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THE REPORT
OF THE
COMMISSION OF INQUIRY RELATING TO PUBLIC COMPLAINTS, INTERNAL DISCIPLINE AND GRIEVANCE PROCEDURE WITHIN THE ROYAL CANADIAN MOUNTED POLICE

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Ottawa, January 16, 1976

The Honourable Warren Allmand, P.C., Q.C., M.P.
Solicitor General of Canada
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Sir:

The Commission of Inquiry relating to public complaints, internal discipline and grievance procedure within the Royal Canadian Mounted Police, established under Order-in-Council P.C. 1974-1338 as amended by P.C. 1974-2415, has the honour to submit the report of its findings and recommendations.

Respectfully yours,

(Chairman)

(Commissioner)

(Commissioner)

(Commissioner)

(Commissioner)

CHAIRMAN

COMMISSION

COMMISSIONERS

His Honour Judge René J. Marin, Chairman
Robin P. Bourne
Robert A. Potvin
Donald K. Wilson
Ross Wimmer, Q.C.

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FORMAT FOR RECOMMENDATIONS

For purposes of identification, the recommendations of the Commission have been prefixed and numbered according to subject matter. The following is a list and explanation of the prefixes used.

COMP.	Public Complaints
OMB.	Federal Police Ombudsman
DIS.	Discipline
ADM.	Matters Incidental and Relating to the Discipline System
GRIEV.	Grievances

PART I

INTRODUCTION

ESTABLISHMENT OF THE COMMISSION

The Order granting the Solicitor General of Canada the authority to appoint this Commission of Inquiry, P.C. 1974-1338 dated June 6, 1974, as amended by P.C. 1974-2415 dated October 31, 1974 reads as follows:

The Committee of the Privy Council advise that, pursuant to Part II of the Inquiries Act, the Solicitor General of Canada be authorized to appoint His Honour Judge René J. Marin of the County and District Courts of Ontario, Robin Bourne, Assistant Deputy Minister, Department of the Solicitor General, Ross Wimmer of Regina, a lawyer, Inspector Donald K. Wilson and Staff Sergeant Robert A. Potvin of the Royal Canadian Mounted Police to be Commissioners to investigate and report upon the state and management of that part of the business of the Solicitor General pertaining to:

(a) the current methods of handling complaints by members of the public against members of the Royal Canadian Mounted Police;

(b) the question whether existing laws, policies, regulations, directives and procedures, relating to discipline and the grievance procedure within the Royal Canadian Mounted Police, are susceptible of improvement and, if so, by what means such improvement should be effected; and

(c) any matters incidental or relating to any of the matters referred to in paragraphs (a) and (b).

The Committee further advise

1. That the Commissioners may adopt such procedures and methods as they may from time to time deem expedient for the proper conduct of the Inquiry; may sit at such time and at such places as they may decide from time to time and shall have complete access to personnel and information available in the Department of the Solicitor General and adequate working accommodation and clerical assistance;

2. That the Commissioners may engage the services of such staff and technical advisers as they deem necessary or advisable and also the services of counsel to aid and assist them in their inquiry at such rates of remuneration and reimbursement as may be approved by the Treasury Board; and

3. That the Commissioners shall report to the Solicitor General of Canada with all reasonable despatch.

The Committee further advise that, pursuant to section 37 of the Judges Act, His Honour Judge René J. Marin be authorized to act as Commissioner for the purposes of the said investigation.

The Committee further advise that His Honour Judge René J. Marin be designated Chairman of the Inquiry.

METHODOLOGY

Introduction

An initial study of these terms of reference required that the Commission define more precisely the scope of the inquiry to be carried out. A narrow interpretation might have deprived us of relevant information. Too broad an approach would have resulted in our involvement with issues totally outside our mandate. In the final analysis we decided to gather sufficient information and opinion to enable us to attain a comprehensive understanding of all the factors involved. The result of this approach was that we received submissions in which unrelated matters were mixed with material which was obviously "incidental or relating to" the specific terms of reference. Our efforts to permit a liberal interpretation were fruitful and we believe that no vital issue was excluded. At the same time, our terms of reference were sufficiently definitive to encourage submissions on those matters which were relevant.

Communications

In order to ensure that the public was aware of the existence of the Commission, we made a concerted effort to publicize our work. This was done through 112 Canadian newspapers. On three separate occasions, September 1974, November 1974 and February 1975, we issued general public notices describing the Commission's terms of reference. A sample may be found at Appendix A. The September notice announced the establishment of the Commission and invited public participation. The November announcement gave the dates of public and private hearings on a regional basis. The February notice publicized the closing date for receiving submissions. A fourth advertisement was placed in different newspapers at separate times. It was sent to newspapers in areas where a hearing was to be held about a week prior to the hearing, giving the times and places for that area's hearings. At about the same time the fourth public notice was issued, we also sent a newsletter containing a press release or feature article to all news media, including the press,

radio, television and cablevision. Feature articles on the Commission appeared while hearings were taking place and the Commissioners spoke with representatives of the various news media before and after each day's hearing.

Realizing the interest that the native people of Canada would have in the Commission, we sought to reach these Canadians through radio and newspaper advertisements in native languages. With the assistance of the Department of Indian and Northern Affairs and the Northern Service of the Canadian Broadcasting Corporation, a number of advertisements were widely circulated. An example of one such advertisement may be found in Appendix B.

Since part of the Commission's mandate related to internal procedures, we used the Royal Canadian Mounted Police Bulletin to publicize our work. Subsequently, on two separate occasions, we wrote to every serving member of the Force. Copies of these communications are at Appendices C, D and E. In addition, we visited many detachments and sent out survey questionnaires to a significant number of members.

Hearings

To learn the views of members of the public and members of the Royal Canadian Mounted Police, hearings and meetings were conducted at various locations in all provinces between November 1974 and July 1975. Selected hearings were held in September and October 1975. Those appearing before the Commission were informed that the hearing could be public or private, depending upon their wishes. In either case, an attempt was made to create an informal atmosphere with a view to fostering good communications.

Verbal Submissions

We actively sought the opinions of those who would be affected by the Commission's mandate whether or not they had communicated with the Commission. These included representatives of native groups, civil liberties associations, groups of lawyers, and Royal Canadian Mounted Police veterans associations. In addition, we made a special effort to meet members who did not submit briefs by visiting Division Headquarters, messes and detachments as well as by holding formal meetings with senior management of the Force. We also visited native and northern communities in order to meet with people living in areas where there are unusual policing problems and where, because detachments often consist

of only one or two members, people may have felt that they could not submit complaints to their local police authority.

Other Meetings

In addition to meeting with people who have been, or are likely to be directly affected by topics under the Commission's mandate, we made an effort to meet with other officials or persons who were able to provide us with advice based on knowledge and experience relevant to our terms of reference. This group includes provincial Attorneys-General, Solicitors General and Ministers of Justice, interested Members of Parliament, members of various Police Commissions and senior members of various police organizations and departments.

Two contacts merit special comment. Arthur Maloney, Q.C., Chairman of the Metropolitan Toronto Review of Citizen-Police Complaints Procedure and his staff were gracious enough to meet with us on several occasions. Discussions with members of this Commission helped us further refine our understanding of police administration. Another valuable source of insight was Mr. Justice Donald Morand, Chairman of the Royal Commission into Metropolitan Toronto Police Practices. Each of these has made a significant contribution which is gratefully acknowledged.

Visits to Other Jurisdictions

Assistance was sought from experts in other countries. In the United States members of the Commission visited Berkeley, Los Angeles, Riverside and Fremont, California and Washington, D.C. A European visit included England, Holland and Sweden. In England, discussions were held with representatives of the Home Office, the British Section of the International Commission of Jurists (otherwise known as "Justice"), senior officers of New Scotland Yard as well as the Police Federation, the Chief Constable and senior officers of the Surrey Constabulary and specialists at the University of Bristol. The visit to Holland provided us with the opportunity to meet the Commissioner of The Hague Police together with his Deputy Commissioner and other senior advisers, several representatives from the Ministry of Justice representing a variety of interests relating to the police and finally, representatives of the three principal police associations. At the same time that three Commissioners were in Holland, the remaining Commissioners and the Director of Research were visiting Stockholm, Sweden. There, meetings were

arranged with members of the Ombudsman's Office, representatives from the office of the public prosecutor, various police officials, members of the National Swedish Police Board, members of the Swedish Judicial Inquiry into Public Complaints Against the Police and academics.

Verification of Files

Many of the members of the public and members of the Royal Canadian Mounted Police related experiences to us which were documented in Royal Canadian Mounted Police records. In order to verify and assess the incidents related, we undertook a review of complaint files as well as of members' service files. Although this proved to be a time-consuming task, the review provided us with considerable information which we otherwise could not have obtained.

ACKNOWLEDGEMENTS

Introduction

There are many who deserve credit for their unselfish assistance to the Commission. Two constraints account for the absence of their names. First, many who helped us have insisted on remaining anonymous and it would be unfair to them to mention only those who made no such request. Second, there is the practical difficulty of listing the hundreds of names not only of those who submitted briefs but of those who shared their experience and wisdom in a more informal manner.

It must suffice to offer sincere, if general, thanks to the Members of Parliament who gave of their time and assistance; those professionals within the criminal justice system who provided expert advice; the members and senior management of the Force who co-operated fully with our enterprise; and, most importantly, the members of the public who shared with us their positive and constructive criticism.

Administrative Support Staff

In order that the Commissioners could undertake their work in an atmosphere which would demand as little administrative inconvenience as possible, we acquired accommodation and administrative support staff to handle the day to day routine. The services of Dr. C. E. Belford were retained in the capacity of Executive Secretary. He was assisted by an administrative officer, four secretaries, a receptionist, a hearing co-ordinator and a clerk, all of whom have been of great assistance in meeting the objectives of our Commission. In addition, we are indebted to Dr. Belford for the assistance he has given in the preparation of this report.

Research Staff and its Program

Clifford D. Shearing, Senior Research Associate at the Centre of Criminology, University of Toronto, accepted the position of Director of

Research. Working with him were three full-time and two part-time assistants. In addition, assistance was provided by three members of the Royal Canadian Mounted Police: S. W. Horrall, Official Historian, Staff Sergeant Major J. Price and Staff Sergeant H. J. Clark.

The research staff provided the Commissioners with historical and other background material essential to our understanding of police administration. Members of this staff travelled in Canada and the Director travelled to the United States and Europe. Information gathered on these fact-finding trips enabled them to assist with the preparation of preliminary papers. We acknowledge the many contributions which Mr. Shearing and his staff have made to the work of the Commission and extend to them our appreciation for their valuable assistance.

Legal Counsel

It was readily apparent from the beginning that there would be a need for counsel to assist us at public and private hearings and to advise us on matters of law. Since it was foreseen that these responsibilities would be time-consuming and demanding, and since extensive travelling throughout Canada and abroad would be required, we chose to divide the work among three associate counsel. This idea proved successful notwithstanding our initial concern that it might be difficult for more than one man to keep abreast of developments in our work. We were fortunate in retaining as counsel, David W. Scott, Q.C., of Ottawa, Harvey Yarosky of Montreal and Gérald E. Desmarais of Sherbrooke.

Our analysis of procedures to which our terms of reference relate has led us to conclude that they have served the Force well in the past. An examination of legislation affecting the Force over its 102 year history reflects remarkably little change in some areas. However, our analysis has revealed that in recent years management has attempted to be more progressive than some members of the public and many members of the Force realize.

The principal character of this report is the remedial nature of its recommendations. We believe that our recommendations are consistent with modern police management theory and we also believe that they may be implemented without any threat to the operational efficiency of this police organization. They are designed to meet the needs of today's public and those of members of the Force. Their implementation will be a challenge to management and we trust that this challenge will be willingly accepted. We think that all of our recommendations are necessary and appropriate. Although some will be more easily adopted than others, we hope that those which appear to present difficulties will not be ignored for that reason, for to ignore them might well be damaging to the fundamental objectives of this report.

Implementation of our recommendations will require that the Royal Canadian Mounted Police Act be rewritten. It is acknowledged, as well, that there may be an added administrative load. With enabling legislation and subsequent implementation, we believe all our recommendations will be found practical, beneficial and of service to the public of Canada and to the Force for some time to come.

PART II

INTERNAL DISCIPLINE, GRIEVANCE AND PUBLIC COMPLAINT PROCEDURES

AN HISTORICAL PERSPECTIVE: 1873-1975

INTRODUCTION

The Need for a Force

In assuming its responsibilities towards its new western territories, the Canadian Government was faced with a conjunction of difficulties of different proportions.

There was, first of all, the problem of settling the Territories in an orderly fashion. In view of its knowledge of the American experience in the settling of the Western United States, the Government was naturally anxious to avoid a duplication of the Indian Wars that even then were continuing in an unabated fashion in the American West. There was, therefore, a need to have the institutions of law and order in place before significant settlement got underway. Treaty negotiations with Natives would solve only the formal jurisdictional questions, there remained the task of educating the Native Bands to the legal necessities for peaceful co-existence and protecting the Bands and the settlers from each other until self-government was achieved. A second issue, the massacre of a party of Assiniboine Indians at Cypress Hills in May of 1873 by American citizens, not only heightened the fear of the Government that an Indian war was a firm possibility, it served as well to indicate that, at that point in time, the Canadian Government was incapable of keeping the peace in its own Territories. The fact that the Americans responsible for the massacre were mistakenly characterized as whiskey traders only added to the Government's determination to provide a police force as soon as possible. Whiskey trading in the Territories not only presented a real and recognized threat to the well-being of the Natives, it offended in principle a large and vocal constituency in Canada, particularly in Ontario. Alexander MacKenzie, the new Prime Minister and a man well-known for his prohibitionist views, moved quickly to act on the enabling legislation[1] Macdonald's Government had passed on May 23, 1873, authorizing the creation of a police force.

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[1] H.C. Vic. C. 35, sec. 10-35, May 23, 1873.

The Origins of the Force

The initial regulations governing internal discipline, grievance and public complaint procedures were developed within a context that mixed respect for military traditions with a sensitivity to the practical requirements of policing. While emphasis shifted from one set of contributing factors to the other as different Commissioners took control of the Force and enacted new provisions or emphasized old ones, both factors contributed and continue to contribute to the evolution of these procedures.

Plans for a force of mounted police to serve in the North West Territories had been a consideration of Sir John A. Macdonald from the time the Government had begun preparations to assume sovereignty over lands previously held by the Hudson Bay Company. By 1869, Macdonald could write:

> "It seems to me that the best Force would be Mounted Riflemen, trained to act as cavalry, but also instructed in the Rifle exercises. They should also be instructed, as certain of the Line are, in the use of artillery, this body should not be expressly Military, but should be styled *Police,* and have the military bearing of the Irish Constabulary."[2]

Macdonald's choice of the Royal Irish Constabulary as a model for what would come to be called the North West Mounted Police was quite in keeping with similar practices in other parts of the British Empire. By 1869, the Royal Irish Constabulary had served for many years as the model of colonial police forces throughout Britain's Empire. Two characteristics distinguished the Royal Irish Constabulary: its military organizational structure and its police function. The former characteristic entailed not only the use of a military rank structure but of uniforms, weapons[3] and a military code of discipline. The latter characteristic of that force, namely its police function, entailed the dispersement of very small detachments of men across the breadth of Ireland. Such a disposition of manpower makes more difficult the possibility that men so dispersed could readily be used as military units in the face of invasion or widespread rebellion.

More importantly, the locating of men in small detachments necessitated placing a greater individual responsibility in the men than is required in truly military organizations. Two or three men serving in

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[2] Macdonald Papers, vol. 516, Macdonald to Cameron, 21 December 1869.

[3] Unlike the unarmed constabulary in England.

isolated posts have a wider discretion in their behaviour and adherence to duty than is normally allotted to military personnel of comparable rank. The organizational and functional amalgam that characterized the Royal Irish Constabulary was well suited to the Government's needs. There is no doubt that it was the Government's belief that problems requiring both military and police expertise were evident in the North West in the early 1870's.

The Military Tradition in the Force

The respect for military tradition in the formation of the Force began with recruitment, particularly among the officer cadre, most of whom had served in either the British Army or the Canadian Militia. These officers, some of whom continued to use military titles in preference to police titles, naturally had a direct influence on the nature of the Force. However, if there was a surfeit of military tradition in the Force where appearances, organization and discipline were concerned, there was a pronounced absence of it in the initial legislation concerned with the Force. The Act of 1873, which provided authority to create the Force, allowed of only two penalties, dismissal or fines not exceeding thirty days' pay. The First Commissioner of the Force, Lieutenant-Colonel George A. French, thought military punishments beneath the dignity of the members[4] and had been satisfied initially with the threat of discharge and a schedule of fines.

Unlike the Militia, the Members of the Force did not serve under the articles of war. Rather, they enlisted under civil contract and thus were not subject to traditional military regulations. In the words of the first Commissioner of the Force, the men were "(t)ied down by no stringent rules or articles of war, but only by the silken cord of a civil contract."[5]

Frontier Policing: The Conditions of Service

The task of policing what now constitutes Alberta, Saskatchewan and most of present day Manitoba was placed in the hands of a Force of one hundred and fifty men engaged by civil contract to serve for three years. By December, 1875, after two years of duty in the West, Commissioner French wrote to the Deputy Minister of Justice informing him that due to desertion and other problems, there remained in the Force only sixty-nine

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[4] Commissioner French to the Minister of Justice, 14 January 1874.

[5] North West Mounted Police, Annual Report, 1874.

men whose engagements would terminate in 1876. Two years after the beginning of the Force, more than half of its original members had left. The reasons are almost entirely due to the conditions of service. Desertion, drunkenness and localized mutinies were common forms of protest against what were often wretched circumstances. During the Force's first winter in the West the living conditions of many detachments could be described as 'bread and board.'

Added to primitive living conditions, lack of supplies and the tardiness of the Government with the payment of members, was the isolation of the members and the routine monotony of their jobs. An editorial in the December 23rd edition of the *Toronto Globe* of 1882 accurately depicts the problems of police service the Force had faced from its inception:

> "One of the greatest annoyances to which the officers of the Mounted Police are subject is the desertion of men, who have often to be placed in such a position that they can easily get across the line if they wish to. The men who desert are almost invariably recruits, who become disheartened with their first experience of real 'soldiering.' And indeed it is not surprising that they should get sick of it. They are taken to a new country far away from friends and old associations, they are subjected to the rigours of a training that is calculated to develop them into useful men just as rapidly as possible, they find there is in the life of an "N.W.M.P." much that is decidedly dull prosy hard work. The recruit finds that in the matter of riding his views differ very materially from those of the sergeant major, and that the latter is strongly disposed to have his way, though it may make the bones of the former ache most terribly after every lesson. The recruit finds that though he is a "mounted policeman" he has much to do that is not at all like the programme he had mapped out for himself when he first decided to enlist. He does not eat a daintily prepared game breakfast, and then spend the forenoon in carefully adjusting a gorgeous uniform, mounting a gaily caparisoned charger, and cantering over the dewy prairie. His riding is generally confined to the riding school, where he is directly under the eye of the sergeant major and the rest of his time is pretty well taken up with a variety of duties and exercises that he had never dreamed of entering into the programme of a mounted policeman. It is a notorious fact that nearly all whoever desert do so during their first year in the service."

The final condition of service was perhaps the most onerous: the territorial law contained statutes of prohibition on wine, liquor, spirits and beer and it was the responsibility of the members not only to enforce the law but to obey it as well. Infractions of these laws were the main cause for dismissal in the early years of the Force.

Commissioner Herchmer's Annual Report for 1888 reveals the full scope of policing duties in the Territories.

"I think the nature of the duties the Police are called upon to perform is not generally known, even by otherwise well informed men, who take a prominent interest in Canadian affairs, and the occasional lapse from duty of an unfortunate is immediately commented upon on all sides. The country occupied by the Police is now, including part of Manitoba, 700 miles long by over 350 miles wide, and until lately we also occupied the Kootenay country, in British Columbia. Over the whole of this enormous country the force is scattered, being divided into ten divisions, and each division, having many outposts, at which the men do duty in twos and threes. Some of these outposts are 150 miles and many are over 100 miles from the nearest officer, and with, generally, no railway communication. Up to date the men have had no future to look forward to, and have really only the discipline instilled into them and their own high character to keep them straight; they are under enormous temptation to misbehave and shield whiskey offenders, and are constantly in danger of getting into trouble by exceeding their duties. There are less punishments inflicted in the Police than in any force I know of, and remarkably few cases of over zeal. Discipline is impartially maintained, and although very strict indeed, but few cases, beyond slight indiscretions, have arisen during the year. The force is well drilled, but from the numerous different avocations in which the men are employed, although individually drilled men they naturally require some days together before they are in a condition to do justice to themselves on parade. As the general public are unaware of our multifarious duties, and, as when we make mistakes as Police proper they make no allowance for our other qualifications, I may be allowed to name a few of the different things we do for ourselves, outside ordinary Police duties and patrols. We are trained soldiers, both mounted and dismounted, and squads in nearly every division thoroughly understand gun drill; we do our own carpenter work, painting, alterations of clothing, black-smithing, most of our freighting and teaming, plough when required, put out prairie fires, act as Customs and quarantine officers, do most of our own waggon repairing and tinsmithing, mend all and make a great deal of saddlery and harness, act as gaolers and keepers of the insane sometimes for weeks, and there is not a division in the force that can not go into any country and put up a complete barracks, either of logs or frame."

DISCIPLINE PROCEDURE

The Discipline System

The Act of 1873 provided for only two disciplinary sanctions, namely the right to levy fines and to discharge members[6]. Today, the discipline system includes a variety of regulations whose administration is supervised across the breadth of the Force and requires the full-time attention of a permanent staff at Royal Canadian Mounted Police Headquarters in Ottawa.

An account of the growth and development of the discipline system of the Force must begin with a brief account of the general framework for the administration of justice in the North West Territories.[7]

The Administration of Justice in the North West Territories

The administration of justice in the North West Territories was placed in the hands of stipendiary magistrates and justices of the peace. These appointees were empowered to deal in a summary way with all but the most serious offences. Normally, where cases of a serious nature arose, such as capital crimes, the prisoner was conveyed to the Court of Queen's Bench in the Province of Manitoba for trial by a judge of that court and a jury. Where necessary, however, two justices of the peace sitting together could exercise the power of a judge of the Court of Queen's Bench of the Province of Manitoba for crimes not requiring more than seven years imprisonment. These latter arrangements were quite reasonable in light of the population densities and the remoteness of the several courts of the Territories.

Two factors of the administration of justice in the North West Territories bear directly on the discipline system of the Force. The first was that

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[6] *Op. cit.*, sec. 20, 22.

[7] *Ibid.*, sec. 1-9.

all justice in the Territories was summary justice; that is, justice "without the intervention of any Grand or Petty (sic. Petit) Jury[8]." The second important factor was that the Commissioner of the Force and every Superintendent were *ex officio* justices of the peace[9]. Not only could these officers hear cases involving citizens, they were by this legislation empowered to hear cases involving members of the Force where the alleged offence did not constitute a breach of police discipline but rather a breach of the criminal or civil law.

The constraints on the administration of justice were those placed on it by demographic considerations. In lands as remote from "civilization" as the Territories were, there were few opportunities to form a jury panel and justice was necessarily of a summary sort. For the purposes of the administration of justice in the Territories, Canada followed Britain's lead and administered her Territories in a fashion similar to the administration of justice in the Colonial Empire.

The Foundations of Discipline

If the same constraints that affected the administration of justice in the Territories affected the administration of Force discipline, it is equally true that the officers of the Force, with their respect for military tradition, contributed heavily to the foundations of discipline in the Force. For although the members of the Force were not serving under articles of war and the first Commissioner of the Force was opposed to the introduction of traditional military punishments[10], there was much about military discipline that commended itself to those in authority in the Force.

Some remarks by an early Commissioner of the Force reveal an attitude that was common in the beginning. In his Annual Report of 1895, Commissioner Herchmer observed that:

> "By taking every opportunity, even of a few odd days, we have kept our men well drilled, but we have so few men, and so much to do outside police duties, between blacksmithing, carpentering, harness repairing, wheel wright's work, painting, tinsmithing, etc., customs, and quarantine duties, to say nothing of the chances of an occasional order, such as the taking of a census of the whole territory in a month, or some other unexpected work sprung upon us, that I do not see how we can keep up our

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[8] *Ibid.*, sec. 4.

[9] *Ibid.*, sec. 15.

[10] French, *Op. cit.* The punishments mentioned are imprisonment, solitary confinement and pack drill.

drills mounted, dismounted, and artillery. Unless the men are well drilled they cannot be disciplined, and without discipline of the highest order, they are useless as mounted police in this country, where some of them are 50 miles away from immediate supervision."

Finally, of course, the Force relied on the rules of discipline of the organization upon which it was modelled, the Royal Irish Constabulary. Since the procedures followed by the Royal Irish Constabulary duplicated many of the military procedures in use in both England and Canada at that time, it stands to reason that, in accounting for discipline in the Force, there is little that can be attributed to the traditions of the Royal Irish Constabulary that cannot be attributed equally to the then-extant practices and procedures that were in use in the Armed Forces of both countries.

By 1894, after numerous amendments to the Act of 1873, the foundation of the discipline system was laid. The ordinances governing Force discipline emanated from three complementary sources. Parliament enacted the statute. Regulations under the Act were made by the Governor-in-Council. General orders or what have since come to be called "Commissioner's Standing Orders" were, as their modern title suggests, made by the Commissioner of the Force.

Rules of Conduct

The original Act of 1873 made no mention of any particular behaviour which constituted a breach of discipline. By 1875, the following offences were introduced as amendments to Section 22 of the Act:

"22. Any member of the Force convicted of,—
Disobeying the lawful command of, or striking his superior,—or
Oppressive or tyrannical conduct towards his inferior,—or
Intoxication however slight,—or
Having intoxicating liquor in his possession or concealed,—or
Directly or indirectly receiving any gratuity without the Commissioner's sanction, or any bribe,—or
Wearing any party emblem,—or
Otherwise manifesting political partizanship,—or
Overholding any complaint,—or
Mutinous or insubordinate conduct,—or
Unduly overholding any allowances or any other public money entrusted to him,—or
Misapplying any money or goods levied under any warrant or taken from any prisoner,—or
Divulging any matter or thing which it may be his duty to keep secret,—or

Making any anonymous complaint to the Government or the Commissioner,—or

Communicating without the Commissioner's authority, either directly or indirectly, to the public press, any matter or thing touching the Force,—or

Wilfully or through negligence or connivance allowing any prisoner to escape,—or

Using any cruel, harsh or unnecessary violence towards any prisoner or other person,—or

Leaving any post on which he has been placed as a sentry or on other duty, —or

Deserting or absenting himself from his duties or quarters without leave, —or

Scandalous or infamous behaviour, —or

Disgraceful, profane or grossly immoral conduct, —or

Violating any standing order, rule or regulation, or any order, rule or regulation hereafter to be made, —or

Any disorder or neglect to the prejudice of morality or discipline, though not specified in this Act, or in any lawful rules or regulations, shall be held to have committed a breach of discipline, —and the Commissioner, Assistant Commissioner, or the Inspector commanding at any post, or a Stipendiary Magistrate, shall, forthwith, on a charge in writing of any one or more of the foregoing offences being preferred against any member of the force, other than a commissioned officer, cause the party so charged to be brought before him; and he shall then and there, in a summary way, investigate the said charge or charges on oath, and if proved to his satisfaction, shall thereof convict the offender, who shall suffer such punishment, either by fine not exceeding one month's pay, or imprisonment for a term not exceeding six months in any gaol at hard labour, or both, as the convicting officer or magistrate shall in his discretion order, in addition to and besides any punishment to which the offender may be liable under any law in force in the North-West Territories, or in any Province in which the offence may be committed, in respect of such offence."[11]

In addition, Section 25 was amended to read:

"25. If any person unlawfully disposes of, receives, buys or sells, or has in his possession without lawful cause, or refuses to deliver up when thereunto lawfully required, any horse, vehicle, harness, arms, accoutrements, clothing or other thing used for police purposes, such person shall thereby incur a penalty of double the value thereof, and be subject to a further fine not exceeding twenty-five dollars, and in default of payment forthwith, to imprisonment for any period not exceeding three months.

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[11] This (and other relevant sections) of the Act have undergone substantial numerical redesignation through time. For the purpose of clarity, these sections will bear their original designation throughout this part.

If any constable or sub-constable during his engagement in the said force, having deserted, absented himself from his duties without leave, or refused to do duty therein, be found in any part of Canada, other than the North West Territories, and on being served with a notice signed by any commissioned officer of the Force, requiring him to return to his duty, or being orally so required by such officer, neglect or refuses to return to his duty; such offender shall, on conviction thereof, be liable to forfeit and pay for every such offence, any sum not exceeding one hundred dollars or to be imprisoned and kept to hard labor for any period not exceeding twelve months, or both; and upon the trial of any offender under this Section it shall not be necessary to produce or give in evidence the original engagement or agreement to serve in the Force signed by such offender, but such engagement may be proved by parol evidence, or by a certificate purporting to be signed by the Commissioner, Assistant Commissioner, or any Inspector of the force, giving the date and period of such engagement; and it shall not be necessary prima facie to prove the signature to such certificate, which shall be held to be genuine, unless it be expressly alleged by the offender not to be so.

Offenders under this section may be prosecuted before the Commissioner, or a Stipendiary Magistrate, or any Justice of the Peace, in any part of Canada; and the several provisions of the laws in Force respecting the duties of Justices of the Peace, out of sessions in relation to summary convictions and orders, shall apply to such prosecutions."

A further amendment that year read:

"Any constable or sub-constable refusing to obey an order distinctly given by, or resisting the authority of a superior officer of the Force, may be forthwith and without altercation, placed under arrest and detained to be dealt with under the provisions of this Act."

With few exceptions, these regulations then constituted and continue to constitute the core of the Force's discipline system. The central theme of this system is revealed in a booklet of *Regulations and Orders,* Section 25, published for the North West Mounted Police in 1889:

"Constables must always remember that obedience is the first quality required of them. It is the essence of discipline and the channel of advancement."

A later edition, entitled *Rules and Regulations,* made the matter even more explicit. In the discipline section of this 1909 publication we find:

"—Every member of the Force is to receive the lawful commands of his superior with deference and respect, and execute them to the best of his ability, without question or comment.

—Officers and N.C.O.'s—(are)—to extract the strictest obedience and attention from those under their command."

The nature of frontier policing, particularly where relations with native people were concerned, entailed an obvious need for men who could earn and maintain the respect of those they policed. The scarcity of their numbers and their very thin distribution across the broad reaches of the West, meant that policing in such circumstances, if it was to be possible at all, had to be of consistently excellent quality. Strict discipline was thus an absolute requirement of successful policing by the Force.

The Administration of Discipline

The Act of 1873 which authorized the existence of the Force provided no guidelines for the administration of discipline. The disciplinary proceedings which developed reflected the same influences that affected the Force elsewhere in its organization. Faced with the task of developing and managing the administration of discipline, successive Commissioners and officers of the Force were greatly influenced by their experience as military officers and their legal experience as stipendiary magistrates and justices of the peace within the North West Territories. To deal with breaches of discipline, the officers of the Force developed a system which was complementary to the civil and criminal process in use in the Territories. Cases involving a member of the Force in any civil or criminal matter were referred to the appropriate civil authorities for action.

The Discipline of Officers

The administration of discipline in the Force began with a distinction between officers and men. Until 1894, officers could not be arrested by their superiors, nor were they ever subjected to the mainstay of disciplinary proceedings, "orderly room," or more recently, "service court." Under an amendment to the Act passed in 1874, proceedings against officers were carried out through the medium of a special inquiry, a proceeding that was to occur,

> "... in the same way as if the proceedings were before Justices, under the 'Act' respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with indictable offenses."[12]

When the inquiry was completed, a report was presented to the minister responsible for the Force for appropriate action.

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[12] H.C. C. 22, sec. 24, 1874.

The Discipline of Men: Formal Procedure

For the men of the Force, discipline was meted out under a set of procedural conventions that, with but few exceptions, remain unchanged to the present time. As with military courts-martial and most criminal cases in the Territories, the essence of such proceedings was that they were summary in nature. These were invariably conducted by an officer who would:

> "Cause the party so charged to be brought before him and he shall then and there in a summary way investigate the said charge or charges and on oath if he thinks fit, and if proved to his satisfaction, shall thereof convict the offender, who shall suffer punishment either by fine not exceeding one month's pay, or imprisonment for a term not exceeding six months in any gaol at hard labor, or both, as the convicting officer shall in his discretion order."[13]

Under this amendment of 1879, an officer could "convict on view" without the formal introduction of evidence under oath.

Service court proceedings were exceedingly formal. As in military courts-martial, the accused member was paraded into the room and could be required to stand to attention during the length of the proceedings. He was in red serge but was not allowed to wear his Sam Browne belt, spurs, hat or gloves.

Due Process

The rights of men in orderly room differed with those of citizens in summary proceedings in criminal court. In orderly room, members were not permitted legal counsel to assist in their defense. Nor would the Force tolerate interference through a writ of *habeas corpus*. In writing his Annual Report of 1885, Commissioner A. G. Irvine advised that he would have included in the Act,

> "... a provision that an offender convicted under the penal clauses of the Police Act for an offence against police discipline shall not be subject to any writ of habeas corpus. Failing this provision, the interest of discipline will assuredly suffer.. Further, that no legal counsel can be permitted to interfere in a question of police discipline."

While the Force was granted its request on the matter of the absence of legal counsel at service court proceedings, there has never been a provision excluding writs of *habeas corpus* or other special remedies.

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[13] H.C. C. 36, sec. 22, 1879.

The Commissioner's Authority

Under the legislation of 1873, the Commissioner's authority included the power to suspend or dismiss members of the Force. Although the Act does not state in an explicit manner that this is a summary power, the language of the Act clearly intends that it be so,

> "... and every such suspension or dismissal shall take effect from the time it shall be made known either orally or in writing to the party suspended or dismissed."[14]

A subsequent amendment in 1882 gave the Commissioner authority to reduce or mitigate a sentence of over one month's imprisonment. This is the first instance of a Commissioner of the Force having a right to intervene in the disciplinary proceedings of his subordinate officers. In 1894, this right of intervention was extended to allow the Commissioner to reduce or eliminate fines as well.

The Commissioner's powers in discipline are more clearly understood by a brief examination of matters that arose during the public inquiry held to examine allegations of misconduct on the part of Lawrence William Herchmer, Commissioner of the Force from 1886 to 1900.

Two matters of principle arose during the Herchmer inquiry. The first had to do with the fact that Herchmer, as a matter of routine, had seen fit to mitigate sentences involving penalties not mentioned explicitly in the Act. The second principle involved circulars issued by the Commissioner to his senior officers directing them to impose a certain degree of punishment for specific breaches of discipline or for breaches of a serious nature. One charge levelled against Herchmer stated that he was wrong in:

> "Issuing an illegal circular to Officers Commanding divisions, directing them in every case of a serious nature to sentence members to twelve months imprisonment with hard labour . . ."

Another charge took exception to the contents of Order 2524 dated 30 April 1888, which read in part,

> "It is to be distinctly understood that a fine of not less than $10.00 is invariably to be awarded in every case of drunkenness in addition to such other punishments as may be inflicted."

For issuing these and like circulars, Herchmer was taken to task by the Commissioner of the Inquiry, Mr. Justice Wetmore, for exceeding his authority under the Act.

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[14] *Op. cit.*, sec. 22.

In Herchmer's defense, it must be stated that he and other Commissioners, have always faced the problem of trying to ensure that punishment was awarded in a consistent fashion. Since the Commissioner was ultimately responsible for discipline, the practice of directing the punishment to be awarded had some rationale behind it.

Penalties

As stated, the initial legislation of the Force allowed for only two sorts of penalties, fines and summary discharge. Underlying this approach were two complementary tenets of discipline. The first tenet was articulated by Commissioner French in 1874 in a letter to the Minister of Justice.

> "—applying military rules for the punishment of policemen I think inadvisable. Imprisonment, solitary confinement and pack drill would, I think, degrade the men in their own eyes."[15]

The second tenet of the Force's earliest approach to punishment was based on the belief that the Force should be 'hard to get in to but easy to get out of'. The number of desertions and dismissals in the early years of the Force was high. Most desertions occurred amoung recruits with less than a year's service, while most dismissals were due to drunkenness. In Herchmer's Annual Report of 1897, there can be seen another feature of Force discipline that qualified its military traditions.

> "It has been found necessary to dismiss 18 men during the year, nearly all for drunkenness. With the few men now at my disposal it is more than ever necessary that all shall be reliable and steady, and while many of those dismissed were smart looking intelligent men, and good soldiers, as constabulary they were useless."

The penalties for breaches of discipline began increasing in 1874 when, in addition to fines and dismissal, a member could suffer loss of rank. In 1875, a penalty of six months' imprisonment at hard labour was introduced and could be levied in conjunction with a fine not exceeding one month's pay. The 1875 amendments, in increasing the penalties, introduced into the Act the possibility that a member could suffer two distinct punishments for the same offence. Section 22 states:

> "Either by fine not exceeding one month's pay or imprisonment for a term not exceeding six months in any gaol at hard labour, or both—in addition to and besides any punishment to which the offender may be liable under any law in force in the North-

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[15] French, *Op. cit.*

west Territories, or in any Province in which the offence may be committed, in respect of such offence."[16]

Presumably, a member of the Force charged with intoxication by a municipal constable would be subject to both the penalty the law permits for public drunkenness and the disciplinary sanctions the Force might administer. Clearly, most of the breaches of discipline listed in the Act were not offences against Territorial Ordinances or Provincial Statutes, but some were. Other examples of misconduct which could lead to cumulative punishment were also included in Section 22 of the 1875 amendments. These were:

> "Scandalous or infamous behaviour,—or
> Disgraceful, profane or grossly immoral conduct,—or . . .
> Any disorder or neglect to the prejudice of morality or discipline, though not specified in this Act, or in any lawful rules or regulations."[17]

Such general regulations could have a very wide scope; certainly wide enough to permit disciplinary proceedings subsequent to any penalties the criminal courts could levy. In a Force with a strict attitude towards discipline, any behaviour that led to penalties in a criminal court was deemed behaviour unworthy of a member of the Force.

In the Act of 1875, particular attention was paid to the problem of desertion. The penalty for such an offence was the most severe the Force could levy: one year's imprisonment at hard labour or a fine of one hundred dollars, or both. In 1894, in addition to the penalties outlined above, a member could be reduced in rank. This penalty was available by virtue of the Act of 1874, but had been deleted from the Act by the 1875 amendments.

Appeals

The Commissioner's control of the Force's discipline system was extended through the medium of the appeal procedures developed in the Force. Commissioner A.G. Irvine, in his Annual Report of the Force for 1885, noted that:

> "I have already had occasion to insist that a police prisoner has an appeal from a sentence inflicted by his commander officer to myself, and through myself, if necessary, to the 'Minister charged with the control and management of the Force,' but that no other appeal is intended, or can be allowed."

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[16] H.C. C. 50, Sec.22, 1875.

[17] *Ibid.*, sec. 22.

In spite of Irvine's preferences, the right to appeal either the conviction or the punishment awarded in a disciplinary proceeding is not mentioned in the early legislation governing the Force. As we have said, the Commissioner was granted the right in 1882 to reduce or eliminate fines and to reduce sentences of imprisonment for terms longer than one month. It is interesting to note that such authority was exercised in a manner as summary as the proceedings that produced the appeal. In forwarding an appeal to the Commissioner, the presiding officer was not required to send any record of the trial proceedings or the evidence on which the sentence had been imposed.

The appeal procedure, though in effect for a number of years in various forms, appears in a codified form in the 1909 edition of *Rules and Regulations*. The two relevant sections are as follows:

> "If any member of the Force, other than a Commissioned Officer, should feel himself aggrieved by a conviction and punishment awarded for an offence under Sec. 29 of the Act [18], he may forthwith appeal to the Commissioner in writing, stating in detail his reasons for making such appeal.
>
> It is within the province of the Commissioner by the exercise of his powers of commutation or mitigation, to regulate the amount of punishment awarded by the Commanding Officer of a post, and to ensure that the proceedings are regular, the punishments legal and that no sentence is heavier than the interests of discipline and the merits of the particular case require . . ."

The Evolution of Force Discipline

Many aspects of the Force have changed over the course of its history, but the disciplinary system established during the first twenty years has for the most part remained unchallenged and unchanged. There are a number of reasons for this.

