworn by the same member who sought, but was refused, a search warrant for the complainant's home; and portions of the RCMP members' notes. Because these materials are vital to the CPC's review of the complaint, the CPC commenced a judicial review application in the Federal Court of Canada in 2004 in order to compel the RCMP to provide the missing materials. The matter is now in the hands of the Federal Court of Appeal to decide whether the RCMP's continued refusal is justified.

- / Another case involves a complaint received by the CPC in 2003 alleging that the RCMP improperly obtained and executed a search warrant at a woman's home. Because, among other things, the search had been undertaken in the context of suspected terrorism activities, the Chair initiated a public interest investigation. Over the past two years, the RCMP has consistently refused to cooperate with the CPC's investigation on the grounds that the matter relates to national security. The RCMP has avoided public accountability in this matter.

These and the examples that follow suggest that, after 16 years, there appears to remain a belief within elements of the RCMP that secrecy is to be preferred over transparency and accountability. There is no question that, in some circumstances, a high degree of secrecy is required in relation to the public at large. However, to ensure that police powers are used within the confines of the law, the occasional need for secrecy should not permit the RCMP to evade accountability to its oversight body.

It is important to distinguish between disclosure to the CPC for the purpose of the public complaint process and disclosure to the public. One does not equal the other. When sensitive information is at stake, the CPC is under an obligation to safeguard that information, just like any other government body. This obligation could, in limited circumstances, result in the complainant not being fully informed of the reasons supporting the CPC's

conclusions. Nonetheless, the complainant and the public can take comfort in knowing that the CPC, a trustworthy body that is independent of the RCMP, examined all the information and arrived at an impartial conclusion with respect to the alleged conduct. When the RCMP unilaterally decides to withhold information from the CPC, neither the complainant nor the public can take such comfort, and confidence in the RCMP is inevitably diminished.

The RCMP Commissioner recently acknowledged, in relation to a specific case, the RCMP's "... unwillingness to disclose some materials, and that disclosure was very slow and ultimately proven to be incomplete." In a memorandum, the RCMP Commissioner stated that he was committed to "large and liberal" disclosure of information to the CPC and, in a directive dated May 10, 2004, he ordered his officials to provide, along with the relevant materials packages, a list identifying "to the extent possible" all documents that are being withheld and the legal impediment to their release. As of March 31, 2005, this directive has apparently not been implemented.

Access to RCMP information is the biggest challenge the CPC faces in ensuring accountability. The *RCMP Act* must be interpreted to best serve the public and give effect to Parliament's intent in creating a civilian oversight mechanism. Unless all necessary materials are provided to the CPC, the public complaint process will become meaningless.

A NEW OPPORTUNITY

In September 2002, Mr. Maher Arar, a Canadian citizen, was arrested while travelling through the United States and was subsequently deported by American authorities to Syria. His year-long detention in that country generated significant public concern when it was alleged that Canadian officials, including the RCMP, had played some role in the events leading to Mr. Arar's deportation to Syria. On his return to Canada, Mr. Arar stated that Syrian authorities had tortured him in the course of interrogations.

As allegations emerged and the public debate heightened, the Chair concluded that there were reasonable grounds to investigate the conduct of unidentified members of the RCMP in connection with these events. Accordingly, on October 23, 2003, the Chair initiated a process set out in the *RCMP Act* by lodging her own complaint. The complaint consisted of a series of allegations that would require the RCMP to investigate the merits of the matter and report back to the Chair.

Specifically, the complaint required the RCMP to report on whether members of the RCMP improperly encouraged U.S. authorities to deport Mr. Arar, a Canadian citizen, to Syria or improperly divulged information and/or conveyed inaccurate or incomplete information about Mr. Arar to U.S. and Syrian authorities.

After the Chair had initiated this process to examine the role of the RCMP in these events, but before the RCMP had completed their investigation, the Government of Canada appointed the Honourable Mr. Justice Dennis O'Connor to inquire into the role of all Canadian officials in connection with the deportation of Mr. Arar from the United States to Syria. Mr. Justice O'Connor was also asked to provide to the government any recommendations that he considered advisable concerning an independent, arm's-length mechanism for review of the national security activities of the RCMP.

On April 7, 2004, the RCMP provided a report to the Chair addressing the allegations set out in the Chair-initiated complaint. The report, at its outset, indicated that there were restrictions on the information that could be provided to the Chair because of the "sensitive nature of criminal investigations having links to national security..." The RCMP report indicated there had been information exchanges between the RCMP and U.S. agencies that were not consistent with existing RCMP policy but, despite this finding, concluded that these exchanges of information were not improper.

