ANNUAL REPORT

1992-1993

ROYAL CANADIAN MOUNTED POLICE

EXTERNAL REVIEW COMMITTEE

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Royal Canadian Mounted Police
External Review Committee

CANADA

Comité externe d'examen de la
Gendarmerie royale du Canada

Chairman Président

June 30, 1993

The Hon. Doug Lewis, P.C., Q.C.
Solicitor General of Canada
13th Floor
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
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Mr Minister:

I hereby submit, for tabling in Parliament, the Annual Report of the RCMP External Review Committee for the fiscal year 1992-93, pursuant to section 30 of the *Royal Canadian Mounted Police Act* and your authorizing me to perform the duties of Chairman.

This seventh annual report was to be the Committee's last, however circumstances have now changed and the Committee will not be amalgamated with the RCMP Public Complaints Commission in the immediate future. I take pleasure and pride in the organization that has developed over the last seven years and particularly in the professionalism of its staff, and we will continue to fulfil our mandate under the *RCMP Act* until such time as Parliament decides to modify that mandate.

I take this opportunity to thank you, your predecessors and staff, and the Commissioner, officers and members of the RCMP for your continued support of the Committee and its work over the last seven years.

Yours truly,

F. Jennifer Lynch, Q.C.
Acting Chairman

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Chairman

Vacant

Vice-Chairman and Acting Chairman

F. Jennifer Lynch, QC

Members

Joanne McLeod, CM, QC

William Millar

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I INTRODUCTION

BACKGROUND

The RCMP External Review Committee was created by the 1986 amendments to the *RCMP Act*. The Committee's mandate is to provide an independent review of grievances, formal discipline, and discharge and demotion appeals filed by members of the RCMP.

Regular and civilian members of the RCMP are not allowed to join a union and are not able to bargain collectively; consequently they are not subject to the grievance resolution procedures established under the *Public Service Staff Relations Act* or the *Canada Labour Code*. The Committee is their main recourse, if they have a dispute with their employer.

Matters coming within the Committee's jurisdiction (see below) are referred to it by officers of the RCMP on behalf of the Commissioner. Once Committee staff have ensured that the material received from the RCMP is complete, the Chairperson reviews it. The Chairperson has the following options:

a) to agree with the disposition of the matter by the RCMP and so advise the parties and the Commissioner of the RCMP;
b) to disagree with the disposition of the matter by the RCMP and advise the parties and the Commissioner of the RCMP of the Chairperson's findings and recommendations; or
c) to initiate a hearing to consider the matter and designate the member(s) of the Committee who will conduct the hearing. Following the hearing, the member(s) designated will provide the Committee's findings and recommendations to the parties and the Commissioner.

In practice, even when in substantial agreement with the Force's disposition of a matter, the Chairperson will provide the parties and the Commissioner with findings and recommendations explaining why the Force's disposition is appropriate.

The Commissioner is not required to follow the Committee's findings and recommendations, although he is required to provide the Committee and the parties with an explanation why he is not following them. In practice, the Commissioner has usually followed the findings and recommendations.

The three systems established by the *RCMP Act* are different, although they share procedural similarities. In the case of grievances, the process is a paper-based one. There are no internal hearings and the material provided to the Committee consists of the member's grievance, the report of the Grievance Advisory Board, the decision of the Force's first level adjudicator ("Level I adjudicator"), any other correspondence exchanged between the member and management, and any other documentation relevant to the grievance. Although a relatively informal process, the *RCMP Act* imposes specific obligations on members: first that they be "aggrieved" and second that they respect certain

time limits. The Committee has had to address these issues on a number of occasions, as they are relatively new to the membership and were not fully understood at first.

When the case is a formal discipline appeal, there is a different process prior to the referral to the Committee: an internal hearing before an Adjudication Board. The Committee is provided with a copy of the transcript, any exhibits filed before the Board, the Board's decision, the appeal and the reply. Although more formal than grievances, the process is not as formal as a court proceeding. In addition to addressing the question whether particular activities constitute misconduct, the Committee has addressed questions such as the admissibility of evidence and procedure before Adjudication Boards. It has also considered issues such as credibility of witnesses and the type of evidence required to establish particular allegations. It also makes recommendations regarding the appropriate sanction to be imposed on a member when misconduct has been established.

Discharge and demotion proceedings are more akin to formal discharge proceedings than to grievances. An internal board reviews the evidence against a member, which is entirely documentary, and testimony or documentary evidence for the member, and determines whether the member is able to fulfil the requirements of the position the member occupies. On appeal, the Committee receives a copy of the documentary material, a copy of the transcript of the Board proceedings, as well as the appeal and the reply. The Committee received its first discharge and demotion matter during this fiscal year. It had not issued its findings and recommendations by March 31, 1993.

Because it represents the broad public interest, the Committee tries to place particular issues in a broader context when making its findings and recommendations. This ranges from reviewing RCMP policies in light of policies in other government departments—some of which clearly apply to the RCMP—to considering how similar issues are dealt with in private sector environments, or in other police forces. Where appropriate, the Committee has not hesitated to recommend that aspects of RCMP policy be changed to respect the rules of natural justice, for example, or to provide for a more workable policy. In most cases, though, the resolution of a particular grievance has turned on the correct application and interpretation of RCMP policy. Since the procedures under the *RCMP Act* were relatively new for the Force and its members, in the early years of its mandate the Committee has taken great care to review and explain various principles of administrative law and procedure to both members and management of the Force.

