ANNUAL REPORT

1993-1994

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

June 30, 1994

The Hon. Herb Gray
Solicitor General of Canada
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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 1993-94, pursuant to section 30 of the *Royal Canadian Mounted Police Act*.

This report is the Committee's eighth and reflects the ongoing commitment of a highly professional staff. We are proud to provide consistently high quality services while also achieving substantial economic savings.

I wish to take this opportunity to thank you for your continuous support of the work of the Committee. I also want to thank RCMP Commissioner Inkster and his management team, as well as the RCMP Divisional Staff Relations Representatives for their sincere efforts which improve staff relations within the Force.

Yours truly,

F. Jennifer Lynch, Q.C.
Acting Chairperson

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COMMITTEE MEMBERS

Chairperson
Vacant

Vice-Chairperson and Acting Chairperson
F. Jennifer Lynch, QC

Members
Joanne McLeod, CM, QC[1]
William Millar

[1] Ms McLeod resigned from the Committee effective 1 September 1993

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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 *Jurisdiction* at p. 2 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 Commissioner and the parties.

In practice, even when in substantial agreement with the Force's disposition of a matter, the Chairperson will provide the Commissioner and the parties 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 if he does not follow them he is required to provide the Committee and the parties with an explanation. In practice, the Commissioner has usually followed the findings and recommendations.

The grievance, formal discipline, and discharge and demotion 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 a Grievance Advisory Board (depending on the nature of the grievance), the decision of the Force's first level adjudicator ("Level I adjudicator"), 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 are still not fully understood.

When the case is an appeal of formal discipline, 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 and recommending the appropriate sanction to be imposed on a member when misconduct has been established, 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.

Discharge and demotion proceedings are more akin to formal discharge proceedings than to grievances. An internal Discharge and Demotion 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 1992-93 and completed its review during 1993-94. This case is discussed below.

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 of misconduct 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. Where formal disciplinary proceedings result in the imposition of sanctions which are informal in nature, the *RCMP Act* does not currently require the Force to forward the matter to the Committee; however the Commissioner has requested that the Committee review these matters in the future. The Acting Chairperson has agreed, provided that such reviews can be accomplished within the Committee's resources.

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 has been advised of a matter that might have fallen within the Committee's jurisdiction but which was not referred to the Committee. This matter is currently being pursued with the Force.

RELATIONSHIP WITH OTHER ORGANIZATIONS

In carrying out its work, the Committee relies on the cooperation of a number of individuals and organizations.

A) *The Royal Canadian Mounted Police*

Since its creation, the Committee has enjoyed a high degree of support from both management and membership 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.

Similarly, the members of the Force 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 be much more difficult to accomplish. The Committee feels that the fact that, to the best of its knowledge, only one member has asked that his matter not be referred to it is testimony to the value members perceive the Committee adds to the grievance, discipline and discharge and demotion processes.

In early 1994, Commissioner Inkster announced that he would be resigning from the RCMP several months later. The Committee would like to make particular note of the support it has received from Commissioner Inkster. He has demonstrated himself to be open and receptive to the benefits of the external review process and has not hesitated to follow the vast majority of the Committee's recommendations. In those instances in which he has not followed the Committee's recommendations, he has been forthright in explaining how and why he disagreed with the Committee. The Committee has enjoyed a thoroughly professional and respectful relationship with Commissioner Inkster who leaves an admirable legacy of leadership. It looks forward to enjoying a similar relationship with his successor.

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 be much more difficult to accomplish.

In addition, the Committee has long benefitted from a Memorandum of Understanding between itself and the Solicitor General Secretariat. Under this Memorandum, staff of the Secretariat provide a number of administrative, financial and human-resource services to the Committee; given the Committee's size it would be impractical for it to attempt to provide these services itself. In their own way, the Committee and the Secretariat are forerunners in the trend to the provision of common services.

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."

At the beginning of 1993-94, Bill C-93, part of which provided 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 were to be taken over, without change, by the Independent Review Commission. The members of the Committee were to become members, and the Vice-Chairperson was to become Deputy Chairperson of the new Commission.

Bill C-93 was defeated in the Senate on June 10, 1993. Much of the Committee's administrative effort to that point had been devoted to preparing for either the amalgamation or an appropriate financial downsizing to reflect the exigencies of the economy. A number of positions had been declared surplus and the Committee's work had been restructured. In addition, the Committee was required to quit the premises leased for it by the Department of Public Works and Government Services; the defeat of Bill C-93 meant that it was unable to co-locate with the Public Complaints Commission as had been planned.