An important aim of the disciplinary system of the Force has been to ensure effective police services through the proper and appropriate conduct of its members. The problems faced by the Force in achieving this aim on the Frontier are similar to those faced by the Force today. With relatively few men available, effective policing was and is only possible if it is carried out by men who are respected. No police force, then or now, can operate effectively without the respect and co-operation of the citizens it serves. This must be earned and can be earned only by men whose conduct is always above reproach. Thus, disciplinary standards which make it possible for men to earn and hold the respect they

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[18] *Ibid.*, sec.22.

required to do their job are no less necessary conditions of effective policing in the present than in the past.

Police service on the frontier required that the majority of the members of the Force serve independently or in groups of two or three, far removed from direct surpervision. Given the authority and discretionary power of a police officer, it was imperative that he exercise self-discipline and self-control. Modern policing requires no less.

Changes in the Disciplinary System

If the purpose of discipline in the Force has remained unchanged, there have, nonetheless, been important modifications in the disciplinary rules. A summary of some of these gives an indication of the direction of the Force on the matter of discipline.

Rules of Conduct

One of the important changes occurred as an amendment to Section 22 of the Act, where a new breach of discipline, "conduct unbecoming," was introduced. This is a breach of discipline which is commonly used to describe those misdemeanours which are not specifically listed in the Act, Regulations, or Standing Orders. This rule can be used by the Force to extend its authority to prescribe the behaviour of a member while not on duty. It is the policy of the Force that its members must conform to the same high standards in their private lives as they do in their public lives. To this end, this and other similar provisions, now found in Standing Orders, may be applied to those members of the Force whose private conduct falls short of that expected by the Force.

Service Court

The 1936 edition of *Rules and Regulations* introduced the provision that certain members charged under the Act with a serious offence could obtain the assistance of another member.

> "Members of the Force with less than six months service charged with serious offences, should, if they so desire, ask that an experienced member of the Force be appointed to assist them in their defence."

Legal counsel was still prohibited in a service court proceeding. Later changes have allowed any member, regardless of length of service, access to assistance from another member.

In 1959, the Act, which since 1920 was known as the Royal Canadian Mounted Police Act, underwent major changes in the area of discipline. The most important change had to do with the "rules of evidence" used in these proceedings.

Between 1879 and 1894, regulations permitted a member to be convicted "on view" without the aid of sworn testimony. In 1894, an amendment stipulated that a charge proved on oath to the satisfaction of the adjudicating officer was required to sustain a conviction. In 1959, Section 34 of the Act was added to require that,

> "The rules of evidence at a trial under this Part shall be the same as those followed in proceedings under the *Criminal Code* in the courts in the province in which the trial is held, or, if the trial is held outside Canada, in the courts of Ontario."

Due Process

In 1962, a significant change relating to due process occurred in Standing Orders. Since its inception, the Force has insisted that the first requirement of a constable was obedience to orders. This obedience extended to the service investigation involving a member's conduct.

When a member chose to remain silent during an investigation, he could be ordered to make a statement. If he refused to do so, he could then be disciplined for refusing to obey the lawful command of a superior. Through this provision, the Force was able to discover the nature of events leading to an allegation of misconduct. Such statements could not be introduced in service court proceedings though they could be used for other purposes.

Penalties

In 1934, an amendment to the Act allowed for pay stoppage for members absent without leave. In that year as well, there is found the first instance where the requirement to make restitution was introduced. Upon conviction of a service offence, a member could, in addition to any other penalty, be required to make compensation for loss of property if the loss was found to have been caused through his negligence or carelessness. He could also be required to pay damages, hospital or medical bills incurred by him while unfit for duty. In 1959, these additional punishments were extended to include the payments of damages for personal injury or loss of property, to a maximum of $1,000.

In 1952, the following penalties were added:

"a) where in the opinion of the convicting officer imprisonment is too severe a punishment the offender may be confined to barracks for a period not exceeding twenty-eight days in lieu of or in addition to a fine;

b) where in the opinion of the convicting officer reduction in rank would be too severe the offender, if he is a non-commissioned officer, may be reduced in seniority in his own rank;

c) where the convicting officer considers that the offence is of a minor nature and that fine or imprisonment would be too severe the offender may be given extra guards, extra fatigues or other extra duties; and

d) where in the opinion of the convicting officer the offence is of so minor a nature that a more severe punishment is not necessary the offender may be reprimanded, admonished or warned as provided for in the Standing Orders of the Commissioner."

In 1959, offences were reclassified as major service offences and minor service offences with a separate range of punishments provided for each. Section 36 of the Act reads as follows:

"36. (1) Any one or more of the following punishments may be imposed in respect of the major service offence;

a) imprisonment for a term not exceeding one year;
b) a fine not exceeding five hundred dollars;
c) loss of pay for a period not exceeding 30 days;
d) reduction in rank;
e) loss of seniority; or
f) reprimand.

(2) Any one or more of the following punishments may be imposed in respect of the minor service offence;

a) confinement to barracks for a period not exceeding 30 days;
b) if pursuant to section 38 the convicting officer recommends dismissal, a fine not exceeding three hundred dollars;
c) a fine not exceeding fifty dollars;
d) loss of seniority; or
e) reprimand."

Appeals

Throughout the history of the Force, all appeals have remained under the role and final authority of the Commissioner. In spite of Commissioner Irvine's attempt in 1885 to involve the "Minister charged with the control and management of the Force" as a final appeal authority, there is no evidence that a Minister has ever acted in this capacity nor has the legislation provided for this procedure.

Although the evolution of the appeal procedures has remained unchanged insofar as the Commissioner's authority is concerned, significant changes have occurred in the procedures leading up to his decision. Under previous provisions, a member appealing a conviction or punishment received in orderly room would forward his appeal through his Commanding Officer to the Commissioner for consideration. In these circumstances, a Commissioner could decide on an appeal without reference to either the evidence used at the trial or the transcript of the proceedings. Under amendments to Section 43 of the Act in 1959, the Minister responsible for the Force now has authority to appoint a Board of Review, "consisting of a Deputy Commissioner or an Assistant Commissioner, and two officers of or above the rank of superintendent." The duties of this Board are found in Section 85 of the Regulations.

> "The board of review shall examine all appeals and records of trials referred to it in order to determine that:
> a) the proceedings at the trial were conducted in accordance with law;
> b) the conviction is supported by the evidence on the record;
> c) the sentence imposed was in accordance with law; and
> d) the sentence was not more severe than the interests of discipline or the merits of the case demand."

Having completed its review, the Board, under Section 86:

> ". . . may recommend to the Commissioner that he:
> a) allow the appeal;
> b) dismiss the appeal;
> c) quash the conviction;
> d) reduce the sentence or the amount ordered to be paid as fine, damages or restitution; or
> e) order a new trial."

Under the authority granted him in Section 44 of the Act, the Commissioner is free to accept or reject the Board's recommendations. As well, under Section 87 of the Regulations,

> "The Commissioner may record such remarks as he deems proper on any matter connected with a trial."

In addition to appeals against conviction or punishment received in service court, there is an appeal procedure with respect to discharge for unsuitability and dismissal by the Commissioner. This latter provision in Section 177 allows the Commissioner to dismiss a member "whose conduct has been so reprehensible as to render him unworthy of continuing in the service." In the recent past, the Commissioner has only

exercised his power of dismissal upon the recommendation of his senior officers or Commanding Officers of Divisions.

Historically, servants of the Crown could be dismissed from service at will and it was in keeping with this tradition that the Commissioner was granted the authority in the Act of 1873 to summarily discharge a member.

Recent consideration of this principle by the Federal Court of Canada suggests that although the principle may still be in existence, its application has been severely restricted. The Commissioner has restricted his own power of summary discharge through the implementation of Standing Order 1200, which says in part that,

> "When a member is informed pursuant to Reg. 151 that his discharge from the Force is being recommended, he shall also be advised that he may appeal to the Commissioner against the recommendation."

The legal effect of Standing Order 1200 is to require the Commissioner to exercise his administrative discretion to discharge in a judicial or quasi-judicial manner. Rather than summarily discharging a member, the Commissioner must consider the merits of the case.[19]

Before the Commissioner considers an appeal, the Officer in Charge of the Staff Relations Branch convenes a Board of Review [20] consisting of himself, the Officer in Charge of the Discipline Section and the Officer in Charge of the branch of service in which the member serves. The Board reviews all relevant material, including the member's service file and makes its recommendations to the Commissioner. Here again, he may accept or reject the Board's recommendations. In effect, a member's appeal now receives the benefit of analysis and assessment by senior officers of the Force. Where a member is dissatisfied with the decision that the Commissioner makes, he has the right to seek redress through the judicial system.

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[19] McCleery. Her Majesty the Queen (1974) 2 F.C.339.

[20] Under an interim administrative order, number 290. This order has yet to be published in the Administration Manual of the Force.

GRIEVANCE PROCEDURE

Grievance Procedure in the Force

In the first years of the Force a member had recourse to two grievance procedures. The first was the formal grievance procedure provided by the Force. This procedure duplicated the standard military procedure for grievances in that a member could submit a grievance through the chain of command until such point as he received redress or was denied the grievance by the Commissioner of the Force. The second grievance procedure was an informal one that occurred outside the Force. Given that many of the early members of the Force had gained access to the Force through their political connections, it follows that they would appeal to these same connections when difficulties arose. In addition, they felt free to write to a Cabinet Minister or the public press to air their grievances.

The more informal procedure gradually fell into disuse by the mid 1930's. In the 1936 edition of *Rules and Regulations*, there was introduced a provision that specifically prohibited members from communicating with anyone outside the chain of command. This provision read as follows:

> "Members of the Force are forbidden to communicate with the Government, Ministers of the Crown or Members of Parliament, or any other person not connected with the Force for the purpose of obtaining advancement, special treatment, consideration or priority or for other purposes of personal advantage or gain. If there is any matter or situation which any member of the Force considers should be given attention, he always has the ordinary channel of communication open to him, . . . and he must use that channel on all matters."

Section XXIX of the 1889 edition of *Regulations and Orders* for the North West Mounted Police contained the first formal articulation of the grievance procedure in use in the Force.

> "The members of the Force can, at any time make any representations they may wish to the Commissioner. They must,

however, be made in writing, couched in proper language and a respectful manner, and forwarded through their immediate superior.

Any member of the force feeling himself aggrieved or injured should bring the circumstances of the case under the notice of his immediate superior officer at once. Any such officer (not being in charge of the district), on receiving a complaint, will forward to the Superintendent, who, if it is intended for the Commissioner, will submit it accordingly.

While officers are to consider it imperative to forward all such complaints, they should forward with them such statements of their own, bearing thereon, as they may consider necessary.

Complainants should bear in mind that in making a complaint which proves, on enquiry, to be frivolous or vexatious, they render themselves liable to punishmenf."

The present grievance procedure in the Force varies little from that quoted. In the present regulations under the heading *Complaints* the following appears:

"93. (1) Every member who feels he has been injured or aggrieved or that he has suffered any personal oppression, injustice or other ill-treatment may make a complaint in the manner prescribed in these regulations.

(2) Every complaint shall be:

a) in writing,

b) signed by the complainant,

c) made within a reasonable time after the occurrence of the ill treatment complained against,

d) written in a respectful tone, and

e) neither frivolous nor vexatious in nature.

94. Every complaint shall be sent through the normal chain of command of the Force and shall be forwarded without delay to the person to whom it is addressed or, if the circumstances do not warrant this action, to such other member as can remedy the complaint.

95. Where the person to whom the complaint is presented does not forward it to the person to whom it is addressed within a reasonable time, the complainant may forward it directly to the person to whom it is addressed.

96. Every person whose duty it is to forward a complaint may forward with the complaint a statement containing such comments as he considers pertinent to the complaint.

97. Every person to whom a complaint is made shall cause that complaint to be inquired into and if he is satisfied as to the validity of the complaint, take such action as is within his power to afford full redress to the complainant or if he has no power to afford full redress, submit the complaint to a superior officer."

The Evolution of Grievance Procedures

The grievance procedure of the Force remained essentially unchanged until 1972 when the Commissioner granted the authority for the formation of what is now known as the Division Staff Relations Representative Program. To this end, representatives were elected by the members of their divisions within the Force. These representatives meet with senior management two or three times a year to discuss issues relating to members' welfare, operational issues and a host of other policy matters.

A number of factors led to the formation of the Division Staff Relations Representative Program. The traditional grievance procedures within the Force were structured to handle individual grievances. There was no mechanism for group or collective grievances on matters of Force-wide interest. In addition to the lack of a system to accommodate collective grievances, the Force had been explicitly excluded from the provisions of the Public Service Staff Relations Act and therefore members did not have recourse to those grievance procedures available to other government employees. This situation continues. There was an Order-in-Council in effect since 1918 prohibiting members of the Force from forming their own association or union. A General Order published October 28, 1918, stated:

> REGULATION
>
> "No member of the Royal Northwest Mounted Police or of the Dominion Police, whether officer, non-commissioned officer or man, shall become a member of or in any wise associated with any trades union organization, or any society or association connected or affiliated therewith: or with any union, society or association of employees or any society or association connected or affiliated therewith: or with any union, society or association having for its object the rights or interest of employees or of labour, or of employers or of capital in competition with each other; and any contravention of this regulation shall be cause for instant dismissal."

This provision was repealed in 1974 by the Governor-in-Council.

What was needed was an effective way for the members of the Force to contribute to discussions on those issues of general concern to the Force. The Division Staff Relations Representative Program may have achieved some measure of success in this regard, but its overall success and acceptance remains a matter of debate within the Force. In response to the mixed reaction this innovation has received, the Force has continued to explore ways in which the system can be improved.

With the removal of the 1918 provision the creation of an association within the Royal Canadian Mounted Police became possible. Shortly after it became lawful to do so, an association was formed by some members of the Force although it remains barred from becoming a collective bargaining agent by the provisions of the Public Service Staff Relations Act.[21]

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[21] Public Services Staff Relations Act, Section 2(3), 1966-67, C.72, s.I.

COMPLAINTS AGAINST THE FORCE

Introduction

The enabling legislation of 1873 which authorized the existence of the Force contained no mention of public complaints procedures. No explicit directives on public complaints procedures appeared until December 1964, when, in Officers Confidential Memorandum Number 10, it was stated that,

> "A complaint against the Force or a member shall be investigated immediately . . ."

Subsequent to 1964, the above order became the leading paragraph of Standing Orders entitled "Complaints Against the Force And/Or Members". These Standing Orders give detailed instructions for the handling of public complaints.

The fact that no explicit directives or regulations governing public complaints procedures appeared until 1964 must not be permitted to mislead. An examination of the arrangements the Force employed in its treatment of public complaints will prevent not only a misunderstanding of the Force's traditional response to public complaints, but will as well provide an insight into the manner in which the senior management of the Force perceived complaints made by the public.

Policing and Public Complaints

It has been argued that not only the success or failure of frontier policing by the Force, but the very possibility of policing, depended to an inordinate degree on the conduct of the members of the Force. This assumption served to account for the consistently strict attitude senior management of the Force had always taken on matters having to do with discipline. It is interesting to note that the same assumption underlies the Force's traditional response to and perception of complaints made by the public. Given the relatively few men available to carry out law enforcement in the Territories, it was imperative that the Force respond quickly and thoroughly to complaints against members. The response of the

Force has always been to attempt in the first instance to resolve complaints informally. Where serious complaints or those of a complex nature have been made, the Force has responded by appointing a senior investigator to determine the extent to which the complaint is either "founded" or "unfounded". Once a determination was made, the complainant has been notified and, where necessary, the member involved has been disciplined.

It is important to note that the Force has always viewed public complaints as a matter related directly to discipline. As a consequence, public complaint procedures were until quite recently identical to those procedures developed within the discipline system. To a significant extent disciplinary action was the accepted corrective response.

The Force has always relied on the good will of those whom it serves. While there exists little if any historical account of particular responses to public complaints or of public complaint procedures in the Force, there exists ample, if indirect, evidence that the Force has traditionaly provided satisfactory service to its constituents. Two examples will suffice.

First, during the early part of the twentieth century, subsequent to the settlement of the Territories, there was serious political consideration given to the disbandment of the Force. It was argued by many members of both political parties that since the West had been settled in a peaceful manner, there was no longer any continued need for the Force. The reaction to the debates on this matter in the House of Commons both from members of the public and members of the territorial and provincial governments in the West provide an overwhelmingly convincing argument that the Force was well respected and admired by those citizens it had served.

Secondly, the stature that the Force gained in the West was such that it was eventually designated as the national police force of Canada. As well, the fact that most provincial governments have persistently sought the services of the Force to provide provincial and municipal police services, continues to indicate the level of respect the Force has merited in the carrying out of its police duties.

It may be an exaggeration to believe that the Force could not have survived with an insensitive attitude toward public complaints during its era of frontier policing. It is no exaggeration, however, to suggest that it could not have survived the political debates that occurred in the early part of the twentieth century had it a record of insensitivity towards those whom it served. The fact that the Force serves today as the police force in eight of the ten provinces, the two territories and one hundred and

seventy-one municipalities, gives credence to the claim that it has provided a satisfactory response to public complaints.

PART III

PUBLIC COMPLAINT PROCEDURE

Chapter 1

CURRENT METHODS OF HANDLING PUBLIC COMPLAINTS BY THE ROYAL CANADIAN MOUNTED POLICE

INTRODUCTION

When the public complaint procedures of the Force are discussed there are diverse interests that must be acknowledged and taken into account. A public complaint procedure that favours the interest of a complainant at the expense of a member of the Force is no more likely to provide satisfaction than a procedure which does the reverse. The interests of the general public and the Force also are involved and must be accorded due consideration. It was with an awareness of the need to balance these interests in an equitable manner that the Commission undertook its investigation and formulated its recommendations.

Between the years 1963 and 1973 the Royal Canadian Mounted Police experienced a rapid and significant increase in manpower. In 1963, the strength of the Force was 8,540 regular members. By 1973, the members had increased to 15,892, an increase of 86.1% within a ten-year period. Such a rate of growth can place a strain on even the most traditionally sound procedures, including those related to the handling of public complaints.

During this period of expansion, there was an increasing public interest in civil rights. This concern included citizen-police relationships and, as a topic of particular interest, the sensitive issue of public complaints procedures.

The rapid rate of growth within the Force at a time of increasing public concern with civil rights has led its senior management to re-examine a number of procedures. Public complaint procedures represent only one facet of this re-examination. In following the directive of the Governor-in-Council to investigate and report upon the current methods of handling complaints by members of the public against members of the Royal Canadian Mounted Police, the Commission has sought to provide the Force with an independent analysis of these methods and recommendations for their improvement.

CITIZENS AND THEIR COMPLAINTS

Historically, the citizens of Canada have respected those charged with the responsibility for providing police service. Where the Royal Canadian Mounted Police is concerned, this respect has generally been accompanied by well-earned admiration and sense of national pride. If such approbations seem worn through overuse, the findings of an attitude survey[1] undertaken in 1972 are worthy of consideration:

—75% of those sampled considered the image of the Royal Canadian Mounted Police as portrayed by the media to be favourable;

—91.7% judged the Force "competent" or "highly competent";

—nine out of ten Canadians saw members of the Force as honest.

Canadians were either "satisfied" or "very satisfied" with the Force on the following subjects:

appearance	96%
respect for citizen's rights	88%
availability	73%
freedom from political influence	67%
attitudes towards the public	85%

Given these figures, one might reasonably inquire whether public complaint procedures in the Force are in need of review. It would seem that the majority of citizens are satisfied with the Force. What is also true, and with good reason, is that the vast majority of Canadian citizens have never had cause to complain about a member of the Force or the quality of police service generally provided.

In preparing its report on public complaint procedures within the Royal Canadian Mounted Police, the Commission has been fully cognizant of the support and admiration the Force enjoys from the majority of

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[1] CROP, Social Norms—Continuation and Conclusions, Montreal, P.Q., October 1972.

Canadians. The Commission recognizes, however, that in Canadian society, justice and fairness are not statistical commodities where minority interests are concerned. The fact that relatively few Canadians lodge complaints against the Force and fewer still express dissatisfaction with the response the Force provides, should not detract from the importance of ensuring that the particular interests of the complainant and the member involved are safeguarded by equitable procedures fairly administered.

What Is a Complaint

The Royal Canadian Mounted Police has followed a policy of grouping complaints into a limited number of broad classifications. This process, however, ignores the more fundamental question which is: What is a complaint? The answer to this question is central to any discussion of public complaint procedures.

Since public complaint procedures serve a variety of interests, any definition of a complaint must be broad enough to include not only those matters immediately recognizable as complaints, but also other categories of communication, including suggestions for change. With this variety of interests in mind, a working definition of a public complaint may be formulated as follows:

> "Any communication received from a member of the public, either orally or in writing, which criticizes the behaviour of a member of the Force or alleges the failure of the Force itself to meet public expectations."

The Commission noted that complaints received by the Force could be categorized as one of two types: complaints alleging specific injury or abuse by a member or members of the Force; and complaints of a more general nature such as matters of police service or the operational policies of the Force. Examples of these general complaints would be, respectively, a complaint alleging inadequate manpower and a complaint expressing dissatisfaction with the fact that members of the Force are not required to wear an identifying name tag or number when in uniform. For the purpose of this report, complaints in the former category will be designated as "specific", those in the latter category, as "general."

Specific complaints may arise from a spectrum of incidents ranging from a complaint that takes exception to a member's attitude while attending to a traffic violation to a complaint of a more serious nature that alleges criminal misconduct such as assault or theft.

Public complaint statistics maintained by the Royal Canadian Mounted Police at Headquarters in Ottawa for the year 1973 indicate that nine per cent of those complaints formally recorded alleged a violation of the law[2]. After investigation, nineteen per cent of these were regarded as valid or, in Force terminology, "founded." No data was available from the Force that would allow the Commission to determine how many of these founded complaints led to prosecution and, of these, to conviction.

In cases where a complaint alleges the criminal behaviour of a member, the Force conducts a criminal investigation. Once the investigation is complete the Force forwards the investigator's report to the prosecutorial authorities. In order not to influence the discretion of the Attorney General's Office, the officer forwarding the report does not comment on the investigator's findings.

Where a specific complaint alleges non-criminal misconduct, the Force may respond in a number of ways which will be discussed elsewhere in this chapter.

Other complaints deal with general issues such as the quality of various police services, while some are directed at the policies of the Force. Complaints are sometimes misdirected. Citizens may complain to the Force about the law rather than the manner in which it is being enforced. For example, many citizens complain about the use of writs of assistance. The Force bears the brunt of this criticism which should be directed in these instances to legislators.

This distinction between specific and general complaints is not one which the Force itself employs. While such a distinction serves a useful analytical purpose, it does overlook the likelihood that many specific complaints are caused by a complexity of factors, which resulted in the particular behaviour of a member. Take, for example, a complaint alleging rudeness on the part of a member. Such inappropriate behaviour may be explained, in part, by fatigue arising out of extra duty necessitated by a manpower shortage. These circumstances may not excuse the behaviour in question, but a series of such incidents should serve to direct attention to an operational situation that perhaps has been ingored.

The Commission has received no clear evidence that the Force conducts a systematic analysis of all specific complaints for ramifications in police operations or that the Force attempts to translate ramifications which might thus be brought to light into possible changes.

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[2] Not all complaints reach the Ottawa Headquarters of the Force. National Headquarters at present only receives copies of founded complaints sent from Divisions across Canada.

What Do Citizens Complain About

The following table illustrates the types of public complaints the Force received during 1973 and 1974. These statistics reflect as well the percentage of founded complaints in each category.

COMPLAINT CATEGORIES	UNFOUNDED		FOUNDED		TOTAL		PERCENTAGE OF TOTAL COMPLAINTS	
	'73	'74	'73	'74	'73	'74	'73	'74
Conduct[3] Unbecoming	61	88	23 (27%)	28 (24.1)	84	116	9.0%	10.5%
Attitude or Manner	100	125	22 (18%)	26 (17.2)	122	151	13.1%	13.7%
Harassment	87	126	10 (10%)	6 (4.5)	97	132	10.4%	12%
Use of Excessive Force	80	137	16 (16%)	25 (15.4)	96	162	10.3%	14.7%
Exceeds Legal Authority	134	111	17 (11%)	10 (8.2)	151	121	16.2%	11%
Inadequate Police Service	184	174	28 (13%)	23 (11.6)	212	197	22.8%	17.9%
Statutory Offences[4]	68	59	16 (19%)	16 (21.3)	84	75	9.0%	6.8%
Other	77	118	4 (4%)	23 (16.3)	81	141	8.7%	12.8%

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(3) "Conduct Unbecoming" is a general category in which complaints about misdemeanours or misconduct of a minor nature are recorded.

(4) "Statutory Offences" includes complaints alleging violation of Federal or Provincial statutes. Throughout the report, we distinguish between these criminal or quasi-criminal offences and those relating to the Royal Canadian Mounted Police Act.

Complaining

In examining complaints, it was discovered that complaints are received in many different forms by the Force, ranging from anonymous telephone calls to sworn affidavits. The majority of complaints against the Force are made directly to the Force and are received at all levels. In 1973, the Solicitor General of Canada received seventeen per cent of complaints recorded formally by the Royal Canadian Mounted Police. Complaints are also received by newspaper editors, politicians at all levels of government and members of the judiciary.

It became evident to the Commission that not all citizens having complaints attempted to bring them to the attention of the Force. The reasons why complaints were not brought to light were many and included the following:

—the individual concerned did not know how to bring the complaint to the attention of the Force;

—he felt that to complain would "do no good" as the Force would simply "cover up";

—he feared that some form of retaliation by the Force would follow the lodging of a complaint;

—upon seeking the advice of others, he was discouraged from pursuing the complaint further.

THE FORCE AND ITS RESPONSE

The Development of Existing Procedures

Throughout its history, the Force has correctly perceived that its public image and the respect its members have earned are among its most precious assets. These are assets to the Force because they allow it to do better police work than could be done if the image were tarnished and respect found wanting among the citizens it serves.

One essential ingredient in the preservation and growth of its public image and respect is the quality of the Force's response to public complaints. From its inception the Force has recognized that, where possible, a swift informal resolution of a complaint at the local level best serves the interests of the complainant and the Force alike.

While both of these characteristics may continue to have a place in any public complaint procedure, there are interests involved in the procedure which at the present time are neither adequately recognized nor sufficiently protected. In tracing the present methods the Force employs in the handling of public complaints, this report will draw attention to the procedures in use which seem in need of some adjustment.

The Handling of Complaints

The majority of complaints directed by the public against members of the Royal Canadian Mounted Police appear to be handled informally. While the current provisions concerning complaints [5] do not make a distinction between formal procedures and informal procedures, such a distinction serves as a useful analytical distinction for the purposes of this report.

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[5] Until July 8, 1975, these orders were in Standing Orders, Numbers 1159 through 1163. The revised orders have been in effect since July 8, 1975. Both sets are quoted in full in this chapter.

The Informal Approach

Our investigation indicated that the current informal method of handling complaints is characterized by the fact that most do not proceed beyond the level at which they are lodged. Usually, the complaint is stated; an understanding concern is expressed; an apology or an explanation may be given and the matter, as far as the complainant is concerned, is closed. When necessary, the involved member will be notified, verbally counselled, or appropriately disciplined in an informal manner.

Another characteristic of these procedures is that they allow a great deal of discretion on the part of the members of the Force responsible for responding to the complainant.

Discretion begins when the complaint is first received by the Force and a decision must be made on whether to record the complaint on the office occurrence report or to let it go unrecorded. This decision may be influenced by a number of considerations. These include:

—the rank and experience of the member receiving the complaint;

—the ability of the member receiving the complaint to mollify the complainant or to divert the complaint to a more appropriate authority;

—the particular procedure laid down by a superior;

—the social status of the complainant.

Most of the considerations which may affect the recording of a complaint may also influence the decision of a commanding officer to proceed with the complaint on an informal or formal basis. An additional consideration might be the past performance of the member involved in the complaint. If the member in question has a history of similar difficulties the officer may decide to proceed formally.

A further area of discretion is revealed by the last example. If the decision is to deal with the complaint informally, a commander must then decide whether discipline is warranted by the member and, if so, what form it should take. As has been stated, the range of discipline available in such situations is limited and may involve no more than extra duties. The remaining area of discretion once an informal resolution has been decided upon relates to the method to be employed by the Force in resolving the complaint. This may include no more than a discussion with the complainant.

It should be stated that a serious complaint leaves little room for the exercise of discretion. The only caveat to this is that the Force is unable

to provide an exhaustive list of incidents which, if reported, must qualify as a serious complaint; that is, one necessitating recording beyond entry in the occurrence report.

Given the wide discretionary authority present in the current informal procedures, it is natural to expect an equally wide variation in response. This variation was confirmed in research undertaken by the Commission. It was noted that in some localities, the detachment commander or officer commanding the sub-division was committed to attempting informal resolution of complaints whenever possible and to encouraging his subordinates to exercise their own initiative in a similar manner. In other areas, the commander was not convinced that informal resolution was the most effective way of handling public complaints and chose to see such complaints investigated formally whenever possible.

This discretion entails that, given any two or more police commands, there is no guarantee that similar complaints will elicit similar procedural responses from the Force. The degree of variation this discretion introduces extends beyond the responses complainants can reasonably expect, to the amount and kind of discipline members might expect. Variation in this latter case is no less than in the former. One member might be given weekend duty for a month while another involved in a similar complaint but under a different command, might receive a verbal rebuke.

In assessing the manner in which the informal handling of complaints proceeds, the Commission observed that the Force is deprived of information vital to its interests. Specifically, we are concerned both with the fact that not all complaints are recorded and with the fact that, among those that are, only those designated as founded are forwarded to the Headquarters of the Force in Ottawa.

It is our opinion that assimilation and analysis of *all* complaints the Force receives would provide information that might profitably be used in a number of ways. Such information, even where "unfounded" complaints are concerned, would quickly bring to the attention of those responsible a pattern of repeated difficulty a member might be experiencing. As well, such information could serve in the assessment of operational procedures and training programs. Finally, the Force would have a needed basis of comparison on complaint activity throughout its Divisions. This information would be extremely useful in assessing the merits of different policies in use within different Divisions.

Another of our concerns is the absence of consistency in the application of informal procedure for handling public complaints. While we

recognize that, in many cases, the informal approach is preferable and support the preference of the Force for this approach, we note that current regulations do not articulate this nor do they provide explicit guidelines to assist in its uniform acceptance.

Finally, we must consider the inequity in the administration of "informal discipline" that presently follows the informal handling of complaints. In this regard, the Commission does not necessarily wish to abridge the authority of those responsible for personnel management. We are sensitive, however, to the interest of members who may bear an uneven and thus unfair burden of punishment. In our discussions on internal discipline within the Force, the Commission will suggest what it considers an equitable solution to this problem.

The Formal Approach

Not all complaints are handled informally. When circumstances require the formal approach to a public complaint, provisions in Standing Orders come into effect. Unlike the informal practices, these orders allow little discretion.

Standing Orders in effect up to July 8, 1975, were:

COMPLAINTS AGAINST THE FORCE AND/OR MEMBERS

1159 (1) A complaint against the Force or a member shall be investigated immediately. (See also C.S.O. 1163)

(2) The Commanding Officer shall promptly inform the Commissioner of brief particulars of any complaint that may, or has, resulted in adverse publicity to the Force or that may give rise to questions in the House of Commons.

Unfounded Complaints

1160 (1) When, after appropriate enquiry and in the opinion of the Commanding Officer, the complaint is unfounded or no disciplinary action is required, the Commanding Officer may conclude the investigation and reports need not be forwarded to Headquarters.

Founded Complaints

1161 Founded complaints shall be summarized in the following manner and forwarded to the Commissioner under Service File caption:

(a) name of complainant

(b) nature of complaint

(c) time, date and place of alleged offence

(d) regimental number and name of member involved

(e) summary of investigation

(f) recommendation OR disposition

SERVICE INVESTIGATIONS

1162 Report the final outcome of an investigation made into any complaints against a member to the complainant and to the member concerned. When informing complainants their complaint is founded, and when applicable, they should be advised that appropriate disciplinary action is or has been taken without revealing the specific action taken.

1163 (1) Any enquiry into the conduct of or a breach of discipline by a member, arising either internally or by complaint from any source shall be known as a "service investigation."

(2) A service investigation shall be conducted forthwith in all cases of known or alleged misconduct or breaches of discipline and the results promptly reported.

During the course of the Commission's investigation, the Force published revised orders which took effect July 8, 1975. We shall have the opportunity to examine these in some detail later in this report.

Recording Complaints

Every office of the Force that deals with the public is required to maintain an occurrence report ledger. In this ledger those complaints which are recorded begin their official existence. The record of complaints which have been recorded and resolved informally does not proceed beyond the occurrence report. The ledger will record that the complaint has been resolved informally and no further reports are made. It should be noted that occurrence reports are not a permanent record and are destroyed after a period of time.

While more serious complaints are often initially recorded in a manner identical to those informally resolved, they are quickly brought to the attention of an officer, usually one in command of a sub-division. Once a decision has been made to bring the complaint to the attention of someone in authority beyond the local level, a file is opened in which the details of the complaint, the results of any preliminary investigation and any other pertinent information are recorded.

The officer initially receiving the complaint has three alternatives; he may return it to the local level for informal resolution or further investigation; he may appoint a senior investigator to investigate the matter or he may refer the matter to higher authority, normally the Commanding Officer of the Division in which he serves. If the complaint is of a kind that may "result in adverse publicity" or "may give rise to questions in the House of Commons" the officer is required to inform the Commanding Officer of the Division and he, in turn, is required to inform the Commissioner.

In cases where complaints are received by the Commissioner or senior officers of the Force, the investigator's report is usually forwarded to the original recipient of the complaint for appropriate action.

Regardless of the level of command from which an investigation is launched, the results of the investigation, along with the investigator's judgment on the validity of the complaint, will become part of the record.

As we have noted previously, should the investigation uncover criminal conduct, the investigator's report, along with any statement or evidence taken, is sent to the prosecutorial authorities without official comment. In cases where the investigation uncovers breaches of discipline, the record then becomes a basis for formal disciplinary proceedings.

Once the investigation of a complaint is completed and a decision as to its validity has been made, the complainant is notified in writing. Where a decision has been taken to discipline the member, the complainant is told that appropriate disciplinary action has been or will be taken but is not informed of the specific discipline ultimately administered.

When a complaint is classified as "founded", a copy of the record is sent to Division Headquarters and another is forwarded to the Headquarters of the Force. If disciplinary action has resulted, a copy of the record and specifics of the discipline administered are placed in the service file of the member.

Investigating a Complaint

In its handling of public complaints, the discretion exercised by the Force extends to the investigation it may undertake. The alternatives available extend from a quick verification to a complete investigation.

The verification of a complaint is initiated at the local level and may involve no more than the validating of allegations made by the complainant. Should the complaint be of a kind usually resolved on an informal

basis, this will normally be the only investigation carried out and the matter will not be forwarded beyond the authority of the receiving office or detachment.

Should the circumstances of a complaint merit further investigation, the matter will be dealt with at the appropriate level of command empowered to order the investigation. In these cases, the officer responsible may choose to have the local office conduct a preliminary investigation or, depending on the circumstances, he may assign a senior investigator to conduct a complete investigation. The investigator is required to be senior to the member involved in a complaint.

During a complete investigation, the investigator will take statements from the complainant, the member involved and any witnesses. In addition, he collects any evidence available. He will then prepare his report and indicate what evidence exists and give his own conclusions. When conducting a complete investigation, the investigator is obliged to inform the member involved as to whether the investigation is a service or a criminal investigation. With but two exceptions, the investigator follows routine procedures in either case.

In conducting a service investigation, the investigator asks a member alleged to have committed a breach of discipline to provide a voluntary statement or to answer questions. Should the member refuse to volunteer information, the investigator can proceed under the following authority:

"E. 1. GENERAL

E. 1. a. A service investigation will be conducted forthwith into alleged misconduct or suspended commission of a service offence by a member.

E. 1. b. A member may request that an interview be conducted to English or French, and such request will be acceded to.

1. If an interpreter or bilingual investigator is required but is not available in your division, request Headquarters to provide one.

E. 1. c. Although a member is not obligated to give a statement after being warned, neither does he have the right to remain silent. He is obligated to answer all relevant questions put to him touching on any internal investigation conducted by the Force.

E. 1. d. Statements or answers to questions given voluntarily may be used in evidence.

E. 1. e. False or misleading statements or answers to questions, oral or written, volunteered or ordered, may be used in evidence for the purpose of proving the falsity or misleading nature of the statement made.

E. 2. DETACHMENT/SECTION COMMANDER OR OFFICER IN CHARGE

E. 2. a. Have a service investigation conducted immediately into any alleged misconduct or suspected commission of a service offence by a member.

E. 2. a. 1. If it is of a serious nature, notify your immediate officer before conducting a full investigation into the matter.

2. If it is not of a serious nature, you may conduct the investigation yourself or appoint another member to do so, as deemed appropriate in the circumstances.

E. 2. b. Ensure that a thorough investigation is conducted.

E. 2. c. If the investigation discloses any misconduct or the commission of a service offence, follow the procedures outlined in Section I and appendix II-13-1.

E. 2. d. If a Statutory violation is disclosed, follow the procedures outlined in Section H.

E. 3. INVESTIGATOR

E. 3. a. Conduct a thorough and impartial investigation.

E. 3. b. Endeavour to obtain information and supporting facts voluntarily from persons involved in or who have knowledge of the matter under investigation.

E. 3. c. If a member is a suspect, clearly tell him you are conducting a service investigation, and the alleged misconduct or service offence that he is suspected of having committed.

1. Give him the customary warning before questioning or taking a statement from him.

2. If the warning is not understood, explain the warning.

3. Ask him if he wishes to give a voluntary statement.

E. 3. d. Immediately preceding a statement or questions and answers made by a suspect, record the following:

1. the nature of the alleged misconduct or suspected service offence;

2. the warning and comment on whether or not it was understood;

3. any clarification given in respect to the warning, and

4. whether the member agreed to give a voluntary statement.

E. 3. e. If a member refuses to give a statement, order him to answer all relevant questions. Carefully explain to him that he is obligated to answer relevant questions and that his failure to do so could result in his being charged

with a major service offence for "refusing to obey a lawful command" under Section 25(1) of the RCMP Act.

E. 3. f. If a member is believed to have knowledge or information relating to the suspected misconduct or service offence and is not a suspect, you may question him directly without warning as to his knowledge of the matter under investigation. However, if he subsequently admits involvement in any offence during the course of the interrogation, immediately give him the customary warning before proceeding.

E. 3. g. Report the outcome of your investigation by memorandum to the member who ordered the investigation without delay." [6]

Section 25(a) of the Royal Canadian Mounted Police Act states,

"Every member who

(a) disobeys or refuses to obey the lawful command of, or strikes or threatens to strike, any other member who is his superior in rank or is in authority over him; . . . is guilty of an offence, to be known as a major service offence, and is liable to trial and punishment . . ."

Although a member is required to obey the order to answer questions put to him during a service investigation, statements obtained in this fashion are not admissible as evidence in service court proceedings. However, such statements allow the investigator to gain information about an incident that would otherwise be unavailable.

The authority of an investigator in a criminal investigation does not extend to the taking of "ordered statements" from a member involved. Because of its failure to meet the criterion of voluntariness, evidence obtained from a member through such a procedure would be inadmissible in a court of law.

If the investigation was a service investigation, the investigator's report is given to the officer initiating the investigation. At this point, the officer must decide whether the complaint is founded and, if so, how he will proceed in the discipline of the member and the notification of the complainant.

The Force has followed the practice of designating a complaint as "founded" or "unfounded." Our analysis of complaint files has shown that in cases where the Force has not substantiated a complaint, it has informed the complainant that the complaint was "unfounded." Such a

[6] Royal Canadian Mounted Police Administration Manual, Vol. 1, II.13.E.1.—E.3.g.

response provides little comfort to a member of the public, particularly one who has been treated badly by a member of the Force.

Apart from the Commission's particular concerns with various aspects involved in the investigation of a complaint, there is a further concern that must be expressed.

In numerous hearings of the Commission and in a substantial number of written submissions, concern was expressed that the public complaint procedures of the Force are not open to review by an independent authority. The fact that the Force alone investigates the alleged misconduct of its members and that its officers determine the validity of a complaint, leaves many members of the public with a suspicion that the interests of the Force are protected to the detriment of the interests of the complainant. In view of the dependence of the Force on the respect and co-operation of those whom it serves, it is our opinion that the procedures for handling public complaints should be so improved that this suspicion not persist.