JURISDICTION

As noted in previous annual reports, the Committee's jurisdiction is not clearly spelled out in any one place. Decisions of discharge and demotion boards may be appealed to the Commissioner by either party on any ground. Unless the member requests

otherwise, before the Commissioner considers the appeal it is referred to the Committee for review. The decision by an adjudication board that an allegation against a member has or has not been established may be appealed by either party on any ground. The member against whom an allegation has been established may appeal the sanction imposed on any ground; the appropriate officer, however, may only appeal on the ground that the sanction is not one provided for by the *RCMP Act*. As in the case of discharge and demotion, unless the member requests otherwise, these appeals are referred to the Committee before the Commissioner reviews them, with the exception that where the only sanctions imposed were informal in nature, the matter is not referred to the Committee.

Grievances are even more complicated. Under the *RCMP Act*, the type of grievances to be reviewed by the Committee are to be established by regulation. The *RCMP Regulations* provide that grievances relating to the following matters are to be referred to the Committee:

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

As reported in previous annual reports, the Commissioner advised the Committee that grievances dealing with a list of 17 subjects would be interpreted to fall within the ambit of paragraph (a); this was subsequently reduced to 16. Hence, the RCMP establishes by regulation what the Committee's jurisdiction will be; the Commissioner of the RCMP has indicated how paragraph (a) is to be interpreted; and, in any given situation, officers of the Force, acting on behalf of the Commissioner, determine whether a particular grievance falls within the Committee's jurisdiction. The Committee is not aware of any matter that should have been referred to it but was not.

RELATIONSHIP WITH OTHER ORGANIZATIONS

As this was to have been the Committee's last Annual Report (see below), it wanted to take this opportunity to express its sincere thanks to a number of other individuals and organizations that have been associated with the Committee throughout its existence.

a) *The Royal Canadian Mounted Police*

Since its creation, the Committee has enjoyed a high degree of support from management of the Force and this has

made the Committee's task easier to accomplish. The Commissioner and his officers have demonstrated a sincere willingness to benefit from the external review process. They have taken the Committee's recommendations in the spirit in which they were made, and they have never hesitated to advise the Committee, through appropriate channels, of their views.

The Committee also wishes to express its appreciation to the members of the Force who have had faith in the Committee and supported its work, particularly the members and Executive of the Division Staff Relations Representative program. Without their active support and encouragement, the Committee's work would have been much more difficult to accomplish.

b) *The Solicitor General*

The Committee is responsible to Parliament through the Solicitor General. The nature of its work, though, is such that it would be inappropriate for there to be any day-to-day discussion between the Solicitor General and the Chairperson. The current Solicitor General and his predecessors have all struck an excellent balance between the need to recognize the Committee's independence and the importance of offering support and advice when required. The Committee has benefitted from this support and understanding of its role, and greatly appreciates it.

c) *The Solicitor General Secretariat*

Although not a part of the Solicitor General Secretariat, the Committee has consistently enjoyed a high degree of cooperation and support from the Deputy Solicitor General and his staff. They have provided Committee staff with advice and support on many issues. Without their active participation, the Committee's work would have been much more difficult to accomplish.

II THE YEAR UNDER REVIEW

In his Budget Speech on February 25, 1992, the Minister of Finance announced that the RCMP External Review Committee and the RCMP Public Complaints Commission would be amalgamated. The Budget Papers emphasized that the consolidation was intended "...to achieve savings in administrative overhead and other efficiencies in program delivery, and to avoid duplication."

While adhering to its primary purpose—the review of cases referred to it by the Commissioner of the RCMP—much of the Committee's effort during the past year has been devoted to preparing for the amalgamation. As of March 31, 1993, Bill C-93, part of which provides for the amalgamation through the creation of the Independent Review Commission for the RCMP, was still before the House of Commons. Under this legislation, the functions of the Committee will be taken over, without change, by the Independent Review Commission. The members of the Committee will become members, and the Vice-Chairperson will become Deputy Chairperson, of the new Commission. Safeguards have been incorporated in the Bill to ensure that material which is obtained by the Commission in its review of grievances, formal discipline, and discharge and demotion appeals will not be used in the review of public complaints. Where an incident results in a public complaint and one of the other matters, the first will be reviewed by the Chairperson of the Commission while the second will be reviewed by the Deputy Chairperson, thereby ensuring that each review is impartial and unaffected by the other.

Extensive meetings were held with representatives of the Public Complaints Commission in order to plan the structure of the Independent Review Commission. Of importance was the identification of the personnel needs of the new Commission in order to be able to advise staff of their roles in the Commission. As a result, four of the Committee's staff will continue to work for the new Commission. Of the remainder, all but two employees had found other positions within the federal sector, or have taken retirement.