By year-end these issues had all been resolved. After being housed in temporary offices on two occasions, the Committee finally moved into its new, permanent offices in early March. As the Committee is in the same building as the RCMP Public Complaints Commission, the two organizations have been able to amalgamate their libraries, thereby reducing personnel and acquisition costs. The Committee's staff requirements have been realigned and new personnel were to be in place by the beginning of 1994-95. Unfortunately two staff members, who would have worked for the Independent Review Commission had to be declared surplus to the Committee's current requirements. As of 31 March 1994 these individuals had not found permanent alternative employment; however, they are covered by the government's Workforce Adjustment Directive and are guaranteed a reasonable job offer.

Since the February 1992 Budget, the Committee has reduced its staff by two-thirds (from 15 to 5) and its budget requirements by more than one-half (from $1.5 million to $700,00). At the same time, the number of matters referred to the Committee has increased from 33 in 1991-92 to 56 in 1993-94.

Given the significant reductions the Committee has made to its operating budget over the last two years, it is of the view that there are no further savings to be achieved through an amalgamation with the Public Complaints Commission. Indeed, there is a possibility that an amalgamation at this point could result in increased expenditures.

The Committee continues to send regular communiqués of its Findings and Recommendations to the Force. It also distributes Summaries of its Findings and Recommendations to the holders of its Decisions binder. By all reports, these Summaries are very well received and are seen as being useful to both management and membership of the Force. In addition, Committee staff have had a number of discussions with Force representatives regarding the possibility of making depersonalized copies of the Committee's Findings and Recommendations available to all members of the RCMP.

During the year, members of the Committee and staff attended the Canadian Symposium on Police Oversight of Law Enforcement and the meeting of the International Association of Civilian Oversight of Law Enforcement.

The position of Chairperson of the Committee and one member's position remained vacant throughout the year. The Vice-Chairperson continued as Acting Chairperson. Ms Joanne McLeod, QC, CM, resigned from the Committee effective 1 September 1993. Ms McLeod, a member of the Committee since its inception, will be missed as for her valuable contribution to the Committee's work. As of 31 March 1994, Ms McLeod's position on the Committee had not been filled.

CASES

As can be seen from the following selection of cases reviewed by the Committee during 1993-94, the issues dealt with by the Committee are varied. In addition, grievances 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. The case numbers in bold print at the beginning of each case refer to the number in the Committee's Decisions binder.

A) *GRIEVANCES-PART III OF THE* RCMP ACT

i) *Language Profiles in Job Opportunity Bulletins*

The Committee continued to receive a large number of grievances related to the Force's identification of language requirements for the staffing of positions covered by its Unit Bilingual Complement (UBC) system. Under this system, rather than identify a linguistic profile for each position in a given detachment or section, the Force determined the number of bilingual members and their levels required to meet the Force's obligations under the *Official Languages Act* for each work unit. When a position was to be staffed, a determination was made whether the required profile for the unit was met; if it was, no formal linguistic requirements were part of the Job Opportunity Bulletin (JOB); if it was not met, the JOB indicated the required profile to meet the UBC and members had to meet this prerequisite in order to be eligible to compete for the position. In addition to identifying linguistic profiles, JOBs also indicated whether the member had to meet the profile in order to be considered (priority I) or whether the member would be allowed to undergo language training

after appointment in order to meet the profile (priority II).

G-81 Six members grieved the bilingual profile associated with the staffing of a Sergeant's position. They argued that staff already in the section were able to offer services in the second official language and requested that the profile and the priority associated with the staffing be reduced. The Level I adjudicator held that the members had not demonstrated that they were affected or "aggrieved" by the staffing action as none had applied for the position or indicated any desire to apply for it. Consequently the grievance was denied.

The members had argued that the staffing action was a promotional opportunity and all members of the Force are affected by promotional opportunities. The Committee acknowledged that on a strictly hypothetical level this was correct, but agreed with the Level I adjudicator that there was no evidence that the members were directly aggrieved by the linguistic profile. It noted, as it has in previous matters, that s. 31(1) of the *RCMP Act* requires a more direct impact on an individual in order to be able to file a grievance.

The Commissioner agreed with the Committee's recommendation.

G-82 A member grieved the priority associated with a staffing action. He argued that the priority was too high as the number of bilingual supervisory positions was too high. The grievor asked that the JOB be reissued with a lower priority. The Force argued that its identification was correct and that, in any event, the grievor was not aggrieved and had no standing as he could compete for an identical position for which a lower priority had been identified. Upon investigation it turned out that there were two forms purporting to identify the linguistic needs for the section, but neither had been completed according to policy.