Responding to the Complainant

When unreasonable delays occur during the handling of a complaint, complainants should be notified. As well, they should be informed of higher authorities with whom they may communicate, should they be dissatisfied with any aspect of the Force's response to their complaint.

Until the publication of the Standing Orders, there was no provision that complaints be formally acknowledged. The general practice of the Force has been to acknowledge written complaints in writing.

As noted, all complainants whose complaints have been formally investigated were usually informed by letter of the results of the investigation. The Force remains very firmly committed to its policy that complainants should not be informed of the specifics of any disciplinary action taken against members.

In instances where an informal resolution of a complaint has occurred, no single pattern of response has emerged. Some commanders make it a practice to write, while others prefer a personal telephone call or visit. In some cases, the Commission found that no contact had been made with the complainant subsequent to receiving the complaint.

In certain circumstances, namely where complaints are of a minor nature, the member receiving the complaint may assure the complainant that the complaint will be attended to. In other such cases, the supervisor of the member involved may solicit the complainant's agreement that the

member will be suitably dealt with and that the matter be best left to the supervisor's discretion.

The complainant is usually at a disadvantage in knowing how best to proceed with his complaint or what sort of response he is entitled to expect. The Commission has found that there exists little uniformity in the consideration shown by the Force in informing complainants when delays have occurred in the investigation of their complaint. We are concerned that all complaints, however received, should be acknowledged in writing and that complainants should be informed in writing if there is a delay in the investigation and the outcome, whether their complaint was handled formally or informally.

The Commission supports the view that the complainant usually need not be informed of the details of disciplinary action taken. Such information may unnecessarily impair the ability of the member to continue to perform his duties effectively. This factor far outweighs whatever satisfaction a complainant might receive from being informed of the particulars of discipline.

Members' Attitudes and Opinions with Regard to Public Complaints

As part of its investigation into the handling of public complaints, the Commission sent a questionnaire to a random sample of 500 constables and non-commissioned officers and to the 375 officers of the Force. Over 84 per cent of the constables and non-commissioned officers and over 90 per cent of the officers responded. Some of the results of this questionnaire bear directly on the concerns the Commission has expressed on the handling of public complaints.

The survey revealed that, while the majority of those surveyed felt themselves moderately knowledgeable about public complaint procedures, 25 per cent of the constables and non-commissioned officers indicated that they had no knowledge or only slight knowledge of these procedures. One per cent of the officers indicated a similar lack of knowledge. Among the constables and non-commissioned officers, 64 per cent reported having had at least one public complaint registered against them; of the officers[7], 62 per cent.

Fewer than 50 per cent of the constables and non-commissioned officers felt that the public complaint procedures were fair to members of

[7] All of whom served as constables and non-commissioned officers before being commissioned.

the Force. This contrasts with the officers' response where over 70 per cent considered the procedures to be fair. When questioned about whether these procedures appeared fair to members of the public, over 80 per cent of both groups agreed that they were.

Our findings indicate that public complaints and public complaint procedures do concern the members of the Force. Of those surveyed, 74 per cent of the constables and non-commissioned officers believe themselves to be serving in a position where they may be complained against by members of the public.

What most concerns us in these results is that the present system for handling public complaints is not one that has the full confidence of a majority of constables and non-commissioned officers. In light of the lack of uniformity of current procedures and the absence of any review authority, we do not agree with the majority of those surveyed that the present procedures are fair to complainants. We are concerned, however, that fewer than 50 per cent of the constables and non-commissioned officers believe the complaint procedures to be fair to members of the Force. Given the percentage of those in this group (74 per cent) who regard themselves as exposed to the possibility of public complaints, the Commission recognizes the damage to morale that the existence of such procedures may cause.

The New Complaint Procedures in the Force

Having discussed the procedures governing handling of complaints that were in effect until recently, it is appropriate at this point to present the new complaint procedures in effect since July 8, 1975. Once these procedures have been quoted, we will proceed to a discussion of the degree to which they meet the concerns we have expressed.

The new complaint procedures in the Administration Manual read as follows:

"D. *COMPLAINTS*

D. 1. *General*

D. 1. a. The good name of the Force depends largely on the confidence felt by the public that a complaint against a member or the Force will always be fully and impartially investigated and that if substantiated, redress will follow.

D. 1. b. It is equally important that members be protected against any false or malicious accusations which may be leveled at them by the public.

D. 1. c. Therefore, it is imperative that all complaints made against a member or the Force be investigated promptly and impartially.

D. 2. *Member*

D. 2. a. If a complaint is made against a member or the Force:

1. Inform the complainant that his complaint will be investigated.
2. Record the complaint on the "Occurrence Report", Form C-238, or on a memorandum.
3. Report the matter to your supervisor promptly.

D. 3. *Detachment/Section Commander or Officer in Charge*

D. 3. a. Acknowledge a written complaint in writing immediately after receipt.

1. If it is of a serious nature, report the matter to your immediate officer forthwith.
2. Investigate a complaint promptly unless directed otherwise by your immediate officer.

D. 3. b. If the complaint involves the non-payment of a debt, deal with it as follows:

1. Diplomatically inform the complainant that the Force is not a debt collecting agency, but that the complaint will be brought to the member's attention.
2. Have the member state in writing whether he acknowledges or disclaims the debt.
3. If the member acknowledges the debt, have him specify what arrangements he has or is prepared to make to settle the debt.
4. If the nature or number of complaints received indicates that the member has been incurring debts indiscriminately, have him:

1. state in writing the names of all creditors, the amounts owing to each and the actual payments he proposes making to effect settlement, and

2. produce receipts of all subsequent payments for inspection.

5. If 3 or 4 applies, tell the member that if he fails to discharge the debts as proposed, he may be charged with a service offence under 1.4.C.4.b. or be discharged in accordance with Reg. 173 of the R.C.M.P. Regulations.

D. 3. c. Forward the investigation report *of any complaint* made against a member through regular channels *to your division.* Include a summary listing:

1. the name of the complainant;
2. the nature of the complaint;
3. the time, date and place of the alleged misconduct;
4. the regimental number(s) and name(s) of the member(s) involved;
5. a summary of the investigation, and
6. action taken or recommended.

D. 4. *Commanding Officer*

D. 4. a. Forward details to Headquarters of any complaint made against a member that:

1. has resulted or may result in adverse publicity to the Force;
2. may be raised in the House of Commons, or
3. is founded. Forward under Service File Caption with advice of the action taken or recommended against the member. (See E.4.)

D. 4. b. Conclude any other complaint at your level, providing you are satisfied with the investigation made and any follow-up action taken.

D. 4. c. Report the final outcome of the investigation made into any complaint against a member to the complainant and to the member concerned.

1. If the conclusion of an investigation is unduly delayed, inform the complainant of the progress from time to time.
2. If a complaint is founded, and when applicable advise the complainant that appropriate disciplinary action is or has been taken without revealing the specific action taken."

These new provisions stipulate that a member shall inform the complainant that his complaint will be investigated. This the Commission supports. However, this requirement leaves open the possibility that such assurances will be given orally. It is our view that all complaints should be acknowledged in writing.

We are in agreement with the provision that all complaints be recorded. We believe, however, that these orders do not go far enough to ensure that there is a uniform and comprehensive system of recording throughout the Force. Our views for a more complete system for recording and analyzing complaints will be reflected in our recommendations.

Although the new orders extend more consideration to the complainant and relate to some of the difficulties we have noted, they do not offer the promise of any substantial change in principle where the interests of the complainant and the member are concerned. It is our opinion that the new procedures fail to adequately treat a number of serious issues.

It is the Commission's belief that the Force itself is not best served by these new procedures. Given the many issues left unaddressed by the new orders, it is felt that a thorough examination of the principles and procedures of public complaint handling must precede any recommendations made by this Commission. To this end, the report will first turn to a discussion of the general principles that underlie the present procedures in use by the Force. Then the report will examine various *types* of complaint procedures in use in other police agencies. Finally, the Commission's position on the fundamental principles that must underlie any public complaint procedure will be presented.

ALTERNATIVES

Introduction

Most procedures for handling public complaints touch upon, to one degree or another, the competing interests of all parties. One measure of the principles that underlie any particular system is the extent to which the interests of all those concerned are recognized and equitably protected. Such a measure will be used to discuss and assess the principles underlying the present procedures of the Royal Canadian Mounted Police and those of other police forces.

Principles of Public Complaint Procedures

Recognizing the long tradition of the Force and the fact that it serves as Canada's national police force, it is reasonable to expect that the principles employed in handling public complaints have served both society and the Force. Indeed, at a certain level the interests of society and the Force coalesce. It is in their mutual interest that the activities of members of the national police force not give rise to public complaints. A member's misconduct, particularly misconduct in a public situation, can leave a whole community disenchanted with the Force.

In seeking to protect the interests of society, successive Parliaments and the courts have confirmed the Commissioner's authority and responsibility for the discipline of members. Given the traditionally stern attitudes of the Force toward discipline, and recognition that its task is made more difficult with each additional incident, the Force has been ever ready to discipline a member involved in a complaint. The interests of members in those situations have not always been protected to the extent that they might have been. A 1962 United Kingdom Royal Commission Report on the Police made reference to an analogous situation.

> "The investigation sometimes tends to be at the cost of some distress and embarrassment to innocent police officers. Pride in their force and concern for discipline, as well as for the maintenance of good relations with the public, work together to encourage senior officers, and in particular chief constables, to exercise the greatest care in the investigation of complaints, and even on occasion to weigh the scales against the constable."[6]

[6] *Royal Commission on the Police, 1962, Final Report*, London, H.M. Stationery Office, p. 125.

Public institutions, the Force included, have never been spared criticism or complaints from the public. Nevertheless, until quite recently, they have enjoyed a confidence which has been largely unchallenged. Beginning in the 1960's, there was a marked shift in social attitudes in the area of civil rights. This new era of social awareness also brought an increasing demand for accountability on the part of the police and other public bodies. The rapid growth of ombudsman offices across Canada is one example of this.

No police force enjoys criticism. Complaints erode the confidence of the public in the Force and make its job more difficult. While it is in the interest of the Force to treat each complaint on its merits in an efficient manner, attempts have not been made to bring public visibility to bear on its complaint procedures. While both the old and the new orders seek to handle complaints quickly and informally and require that the Commissioner receive the details of any complaint which might bring adverse publicity to the Force or lead to questions in the House of Commons, neither provides for the publication of information which would instruct the public as to procedures to be followed in lodging a complaint.

Models of Public Complaint Procedure

In reviewing procedures used by other police forces, the Commission took note of similarities as well as differences. In most police departments examined, there was some degree of integration of public complaint procedures with discipline. More precisely, there was a tendency among many departments to use existing discipline procedures, albeit with some slight modification, as a vehicle for processing public complaints. Consequently, the complaint procedures in most departments have assumed the character of disciplinary proceedings. Where differences occurred, these were, in the main, differences in emphasis.

Some departments reflected little concern for the rights of a member named in a complaint or for the implementation of remedial measures to assist in the correction of unacceptable behaviour. In these departments, discipline procedures were essentially accusatorial and punitive in nature and little or no action was taken beyond the administration of sanctions.

Other departments, though tying the public complaint procedures to discipline, exercised a more remedial approach to the correction of unacceptable behaviour. To one degree or another, these departments took the position that their interests and those of the involved member were best served by attempting a non-punitive remedial approach.

Another area where differences existed has to do with the extent to which the procedures include involvement of non-police personnel. It has been argued that the public can have confidence in the procedures for handling complaints only if there is non-police involvement. However, counter arguments have been put forward which hold that such non-police involvement would undermine the authority of police commanders. In many cases, it was viewed by police management as an unwarranted encroachment into an area that falls within their exclusive jurisdiction.

Many attempts have been made to resolve this problem. These have resulted in the establishment of a number of complaint procedures, each differing with respect to the degree and the character of public involvement in the process. In a recent paper on the control of police behaviour, Professor Allan Grant of Osgoode Hall Law School developed the following categories of complaint procedures based on the nature of public involvement in the process.

> "1) *The "in-house" model:* Here the duty to record the complaint, to investigate and adjudicate upon it, would be in the hands of the police. This model most closely corresponds to that currently in use in Ontario and in England although, in Ontario, unlike England, there is no express legislative duty upon the police to record complaints against officers by members of the public. It is submitted that the appellate role played by Boards of Police Commissioners and the like does not introduce a sufficiently disinterested factor to remove current practices from this category.
>
> 2) *The externally supervised "in-house" model:* Here the investigation and adjudication functions follow the "in-house" model but there is an external review factor built in at the end of the process. This reviewing role could be played by an independent lawyer who would have the task of considering the whole conduct of the case to ensure that just and fair treatment was received by either the complainant or both the complainant and the officer about whom complaint was made. It would be the duty of this independent reviewer, on application of an aggrieved party, to make recommendations to the Solicitor General about further action, if any, which should be taken, either in the instant case or henceforth to ensure a proper disposition of the case. A model of this type is currently being studied in England and it has the tentative support of several Senior Officers Association and the Police Federation, representing about 100,000 men from Police Constable to Chief Inspector, in England and Wales.
>
> 3) *The police investigation with independent adjudication model:* Here investigation of complaints would, as at present, be conducted by the police, but once the investiga-

tion was completed the adjudication and disposition would be in the hands of a body independent of the police. This adjudication function might be undertaken by a judge, a lawyer appointed for the purpose or a board upon which the public would be represented by civilian members.

4) *The independent investigation with police adjudication model:* Here the investigation would not be in the hands of the police but would be conducted by investigators employed specially for the purpose and under the control of an Ombudsman or Commissioner of Rights whose duty it would be to report back to the Chief of Police with recommendations of necessary action, leaving final disposition in the hands of the police.

5) *The "truly independent" model:* Here all facets of the complaint from its initially being recorded until disposition would be kept out of police hands entirely. In effect, the Chief of Police would be notified of the disposition of the complaint by the authority here created and would have no discretion but to comply with the order, although the officer complained of and/or the police force itself would, of course, be represented at the board hearing, by counsel or agents."[9]

Models (1) and (5) do not provide a reconciliation at all as they simply endorse one side of the argument at the expense of the other. Model (3) is in fact little better than model (5) from the police point of view since it removes the right to command from the police authorities with respect to public complaints just as effectively as does model (4). Model (4) is, in our opinion, to be criticized on practical rather than theoretical grounds. The evidence reviewed suggests that an investigation carried out by an external body might be less reliable and thorough than an investigation conducted by the police department concerned.

Since the publication of Grant's paper, a sixth model has been developed by Arthur Maloney, Q.C., in his report to the Metropolitan Toronto Board of Commissioners of Police.

6) *The Maloney Model*

In this model, an internal authority provides the investigative function. The adjudicative function, but not the disciplinary function, is placed completely in the hands of an external authority.

This model, in completely removing the adjudicative function from the responsibility of police management, departs from the Commission's philosophy that management must retain initial responsibility for action in this and all other aspects of public complaint procedures.

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[9] Grant, Allan, *The Control of Police Behaviour* found in *Some Civil Liberties Issues of the Seventies*, (ed.) W. S. Tarnopolsky, pub. Carswell, Toronto, 1975, pp. 93 ff.

It is the Commission's belief that only the second model, where external review is adopted, holds open the dual possibility of safeguarding a complainant's interest in complaint procedures and protecting the Force from the suspicion that its procedures operate to the detriment of the citizens it serves.

Chapter II

A NEW PUBLIC COMPLAINT PROCEDURE

INTRODUCTION

A fundamental premise of the procedures we have proposed is that the most effective way of responding to complaints is to identify the causes and correct the conditions which give rise to them. If this is done public complaints will come to be viewed as an opportunity for reviewing and improving the service provided by the Force. Furthermore, by improving police service, corrective and remedial procedures which lead to improved police service should have the effect of diminishing public complaints by reducing their causes. A remedial complaint system should be viewed as a major component of a more general program designed to ensure effective policing through the improvement of police service and the fostering of closer co-operation between the police and the public. In today's society, a police department can have no greater asset than the support and encouragement of the people it serves.

A second premise upon which our proposals are based is that, where complaints alleging criminal misconduct are concerned, a member of the Force should be treated in the same way as any other Canadian citizen.

Thirdly, we have based our proposals on the belief that where complaints of a non-criminal nature are made, the responsibility for responding to these complaints rests with the management of the Royal Canadian Mounted Police which is accountable for the service provided by the Force.

Fourthly, not only does the management of the Force have a responsibility to effectively and satisfactorily respond to public complaints, but Canadians have a right to be assured that they are in fact carrying out this responsibility.

Finally, we have based our proposals on the premise that a complainant should be entitled to appeal to an independent authority when dissatisfied with the disposition which the Force has made of his complaint.

In seeking to implement these principles in a manner which will not interfere with the management's responsibility to manage the Force, we have recommended the appointment of a Federal Police Ombudsman.

During its investigation of the handling of public complaints by the Royal Canadian Mounted Police, the Commission undertook to determine the extent to which the procedures recognized and accounted for the interests of all concerned. Turning now to our recommendations, it is necessary to augment these procedures so as to provide a basis for not only a *fair* system but an *effective* one.

To ensure that the procedures recommended meet both standards of fairness and effectiveness, it was necessary to analyze the separate interests of the parties affected by these procedures. It is our belief that unless these procedures are based upon an objective shared and promoted by all concerned they are destined to prove ineffective. The Royal Canadian Mounted Police has always understood that the measure of its service to the citizens of Canada has been *effective policing*. It recognizes that effective policing is not an objective than can be achieved in isolation from the public it serves.

In formulating our recommendations, we have followed and expanded upon the Force's own understanding of this unifying purpose. For example, in recommending that *all* complaints be acknowledged in writing, we are concerned to assure every complainant that his complaint will be attended to. As well, we recognize that by such action the Force will make its procedures more visible and thereby increase the confidence of the public in its procedures. Additionally, this recommendation would facilitate a more comprehensive review than is now made of complaints. Such a recommendation is consistent with our belief that, in the end, the fairest procedures for handling complaints will prove the most effective.

AN ALTERNATIVE

In common with many other police forces, the complaint procedure employed by the Royal Canadian Mounted Police has originated and evolved within the discipline system and, as a consequence, displays the same characteristics. Many of these are either inappropriate or are over-emphasized to such an extent that they interfere with the role we believe complaint procedures should play in providing effective police service.

Police discipline systems examined are fundamentally adversarial. Those responsible for discipline lay charges and, when appropriate, impose sanctions. Those charged are necessarily placed on the defensive. These accusatorial and defensive attitudes tend to manifest themselves in the handling of complaints.

It is our position that such attitudes have no proper place within a complaint system. Such a system must stress co-operation between the public and the police in pursuit of their common objectives. Although a public complaint *may* lead to disciplinary action, the objective of a complaint procedure should not be identical to that of a disciplinary procedure. While the public complaint and the disciplinary systems are interrelated, the issue of misconduct, if it arises, is an issue which must be considered and settled within the discipline system. All other questions arising as a result of a public complaint are questions that fall within the context of the public complaint procedure.

Because the policies and procedures of the Force continue to be shaped by attitudes and perceptions derived from the interrelation of complaint and disciplinary systems, the Commission is of the opinion that a new procedure for handling complaints is necessary.

While this new procedure will retain many existing practices, its primary innovation is that it will be a separate system, clearly distinguishable, both by attitudes and objectives, from its predecessor and the discipline system.

Therefore, we recommend that:

COMP. 1 The Royal Canadian Mounted Police should adopt a public complaint system operationally and functionally distinct from the disciplinary system.

A REMEDIAL SYSTEM OF HANDLING PUBLIC COMPLAINTS

The new system we propose will be essentially remedial in nature.

A public complaint system is remedial when it emphasizes the positive aspects of corrective action and encourages the use of other-than-punitive measures to achieve a change in individual behaviour or perform-

ance. Such a system will make possible the identification of changes that are necessary and which affect groups of members or the Force as a whole in response to public complaints.

We must begin with a definition of "public complaint" sufficiently comprehensive to serve the remedial design of the new procedures. Accordingly, we recommend that the Commission's own working definition of a public complaint be adopted.

COMP. 2 The Royal Canadian Mounted Police should adopt as their definition of a complaint the following: "Any communication received from a member of the public, either orally or in writing, which criticizes the behaviour of a member of the Force or alleges the failure of the Force itself to meet public expectations."

The remedial system we propose covers three interdependent areas of procedure.

First, there are recommendations that relate directly to the procedures to be employed by the Force in its communications with the public. These recommendations seek to avoid the possibility of the development of an adversarial cast to complaint proceedings. By recommending certain initiatives the Force should adopt when complaints arise and are being processed, the Commission hopes to avoid situations which provoke defensive or hostile attitudes.

Secondly, the recommendations also address the processing of complaints and the procedures to be adopted with respect to members involved in public complaints. Where the former recommendations are concerned, it is our intention that public complaints should serve as a barometer of the quality of police service provided by the Force. To this end, procedures for recording and analyzing complaint data are presented. In addition to the action such recording and analysis may indicate where individual members are concerned, senior management will benefit from an increase of information on which to base policy decisions. It will be assisted in its evaluation of both general policies, relating to training and staffing, and local policies in use in different divisions of the Force. Where individual members are concerned, this information will assist the police staffing function by highlighting individual abilities or disabilities which give evidence that a member is more suitable for certain kinds of work or for work in certain geographic areas. In this remedial context, discipline will be an integral, though quite distinct, alternative. Although present, discipline will no longer characterize the basic approach to the resolution of public complaints.

Finally, we urge the establishment of the office of a Federal Police Ombudsman. With the creation of this office the Commission seeks to guarantee the effectiveness of the above procedures by providing an authority to conduct an external review of complaint proceedings and to provide, when necessary, an avenue of assistance for parties involved in a complaint. We have devoted a chapter of the report to a discussion of the need for such an office and the assistance its incumbent would provide complainants, members involved in complaints and the Force itself. Throughout this present chapter, reference will be made to this office as the need arises.

Having introduced the general character of a remedial system, the Commission recommends that:

COMP. 3 A remedial system for the handling of complaints made by members of the public should be adopted by the Royal Canadian Mounted Police.

Receiving the Complaint

As noted earlier, complaints are received by the Force itself, as well as by the Solicitor General, elected representatives at all levels of government, special interest groups and others.

We are satisfied that within current procedures complaints reach the appropriate level for investigation and nothing should be done to unduly restrict the channels citizens may choose to lodge a complaint. In view of this, we do not intend to propose that any particular channel be favoured. However, the public should be informed of the various offices available for receiving a complaint. To this end, an information bulletin should be prepared and be made available to the public through the Force as well as through other agencies to which the public has access. Such a bulletin would not only provide information concerning complaint procedures but would also encourage the making of a complaint at the earliest possible time. Members of the public should be notified that with the passage of time evidence is lost, memories dim, members of the Force are transferred and the reconstruction of events becomes difficult.

Accordingly, we recommend that:

COMP. 4 No restrictions should be placed on the channels available for making complaints; the public should be advised of these channels and of the need to make complaints as soon after the event as possible; the means of advising the public should include the availability of an information bulletin.

Responding to the Complainant

All complaints should be acknowledged in writing. This will inform the complainant that his complaint has been registered and is being considered by the Force. In addition, this requirement will serve to ensure that all public complaints are recorded. This recommendation need not add greatly to the administrative workload within the Force if a form is devised for this purpose. For example, a standard form which would contain the particulars of the complaint could be employed. One copy would serve as the acknowledgement to the complainant and the other copy would serve as a record for the Force.

After a public complaint has been dealt with, either formally or informally, the complainant should be informed in writing of the disposition of his complaint and the manner in which the Force's decision might be appealed. If a complaint has been resolved to the satisfaction of all parties, there is also a need for a written statement of the particular details of the resolution. In either case, the complainant should be informed in writing by a supervisor at a level of command not lower than that at which the complaint was resolved.

We recommend that:

COMP. 5 All complaints should be acknowledged in writing by the Royal Canadian Mounted Police.

COMP. 6 The disposition of a public complaint should be reported to the complainant in writing. Such correspondence should inform the complainant of the manner in which the Force's decision might be appealed.

Classifying Complaints

The Force presently employs one of two classifications for a complaint: "founded" or "unfounded." As a result, there may be occasions when a complainant is told by the Force that his complaint is unfounded when what is meant is that his complaint has not been or cannot be proven. A member of the public who, in his own mind, is convinced that he was treated badly by a member of the Force is not likely to react favourably to a letter which informs him that his complaint is unfounded. Many public complaints are difficult to validate, particularly where only two persons are involved—the complainant and the police officer. It is proposed, therefore, that consideration be given to introducing the terms "substantiated" and "unsubstantiated."

We recommend that:

COMP. 7 Complaints should be categorized as "unfounded," "unsubstantiated" or "substantiated."

Record of Public Complaints

There is at present no central repository for all complaints made to the Force. Founded complaints are reported from division headquarters to Headquarters, Ottawa. However, records at the division level are not necessarily complete. At the detachment or sub-division there are likely to be a number of verbal complaints which are resolved informally and for which records are neither kept nor presently required. Other complaints may be recorded on detachment occurrence reports, but if they are resolved at the local level to the satisfaction of the complainant, a permanent record may not be kept. Some complaints made at field level may appear as part of an operational crime report and may be dealt with as part of the total criminal investigation process, rather than as a complaint. These complaints will not be recorded as such on any public complaint file.

These situations seriously inhibit the Force's ability to use public complaints as a source of information about the quality of police service it is providing and/or to assess the effectiveness of remedial action it may take in response to public complaints.

In our view, if a remedial system of public complaints within the Force is to succeed, it is essential that all complaints received, either orally or in writing, be systematically recorded whether the complaint is substantiated, unsubstantiated or unfounded. In a remedial complaint system, any complaint is an expression of public dissatisfaction of one form or another. The fact that the Force finds a complaint unfounded or unsubstantiated may be a subjective judgment and does not necessarily justify excluding such a complaint from the record. For example, a series of unfounded or unsubstantiated complaints in a certain region or about an individual member may well be an indication that remedial action of one sort or another is required.

Although a written record of a complaint is necessary, we are concerned that one undesirable consequence of a formal system of recording complaints could be its inhibiting effect on the informal day-to-day communications between the public and the police. In our opinion, a complainant should be invited to submit his complaint in writing. If he

does not wish or is unable to do so, the member of the Force receiving the complaint should be obligated to make a written record.

We recommend that:

COMP. 8 All complaints should be reduced to writing on a standard form either by the complainant or by the member receiving the complaint.

COMP. 9 All complaints should be recorded within the Royal Canadian Mounted Police.

Informing Members Involved

Any member who has been accused of misconduct by a complainant should be informed as soon as possible of the receipt of the complaint and of its disposition. There will be occasions, however, when informing the member or members immediately may seriously inhibit the Force's investigation. In such cases it may be necessary to delay informing the member that a complaint has been lodged. The opportunity for misuse of the discretion this provision provides will be reduced by recommendations we will make for an internal review procedure to be discussed later in this part of the report.

We recommend that:

COMP. 10 Members of the Force whose conduct is complained about should be informed as soon as possible of the receipt of the complaint.

COMP. 11 Members should be informed forthwith of the disposition of complaints against them.

Reporting Public Complaints

Fundamental to a remedial system is the requirement for information about the number and character of complaints lodged by the public. This requirement calls for an accurate and complete record of all complaints, whether resolved formally or informally at any level within the police organization. If the Force is to take remedial action in response to public complaints, a record of all complaints must be forwarded to repositories for analysis. These would be established at various levels of command including a central repository at Royal Canadian Mounted Police Headquarters in Ottawa. Reports of complaints and their disposition would be made on a continuing basis. A continuing review of all complaints should be carried out at Ottawa Headquarters. All command levels should have

complaints under constant review. Ideally, a computerized information system should be used.

In addition to the reporting of public complaints and their disposition to central repositories within the Force, this information should also be forwarded to the office of the Federal Police Ombudsman in order that the Force's response to public complaints can be effectively reviewed. The Commissioner should forward this information as soon as it has been received.

We recommend that:

COMP. 12 All information concerning public complaints and their disposition should be directed to central repositories for analysis and review.

OMB/COMP. 13 All information concerning public complaints and their disposition should be forwarded to the office of the Federal Police Ombudsman.[10]

Analysis of Public Complaints

The effective analysis of complaint data is essential to a remedial system. The purpose of the analysis is to identify the reasons for complaints in order that fundamental problems may not be allowed to continue. Trends indicating public dissatisfaction with individual members of the Force, or with the Force itself, would be recognized. With the identification of the numbers and types of complaints at detachment, sub-division, division and Headquarters levels, particular policing problems in certain regions would be defined. As well, profiles would be drawn up and specific trends as to age, service, rank or training could be identified.

Accordingly, we recommend that:

COMP. 14 A systematic analysis of complaints should be instituted with a view to identifying causes of complaints, including deficiencies in police service, police practices or personnel problems.

Remedial Action

The results of the analysis and evaluation of complaints must be forwarded to those command levels with authority to effect and monitor remedial action. For example, there may be a need for improved person-

[10] Recommendations marked with "OMB/" relate to the authority or responsibility of the Federal Police Ombudsman. Similarly designated recommendations will be found in those parts of the report which deal with internal discipline and grievance procedures.

nel selection and staffing, police-community relations programs, public education programs or improved training. In addition, other data may indicate a more localized difficulty having to do with the deployment of police personnel, lack of manpower or inadequate facilities.

In still other cases, it will become evident that a particular member is experiencing difficulties which give rise to public complaints. Whether such complaints are substantiated or unsubstantiated, the member's commanding officer should be alerted to the possibility of problems which might require corrective action. Such corrective action at an individual level could involve a wide variety of alternatives including informal discussions which may involve guidance or advice, a period of retraining, medical attention or special leave.

In suggesting a remedial approach, it is not our intention that a supervisor wait until he receives notice from a central authority before taking action. Rather, it is hoped that a supervisor will take remedial action immediately, as part of an overall approach to resolving a complaint. In our view, information received from a centre of analysis and evaluation would serve, in most cases, as a check to ensure that appropriate action has been taken.

We recommend that:

COMP. 15 The results of the analysis and evaluation of complaint data should be forwarded to appropriate command levels for information and action.

COMP. 16 As soon as possible, each supervisor should initiate such remedial action as may be necessary to ensure that problems indicated by complaints are not permitted to continue.

Public Complaint Files

If the proposed complaints system is to be truly remedial, a special effort must be made to prevent the improper use of complaint files. The current policy within the Royal Canadian Mounted Police is to separate public complaint files from other files except in those cases where a complaint is classified as "founded" and where disciplinary action is taken as a result of the inquiry.

There have been instances where the Force has designated a complaint as being unfounded but, nevertheless, the investigation has resulted in disciplinary action being taken against the member. This practice is a source of considerable resentment among members who regard it as unjust and prejudicial to their careers and it is our opinion that it should

be discontinued. In order to ensure this, and in order to minimize the potential for a continuing prejudice, we will recommend that in those cases where a complaint is classified as "unfounded" or "unsubstantiated," the complaint file should be kept separate and apart from any personnel filing system and that there should be restricted access for limited purposes. Further, where a complaint is determined to be "substantiated" and discipline follows, but in a manner which will not be recorded on a service or other file[11], those complaint files should also be removed to the limited access area. Recognizing that an unusual number of complaints against an individual over a relatively short period of time may be significant, even if judged "unfounded," we propose that access to the complaint files should be had for the purposes of analysis, for consideration of a member's suitability for continued service or for determination of a member's transfer to or from a special posting.

We recommend that:

COMP. 17 No disciplinary action should be taken on the basis of any complaint classified as "unsubstantiated" or "unfounded."

COMP. 18 Except in those cases where recorded discipline results from a complaint, the complaint file together with any comments or action taken thereon should be kept separate from service, personnel or other files and should be available only for purposes of analysis, consideration of a member's suitability for continued service or for the determination of a member's transfer to or from a special posting.

Informal Resolution of Complaints

The Commission shares the Force's belief that a great many public complaints can be resolved in an informal manner at the local level. The benefits of this approach, which emphasizes understanding, communication and mutual respect between the police and the citizens they serve, far outweigh any of its perceived disadvantages. In supporting the view that the opportunity to resolve conflicts in an informal manner must be available, we must emphasize the need for the Force to make explicit its preference for this approach.

The informal procedure for handling complaints has as it objective the immediate and satisfactory resolution of complaints at the organizational level at which they occur. In this procedure, there are two factors

[11] This and other material in this section anticipates matters dealt with in a subsequent part of the Report.

which are of concern and on which we wish to comment. The first is that such a procedure requires the active participation of the member whose conduct is alleged to have given rise to the complaint. It is our opinion that his co-operation in the informal resolution of a complaint will be encouraged if concern about discipline can be minimized. For the purpose of informal resolution, we believe that any discipline resulting from a complaint should be administered, insofar as possible, within the limits proposed for informal disciplinary action. A member whose conduct is alleged to have given rise to a complaint may in some cases find some incentive to admit to a degree of impropriety or indiscretion on the understanding that the discipline he may receive will be relatively minor and that the entire matter will be disposed of quickly without delay caused by a lengthy investigation. Important to these incentives is the recommendation that records of complaints, and the informal discipline that may result, will not form part of a member's personnel or service file.

The second factor with which we are concerned is the need to record and report even those complaints which are resolved informally. If the management of the Force is to have all the information it needs to take remedial action, then it follows that all complaints must be recorded and reported. Not only will this permit the Force to make the analysis and evaluation it needs prior to taking remedial action, but, as well, such information, once delivered to the Federal Police Ombudsman, will permit him to monitor the Force's efforts at complaint handling and enable him to recommend any changes in policy, practice or training he believes will lead to a reduction in the number of complaints.

Accordingly, we recommend:

COMP. 19 The Force should adopt an explicit policy that informal complaint resolution be an integral part of the complaints system.

OMB/COMP. 20 The resolution of complaints should be monitored by the Federal Police Ombudsman who may recommend changes in policy, practices and training.

In our opinion, the best interests of both the complainant and the police may be accommodated in an informal approach by recognizing the need to leave with the police the responsibility and first opportunity to answer for and correct itself, while at the same time acknowledging a requirement to leave with the complainant the opportunity to request resolution of his complaint through the impartial agency of a Federal Police Ombudsman, should the police fail to provide either an expeditious or satisfactory response.

Under this proposal, the complainant's right to seek resolution of his complaint outside the Force is upheld. A complainant should not be required to pursue his complaint solely through the command channels but should, after a reasonable period of time has expired, have the right to request a review of the matter by the Federal Police Ombudsman, who, upon receiving the request, should be empowered to investigate, mediate, or order a hearing to be held and thereafter to make such recommendations as he sees fit.

We recommend that:

OMB/COMP. 21 A complainant may appeal the resolution of his complaint to the Federal Police Ombudsman.

Investigating a Public Complaint

While we favour the informal resolution of complaints whenever possible, we are aware that many complaints will require formal investigation.

We have received many submissions which have urged the establishment of some form of civilian review as an alternative to the current practice whereby the responsibility for investigation and decision-making with respect to public complaints remains with the police. Among these submissions, we found a firm consensus that a judgment on the validity of a complaint could best be handled by an authority independent of the police. There was no similar consensus on whether this same body could ensure effective internal investigations as well.

There is no doubt that there is a general lack of confidence in any system for handling complaints against the police in which the police themselves have sole responsibility for *investigation, complaint-judgment* and *review.* This lack of confidence is reflected both by the complainant and by the member involved in a complaint. The former is suspicious of a bias that will favour either the member involved or the image of the Force. The latter is equally suspicious that a bias will be shown in favour of the complainant, either for purposes of administrative convenience or to protect the image of the Force—at his expense. Neither party appears satisfied with the current procedures[12].

The facts before us, as revealed both from submissions made, our analysis of the complaint files of the Force and our assessment of the

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[12] In response to a Commission questionnaire, forty-five per cent of the non-commissioned officers and constables and twenty-four per cent of the officers indicated their belief that the present public complaints system is unfair to members of the Force.

success of civilian review boards in the United States, have led us to the conclusion that while it may not be appropriate for the police to perform *all* the required functions in handling complaints, it does not follow that they should not perform *any*.

In our opinion, there are good reasons for allowing the responsibility for conducting internal investigations to remain with the police. In considering alternatives to this position we unearthed certain stubborn realities that could not be ignored.

One of the most obvious impediments to the use of external investigators is seen in the experience of investigators employed by civilian review boards in the United States. In many instances, these men met with undisguised hostility and there were cases where the police simply closed ranks to severely frustrate the external investigation. In other cases, where the external investigator was a relative stranger to the police organization, he was more easily sidetracked or frustrated than an internal investigator would have been.

Related to these difficulties is the problem of recruiting experienced investigators who are in fact and in appearance independent of the police community. As men of needed expertise are likely to have learned their craft while serving with a police force, we believe it wishful thinking to suggest that such men will appear to the public to have the requisite independence. If the use of such men is discounted, there is left the possibility of securing sufficient numbers of men with no police background to serve as investigators. Unfortunately, there is little likelihood that such men would uniformly possess the skills necessary to conduct internal investigations or would escape the constraints mentioned above.

Investigative skills are acquired only after extensive training and lengthy experience. These skills are mandatory if complaints investigations are to be adequately dealt with at the investigation level. They are skills which direct the peace officer to all the relevant information and which permit a proper appreciation of that which is evidence. The experienced police investigator will know what legal aids are available to him in terms of search, seizure, arrest and custody, and when to invoke them. He will be expected to make an intelligent judgment in those cases where he is faced with conflicting information as to the truth of the matter. These qualities are evident in the vast majority of experienced policemen we have seen and heard. When we couple with this the integrity evidenced in the investigation of complaints we have examined, we are forced to conclude that the investigation of complaints made by the

public against the Royal Canadian Mounted Police is best undertaken by the policemen themselves.

Our recommendation that police retain the responsibility for the investigative function in the handling of public complaints is subject to two qualifications. Where criminal or quasi-criminal complaints are concerned, responsibility for assessing complaints must be accepted by the prosecutorial authority. Where non-criminal misconduct is in question, the responsibility for complaint assessment remains with the Force but is open to review by the Federal Police Ombudsman.

We recommend that:

COMP. 22 Public complaints which are not resolved informally and require formal investigations should be investigated by members of the Royal Canadian Mounted Police.

Complaints Alleging Criminal Behaviour

In cases of complaints alleging criminal behaviour, we are of the opinion that the handling of these should parallel as closely as possible the processing of criminal allegations against other members of the public.

We believe that the same treatment should be afforded members of the Force as is afforded members of the public in criminal prosecutions. Since we are as well of the opinion that the Force is best equipped to provide investigative services for all complaints, we consider it desirable to detach those conducting criminal investigations from the Force on a secondment basis. In order to ensure the *visible* independence of, and the absence of any constraints on, criminal investigators, we recommend that they be seconded and directly accountable to an attorney general who will have final responsibility for both the adequacy of criminal investigations and their final disposition.

This secondment principle would apply only to those cases in which a public complaint alleges criminal or quasi-criminal conduct on the part of a member of the Royal Canadian Mounted Police. In large jurisdictions, such secondment might be on a full-time basis for a period not exceeding two years. In smaller jurisdictions, where demand for criminal investigative services is insufficient to justify a full-time secondment, investigators could be seconded on a case by case basis.

In those provinces where the Royal Canadian Mounted Police do not act as provincial police, and in those municipalities which may become

involved through an allegation that criminal or quasi-criminal activity on the part of a member of the Force has taken place within their geographic jurisdiction, the secondment principle would apply provided always that the appropriate local authorities be kept informed of investigations being undertaken.

Consequently, we recommend that:

COMP. 23 Criminal investigations involving members of the Force should be undertaken by experienced Force investigators who, having been seconded to an attorney general, would work under his direction and be accountable to him.

Safeguarding the Rights of Members

To ensure that the procedures for processing complaints alleging criminal misconduct parallel those used for other Canadian citizens, the Commission is concerned that the rights of members be safeguarded. When it is concluded that there is insufficient evidence for criminal prosecution, that decision must also guide the Royal Canadian Mounted Police in its disposition of the matter. That is to say, although an internal investigation may uncover facts requiring some disciplinary action, the reports relied on by the Attorney General should not form the basis of disciplinary proceedings in which the essence of the criminal charge is alleged. To this end, provisions must be made to ensure that the investigator's reports, prepared while the investigation was under the direction of the prosecutorial authority, are not made available to the management of the Force for administrative or disciplinary purposes.