In accordance with the provisions of the *RCMP Act*, a Chair-initiated complaint must be reviewed. For the purposes of a review, the RCMP Commissioner must furnish the Chair with all materials relevant to a complaint. In light of the wording of the RCMP report on the complaint, it seems unlikely that the RCMP would have furnished all relevant materials to the CPC because they involve matters of national security. However, because Mr. Justice O'Connor's inquiry covers the role of the RCMP as well as of other federal officials in relation to Mr. Arar, the Chair suspended the review of her complaint so as not to duplicate the work of the Arar Commission. As a result, the RCMP has never formally refused to provide materials relevant to the Chair-initiated complaint involving Mr. Arar.

Mr. Justice O'Connor's request for submissions on the best mechanism for review of the national security activities of the RCMP prompted the CPC to undertake a wide-ranging examination of effective and comprehensive civilian review of RCMP conduct generally. Information is the lifeblood of any review mechanism and, as indicated above, there is significant resistance by the RCMP in supplying information to the CPC.

The CPC viewed the submission it prepared and delivered to Mr. Justice O'Connor as an opportunity to generate public awareness of the importance of effective civilian review generally and to demonstrate the weaknesses in the current review mechanism in relation to the RCMP. Its submission (which can be found in its entirety on the CPC Web site at www.cpc-cpp.gc.ca, under Reports and Publications; the Executive Summary is attached at Appendix A) makes the following principal points:

- / The CPC has been mandated by Parliament to review the conduct of members of the RCMP in the performance of their duties, and this mandate, by its clear words, extends to the conduct of members performing national security functions.
- / The CPC's ability to discharge this mandate with respect to national security activities and more traditional policing functions is significantly limited because of its inability to gain unfettered access to information in the control of the RCMP.
- / If the CPC is to remain as the designated review agency for RCMP activities, it must be properly empowered to do so.
- / With respect to the national security activities of the RCMP, the CPC favours the creation of a new review agency that would be empowered to review the national security activities of all federal officials engaged in security and intelligence operations. In essence, it is the CPC's view that these necessarily secret and intrusive activities by federal officials require a permanent review mechanism of the type provided by Mr. Justice O'Connor in relation to the Arar matter.
- / For the most part, the review of national security activities must be carried out in secret. However, as long as there is a review mechanism in place with a reputation for integrity and effectiveness, the Canadian public will accept the necessity for the details of the work of security and intelligence services to be kept secret.
- / The suggestion that additional review of the national security activities of the RCMP or other federal officials engaged in security and intelligence functions is too onerous for a new review agency does not bear scrutiny. All federal departments and agencies are subject to significant review, for different

reasons, by different agencies (for example, the Office of the Auditor General, the Office of the Information Commissioner, the Office of the Privacy Commissioner). These review agencies all perform important functions but police and security services are unique because they are required to do things that elevate the risk to the rights of Canadians. None of the review agencies listed as examples above are directly concerned with the protection of the human, civil and constitutional rights of the public.

The CPC is optimistic that the government's commitment to the establishment of an independent review mechanism for the national security activities of the RCMP will lead to a fresh look at the many inadequacies of the current public complaint process in relation to the RCMP. It is further hoped that, whatever form it takes, such a fresh look will lead to the legislative changes that are necessary to assure the Canadian public that the conduct of the RCMP is subject to effective civilian review.

PART IV : Relationship Building

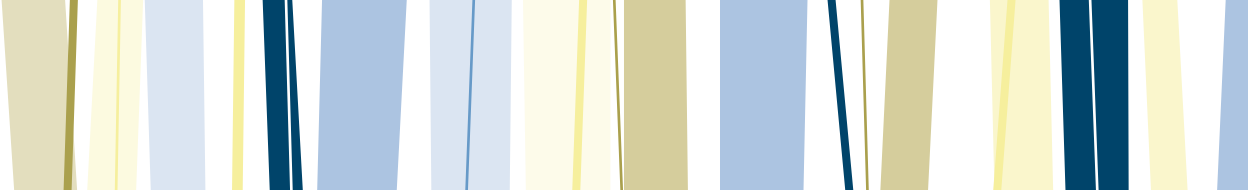
LIAISON WITH STAKEHOLDERS

Much still needs to be done to respond to the needs and interests of complainants and RCMP members. Because of the complexities of the legislation, the public complaint process is difficult to understand and may take longer than expected for those involved.