The Level I adjudicator decided that it was not his role to determine what the real UBC was or to determine which form was the accurate one. He ordered that the UBC be redetermined and that the staffing action be recommenced. He did not order that the priority be reduced. The grievor pursued the matter to Level II, arguing that he did not obtain the redress he sought, that the Level I adjudicator should have determined the appropriate UBC and that the redetermination would not be conducted objectively.

The Committee found that the grievor did have standing: although he could have competed for the other position, his chances for advancement were lessened by only being able to compete for one position. The Committee agreed with the Level I adjudicator that there was sufficient doubt about the correct UBC to set aside the original determinations. As it did not have enough information to determine the correct UBC, it recommended that the matter be returned to the Unit Commander.

The Committee felt that the grievor's argument that a redetermination would not be conducted objectively was premature; if that turned out to be the case a subsequent grievance could be filed. The Committee recommended that the grievance be upheld, but that the specific remedy sought by the

grievor—reduction of the priority—not be granted.

The Commissioner agreed with the Committee's recommendation.

G-83 A member grieved the linguistic requirements for the staffing of a position, noting that they would prevent a well-qualified and experienced person from applying. In addition, the grievor submitted a number of arguments suggesting that the profile was not accurate. The Level I adjudicator denied the grievance on the grounds that the grievor had not shown how he was personally affected by the staffing action and, therefore, was not aggrieved.

The Committee disagreed with the Level I adjudicator. It felt that the grievor's reference to a well-qualified and experienced candidate was a clear reference to himself and that he should not be penalized for imprecise drafting style. On the substantive issue—whether the UBC had been properly determined—the Committee was of the view that the determination had been based on the requirements of the position, and not the needs of the unit, as required by policy. Consequently it recommended that the grievance be upheld and that the UBC be redetermined.

The Commissioner agreed with the Committee and ordered that the UBC be redetermined, although he noted that the grievor might still be excluded from consideration under the correctly-determined UBC.

G-84 A member grieved the linguistic requirements in a JOB; however he did not indicate how he was affected by them. The Level I adjudicator denied the grievance on the ground that the member was not aggrieved. The member provided no additional material to the Committee and it upheld the Level I adjudicator's denial and recommended that the grievance be denied.

The Commissioner agreed with the Committee.

G-101 A member applied for a position and subsequently grieved the priority associated with the staffing action. The Level I adjudicator denied the grievance on the grounds that the grievor had not demonstrated how he was aggrieved by the linguistic profile and that there were other mechanisms available to address his situation (under the *RCMP Act*, the grievance system is only available where there are no other dispute-resolution mechanisms).

The Committee found that the member had not been refused consideration for the position. The grievor's only complaint seemed to be that by virtue of the lower priority assigned to the staffing action, more candidates could apply and, therefore, the grievor's chances of being successful were lower. The Committee concluded that the member's grievance was not directed as much at the particular staffing action as at the implementation of the Force's Official Languages Policy within the division and the notion of the UBC. The Committee, having previously determined that the grievance system does not permit "policy" grievances of this type, concluded that the member had no standing to present his grievance and recommended that it be denied.

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

G-103 A member had previously successfully grieved the linguistic profile of a staffing action. The linguistic profile was reevaluated at a lower level. The member was acting in the position and grieved again. He also grieved the fact that there was no requirement for supervisory experience in the requirements for the position.

The Level I adjudicator found that Force policy had been followed and that the linguistic profile had been determined after a consideration of all relevant material. The adjudicator was of the view that there was adequate justification for the linguistic profile and priority of the staffing action. He was also of the view that supervisory experience would be considered when ranking candidates and its absence from the requirements of the position did not justify cancelling the staffing action.

The Committee noted that the issue of supervisory experience was not currently within its jurisdiction (see *Jurisdiction*, p. 2, above) and so provided no advice on this issue. The Committee found that there was sufficient material on file to justify the linguistic profile assigned to the staffing action and recommended that the grievance be denied on this point. With regard to the priority, the Committee was of the view that there was material on file that showed evidence of a bias against persons who have attained a level of linguistic ability after language training and that this reasoning was flawed and had affected the determination of the required priority. Consequently the Committee recommended that the grievance be upheld on this ground and that the priority be redetermined.

The Commissioner agreed with the Committee's recommendation that the grievance be denied with regard to the linguistic profile. However, he disagreed with the Committee's recommendation that it be upheld with regard to the priority. He was of the view that there was adequate justification to require priority I staffing and that the officer whose views the Committee had found to be biased would play no part in the selection of the successful candidate. With regard to the supervisory aspect, the Commissioner was of the view that if the grievor had presented this aspect of his grievance separately, he would not have been successful as he had not demonstrated how he had been aggrieved by the failure to include supervisory experience in the requirements of the position. For these reasons the Commissioner denied the grievance.