Accordingly, we recommend that:

COMP. 24 Criminal investigation reports should remain in the custody of the prosecutorial authority and should not be provided to the Royal Canadian Mounted Police for use in disciplinary investigations.

COMP. 25 Royal Canadian Mounted Police investigators who have served as investigators for the prosecutorial authority should not be employed by the Force to investigate the same case for disciplinary purposes nor should they be questioned by members conducting investigations relating to discipline.

Independence of Prosecutorial Authorities

Prosecutors working within the sphere of their administrative and court responsibilities are in daily contact with the police. We have

received evidence that many citizens are concerned that this working relationship renders these authorities less than totally effective in cases where there are allegations of criminal misconduct against peace officers. Whether or not this concern is justified, the Commission is of the opinion that there must be more *visible* independence between prosecutorial authorities and the police. The view that prosecutors are too closely associated with police to permit either an unbiased review of complaints alleging statutory offences or prosecution free from constraints should be examined. We invite Attorneys General and other prosecutorial authorities to evaluate this observation and, where necessary, effect remedial action.

In order to satisfy public concern, we suggest that an independent agent of the Attorney General be charged with the review of the investigation of all complaints which allege criminal misconduct on the part of the police. Such an agent would advise the Attorney General on the proper course of action and, when necessary, prosecute.

In the interest of achieving *visible* independence, such agents could be drawn from counsel outside the prosecutor's office, particularly for those cases which are sensitive or of deep public interest or concern.

The principal point to be made is that within this category of complaints it is mandatory that there be independence from the police in the decision to prosecute. The Attorney General must be in a position to impartially and objectively assess the work of the investigator, the quality of his investigation and the evidence available for prosecution.

We recommend that:

COMP. 26 Discretion respecting prosecution should only be exercised after a report of the investigation has been reviewed by an independent agent of the prosecutorial authority.

The Decision to Prosecute

The history of Royal Canadian Mounted Police discipline indicates that some Attorneys General have declined to prosecute policemen even when the investigation indicated that an offence had been committed. In such cases, the matter was returned to the Force with a recommendation that disciplinary action be taken as a substitute for criminal trial. The Commission believes that this practice should not be countenanced. In all cases where there is *prima facie* evidence sufficient to establish criminal misconduct, prosecution should be entered. Such cases should not be remitted to the Force for disciplinary action as a substitute for criminal

prosecution and Commanding Officers of Divisions should be precluded from taking disciplinary action in these circumstances.

When an Attorney General or his agent concludes that there is evidence sufficient to lay a charge, the matter should proceed through the criminal courts.

Accordingly, we recommend that:

COMP. 27 No disciplinary action should be taken by the Royal Canadian Mounted Police against any of its members as a substitute for criminal prosecution.

COMP. 28 No matter should be remitted to the Royal Canadian Mounted Police by the prosecutorial authority or his agent with a view to using disciplinary action as a substitute for criminal prosecution.

Reporting the Disposition of a Complaint Alleging Criminal Behaviour

Once a complainant has been advised by the Royal Canadian Mounted Police that his complaint has been referred to the Attorney General for investigation, the responsibility of the Force to communicate further with the complainant with respect to the disposition of his complaint should cease. Notification of the results of the investigation or discussions with the complainant on these results should be undertaken by the Attorney General or his agent.

Concurrent with his communication to the complainant, the prosecutorial authority should be required to notify both the suspected member and the police administration of the action taken or about to be taken.

A further responsibility for the prosecutorial authority is a reporting function. It is our opinion that this authority should report on a case by case basis to the Commanding Officer of the Force in his jurisdiction and to the Federal Police Ombudsman in Ottawa. His report should contain his findings on the case together with any recommendation he may have for remedial action.

We recommend, therefore, that:

COMP. 29 The prosecutorial authority or his agent should forward to the complainant the results of the criminal investigation and the decisions based on that investigation.

OMB/COMP. 30 The prosecutorial authority should report his final disposition of complaints on a case by case basis to both the Royal Canadian Mounted Police and the Federal Police Ombudsman.

The Role of the Court

The Commission has received some representation to the effect that there are some members of the judiciary who appear reluctant to convict police officers charged with criminal or quasi-criminal offences. Such representations have appeared to direct their attention particularly to the magisterial or provincial court judge level. The substance of the suggestions has been that where there is a highly visible liaison between the court and the police, some members of the public will draw the inference that a different standard will be applied in the trial of police officers than is applied in the trial of other citizens. This perception, right or wrong, seems to arise most often in those circumstances where the court relies upon the police for transportation or other support services in the court's day to day work, or where there is an obvious or apparent close relationship between the judge and the police officers in a given community.

Notwithstanding the fact that there may be circumstances existing in some areas which seem to justify these observations, we are confident that in the vast majority of cases the objectivity of the judiciary is, and will continue to be, evident. We are also confident that when police officers are on trial a vigorous prosecution will assist in assuring that policemen receive the same treatment by the courts as every other citizen. These prosecutions should be conducted by experienced prosecutors or, in some cases, by counsel specially appointed for the task.

The Investigation of Complaints Not Alleging Criminal Behaviour

The procedure for processing non-criminal allegations, while of concern to the public in the sense that they are pertinent to the service provided to the public by the police, are generally less serious than criminal or quasi-criminal allegations. Thus, these need not be subject to the same degree of direct public scrutiny as the procedures for processing criminal allegations.

It may be desirable for the Force to develop specialized units of investigators to deal with complaints. We have discussed the operation of such units with officials at Scotland Yard and elsewhere and are impressed with their success. With this in mind, we support the examina-

tion presently underway within the Force of the feasibility of special investigation units. The success of such units, however, depends upon the competence and experience of its members. In order to attract such investigators, it will be necessary to ensure that postings to these units be viewed as a distinction within the Force. Such postings should offer members an opportunity for career advancement and the further development of investigative skills. Since these members will be in a sensitive and difficult position postings should not be for longer than two years.

We recommend that:

COMP. 31 The Royal Canadian Mounted Police should employ special investigation units to investigate complaints alleging non-criminal behaviour.

COMP. 32 Investigators assigned to special investigation units should serve for a period not exceeding two years.

PART IV

THE FEDERAL POLICE OMBUDSMAN

INTRODUCTION

In the system we have proposed for handling public complaints, we have introduced a number of innovations. These have sought to effect a uniformly remedial approach in the handling of complaints and in treating the causes which give rise to them. Some have sought to safeguard the rights of both complainants and members involved. Others have sought to assure all concerned that complaints are thoroughly and objectively investigated.

Whether these proposals can achieve their stated objectives depends upon the acceptance of the most important of our recommendations, the Federal Police Ombudsman. His authority and responsibilities will serve as a guarantee to the Canadian people that a remedial, fair and thorough approach is being taken and, as well, they will complement the handling of public complaints by the Force.

In granting the Ombudsman the independence and authority *to review* the Force's response to public complaints on both an individual and organizational level and *to make appropriate recommendations*, the Commission is well aware that despite the positive results promised by the exercise of this authority, the creation of such an office may give rise to a variety of concerns. To allay some of these concerns, it is appropriate that we discuss in detail the need for such an office and the authority and responsibilities that would be vested in its incumbent.

The Federal Police Ombudsman is central to all the recommendations contained in our report in the sense that our conception of the office involves vesting it with jurisdiction not only in the matter of public complaints, but also, and of equal importance, in providing a review authority external to the Force with broad powers of recommendation in connection with both internal discipline and members' grievances within the Force.

Part IV of our Report recommends both the creation of the office and its jurisdiction in the resolution of public complaints. The Federal Police

Ombudsman's intended role and jurisdiction in other areas is specifically dealt with in the form of recommendations in the chapters dealing with discipline and grievance.

THE NEED FOR AN INDEPENDENT AUTHORITY

Our recommendations for handling public complaints are predicated on our belief that the Royal Canadian Mounted Police should be primarily responsible for investigating and responding to public complaints not alleging criminal behaviour. In rejecting the use of an external authority to perform both of these functions, we are persuaded by the argument that the Commissioner of the Royal Canadian Mounted Police is and should remain responsible for the provision of effective police service. In holding the Commissioner accountable for the performance of the Force, it follows that his office must retain the authority necessary to remedy any deficiencies which public criticism serves to indicate.

Any alternative to the present arrangement which would vest the responsibility for investigating and for responding to complaints in the hands of an external authority would place the Commissioner in a somewhat untenable position. With the creation of two command structures, there would no longer be a single authority accountable for the management of the Force and the conduct of its members. In such circumstances, he would be held accountable for the performance of the Force without having sufficient authority to manage it or determine its policies. As well, any such alternative would create a divided authority which would hamper the ability of the public, through its representatives, to hold the Commissioner responsible for the actions of his subordinates.

In supporting the thesis that the Commissioner should retain his responsibility for the control and management of the Force, we recognize, at the same time, the need to demonstrate to the Canadian people that the Force is fulfilling its responsibilities. To this end, it is essential that some means for reviewing the actions of the Force be available.

The principal requirement of any credible reviewing authority is that it enjoy the confidence of both the public on whose behalf it is acting and

the Force whose actions it is reviewing. Such confidence is only possible, in our opinion, if this authority is *visibly independent* of the Royal Canadian Mounted Police and responsible directly to Parliament rather than to the government of the day.

Arguments for the need of an independent reviewing authority to oversee the handling of complaints by the police are not new and have been put forward in other places at other times.

In the United Kingdom, the members of the Royal Commission on Police raised the question,

> "... whether any system which places the investigation and determination of complaints from start to finish in the hands of the police alone can be expected to command public confidence and thus, in the words of our terms of reference, be regarded as a sufficient means of ensuring that complaints by the public against the police are effectively dealt with."[1]

It is instructive to note that the members of that Commission did not achieve consensus in their resolution of this question. The majority argued that in the absence of any evidence that the police were not adequately discharging their responsibilities with respect to the handling of complaints there were no grounds for proposing that a reviewing authority be established. A minority took issue with this argument on the grounds that the principle in question was not whether the police were satisfactorily responding to public complaints but rather whether the public could assure themselves that the police had acted appropriately. Their position was expressed as follows:

> "Three of us, on the other hand, think that the measures so far proposed are inadequate to enable the public to feel assured that complaints are properly dealt with. To this minority it appears that the need to ensure that justice should be seen to be done overrides the considerations set out in the preceding paragraph. They fully share the confidence of their colleagues in the fitness of the police to deal with complaints, and think that any preliminary investigation must continue to be in police hands. Moreover, they think that police discipline should remain the responsibility of the chief officer. But in their view this misses the point: no harm can result from the imposition of some form of independent external check on the actions of chief constables in handling complaints, and the interests of justice and of the public, no less than those of good relations between the police and the public, require it. Moreover an independent body would be able to review in a simple and effective manner the conduct

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[1] Royal Commission on the Police 1962. *Final Report.* London, Her Majesty's Stationery Office: 1962. P. 138, para. 477.

> of chief constables in handling incidents wider in scope than those which merely give rise to complaints by individual members of the public against individual policemen. Those of us who are of this opinion would therefore like to see a Commissioner of Rights appointed . . .''[2]

Developments both in England and elsewhere since the publication of this report have tended to vindicate the minority position.

Sir Robert Mark, Commissioner of Police of the Metropolis (London), in his Dimbleby Lecture said, in the context of his remarks about Scotland Yard's squad of internal investigators:

> ''We realize, however, that the procedure has one major drawback. It looks like a judgment of policemen by other policemen. So long as this remains the case, some of you may, understandably, be sceptical. No one likes to accept the verdict of a person thought to be a judge in his own cause. That is why the Home Office are trying to devise a system of outside review of such investigations, which will have everyone's confidence.''[3]

The position in favour of an independent review of the complaints process was also endorsed by the two working groups established to report on the handling of complaints against the police in the United Kindgom. The Working Group for England and Wales argued for an independent element in the complaints process.

> ''Because the police must necessarily investigate complaints against their own members, they can be represented as being judges in their own cause, and there is some public unease over the thoroughness and objectivity of their investigations. We believe that suggestions of widespread and continuing public concern about the operation of the existing arrangements are much exaggerated; but it must be accepted that a degree of public unease is probably inseparable from a system which, from the point of view of the ordinary member of the public, operates largely behind closed doors. He himself cannot observe the system in operation to satisfy himself of its thoroughness and impartiality, and there is no one outside the system who can thus observe it on the public's behalf. The provision of a means for independent scrutiny of the way in which complaints had been dealt with would be like letting in a window on to the outside world; the reviewing authority would be able to observe how the system had operated in all cases where anyone thought it had operated unsatisfactorily, and thus provide both specific information about the handling of such complaints and also a more general assurance that complaints are investigated fully and impartially.''[4]

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[2] *Ibid.*, pp. 138-139, para. 479.

[3] Mark, Sir Robert, Dimbleby Lecture, *The Listener*, volume 90, No. 2328, November 8, 1973.

[4] Report of the Working Group for England and Wales, *The Handling of Complaints Against the Police*, London, Her Majesty's Stationery Office: 1974, pp. 17-18, para. 41.

The need for an independent authority to review the actions of the Force in handling public complaints is not one based on any discovery of a history of abuse or neglect. On the contrary, we have not found many cases where the Force was not both thorough in its investigation and fair in its disposition of complaints. The need in question is based on perceptions held by many who have difficulty in understanding how the Force can be both the supervisor and final arbiter for public complaints. Complainants, members involved in complaints and Canadians in general are entitled to an unqualified confidence in the Royal Canadian Mounted Police. In our view, the introduction of an independent review authority will ensure that such confidence is attainable.

THE OMBUDSMAN: A REVIEWING AUTHORITY

In a number of hearings and written submissions, the Commission was made aware of the concern of many Canadians that an independent review authority be established. Little consensus was evident, however, on what form such an authority might take.

Among the several alternatives mentioned were the Solicitor General of Canada or an official responsible to him; a Federal Police Commission, tribunals composed of members drawn from the public, the Force and various federal ministries; and a civilian review board.

Careful consideration was given to these alternatives. While merit could be found in each, our assessment revealed that each alternative has liabilities as well. For example, in considering whether a civilian review board might be employed to exercise an independent review authority for the handling of public complaints and provide other services related to internal discipline and grievance procedures, we naturally turned to the experience of such boards in the United States. Our research has indicated that, for a variety of reasons, such boards have met with less success than anticipated. Instead of providing an *ex post facto* review and recommending a remedial approach that would obviate the causes of complaints, many of these boards served to exacerbate the already existing adversarial character of the complaint process. In these situa-

tions public confidence in both the police and the boards themselves eroded in equal measure.

In *When Americans Complain,* Walter Gellhorn notes that, where civilian review boards are concerned,

> "What is needed at this point is not a further institutionalizing, through a civilian board, of the notion that a complaint signalizes a dispute between two individuals alone. What is needed, rather, is acceptance of the view that a citizen's complaint about a policeman, just like a citizen's complaint about any other public servant, deserves the attention of superior administrators who are intent upon reducing irritations and improving services. If anyone believes that the responsible superiors have not given the desired degree of attention, an outsider's inquiry becomes desirable. The issue then presented is not the guilt or innocence of a particular public servant, but the probity, efficiency, and policies of those who have weighed citizens' allegations about shortcomings or misdeeds. These are to be judged by a review of what the superiors did, not by a trial of what the subordinates are accused of having done. Persons who wish to protest about police operations should indeed be able to bring their protests before a competent authority wholly outside the Police Department. But this should not operate to supplant the Police Department as the primary investigator and decider of charges against its members."[5]

With these concerns in mind, we found ourselves sympathetic to the views expressed by Mr. Robert Carr, former Home Secretary. After examining a number of proposals for the establishment of an independent element in the public complaint process, Mr. Carr "expressed a provisional preference for an *ex post facto* review on ombudsmen lines."[6]

Although the office of ombudsman, as the position is presently understood, had its origins in the creation of parliamentary democracy in Sweden in 1809, it is only in the recent past that its merits have been appreciated in this country.

While the present duties of ombudsmen may vary somewhat, there are three general characteristics which are common to them all. The first is that the ombudsman derives his authority from, and is answerable to, the legislature. Secondly, he has powers to investigate all administrative but not legislative decisions. Finally, while he has the power to criticize administrative decisions and recommend change, he does not have the authority to reverse administrative decisions or to reprimand malefactors.

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[5] Gellhorn, Walter, *When Americans Compalin,* Cambridge, Massachusetts: Harvard University Press, 1966, p. 191.

[6] Report of the Working Group for England and Wales, *op. cit.*, p. 3, para. 7.

The office of ombudsman has gained popularity with legislators and citizens of democratic states because it offers them a credible solution to the following problem: How is it possible to provide an effective overseer of administrative action without denying administrators the authority to make decisions for which they are accountable? The ombudsman provides the solution by serving as a "watchman" who is granted authority by the legislature to conduct inquiries on its behalf and report back to it. By granting him as much independence as is consistent with its own authority and responsibility, and at the same time denying him the right to reverse the administrative decisions, the legislature ensures the continued accountability of public servants and a candid assessment of their exercise of delegated authority.

It may appear that because ombudsmen traditionally do not have the power to reverse decisions but only to criticize and recommend change, they are destined to an ineffective role. Such a perception ignores a history of success in countries where ombudsmen have existed for a number of years. In addition to reporting to the legislature, he can influence public opinion through the media, thereby creating additional incentive to accept his recommendations. The power to recommend and persuade has proved sufficient.

The success of ombudsmen in effecting administrative change is not dependent solely upon their ability to influence legislative action and public opinion. The manner in which they have carried out their responsibilities also accounts in large measure for their success. In criticizing administrative action, they have sought to avoid attributing blame at the individual level and have endeavoured to rectify conditions giving rise to complaints. Even in those jurisdictions where ombudsmen have prosecutorial powers and punitive sanctions available, they have relied primarily upon persuasive means to effect change. Their reports rarely identify administrators by name. More often there is rendered an impersonal assessment of a department or a set of administrative procedures that have caused difficulties.

Given access to official files, the ombudsman easily acquires knowledge of facts relevant to a particular complaint. Administrative hearings are rarely necessary and, when they do occur, are likely to be informal and not adversarial in nature. By taking an approach that does not seek to assign guilt or impose punishment, but attempts to educate those concerned and achieve lasting remedy, the ombudsman ensures the co-operation of administrators and complainants alike.

The ombudsman's presence has a salutary effect in preventing administrative abuse. In an administration whose records and actions are open to review, greater care and sensitivity in the decision-making process become second nature. Since no one relishes having his errors exposed, however impersonally this may be done, officials learn to take the "ounce of prevention" that avoids the "pound of cure."

> "A young prosecutor acknowledged being conscious of saying to himself with considerable frequency: "I must be careful with this case, because it is just the kind the Ombudsman looks for." A former judge declared: "I can't point to a specific matter, but the Ombudsman entered into my thinking. He was a supervisory shadow, if I may put it so." A more youthful judge added: "The Ombudsman seems to me to personify the law, the omnipotent force in Swedish administration." A prison governor who had not experienced an inspection for nearly ten years said: "Often when I'm making a decision, I ask myself, How would the Ombudsman decide things? It has a good effect on me."[7]

Two functions performed by the Ombudsman that are frequently overlooked are to shield administrators from unfair criticism and to recognize exemplary conduct. In commenting on this aspect of the Swedish Ombudsman's role, Gellhorn writes:

> "By finding no fault in 90 percent of the cases about which complaint has been made, he sets at rest what might otherwise be continuing rumors of wrongdoing. He may even be an insulator against the heat a hostile press has engendered. His rulings serve to chart paths that can be followed safely in the future. When he identifies inadequate staffing as a cause of undesirable delays for which hard-working officials have been unjustly blamed, he may help achieve needed organizational reforms; as a court president said, 'Advice from outside often succeeds after we judges have failed to get what is needed.' And sometimes, especially in his reports of inspections, the Ombudsman gives praise that does much for public servants' morale: . . . applause for the public's employees are desirable by-products of the Ombudsman's activities."[8]

Professor Brian Grosman, Chairman of the Saskatchewan Law Reform Commission, in support of his proposal for the introduction of an ombudsman into the complaint handling process, addressed the protective role such an official could play.

> "The impartiality of the ombudsman may also be useful to support the police against unwarranted complaints. Rejection of

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[7] Gellhorn, Walter, *Ombudsman and Others*, Cambridge, Massachusetts: Harvard University Press, 1966, pp. 226-227.

[8] *Ibid.*, pp. 250-251.

complaints by an impartial agency and indication that they were not justified is obviously of substantial support to an agency which is continually subjected to criticism which may or may not be warranted."[9]

THE SPECIALIZATION OF THE OMBUDSMAN'S ROLE

In recent years, there has been a marked trend towards the development of more specialized ombudsmen either on a geographic basis or on the basis of the particular administrative branch of government the ombudsman is required to oversee.

In Sweden, for example, there are three ombudsmen, each with different responsibilities, sharing a common office and staff. Their jurisdiction is divided as follows:

(a) social welfare, building and town planning, and the protection of free public access to official documents;

(b) courts, public prosecutors, police and the armed services;

(c) all other areas of public administration.[10]

The growth and complexity of government services has made it increasingly difficult for a single ombudsman to adequately investigate all complaints and make informed recommendations. A recently published survey[11] indicates that there has been a proliferation of ombudsmen throughout the world, particularly specialized ombudsmen. For instance, Norway, Denmark and Sweden now have consumer ombudsmen; there are a number of ombudsmen dealing with health, most notable of whom is the Health Service Commissioner in Great Britain who has jurisdiction over all health care services; a number of states in the United States have ombudsmen with special functions.

The governments of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland have established the office of

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[9] Grosman, Brian, *Police Command*, Toronto: 1975, pp. 130-131.

[10] Rowat, Donald, *The Ombudsman Plan*, Toronto: 1973, p. 3.

[11] Frank, Bernard, *Ombudsman Survey*. American Bar Association, 1975.

Ombudsman. The government of Quebec has established the office of Public Protector, who functions as an ombudsman. In Canada, there has been appointed a Commissioner of Official Languages whose functions and duties are those of an ombudsman but limited to complaints related to the implementation of the Official Languages Act.

A POLICE OMBUDSMAN

The concern has been expressed at some hearings that an external reviewing authority for public complaints would be an "outsider" who would lack an understanding of the particular problems the Force has to face. We are of the opinion, however, that it is precisely because he is an "outsider" that he will bring to the position the independence in judgment that is so necessary. Furthermore, although initially an "outsider," a police ombudsman will soon acquire a detailed and intimate knowledge of the Force and its members.

We feel it important to emphasize our belief that the authority and responsibilities of the Federal Police Ombudsman should not be subsumed by an Ombudsman with a more general mandate. The size and geographic distribution of the Force, the multiplicity of its duties as federal, provincial and municipal police, as well as the nature and visibility of its contact with the public, indicate the need for the services of a specialized ombudsman.

Accordingly, we recommend that:

OMB. 1 An independent authority, to be known as the Federal Police Ombudsman, should be established by the Parliament of Canada.

OMB. 2 With respect to public complaints, the Federal Police Ombudsman should be responsible for:

(I) ascertaining that all complaints are investigated in an appropriate manner;

(II) recommending such remedial action as he believes necessary at both the individual and organizational level;

(iii) providing a review of any particular complaint or the procedures followed by the Force in its response; and

(iv) serving as an authority with whom a complaint may be lodged.

THE AUTHORITY OF THE FEDERAL POLICE OMBUDSMAN

In our opinion, the Ombudsman should have all of the authority vested in a Commissioner appointed pursuant to the provisions of the Inquiries Act[12]. Without full powers of inquiry, the ombudsman would be unable to fulfil his role as a watchman on behalf of Parliament. Although the Ombudsman's formal power is limited essentially to the power of inquiry on behalf of the legislature and his reporting to them, he has in addition considerable indirect power via his authority to publicize his findings. This power is founded upon the ability of the public through the news media to insist that public officials account for their actions. The authority for an ombudsman to make public his inquiries and findings is an extension of his role as a parliamentary overseer, and ultimately the people's watchman.

The Ombudsman should report annually to Parliament. In addition, he should have the right, if he deems it in the public interest, to publish any reports at any time relating generally to the exercise of his duties or to any particular case investigated by him, whether or not such matters have been reported to Parliament. This right should, of course, be tempered by such constraints as may be necessary to protect the legitimate interests of any person who may be adversely affected by such a public report.

During the course of an investigation, the Federal Police Ombudsman may deem it necessary to hold hearings which, in his discretion, may be in private.

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[12] *Inquiries Act*, R.S.C. 1970, I-13.

Occasions might arise when the Federal Police Ombudsman may wish to authorize a hearing and for that purpose appoint a tribunal to determine the merits of a complaint. This could take place for various reasons. For example, where a complaint involves a police officer working under the authority of a provincial attorney general, the government of the province may, in the judgment of the Ombudsman, have interest in that matter which might justify the appointment of a tribunal consisting of one or more representatives from the area in which the complaint arose.

In order that the Ombudsman meet the objectives to which reference has been made, we recommend that:

OMB. 3 The Federal Police Ombudsman should have all the authority vested in a Commissioner appointed pursuant to the provisions of the Inquiries Act.

OMB. 4 The Federal Police Ombudsman should have the authority to appoint tribunals to hold hearings convened for the purpose of determining the merits of a complaint.

OMB. 5 The Federal Police Ombudsman should report to Parliament at least annually but should be authorized to report at any time and to publish any report, if he deems it to be in the public interest.

APPOINTING THE FEDERAL POLICE OMBUDSMAN

The success and credibility of the complaints procedure we have recommended, and of the disciplinary and grievance procedures we will recommend, depend in large measure on the ability and competence of the Federal Police Ombudsman.

The task of selecting an appointee who will command the respect and confidence of both the public and the administration has been, of course, a concern wherever an ombudsman's office has been established. Consequently, in considering this problem, we examined the experience and practice of other jurisdictions. In Sweden, the formal requirement is that the ombudsman be a person of "known legal ability and outstanding integrity"; in Denmark, he "must have legal education"; in Finland, the requirement is that he be "distinguished in law"; and, in Norway, the

requirements are somewhat more stringent as he must "have the qualifications demanded of a judge of the Supreme Court." We believe that it might be preferable if the appointee to the office we recommend was trained in the law. Nevertheless, this qualification need not be mandatory. As has been stated:

> "A critic's personal attributes are no doubt more important than his past training. He need not be widely known when he begins his work, though obviously he cannot be a nonentity. The Finnish and Swedish ombudsmen, for example, have usually been drawn from the lesser judiciary or some other official post that has not at all put them in the public eye. The first Norwegian ombudsman had been a veteran civil servant and Supreme Court judge, but was not a prominent public figure. The Dane had been a law professor. They and their counterparts elsewhere have gained recognition through their work after appointment. A Swedish legislator summarized the matter by saying: 'The man we select does not lend distinction to the office; the office distinguishes him'."[13]

Ombudsmen are appointed by legislative bodies and their selection is ordinarily not subject to partisan politics.

In most countries, the ombudsman is appointed for a fixed term. Minimum terms are rarely less than four years. While it is desirable that the term of office be of sufficient length to enable him to establish continuity and consistency, it should not be so long as to risk loss of perspective and flexibility.

The level and control of salary are an important consideration. In all countries the salary is substantial, in order both to attract a highly qualified person and to indicate the esteem and importance of the position. Furthermore, in most countries an attempt has been made to divorce the salary from any direct political control lest this be used as a method of influencing his work. This problem has been resolved in Denmark and Sweden by making the ombudsman's salary equal to that of a member of the Supreme Court.

The American Bar Association House of Delegates has adopted a resolution which states in part:

> "That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body;

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[13] Gellhorn, Walter, *Op. cit.*, pp. 423-424.

(3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action."[14]

We endorse the principles underlying these requirements and would urge their consideration in any legislative changes enacted as a consequence of our recommendation.

Specifically, we would recommend that:

OMB. 6 A person should be appointed to the office of Federal Police Ombudsman by the Governor-in-Council on the address of the House of Commons.

OMB. 7 The Federal Police Ombudsman should be appointed for a fixed term.

THE FUNCTIONS OF THE FEDERAL POLICE OMBUDSMAN

In developing our recommendations for a Federal Police Ombudsman, we have defined his role as essentially that of a watchman. This view

[14] Frank, Bernard, *Op. cit.* p. 50.

of his position has been cogently summarized by Chief Justice Milvain of Alberta who said of the ombudsman that:

> "He can . . . focus the light of publicity on his concern as to the injustices and needed change . . . he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good."[15]

There may well be special circumstances when a complainant prefers to remain anonymous to the Royal Canadian Mounted Police. In these cases, the Federal Police Ombudsman could receive the details about the complaint directly from the complainant and initiate an inquiry into the complaint in his own right, thereby protecting the identity of the complainant.

We recommend:

OMB. 8 In handling complaints from members of the public, the Federal Police Ombudsman should have the authority to forward the complaint to the Royal Canadian Mounted Police for investigation without revealing the identity of the complainant.

If a complainant who has complained to the Force is of the opinion that his complaint is not being adequately responded to, he should have the right to bring that matter directly to the attention of the Federal Police Ombudsman.

Accordingly, we recommend that:

OMB. 9 Complainants should have the right to bring to the attention of the Federal Police Ombudsman delays or inefficiencies in the handling of their complaints by the Royal Canadian Mounted Police.

One of the principal objectives of the remedial complaint system we have proposed is to encourage the continuing examination of complaints with a view to identifying trends and problem areas within the Force which might not be recognized if complaints were examined on a case-by-case basis.

Accordingly, we recommend that:

OMB. 10 The Federal Police Ombudsman should be required to undertake an analysis of data relating to public complaints with a view to detecting and isolating problems which can be brought to the attention of the Royal Canadian Mounted Police together with his recommendations for remedial action.

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[15] Re Ombudsman Act, (1970) 72 W.W.R., 176-192.

We have argued that one of the principal functions of the Federal Police Ombudsman should be to provide an independent review of the action taken by the Force with respect to public complaints.

Accordingly, we recommend that:

OMB. 11 The Federal Police Ombudsman should have the authority and the power to *recommend* change in the disposition of a complaint; restitution or compensation; and whatever other action he considers appropriate.

If the Federal Police Ombudsman is to meet the expectations of all parties involved, it is imperative that he provide a detailed account of the basis for his decision.

Accordingly, we recommend that:

OMB. 12 The Federal Police Ombudsman should be required to deliver written reasons for his decisions to the parties concerned.

To make it possible for the ombudsman to review and analyze all complaints, a liaison should be established between the offices of the ombudsman and the Attorneys General to facilitate the exchange of information with respect to action taken in response to complaints alleging criminal behaviour.

Accordingly, we recommend that:

OMB. 13 Information on the action taken on complaints alleging criminal behaviour should be exchanged between the Federal Police Ombudsman and Attorneys General.

PART V

INTERNAL DISCIPLINE PROCEDURE

Chapter 1

THE PRESENT SYSTEM OF DISCIPLINE

INTRODUCTION

In our investigation and assessment of the "existing laws, policies, regulations, directives and procedures" of discipline within the Force, we soon realized that each of these aspects was only a part of a much larger whole. Discipline within the Royal Canadian Mounted Police consists of more than these provisions and procedures and extends beyond the administration of sanctions. While there are provisions that stipulate breaches of discipline, address the procedures of its administration and provide schedules of punishment, these give only a partial indication of the nature of discipline as it exists in the Force today.

An understanding of the current scope of discipline must begin with an awareness of the evolution the Force has undergone as an organization and the effects this has had on discipline.

DISCIPLINE AND THE EVOLUTION OF THE FORCE

Discipline within the Royal Canadian Mounted Police was developed and has evolved under the influence of the military character of the Force and the operational requirements of law enforcement. During the first fifty years, the interaction of these two influences on discipline was complementary. The nature of law enforcement on Canada's frontier and slow communication worked against the possibility of a centralized and close control such as is possible in military units. The disposition of men into small detachments required that the Force place great trust and responsibility in its officers and men and that they, in turn, exercise self-discipline and self-reliance.

Balancing this early encouragement to self-discipline were explicit provisions which exemplified a strict and summary approach to breaches of discipline. In such a system, minor misconduct constituted more than a mere misdeed; it gave evidence of a breach of trust and characterized the

member as unreliable. When self-discipline failed, punishment was swift and severe.

The inculcation of discipline was made easier by the fact that the Force was organized along military lines and staffed with men who had served as officers and non-commissioned officers in the Canadian Militia and the British Army. Given the prestige of military service in Canadian society in the 19th century, all ranks were aware of the standards, if not the details, of military discipline.

Training in the early Force placed great emphasis on discipline and almost no emphasis on what today is known as police science. The medium in which discipline was taught was almost completely military. Gun drill, riding and cavalry exercises, marching and military etiquette all served to instil the member with a military bearing and a respect for the military "traditions" of service.

While little of what was properly military was used by the member assigned to frontier policing, he was always mindful of the standards of behaviour expected of him. In such circumstances, the threat of summary and severe discipline was fairly balanced by an operational independence that required self-control and promoted self-respect. For a number of reasons, the present system of discipline no longer reflects the same harmony of interaction and balance.

During the past fifty years, the Royal Canadian Mounted Police has become a national police force, the administration of which is closely controlled by its Headquarters in Ottawa. The responsibilities of the Force have increased in both size and complexity. With a present strength in excess of 15,000, it provides a multitude of police and security services across Canada. These developments alone have had important consequences for discipline.

The increase in the size of the Force and the complexity of its operations resulted in the development of more regulations, usually administrative in character. Policing became a much more "rule-guided" enterprise than it had been in the past.

Coincidently with the increase in the size of the Force and its trend towards centralized administration, there was the development of modern communications systems. These allowed the central administration of the Force to exercise a far greater scrutiny of breaches of discipline and administrative regulations and to monitor and advise in a direct fashion how these cases might best be handled. In these circumstances, the need for self-reliance and self-discipline became far less apparent to members.

For those responsible for discipline on the local level, the scrutiny exercised by a central administrative authority naturally promoted the administration of discipline "by the book."

What is important to note at this point is that "the book" had come down through the history of the Force in a virtually untouched fashion. Regulations and procedures, in existence since the early years of the Force, traversed time more or less "en bloc." But what may have been necessary and fair, given the circumstance of frontier policing in 1890, no longer seemed so fifty years later.

Reporting to the Force on its personnel policies in 1944, R. L. Haig-Brown of the Canadian Army noted:

> "The Force has adapted its personnel extremely well to the changing conditions of the country. But there is some lag in adopting its treatment of personnel to the changed character of the men. The Mounted Policeman today is a career man, steady, intelligent, reasonable. Every inclination makes him a family man, with a life of his own to live. He is for this reason ambitious and easily disciplined, and at the same time more trustworthy and reliable than the older type. He is an altogether different man, and in many ways a better man; for all these reasons he requires different handling and treatment, and the fact that he does require it is to his credit, rather than his discredit."[1]

Policing has always required reliable men capable of great self-restraint and self-discipline. Only these qualities can promote the self-respect a policeman must have if he is to be effective. It is an irony of history that, as the responsibilities of the Force grew and became more complex, evolving administrative practices failed to take into account the changed character of the "altogether different man."

THE CURRENT DISCIPLINARY SYSTEM

The rigours of recruit training, still military in character if not in curriculum, introduce the member to a disciplined, rank-structured environment whose essentials will not change throughout his career. In such an environment, a member's conduct, attitudes and job performance will be assessed by those who are superior in rank.

The requirements of policing within a Force which maintains its military character and organization has meant that discipline, in its broadest sense, is inseparable from a member's daily routine as a

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[1] R. L. Haig-Brown, *A Report on Personnel Selection for the Royal Canadian Mounted Police*, 1944, Special Reports Leading to Final Report, Report No. 3, p. 2.

policeman. The professional requirements of policing are met within a code of conduct that touches all aspects of a member's life, whether on or off duty.

The inseparability of the requirements of policing and the standards of conduct is better understood when one realizes that a member is under the supervision of a superior whose interests extend beyond assessments of his technical competence to include his attitude, dress, deportment and loyalty to the Force. Professional competence requires more than a good grasp of the technical elements of one's job; it extends to the conduct and attitude one exercises in carrying it out. In such a situation, a member of a traffic detail whose attitude with the public is abrasive is as much in error as the member who fills out a traffic summons incorrectly. Both have failed to do their job in a professional manner. The fact that a superior is expected to attend to each error with a concern undiminished by the differences between them gives evidence of the inseparability we have discussed.

The philosophy underlying the present system of discipline is found in the following remarks from the Force's Administration Manual:

> "No group of people can work together without some form of organized control and discipline. The nature of our profession, as peace officers, demands that we set for ourselves a much higher standard of conduct than is expected of a member of the general public, and that we be willing to live by a much stricter code of self-discipline. We are mindful that our everyday actions, both on the job and in private life, are judged by the public in our role as peace officers, not as private citizens."[2]

Such a philosophy makes clear that the Force's concern with discipline extends beyond the member's active duty as a peace officer. Two considerations are cited to justify this prerogative. The first is that effective policing is more easily carried out if citizens respect the Force as a whole and the individual member who enforces the law. Where a member's off-duty conduct earns him ridicule or disrespect, he will be less effective as a peace officer and the general reputation of the Force will suffer.

Secondly, the paramilitary character of the Force places certain extraordinary requirements on its members. Regulations require that a member must be prepared for duty at almost any time. Excessive drinking, for example, could undermine the effectiveness of a member required to respond in an emergency situation or to replace a member unfit for duty.

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[2] Administration Manual, II. 13. I. 1. a.

Supplementing this general philosophy are the particular objectives of the discipline system. These were presented to us by the Commissioner of the Force during his appearance before our Commission.

(1) To maintain a high standard of conduct by members of the Force which we feel is expected by the public we serve.

(2) To develop self-discipline in members.

(3) To motivate members to act and perform to the standards expected.

(4) To motivate members to perform in a professional manner.

(5) To train, develop and assist members to overcome inadequacies.

(6) To improve and preserve morale, loyalty and esprit de corps.

(7) To deter members from conducting themselves in an unacceptable manner.

The means by which the Force attempts to achieve these objectives extend far beyond the application of provisions they themselves have labelled "disciplinary." Recruit and "in-service" training, personnel policies, counselling and the effect of serving in a disciplined, military environment contribute as well. It is through the use of these non-punitive means that the Force educates its members to the requirements of policing and the standards of conduct it has set. Supplementing these non-punitive measures are the provisions of discipline. These stipulate the breaches of discipline, the procedures for its administration and the schedules of punishment.

The statutes, regulations and standing orders which constitute the provisions of discipline are numerous. In addition to specific disciplinary offences, the Royal Canadian Mounted Police Act provides authority for the Governor in Council to make regulations for the organization, training, discipline, efficiency, administration and good government of the Force[3]. As well, the Act authorizes the Commissioner to make rules known as standing orders in these same areas of concern.

Depending on the particular breach of discipline concerned and the discretion of his superiors, a member may be subjected to one of four types of discipline [4]. For the least serious offences, he may receive a "cautioning." This is a verbal admonishment the circumstances of which are reported to Headquarters and are recorded in a member's service file. For more serious offences, a "warning" may be administered. This is

[3] Royal Canadian Mounted Police Act, 1959, C. 54, s. 21.

[4] Administration Manual, II. 13. I.1.c.1-4.

a more formal procedure than cautioning and requires that a written account of the issue in question be read to a member and that he sign it. This too is placed on a member's service file and becomes part of his permanent record.

The Act prescribes minor and major offences which will result in service court proceedings. If found guilty in service court, a member may expect punishment. Schedules of punishment include imprisonment for a term not exceeding one year [5], fines, loss of pay, reduction in rank, loss of seniority or a reprimand. Finally, a member may be subjected to compulsory discharge.

The disciplinary system of the Force contains three distinct elements: provisions stipulating the general rules of conduct; administrative and financial instructions; and what, for want of a better phrase, we have designated "indirect discipline."

As we have noted, the provisions which set out the general rules of conduct include, for the most part, rules one would expect a police officer to have to obey: not accepting bribes, following the lawful orders of a superior, etc. Where these rules are concerned, the Force has developed rather straightforward procedures for handling their abuse.