To improve liaison with stakeholders, the CPC continues to take part in outreach initiatives that were launched last year, including meetings with the RCMP to identify key issues to be addressed in the public complaint process. The CPC's initiatives included:

- / development and provision to the RCMP of a checklist of materials to be provided by them to the CPC upon receipt of a request for review;
- / continued efforts to provide greater clarity in defining the allegations contained in complaints;
- / better use by the CPC of ADR with the RCMP;
- / better coordination between the CPC and the RCMP in the tracking of cases.

These initiatives have resulted in improvements to the initial RCMP investigation of complaints and in more efficient and effective conduct of reviews.



The Chair of the CPC maintains a dialogue with other agencies and associations concerned with excellence in policing. The Chair has been involved in consultations with the Province of Saskatchewan and its key stakeholders (e.g., the Federation of Saskatchewan Indian Nations) in its newly developed police complaints legislation. The CPC and Saskatchewan are committed to working together to find additional opportunities for collaboration and cooperation to better serve the people of Saskatchewan. The Attorney General of Saskatchewan has asked the federal government to consider having the CPC open a regional complaints office in Saskatchewan.

The Chair and CPC officials also contribute significantly to the Canadian Association of Civil Oversight of Law Enforcement (CACOLE) annual conference; the Chair is scheduled to lead a session on civilian review of the RCMP's national security activities, and the CPC's Executive Director serves on CACOLE's Board of Directors.

RELATIONSHIP BETWEEN THE RCMP AND ABORIGINAL COMMUNITIES

In light of information received through consultations with communities and from correspondence from complainants and other members of the public, there continues to be a concern about the relationship between the RCMP and Aboriginal communities. The CPC acknowledges the effort invested by the three levels of government, law enforcement bodies and Aboriginal/First Nations leadership to break down barriers and build trust. The CPC can make a substantive contribution to solutions for better policing through the complaint process and community outreach.

Historically, Aboriginal peoples have underutilized the CPC's complaint process. In recent years, however, the Federation of Saskatchewan Indian Nations (FSIN) has taken a leading role in assisting members of Saskatchewan Aboriginal communities to use the CPC's process, and the Chair would like to acknowledge, once again this year, the great service the FSIN has rendered to its constituents in this respect. The CPC will seek to build on these successes and work to improve its service to Aboriginal Canadians.

The CPC will also continue efforts in concert with key stakeholders (e.g., Aboriginal First Nations leadership, community advocates, other government partners, the RCMP, etc.) to identify community-based means of conflict resolution. These methods could be suitable for cases in which formal processes are impractical or simply constitute one part of a solution.

PART V : Operations

CPC Budget and Expenditures

<i>(\$ THOUSANDS)</i>	Actual Spending 2004-2005	Planned Spending 2005-2006
Salaries, wages and other personnel costs	2,818*	2,604
Contributions to employee benefit plans	558	521
Subtotal	3,376	3,125
Other operating expenditures	1,443*	1,560
Total net spending	4,819	4,685

* This amount reflects funding received through Supplementary Estimates A and B.

CPC Operations

The CPC is a small independent federal government agency, with just over forty employees on strength at any given time. It is a challenge for the organization to provide oversight of the conduct of some 19,000 members of the RCMP organization across the country from two small offices in Surrey, B.C., and Ottawa, Ontario. Over the past year the CPC has begun restructuring and re-alignment to fill long-standing management vacancies, to ensure that positions are classified appropriately and to build a corporate capacity to meet the requirements of good management in the federal public service.

The position of Executive Director was filled in June 2004, Director of Complaints and Investigations in November 2004, Comptroller in October 2004 and Head of Communications in August 2004; a competitive process was begun to fill the position of Director of Major Projects and Research.

Planning and Reporting

The first half of the year was focused on filling key vacancies in management positions in the organization. With the new management team in place, the latter half of the past year was devoted to building and renewing an approach to governance, planning, policy, communication and management controls in order to integrate all aspects of business and corporate planning and operations.

The CPC Governance Framework was reviewed and updated. Human Resources, Information Management/Information Technology and internal and external Communications plans were developed. A new learning policy was prepared and adopted that formed the basis for integrating learning into the performance commitment and results measurement process for the staff of the CPC. An ambitious Business Plan was prepared through a cohesive and consultative process, taking into consideration the current and anticipated environmental influences, risks and challenges facing the CPC.