G-108 A member at Training Academy grieved the linguistic profile for the staffing of a supervisory position in his section. He claimed that the Force had identified a need for too many bilingual instructors for the unit's needs and, as a result, had identified a need for too many bilingual supervisors. The number of bilingual instructors was based on a ratio of two students to one instructor, while the proportion of bilingual supervisors to the total number of supervisors was similar to the proportion of bilingual instructors to the total number of instructors. The Level I adjudicator did not specifically address the issue of bilingual instructors, but felt that logic and good sense dictated that a similar proportion of supervisors be bilingual.

The Committee considered both aspects of the grievor's submissions. It

noted that the instructors' clients were recruits and it was open to management to determine the ratio of recruits to instructors. This ratio should not be different depending on which official language was being used. Given the ratio determined by management, the number of bilingual instructors could be objectively determined based on the number of recruits in a training troop. This management had done and the Committee saw no reason to interfere with management's determination.

In the Committee's view, the supervisors' clients were the instructors. All participants in the language-determination process seemed to have made a fundamentally incorrect assumption regarding the first official language of bilingual instructors and the need to supervise them in the second official language. While it is true that in bilingual regions of the country (Training Academy is a designated bilingual region), the *Official Languages Act* entitles persons to be supervised in the official language of their choice, the likelihood of all bilingual instructors choosing to be supervised in the same official language was slim and presupposed that they all had the same first official language; this assumption could not be supported.

The Committee felt that the Force had not objectively considered the need for supervision in the second official language and so it could not support the same ratio of bilingual supervisors as instructors. Consequently it recommended that the grievance be upheld. As the Force had already decided to change its method of identifying language requirements in bilingual regions, the Committee recommended that its analysis be taken into account in the determination of the new requirements for the staffing action.

The Commissioner had not issued his decision in this matter by 31 March 1994.

ii) *Medical Discharge*

G-85 A member suffered from Post Traumatic Stress Disorder (PTSD) as a result of a series of incidents which had occurred while he was on duty. As a result, the member was off duty for a prolonged period of time. Due to a lack of communication among the various parties to the matter (divisional headquarters, the detachment, sub-division headquarters, the grievor and his medical professionals) the grievor was under the impression that his medical professionals had ordered that he was to receive no contact from the Force for a period of six months. While the Force was aware of this impression, various members did initiate contact with the grievor under a variety of circumstances. The member also contacted the Force on occasion. It would appear that some of these contacts aggravated what was already a very difficult situation. Some 18 months after the member went off-duty, the Force initiated medical discharge procedures.

In line with the procedures then in place, the divisional Health Services Officer (HSO), one of his assistants and a medical practitioner nominated by the grievor reviewed the medical information regarding the grievor. Part of this information was a letter written by the grievor's clinical psychologist which stated that, given the Force's refusal to leave the grievor alone, there was no likelihood that he would be able to return

to his employment with the Force. Consequently, the medical board recommended to the Divisional Commanding Officer (CO) that the grievor be discharged from the Force for medical reasons. The CO agreed and advised the grievor, who then filed his grievance.

Despite being sympathetic to the grievor, the Level I adjudicator could find no error of fact or process and no evidence of bias or prejudice in the application of policy. Consequently he denied the grievance. The grievor sought a Level II decision based on a full review of his case.

The Committee found that the RCMP has a right, and even a duty, to ensure that its members are medically fit—both physically and mentally—to perform their duties. It also found that the grievor was suffering from PTSD and that this was aggravated by actions of the Force, particularly local detachment personnel, as a result of a distinct lack of understanding of the grievor's condition. The Committee also found that the procedure adopted in creating the medical board was flawed. It was of the view that the HSO had already determined that the grievor was unfit for continued employment in the Force before convening the medical board on which he sat, and that the Board did not ask itself the correct question: whether the member could return to duty within a reasonable time. Consequently the Committee found that it had not been established that the grievor should be discharged; however, as it did not have any information regarding the grievor's current medical condition, it could not recommend that the grievor be returned to duty. Consequently it recommended that a new medical board be convened to answer the correct questions and make a new recommendation.