Discipline applied with respect to infraction of administrative or financial instructions is best introduced by a quotation from the 1944 Haig-Brown Report:

> "Generally it is the pettiness of restrictions, their nagging quality which suggests that the men are irresponsible and hard to discipline that causes most discontent. The writer has been impressed again and again by the number of small infractions, often quite unrelated to the main issue, which are brought to light in almost any inquiry. One feels that a close examination of any 24 hours of a policeman's life would reveal half a dozen such infractions and that any man who survives an inquiry without the discovering of a charge that can be laid against him has been extremely lucky. Such close regulations, particularly under the present system of slow promotion, have a very real tendency to discourage initiative." [6]

What is important to note here is not that the quotation has correctly characterized the policeman's lot. Rather, its importance rests on what it implies: that in the normal course of his operational duties, a member is

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[5] A penalty which has not been employed for a number of years.
[6] R.L. Haig-Brown, *Op. cit.*, Report No. 7 p. 5.

routinely in a position of at least tacit disregard of some administrative regulations. Two examples will suffice.

Consider the situation in which some members of specialized squads in large cities have found themselves. The type of district in which they carry out their work is often characterized by high crime rates and violence and is populated by addicts, transients, known criminals and persons who eke out their livelihood on the edge of society. Few in these districts are interested in assisting in the prevention of crime or apprehension of criminals. Those that might help hesitate for fear of reprisal.

Any member placed in this situation and others like it comes to understand that in his particular law enforcement task his effectiveness will be governed by the amount of information he can amass on a continuing basis. In such a situation, he will have to develop informants if he is to gather information because no one will volunteer the assistance he needs. But paid informants in this milieu are as expensive as they are untested. Often they are drug addicts and will only take the risk of informing to earn the money they need to buy drugs. Added to these factors is the tendency of these informants to demand payment, or a portion of it, before any information is given. There are provisions for members to pay approved amounts to informants after they have supplied what is proven to be valid information. As well, there are provisions which will, under defined and restrictive conditions, permit prepayment for anticipated information. The problem is that these latter provisions require that the member first seek formal approval from his officer who, in turn, may have to obtain the approval of his Commanding Officer. All of this takes time and considerable justification, for the payment may be high and the informant unreliable or untested. The member in contact with the informant is often not permitted the time these procedures require. The informant or the nature of the information itself may demand immediate action and a decision must be made on the spot. In the interest of achieving the operational objectives of the Force and the rewards which attach to a job well done, a member may feel he must ignore the administrative regulations and make an unauthorized payment to an informant.

Often the member's supervisors are tacitly aware of situations like this and are sympathetic to the member when he takes these risks. Generally, however, they find it to everyone's advantage to look the other way, for they are bound by the same regulations as their subordinate. To be formally aware that a subordinate is in breach of a regulation and fail to take action is to implicate oneself in the offence.

Providing that the breach of regulations never comes officially to the attention of a member's superiors, it is unlikely that he will be chastised. Indeed, he might be praised for his operational success. If, however, such actions are brought officially to the attention of his superiors, those in charge have no choice but to enforce the regulations and impose the sanctions called for. Since superiors may not, without inviting discipline upon themselves, admit prior knowledge of the breach, the member finds himself very much alone as the disciplinary procedures are brought to bear. The operational conditions which gave rise to the offence will not be considered mitigating, for within current provisions the issue is simply one of guilt or innocence of a breach of regulations.

Regulations, which are based on administrative and financial requirements and which apply equally to all departments, are not always readily adaptable to the realistic requirement of an efficient police service. Added to this is the fact that local commanders have the authority to interpret these controls more stringently than is required by either Headquarters or other ministries. The exercise of the discretion will vary with different commanders. It is not only that some of these financial and other controls are unrealistic. The member must also cope with different interpretations of these regulations and the varying intensity of their application.

Instructions concerning the control of police vehicles are often overlooked by members assigned to operational duties. For example, the local instruction may be that after 4:30 p.m. all vehicles are to be parked in a designated place and that a member wishing to use one that evening must sign it out after receiving his superior's authorization. The investigator who is caught up unexpectedly in an enquiry that requires immediate follow-up and realizes that he is going to be quite late returning to the office will often find himself somewhat pressed to locate his superior and get the required authorization. If, for some reason, he has not received authority and is late returning to the office, he will have another decision to make: either to return the car despite the late hour or to keep it overnight. If he returns the car to the garage, signs it in and fills it up with gas, all of which may be required, then he may be facing a further delay in what may already be a considerably late arrival home. Failure to receive authorization to retain the car overnight will not likely result in anything more than a mild rebuke, or perhaps no sanction whatsoever, providing of course that the member does not have an accident, or become otherwise involved in an incident that cannot escape attention. Should one of these latter misfortunes occur, he is on his own and clearly in breach of regulation.

These examples illustrate the kind of dilemma in which a member frequently finds himself. Although it may often be more practical and expedient for him to rely on his own initiative in determining the course of action to pursue, to do so is to risk censure or worse. The alternative, however, is to strictly abide by the written instructions and accept the possibility that the effectiveness of his performance as a police officer may be inhibited.

The final element of the discipline system is one which does not usually result from a breach of regulations. Rather, it serves as a means of disciplining members who, for one reason or another, have displeased their superiors. Since, in this case, no explicit breach of regulations is evident, supervisors cannot proceed in the straightforward manner available to them in normal disciplinary procedures. Here, no charges are laid; no proceedings are held; no fines are levied. Sanctions are imposed indirectly and are held to be based upon the exigencies of the Force. Given the disciplined environment and the prerogatives of superiors in such an environment, sanctions can take many forms. These can range from the continuous assignment of a man to menial duties requiring little or none of his expertise, or may involve transfer or denial of opportunity for promotion for reasons that are never made clear to the member.

The extent of the delivery of discipline through this more subtle process is impossible to measure in any accurate fashion. By its very nature, such a process is only effective if it remains more rumour than reality. Since the member is not told that he is being punished and cannot see his file to reassure himself that he is not, he will often reach what is to him the inescapable conclusion that a tacit sanction has been administered.

The number of actual penalties presently administered in this manner is impossible to gauge; in fact, these sanctions may no longer occur. While there is evidence to confirm that such practices have occurred, what is important to note is that there continues to be a widespread belief that such sanctions are still being applied. The continued currency of this perception, more than its accuracy, would seem to indicate that there is a lack of confidence in the discipline system on the part of some members and this has resulted in some deterioration of morale.

THE ADMINISTRATION OF DISCIPLINE

While every person in charge of a post has the responsibility to ensure compliance with the rules of discipline, only officers are permitted

to deliver prescribed sanctions and preside at service court proceedings. Some non-commissioned officers may punish members informally but, if they do so, they run the risk of being disciplined themselves for exceeding their authority. A member in charge of a post is required to ensure that those under his supervision conduct themselves appropriately. If they do not, he is required to report breaches of discipline to his immediate superior.

While any officer may recommend that a particular course of action be taken in the light of a particular breach of discipline, Force policy clearly restricts the authority to impose punishment upon senior officers. At the present time, junior officers must seek the direction of the Commanding Officer of their division before issuing a cautioning or a warning. Commanding Officers may, in the case of a minor service offence, but not a major one, cause a written charge to be prepared and served on the member. While only the Commissioner is empowered to direct that a written charge be prepared in the case of a major service offence, in practice, he has delegated this authority to the Deputy Commissioner (Administration) and the Director of Organization and Personnel. Only the Commissioner has the authority to discharge or dismiss a member.

All disciplinary proceedings are reviewed at Headquarters to ensure that the proceedings conform to existing requirements and that the penalties administered are both legal and consistent with current standards. In cases where a service court proceeding does not result in a conviction and Headquarters feels that, not withstanding this, some penalty is in order, it sometimes directs that a cautioning or warning be delivered.

In cases where a member appeals either his conviction or the penalty that has been levied,

> "The Commissioner may,
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> (a) quash a conviction;
>
> (b) dismiss an appeal;
>
> (c) reduce the sentence or the amount ordered to be paid as damages or restitution; or
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> (d) order a new trial." [7]

On occasion, he may discharge a member notwithstanding that a trial officer has not recommended discharge under Section 38 of the Act.

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[7] Royal Canadian Mounted Police Act, 1959, C. 5-4, s. 44.

We have found cases where trial officers, acting within their authority and in conformity to regulations, have been severely criticized by Headquarters when it has disagreed with their findings or penalties. While it is appropriate that procedural errors and illegal penalties should be brought to the attention of officers by Headquarters, the Commission is of the opinion that a trial officer's discretion must be respected in all cases where it conforms to regulations.

While a central review is necessary to ensure uniformity across the Force and to protect against local abuse of authority, the current administrative practices restrict the authority of those responsible for the day-to-day conduct of members. By placing the authority to discipline in the hands of those least acquainted with the member and least able to closely monitor the effects of sanctions on members and their peers, the system fails to allow a supervisor to tailor discipline to a member in such a fashion as to correct his behaviour and encourage the good conduct of others.

These considerations suggest that the administration of discipline proceeds within a highly centralized framework which denies those directly responsible for the conduct and morale of members, the authority and autonomy they need to manage effectively.

DISCIPLINARY SANCTIONS

The Administration Manual defines "four basic types of discipline in the Force." These are:

1. Cautioning: the imparting of a formal oral admonishment by an officer.
2. Warning: the imparting of a written reprimand by an officer.
3. Charging with a Service Offence: the laying of a charge under Section 25 or 26 of the Royal Canadian Mounted Police Act.
4. Compulsory Discharge. [8]

The punitive effect of a cautioning or a warning includes the potential each is perceived to have in retarding promotion or influencing subsequent decisions affecting one's career. Both cautionings and warnings, once delivered, become a matter of record and are placed on a member's service file for the remainder of his career. A service file, while not available to a member, is available to his superior officers who may refer

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[8] Administration Manual, II.13.I.I.c. 1-4.

to it when considering promotions, transfers and matters of discipline. While no single cautioning or warning should impede advancement or necessarily ensure a more burdensome penalty for a future breach of discipline, a number of these might raise the question of a member's suitability for continued service.

In circumstances where a member has been convicted of a major or minor service offence, the sanctions which may be imposed are:

> "(1) Any one or more of the following punishments may be imposed in respect of a major service offence:
>
> (a) imprisonment for a term not exceeding one year;
>
> (b) a fine not exceeding five hundred dollars;
>
> (c) loss of pay for a period not exceeding thirty days;
>
> (d) reduction in rank;
>
> (e) loss of seniority; or
>
> (f) reprimand.
>
> (2) Any one or more of the following punishments may be imposed in respect of a minor service offence:
>
> (a) confinement to barracks for a period not exceeding thirty days;
>
> (b) if pursuant to section 38 the convicting officer recommends dismissal, a fine not exceeding three hundred dollars;
>
> (c) a fine not exceeding fifty dollars;
>
> (d) loss of seniority; or
>
> (e) reprimand.
>
> (3) Where a person is found guilty of two or more offences alleged in one written charge, the total punishments imposed in respect of all offences shall not exceed any of the maximum punishments prescribed by this section for one offence."[9]

The penalties imposed in service court, along with a copy of the proceedings, become a permanent part of a member's service file.

The last type of discipline, compulsory discharge, is the sole prerogative of the Commissioner. In the case of officers, who serve during the pleasure of the Governor in Council, the Commissioner may recommend that they be discharged. The circumstances under which the Commissioner may discharge or dismiss a member and an officer are stated in Sections 173 and 177 of the Regulations:

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[9] Royal Canadian Mounted Police Act, 1959, C. 54, s. 36.

"The Commissioner may recommend the discharge of an officer and may discharge a member other than an officer who has proved to be unsuitable for duties in the Force."

"Every member other than an officer convicted of an indictable, summary or service offence, or otherwise bringing discredit on the Force or whose conduct has been so reprehensible as to render him unworthy of continuing in the service may be dismissed forthwith by the Commissioner."

The effects of discharge under Section 173 extend to the difficulties that members have in gaining other employment. Until quite recently, the discharge certificate noted that the member was "unsuitable." This led prospective employers, unaware of the Force's meaning of the term, to suspect the worst. The Force holds that such discharges should not reflect adversely on the character or abilities of the member. Police work within the Force is not a profession to which all may adapt, even the most willing. "Unsuitability" for service in the Force does not mean that the member might not contribute and excel in another profession or line of work. Unfortunately, the Force's use of this term was not generally understood and such discharges stigmatized those who received them. Current discharge certificates note only the length of service.

The consequences of dismissal under Section 177 are similar to those of discharge under Section 173, with the additional consequence that a member so dismissed may be deprived of pension benefits[10] to which he might otherwise have been entitled.

Within the Force at present, discipline in the narrow, punitive sense is used to deal with problems of job performance as readily as it is used in matters of unsatisfactory conduct. In our opinion, this seems inadequate for two separate reasons.

The failure of a member to conform to the disciplinary regulations may best be handled in a manner that seeks to correct misconduct, rather than merely to punish the member for it. To look at a breach of discipline from a perspective that seeks solely to determine blame and exact punishment is to close off a number of non-punitive alternatives which, if properly administered, may accomplish the necessary corrective effect. Sanctions should be retained but the provisions of discipline must be expanded to accommodate other means of correcting behaviour.

Similarly, when a member demonstrates poor job performance, or ignores administrative regulations, the use of sanctions may seem inapplicable to problems better corrected through retraining, closer supervision,

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[10] Royal Canadian Mounted Police Superannuation Act, 1959, C. 34, s. 10(4)(b).

or a review and amendment of regulations. Punishment may be appropriate at some point. We believe, however, that it promises little by way of success when the difficulties have essentially to do with lack of training, lack of skill, breaches of inappropriate regulations or unusually onerous working conditions. As with misconduct, the initial emphasis should be on taking corrective action, and not on inflicting punishment.

DISCIPLINARY PROCEDURES

A number of procedures are undertaken when a member is alleged to have committed a breach of discipline.

Investigation

An investigation of a breach of discipline is normally conducted in two stages. Initially, the member's immediate supervisor will conduct enquiries to determine whether the incident could have occurred. If the supervisor believes that there may be some truth to the allegation, he will report the matter to his superior officer or his post commander with whatever recommendations he feels necessary.

> "Whenever it appears to an officer or to a member in charge of a detachment or detail that a service offence has been committed, he shall make or cause to be made such investigation as he considers necessary, and for the purposes of any such examination an officer may examine any person on oath or affirmation, and may compel the attendance of witnesses in the same manner as if the investigation were a proceeding before justices under the provisions of the Criminal Code relating to summary convictions."[11]

The investigation will be undertaken by a member senior to the member whose conduct is being investigated.

During the course of an investigation, the member being investigated will be asked to make a statement with respect to matters related to the investigation. If he declines, the investigator has the authority to order him to answer questions. This authority is provided for in the Force's Administration Manual.

> "Although a member is not obligated to give a statement after being warned, neither does he have the right to remain silent. He is obligated to answer all relevant questions put to him touching on any internal investigation conducted by the Force.

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[11] The Royal Canadian Mounted Police Act, 1959, c. 54, c. 21.

> Statements or answers to questions given voluntarily may be used in evidence.
>
> False or misleading statements or answers to questions, oral or written, volunteered or ordered, may be used in evidence for the purpose of proving the falsity or misleading nature of the statement made."[12]

Throughout our deliberations, we have expressed concern about the use of "ordered statements" in service investigations. Such a procedure deprives the member of the basic right to remain silent, a right assured all other members of the public by law. Also, it has been contended by members appearing before us that such statements can be used improperly for purposes other than the investigation in respect of which the statement is taken.

When the investigator has completed the investigation, he will submit to the appropriate authority all evidence collected and his opinion of the validity of the allegation. Depending on the nature of the offence, an officer will decide on what action to take. If the investigation disclosed that a statutory violation may have occurred, the matter is referred to the Attorney General of the province, or other appropriate authority, for a decision.

Service Court

Charges alleging major or minor service offences are tried within a service court over which a commissioned officer presides. There are a number of features of the service court on which comment is warranted.

Provisions of the Royal Canadian Mounted Police Act and Regulations preclude the attendance of professional counsel at the service trial.[13] The accused member may request the assistance of another member to represent him but is precluded from being aided by members trained in law who are serving in the Legal Branch. This provision assumes greater significance when it is realized that service court procedure is patterned on the adversary system and that the member or his representative shares with the prosecutor the right to call, examine and cross-examine witnesses. Evidence is given under oath. The presiding officer determines matters of both law and fact.

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[12] Administration Manual, II.13.E.1.c.—E.1.e.

[13] Royal Canadian Mounted Police Act, 1959, c. 54, s. 34(3).

Section 34, sub-section 6, of the Royal Canadian Mounted Police Act states:

> "The rules of evidence at a trial under this Part shall be the same as those followed in proceedings under the Criminal Code in the courts in the province in which the trial is held, or, if the trial is held outside Canada, in the courts of Ontario."

Section 35 stipulates that:

> "If the presiding officer is satisfied on the evidence submitted at the trial that the accused is guilty of an offence as charged, he shall so find, and the presiding officer may sentence the accused to punishment as prescribed in this Part."

These two sections are as significant for what they omit as they are for the guidelines they establish. For instance, it is not explicitly stated that a trial officer shall make his finding of fact on the basis of the criteria established for criminal trials or on those of a civil trial. The burden of proof is solely upon the prosecution in a criminal trial, requiring production of evidence sufficient to prove the matter beyond a reasonable doubt. In civil matters, the plaintiff is called upon to establish his case upon the balance of probabilities. Which of these standards is applicable in service court is open to question. Our review of some trials has revealed that trial officers vary in their interpretation of what is required. While some have demanded standards equivalent to those of a criminal trial, others have relaxed those standards significantly.

There is similar confusion in the interpretation of correct procedure. While Section 34, sub-section 6, refers to the application of rules of evidence, there are some trial officers and many members who have been in the position of the accused, who believe that the section dictates the use of criminal trial procedures as well. Whether or not this is the case, it is clear that service trial procedure has evolved in such a manner as to give the appearance of a criminal trial. It is evident as well that this fact has made it difficult for many to understand or believe that they have been involved in what Force management has referred to as an administrative hearing.

The confusion on these matters and the variation in results they produce appear to have had a significant impact on the degree of confidence members of the Force are prepared to place in this aspect of the formal disciplinary system. This is reflected in statements to the effect that there is an absence of due process in service trials; that members are deprived of an opportunity to present an adequate defence; that trial officers are not adequately equipped through experience or training to be competent service court judges; and that trial officers too often lack

impartiality and tend to give too much consideration to incidental matters such as the image of the Force, the perceived wishes of Headquarters or the deterrent effect a punishment may have on other members.

It is our belief that a member of the Force charged with a service offence should be entitled to the same protection present in judicial proceedings involving charges under the Criminal Code of Canada. The need for such protection is manifest when it is considered that a charge under the Royal Canadian Mounted Police Act places a man's career in jeopardy and causes him and his family considerable hardship when certain penalties are imposed.

Our recommendations will be directed to the definition and clarification of the rights, obligations, rules and procedures of formal disciplinary procedures in order that in the future much of the ambiguity, equivocation, misunderstanding and mistrust will be dispelled.

Members have brought to our attention a number of considerations which they claim cast doubt upon the impartiality a trial officer brings to a service court proceeding. They point out that most trial officers are not trained in the law nor are they practiced as triers of fact. Some perceive that these officers may feel that duty requires that they give weight to considerations such as the image of the Force, the informal standards of discipline espoused by Headquarters and the effect a sanction might have on the behaviour of other members. As well, it is felt that trial officers cannot help but be influenced by interested fellow officers during the time they spend with them immediately prior to the service court proceedings.

Appeals

Within the discipline procedures, provision is made for members to appeal recommendations for discharge, as well as service court convictions and penalties. Members may not appeal cautionings or warnings, but may grieve these under procedures to be discussed later in this report.

The availability of an appeal arising out of a service court conviction or sentence for a major service offence is established in the Royal Canadian Mounted Police Act. The appeal must be launched in accord with the following section:

> "41. A member who has been convicted of an offence under this Part shall be furnished with a written transcript of the evidence at the trial if he so requests within forty-eight hours after the passing of sentence and he may within four days after the

receipt of the written transcript appeal to the Commissioner by serving on the officer who presided at the trial or on the member's commanding officer, a written notice of appeal setting forth the grounds upon which the appeal is made and the appeal shall be proceeded with, with all due dispatch."[14]

The notice of appeal, together with a complete record of the service court proceedings, is forwarded to the Commissioner who, in turn, forwards it to a Board of Review established under Section 43 of the Act. This Board of Review is one appointed by the Minister responsible for the Force and is composed of a Deputy Commissioner or Assistant Commissioner and two officers above the rank of superintendent. Its responsibilities are described in the following regulation:

"The board of review shall examine all appeals and records of trials referred to it in order to determine that:

(a) the proceedings at the trial were conducted in accordance with law;

(b) the conviction is supported by the evidence on the record;

(c) the sentence imposed was in accordance with law; and

(d) the sentence was not more severe than the interests of discipline or the merits of the case demand.

The board of review may recommend to the Commissioner that he:

(a) allow the appeal;

(b) dismiss the appeal;

(c) quash the conviction;

(d) reduce the sentence or the amount ordered to be paid as a fine, damages or restitution; or

(e) order a new trial." [15]

Appeals [16] from a conviction or penalty for a minor service offence or from a recommendation for discharge under Regulation 173 or 177 are forwarded to the Commissioner for the attention of the Officer in Charge of Discipline. Upon receipt of the appeal, this officer prepares a brief and notifies the Officer in Charge of Staff Relations Branch to convene a review board. The review board consists of the Officer in Charge of Discipline, the Officer in Charge of Staff Relations Branch and a member from the member's service branch at Headquarters. The review board

[14] *Ibid.*, Section 41.

[15] Royal Canadian Mounted Police Regulations 85, 86.

[16] Administrative Bulletin 290, 23 May 1975, "Grievances and Appeals".

prepares its findings and recommendations and forwards these to the Commissioner who, in turn, decides whether the appeal is to be allowed or denied.

Members have taken exception to a number of aspects of the appeal procedures. It would appear, on the basis of submissions we have received and a survey we have conducted, that there is a limited confidence in the Commissioner's ability to provide the kind of independent review that members feel they are entitled to. Many members expressed serious doubt that the Commissioner and the boards of review would support the interests of a member against disciplinary decisions taken and recommendations made by fellow officers. As well, members are concerned that the Commissioner, who is responsible for the public image and reputation of the Force, will weigh considerations other than the merits of a particular appeal when making his decision.

Another point raised by some members has to do with the appeal procedures that relate to recommendations for discharge and dismissal. Some members have pointed out that in such procedures the member has far less opportunity to defend himself or protect his interests than he would have were he involved in proceedings in service court where the penalties are normally far less severe and where he has the opportunity to tender evidence, cross-examine witnesses and present arguments. In cases of summary discharge, the member involved has no opportunity to confront his accusers and must be content with a written notice of appeal that must be forwarded within four days of formal notification that a recommendation for his discharge has been made.

RELATED ISSUES

The Discipline of Officers

Many members making submissions drew attention to the fact that, in their opinion, officers and men were not treated equally within the discipline system. In particular, they held that some officers who should have been severely disciplined were allowed to resign with full pension. As well, they noted that few officers are seen to be disciplined and fewer still are required to face charges in a service court proceeding.

The Commission has found evidence which supports these allegations. It should be noted at the same time that there is also evidence that some officers have been subjected to a degree of discipline far out of proportion to the nature of the misconduct. It is our opinion that the Force

must take whatever measures are necessary to ensure that discipline is applied to all ranks equally, as was intended by the Act.

Counselling

> "When the circumstances do not warrant taking disciplinary action, a supervisor may impart advice or guidance by counselling a member. Counselling does not have a disciplinary connotation.
>
> 1. If the condition or problem persists, recommend disciplinary action be taken.
>
> (1) Keeping a written record of a counselling is desirable."[17]

Minor or initial misconduct or evidence of poor job performance may, at the discretion of a supervisor, be dealt with by counselling a member.

A record of counselling is usually kept and placed on a member's permanent file. Many members are concerned that in spite of assurances to the contrary, the consequences of such record-keeping may be punitive and may, like records of cautionings and warnings, hinder a member's career.

The Right to a Private Life

In the section entitled "The Present System of Discipline", we quote the philosophy of discipline set out in the Force's Administration Manual. The last sentence of that quotation bears repeating.

> ". . . We are mindful that our everyday actions, both on the job and in private life, are judged by the public in our role as peace officers, not as private citizens."[18]

Two reasons are given for the Force's concern with a member's private life. Inappropriate off-duty behaviour can adversely affect a member's ability to provide good police service and can bring discredit on the Force as a whole. As peace officers, members must be ready at all times for emergency duty or, if need be, to replace members unfit for service. While such arguments are well founded, the operational requirements of the Force must be better balanced with the member's right to privacy and freedom from interference. Assessments of off-duty behaviour must be made in the light of the actual and reasonable expectations of emergency service and local conditions. There must be some actual evidence that a

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[17] Administration Manual, II.13.I.1.b.

[18] *Ibid.*, II.13.I.1.a.

member's private behaviour is impeding his ability to carry out his duties as effectively as is necessary.

Multiplicity of Procedures

On occasion, a member will be suspected of a statutory offence. In such cases, an investigation is undertaken and the investigtor's report, any evidence he has collected and his recommendation on the allegation in question are forwarded to the Attorney General of the province or other appropriate authority for a decision. Should the prosecutorial authorities decide not to proceed with prosecution, they will so notify the Force and sometimes suggest that the matter be handled internally through its disciplinary procedures. Often the Force will follow this suggestion and the member will be required to face a service charge related to the alleged violation in service court.

Some members have argued that, if the prosecutorial authority has reviewed the case and found insufficient evidence to justify the laying of a criminal charge, then the Force hardly seems justified in laying a service charge for substantially the same offence.

While we are of the opinion that the Force must be free to discipline members, we believe that, where a decision not to prosecute is taken relative to a criminal or quasi-criminal allegation or where the charge is dismissed, the Force should not, on the basis of the same allegation, charge its members with a service offence.

Chapter II

A NEW DISCIPLINE SYSTEM

INTRODUCTION

In 1892, Superintendent Charles Constantine of the North West Mounted Police stated in his annual report:

> "It appears to me that we must trust more to men and less to regulation. Get good men forward, give more power to individuals, create a confidence through all ranks, one with the other, and things will work harmoniously in maintaining the peace of the country, infusing a confidence in their vigilant guardianship of persons and property."[19]

It seems that most people comprehend disciplinary action as referring only to the assessment of punishment in response to some failure to perform in accordance with an established standard. This narrow understanding overlooks what we think is the principal function of discipline, which is to train, correct or develop by instruction or example. Therefore, it is important that there should not be allowed to persist within the Force a conception that malfeasance, attributable to some lack of technical ability, will inevitably result in the person responsible being drawn into a procedure, the principal purpose of which is to determine blame and assess penalties. It would be much more constructive if all those involved with the system could view it as being primarily designed for training and instruction, with the enforcement of obedience and the maintenance of order being secondary or collateral objectives.

The attention of the Commission was called to a disturbing number of instances in the recent history of the Force where the full weight of a highly formalized system of investigation and punishment was invoked in response to seemingly minor, and sometimes petty, breaches of standing orders or regulations, often resulting from want of supervision or training. The energy and enthusiasm with which this sometimes appeared to be done has often been met with resentment and bitterness by the member directly affected and has tended to undermine the general morale of

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[19] In *Moosomin and the Mounted*, Gilbert McKay, privately published, p. 34.

those familiar with the action taken. Indeed, nothing is more likely to arouse resentment and bring the general procedure into contempt than to initiate investigations or to lay a charge on facts which disclose no more than a technical or trivial breach of the rules.

We feel that an ideal disciplinary system should seek to attain more positive results, in the sense that the person should not feel demeaned or humiliated by the action taken, but motivated to improve his performance on another occasion. It is felt that this objective could best be achieved by having those in authority take a rather less formal approach to problems than may sometimes be, or have been, customary. Most often, as much can be accomplished by a simple oral admonishment as by official and formalized sanctions of the kind presently in use.

Implicit in this observation is an understanding that a well-disciplined and effective force is the product of the character and training of its men, rather than of its regulations or regimentation. Discipline, understood in its broadest sense, is better infused through training than through rule or fear of punishment. Thus, the primary means of achieving it must be remedial rather than punitive.

Under the explicit provisions of discipline, non-punitive measures are unavailable. As a consequence, a supervisor or superior faced with a breach of discipline or unsatisfactory job performance must, if he chooses or is required to invoke these provisions, punish the member in question.

The remedial system of discipline which we recommend takes issue with what is the essentially punitive character of the present provisions and the rights of members to whom provisions apply. Our proposals seek to develop alternatives to punishment and new procedures which further protect the rights of members. By recommending that these proposals be incorporated as part of the explicit provisions of discipline, we seek to supplant the solely punitive emphasis of the current provisions with ones which emphasize remedial action.

In developing our remedial system, we have been guided by a number of principles. A brief elaboration of these will serve as an introduction to the specific recommendations we have made and will underscore the remedial nature of our approach.

Corrective Action

Not all problems giving rise to breaches of discipline, misconduct or unsatisfactory job performance can be corrected through the use of

punishment. While a remedial approach to discipline recognizes that sanctions may sometimes be necessary, it also recognizes that there are many situations in which punishment is not only inappropriate, but unfair.

Problems of performance and conduct may be due to inconsistencies between rules, regulations and directives and the operational requirements of policing. In other cases, local conditions such as a shortage of adequate manpower, ineffective leadership and supervision or a protracted stress situation may give rise to problems of either conduct or performance.

In a remedial system, steps would be taken to ensure that, before punitive action of any sort was taken, the above considerations had been reviewed and precluded as contributing factors of any significance. Only if a supervisor is assured that a particular difficulty relates primarily to the individual concerned should punishment of any sort be imposed. Otherwise, attention must be directed to remedying whatever factors caused the problem in the first instance. Corrective action, indeed disciplinary action of any kind, is self-defeating if it is misdirected. The accurate identification of a problem is the necessary first step of any remedy. If a problem results from circumstances over which the individual has no control, it is obvious that unless the circumstances are changed the problem will not be remedied by attempting to correct the behaviour of the individual.

Even in those cases where the individual is the source of the problem, punishment may not be the appropriate response. An inability to adjust to local conditions, inadequate training, a lack of familiarization with new requirements and regulations or a personality clash with a supervisor may account for whatever difficulty arises. Here again, accurate identification of the source of a difficulty must precede any disciplinary action, punitive or non-punitive.

When discipline is necessary, an approach which seeks to correct and educate a member should precede one that seeks to assign blame and impose punishment. To make this possible, supervisors and other managers responsible for discipline must be provided with a full complement of alternatives and general directions for their correct implementation.

In our recommendations, we have employed a distinction between informal disciplinary procedures and formal disciplinary procedures. While the former do contain some alternatives which could be described as punitive, they consist for the most part of non-punitive alternatives. The formal disciplinary procedures have undergone some substantial

modification and additional safeguards for members subjected to these procedures have been introduced.

Decentralization

There can be no doubt that members take great pride in the Force, in the work which they do and the positions they hold in the communities in which they serve. It has become clear, however, that many members would like to participate to a greater degree than is presently possible in decisions that affect them, particularly where discipline is concerned.

The Commission is of the view that members themselves are best aware of those considerations which account for many of the problems leading to misconduct and poor job performance. It seems reasonable to expect that their knowledge of these difficulties would be solicited and acted upon by those in command.

Those whose responsibility it is to draft and enforce regulations, rules and orders should consult with those who must abide by them. Often, such consultation may serve to identify administrative requirements which seem likely to impede effective policing. In this and other ways, the remedial approach seeks to involve members in the formulation and implementation of the disciplinary provisions under which they serve.

At the present time, authority for disciplinary action within the Force is, to a great extent, placed in the hands of senior officers at division level or national Headquarters. We recognize that this centralized control of discipline has certain advantages in that it provides for the standardization of disciplinary action across the Force and serves to protect members, to some extent, from unfair and unreasonable discipline.

In our opinion, however, there are other considerations that are equally important. There is the need to relate corrective action to the particular needs of members experiencing difficulties and to closely monitor the effect such action can have. A remedial system of discipline requires not only the accurate identification of the causes of poor job performance or misconduct; it requires that managers, in conjunction with the member involved, tailor corrective action to particular problems and monitor the effects this action has on the member's performance or conduct.

Remedial disciplinary action cannot be undertaken at a distance. We believe that, as a general rule, the interest of effective management would be better served by a greater decentralization of authority in the administration of discipline.

Safeguarding the Rights of Members

The discipline system with the greatest likelihood of success is one which, through its provisions and procedures, earns the respect of those for whom it is administered. Essential to such a system are provisions which demonstrably recognize and protect the rights of members.

The remedial system we propose introduces a number of safeguards that will afford a member protection from disciplinary abuse. Such safeguards are necessary, if the provisions of discipline are to be seen to be in the member's interest, as well as that of the Force. The safeguards are varied and extend from explicit procedures that protect the rights of members to recommendations which would have the effect of reorganizing certain aspects of the administration of discipline.

A Review Authority

In seeking to provide a remedial approach to problems of conduct and unsatisfactory job performance, we have introduced a number of recommendations. Some of these safeguard the rights of members; others provide supervisors with more autonomy and authority to deal with problems of conduct and performance; still others affect changes in the current practices and procedures of informal and formal discipline.

Whether these recommendations can achieve an overall remedial objective depends, in great part, on the respect and confidence this new system of discipline elicits from members. In order to ensure that this system be as fair and equitable as possible and be perceived to be so by members of the Force, provision must be made for an independent authority outside the Force to review disciplinary action.

In proposing that an external authority review such cases of disciplinary action as are brought to his attention, we are mindful that such an authority must not abrogate, nor limit, the authority for the control and management of the Force which is vested in the Commissioner. In order to avoid any semblance of divided authority or accountability where discipline is concerned, we have assigned the authority for external review of disciplinary action to the Federal Police Ombudsman, who will exercise this authority in a manner consistent with his authority as it relates to public complaints. Where discipline is concerned, the Federal Police Ombudsman would not have the broad powers of review granted him in matters relating to public complaints. Rather, his authority would be restricted to hearing appeals previously denied by the Commissioner.

Specifically, when an appeal has been denied by the Commissioner, the Ombudsman could, at his discretion, consider arguments or hear *viva voce* evidence from anyone appearing before him. The Ombudsman would not have the authority to reverse any disciplinary action taken, but would have the right to consult with the Commissioner and make recommendations to him on any matter relating to discipline. In preparing his report to Parliament, he would be free to make any recommendation he saw fit on matters relating to discipline.

As we have noted in Public Complaints, the principal requirement of any reviewing authority is that it enjoy the confidence of those it serves. By granting the authority to review appeals from disciplinary action to an ombudsman who is visibly independent from the Force, we seek to guarantee that such confidence will be well placed.

A REMEDIAL SYSTEM OF DISCIPLINE

Introduction

The proposed system of discipline draws upon the preceding principles to provide a more remedial approach to discipline than currently exists. To this end, the provisions of discipline contain both an informal and a formal component. Within these components are schedules of procedures that extend from an oral admonishment to dismissal.

The Informal Procedures

Oral Admonition

Currently within the Force, warnings and cautionings are generally perceived as punitive tools of management. Although the term "counselling" implies the giving of professional guidance, it also is viewed by some members as a punitive matter which, when recorded, may inhibit career opportunities. In our opinion, all but very serious matters of misconduct or lack of competence should be dealt with by a supervisor in a much less structured fashion. To this end, the rules relating to warnings, cautionings and counsellings should be repealed.

In many instances where a breach of discipline has occurred or substandard performance of duties has been recognized, those in command may feel that they are not authorized to simply admonish the member responsible as an alternative to instituting a formal investigation and discipline proceedings or, if there has been a complaint about the

member's conduct, dismissing or minimizing the complaint. Faced with what they perceive to be limited alternatives, they may not pursue matters involving established minor misconduct because the institution of a formal investigation and disciplinary proceeding would be unduly harsh or would waste limited manpower and other resources on relatively insignificant matters. However, it is open to those who are aware of the misconduct to conclude that the Force is not concerned with the effective policing of its own members. Furthermore, the potential deterrent effect of positive action is lost and the member may, at a later date, become involved in misconduct which could have been avoided.

It is the view of the Commission that those in positions of authority at all levels within the Force should be permitted and encouraged to deal with minor breaches of discipline or substandard performance by the prompt administration of an informal oral admoniton. This, of course, is presently being done by many on an unoffical basis. However, it is a procedure which should be explicitly incorporated within the provisions of discipline, so that there can be no doubt that it is an acceptable and preferable alternative to a more formalized approach.

When an admonition is undertaken, no formal record of it should be maintained, since isolated occurrences of minor misconduct should not have a discrediting effect on the overall assessment of a member's performance. Continued minor breaches of discipline by an individual may be reflected in the personal assessment periodically prepared by that individual's first line supervisor.

It is not thought that an individual should have the right to reject the administration of an informal admonition, to appeal therefrom, or to request a hearing. It is recognized, of course, that situations could arise where the admonition was not justified or resulted from incorrect information. If a person felt that he had been unjustly treated, that circumstance should be regarded as a grievance and be dealt with under the grievance procedure discussed elsewhere in this report.

In conjunction with an oral admonition, it is important that the circumstances giving rise to the need for it be fully discussed with the member in a constructive way. Such discussions should take place privately, in order that the dignity of all parties will be maintained.

Accordingly, we recommend that:

DIS. 1 When disciplinary action is necessary, an approach which seeks to correct and educate a member should precede one that seeks to assign blame and impose punishment.

DIS. 2 Where conditions beyond the responsibility of the member are found to be contributing factors to problems of either performance or conduct, no disciplinary action should be taken. Rather, a supervisor should report such matters and take whatever corrective action he deems necessary.

DIS. 3 All enactments relating to warnings, cautionings and counsellings should be repealed and an oral admonition procedure be substituted.

DIS. 4 The administration of an oral admonition should not be formally recorded.

DIS. 5 The administration of an oral admonition should be accompanied by a private discussion, wherein the reasons justifying the admonition are made clear to the member in a constructive way.

DIS. 6 Oral admonitions could be grieved but could not be appealed, nor should a member have a right to request formal proceedings as an alternative to accepting the admonition.

Other Options

In those circumstances where it is clear that an admonition would be inappropriate, a more formalized procedure must be available. Such a procedure, though more formal than the admonition procedure, should remain considerably less structured than the traditional service court and not involve any course of action resembling or involving a trial or hearing. It is envisaged that it would be used, for example, where a member had been guilty of a series of minor breaches of discipline evidencing a continuing course of misconduct, or where the nature of the misconduct demanded a firm response.

Representations were received by the Commission to the effect that, frequently, far too much time elapsed between the discovery of a breach and the final disposition of any disciplinary proceeding resulting therefrom. Often, several weeks or months may elapse between the time that a person is made aware that his conduct is being investigated and the time that any sanction is ultimately applied. This clearly has a demoralizing effect on the individual who is throughout concerned about his future and this concern may cause his job performance to deteriorate. There are also cases where the emotional strain created during this period has done damage to family relationships, resulted in excessive use of alcohol, or aggravated pre-existing health problems.

It seems imperative, therefore, that any disciplinary proceedings which may be contemplated should be undertaken as soon as possible after the events which create the necessity for them. The direct involvement of Headquarter's personnel in this process neither facilitates this objective nor appears to us to be necessary. Hence, we suggest eliminating the existing procedures relating to "warnings" and "cautionings." We would propose a system whereby supervisory personnel at the lowest possible level be authorized to informally administer disciplinary sanctions, subject to restrictions and regulations designed to protect members against the possibility of oppressive, unfair or unduly harsh treatment by their commanders.

The procedures which we envisage would allow a commander at the detachment, sub-division or division level to cause an investigation to be made into any alleged misconduct or unsatisfactory performance on the part of any member of the Force directly under his command. If the investigation establishes that a specific breach of conduct has probably been committed and that the need for informal disciplinary action is indicated, he would be obliged to discuss the allegation frankly with the member responsible. In a large number of cases, a forthright discussion of this kind would obviate the necessity of a protracted internal investigation. Of course, the nature of such discussions should be regarded as privileged and not be used as evidence in any subsequent formal proceedings which may take place. Other objectives of such a discussion may be described as follows: first, to advise the member of the specific nature of the allegation which is made; secondly, to satisfy himself that the member is aware of and fully understands the options which are available in dealing with the allegation; and thirdly, to request the member to select the procedure which he wishes to adopt.