As a result of this restructuring of the Committee, the research and communications function has effectively been abolished. The Committee continues to send bi-monthly communiqués of its Findings and Recommendations to the Force. It has also continued to prepare and distribute Summaries of its Findings and Recommendations to the holders of its Decisions binder.

During the year, members of the Committee and staff attended the Canadian Symposium on Police Oversight of Law Enforcement, the meeting of the International Association of Civilian Oversight of Law Enforcement and a joint annual meeting with the RCMP Public Complaints Commission.

The position of Chairperson of the Committee and one member's position remained vacant throughout the year. The Vice-Chairperson continued as

Acting Chairperson. The appointments of the Vice-Chairperson and the other two members of the Committee expired in January 1992; all three were reappointed for five-year terms.

CASES

As can be seen from the following selection of cases reviewed by the Committee during 1992-93, the issues dealt with by the Committee are varied. In addition, matters referred to the Committee are often decided on different grounds than those identified by grievors and/or Level I adjudicators. This is particularly the case with procedural issues, such as time-limits and standing, which cut across all grievances.

a) *Grievances*

i) *Goods and Services Tax (GST) on a new residence*

A member was transferred to a new detachment. He bought a new house from a builder and was charged Goods and Services Tax (GST) on the purchase price. He claimed reimbursement of the GST from the Force. This claim was denied. Slightly more than two months later, he filed a grievance and requested an extension of the 30-day time limit provided by paragraph 31(2)(*a*) of the *RCMP Act*, on the grounds that he had made an effort to initiate the grievance procedure during the 30-day period. The Force never responded to the grievor's request for an extension, however it processed the grievance in the normal manner.

The Committee considered whether the grievance was out of time and whether the grievor was entitled to be reimbursed the GST he paid on the new home. In view of the fact that the Force never responded to the grievor's request for an extension but processed the grievance in the normal way, the Committee found that an extension had been granted retroactively, pursuant to subsection 47.4(1) of the *RCMP Act*. The Committee considered the legislation establishing the GST and the RCMP *Relocation Directive*, and concluded that GST could only be reimbursed if the principal expenditure (*i.e.* the purchase of the residence) was reimbursed. As this was not the case, the grievor was not entitled to be reimbursed the amount of the GST. The Committee also noted that prior to the establishment of the GST, a part of the cost of new homes represented the builder's payment of the old Federal Sales Tax (FST) on materials used in the construction of the home. As the FST had never been reimbursed to members and the GST simply replaced the FST, there was no reason why the GST should be reimbursed.

With regard to the question whether the grievance was presented on time, the Commissioner was of the view that extensions should not be granted once the initial 30-day period has expired. Consequently, he was of the view that the grievance should not have proceeded, but that as the grievor had proceeded in good faith, he should not be penalized. The Commissioner agreed with the Committee on the substantive issue that the GST should not be reimbursed.

ii) *Mileage and meal allowances*

A member based at an airport detachment was assigned to work downtown for a short period of time. He claimed mileage and meal allowances as well as overtime. His claim was rejected and his grievance was denied at Level I. The member appealed the Level I decision but made no submissions.

Although it is a relatively informal one, the grievance procedure is adversarial. Grievors are required to establish, on a balance of probabilities, their entitlement to any relief sought. In order to overturn a Level I decision, grievors must demonstrate how the Level I decision is incorrect; simple disagreement with the results does not suffice. As the grievor had not made it clear to the Committee on what grounds he was seeking a Level II review, the Committee was not in a position to recommend that the Level I decision be overturned. The Commissioner agreed with Committee.

In another file, a member based at a satellite operation was required to report to local headquarters for a limited period. He claimed a travel allowance for the distance between the two locations. This request was denied, although some other members involved in the same operation did receive allowances. The member grieved and his grievance was denied at Level I on the grounds that RCMP policy, rather than Treasury Board policy applied and, under the RCMP policy, the grievor's worksite had been changed for the duration of his assignment. The grievor appealed and sought the Committee's views on the correct definition of his worksite and claimed that he should have been treated in a similar fashion to the members who had received allowances.

The Committee did not feel the need to address the distinctions between Treasury Board policy and the RCMP *Travel Directive* as it was of the view that the same result was achieved under both. Both documents provide that travel allowances are intended to reimburse expenses incurred as a result of travel, they are not intended to provide a financial benefit to employees. The grievor had not demonstrated that he had incurred any additional expenses. Although there was a short distance between the regular work location and the local headquarters, the grievor did not establish that he had to travel further or that he was required to attend at his regular location prior to reporting to the local headquarters. In addition, he did not demonstrate that his situation was similar to that of other members who were reimbursed. The Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation, noting that the *RCMP Act* requires that members be aggrieved in order to present a grievance. As the grievor had not met the burden of demonstrating that he had been aggrieved, his grievance was denied.

A number of members based at an airport detachment were seconded to a downtown office during an eight-month period. There had previously been discussions between the Officer in charge of the airport detachment and the Officer in charge of the downtown

office regarding the appropriate way of responding to the downtown office's need. Finally it was agreed that members who used private vehicles to drive from the airport to downtown would be compensated at the lower of the two rates provided by the travel policy, *i.e.* the "employee-requests" rate rather than the "employer-requests" rate.