Financial and Administrative Management

During the past year the Treasury Board (TB) has been moving towards the adoption of the new Expenditure Management Information System (EMIS). Part of that system is the Management, Resources and Results Structure (MRRS). The MRRS, which replaces the Planning, Reporting and Accountability Structure (PRAS) policy framework, will serve as the basis to report to Parliament through the Estimates and Public Accounts from April 1, 2005 and onward.

As stated by the TB, "Departments should ensure that their information systems, performance measurement strategies, reporting, and governance structures are consistent with and support their organization's Management, Resources and Results Structure and reflect the manner in which resources are actually managed and allocated in the organization."

Although the CPC is small, with a relatively small budget, the financial management and reporting function is subject to the same rigour as that of larger departments. To comply with TB requirements the CPC has had to adopt the new reporting requirements, and develop a Program Activity Architecture (PAA), which will be the framework for accounting and reporting under the MRRS in the Departmental Performance Reports and Reports on Plans and Priorities.

Meeting these requirements has posed a very significant and time-consuming challenge for the CPC's limited financial management and administrative resources, but CPC is pleased to report that it was one of the earliest federal institutions to comply with the requirement to develop a PAA.

Human Resources Management

The CPC has developed and is following an action plan for the implementation of the *Public Service Modernization Act*. Because the CPC is struggling with implementing a large amount of human resources modernization change, proposals for funding of a human resources professional have been made to central agencies. Although the CPC receives some support for transactional services from Public Safety and Emergency Preparedness Canada, as an independent federal agency, the CPC must submit, on its own, a large number of plans and reports to central agencies. The CPC participated actively in an interdepartmental initiative to build a swat team to assist small agencies in the implementation of the *Public Service Modernization Act*. In February 2005, the Management Committee expanded the core values of the organization to include key staffing values, as detailed in Appendix B.

Management of Information and Technology

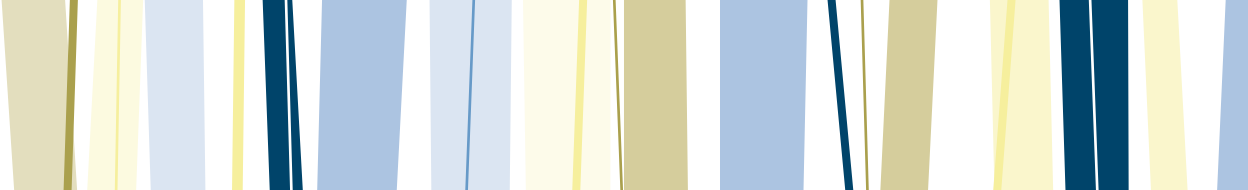
To support the Kingsclear investigation and investigations in general, the CPC sought and obtained central funding to upgrade the case tracking system and integrate it with the corporate electronic records management system, and to incorporate new scanning, digitizing and document management solutions. The CPC participated actively in the development of TB information management policy and in the interdepartmental initiative to assist small agencies in the implementation of the Management of Government Information Policy. The CPC undertook an information management capacity check to provide direction with respect to gaps in information management, risks and priorities.

APPENDIX A

EXECUTIVE SUMMARY – SUBMISSION OF THE CPC REGARDING THE POLICY REVIEW OF THE COMMISSION OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR

The CPC is an independent civilian agency that reviews the conduct of the RCMP. The present Chair of the CPC, with her long experience in the civilian review of CSIS, has valuable insights to offer to Mr. Justice O'Connor as he formulates his recommendations to the government on the best means to achieve an independent, effective, arm's length review mechanism for the national security activities of the RCMP.

The CPC has the mandate to review the national security activities of the RCMP, but does not currently have adequate access to information to properly do the job entrusted to it by Parliament. Relentless determination has allowed the CPC leadership to achieve much despite the limitations. But unfettered access to information is a prerequisite to effective review. Lack of clarity in the legislation regarding the CPC's right to information allows the RCMP to resist civilian review. The CPC is also constrained because someone has to complain before it can evaluate the conduct of a member of the RCMP. In our multi-cultural society, people who feel vulnerable generally do not complain. This limitation would disappear if the CPC were empowered to perform random audits.



The CPC endorses the present form of civilian review. It makes findings and recommendations so does not impact on police independence or currently defined lines of accountability. This form of review, with a properly empowered agency, can, according to a CSIS official commenting on SIRC, “perform an invaluable function.”