In the event that the member decides to acknowledge that the allegation made against him may be correct, he would be required to accept whatever sanction his commander subsequently imposed from the range of sanctions available. There must, of course, be certain limitations placed upon the range of sanctions which would be available at this level. The member should be fully apprised of these limitations before being requested to exercise his option. The member who is the subject of the allegation would have two options: he could choose to have his own commander deal directly with the situation or he could ask that a hearing be convened for the purpose of determining responsibility or deciding upon an appropriate sanction. If such formal disciplinary proceedings are undertaken, the member should not thereby be exposed to greater

sanctions than would have been available had he chosen to have his own commander deal with the situation. Thus, the tribunal conducting the proceedings should be limited to the same range of sanctions as are made available to the commander and enunciated hereunder.

A member alleged to have committed a misconduct should not be required to make his decision immediately but, rather, be given an opportunity to reflect upon it and seek advice or counsel if he desires. A period of seven days has been suggested and would appear to give adequate time for a member to come to a decision.

If the member denies that he is responsible for the alleged misconduct or incompetence, his commander would then be entitled to decide whether to recommend, through normal command channels, that formal disciplinary proceedings be instituted. These proceedings, if authorized by the Division Commanding Officer, would be governed by the provisions discussed elsewhere under the heading of "Formal Discipline Procedures." If such formal proceedings are not recommended by the local commander or his recommendations are not accepted by the Division Commanding Officer, the matter would be at an end insofar as the member is concerned.

The Commission is of the view that the commander should have options as well. It would be his responsibility to select a sanction which, in his opinion, would best serve the interest of the individual member, the Force as a whole and the public which they must serve. The range of sanctions should include both non-punitive and punitive options in the hope that all concerned would begin to view discipline primarily as a remedial, as opposed to a punitive, program.

In many cases where a member has admitted his misconduct, no further action may be necessary. A good many people may be sufficiently chastened by the experience of being found in error and having to accept the responsibility for such error. In such cases, corrective action may not be necessary, since the objective is ordinarily achieved by requiring such a person to be more attentive to his duties in future and to aspire to, and work toward, a higher standard of conduct.

Non-punitive Options

The non-punitive options should be restricted to the following, any one or more of which could be imposed:

(i) probation;

(ii) assignment to work under supervision;

(iii) temporary assignment for specific training;

(iv) professional counselling; and

(v) recommendation for transfer.

(i) Probation

There may be cases where the behaviour of a member is attributable to a problem capable of being immediately recognized and specifically dealt with. In these circumstances, such a person is primarily in need of understanding, guidance and assistance. The situations which come to mind may involve a breach of discipline which has resulted from lack of experience or a deficiency in training. There might also be a health or emotional problem which may manifest itself in many ways, including the excessive use of alcohol or abuse of authority.

When such deficiencies are recognized, a period of probation could be imposed and made subject to certain conditions, including a requirement that the member report for periodic interviews with his immediate superior; that he be temporarily assigned to a position where he will receive greater supervision and further specific training; or a recommendation that he receive professional counselling in respect of his particular problem. Of course, any of these actions might be taken in an individual case without necessarily being attached as a condition of probation.

In any event, whenever a member is put on probation, it is most important that any such order not be made summarily, but be introduced only after he has had a full and frank discussion with his supervisor concerning what are thought to be his shortcomings. This suggestion is made to ensure, so far as possible, that the member fully appreciates the standard of conduct which will be required of him in future.

Whatever period of probation may be imposed in any individual case, it should not be more than three months. It is felt by the members of the Commission that if a pattern of behaviour cannot be corrected within that period of time, consideration might be given to other forms of corrective action.

(ii) Assignment to Work Under Supervision

The Commission has been made aware of instances where misconduct has occurred through a lack of experience or a lack of understand-

ing of correct procedures. These problems can often be attributed to a deficiency in some aspect of training. When these problems are identified, there may not be any advantage gained from imposing a period of probation and the solution might simply be to assign the member to work for a period of time under the direct and close supervision of more senior and experienced personnel.

(iii) Recommendation that the Member Be Temporarily Assigned to Receive Specific Training

Occasionally, it will be recognized that a deficiency in the performance of a member probably will not be corrected simply by the close supervision of his day-to-day work. For example, he might not have an adequate understanding of the law as it relates to his particular duties or he may not be sufficiently knowledgeable concerning the policies of the Force or the individual requirements of the particular area in which he is serving. In these instances, the commander may judge that the member should be temporarily assigned to receive intensified training in particular skills. This alternative should be open to the local commander whose recommendation would be made to his immediate superior.

(iv) Recommendation that the Member Attend for Professional Counselling

It is difficult for any person to work effectively and efficiently if he is preoccupied with problems that might be described as personal and due to emotional, physical, financial or marital stress. Managers and supervisors should be trained and expected to be alert to the symptoms of these problems and be prepared to assist where necessary.

The Commission, during the course of its inquiry, was made aware of many individual problems that ultimately resulted in misconduct which could have been averted, if those in authority had simply been prepared to bear witness to that which was there for all see. These examples included persons with drinking problems whose shortcomings in performance were responded to, not with sympathetic offers of assistance, but with threats of punishment and even dismissal from the Force.

It is our submission that commanders be encouraged to aid members in seeking professional counselling and to assist counsellors in corrective programs. To respond to common human frailties and deficiencies by punishing or removing the man, as evidence shows to have often been the

response in the past, is a waste of manpower, is manifestly unjust and does a disservice to the organization as a whole.

(v) Recommendation for Transfer

We have been informed that there is no longer any such thing as a "disciplinary transfer" in the sense that it is not management policy to transfer members from one location to another as a punishment. However, there appears to be a widespread suspicion among members that breaches of discipline have often resulted in transfers being made in a fashion deliberately contrived to create difficulties for the member and his family.

Movements of personnel have often been carried out without explanation or consultation and without any regard whatever being paid to the financial, physical or emotional well-being of the person involved. For instance, there is at least one documented case of a member with a young family being transferred to a detachment some considerable distance from his existing home with such transfer to take effect four days before Christmas. He quite understandably felt that the decision to transfer him was motivated by ill-will and was a result of difficulties which he had with his commander. It is acknowledged that such an illustration may not be commonplace or typical but the evidence points to the conclusion that this kind of situation occurs.

There can be no question that circumstances will arise which will dictate that members must be transferred from communities in which they serve. If people in a community lose confidence in the members who provide police service, then it is desirable for the community and the Force that those members be moved as soon as possible.

What is intended is that, in those circumstances where it is clearly apparent that a person cannot cope with the specific duties which have been assigned to him, it should be open to his superiors to effect his transfer. In order to avoid undue hardship, such transfer should ordinarily be restricted to the division in which the member is presently serving.

It is the opinion of the Commission that the exigencies of the service should be recognized but that, in fairness to the members, certain safeguards be established to protect against any possible abuse of authority. If the conduct of a member is such as to require his removal from the location of his duties to some other location, then he should be advised of the reasons for that decision. A commander who has concluded that a member under his authority can no longer function usefully in

his present position should be entitled to recommend the transfer of that person. The circumstances under which such a decision might be allowed to be taken must be restricted to those:

(a) where it can be demonstrated that the member's problem is associated with the location where he is serving;

(b) where it can be shown that the nature of the duties presently being performed by the member have given rise to a disciplinary problem; or

(c) where there is a demonstrable lack of ability to perform the specific job to which the member is assigned.

If the member has again been guilty of misconduct during a period of probation, or if he has declined or neglected to receive further training or counselling as may have been recommended or if he has refused to accept a transfer which has been ordered upon the recommendation of his commander, then proceedings could be instituted which would lead to more severe sanctions.

Accordingly, we recommend that:

DIS. 7 Formal authority should be granted for the use of the following non-punitive options by all commanders, from post commanders to Commanding Officers, when administering discipline:

(1) Probation for a period not exceeding three months.

Either in conjunction with probation or as independent provisions:

(2) Assignment to work under supervision.

(3) Recommendation that the member be temporarily assigned to receive specific training.

(4) Recommendation that the member attend for professional counselling.

(5) Recommendation for transfer.

Punitive Options

Should punitive alternatives be justified, it is recommended that they be restricted to one of the following:

(i) loss of regular time off;

(ii) reprimand; or

(iii) severe reprimand.

(i) Loss of Regular Time Off

There may be occasions where the nature of a member's misconduct resulted in his detachment or operational unit being deprived for a time of his services. An example of such an occurrence would be where a member, without justification, is late in reporting for duty. In such circumstances, it would often be reasonable and just to require him to compensate for the time lost. Therefore, it should be open to the commander, in a proper case, to deprive a member of regular time off. Limits should be placed on this alternative to guard against abuse and it is suggested that there should be a reasonable relationship between the amount of working time the member has lost and the penalty. In no case should the amount of time deducted exceed three days.

(ii) Reprimand

Where circumstances warrant, a commander should be allowed to administer a reprimand in writing to be delivered personally and in private. In order to achieve the most beneficial result, the circumstances leading up to the reprimand must be discussed with the member so that he has the opportunity to comment.

A copy of the written reprimand would appear and remain on the member's file until such time as its removal might be obtained in accordance with our recommendations.

(iii) Severe Reprimand

There may be breaches of conduct which would be such as to justify a greater degree of punishment than a reprimand, but not sufficiently severe to warrant the institution of a formal hearing which might lead to discharge.

In order to deal with these situations, it is appropriate to allow the commander the alternative of administering a severe reprimand which would remain on the service file until such time as the Commissioner of the Force saw fit, upon application, to have it removed. Any record of a severe reprimand should automatically be removed after three years provided that during that time there is no further recorded misconduct. This would be the ultimate sanction available to a commander and, hopefully, would be used only in rather extreme cases.

We, therefore, recommend that:

DIS. 8 The following sanctions should be included in the discipline provisions and the authority for their implementation be at the discretion of the detachment commander:

(1) Loss of time off; not to exceed three days.

(2) Reprimand. A copy of the reprimand would be placed on a member's file and remain until such time as the Commissioner saw fit, upon application, to have it removed. Any record of a reprimand should automatically be removed after one year if, during that time, there had been no further recorded misconduct.

(3) Severe Reprimand. A copy of the reprimand would be placed on a member's file and remain until such time as the Commissioner saw fit, upon application, to have it removed. Any record of a severe reprimand should automatically be removed after three years if, during that time, there has been no further recorded misconduct.

DIS. 9 A member should have the right to refuse informal discipline.

DIS. 10 Where a member refuses informal discipline or specifically denies the allegation, in whole or in part, the commander could, within seven days, decide whether to report the matter in writing together with his recommendations to the Commanding Officer. Should the commander decide to make a report, intermediate supervisors should expedite the forwarding of the report to the Commanding Officer. Where disciplinary proceedings are not recommended by a commander or his recommendations are not accepted by the Commanding Officer, the matter would be at an end insofar as the member is concerned.

DIS. 11 If formal proceedings are instituted following a member's refusal to accept informal discipline, the member should not be subject to any sanction greater than that available at the informal level.

The informal procedures would be adopted only with the consent of the member. It is not thought necessary or appropriate, therefore, to provide that there be any appeal from the decision or disposition. However, it is recognized that the sanction selected may not always be consistent with the nature or gravity of the circumstances surrounding the misconduct. For example, a recommendation could be made that the member attend for counselling in respect of an emotional or alcohol problem which the member may feel does not, in fact, exist. Also, a member may regard the punitive option selected as being unduly harsh or

unjust, given his previous record of performance and the gravity of the default. In such an event, the matter should be regarded as a grievance, with the member having the right to seek a remedy under the procedures provided for that purpose. Of course, the grievance could only extend to the sanction and the member should not be allowed to use the procedure to reopen the entire question of his culpability.

Accordingly, we recommend that:

DIS. 12 A member should have the right to grieve any sanction which results from the administration of informal discipline.

The Formal Procedures

In formulating our recommendations in this section, we have suggested substantial changes in current procedures. By adding more safeguards to protect the rights of the member subjected to formal proceedings, we seek not only to protect members from disciplinary abuse, but to instill in them a respect for the disciplinary system under which they serve. We believe that such respect can only be forthcoming if there is a clear perception on the part of members that the provisions and procedures of discipline respect their right to just discipline fairly administered. In general, it is intended that formal procedures will be employed only in the most serious circumstances or when the informal procedures have proven demonstrably inadequate.

Investigation

We have received no submissions that suggest that the Force should not continue to undertake disciplinary investigations, nor have we thought it necessary to explore other alternatives. We have concluded, therefore, that such investigations should continue in essentially the same manner as investigations initiated by a public complaint of a non-criminal nature.

It is essential to our overall objectives that responsibility for investigations be placed at the lowest possible level of command. This would assist in ensuring acceptance of responsibility at that level for informal discipline. Occasions will arise, however, when a more senior man will be designated as an investigator in order that enquiries may be seen to be more independent and objective or in order that more experience may be brought to bear upon a difficult situation. In such cases, our requirements will be met if the investigator and the local commander consult on the

results of the investigation, with the responsibility for follow-up action remaining with the local commander.

Current procedures should be modified, however, with respect to the rights of a member when he is interviewed by an investigator.

Standing Orders published in 1973 include the following directions:

> "1168. When a investigator intends to obtain a statement from a member suspected of having committed or having been involved in an offence against the R.C.M. Police Act or Regulations, or C.S.O.s, the investigator shall:
>
> (a) briefly advise the member of the suspected offence;
>
> (b) warn the member according to custom in that jurisdiction;
>
> (c) ask the member to indicate whether or not the warning is understood;
>
> (d) repeat and explain the warning if it is not understood;
>
> (e) establish whether or not the member wishes to give a voluntary statement;
>
> (f) advise the member if he declines to give a statement that he is required to answer relevant questions and of the provisions of Section 25(a) of the R.C.M. Police Act; and
>
> (g) record on the page immediately preceding the statement or, if (f) applies, the questions and answers:
>
> (i) the advice given in (a),
>
> (ii) the warning given in (b),
>
> (iii) the member's answer to (c),
>
> (iv) the question and answer required by (e).
>
> 1169. (1) A member who is believed to have knowledge of information relating to a suspected offence against the Act or Regulations or C.S.O.s and who is not suspected of having committed an offence shall give a statement if requested and without being warned.
>
> (2) If the member refuses to give a statement, the investigator shall:
>
> (a) advise him that he is required to answer relevant questions;
>
> (b) notify him of the provisions of:
>
> (i) this C.S.O., and
>
> (ii) Section 25(a) of the R.C.M.P. Act; and
>
> (c) record on the page immediately preceding the questions and answers the advice given under (a).
>
> 1170. (1) Any oral or written statement which is found, on a voir dire, to be voluntary, may be used in evidence.

(2) Any oral or written statement whether volunteered or ordered which is false or misleading may be used in evidence for the purpose of proving the falsity or the misleading nature of the statement."

More recently, this directive has been rewritten in the following terms within the Administration Manual. The relevant portions read:

"E. 1. GENERAL

E. 1. a. A service investigation will be conducted forthwith into alleged misconduct or suspected commission of a service offence by a member.

E. 1. b. A member may request that an interview be conducted in English or French, and such request will be acceded to.

1. If an interpreter or bilingual investigator is required but is not available in your division, request Headquarters to provide one.

E. 1. c. Although a member is not obligated to give a statement after being warned, neither does he have the right to remain silent. He is obligated to answer all relevant questions put to him touching on any internal investigation conducted by the Force.

E. 1. d. Statements or answers to questions given voluntarily may be used in evidence.

E. 1. e. False or misleading statements or answers to questions, oral or written, volunteered or ordered, may be used in evidence for the purpose of proving the falsity or misleading nature of the statement made.

E. 2. DETACHMENT/SECTION COMMANDER OR OFFICER IN CHARGE

E. 2. a. Have a service investigation conducted immediately into any alleged misconduct or suspected commission of a service offence by a member.

E. 2. a. 1. If it is of a serious nature, notify your immediate officer before conducting a full investigation into the matter.

2. If it is not of a serious nature, you may conduct the investigation yourself or appoint another member to do so, as deemed appropriate in the circumstances.

E. 2. b. Ensure that a thorough investigation is conducted.

E. 2. c. If the investigation discloses any misconduct or the commission of a service offence, follow the procedures outlined in Section I and appendix II-13-1.

E. 2. d. If a Statutory violation is disclosed, follow the procedures outlined in Section H.

E. 3. INVESTIGATOR

E. 3. a. Conduct a thorough and impartial investigation.

E. 3. b. Endeavour to obtain information and supporting facts voluntarily from persons involved in or who have knowledge of the matter under investigation.

E. 3. c. If a member is a suspect, clearly tell him you are conducting a service investigation, and the alleged misconduct or service offence that he is suspected of having committed.

1. Give him the customary warning before questioning or taking a statement from him.

2. If the warning is not understood, explain the warning.

3. Ask him if he wishes to give a voluntary statement.

E. 3. d. Immediately preceding a statement or questions and answers made by a suspect, record the following:

1. the nature of the alleged misconduct or suspected service offence;

2. the warning and comment on whether or not it was understood;

3. any clarification given in respect to the warning, and

4. whether the member agreed to give a voluntary statement.

E. 3. e. If a member refuses to give a statement, order him to answer all relevant questions. Carefully explain to him that he is obligated to answer relevant questions and that his failure to do so could result in his being charged with a major service offence for "refusing to obey a lawful command" under Section 25(a) of the RCMP Act.

E. 3. f. If a member is believed to have knowledge or information relating to the suspected misconduct or service offence and is not a suspect, you may question him directly without warning as to his knowledge of the matter under investigation. However, if he subsequently admits involvement in any offence during the course of the interrogation, immediately give him the customary warning before proceeding.

E. 3. g. Report the outcome of your investigation by memorandum to the member who ordered the investigation without delay."[20]

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[20] Administration Manual, II.13.E.1.—E.3.g.

We have received numerous submissions which take exception to the "ordered statement." It is apparent that it currently has little credibility since it is perceived, sometimes erroneously, as a requirement that a member incriminate himself. From the perspective of many members, the "ordered statement" is both unnecessary to a successful investigation and removes the same right to silence which is enjoyed by other citizens. Whether or not the answers required from members violate any right to silence is not as important a point as the fact that members of the Force who have spoken to us have almost unanimously voiced their condemnation of this practice.

In our opinion, every employee of an organization should have to account for his actions when he has a responsibility to carry out a specific function. For this reason, we have considered replacing the "ordered statement" with what in some jurisdictions is referred to as a "duty statement." This latter statement is somewhat more restrictive than the "ordered statement" in that it confines the mandatory statement to an accounting of actions while on duty.

In reaching our conclusions about the "ordered statement," we took into full consideration the need for commanders at all levels to be aware of the activities of those members for whom they are responsible. On the other hand, the concept of the "ordered statement" has generated such a climate of mistrust and bad faith between members and the management of the Force that we have been persuaded that any kind of mandatory statement should not be required by the Royal Canadian Mounted Police and that the current "ordered statement" should be abolished.

It is necessary to stress that we have no desire to undermine the authority of either the detachment commander or more senior supervisors. Accountability is essential. What we are saying is that accountability should be achieved in an atmosphere of mutual trust, on a voluntary basis and not through coercion. It is our opinion that the abandonment of the ordered statement will not alter, to any significant degree, management's ability to administer the Force with efficiency.

Accordingly, we recommend that:

DIS. 13 A member who chooses not to give a statement during a service investigation should not be ordered to do so, nor should he be required to answer questions put to him by the investigator.

Suspension

When a member is alleged to have committed a serious breach of discipline, a full investigation is undertaken. Should the investigation reveal evidence to substantiate the allegation, the Force may under the present system dismiss the member forthwith, thereby denying him the benefit of a hearing such as that provided by service court procedures.

We have heard from supervisors and members of senior management who have stressed the need for expeditious action in certain cases. We have heard other evidence to the effect that such action can work to the detriment of the member involved in disciplinary investigations.

It seems reasonable to us that the need for swift and conclusive action can often be minimized if a member is simply removed from the scene of the investigation, pending its completion or pending completion of disciplinary proceedings.

We recommend, therefore, a more extensive use of suspension with pay. It is anticipated that broader acceptance of this procedure will permit a more relaxed atmosphere within which appropriate action may be considered.

We are of the opinion that any service investigation which is undertaken should be conducted with dispatch, in order that the member being investigated is not kept in a state of uncertainty and anxiety for an indefinite period. It is our view that, in the ordinary case, no more than 45 days should normally elapse between the commencement and the termination of any service investigation. If, for any reason, the investigation cannot be concluded within that time, the member should be advised of his position and of the current status of the investigation.

Of course, no such time limit can be arbitrarily applied when a member is under investigation because he is suspected of having committed a criminal or other statutory offence. Nevertheless, even in those circumstances, he should be advised of the results of the investigation as soon as possible after it has been concluded.

We recommend that:

DIS. 14 During a criminal investigation or a service investigation of a serious nature and any subsequent proceedings, a member should be either suspended with pay or assigned to other duties.

DIS. 15 No more than 45 days should normally elapse between the commencement and termination of any service investigation. If the investigation cannot be concluded

within that time, the member should be advised of his position and of the current status of the investigation.

DIS. 16 When a member is under investigation because he is suspected of having committed a criminal or other statutory offence, he should be advised of the results of the investigation as soon as possible after it has been concluded.

The Disciplinary Tribunal

In our consideration of complaints and of informal disciplinary procedures, the emphasis has been on a positive and remedial approach which would minimize formal proceedings. We acknowledge that, in certain circumstances, such proceedings will be necessary. However, it is our opinion that those now in use are susceptible of improvement.

In keeping with our recommendation for decentralization of administration of disciplinary matters, we believe that a Commanding Officer should be the convening authority for formal disciplinary proceedings. We foresee three circumstances in which formal proceedings may be convened:

(a) When the Commanding Officer is of the opinion that a *prima facie* case has been established through investigation, but the member denies the offence, disagrees with the facts alleged or declines to submit to informal discipline, the Commanding Officer may order that a disciplinary hearing be convened. This should be done within seven days of receipt of a recommendation to that effect. It shall be in the discretion of the Commanding Officer to accept or refuse the recommendation.

(b) If the Commanding Officer has been apprised of the circumstances before any disciplinary action has been taken and is of the opinion that the matter cannot be resolved through informal disciplinary proceedings, he may convene a disciplinary hearing.

(c) If, in the opinion of the Commanding Officer, there is clearly a need for a trial of the issue in order to arrive at the true facts of the case, he may convene a disciplinary hearing.

In order to eliminate unnecessary use of formal proceedings, it will be necessary to define specific misconduct for which the formal proceedings are appropriate. In view of the position we have adopted for the informal resolution of disciplinary matters, we do not consider it advisable to continue the distinction between "major service offences" and "minor service offences." Rather, we foresee adoption of a code of ethics, within

which would be included a definition of those acts which constitute misconduct and for which formal proceedings may be required. The drafting of such a code should be undertaken by a panel whose composition is truly representative of all ranks.

It is of sufficient importance to warrant repeating that formal proceedings should not be used to resolve problems of minor misconduct. We further believe that the definition of more serious misconduct should not preclude the use of informal procedures for those offences in appropriate cases.

In considering how current service court proceedings might be improved, we have examined, in some detail, three alternatives, any one of which might be suitable for formal proceedings. They are:

(1) A three-man board appointed to hear the evidence and adjudicate on the matter in a formal manner. One member would be trained in law.

(2) An arbitration-like hearing in which formality is minimized, but within which protection of all participants would be ensured through due process.

(3) A one-man tribunal with the stipulation that he be trained in law.

We have considered each of these alternatives in detail. We were particularly interested in single trial officer trained in law. We were influenced against this, however, by arguments to the effect:

(a) that the fact that a member was trained in law did not necessarily ensure that he would be a better adjudicator;

(b) that legal training might lead to too much structuring and formality; and

(c) that an administrator with training in law, in the view of an accused member, might not be as credible, and possibly less credible, than an operational officer within the command structure.

Our conclusion is that there would be no gain in utilizing persons trained in law as sole judges of fact and law.

With respect to the arbitration-like proceedings, we believe that, since their degree of formality is likely to reflect the character of the presiding person and will tend to be more formal in some cases than in others, there would develop an inconsistency which is undesirable in an organization like the Force.

It follows from the foregoing that we are inclined to favour a three-man tribunal, consisting of one officer trained in law and two other

officers, all appointed by the Commanding Officer. Proceedings should be styled "disciplinary hearings" and should be structured in such a way as to be an effective administrative tool and a forum within which an accused is assured of a fair hearing with full protection of his rights.

With respect to formal proceedings, we recommend that:

DIS. 17 Major and minor service offences as they are now defined should be replaced by a code of ethics to be drafted by a panel composed of members selected from various ranks within the Royal Canadian Mounted Police.

DIS. 18 The Commanding Officer should be the convening authority for formal disciplinary proceedings.

DIS. 19 Formal disciplinary hearings should be before a tribunal composed of three officers, one of whom shall be trained in law. In those Divisions in which there are not a sufficient number of officers from whom the Commanding Officer may choose, he should have the authority to request personnel from neighbouring Divisions, on authority of the Commissioner.

DIS. 20 A member should have the right to object to the appointment of any officer to the tribunal.

DIS. 21 Any objection to the appointees on the tribunal should be made in writing by the member, or his representative, within seven days of receipt of official notification of the hearing.

DIS. 22 The Commanding Officer should rule upon the merits of any objection and that ruling could become a matter for subsequent appeal in conjunction with other matters that may arise during the course of the hearing.

DIS. 23 The tribunal should select a chairman from among its members.

DIS. 24 The hearing tribunal should have available to it a fully qualified court reporter to ensure an accurate transcript of proceedings. The method of transcription should be left to the court reporter but he should be permitted to use any method currently accepted by courts of criminal jurisdiction.

DIS. 25 A member should have the right to be represented at his disciplinary hearing by any person of his choice, including civilian legal counsel. In the discretion of the tribunal, the cost of such counsel may be borne by the Royal Canadian Mounted Police.

DIS. 26 **The prosecution should be undertaken by whomever the convening Commanding Officer may designate.**

DIS. 27 **Participants in disciplinary hearings should be permitted to wear civilian clothing and there should be only such formality as is necessary to ensure order.**

DIS. 28 **Proceedings should be commenced by the Commanding Officer through service of a notice of hearing on a member; the notice to include the formal charge, the names of those officers who will conduct the hearing and the date on which the first appearance is to be made.**

DIS. 29 **The proceedings should be commenced within three months from the date that the subject matter of the proceedings first came to the attention of the Force.**

DIS. 30 **A member should be entitled to full disclosure of all evidence to be introduced before the tribunal, including the statements of any persons intended to be called as witnesses.**

DIS. 31 **A member should be permitted to acknowledge or deny the specific offence or to raise, as a preliminary objection, the fact that he has been otherwise dealt with within the disciplinary system on the same set of circumstances or facts or that he has had or is awaiting a criminal trial on a charge alleging substantially the same offence.**

DIS. 32 **Witnesses, including those not members of the Royal Canadian Mounted Police, should be compellable. The accused should not be compellable but, if he chooses to give evidence, he shall be considered a competent witness.**

DIS. 33 **The tribunal should decide whether the breach of discipline is "proved" or "not proved." The decision of the tribunal should be based on proof beyond reasonable doubt.**

DIS. 34 **Penalties should not include imprisonment or incarceration, but should be limited to the following:**

(a) dismissal;

(b) requirement to resign either forthwith or on such date as may be specified in the decision as an alternative to dismissal;[21]

(c) reduction in rank;

(d) fine not exceeding $300;

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[21] While a "requirement to resign" may seem to some a contradiction in terms, we believe that, in respect of the dignity of members, this option may be preferable to that of dismissal.

(e) severe reprimand; or

(f) reprimand.[22]

DIS. 35 An appeal could be lodged by either party to the proceedings.

DIS. 36 The appeal should be lodged within 30 days of the completion of the proceedings and be directed, in the first instance, to the Commissioner who should decide the appeal on the basis of the record of proceedings.

OMB/DIS. 37 A subsequent appeal could be made to the Federal Police Ombudsman who could review the appeal on the record or, in his discretion, hear such evidence as he deems advisable.

Service File Record

During service court proceedings, it has been the custom before assessing punishment, to bring before the court the member's record of service court convictions, warnings and cautionings for the past five years. This practice, together with the concern members have for the after-effects of discipline, required that we review the relevance of the record of conviction on a member's service file.

Regardless of assurances which have been given to the contrary, members making representations to us are convinced that a "defaulter sheet" entry will haunt them for the remainder of their career. Although our analysis of service files does not substantiate this concern, it remains a real area of apprehension. In view of this, and because the members seek to be reassured that there will come a time when such an entry no longer reflects adversely on them, we have addressed the question of removing such records after a specified period has elapsed.

Alarm has been expressed with respect to the recent innovation at criminal trials, whereby some judges have allowed service court convictions of a police witness to be relevant to judicial proceedings. It has been represented to us that, in some cases, members of police forces have been examined at length in this respect in courts of criminal jurisdiction, as a means of testing the policeman's credibility. We do not believe that a policeman should be examined with respect to disciplinary matters for the purpose of testing credibility. The Commission is of the opinion that any

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[22] These punishments need not be mutually exclusive. Remedial action of a non-punitive nature, defined within informal procedures, should also be available to the tribunal. Furthermore, there might be provision to suspend the imposition of punishment, subject to specific conditions, for a given period of time. Compliance with the conditions would free the member from any liability to further punishment.

analogy between the findings of a service court and a conviction registered in a court of criminal jurisdiction is improper.

Many members have made representations concerning the length of time a record of any disciplinary measure should be retained on file. We believe that members who have been punished and who have subsequently shown good service should not be penalized by having a record of their misconduct held on their file for an indefinite period of time.

Therefore, we recommend that:

DIS. 38 The member concerned should be entitled to apply for removal of the record of disciplinary action from his file at any time.

DIS. 39 It should be in the sole discretion of the Commissioner to grant the request of the member.

DIS. 40 The Commissioner's decision should be predicated on the quality of service and good conduct of the member subsequent to the finding which forms the basis of the application.

DIS. 41 In any event, in those cases where there have been no disciplinary entries on the file for three years, there should be automatic removal of the entry from the file.

DIS. 42 Removal from the file should consist of removal of the formal entry as well as any material relating to the investigation, hearing or adjudication.

DIS. 43 After review by Headquarters, no record should be maintained of proceedings in which the case is determined to have been "not proved."

DIS. 44 Material removed from files should be sealed and placed in a storage area under the direct control of the Commissioner.

DIS. 45 Access to this material should be granted only by the Commissioner for the purpose of examining an individual's total record of service where discharge proceedings are considered or where, for purposes of sensitive postings, the record of a member may need to be examined.

DIS. 46 A record should be kept of those files to which access has been given, together with the reason for access.

Chapter III

MATTERS INCIDENTAL AND RELATING TO THE DISCIPLINE SYSTEM

INTRODUCTION

In this chapter, we introduce issues which, under existing provisions, are incidental to discipline. The matters discussed are related to discipline in a far more direct fashion than regulations or standing orders indicate. In light of this fact and the concern which many members have expressed, we have felt obligated to consider the points raised and comment upon them. In some cases, we have formulated suggestions and recommendations which propose remedies to the problems raised.

ADMINISTRATIVE DISCHARGE

A clear distinction must be made between what we will refer to as an "administrative discharge" and that which may be termed a "disciplinary discharge"[23].

The former is the subject matter of this section. We have chosen to separate it from our consideration of formal discipline, notwithstanding that, in the past, it has been a part of the disciplinary process. Although the Commission supports the continued use of the administrative discharge, we believe its terms of reference should be clearly defined.

We have been told by senior management of the Force that summary discharge according to current Regulations is a necessary instrument of management. While the right to discharge must remain with management, the manner in which it is used at the present time does permit abuse. This abuse is most often referred to in terms of the lack of opportunity a member has to answer allegations which lead to summary discharge.

Bearing in mind the difficulties a discharge may cause a member in search of gainful employment, we can find no valid grounds for maintain-

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[23] That is, a discharge made as a result of a disciplinary hearing, viz. Dis. 34.

ing a system of discharge which does not anticipate a hearing at some stage. While we believe that the board of review for discharges ensures consideration of all factors in current discharge proceedings, we are of the opinion that these proceedings lack the one ingredient which will satisfy members of the legitimacy of the discharge process. That ingredient is a hearing. We propose to leave with the Commissioner the right to discharge, subject to the following conditions:

ADM. 1 When the requirement for discharge is manifest, the Royal Canadian Mounted Police should consider whether the opportunity for the member to resign from the Force should be offered to him as an alternative to discharge. Furthermore, since we do not believe that resignation should be refused simply in order that formal discipline may be effected, and since resignation may be an efficient means of resolving disciplinary problems, we believe the Force, in its discretion, should seriously consider any application to resign at any point in time, including during a service investigation or even during a formal hearing. Such consideration should favour resignation in those cases where the Force has nothing to gain through the formal disciplinary proceedings other than retribution.

ADM. 2 A member should not be administratively discharged with respect to a matter covered by the disciplinary code.

ADM. 3 Discharge proceedings should be instituted only in those cases where it has been indicated to the satisfaction of a Commanding Officer that:

(a) a member is clearly not suited for police duties; or

(b) there has been persistent inefficiency in the performance of duty; or

(c) there has been an inability on the part of the member to respond to efforts to improve the quality of his service; and

(d) it is manifest that the member's supervisor has taken all reasonable steps to ensure that the member has had proper guidance, assistance and supervision to give him the opportunity to bring his standard of service up to an acceptable level.

ADM. 4 Where, in the opinion of the Commanding Officer, there are grounds to support the need for the discharge of a member, that member should be served with written notice accordingly and informed that, if he disputes the decision, a hearing will be convened to determine the matter.

ADM. 5 **The notice should contain, in specific detail, the facts on which the decision to discharge is made.**

ADM. 6 **A member should be entitled to full disclosure of all evidence to be adduced against him, including copies of statements obtained from any persons intended to be called as witnesses.**

ADM. 7 **The hearing should be before a tribunal composed of three officers, one of whom should be trained in law. The tribunal should select a chairman from among its members.**

ADM. 8 **A member should have the right to be represented at his discharge hearing by any person of his choice, the choice to include civilian legal counsel. In the discretion of the tribunal, the cost incurred by the member may be borne by the Force.**

ADM. 9 **At the hearing, the member should be advised again of the grounds upon which discharge is being effected, such grounds to be identical to those contained in the original notice to him.**

ADM. 10 **The chairman should call upon the Commanding Officer's representative to call witnesses in support of the specific points made in the notice to the member.**

ADM. 11 **For the purpose of the discharge hearing, the member should be allowed to call witnesses in support of his position.**

ADM. 12 **The matter should be determined by the tribunal on the basis of a "balance of probabilities."**

ADM. 13 **The member should be entitled to appeal the decision of the tribunal to the Commissioner, such appeal to be forwarded within 30 days of the decision. The Commissioner should decide the appeal on the basis of the transcript of proceedings.**

ADM. 14 **A subsequent appeal could be made to the Federal Police Ombudsman who may formulate his recommendations on the appeal from the record or, in his discretion, hear such evidence as he deems advisable.**

TRANSFERS

One of the most common allegations raised by members is that transfers are frequently used for disciplinary purposes. To allay further doubts which may continue to arise with respect to transfers, we will register some of the concerns expressed and will make recommendations which, if implemented, we believe would bring about an increase in

confidence in the system of transfers within the Royal Canadian Mounted Police.

While it is evident that the Force must effect transfers and that such decisions should be made at the managerial level, it cannot be denied that transfers can create hardship and that the circumstances of some transfers justify a conclusion that they may have been initiated for reasons of discipline.

It is unnecessary to consider at length why the Force must continue the use of transfers. The requirements of policing; the need for developing the skills of its members; the need to place new members into certain areas and the need to provide expertise to other areas are reasons enough. In our opinion, however, the Force should take more care to ensure that transfers do not create real hardship, particularly for married members with families.

We are concerned that the relocation of a family creates difficulties for the children who must move to a new school, sometimes in mid-term and sometimes for the member's wife who may have to end a working career. These difficulties are compounded when the member is a Canadian of French descent, whose children sometimes have to be moved to an area where bilingual education is either very expensive or not available. It may be that the Force would want to specifically examine such considerations in recognition of special needs but, in any event, it cannot afford to overlook the financial hardship that transfers can create.

In addition, in a period of economic instability and mounting costs in the field of real estate, it is unrealistic to expect that a member could be transferred frequently without financial loss. Complaints by members who have devoted years to the Force and find themselves without an equity in a home are not infrequent. Many members who have experienced continuous transfers during their careers are in such an unfortunate position. As a consequence of this situation, there has been a lowering of morale with perhaps a concomitant decrease in performance.

The attention of the Commission has been drawn to other problems created by transfers, including instances where the special need of the member might outweigh the requirements of the Force. Members have brought to our attention the fact that their transfers were effected, despite special pleas for consideration of a sick or retarded child and the inability to obtain treatment in a new area. These requests were disregarded by the Force, leaving the members with the impression that insufficient regard was paid to their individual needs.

Refusals to transfer members from remote postings can also cause hardship. We know of at least one instance where a member was required to fly many miles at his own expense on a regular basis to obtain special medical treatment for his sick child. Although a transfer would have alleviated considerable financial hardship for the member, the transfer was refused.

There is another dimension to the problem. Many members of the public came before the Commission to stress the need for strengthened links between members of the Force and the community in which they serve. They complained that often members were transferred too soon after they had succeeded in establishing a very good relationship with people in the detachment area. Obviously, transfers will disrupt relationships which have developed between members and the communities they serve and policing effectiveness will suffer.

The decision to transfer should be one which balances both the interest of the Force and that of the member. The member should, whenever possible, be made aware of the reasons for his transfer. Transfers which are not accompanied by proper explanations allow members the freedom to speculate on the motives for them. Such transfers may be interpreted as disciplinary in origin, even when in fact, they are being made for thoroughly valid reasons. One approach to this problem may be to give a member access to his entire file to ascertain for himself that the transfer is not being undertaken for reasons of discipline.

In one case, a senior non-commissioned officer, who had been moved on the average of twice a year for ten years, refused to take a transfer which he interpreted to be disciplinary in nature. As a consequence, he resigned and in this instance the Force lost an experienced member in whom it had a substantial investment. This resignation was made solely because the member was under the impression that his transfer was disciplinary. Upon verification of the service file of that member, the Commission came to the conclusion that there were no disciplinary overtones to the transfer and that the transfer was indeed in the best interest of the member. The transfer had been the subject of fully documented discussions for some six to eight months prior to the disciplinary occurrence which led the member to the conclusion that the transfer was disciplinary. One cannot avoid speculating how different the outcome might have been had the member been able to see his complete file.

While it is policy under the present system to have an interview with a staffing officer prior to a transfer, it is not always possible for these

interviews to take place. In order that members do not think that they are being transferred for disciplinary reasons, a greater degree of consultation should take place and personal circumstances be taken into consideration. Whenever possible, members should be notified in writing of transfers a minimum of 90 days prior to the date of the transfer. Where dependants are attending school, transfers should not take effect during the academic year. A transfer should be a fully planned and justifiable move within a career pattern.

In response to many of the above concerns, the Force has recently modified some of the policies and procedures which relate to transfers. Under interim instructions dated October 23rd, 1974 and entitled *Succession Planning*[24], senior management has initiated a detailed and methodical program in an attempt to identify and correct imbalances which could arise between staff postings and available manpower.

Part of succession planning involves the question of transfers. The Force is interested in placing men in positions best suited to their talents, training and preferences. To this end, staffing officers are instructed to:

> "—examine qualifications, training and experience of incumbents utilizing available resources such as: Forms 816, 1005, A-323, A-26, Inspection Reports, etc.;
>
> —identify incumbent's career aspirations and personal preferences via Parade[25] and/or Staffing Interview;
>
> —assess their potential for further advancement."[26]

Regulations recognize that mitigating circumstances may arise. Section 13 of Administrative Bulletin 225 states:

> "13. The following is a list of situations or factors that will *alter* succession lists. Many of these situations are inevitable and succession lists should be adjusted *as and when the situations occur.*
>
> a. supplementary positions during a fiscal year;
>
> b. changes in functions/requirements/rank of existing positions;
>
> c. changes in members' qualifications/suitability/aspirations/rank, etc.;
>
> d. applications for compassionate transfer which have been approved;

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[24] Administrative Bulletin 225, Issued October 23, 1974. Effective from November 1, 1974.

[25] Computer record of personnel data.