During the secondment, the members submitted claims for mileage at the employee-requests rate. Some members subsequently came to the conclusion that they should have been reimbursed at the higher, "employer-requests" rate and, two months later, submitted claims for the difference between the two rates. These claims were denied. The grievor grieved this decision claiming that he did not know of the agreement between the two Officers and that as there was no other viable alternative, he felt he had been asked to use his own automobile. The grievance was denied at Level I and the grievor appealed.

The Committee found that, on a balance of probabilities, the grievor was aware of the arrangement prior to or during his secondment. It concluded that it was the application of this agreement that aggrieved the grievor and the denial of his claim for additional compensation merely confirmed the earlier decision. As the grievor had submitted his grievance six months after his secondment ended, he had submitted it outside the time limit. In addition, the Committee found that the grievor was estopped from grieving the application of the agreement to him as he had led the Force to believe that he had accepted its provisions. Consequently, the Committee recommended that the grievance be denied.

The Commissioner agreed with the Committee and denied the grievance on the basis that it was filed outside the statutory period of 30 days.

iii) *Home Equity Assistance Program (HEAP)*

A member who was transferred sought benefits under the Home Equity Assistance Program. Under this program members are reimbursed for a portion of losses incurred on the sale of a principal residence if certain conditions are met: there must have been a 10% market decline during the period a home has been owned and the member must have suffered a loss on the sale of the home. The applicable policy does not specify how the 10% market-decline criterion is to be established. In this case the member and the Force each considered several different approaches to determine whether this criterion had been met. The member's methods demonstrated a sufficient decline, the Force's did not. The member grieved the Force's refusal to provide him assistance under the program.

The Committee considered the detailed calculations provided by the grievor and the Force. Of the methods used, none were completely satisfactory as they did not limit the effect of extraneous factors, such as improvements to the property. The Committee concluded that an appropriate method would compare the value of improved properties with improved ones, or of unimproved properties with unimproved ones. In

the alternative, or in addition, general market statistics could be used, as the applicable policy requirement is that there be *some* evidence of 10% decline, not that a particular method indicate such a decline. The Committee recommended that the matter be referred back to the original decision maker to ascertain whether there was *some* evidence of a 10% market decline, using one of the methods identified by the Committee.

The Commissioner agreed with the Committee's analysis and ordered that new calculations be done comparing unimproved homes with unimproved ones, or improved homes with improved ones, and that he be provided with the revised figures in order to make the final determination whether the 10% market-decline criterion had been met. When the revised figures were provided to the Commissioner, he determined that the criterion had been met and he awarded the member reimbursement under the program.

iv) *Reimbursement of Legal Fees on Relocation*

A member was relocated and bought a new house; the builder failed to pay all the subcontractors and liens were registered against the property. The member incurred legal expenses to clear the liens and claimed reimbursement from the Force. This was denied on the grounds that the liens were a civil matter between the builder and the member, and the Force had no authority to pay for expenses incurred after the member obtained title. The member grieved and the initial decision was upheld at Level I. The grievor appealed.

The Committee found that the list of reimbursable expenses provided by the *Relocation Directive* was not exhaustive; the *Directive* provides for reimbursement of legal fees required to obtain a *clear* title to property and provides *examples* of the type of expenses that can be reimbursed. The Committee's analysis demonstrated that clearing the liens was necessary to obtain clear title. The grievor had made appropriate provision for payment to subcontractors in the purchase agreement, therefore the Committee recommended that the legal fees be reimbursed. The Committee also noted that it took too long for the Force to deny the grievor's request for reimbursement.

The Commissioner agreed with the Committee's analysis and upheld the grievance. He also commented that the six-month delay was not in the interests of the Force or its members.

v) *Residency Policy*

A member was relocated within her division. The divisional residency policy required members to live within detachment boundaries. Prior to the relocation, her child attended a minority official language school. The member had concerns about the availability of minority language schooling in the new location. She hoped that arrangements could be made so that the child could continue to attend the school and proceeded with the transfer. When it became clear that appropriate arrangements could not be made, the member sought an exception from the division's residency

requirements. This exception was denied and the member grieved the decision on a number of grounds. The grievance was denied at Level I and the grievor appealed, arguing that her submissions had not been addressed.

The applicable residency policy allowed for exceptions but did not indicate on what grounds such exceptions were to be granted. Even though such decisions are a managerial prerogative, which should not be lightly overturned, the Committee was of the view that the grievor had demonstrated ample grounds to justify an exception from the policy. First, the grievor's ex-husband had previously challenged her custody of the child on the grounds that the child would lose its identification with the minority official language; the grievor's custody had been continued in part because she had been able to demonstrate the availability of minority official language education. Second, there was no minority official language education available within a reasonable distance of the detachment boundaries. Although immersion classes were available at her new residence, immersion is not an adequate alternative for a child who is already fluent in the language. Finally, the grievor was able to demonstrate that the detachment's operational efficiency had not been impaired by her actual residence outside the detachment, and would not be impaired in the future; the Force did not seriously challenge this. Consequently the Committee recommended that the grievor be granted an exception from the divisional residency policy.