The Commissioner disagreed with the Committee. He noted, as had the Committee, that the grievor had not objected to the role played by the HSO and, as he found no evidence of bias against the grievor, was not prepared to agree that the HSO's presence on the board was fatal. He also noted the views of the grievor's clinical psychologist, who was on the medical board, and concluded that there was no evidence the grievor would be able to return to duty. Consequently he ordered that the grievor be discharged.

G-96 Another member from the same detachment had been off duty for a prolonged period for stress-related illness. A medical board was convened and recommended that the member be discharged for medical reasons. The member had already filed a grievance against the decision to commence medical-discharge proceedings. The CO, acting on the recommendation of the medical board, ordered the member discharged. The member grieved and sought the cancellation of the medical discharge proceedings.

The Level I adjudicator partially upheld the grievance on the grounds that the participation of the HSO on the medical board, to which the grievor had consistently objected, called the board's recommendation into question. He ordered that a new medical board be convened. The grievor pursued the matter to Level II as he still wanted the medical discharge process stopped in its entirety.

Prior to the Committee making a finding and recommendation, the Level II adjudicator in the grievance against the institution of medical discharge proceedings (a matter which is not currently referred to the Committee—see *Jurisdiction* at p. 2, above) upheld the member's grievance and declared the medical discharge proceedings to be a nullity. The Force advised the Committee that it felt the grievance before the Committee had become moot (*i.e.* hypothetical) and asked that it proceed no further; the grievor agreed.

Given the rather unusual set of circumstances, the Committee agreed that the matter was moot and recommended that the Commissioner deal with the matter no further. He agreed with the Committee and considered the matter closed.

iii) *Correct interpretation of the Travel Policy applicable to the RCMP*

A number of members in a division became dissatisfied with the way in which the division was handling claims for reimbursement of meals taken in the general vicinity of detachment headquarters. The Committee was advised informally that there were "hundreds" of claims submitted, most of which were denied and many of which denials were then being grieved. The Committee received a number of these grievances in 1993-94. Based on a quick review of the files received, it became apparent that they all raised basically similar issues. As a consequence, the Committee chose to analyze one file in depth in order to determine the best approach to deal with the remainder.

G-86 A member was involved in transporting a prisoner from a penitentiary to an international airport in order to extradite the prisoner out of the country. The member claimed that, as a result, he was unable to eat his normally-scheduled mid-shift meal at the usual time and place, and so had to purchase a commercially-prepared meal. He claimed reimbursement for the cost of the commercially-prepared meal. This claim was denied on the grounds that it was not permitted by applicable divisional policy.

The member grieved, claiming that his entitlement was to be determined according to the travel policy then applicable to the Public Service (known as Personnel Management Manual chapter 370, or PMM 370) and not the divisional policy. His grievance was denied at Level I on the basis of the divisional policy.

The Committee reviewed provisions of the current and previous *RCMP Acts* and *RCMP Regulations* in order to determine who had authority to adopt travel policy for the RCMP. It concluded that only the Treasury Board had such authority and that, as a consequence, so-called RCMP policy, whether national or divisional, could only apply to the extent that it substantially reproduced the policy approved by Treasury Board.

The Committee then attempted to determine whether the divisional policy substantially reproduced the Treasury Board policy. Treasury Board policy was held to be PMM 370, subject to specific modifications set out in annexes to two Treasury Board Minutes dating back to the early 1970s. The Committee came to the conclusion that neither the

national RCMP policy, nor the divisional policy in question substantially reproduced the actual Treasury Board policy on the point in issue. As a result, the Committee concluded that the member's claim had been denied on inappropriate grounds.

It did not, however, recommend that the grievor's claim be reimbursed automatically as it was necessary to consider the claim in light of the actual Treasury Board policy. The Committee found that it was not appropriate for it, or the Commissioner, to make this determination in this case and so it recommended that the grievor's claim be referred back to the division for a new decision in accordance with the actual policy, as identified by the Committee. The Committee also recommended that the Force and the members whose other, similar grievances were pending negotiate an arrangement under which their claims would be reconsidered at the divisional administrative level. The Committee indicated it would hold these other grievances in abeyance to allow such an arrangement to be negotiated. Finally the Committee recommended that the Force seek clarification from Treasury Board of the meaning of some of the more obscure elements of its policy, as well as a new policy integrating the contents of the Treasury Board Minutes with the main policy.

The Commissioner agreed with the Committee's recommendations. As of 31 March 1994, the Committee had not been formally advised what course of action was being taken regarding either the pending claims or the grievances still before it.