[26] Supra., Administrative Bulletin 225, Section 7, Step 2.

e. applications for transfer to a particular functional/geographical area and the application has received favourable consideration;

f. transfers believed necessary/desirable to another function or within the same functional area, inter or intra-Divisionally, because of disciplinary matters, unsatisfactory services, etc.;

g. unexpected manpower changes, caused by factors such as Government legislation, termination of contracts, etc."[27]

These new regulations address and draw attention to some areas in which complaints were registered. Many submissions received on matters of transfers reflected policies superseded by these new regulations and it is the Commission's belief that these will do much to alleviate practices previously giving rise to complaints.

We have stated that members should be provided with the reasons for their transfers and this should include not only an interview, but access to service files which may have many pertinent comments on the transfer, so that the member may feel that the transfer is accompanied by planning and co-ordination. We have considered the right of members to refuse a transfer and have concluded that a member be entitled, as of right after five years' service with the Force, to refuse a transfer for reasons of family, health and finances. The refusal of a transfer may limit the further career advancement of a member and he should be so apprised by a staffing officer of his career opportunity.

It may be suggested that the right of a member to refuse a transfer could mean that certain areas would be without sufficient assistance and that police work would suffer. We would argue against such a proposition since it is always open to the Force to advertise positions in certain areas to all its members and to reward the applicant chosen with either accelerated promotion or acting pay during that posting. One must agree that a member who accepts a posting voluntarily will probably provide better service, responding more adequately to his work.

The Commission cannot ignore disciplinary reasons as a cause for transfer. It must be recognized, however, that when such is the case and in recognition of the dignity of a member, that member should have the reasons made clear to him and should not be left to speculate concerning the cause of his transfer. The problem cannot and should not be hidden from the member; indeed it ought to be explicitly stated and explained to

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[27] *Ibid.*, Section 13.

him in no uncertain terms. The credibility of the system demands this and, if the transfer is sought to correct the behaviour of a member, that goal will not be achieved without frankness and complete disclosure. It is conceded that, for many reasons, a member's behaviour can require a transfer and, indeed, in some cases, the Commission is satisfied that the transfer would be preferable to a discharge. However, such transfers must be made with complete disclosure and in the spirit of changing the behaviour pattern of an individual and not for undisclosed motives of a punitive nature.

While the matter of bilingualism is definitely outside the scope of this Commission, one cannot ignore the problems which result in transferring francophone members to predominantly English-speaking areas. While, in many cases, these transfers are necessary, they should not take place without adequate consideration of the ethnic background and aspirations of the member concerned.

PROMOTIONS

Many members appearing before the Commission alluded to circumstances which led them to believe that a promotion had either been delayed or denied as a result of some indirect form of discipline. To the extent that such concerns are well founded, we must confront the causes giving rise to them. For example, if a complaint is unfounded, it ought not to influence the promotional opportunity of a member and should not be perceived as having any role in the consideration of his promotion. In our opinion, if there are no grounds for direct discipline, it is unconscionable that any form of indirect penalty should be considered.

While some delay in promotion could conceivably take place during a service investigation or during the process of appeal, promotion ought not to be denied for the simple reason that the investigation is incomplete or the appeal is pending. While an investigation, in its initial stage, may justify a delay in an individual member's promotion, it should not in itself justify a denial of that promotion.

Some members believe that the promotional system may be used to effect indirect discipline. We subscribe to the position that the visibility of the promotion system should be such that a member will always be able to know why a promotion has been delayed or denied. It may be that recent amendments[28] to the Administration Manual will relieve members'

[28] Administration Manual II.1.I.a.7.

concerns in this regard. It is incumbent on us to note, however, that the effectiveness of this directive will depend upon its uniform application across the Force.

The Commission recommends that the current system of promotion be reviewed and that consideration be given to introducing competition for promotion, which may include promotional examinations, interviews and the establishment of explicit criteria for each position in the Force.

In outlining its system of promotion, the Force should make the criteria for available positions known to members of all ranks, in order that they may prepare themselves for promotion. In those cases where a member cannot be promoted because of a shortcoming, that deficiency ought to be brought to his attention immediately in order that he might improve himself or consider alternative employment. Furthermore, a member should always be in a position to either raise the question of promotion and submit a grievance in order to clarify his status without fear of recrimination.

PENSIONS

The matter of pensions within the Force is an issue which continues to be one of deep concern to all members.

Some senior non-commissioned officers have indicated that, in their opinion, current pension provisions are far too limited and that a penalty-free pension should be available after 20 years' service. In the present circumstances, a member may retire after twenty years' service but, in doing so, his pension is reduced by 25% of the amount to which he would be otherwise entitled. The penalty decreases by 5% per year until 25 years' service has been completed. This penalty particularly concerns members because a member discharged from the Force as "unsuitable" does not suffer any penalty with respect to his pension.

Other members have singled out pension regulations as the main reason for not accepting promotion to commissioned rank. It is noted that a member who accepts a promotion to commissioned rank may find himself in a position of having to serve 35 years before being eligible for any pension. Many members have noted that there is no parallel in any organization, including the Canadian Armed Forces, where such a requirement is built into the promotional system. It is strenuously argued by these members that any scheme which forces senior non-commissioned officers to renounce substantial pension benefits to obtain a

commission is too high a price to extract and that many members faced with that prospect have declined the promotion to commissioned rank. Instead of accepting a commission and having to complete 35 years of service to be entitled to the full benefits, a number of members have refused a promotion, rather than give up the security of a relatively good pension upon retirement after 25 years.

A recent amendment to the pension provisions, called the "85 Factor", allows an officer of the Force to retire voluntarily if his age and pensionable service total 85. The minimum age is 55 years with 30 years of service. While this innovation may provide a few officers with an option, it is only a partial solution to the larger problem of pensions. Basically, we are of the view that the criterion for pension benefits and entitlements should be the same for officers and other ranks. Consideration must also be given to the fact that a police career must always be challenging and it would be unrealistic and, in some cases, counter-productive for members to remain within the Force for a prolonged period of time solely to protect their pensions.

The Royal Canadian Mounted Police may find it beneficial to make representations to the Solicitor General and Treasury Board to adopt the policy that some other police forces have instituted. In some cases, flexible pension schemes allow full pension for all ranks after 25 years with the option to remain in the force for a maximum of 35 years.

The Force should also consider whether or not pensions should be calculated on the average of the last three years, as opposed to the last six years of service, and, to that effect, carry out a full study of pensions with a view to making submissions to Treasury Board on a topic that concerns so many members of the Force.

Finally, our Commission finds the concept of pension penalty attaching to disciplinary discharge repugnant. We believe that, in this day and age, there can be no justification for the imposition of such a continuing penalty on that which is considered a right.

PERSONNEL ASSESSMENT

Many submissions dealt with personnel assessments and how, in many instances, members' assessments may relate to discipline. While under the present system an individual member may examine his personnel assessment, that has not always been the case and, accordingly, members of many years' experience still feel that their files adversely

reflect past disciplinary action, whether this action resulted in counselling, warning or other discipline.

In a few submissions, the Commission heard that senior non-commissioned officers had been penalized for submitting personnel assessments on subordinates which the officers commanding felt were too laudatory and therefore undeserved. A valid personnel assessment cannot exist if a senior non-commissioned officer can be subject to discipline for writing a personnel assessment which reflects the facts as he perceives them. The Commission suggests that the author of a personnel assessment should not be subject to any form of discipline for expressing, in good faith, what he perceives to be true about a member.

MEDICAL TREATMENT

In appropriate circumstances, the Force may legitimately direct that a member undergo examination for alcoholic, psychiatric or other medical problems. There may be cases where continued service is conditional on the following of such direction. Nevertheless, there has been some suggestion that the current system of medical referrals has potential for abuse and, to this extent, some comment is warranted.

It appears to us that it is a responsibility of supervisors to detect factors in subordinates which may give evidence of medical problems. It is a further responsibility to discuss those observations with the member and to encourage the obtaining of medical assistance. The supervisor exceeds his authority and his competence, however, when he presumes to diagnose a problem and to direct a medical referral. It is an unfortunate practice as well to treat apparent medical problems as a cause for some form of formal discipline.

The Commission believes that the program of medical services for members of the Force should be re-examined for two principal reasons. First, because medical examination and treatment can be such a private matter, a member should be allowed to seek the assistance of a medical practitioner of his choice. In those cases where there appears to be a job-related problem or where the diagnosis would appear to have consequences for the member on the job, there would be a requirement that the doctor report to another physician serving as an agent of the Force. He, in turn, would report to the Force in order that supervisors might be in a position to take remedial action, in the interests of the member or in relation to the standard of police services being delivered.

Secondly, we have heard evidence to the effect that the current practice with respect to medical services is contrary to the aims of medical doctors involved in family practice. The theory is that the family should be treated as a unit for medical purposes, because so many ailments can be family related or family oriented. The removal of one member of the family to separate and independent medical examination and treatment may, therefore, frustrate the aims of a family practitioner. On this basis, it appears reasonable that members of the Force should be permitted to involve themselves with a family doctor in the interests of the well-being of the family. We are unable to conceive of reasons to substantiate any claim that such a system would be detrimental to the interests of the Royal Canadian Mounted Police. Financial considerations would be cared for by medical insurance coverage being undertaken by the Federal Government.

We are also called upon to make reference to the fact that untrained persons sometimes become interpreters of medical reports. At the writing of this report, the Commission is aware of the concern of the senior management of the Force with the interpretation of medical data by non-medical persons and, accordingly, we must concur with that concern by recommending that no lay person should have access to medical files, except with the Commissioner's expressed permission and only in the most limited circumstances.

REMOTE POSTINGS

It is inevitable that, in a force as widely dispersed as the Royal Canadian Mounted Police, there will be some postings that offer particular policing problems or, for social or economic reasons, are not attractive to many members, particularly when such postings are unduly prolonged. Given the circumstances of these postings, it is imperative that the Force determine not only that a member is willing to serve in what are referred to as "remote postings," but that he is capable of adjusting to the unusual conditions such service requires. In order to ensure that such postings appeal to as many members as possible, we believe that the following recommendations are in order.

We have concluded that there is some wisdom in treating certain areas differently and we are of the opinion that the procedure of elective postings should be restored, expanded and periodically re-examined to incorporate changing demographic conditions.

Personnel willing to serve at remote postings should undergo whatever psychological testing may be required to assist Staffing Branch in determining whether they will be capable of adjusting to the unusual conditions of such postings. In addition to such testing as may be required for these volunteers, we recommend that the Force institute an orientation program. Such a program would provide members with the opportunity of a brief first-hand experience of service at a remote posting and would inform them of the general and particular considerations that should be taken into account in order to ensure effective policing.

For members serving at remote postings, we recommend that they be granted leave frequently enough to ensure that they can maintain a high morale and a positive approach to their duties. Service at a remote posting requires that members respond when needed on a 24-hour basis, seven days a week. In light of this consideration and the general hardship of such service, we believe that members must be granted sufficient leave to restore themselves, even if this might entail special consideration.

Finally, we believe that members serving on remote postings are entitled to more financial compensation than current regulations permit. For example, with respect to remote postings in the Arctic, the northern allowances[29] presently in effect have been a source of complaint to this Commission and, while such complaints are outside our terms of reference, we cannot be insensitive to them. In certain postings in the Arctic, many consumer goods are priced approximately five times the price of these goods in southern Canada. In light of this consideration, we recommend that the Force request that Treasury Board review current allowances with a view to providing more adequate compensation than presently exists.

CERTIFICATES OF DISCHARGE

There were numerous complaints by former members about certificates of discharge incorporating references to discipline. Regrettably, in some cases, such certificates have been issued to members in circumstances where the discharge was not brought about by reason of discipline. The certificate of discharge was, nonetheless, issued as if it were a direct consequence of a disciplinary measure.

One former member related to the Commission that he was subject to a charge in civilian court and subsequently acquitted without the

[29] Isolated Post Regulations, C.X.7, September 12, 1975.

necessity of adducing any evidence in his defence. He then sought to purchase his discharge and the Force accepted that he could; he was, nonetheless, discharged as "unsuitable" for conduct unbecoming a police officer.

Certificates of discharge which read "unsuitable" have hindered members seeking employment. Some members have gone for as long as ten years looking for suitable employment without success because of such certificates and have found that the only occupations available to them were menial in nature. While the Commission is in complete agreement with the recent amendments to the Royal Canadian Mounted Police Regulations [30] which delete the requirement to indicate the reasons for discharge, we must also recommend that members discharged prior to the effective date of this amendment be allowed to apply to have their certificates of discharge revised accordingly.

NATIVE POLICING

> "Ignorance of the law compounded by language barriers and the inappropriateness of many laws are two of the main problems of Inuit in their lives within the Canadian System of Criminal Justice."[31]

Few areas of concern have been as difficult to deal with as native policing. The topic relates to our mandate in that the behaviour of members responsible for native policing has often led to complaints which, in turn, have led to disciplinary action on the part of the Force.

In many cases, the complaints of the native people are not directed to individual members but take the form of suggestions to the Force itself as to how policing should be carried out. These suggestions should be received by the Force, examined and, where possible, implemented.

The reports on the National Conference and the Federal-Provincial Conference on Natives Peoples and the Criminal Justice System, both held in Edmonton, February 3-5, 1975, make a number of recommendations which may assist in placing native policing in perspective. The recommendations read as follows:

> "—A study of the number of natives hired on urban police forces, how many are still police officers, and why others have left police work;

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[30] Royal Canadian Mounted Police Regulations, section 158.

[31] *Native Peoples and Justice*, Communications Division, Ministry of the Solicitor General, Government of Canada, 1975, p. 29.

—The establishment of citizen committees to deal with complaints about police treatment of native people;

—The requirements that an officer in urban centres arresting a native contact native police before taking further action or, if this is impossible, a native organization in the community that could be reached around the clock;

—The hiring by native organizations of street workers to work in urban communities with the police;

—Patrolling by police on foot rather than in cars so that officers have direct contact with people on their beats thereby fostering a better relationship with the community and more humane law enforcement;

—The appointment of natives to local police commissions in consultation with native organizations;

—The hiring of more native policemen in centres to which large numbers of native persons have moved;

—A national training program for special native constables."[32]

Further recommendations suggest that:

—Regular liaison meetings between police authorities at all levels and band council or communities with special emphasis on native and Inuit problems and prevention programs as well as the promotion of understanding of the law and law enforcement responsibility among all native and Inuit peoples;

—The establishment of commissions for citizens' committees in native communities to promote police-community relations, to advise on policing, and to receive complaints against police officers;

—The hastening of the removal of police officers from their roles in some places as court clerks and prosecutors;

—The setting up of ways to advise persons taking part in the presentation of what progress has been made with their proposals.[33]

These recommendations assume, however, that native people understand and appreciate the avenues open to them to register a complaint against members of the Force. In light of the recommendations made in this report under a different heading, it is unnecessary to deal at length here with the assistance which should be provided to natives by members of the Royal Canadian Mounted Police in registering their complaints in the future.

In one Canadian province, it was the policy of a former Commanding Officer to have the investigating officer accompanied by a native court worker, who was present throughout the interview with the native person,

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[32] *Ibid.*, p. 22.

[33] *Ibid.*, p. 23.

thus overcoming the problem of communication and the problem of fear, where it exists. In another province, we noted that a non-commissioned officer with an established reputation had been designated as a liaison officer with the native people. Through periodic visits and interviews with members of the community and community leaders, this officer attempted to meet difficulties as soon as they arose. These steps are not only commendable but have earned the praise of native and community leaders alike in these provinces. Undoubtedly, any program must be developed to meet specific needs in a given community. The Commission would hope that detachment commanders and officers in charge of sub-divisions would be willing to implement, in consultation with native leaders, methods which are both imaginative and progressive and which meet with the approval of the population of these communities.

The suggestions from native groups can be ignored only with some risk on the part of the Force. Representatives of native groups have left no doubt during the various meetings with this Commission that methods used effectively in urban policing cannot, with equal effectiveness, be applied to their communities. They expect and demand much more. The need for regular patrols by members of the Royal Canadian Mounted Police is one which is often repeated and is often coupled with the suggestion that, unless the members communicate on a personal basis with the citizens of the community in which they serve, policing will become altogether too removed to be effective.

Natives have asked for greater participation by members of the Royal Canadian Mounted police within the community by attendance at band and council meetings. Such meetings would bring about greater sensitivity by the police to the community's needs. The appearance of members of the Force at their meetings would serve not only to foster trust, but would also serve to promote crime prevention and initiate a much-needed dialogue between the public and the members of the Force.

The use of special native policemen has not been without a great deal of comment and suggestion on the part of the native people and the Commission recognizes the desire of native communities to have their people involved in policing the community. There was, however, an absence of consensus on the manner by which native peace officers would be appointed to particular locations. The submissions were nonetheless unanimous in suggesting that policing cannot be done solely by native special constables.

The practice of "hub policing" has been an unpopular one, particularly in native communities. In "hub policing," small detachments are

closed in favour of a concentration of police personnel and facilities in a location central to a region. Members work from the "hub" and they patrol and respond to calls in the outlying areas. In most cases, distance prevents members from living in these patrol areas and residents there rarely have the opportunity to develop a rapport with them. Consequently, the confidence of residents both in the ability of police to prevent crime and to understand the special characteristics of a community are severely eroded because the police are seen only to respond to calls after a crime has been committed.

The members themselves view native policing as a highly selective and demanding task. For that reason, we are of the view that no one should be posted in a detachment involving native policing without first having the opportunity to visit that detachment to assess his own ability to live in that community prior to commencing his actual service.

It is also our recommendation that members be provided with sufficient cultural orientation and training before their postings commence. These courses might be designed with the assistance of community or band councils and would acquaint the member with the customs of native Canadians. Of particular importance to this Commission is the role that a peace officer might serve as an educator in matters pertaining to law. Such training as is undertaken in preparation for a remote posting should include courses which will assist the member in acquainting native people with their rights and responsibilities under the law.

In order to encourage natives to join the Force as special constables or regular constables, it may be necessary to make some changes in current policy. Recruitment standards for natives should be made explicit and should articulate the changes in qualification standards which the Force presently employs. Where the recruitment of special constables is concerned, these positions must be made more financially attractive in order that such employment can compete with alternatives in the North. Finally, the Force should recommend to Treasury Board a complete review of pensions presently payable to many retired native special constables. While the lack of adequate pensions is due in part to the fact that special constables in Northern areas received free rations and accommodation and, therefore, a commensurably lower salary, the current pensions of these former members has not escaped the attention of those in their community and often acts as a deterrent to natives who may be contemplating service with the Force.

These recommendations must also be seen in light of the desirability of allowing a member who is no longer at ease in a native community to

request a transfer. Similarly, they would allow the community a free expression of its feelings with respect to individual members, enabling the Force to evaluate the service being rendered. With increased sensitivity and better communication, complaints against members of the Force would soon decrease.

PART VI

GRIEVANCE PROCEDURE

Chapter I

CURRENT GRIEVANCE PROCEDURE

INTRODUCTION

Since the early years of the Force, regulations have provided members with a system for registering their grievances. The formal procedure that the Force originally adopted and continues to employ is one common to many military organizations. In circumstances where a member believes he has a justifiable complaint, he is entitled to seek redress through the command structure of the Force. Should a succession of increasingly senior officers be unable or unwilling to provide redress, a member's grievance will eventually reach the Commissioner of the Force whose decision on the matter is final.

In the course of its investigation, the Commission noted that few complaints from members of the Force are translated into formal grievances. Many complaints are resolved through informal means and the formal grievance procedures are usually invoked only after an attempt has been made to achieve redress informally. Given the availability of both formal and informal avenues for complaint resolution, a thorough understanding of grievance procedures in the Force requires that both be examined and their strengths and weaknesses assessed.

THE INFORMAL RESOLUTION OF GRIEVANCES

Local Resolution

There are a wide variety of informal means available to members seeking redress for a grievance. In many cases, a member will simply discuss his grievance with his supervisor and, depending on the nature of the grievance, the supervisor will resolve the problem on his own initiative or seek the required authority from his superior to take whatever action is necessary to provide redress. Complaints capable of resolution in this manner would involve those matters normally within the discretion of the supervisor; such as, duty assignments, time off and shift assignments.

Sometimes the resolution of a complaint will require an exchange of memoranda between a member and various superiors. However, as the Regulations pertaining to formal grievance procedures are not referred to in the exchange of correspondence, the matter is not treated by the parties concerned as a formal grievance.

Since there are no explicit provisions establishing what constitutes a "justifiable" grievance, the informal procedures only provide the member, unsuccessful in achieving a resolution at this level, with a measure of what official reaction is likely to be. In discussing his complaint with his superiors, he will be apprised of their opinion of the legitimacy of his complaint and its chances of successful resolution. As well, other members will rely on their memory of past complaints of a similar kind and will share with the aggrieved member their knowledge of positions taken by senior officers on complaints of the kind he is advancing. In addition to gaining a measure of the legitimacy of his complaint and the likelihood of its successful resolution, particularly on an informal level, a member may be advised to drop the complaint or not to initiate a formal grievance. Often such counsel may be well intentioned and based upon a sincere belief that the issue raised is without merit.

Some members have indicated, however, that, even in cases where a grievance was thought to have merit, they have been given to understand that, should an informal resolution be denied them, the launching of a formal grievance may have untoward effects upon their career. Many of these members expressed the opinion that their superiors would hold such action against them. This opinion was shared by over 25% of the constables and non-commissioned officers responding to a Commission survey.

While we are concerned that a significant number of members surveyed appear reluctant to employ the formal grievance procedures, we strongly approve of the current practice of seeking local and informal avenues of resolution of grievances before resorting to formal procedures. In our view, this practice should be encouraged and strengthened wherever possible as it constitutes the most efficient method of resolving grievances.

Further and apart altogether from the question of efficiency, the informality associated with this method of treating grievances should provide the member with an occasion for participation in improving the operations of the Force at the membership level, a need that was voiced by many members in their submissions to the Commission.

There are two further local means of informal redress that are available to members: Staffing and Personnel Officers and Division Staff Relations Representatives.

Staffing Branch

The responsibilities for staffing, recruiting and personnel are carried out by Staffing and Personnel Officers. In a directive dated May 23, 1975, and issued by the Director, Organization and Personnel, Staffing and Personnel Officers were reminded that they,

> "must be constantly on the lookout for morale problems, be they of an individual or group nature and be prepared to take positive action either through personal counselling, negotiation with others or through formal reporting."

Although a major responsibility of Staffing and Personnel Officers is researching and making recommendations for the selection, transfer and promotion of members below commissioned rank, the language of the directive does indicate that these officers are intended to be available to members seeking solutions to a variety of problems.

It has been made clear to us, however, that some members will no longer utilize the services of these officers when seeking an informal resolution of a complaint or grievance. In submissions presented to the Commission, these members indicated dissatisfaction with the practices of some Staffing and Personnel Officers. Their dissatisfaction was based on the fact that they had been given to understand that matters discussed during interviews with Personnel Officers would be kept confidential and would neither be communicated to a member's superior nor be placed on that member's file. They were of the view that Staffing and Personnel Officers had an obligation, which was not being uniformly discharged, to make it clear to the member that confidentiality of communications of this kind would not necessarily be maintained. These members would find it preferable if they could confide in Staffing and Personnel Officers and be satisfied that the nature and content of such interviews would not become a matter of record or general knowledge.

Staff Relations Branch

In 1972, the Commissioner authorized the establishment of what are now known as Division Staff Relations Representatives. In addition to being "involved in matters affecting the welfare and dignity of

members"[1] these representatives are authorized by the Commissioner "to bring problems, concerns and recommendations to management"[2].

> Further responsibilities require that:
>
> "One Division Staff Relations Representative shall be directly involved in pay discussions.
>
> One Division Staff Relations Representative shall sit as a member on each N.C.O. Promotion Board at Headquarters, Ottawa."[3]

A Division Staff Relations Representative is elected by the members of his Division for a minimum term of two years and may be re-elected. In his capacity as a Division Staff Relations Representative, the member,

> ". . . is the representative of all the members of that Division and is responsible to the members and the Commanding Officer of that Division."[4]

These representatives meet at least twice a year with the Commissioner and other senior officers of the Force to acquaint these officers with the concerns of members and to forward any recommendations they deem appropriate.

Division Staff Relations Representatives assist members seeking redress in two ways. As will be seen in the section entitled "Formal Grievance Procedures," the representative is available to assist those members who launch a formal grievance and, as well, he serves on a divisional board which reviews all grievances. Of equal importance is the availability of the representative to members seeking an informal resolution or redress. Since the representative has direct access to the Commanding Officer of a division and to the Internal Communications Officer at Headquarters, Ottawa,[5] he is in a position to apprise these officers on an informal basis of concerns relayed to him by individual members or groups of members.

The following statement was issued in a recent Administrative Bulletin:

> "The Commissioner recently approved the formation of a Staff Relations Branch to embody the Division Staff Relations Representative Program . . ."[6]

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(1) Memorandum dated October 9, 1974, signed by M. J. Nadon, Commissioner of the Royal Canadian Mounted Police, page 3.

(2) *Ibid.*, page 3.

(3) *Ibid.*, page 2.

(4) *Ibid.*, page 2.

(5) *Ibid.*, page 2. The Internal Communications Officer is now known as the Officer in Charge, Staff Relations Branch.

(6) Administrative Bulletin 290, dated May 23, 1975.

On June 1, 1975, the Division Staff Relations Representative program was reorganized and became the Staff Relations Branch under command of an Inspector at Headquarters, Ottawa. The responsibilities of this branch incorporate those of the program it supersedes and are expanded to include a review of all grievances, appeals from recommendations for discharge, matters affecting staff relations and internal communications. Projected programs of this branch include the circulation of a magazine or news-sheet dealing with matters of general concern to members.

The creation of this branch has left unchanged the responsibilities of divisional representatives. Since this branch has been in operation for less than a year, it is too early to assess its effectiveness. An indication of its acceptability and the members' confidence in the new grievance procedures is that there has been a substantial increase in the number of grievances being launched by members.

FORMAL GRIEVANCE PROCEDURES

The member who wishes to make a formal grievance does so under authority of sections 93 through 97 of the Royal Canadian Mounted Police Regulations.

> "93. (1) Every member who feels he has been injured or aggrieved or that he has suffered any personal oppression, injustice or other ill-treatment may make a complaint in the manner prescribed in these regulations.
>
> (2) Every complaint shall be:
>
> (a) in writing,
>
> (b) signed by the complainant,
>
> (c) made within a reasonable time after the occurrence of the ill-treatment complained against,
>
> (d) written in a respectful tone, and
>
> (e) neither frivolous nor vexatious in nature.
>
> 94. Every complaint shall be sent through the normal chain of command of the Force and shall be forwarded without delay to the person to whom it is addressed or, if the circumstances do not warrant this action, to such other member as can remedy the complaint.
>
> 95. Where the person to whom a complaint is presented does not forward it to the person to whom it is addressed within a reasonable time, the complainant may forward it directly to the person to whom it is addressed.
>
> 96. Every person whose duty it is to forward a complaint may forward with the complaint a statement containing such comments as he considers pertinent to the complaint.

97. Every person to whom a complaint is made shall cause that complaint to be inquired into and if he is satisfied as to the validity of the complaint, take such action as is within his power to afford full redress to the complainant or if he has no power to afford full redress, submit the complaint to a superior officer."

More recent provisions, dated November 28, 1975, and set out in the Administration Manual, indicate in detail the procedures to be followed.

"E. 1. GENERAL

E. 1. a. Follow the grievance procedure shown in Appendix II-16-1.

E. 1. b. For the purpose of this section an:

1. officer commanding means a sub/div. o.c., o i/c autonomous detachment or branch reporting directly to a commanding officer and at Headquarters a director or o i/c of a branch not attached to a directorate.

2. commanding officer means an officer in charge of a division, including HQ division.

E. 2. MEMBER

E. 2. a. Attempt to resolve the grievance by bringing it to the attention of your superior and/or your division staff relations representative.

E. 2. b. If your supervisor does not or cannot resolve your grievance, you may submit a formal grievance under Regulation 93.

1. To submit a formal grievance follow the procedures shown in Appendix II-16-1.

E. 2. c. If you are dissatisfied with a ruling made initially or subsequently at a higher level, you may request in writing through channels that the matter be referred upwards to the next successive level. The levels are:

1. officer commanding;

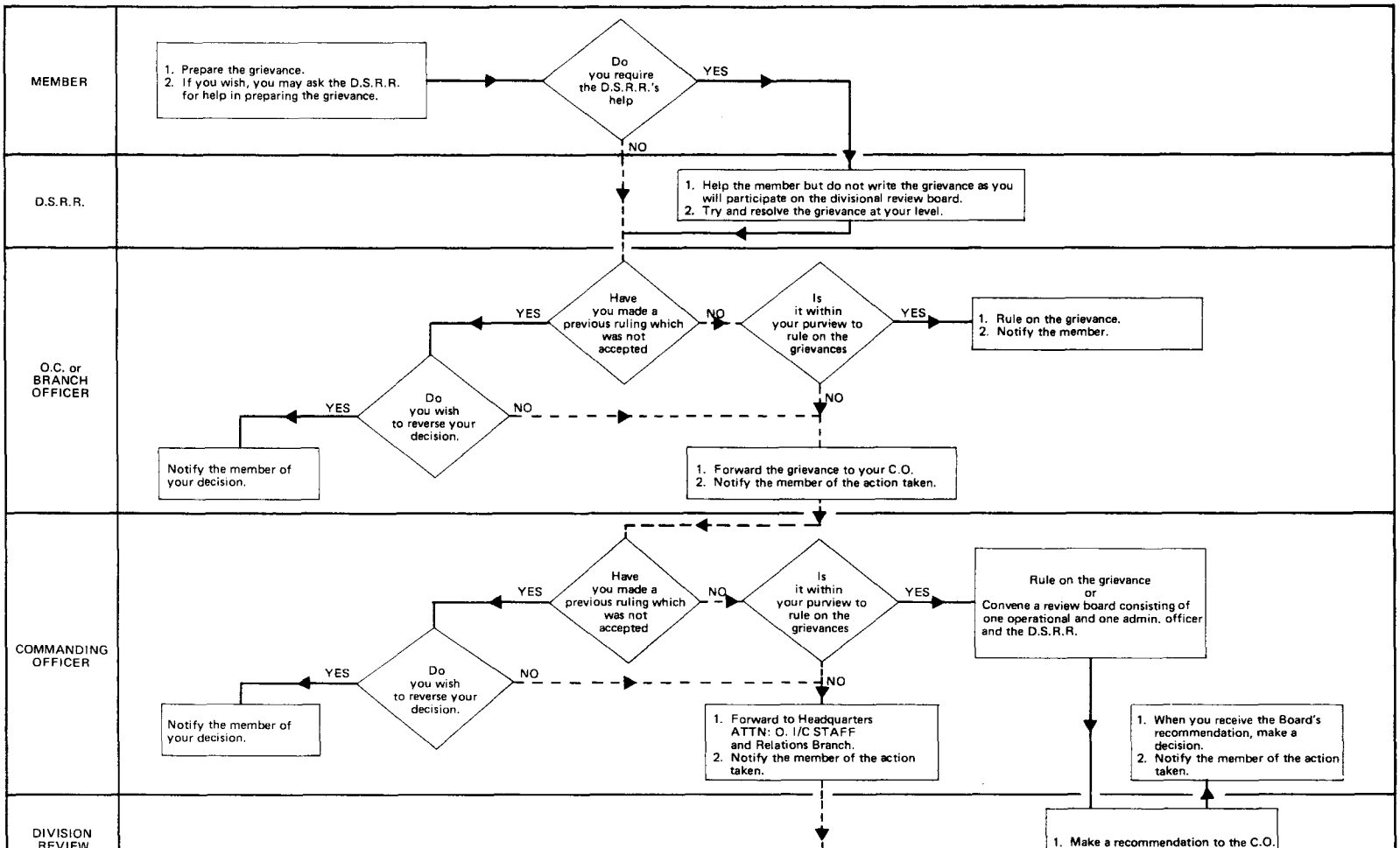
2. commanding officer;

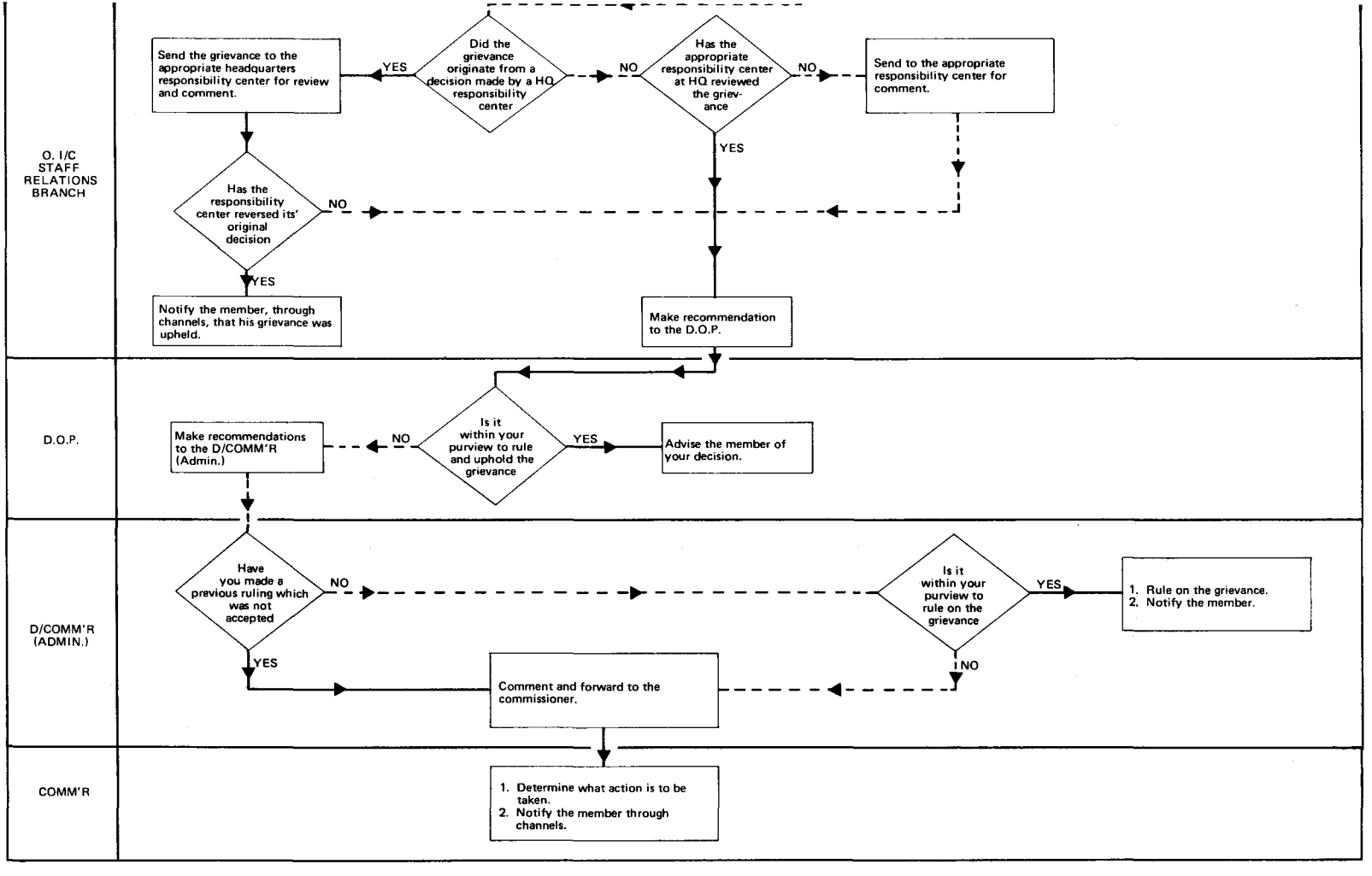
3. Deputy Commissioner (Admin.), and

4. Commissioner (whose ruling is final)."

GRIEVANCES

Appendix II-16-1




O. I/C STAFF RELATIONS BRANCH
Send the grievance to the appropriate headquarters responsibility center for review and comment.
YES
Did the grievance originate from a decision made by a HQ responsibility center
NO
Has the appropriate responsibility center at HQ reviewed the grievance
NO
Send to the appropriate responsibility center for comment.
YES
Has the responsibility center reversed its' original decision
NO
YES
Notify the member, through channels, that his grievance was upheld.
Make recommendation to the D.O.P.
D.O.P.
Make recommendations to the D/COMM'R (Admin.)
NO
Is it within your purview to rule and uphold the grievance
YES
Advise the member of your decision.
D/COMM'R (ADMIN.)
Have you made a previous ruling which was not accepted
NO
YES
Is it within your purview to rule on the grievance
YES
1. Rule on the grievance.
2. Notify the member.
NO
Comment and forward to the commissioner.
COMM'R
1. Determine what action is to be taken.
2. Notify the member through channels.

While the new procedures set out in the Administation Manual have not been in effect long enough to permit an assessment based upon experience, some comments respecting the principles underlying the procedures are in order.

The Division Staff Relations Representative serves two functions within the formal grievance procedure. He assists the member in the preparation of his grievance and he serves as one of three members of a Division Review Board. We are of the opinion that these functions are incompatible.

If the Division Review Board is to provide the Commanding Officer with an independent and objective assessment of a grievance, it is imperative that the members of this board should not have been involved in earlier attempts to resolve the grievance informally nor should they have taken part in its formal preparation.

While we believe that members of a division should be represented on a Division Review Board by someone of their choosing, he should not be the Division Staff Relations Representative. The principal responsibility of the Division Staff Relations Representative should be to assist members in their attempts to resolve their grievances informally and, where resolution has not occurred, to assist the member in translating the informal grievance into a formal one. The system should not provide an occasion for the remaining members of the Division Review Board to discount the objectivity of one of its members. We are of the view that the procedures as presently envisaged with the Division Staff Relations Representative participating as a member of the Division Review Board is likely to lead to this result.

Another concern of this Commission relates to the independence of the review board with respect to the Commanding Officer of a division. All the members of a review board are appointed by the Commanding Officer with the exception of the Division Staff Relations Representative. A question arises as to the extent to which the appointees of the Board will be able to exercise independent judgment in those cases where an action of the Commanding Officer is the subject of a grievance.

A further concern of the Commission is the requirement that a member from an operational branch and a member from the administrative branch be required to serve on the Division Review Board. This requirement, in our opinion, seems less important than one which would require that members serving on such a board have the confidence and respect of the members of the division in which they serve. As all

members have an interest in both the operational and administrative functions of the Force and many members have had experience in both branches, we see no reason why the present requirement should remain. Such a requirement may introduce parochial interests into an undertaking which should provide recommendations of benefit to the member concerned and the Force as a whole.

Current procedures outlined in the grievance flow chart [7] require that appointees to the Division Review Boards shall be drawn only from the officer cadre in each division. In our opinion, denying members, otherwise well qualified, the opportunity of serving on the review board forsakes an important advantage in that it denies an aggrieved member the opportunity of having his grievance reviewed by his peers. A review of grievances by a Board which includes peer representation has the dual benefit of ensuring that the merits of a particular grievance, as it affects all ranks, are properly before the Board and that the Board's recommendation, favourable to the grievor or otherwise, bears the requisite credibility.

Under the new grievance procedures, no provision is made for a member to reply to comments that are made by supervisors and commanders as his grievance proceeds up the chain of command except insofar as these comments may be made known to the grievor when a ruling is made. Such a procedure denies members an opportunity to counter arguments used against them or to challenge their validity. Added to this is the fact that, under current procedures, an officer ruling on a grievance is under no obligation to indicate to a grievor the reasons for his decision. His only obligation in these circumstances is to notify the member of the action being taken.

The new procedure requires that, once a grievance reaches Headquarters, it be reviewed by the Officer in Charge, Staff Relations Branch, and the Director of Organization and Personnel, and that it be ruled upon by the Deputy Commissioner (Administration). Such review procedures will inevitably increase the time necessary to finally resolve a grievance and, further, are likely to complicate unnecessarily the assessment of the merits of the grievance. In our opinion, the interests of all concerned will be better served if the grievance is forwarded directly to the Commissioner.

Finally, the current procedure does not provide for a review of the grievance by some authority outside the Force. During its deliberations, the Commission received many submissions on this subject, the great

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[7] Administration Manual, Appendix II-16-1.

weight of which were to the effect that some form of external review is desirable. The Commission found this position to be in line with generally accepted experience in other fields and concluded that such a review was vital to a grievance system which would have the respect of those members most likely to have an occasion to resort to it.