The Commissioner agreed with the Committee that the grievor should be granted an exception to the policy. He reiterated his view that management of the Force has a right to establish residency requirements and that he could not foresee the day when all members will be able to live where they want; however he was of the view that the grievor had proposed an acceptable compromise which would allow her to respond to operational requirements.

Another member applied for promotion to a specialized position. He was advised that if he was selected he would be required to move into Force-provided accommodation. The member indicated that he accepted the condition but suggested that he might have difficulty selling his residence and that he would seek an exception from the policy to avoid uprooting his family. The member was selected for the position and he made a formal request for an exception from the requirement to reside in Force-provided accommodation. This was denied and the member was advised that if he did not move into the Force-provided accommodation his appointment would be rescinded. The member took steps to list his residence for sale.

Several months later it came to the Force's attention that the member's residence was no longer listed for sale; apparently the member was awaiting the outcome of another member's grievance. Management decided to initiate proceedings to rescind the appointment. Fifteen months after his promotion, the member grieved the requirement to live in Force-provided accommodation. He submitted that he

had been unable to sell his residence and that the previous fifteen months had demonstrated that he was able to fulfil his job requirements without residing in Force-provided accommodation.

The grievor's supervisor advised the grievor that his grievance was out of time. This was confirmed by Staff Relations Branch at Headquarters. The grievor responded to this and claimed only to have become aggrieved when he learned of the intention to rescind his appointment, one week prior to filing his grievance. Staff Relations Branch decided to refer the matter to the Level I adjudicator for a decision. The adjudicator found that the grievor knew of the requirement to occupy Force-provided accommodation a year prior to filing his grievance, which was, consequently, out of time. He also found that the grievor had accepted relocation as condition of his promotion and could not claim to be aggrieved by a process which he had initiated. The grievor appealed the decision, claiming that the Force, by presenting his grievance to the Level I adjudicator had determined that it was not out of time and that the requirement that he relocate was "unacceptable" in light of Force policies and procedures.

The Committee found that the Force had not determined that the grievance had been presented within time; in forwarding the grievance to the Level I adjudicator, the Force had expressly indicated that time limits were an issue that would have to be addressed by the adjudicator. Implicit in the grievor's submission was the notion that the 30-day time limit did not begin to run until the grievor had become aggrieved; the Committee concluded that this was correct and found that members are aggrieved when they know of the essential facts giving rise to a grievance. The grievor had indicated that his grievance related to the merits of the original order to relocate. This order was made at the time the grievor was appointed and was reiterated when his request for an exception from the requirement to occupy Force-provided accommodation was denied. This was approximately one year prior to the date of his grievance. Consequently the Committee found that the grievance was out of time and did not address the issue whether the grievor should be required to occupy the Force-provided accommodation.

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

vi) *Travel allowances*

A member grieved his transfer. Pending the resolution of his grievance, the member was ordered to proceed to the transfer location where he would be in travel status; it was noted that if he was at the location for more than two months certain allowances would be reduced and that there would be a further reduction two months later. At the end of four months, the member continued to claim a higher rate than was provided, arguing that he was entitled to the higher rate until his grievance regarding the transfer was settled, as applicable policy stated that "full vouchering privileges" would be provided. The member's claim was

denied and he presented the grievance that was considered by the Committee.

The Committee found that the expression "full vouchering provisions" simply meant that members in the grievor's situation were entitled to the full benefits of the travel policy. These had been given to the grievor, as the travel policy specifically provided for reduced allowances after two months and four months in a particular location. The member had been advised of this prior to his departure. While the amounts he received were not sufficient to reimburse him for three restaurant meals per day, they were never intended to do that. Members who are in travel status at the same location for more than two months are expected to occupy self-contained accommodation and are expected to prepare their own food; the travel allowances simply cover the additional costs members in this situation incur over those costs they would have incurred if they had not been travelling. The Committee recommended that this aspect of the grievance be denied. The Commissioner agreed with the Committee.

An additional matter had been raised by the grievor relating to weekend travel home. The policy provides for a claim for actual expenses up to an amount not exceeding the greater of two other amounts; the Force had misinterpreted this provision as being the lesser of the two other amounts. Consequently the Committee recommended that this ground of the grievance be upheld. The Commissioner agreed with the Committee.

Another member was injured in an off-duty incident. Because he was posted to an isolated post and adequate treatment was not available in his division, he returned to his parents' residence for recuperation after being hospitalized he received travel allowances for part of his convalescence but expenses were denied when the Force determined that he no longer had a principal residence. The member grieved.

The Committee considered the applicable policies and found that none of them fully covered the grievor's particular situation. However, considering the underlying principle of the travel policy—that members should be reimbursed for additional costs but that there is no room for personal enrichment--the Committee found that the member had not demonstrated that continued full travel benefits represented an accurate assessment of his extra costs. Nevertheless, the Committee found that certain incidental expenses should be recognized and recommended that the grievor should be reimbursed for them. The Committee also recommended reimbursement of certain related automobile travel allowances.