G-109 Another member in the same division attended a conference outside the division. Some meals were provided by the conference organizers. Due to having experienced delay at an earlier meal, the member purchased a commercially-prepared meal and sought reimbursement from the Force. His request was denied. The member grieved and argued that under the Treasury-Board approved policy (which, he argued, was PMM 370) he was entitled to be reimbursed the cost of his meal. The Level I adjudicator denied the grievance on the grounds that both PMM 370 and the Force's Administration Manual quite specifically denied reimbursement under the circumstances.

The Committee reiterated its conclusions in the previous matter that the Treasury-Board policy applicable to the RCMP was PMM 370 as modified by the Treasury Board Minutes and that the Force's national and divisional Administration Manuals could only be relied on to the extent that they substantially reproduced the provisions of the applicable policy. In this instance, the Committee found that all three were to the same effect: except in exceptional circumstances, travellers cannot claim reimbursement for the cost of meals when those meals are provided as part of a conference or meeting. While the member had indicated that he had experienced difficulty eating an earlier meal, the Committee was not satisfied that this amounted to exceptional circumstances. In addition, even though the member suggested that other attendees might have been reimbursed meals under similar circumstances, it noted that the alleged incorrect application of policy in an

unsubstantiated incident did not entitle him to a similarly incorrect interpretation of policy. For these reasons the Committee recommended that the grievance be denied.

The Commissioner had not issued his decision by 31 March 1994.

iv) *Relocation Policy*

Home Equity Assistance

G-97 A member was relocated; expecting to lose money on the sale of his old-post residence, he applied for assistance under the Force's Home Equity Assistance Program (HEAP). The member received an offer of purchase at an amount below his purchase price; he accepted subject to approval of his HEAP application which had not been decided prior to the expiry date of the offer. On the basis of advice from FSSB, he accepted the offer and concluded the sale. Subsequently his application under HEAP was denied on the grounds that the 10% housing-market-price decline criterion in the policy had not been met. The member asked that the matter be reviewed and presented information suggesting that the price decline had been 12%. The Force reviewed the matter, reopened the original decision but refused the application. The member grieved. The Level I adjudicator felt that the grievor had been treated in accordance with proper procedures and policy and denied the grievance.

The Committee, based on its analysis in another matter (see G-91, p. 27, below), felt that the grievance was validly directed at the results of the review, which had reopened the original decision, and so was within the 30-day period provided by the *RCMP Act*. With regard to the merits, the Committee concluded that the dispute between the Force and the grievor was based on differing interpretations of the 10% housing-market-price decline criterion in the HEAP policy. Under the Force's interpretation, the criterion would only be met if the housing market at the time of sale was at least 10% lower than it was at the time of purchase. Under the grievor's interpretation, the criterion would be met if the housing market at the time of sale was at least 10% less than it had been at any time after the purchase. In the current matter, the housing market had increased after the grievor had purchased his house and then declined by more than 10% so, if the grievor's interpretation was correct, he would have been entitled to assistance. The Committee found that while both interpretations were reasonable based on the somewhat imprecise drafting of the specific provision in the policy, the Force's interpretation was the more reasonable in the overall context of the policy. The Committee recommended, therefore, that the grievance be denied. It also noted that while there was no evidence that the grievor had been misled by the information provided by FSSB, it was unfortunate that his application could not have been dealt with more quickly.

The Commissioner agreed with the Committee's findings regarding time frames and the substantive issue and denied the grievance.

G-110 A member was relocated to a detachment in a small community where the choice of housing was limited. He purchased a house which required considerable repairs and improvement. Shortly after, the number of members at

the detachment was reduced and the member was transferred. He experienced difficulty selling his residence and applied for assistance under HEAP.

He was advised that he would be eligible for HEAP assistance based on the difference between his selling price and an adjusted purchase price. The adjusted purchase price included the cost of some of the repairs that had been necessary. After an exchange of correspondence, the member grieved the Force's refusal to include all of his repairs in the adjusted purchase price. The Force's position was that the HEAP policy provided a list of improvements which could be considered in establishing the adjusted purchase price and that anything not on the list could not be considered. The member was of the view that it made no sense that improvements could be considered but that repairs needed to make a house liveable could not be.

The Level I adjudicator considered the HEAP policy and the list of improvements. He concluded that one of the items (wiring the outside garage) was included on the list and should have been taken into account. He was of the view, though, that the none of the other repairs fell within the list approved by Treasury Board and so could not be considered. He did, though, feel that the member might fall within a provision dealing with "exceptional cases of hardship" and recommended that Treasury Board be approached to ascertain whether some of the grievor's expenses could be reimbursed on that basis. Nearly a year later, the Deputy Commissioner (Corporate Management) advised the grievor that he would not approach Treasury Board and that the grievor could present his grievance to Level II within 14 days.