GRIEVANCES BEYOND THE JURISDICTION OF THE COMMISSIONER

There are a number of matters which give rise to discontent from time to time but the remedy of which is beyond the Commissioner's authority. These matters usually fall within the categories of pay and benefits.

Frequently, members feel that they are not being adequately compensated for the work which they do or are being denied benefits to which they should be entitled. Section 22(1) of the Royal Canadian Mounted Police Act states that:

> "The Treasury Board shall establish the pay and allowances to be paid to the members of the force."

The existing practice in dealing with problems over which the Treasury Board has ultimate jurisdiction is for the Commissioner to make representations to the Board and, at times, assume the role of an advocate on behalf of the members. However, he does not make the final decision which many members feel, rightly or wrongly, is often made without a complete understanding of their particular requirements or problems. In such cases, a sense of frustration arises because these are matters which are determined outside the Force and in respect of which members can exercise little or no influence. Although these matters are seen as legitimate grievances, there is presently no procedure whereby they can be resolved.

In the view of the Commission, these complaints do not constitute grievances of a kind which are contemplated by or could be accommodated within the grievance or staff relations procedures which presently exist. The kinds of grievances which the current procedures are intended to handle are those which are within the Commissioner's prerogative to rectify. Issues related to pay and benefits are matters over which the Commissioner has no authority. By virtue of the limits of the Commissioner's authority, these issues are not compatible with nor can they be considered within the existing or proposed procedures for handling internal grievances.

It is important to recognize that there has been a degree of discontent expressed by and on behalf of a substantial number of members with reference to the absence of any method by which they themselves can make direct representations to those in authority in respect of matters which are of serious concern to them. Many are now questioning the desirability of a system whereby the Commissioner, who is charged with the responsibility for the effective and efficient administration of the Force, is also the person upon whom they must rely to pursue, on their behalf, ambitions for economic advancement. Inherent in this duality of responsibility may be a conflict of obligation or accountability. Whether or not this can be established by the application of logic or experience, it is evident that there does not exist within the minds of many members sufficient confidence that questions concerning their individual and collective economic well-being are attracting adequate attention from those whose duties are concentrated in the area of fiscal administration.

While we do not think that grievance procedures can be designed to cope with the particular misgivings which have been expressed, it is our opinion that it would be useful for the responsible authority to examine whether or not some other vehicle might be established whereby the members could collectively present their views directly to those within whose power it is to effect change or grant relief.

Chapter II

REVISED GRIEVANCE PROCEDURE

INTRODUCTION

In formulating our recommendations, we were mindful of the fact that the Force has recently introduced new grievance procedures[8]. While our recommendations, in some cases, seek to correct what in our opinion are deficiencies in these procedures and, in other cases, seek merely to supplement them, we do not feel that any change of emphasis in the basic principles these procedures reflect is necessary.

The new procedures, in addition to preserving the principle that a member should have access to his superior officers in seeking redress, incorporate two further principles. The first principle is that a member is entitled to assistance in the preparation of his grievance. Second, a division grievance review board is established and given the authority to make recommendations to the Commanding Officer. The existence of such a board introduces into the grievance procedure a measure of review and assessment heretofore not available to members seeking redress.

LODGING A GRIEVANCE

Knowledge of the Disposition of Grievances

While regulations permit any complaint to be the subject matter of a grievance, a member is often at a loss to determine whether his complaint is one that would be considered legitimate by his peers and superiors. This uncertainty can cause hardship to members who may not feel confident about the probability of the successful resolution of their grievance. It is the view of the Commission that it would be in the interests of the Force as well as the members to establish a process of assembling

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[8] Administrative Directive 290, dated May 23, 1975. Now Administration Manual II-16, November 28, 1975.

and disseminating on a reasonably regular basis an account of the nature of selected grievances and their disposition. This would serve, in the case of the Force, to ensure that the objectivity and merits of its managerial decisions are, insofar as possible, accepted by the members and, in the case of the members, to ensure that they have a full understanding of the policy and philosophy which underlies administrative decisions affecting them.

In order, therefore, to foster a confidence in members that is based upon an accurate knowledge of previous grievances and their disposition, the Commission believes that the nature of such grievances and their disposition should be made known to members.

Accordingly, we recommend that:

GRIEV. 1 With the consent of a grievor, a summary of his grievance and its disposition should be prepared by the respective Division Review Boards and should be published and circulated within the division on a regular basis.

GRIEV. 2 The names of members sitting on the board which reviewed the grievance should be published, but the identities of grievors should not.

GRIEV. 3 Summaries of grievances thought to be of interest to the Force as a whole should be selected and published for circulation to all members on a quarterly basis.

Confidentiality

Some members indicated in their submissions to the Commission the conviction that a member taking advantage of the formal grievance procedure does so at some risk to his career. Whether or not such risk has, in fact, existed in the past is beside the point. We are of the view that such an impression might well arise in a system in which the treatment and disposition of grievances is sufficiently insulated from the members themselves that they have no clear understanding of what transpires in the processing of a grievance. It is, of course, difficult to develop an administrative policy which will remove the suspicion which will arise in the minds of some, whatever such policy might contain. On the other hand, it is the Commission's view that it is important that there be included in the grievance procedure built-in statements of principle which will have the effect of minimizing the occasions for such impressions or suspicions arising.

In our studies of other grievance procedures, we were impressed by the provisions set out in the Canadian Forces Queen's Regulations and Orders[9], which are intended to ensure that a member of the Canadian Forces processing a grievance will be neither penalized nor suffer prejudice as a result. The Queen's Regulations and Orders further contemplate that the identity of the grievor shall be protected and that the subject matter of the the grievance and its disposition shall not find its way on the grievor's personal file.

Standing Orders in the Administration Manual provide that:

> "a member may bring problems or grievances concerning his well-being at work to the attention of his supervisor without fear of consequences or reprisal."[10]

It is the opinion of the Commission that this provision lacks the force necessary to effectively eliminate prejudicial results to a member who has taken advantage of the formal grievance procedure. It requires expansion and we are of the opinion that the approach adopted in the Administrative Orders of the Canadian Forces captures more effectively the spirit of the principle.

We, therefore, recommend that:

GRIEV. 4 No member should be penalized, directly or indirectly, as a result of the lodging of a grievance. It should be the responsibility of those charged with administering the grievance procedure and, in particular, the grievor's superiors, to ensure that he is neither penalized nor suffers any prejudice as a result of his delivery of the grievance.

Many members who had reservations as to whether or not their careers might be jeopardized were they to take advantage of the formal grievance procedures also expressed concern with respect to the confidentiality of their grievance. In particular, members believed that the current procedures requiring that a record of a grievance be placed on their service file leaves open the possibility that this information may, at some point in the future, be used against them.

Apart altogether from the question of whether or not lack of confidentiality is likely to lead to the illegitimate use of information at some future time, it is our opinion that personal files are not an appropriate location for maintenance of materials relating to grievances. The relation-

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[9] Canadian Forces Queen's Regulations and Orders, Canadian Forces Administration Orders 19-32.

[10] Administration Manual, II.16.C.2.

ship between the information contained on a personal file and the subject matter of most grievances which would dictate their being stored together is, in our view, absent. When one considers the use to which personal files are ordinarily put and the personnel who have access to them, it becomes self-evident that materials relating to grievances should not be thus maintained.

Accordingly, a simple method of discounting membership suspicion which we have here described is to limit access to grievance files.

Accordingly, we recommend that:

GRIEV. 5 Grievances should be placed on files opened for that purpose and no record of a grievance should appear on any other file.

GRIEV. 6 Access to grievance files should be limited to those persons responsible for handling grievances.

Members of the Force expressed concern about the effect of lodging a grievance not only with respect to the general subject of career advancement, but more often with particular reference to transfers and denials of promotion. Those members who addressed themselves to this subject more often than not were suspicious that a member lodging a grievance was likely to be faced thereafter with an inappropriate transfer or denial of promotion. The Commission was unable to verify by specific examples that this actually occurred. Nonetheless, the concern of members who appeared before it was sufficiently widespread that it is felt desirable to allay this concern in concrete terms once and for all.

Accordingly, we recommend that:

GRIEV. 7 In no circumstances should information relating to grievances be used in decisions relating to promotions or transfers.

Choice of an Official Language

As indicated earlier in this Report, the Commission believes that the Force, through the vehicle of its administrative procedure, should be sensitive to the linguistic heritage of its members. It is felt that in the area of member grievances, notwithstanding that to some it may appear to be self-evident, the linguistic privileges of the members of the Force should be explicitly provided for. The grievor has the right to pursue his grievance in either official language and the grievance procedure should so provide.

Accordingly, we recommend that:

GRIEV. 8 The Administration Manual be so modified as to indicate to the grievor that he has the right to pursue his grievance in either official language. Any subsequent correspondence with the grievor relating to his grievance should be in the language in which the grievance was initially lodged.

Assistance to Members

From submissions made to us and our assessment of the records of disposition of individual grievances, it became apparent that it is unrealistic to assume that the ordinary member of the Force, if left to his own devices, can either come to an informed and sensible conclusion as to whether to lodge a grievance or, having lodged one, effectively proceed with it through the grievance procedure.

The Force has recognized the need for assistance to members in this regard by providing, in its current procedure, that the grievor may request and secure the assistance of the Division Staff Relations Representative. There may well be occasions when an individual member may wish to use resources other than the Division Staff Relations Representative by way of assistance and we see no reason for restricting the grievor to this one source of aid.

Accordingly, we recommend that:

Griev. 9. The grievor should be entitled to seek assistance from anyone in the preparation and pursuit of his grievance.

Financial Compensation

In certain circumstances, a grievor may choose to secure professional services by way of assistance in the preparation and pursuit of his grievance. There may be occasions in which the requirement for professional assistance arises from the nature of the grievance itself. We are of the opinion that grievances, justified or otherwise, will in many cases serve not only the grievor but the Force as a whole. In these situations, the authorities responsible for disposition of the grievance may conclude that it would be unfair to burden the grievor with what may well be a significant expense in securing such professional advice or assistance.

Accordingly, we recommend that:

Griev. 10 In the discretion of the person who ultimately makes the decision in respect of a grievance, the member

should be entitled to be reimbursed any costs which he has incurred.

Grievor's Access to Information

In the preparation and pursuit of a grievance, it is imperative to ensure that a grievor is given every opportunity to properly document and define his grievance. Since grievances may be judged on the record, a grievor must have access to all information related to his grievance.

Accordingly, we recommend that:

GRIEV. 11 The grievor should be granted access to all information related to his grievance.

Given the nature of current procedures, a grievor intent on continuing a grievance up the chain of command needs access to information developed on his grievance by those authorities who have reviewed the grievance and have disposed of it unfavourably.

As has been repeatedly observed, it is essential in the development of a workable grievance system that it achieve acceptance, as being objective and fair, by the members of the Force. The Commission believes that this goal can be achieved only if the system makes it a requirement that a complete and accurate record of the progress of the grievance be maintained. The record that the Commission has in mind would be one which would include not only the formal documents initiating the various steps in the grievance procedure, but also all of the evidence, documentary or otherwise, considered by the various authorities in the chain of command in disposing of the grievance. It would be incompatible with the concept of an objective review of individual grievances to have such review take place other than on the basis of a full and accurate record. The responsibility for insuring the integrity of this record must rest with the administration.

We, therefore, recommend that:

GRIEV. 12 The grievor should be supplied with a copy of all material used by a Division Review Board in formulating its recommendations.

GRIEV. 13 Any verbal information presented to the Division Review Board or any decision-making authority will be transcribed and a copy made available to the grievor without undue delay.

GRIEV. 14 The grievor should be supplied with a copy of any recommendations or decision in respect of his grievance.

Justification for the Disposition of Grievances

Current procedures place no requirement upon either Division Review Boards or any officer ruling on a grievance to give reasons that justify their recommendations or decisions. However, if a grievor is to understand decisions taken with respect to his grievance and accept such decisions in good faith, it is imperative that he be apprised of the reasons which led to the decision taken. Access to such information is no less important in those cases when a grievor chooses to challenge an unfavourable decision and pursue the matter further.

Accordingly, we recommend that:

GRIEV. 15 The grievor should be provided with written reasons for any decison or recommendation relating to his grievance.

The present procedure contemplates a final review of the disposition of grievances, within the Force, by the Commissioner. By reason of the fact that this is intended to be the last step in the internal grievance procedure, we are of the view that this appeal process should be more specifically spelled out. A time limit for appeal should be provided in order to enable the Force to determine whether the matter has been finally laid to rest or not. Further, there should be some definition of the manner in which the grievor can make his views known to the Commissioner.

Accordingly, we recommend that:

GRIEV. 16 In the event that a decision is made which is unfavourable to the grievor, he should be entitled, within 30 days from the date that he received the written reasons, to ask that the matter be reviewed by the Commissioner and he should be allowed to make representations in writing in seeking to show that the decision is not justified by the reasons.

DIVISION REVIEW BOARDS

We have noted earlier our approval in principle of the establishment of Division Review Boards within the current grievance procedures. While we endorse the use of such boards, we have a number of proposals for improving the manner in which they are presently constituted.

Therefore, we recommend that:

GRIEV. 17 A Division Review Board consisting of three members should be convened to review every grievance. The

Board should ordinarily include one officer and two members from the non-commissioned ranks.

Representation on Division Review Boards

We are in agreement with the current provision which permits a member elected by the members of the division to sit on a Division Review Board. However, we have elsewhere indicated that, in our opinion, such a responsibility should not be assigned to the Division Staff Relations Representative. Since this member does provide assistance to the grievor in the preparation of his grievance, we believe his role as a member of the review board to be untenable.

Consequently, we recommend that:

GRIEV. 18 The Division Staff Relations Representative should not be a member of a Division Review Board.

At the present time, Division Review Boards are so constituted as to require that the two appointees of the Commanding Officer be drawn from the officer cadre. While we acknowledge that many officers by virtue of their status and experience can make a valuable contribution to Division Review Boards, we believe that there are many members other than officers who could contribute an equal amount of experience and knowledge to such an undertaking. To insist that the majority of Board members be officers is to unnecessarily limit the pool of expertise that may be drawn upon in appointing Review Board members.

In our opinion, a prime consideration in the appointment of members to the Board should be the confidence that members of the division have expressed in the candidates appointed. In some cases, members of these boards will undoubtedly be making unpopular recommendations and we believe that such recommendations will be more palatable to members if they are made by men who have earned their confidence.

Another concern is the requirement that appointees to Division Review Boards be drawn respectively from administrative and operational branches of the Force. In our view, this requirement is of secondary importance and should not be included in the criterion of selection for two reasons. First, many members, particularly senior members, have served in both branches of the Force and their current duties will not necessarily reflect the full scope of their expertise. Second, and more importantly, a particular expertise in an area to which a grievance relates is a more preferable guide to selection than a current assignment to one or the other major branches of service.

A final concern with the representation of members on Division Review Boards centres on the current procedures whereby members are placed on such boards. In view of the importance we attach to the requirement that members have confidence in those serving on such boards, we believe that appointees to a Division Review Board should be drawn both from officers selected by the Commanding Officer and members nominated by the members of each division. An added consideration to be taken into account is the fact that, in some cases, the board will be required to review grievances which have arisen as a direct result of decisions made by the Commanding Officer. Such possibilities clearly indicate that means must be found which will ensure the visible independence of review board members.

We have considered various ways in which the preferences of members for staffing of review boards might be accomplished. By way of example, at the time that Division Staff Relations Representatives are selected, a similar selection process might concurrently take place for the purpose of developing a list of nominees. The mechanics of this process are secondary to the principle that there should be a representative list of members' nominees for staffing of review boards, the intention being that those selected are truly representative of the members in a particular division.

This process may be somewhat impractical for smaller divisions, in which event the selection process for the establishment of a particular review board should extend to the list of nominees associated with larger neighbouring divisions.

Finally, since the selection of members for a particular board would be made by the Commanding Officer, albeit from a representative list of nominees, the grievor should have the opportunity to register any objection that he might have to the constitution of the board established to deal with his particular grievance.

Therefore we recommend that:

GRIEV. 19 Members of any Division Review Board established to make recommendations regarding a grievance should be selected by the Commanding Officer from a list of nominees. The list of nominees should consist of officers nominated by the Commanding Officer and others nominated by those of non-commissioned rank. The number of officers on the list should not exceed one-third of the total.

GRIEV. 20 The Chairman of each Division Review Board should be chosen by the members of the Board.

GRIEV. 21 The grievor may object to the appointment of any member of a Division Review Board, such objection should be made in writing to the Commanding Officer who would accept or reject the objection. The objection and the decision should form part of the written record.

GRIEV. 22 In small Divisions, the Commanding Officer should be able to choose Division Review Board members from lists of nominees in neighbouring Divisions.

Access to Information by Division Review Boards

Current procedures provide no explicit authority which would enable a Division Review Board to obtain the information it requires to properly review and formulate recommendations on a grievance. Authority should be granted to Division Review Boards to obtain access to any information they require. This authority should extend to calling witnesses and receiving evidence on oath on matters relevant to the disposition of a grievance. It goes without saying that any information secured in accordance with this principle by the Division Review Board should form part of the record earlier referred to and, thus, be made available to the grievor and any subsequent review authority.

Accordingly, we recommend that:

GRIEV. 23 Explicit authority should be granted Division Review Boards in order that they may have access to such information as they require. This authority should include the power to summon witnesses and hear testimony upon the matters at issue.

Appealing Administrative Instructions

In certain circumstances, there may be grievances which question the continuing practicality or reasonableness of written orders or instructions. We believe that, in appropriate cases, Division Review Boards should have authority to recommend that the provision in question be modified or repealed before reaching a decision on the grievance at hand.

Therefore, we recommend that:

GRIEV. 24 Division Review Boards should be granted authority to recommend, through appropriate channels, that any written order or instruction be modified or repealed and, pending a decision on that recommendation, to defer any further action on the grievance.

The Role of a Commanding Officer

The existing procedure comtemplates that if the Commanding Officer has jurisdiction to rule on a grievance, it will be encumbent upon him to decide whether or not the grievance merits the convening of a Division Review Board. It is open to the Commanding Officer to dispose of the grievance in a manner favourable or unfavourable to the grievor without the benefit of a Division Review Board's recommendation.

Further, if the Commanding Officer doubts his jurisdiction to dispose of the grievance, the existing procedure does not contemplate the convening of a Division Review Board to secure the benefit of its recommendation, either on the matter of jurisdiction or the merits of the case. The Commanding Officer, in matters of want of jurisdiction, is required to simply move the grievance up the chain of command.

Since the Division Review Board exercises a power of recommendation only and since its involvement is vital to the concept of objective review of the merits of individual grievances by an informed representative panel of members, it is our view that it should not be by-passed except in the case of a grievance which the Commanding Officer has jurisdiction to dispose of and intends to resolve in a manner favourable to the grievor.

Accordingly, we recommend that:

GRIEV. 25 The Commanding Officer should convene a Division Review Board to consider all grievances which reach him in order to secure its recommendation, except in circumstances in which he decides to resolve the grievance in favour of the grievor.

Participation of the Grievor Before the Division Review Board

The existing grievance system makes no reference to the opportunity afforded the grievor to be heard before the Division Review Board. In many cases, the grievor would wish to advance argument only with respect to his grievance; on the other hand, there are bound to be cases in which the formulation of a reliable and intelligent recommendation by the Division Review Board will depend upon hearing evidence of the circumstances giving rise to the grievance. If a member has the right to grieve, he must enjoy the concomitant right to present evidence in support of his grievance in appropriate cases.

Accordingly, we recommend that:

GRIEV. 26 The grievor should be entitled to appear before the Division Review Board to make submissions and, in appropriate cases, to tender evidence in support of his grievance.

GRIEVANCE PROCEDURES AT HEADQUARTERS

Current procedures require that a grievance denied by the Commanding Officer of a division is required to pass through three officers at Headquarters before it finally reaches the Commissioner. Specifically, such a grievance must be reviewed by the Officer in charge Staff Relations Branch and forwarded to the Director of Organization and Personnel who may uphold the grievance or make a recommendation to the Deputy Commissioner, Administration. The Deputy Commissioner, Administration, may either rule on the grievance or comment and forward it to the Commissioner. The Commissioner will determine what action is to be taken and will notify the member through channels. His decision is final.

Unlike the Commanding Officers and the Commissioner who have general responsibility for the members under their command, the three officers just noted are responsible for specific aspects of the Force. Furthermore, they are primarily concerned with administrative rather than operational matters. While some grievances will undoubtedly fall within their areas of responsibility, there will be others that will be more concerned with some other aspects of the Force, for example, a particular operational question. In view of this, it seems to us appropriate that a grievance denied by a Commanding Officer should be forwarded directly to the Commissioner for a decision. The Commissioner would, of course, be at liberty to seek the advice of anyone in the Force before making his decision and could, as a matter of routine, forward a copy of his decision and the record on which it is based to the above-mentioned officers for their information. This proposal has the advantage of reducing the number of people who are required to handle the grievance before it reaches the Commissioner. It also ensures that a grievance need only be referred to Headquarters once, since only the Commissioner and not senior members of his staff can rule on the grievance.

According, we recommend that:

GRIEV. 27 If it is not within the Commanding Officer's purview to rule on the grievance, he should forward it, together with the Division Review Board's recommendation, directly to the Commissioner for a decision.

THE ROLE OF THE FEDERAL POLICE OMBUDSMAN IN THE GRIEVANCE PROCEDURE

If the grievance procedure is to gain and hold the confidence of the members it is meant to serve, it is necessary that it be open to review by an authority external to the Force and therefore independent of it. In order to avoid any semblance of divided authority or accountability where grievances are concerned, we propose that this review authority be assigned to the Federal Police Ombudsman who will exercise it in a manner consistent with the limitations imposed on his office in matters relating to discipline procedure.

The Federal Police Ombudsman would review grievances denied by the Commissioner of the Force and make such recommendations as he sees fit. Specifically, when a grievance has been denied by the Commissioner, a member may request the Ombudsman to review the grievance. When a matter is referred to the Ombudsman, he would consider the grievance by examining the written record and, at his discretion, he may make such further enquiries or obtain such further evidence as he sees fit. He would not have the authority to reverse any decisions made with respect to a grievance, but he would be required to express his views and make such recommendations as he sees fit to the Commissioner. These recommendations may be the subject of comment in his annual report to Parliament.

Accordingly, we recommend that:

OMB/GRIEV. 28 In those cases where the Commissioner has denied a grievance, the grievor may request the Federal Police Ombudsman to review the grievance.

A SYSTEMATIC REVIEW OF GRIEVANCES

Grievances, in many cases, are not merely an expression of a personal complaint but may be symptomatic of the attitude of members and their morale generally on a particular subject. Accordingly, in the treatment of grievances lodged by individual members, the Force itself will wish to be sensitive to the remedial potential arising out of a particular grievance from the standpoint of the Force and its members at large. In order to achieve this objective, we regard it as desirable that the Force establish a system of reporting and recording of grievances so that their cumulative effect in any particular area will be capable of assessment from time to time on an on-going basis. We see no need for the involvement of the Federal Police Ombudsman in this area by reason

both of the fact that it is essentially a managerial function, and also the fact that the Federal Police Ombudsman will have a review function in the case of particular grievances in accordance with our earlier recommendation.

Accordingly, we recommend that:

GRIEV. 29 Consideration should be given to establishing a reporting and recording system for grievances similar to that which has been recommended for public complaints.

GROUP GRIEVANCES

Frequently, events will occur which are thought to be unjust or injurious, the effects of which extend beyond the interest of an individual member. That is, a real or imagined hardship may well create resentment or concern equally amongst a number of members. Such circumstances often arise out of adverse working conditions or out of seemingly unreasonable or inappropriate interpretation or application of standing orders or administrative directives. At the present time, Regulations or administrative instructions do not specifically contemplate that, where numerous persons have the same interest in one cause or matter, a single grievance may be advanced on behalf of or for the benefit of all persons so interested.

With the establishment of the Division Staff Relations Representative Program, some recognition has been given to the desirability of a vehicle for the collective expression of dissatisfaction or desire for change. Such matters can be communicated by these representatives at meetings with the Commissioner and senior officers of the Force.

It is the view of this Commission that the current procedures should accommodate group or collective grievances. Where there is a common interest and a common cause of complaint or resentment, group or collective action appears to us to be desirable if the relief sought is beneficial to all those directly concerned.

Accordingly, we recommend that:

GRIEV. 30 A group of members with a common cause of complaint should be allowed to have a single grievance lodged on behalf of the group.

APPENDICES

APPENDIX A

CANADA

THE COMMISSION OF INQUIRY RELATING TO
PUBLIC COMPLAINTS, INTERNAL DISCIPLINE
AND GRIEVANCE PROCEDURE WITHIN THE
ROYAL CANADIAN MOUNTED POLICE

PUBLIC NOTICE

The Commission of Inquiry established by authority of Order-in-Council P.C. 1974-1338 dated June 6, 1974 to investigate and report upon

a) the current methods of handling complaints by members of the public against members of the Royal Canadian Mounted Police; and

b) whether existing laws, policies, regulations, directives and procedures, relating to discipline and the grievance procedure within the Royal Canadian Mounted Police are susceptible of improvement and, if so, by what means such improvement should be effected;

invites public participation by way of written submissions and public or private meetings or hearings. The confidentiality of all submissions will be respected.

Interested citizens, including members and former members of the Royal Canadian Mounted Police, are requested to correspond with the Commission of Inquiry, 18th Floor, The Laurentian Towers, 44 Bayswater Ave., Ottawa, expressing their views relating to the above questions. Anyone wishing to meet with the Commission of Inquiry or members thereof should also write indicating their desire to do so. The Commission will do its utmost to accommodate these requests.

The Commission requests that all submissions be forwarded on or before November 30, 1974 to either

The Executive Secretary
Commission of Inquiry
18th Floor
The Larentian Towers
44 Bayswater Avenue
Ottawa, K1Y 4K3
Ontario

or

P.O. Box 3070
Ottawa, K1Y 4J3
Ontario

His Honour Judge R.J. Marin, Chairman
R. Bourne, Commissioner
D.K. Wilson, Commissioner

C.E. Belford, Executive Secretary
D. Scott, Counsel
H. Yarosky, Counsel

Dated at Ottawa in
The Province of Ontario
this 29th day of August,
1974

APPENDIX B

CANADA

The Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police

PUBLIC NOTICE

ANNOUNCES THAT SUBMISSIONS WILL BE RECEIVED BY THE COMMISSION UNTIL

MARCH 31st, 1975

and that subsequent to that date no further subaissions will be received by the Commission.

Subaissions may be sent to either:

C.E. Belford,
Executive Secretary
Commission of Inquiry - R.C.M.P.
18th Floor
The Laurentian Towers
44 Bayswater Avenue
OTTAWA, Ontario K1Y 4K3

or

David W. Scott, Esq.
Associate Counsel
Commission of Inquiry - R.C.M.P.
c/o Scott & Aylen
Barristers & Solicitors
170 Laurier Avenue West
OTTAWA, Ontario K1P 5V5

By Order of the Commission

January 30, 1975

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ᒫᑭ 31ᖅ, 1975-ᒧᐊᖅᑐᑦ.

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ᒥᑦᑕ ᐱᐅᔪᓐ, (C.E. BELFORD,
ᐊᒥᓱᓕᖅᑐᖅ, EXECUTIVE SECRETARY,
COMMISSION OF INQUIRY-RCMP
18TH FLOOR,
THE LAURENTIAN TOWERS ᐅᓪᓗᒥᒃ
44 BAYSWATER AVE.
OTTAWA, ONTARIO K1Y 4K3

DAVID SCOTT, ESQ
ASSOCIATE COUNCIL
COMMISSION OF INQUIRY
% SCOTT AND AYLEN
BARRISTERS AND SOLICITORS
170 LAURIER AVE, WEST
OTTAWA, ONTARIO K1P 5V5,

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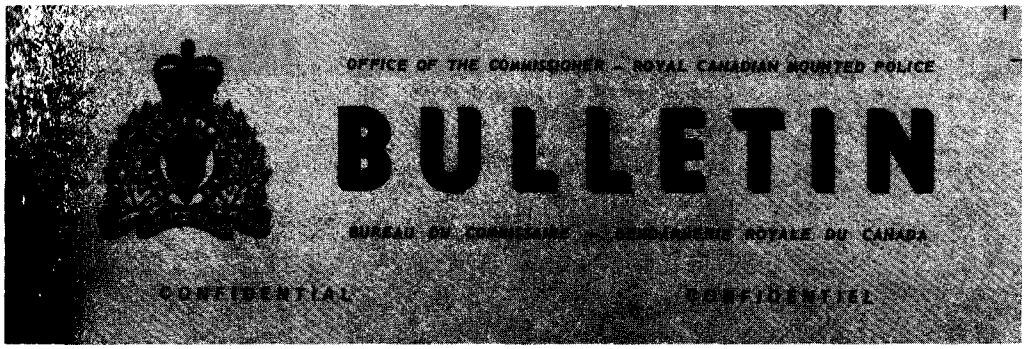
ᔮᓐᓇᒪ 30, 1975

APPENDIX C



GENERAL ORDERS — 7 September / *Septembre* 74 — ORDRES GÉNÉRAUX

– PART ONE –

– PREMIÈRE PARTIE –

COMMISSION OF INQUIRY INTO DISCIPLINE IN THE R.C.M.P.

The following letter was received from Judge René J. Marin, Chairman of the Commission of Inquiry into discipline in the RCMP, in response to my offer of our communications channels as a vehicle for the Commission to communicate with all members.

"The Commission of Inquiry has, as its terms of reference, matters which deeply affect and concern all members of the Force, regardless of rank or grade, years of service or geographic location. It is mandatory, therefore, that the Commissioners and I gain from insight into the perceived problems and proposed solutions as seen by the members. I wish to invite participation by members of the R.C.M.P. through which we may receive this insight.

As with our solicitation of public participation, I am requesting that written communications be made by members to the address noted hereunder prior to October 31, 1974. Although this date may be flexible, it is desirable that submissions be received as close to that date as possible. Written submissions should be as comprehensive as possible and should indicate whether the members, individually or as represented by someone of their choice, wish to appear before the Commission for the purpose of entering into discussion. Any meetings between members of this Commission and members of the Force may be public or private, depending on the wishes of the members appearing.

All written submissions will be held in strict confidence. Only the Commissioners and the Commission staff will be aware of the contents of the submissions and their authors. By the same token, members requiring private meetings with our Commissioners will have their spoken remarks protected in like manner. It is hoped that these assurances will permit members to frankly disclose areas of concern and constructive comment for reassessment of current procedures.

COMMISSION D'ENQUÊTE SUR LA DISCIPLINE À LA G.R.C.

À la suite de l'offre que je lui avais faite de se servir de nos moyens de communication pour atteindre tous nos membres, M. le juge René J. Marin, président de la Commission d'enquête sur la discipline à la G.R.C. nous a adressé la lettre suivante.

"Les questions qui touchent profondément les membres de la Gendarmerie, peu importe le grade, le nombre d'années de service ou le lieu d'affectation, entrent dans les attributions de la Commission d'enquête. Les commissaires et moi-même devons obligatoirement faire preuve de perspicacité à cet égard; c'est pourquoi je désire inviter les membres de la Gendarmerie à nous indiquer les problèmes constatés et les solutions qu'ils y proposent.

Pour ce qui est de notre demande concernant la participation du public, je prie les membres de faire parvenir leurs communications à l'adresse sous-mentionnée, avant le 31 octobre 1974. Bien que cette date ne soit pas fixe, il serait souhaitable que ces communications soient transmises le plus près possible de cette date. Les communications devraient être aussi complètes que possible et il faudrait y préciser si les membres désirent paraître eux-mêmes devant la Commission ou y déléguer quelqu'un de leur choix, pour participer aux délibérations. Toute rencontre entre les membres de cette Commission et les membres de la Gendarmerie peut être publique ou privée, selon le désir de ces derniers.

Toutes les communications seront strictement confidentielles. Seuls les commissaires et le personnel attaché à la Commission connaîtront le contenu des communications et le nom des auteurs. De plus, les propos des membres qui exigent la tenue de réunions à huis clos avec les commissaires bénéficieront d'une protection semblable. Nous espérons que, sur cette assurance, les membres exprimeront franchement leurs préoccupations et discuteront de façon constructive afin de faciliter la réévaluation des procédures actuelles.

COMMISSION OF INQUIRY INTO DISCIPLINE IN THE R.C.M.P.
(Continued)

The location and timing of meetings to be held will be dictated by the response of members and the degree to which it is indicated that meetings or hearings are desirable. Every effort will be made to accommodate those who wish to meet with us.

The Commissioners and I are hopeful that this message will elicit the response so necessary to our work. Written submissions should be addressed to Charles E. Belford, Executive Secretary, Marin Commission of Inquiry, 44 Bayswater St., 18th Floor, Ottawa, Ontario.

Thank you for your cooperation in this matter.

Sincerely yours,

Judge René J. Marin

Chairman."

COMMISSION D'ENQUÊTE SUR LA DISCIPLINE À LA G.R.C.
(suite)

On choisira le moment et le lieu des rencontres à venir selon l'intérêt manifesté par les membres et la plus ou moins grande nécessité de tenir ces réunions ou séances. On ne négligera aucun effort pour faciliter les choses à ceux qui désirent nous rencontrer.

Les commissaires et moi-même souhaitons que la présente lettre suscite la réaction si indispensable à notre travail. Les communications doivent être adressées à M. Charles E. Belford, secrétaire exécutif, Commission d'enquête Marin, 44, rue Bayswater, 18e étage, Ottawa (Ontario).

Je vous remercie de votre collaboration et vous prie d'agréer l'expression de mes sentiments distingués.

Le président,

René J. Marin, juge."

APPENDIX D

communication

TO: All members of the R.C.M.P.

The General Orders, dated September 7, 1974, contained an open letter to the members outlining the establishment of a Commission of Inquiry into certain aspects of the R.C.M.P., including matters relating to the discipline and grievance procedure within the Force.

The Commission will hold public hearings from now until the middle of March 1975 and will visit each province to hold public or private hearings. Daily newspapers will announce the date and place of the hearings and anyone who corresponds with the Commission and expresses an interest to meet privately with the Commission will be advised by letter of the day, time and place at which such a meeting may be held.

Members who wish to present their views to the Commission but who are, for any reason, unable or ill-disposed to attend a meeting, may call Ottawa at Commission's expense and may be provided with such expense funding as may be necessary to assist attendance at a predetermined location or any other reasonable accommodation which may be requested.

Members may wish to arrange a conference call to the Commission and the Commission will assume the charges if the call is placed to Ottawa, 995-8258.

It is essential that this Commission have the benefit of your experience and professional opinion and your participation is invited. All materials, letters and identities relating to private hearings will be kept confidential. Those submissions where confidentiality has been requested will be similarly protected.

Should you wish to make any representation to the Commission, we would ask that you notify the Executive Secretary, C.E. Belford, 18th Floor, 44 Bayswater Avenue, Ottawa, Ontario K1Y 4K3, or telephone (613) 995-8258.

Chairman – Président
Judge René J. Marin Juge

À: Tous les membres de la G.R.C.

L'arrêté-en-conseil du 7 septembre 1974 exposait à tous les membres les lignes directrices instituant une Commission d'enquête dont le mandat était de faire enquête sur diverses questions relatives à la G.R.C., dont la discipline interne et le règlement des griefs au sein de la gendarmerie.

La Commission tiendra des audiences publiques à compter d'aujourd'hui jusqu'à la mi-mars 1975, puis se transportera d'une province à l'autre afin d'y tenir des audiences tant publiques que privées. La date ainsi que le lieu des audiences seront communiqués par la voie des journaux. Toute personne intéressée à se présenter devant la Commission au cours d'une rencontre privée et qui en exprime le voeu à la Commission sera avisée par écrit de la date, l'heure et le lieu de cette rencontre.

Les personnes désirant ainsi se faire entendre devant la Commission et qui, en raison de quelque empêchement, ne peuvent se présenter à la rencontre, pourront téléphoner à Ottawa aux frais de la Commission pour l'aviser de ce contre-temps. La Commission pourra, s'il y a lieu, leur fournir les fonds nécessaires afin qu'ils rencontrent la Commission à un endroit déterminé ou afin de pourvoir à toute autre modalité de rencontre requise qui soit raisonnable.

Les membres qui voudraient prendre part à une réunion pourront en aviser la Commission par téléphone. La Commission en assumera les frais si l'appel est reçu à Ottawa, au numéro 995-8258.

La Commission estime qu'il est essentiel qu'elle puisse profiter de votre expérience et de votre expertise professionnelle. Vous êtes donc cordialement invités à participer à ses travaux. Il est entendu que toute pièce, communication ou identité d'une personne, relativement aux audiences privées, demeurera confidentielle. Aussi, toute déposition demeurera confidentielle si la personne qui l'a faite exprime le désir qu'il en soit ainsi.

Si vous désirez vous faire entendre devant la Commission, nous vous prions d'en communiquer votre intention au Secrétaire exécutif, C.E. Belford, 18ième étage, 44 avenue Bayswater, Ottawa, Ontario K1Y 4K3, ou, au téléphone (613) 995-8258.

Commissioners (613) 995-8258

R. Bourne, R.A. Potvin, D.K. Wilson, R. Wimmer

Commissaires (613) 995-8258

COMMISSION OF INQUIRY RELATING TO PUBLIC COMPLAINTS, INTERNAL DISCIPLINE AND GRIEVANCE PROCEDURE WITHIN THE ROYAL CANADIAN MOUNTED POLICE.

COMMISSION D'ENQUÊTE SUR LES PLAINTES DU PUBLIC, LA DISCIPLINE INTERNE ET LE RÈGLEMENT DES GRIEFS AU SEIN DE LA GENDARMERIE ROYALE DU CANADA.

44 BAYSWATER, OTTAWA, CANADA K1Y 4K3 (613) 995-7630

APPENDIX E

communication

17-02-75

To all Members of the R.C.M.P.

As Chairman of the Commission of Inquiry — RCMP, I would like to take this opportunity to advise the members of the Force that the Commission will be receiving submissions from members and the public until March 31st, 1975. After March 31, 1975, the Commission will begin its deliberations and drafting of the Report and thus will be unable to accept further submissions.

I might say at this time that the Commissioners are quite pleased with both the number of responses from members of the Force and their quality.

I would like to thank those who have contributed written and verbal submissions. I know that I convey the sentiments of all the Commissioners when I say that these submissions constitute a substantial benefit to the Commission's undertakings.

Sincerely yours,

Chairman — Président
Judge René J. Marin Juge

A tous les membres de la G.R.C.

En ma qualité de président de la Commission d'enquête — GRC, je saisis l'occasion qui m'est offerte de vous faire part que la Commission est disposée à recevoir vos représentations et celles du public jusqu'au 31 mars 1975. Après cette date, la Commission entreprendra une nouvelle étape, celle de ses délibérations et de la rédaction de son rapport; il lui sera donc impossible de considérer les représentations soumises après le 31 mars 1975.

Dès maintenant, je peux vous assurez que le nombre et la qualité des interventions en provenance des membres de la G.R.C. ont vivement impressionés les commissaires.

Je remercie ceux qui nous ont transmis leurs points de vue, tant sous forme orale qu'écrite. Les commissaires et moi avons le sentiment que vos interventions représentent une contribution importante et essentielle aux travaux de la Commission.

Bien à vous,

Commissioners (613) 995-8258

Commissaires (613) 995-8258

R. Bourne, R.A. Potvin, D.K. Wilson, R. Wimmer

COMMISSION OF INQUIRY RELATING TO PUBLIC COMPLAINTS, INTERNAL DISCIPLINE AND GRIEVANCE PROCEDURE WITHIN THE ROYAL CANADIAN MOUNTED POLICE.

COMMISSION D'ENQUÊTE SUR LES PLAINTES DU PUBLIC, LA DISCIPLINE INTERNE ET LE RÈGLEMENT DES GRIEFS AU SEIN DE LA GENDARMERIE ROYALE DU CANADA.

44 BAYSWATER, OTTAWA, CANADA K1Y 4K3 (613) 995-7630

The Committee of Council have had before them the annexed Report, dated August 27. 1873, from the Honorable the Minister of Justice, recommending that a Police Force in and for the North West Territories be constituted in accordance with the provisions of the Act 36th Vic. Cap 35, and submitting certain suggestions with respect to the organization of the Force and they respectfully advise that a Police Force be constituted accordingly and organized as recommended in the said annexed Report.

John A. Macdonald