The Commissioner agreed with Committee, although he found that the member had been overpaid allowances during the initial period of his convalescence. He felt that this was an overpayment that was recoverable from the member. He therefore awarded the member the amounts recommended by the Committee, less the amount found to be overpaid.

vii) *Language Profiles in Job Opportunity Bulletins*

In 1989 the Force initiated staffing actions for a number of positions in a division. At the time, a number of members filed grievances regarding the linguistic requirements in the staffing actions. These grievances resulted in the Committee holding a hearing and recommending that the linguistic requirements be reconsidered, as they had not been determined in accordance with the Force's Official Languages Policy. The Commissioner had agreed with this recommendation and had ordered that the linguistic requirements be redetermined.

Among other concerns, the Committee had previously found that, contrary to Force policy, the detachment commanders had not been involved in the determination of the Unit Bilingual Complement (UBC) for their detachments. When the linguistic requirements were being reconsidered, three detachment commanders conducted inquiries in their areas and determined the UBCs for their detachments. The Officer Commanding (OC) the subdivision reviewed the determinations made by the detachment commanders and felt that they had identified an insufficient requirement for bilingual services for the travelling public. Consequently he recommended to the Official Languages Officer (OLO) that higher requirements be identified. The OLO supported the OC's determination, and staffing actions were commenced, based on the UBCs determined by the OC.

Three members grieved the linguistic requirements—one for each of three detachments. The Level I adjudicator recognized that detachment commanders were an integral part of the Force's linguistic determination process, but found that they had not adequately addressed service to the travelling public in their linguistic determinations. The adjudicator concluded that the determinations proposed by the OC and supported by the OLO were valid and denied the grievances.

The grievors appealed the Level I decisions. In two instances, the Committee found that the members did not have standing to present a grievance because they had failed to demonstrate that they were "aggrieved". This they could have done by, for example, showing they had applied for the positions but were screened out on the basis of the linguistic requirements, or by stating that they would have applied, but for the linguistic requirements. As these grievors had not made any such suggestion, the Committee could not find that they had anything other than an academic dispute with the Force regarding the linguistic requirements in these detachments. The Committee has previously found that the grievance procedure is not the forum to resolve academic disputes. The Committee recommended that these two grievances be denied.

In the remaining grievance, the Committee determined the grievor did have standing. The Committee found that the detachment commander had taken his responsibilities seriously and had gone to considerable lengths to obtain solid statistics and provide a full rationale regarding the requirement for service in both official languages in the

detachment. Noting that it would be entirely appropriate for the Force to determine that there was a greater need for service in both official languages if such a position could be supported, the Committee found that the Force had not done so in the present case, as the OC's determination was not supported by data or a convincing rationale. Consequently, in the third grievance the Committee recommended that the staffing action be cancelled and that the determination of linguistic requirements be done again, in accordance with the Force's policy.

The Committee noted that the process followed and rationale used in all three linguistic determinations was very similar. Therefore the Committee also recommended that a managerial review of the linguistic requirements of the first two staffing actions be conducted. The Commissioner had not decided this matter by the end of 1992-93.

In another file, a member was acting as the non-commissioned officer in charge (NCO i/c) of a section. In order to initiate a staffing action, he reviewed the section's linguistic requirements. As a result, new language requirements were established. This was grieved by other members and investigated by the Commissioner of Official Languages (COL). The linguistic requirements were again revised and a staffing action was initiated. The acting NCO i/c was screened out of the competition as he did not meet the necessary linguistic profile. He grieved, arguing, among other things, that the unit commander (himself) had not had input into the UBC-determination process, that there was no justification for the higher linguistic requirements and that, contrary to the Force's UBC policy, linguistic needs were being determined on the basis of the requirements of positions, rather than on the requirements of the unit.

The Level I adjudicator determined that the grievor's input as unit commander had been sought, although it had not been followed, that there was justification for the linguistic requirements and that Force policy had been followed. The grievor appealed.

The Committee initially determined that the grievor had demonstrated standing and had presented his grievance within applicable time limits. It also found that while the appropriate part of the linguistic determination form did not contain a justification for the linguistic requirements, these were included in an accompanying memorandum. They indicated that the principal justification for the determination was the report prepared by the COL as a result of the complaint about the earlier re-determination. This report had been issued more than a year prior to the second re-determination and a number of factors, including the unit's reporting relationship, had changed in the interim. In addition, the COL's report did not consider the Force's UBC policy (which specifically prohibits the identification of linguistic requirements for positions, relying instead on the identification of a bilingual complement for a unit). Consequently, to the extent that the linguistic determination was based on the COL's report, it did not follow Force policy.