This unusual procedure caused the Committee some concern with regard to the time limits under the *RCMP Act*. However, it concluded that the member could not be penalized for awaiting the Force's decision whether to approach Treasury Board before proceeding to Level II. The Committee agreed with the Force that the list of improvements provided in applicable policy were exhaustive and that if an improvement did not fall within the list, it could not be considered in adjusting the purchase price. However, the Committee was of the view that the policy allowed a more flexible interpretation in the case of repairs necessary to ensure the integrity or the livability of the residence. The Committee then reviewed each of the items the grievor had claimed and concluded that, with one exception, they either fell within the list of improvements or were necessary repairs that ought to be included in determining the purchase price of the residence. Consequently the Committee recommended that, with the one exception, the member's grievance be upheld.

The Commissioner had not issued his decision by 31 March 1994.

G-111 In a similar matter, a member alleged that he had been required to make a number of necessary repairs to his house in order to obtain CMHC mortgage financing. He had also incurred expenses for other work on the house. The Force took the view that the repairs were not improvements included in the Treasury-Board approved list and so they could not be considered in

determining the adjusted purchase price for the residence.

In considering the member's grievance, the Committee used the same reasoning as in G-110, but in this case it did not have enough information to identify the amount of money the member had spent on the repairs versus the amount he had expended on the other work and so it was not able to recommend exactly how much should be added to the adjusted purchase price. Consequently it recommended that the appropriate amounts be calculated and the member be reimbursed accordingly.

The Commissioner had not issued his decision by 31 March 1994.

G-112 A member built her residence on a lot in a rural area. The member was transferred and lost a considerable amount upon the sale of the residence. The member applied under HEAP and was accepted. The Grievor, however, was not in agreement with the way in which the Force calculated the purchase price of the residence for the purpose of reimbursement under HEAP. She provided additional information to the Force and requested that the Force's decision be reviewed. The Force did so, but maintained its position. The Grievor requested another review, but the Force maintained its previous decision. The member grieved.

The Level I Adjudicator denied the grievance on the basis of the statutory 30-day time limit for submitting a grievance at Level I: the member should have grieved with 30 days of the Force's initial decision. The member submitted the grievance to Level II, arguing that the Force had made no final decision until its last review and that she had been entitled to grieve within 30 days of receiving that review.

The Committee applied its approach to time limits discussed in G-91 (p. 27, below). It found that the Force's initial decision on the member's HEAP claim was itself grievable. However, although the member did not grieve within 30 days of this decision, this was not the end of the matter. The member submitted additional information which put the initial decision "in a whole new light" and the Force reviewed the decision on this basis. The member was entitled to submit a grievance within 30 days of the review. The member, however, did not do so. Rather the member requested another review. The Committee determined that for this review, the member had not submitted new information that put the previous decision "in a whole new light". The Force's decision in this review had merely confirmed the decision in the previous review. As the member had not grieved within 30 days of receiving the previous review, the grievance was outside the statutory time limit and the Committee recommended that it be denied.

The Commissioner had not issued his decision in this matter by 31 March 1994.

Interim Accommodation

G-95 A member was relocated and experienced difficulty selling his old-post residence. He finally received an offer with an early possession date; he accepted the offer. He then experienced difficulty finding a suitable residence at the new post and eventually purchased a newly-built house. After negotiating with the builder, he was able to advance

his possession date but there was still a period of four months between the two possession dates. The member requested Interim Accommodation (IA) assistance and payment of Storage in Transit (SIT) fees for his personal effects. The requests were refused; on four occasions the member sought to have the decision reviewed; each time the response was negative. The member grieved.

The Level I adjudicator denied the grievance related to IA as it is normally only available for a period of 14 days, except in "exceptional cases"; the adjudicator did not view the grievor's circumstances as being exceptional. On the other hand, he allowed the grievor's claim for SIT as this is available in cases of "demonstrated need"; the adjudicator felt that the grievor had demonstrated a need.

In the Committee's view, this file raised a number of time limits issues that had not already been addressed. In line with its analysis in another matter (see G-91 discussed at p. 27 below), the Committee found that the decision on the grievor's final request for a review was grievable because the grievor had provided new information that put the original decision "in a whole new light" and the Force had, effectively, reviewed and reopened the original decision. On the merits, the Committee was of the view that the grievor's actions had been reasonable and his costs were legitimate. The Committee found that the grievor's circumstances were exceptional and recommended that the grievor be provided with IA assistance for the period of four months. The Committee also noted that there was correspondence on file which expressed the view that the grievor's situation had not been appropriately considered because all of the decision makers were lower in rank than he; the Committee commented that entitlements under policy and equitable treatment in the grievance system is not a function of rank.