Reasonable people agree that national security activities must be secret – and the CPC is committed to that principle – but that secrecy can result in a violation of the rights of Canadians. However, so long as a trusted individual with unlimited access to information is empowered to guard the rights of Canadians, confidence in the police and security services that protect us can be enhanced.

Our first proposal is a properly empowered CPC, with adequate access to information and the capacity to conduct audits. This would allow the CPC to effectively review the RCMP and hold it accountable to the public it serves. These enhancements are necessary to ensure that civilian review keeps pace with the changes in RCMP policing over the past 20 years. This first proposal, however, does not address the larger issue identified by the Auditor General when she advised the government to take steps to ensure that all intrusive national security activities be subject to a consistent level of civilian review.

Accordingly, the CPC offers its second and preferred proposal. This is a more comprehensive solution to the gaps in the review of the national security activities of federal officials generally. The CPC recommends the creation of a National Security Review Commission (NSRC), modeled on the Arar Commission, but permanent. The NSRC would be empowered to review and make findings and recommendations about the activities of any federal official engaged in national security.

This proposal would ensure effective, consistent review of RCMP national security activities and the national security activities of all other federal agencies. This is particularly important in the current environment where agencies work closely together to protect our national security. The proposed NSRC will bring the same focus to the protection of our rights and freedoms that other agencies bring to our physical security.

Existing review agencies (CPC, SIRC, CSE Commissioner) would continue to bring their expertise to bear on the services they know well. The NSRC, like the Arar Commission, would focus on broad issues of importance having cross-agency implications. Duplication is avoided because the NSRC would have the authority to assume carriage of any matter

involving the national security activities of a federal official. The CPC decided to suspend its review of the Arar case when Mr. Justice O'Connor was appointed – this proposal would simply formalize what happened in that case.

The NSRC, unlike the Arar Commission, would be able to bring its acquired expertise to bear on future cases. Unlike the Arar Commission, and subject to a government veto for national security reasons, it would bring its own judgment to bear in deciding what required scrutiny.

The additional level of review that we propose is not too much. It fills a gap. All federal departments and agencies are subject to significant review, for different reasons, by different agencies (for example, the Auditor General, the Information Commissioner, the Privacy Commissioner). These review agencies all perform important functions, but police and security services are unique because they are required to do things that elevate the risk to the rights of Canadians. It is that additional risk that requires another level of civilian review to ensure against the abuses that can occur.

Canadians will be willing to entrust the review of their national security services to well-respected persons having unfettered access to information in the possession of the federal government. With that trust, police and security services will enjoy the confidence of Canadians as they address the challenge of ensuring our national security. And Canadians can be assured that a reasonable balance between national security and democratic rights is maintained.

APPENDIX B

CORE VALUES OF THE STAFFING SYSTEM IN THE PUBLIC SERVICE ENDORSED BY THE MANAGEMENT COMMITTEE

The Management Committee endorses the following core values, which will guide the staffing processes:

- / Competence: ensure that employees appointed to the CPC positions are qualified;
- / Non-partisanship: ensure that employees are appointed and promoted objectively and free from political or bureaucratic patronage; and
- / Representativeness: ensure that the composition of the CPC reflects that of the relevant labour market.

Also, the Management Committee recognizes that, to ensure that the above values are respected, appointments are to be based on Merit.

- / Merit: the merit principle requires that the best qualified person is the one to be selected (i.e. relative merit), normally, as a result of a competitive process; it recognizes that there may be circumstances to warrant the appointment on the basis of individual merit (without competition).
- / Staffing practices are to be and seen to be fair (just treatment of candidates); equitable (equal access to employment opportunities, barrier-free and inclusive); transparent (open communication with employees and candidates on staffing approaches and decisions).

Also, the Management Committee understands that the management of HR activities has to be guided by principles of:

- / affordability/efficiency (staffing processes that are simple, timely and effective, including ensuring value for money);
- / flexibility (staffing processes that reflect the specific needs of the department).

GETTING IN TOUCH WITH THE CPC

By e-mail:

complaints@cpc-cpp.gc.ca (for complaints)
org@cpc-cpp.gc.ca (for general enquiries)

By telephone:

From anywhere in Canada and the U.S.: 1 800 665-6878
From within the Ottawa area: (613) 952-1471
From within the Vancouver area: (604) 501-4080

By fax:

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