The Committee recommended that the linguistic requirements be redetermined in accordance with Force policy. In order to avoid the suggestion that the grievor might not be sufficiently objective, it recommended that someone other than the grievor be designated unit commander for this purpose. The Commissioner had not rendered his decision at the end of 1992-93.

viii) *Classification of Civilian-Member Positions*

After a new job description had been prepared for a civilian member's position, it was submitted for classification. The result was that the position was classified at the same level as it had been previously, as there was no significant difference between the old and new job descriptions. Thirty-four days after receiving the notice of classification, the member sent a facsimile message to the Director of Personnel indicating that he had been erroneously informed that he had 25 working days in which to grieve, and seeking an additional 30 days in which to submit his grievance. There was no record of this request being answered, although there was a hand-written notation, dated two weeks later, on the facsimile: "Matter has been cleared up...no reason to reply to telex". On the same day he sent his facsimile, the member grieved the classification of his position, arguing that there had been significant changes in his job since it had been classified previously. The Level I adjudicator denied the grievance on the grounds that the grievor had not argued that there had been an error of fact or process. The grievor appealed to Level II and provided an extensive submission that considered the position in the context of the applicable classification standard and provided supporting documentation.

The Committee considered the material provided by the grievor, as well as that presented to the classification analyst when the request for reclassification was made. The Committee found that while the reclassification was conducted properly on the basis of the material before the analyst, the analyst had not been provided with complete information by the Force. On the basis of the full record, it concluded that the grievor had demonstrated that the reclassification was in error and should be redone. In order to assist the Commissioner, the Committee provided a classification analysis based on the information before it and concluded that the position should be classified two levels higher than its previous classification.

The Commissioner considered the grievor's message seeking an extension of time to have been submitted out of time, without an extension having been granted. Consequently he found the grievance to have been submitted out of time. He acknowledged, however, that the grievance demonstrated that the position should be reclassified. While appreciating the classification analysis provided by the Committee, he was not prepared to conduct a classification exercise himself and so ordered that the matter be returned to the classification branch for review based on the information obtained in the grievance process. He also ordered

that the grievor derive the maximum benefit under RCMP policy should the classification review result in a higher level being recognized.

In 1975, a number of civilian-member positions were to be converted to public-service positions. This did not happen and in 1981 the positions were reclassified as civilian-member positions using a particular classification standard. The incumbents objected to the choice of classification standard used at that time. In 1987, a review was conducted and it was determined that the positions should be reclassified using a second standard, suggested by the incumbents. New job descriptions were prepared and submitted to the classification branch in 1988. The members were unhappy with the resulting classification, suggesting that a third classification standard should have been used. They were also unhappy with the effective date of the reclassification. They filed a grievance to this effect.

The Level I adjudicator agreed with the grievors that the third classification standard had not been considered when their positions were reclassified in 1988, and ordered that the matter be returned to the classification branch for review and consideration whether the third standard was applicable to the positions. The classification branch did not conduct a review, relying instead on the review it had conducted in 1987. The grievors filed a further grievance regarding the classification branch's refusal to implement the Level I decision. After some discussion within the Force, the grievors withdrew their second grievance and the first grievance was referred to the Committee for review.

The Committee agreed with the Level I adjudicator that the grievors had demonstrated that the 1988 reclassification was erroneous, as it had proceeded on the assumption that the second classification standard was the appropriate one, without considering whether there was another standard (the third, or even a fourth) that was more appropriate. While the second standard clearly did not cover all aspects of the grievors' jobs, the Committee could not recommend the use of the third standard—the one suggested in the grievance—because it contained a specific provision which appeared to exclude its use in work environments such as the grievors'. Consequently the Committee recommended that the classifications be completely redone.

The Committee did not have enough information before it to recommend a classification itself, so it recommended that a classification committee, composed of persons who were knowledgeable in classification, particularly the use of Public Service classification standards, should be struck. The Committee recommended that the classification committee be asked to consider *all* possible classification standards and select the one that was *most* appropriate for the grievors' positions. The Commissioner had not rendered his decision by the end of 1992-93.

b) *Discipline*

i) *Discreditable Conduct*

A civilian member was alleged to have sexually harassed a number of subordinates who worked with him in a confined area. The alleged activities included inappropriate language and gestures, as well as one incident of inappropriate touching. An Adjudication Board found the allegations to be established and ordered the member to resign or be dismissed from the Force.

The member appealed the decision of the Adjudication Board on a number of grounds. He argued that the Appropriate Officer had not made full and complete disclosure of the case against him. He submitted that he had not been given an adequate opportunity to cross-examine witnesses and make representations before the Adjudication Board. He also appealed the sanction arguing that it was excessive. The Committee addressed the issues raised by the Appellant and concluded that the appeal should be dismissed.

At the initial interview with the Force investigator, one of the witnesses was asked whether she had ever had sexual intercourse with the Appellant. Although she denied this, she did not indicate to the investigator that she had previously had a relationship with him. The exchange was not recorded in her "statement". She later advised the investigator and the Appropriate Officer's representative of her earlier relationship with the Appellant. The existence of these communications was not disclosed to the Appellant prior to the hearing but was revealed in testimony. After the allegations had been made against the Appellant, another witness received threatening letters and telephone calls at work; the existence of these threats was not disclosed to the Appellant prior to the hearing, but their existence was inadvertently revealed in testimony.

The Committee reviewed the Force's obligations to disclose information to members involved in disciplinary proceedings. First it noted that the existence of a prior sexual relationship between the witness and the Appellant was irrelevant to whether the Appellant had been using inappropriate language and behaviour in the work environment. Second the Committee, reiterating the fact that RCMP disciplinary proceedings are not criminal in nature, found that criminal rules of disclosure are not directly applicable to RCMP proceedings. Third, the Committee pointed out that the *RCMP Act* sets out specific disclosure requirements, which have been supplemented by the Force in the Administration Manual. These require the Force to provide a member with a copy of any written material to be produced before an Adjudication Board, a copy of the statements of witnesses, and of persons whom the Force does not intend to call as witnesses, and a list of exhibits.

The Committee was of the view that failure to transcribe a potential witness' words does not relieve the Force of the obligation of disclosure if the words form part of a "statement". In this case, although the question about a prior sexual relationship should never have been asked, it was, and an answer was given in circumstances

which gave the exchange the character of a statement; this should have been disclosed to the Appellant. The witness' subsequent clarification to the investigator and the Appropriate Officer's representative was sufficiently important to the latter that he raised it during the witness' testimony in chief. Consequently it should also have been disclosed, as it related to the earlier "statement" and constituted part of the evidence she was going to give.

Even though the Force was under an obligation to disclose this information to the Appellant, its failure to do so did not prejudice him. The appropriate remedy for failure to disclose information is an adjournment of the hearing. The Appellant did not request an adjournment and dealt with the matter in cross-examination. In any event, the issue whether there had been a relationship was not only irrelevant to the allegation, it should never have been admitted by the Adjudication Board. Consequently, the Appellant was not prejudiced by the failure to disclose.

The threats against the second witness all arose after the Appellant had been advised that he would be appearing before the Adjudication Board. As they formed no part of the case against the Appellant, the existence of the threats would only have to be disclosed if there were some obligation on the Force, beyond that found in the *RCMP Act* and the Administration Manual. Although there is case law that would suggest that the existence of relevant information should be disclosed to a party when failure to do so would prejudice that party, the Appellant had failed to established the relevance of the threats to the allegation that he had harassed his staff. Consequently, and as the Force had no intention of adducing evidence at the hearing, there was no obligation to disclose their existence to the Appellant. That it did come out at the hearing was unexpected and it played no part in the Board's decision.

The Appellant's submission that he had not been given the opportunity to cross-examine witnesses and make representations before the Board appeared to be related solely to his wish to cross-examine a witness called on his behalf. Initially this witness was to be called by the Appropriate Officer, but when the Appropriate Officer's representative decided not to call the witness, the Appellant called him. One of the traditional differences between examination-in-chief and cross-examination is that leading questions are not permitted in examination-in-chief, unless a witness is declared hostile or has made a previously inconsistent statement, in which case a party may be allowed to cross-examine its own witness. While the *RCMP Act* does not require strict adherence to court-room procedures, it does not abolish all procedural rules. Although an Adjudication Board has the authority to permit a party a degree of latitude in questioning a witness, there was no evidence that would justify allowing the Appellant to cross-examine his own witness.

With regard to the sanction imposed, the Appellant submitted that a number of mitigating factors should have been considered: there was no public involvement; the circumstances of the Appellant's suspension were

extremely humiliating; the alleged harassment had ended prior to the Appellant being suspended; the sanction was disproportional when compared to other disciplinary situations; and there was no lasting harm done to the witnesses. He also submitted that he had an unblemished service record of some length; that the Commanding Officer had initiated the investigation and had forced the witnesses to testify; and that no witness had made a complaint.

The Committee found no factual basis for the last two submissions and, in any event, did not find them relevant to the issue of sanction. The Committee did acknowledge that a previously unblemished service record can be considered when determining the appropriate sanction. The Committee noted that there was evidence that members of the public had been affected by the Appellant's conduct and it agreed with the Adjudication Board that, even if the public had not been affected, the Appellant's misconduct was serious. Although the Appellant's suspension may have been inconvenient and embarrassing, it was not itself a sanction and in light of the allegations it was fully justifiable, therefore the Committee could not conclude that it mitigated the appropriate sanction. Although there was some indication that the Appellant had not been engaged in objectionable behaviour immediately prior to his suspension, there was no evidence of remorse. The Committee noted, though, that the Force did not give the Appellant the opportunity to remedy his behaviour by warning him that he would be disciplined if he continued.

The Committee was not prepared to accept the Appellant's suggestion that sexual harassment was a relatively minor disciplinary matter. It viewed this type of behaviour as being very serious. Contrary to the Appellant's suggestions, there was evidence that the witnesses had been harmed by the Appellant's behaviour.

The Committee concluded that the Appellant's discipline-free record and the lack of warning by the Force were the only mitigating factors. Against this, it found the Appellant had failed to recognize his wrongdoing and express remorse. The conduct continued over a long period of time and the Appellant was in a supervisory relationship with the witnesses. Under the circumstances, the Committee was of the view that if the member remained with the Force, it would be required to keep him in an all-male environment or under constant supervision. Such a burden on the Force would be too onerous. Therefore, the Committee supported the Adjudication Board's sanction of a direction to resign, failing which the member would be dismissed.

The Commissioner did not agree with all of the Committee's analysis of the Force's disclosure obligations, however he did agree with the Committee's conclusion that the evidence supported the allegation and that the member should resign or be dismissed from the Force.