The Commissioner agreed with the Committee's recommendations regarding time limits, the merits and the comments about the relative ranks of the individuals involved.

G-102 A member was relocated to an isolated community. He was unable to find other accommodation and made arrangements to live in government housing at the new post. He sought Interim Accommodation assistance for the 39 days between his arrival and the date he could occupy the government housing. The member was advised that policy allowed IA for a period of 23 days, less any time spent packing and loading his household effects, with the possibility of an additional 14 days of accommodation assistance only (*i.e.* no reimbursement for meal expenses). The grievor was unable to find self-contained IA and requested payment of meal allowances for the extended period of interim accommodation. The request was denied.

The Level I adjudicator recognized the extenuating circumstances the grievor found himself in; however the adjudicator felt bound by policy to deny the grievance.

The Committee agreed that the Relocation Directive limits assistance to the periods and amounts indicated; however it felt that the grievor's extenuating circumstances warranted exercise of the Commissioner's prerogative to seek authority from

Treasury Board to provide additional reimbursement. The Committee recommended that the Commissioner seek appropriate authority from Treasury Board.

The Commissioner agreed with the Committee that the grievor faced exceptional circumstances and had done everything that could have been expected of him. He directed that approval be sought from Treasury Board to reimburse the grievor an additional 23 days of meal allowances.

G-113 A member was advised that he would be relocated to another division. He sold his residence at the old post and made arrangements to obtain accommodation at the new location. He advised his new superiors that his accommodation would not be available for several months. He was told that he could remain at his old post in the interim. Two weeks later, he was asked to go to the new post as soon as possible to meet a staff shortage. He immediately left his old post.

The member claimed reimbursement of the expenses associated with disposing of his residence at the old post and assistance with his accommodation expenses until he could move into his residence at the new post. Both claims were denied and the member grieved. Although the Force dealt with the grievances separately, the Committee decided to consider them together as they arose out of the same circumstances.

The Level I adjudicator who considered the grievance relating to the sale of the grievor's old-post residence refused the claim on the grounds that the RCMP Relocation directive denies such reimbursement where a member already owns another house that is eligible for such reimbursement, unless the member renounces his/her right to reimbursement on the other house. When the grievor had relocated to the old post several years before, he had been advised that he could keep a house he already owned; this turned out to be incorrect advice but, as a result of the Commissioner upholding the Committee's recommendation in the member's earlier grievance, he had finally been able to keep the first residence. As the grievor had not renounced his right to reimbursement of fees associated with the sale of the first residence, he could not be reimbursed fees on the sale of his subsequent residence.

The Committee was of the view that this Level I adjudicator was correct. Even though the grievor had been given incorrect information several years earlier, and notwithstanding the Committee's recommendation in that grievance, the applicable policy in effect at the time had not changed. Consequently the Committee was of the view that the grievor knew, or should have known, when he decided to keep his first residence that he would not be eligible for reimbursement of fees associated with the sale of any other residence as long has he kept the first or did not renounce his right to reimbursement in respect of it. Consequently the Committee recommended that this grievance be denied.

In the second grievance, the Level I adjudicator granted the member accommodation assistance for the period requested but did not grant him a meal allowance because, although the grievor had acted in good faith throughout, the

request for him to advance his intended arrival at the new post was not an order, it was just a request.

The Committee was of the view that the Level I adjudicator had misconstrued the reasonable effect such a "request" would have on a member such as the grievor. The Committee felt that it would not have been reasonable for the member to have refused to comply with the "request" and delay his arrival at the new post until the originally scheduled date as the "request" was effectively an order. Consequently, the Committee was of the view that the member was in travel status from the date of his arrival at the new detachment until the originally scheduled arrival date and was entitled to accommodation, meal allowances and incidental expenses as provided by policy. Consequently the Committee recommended that this grievance be upheld.

The Committee also noted that in the earlier grievance filed by the same member several years ago, it had recommended that members being relocated be provided relocation information by the division that would have to pay the cost of the relocation. Traditionally information has been provided by the sending or old division while the costs have been borne by the receiving or new division. In the earlier grievance, this had been at the root of a good degree of confusion. It appeared to the Committee that much of the confusion in these grievances were a result of the same procedures, which did not appear to have changed, despite the Committee's earlier recommendation. As a consequence, it reiterated the earlier recommendation that division giving information about the Relocation Directive and the division paying the costs of a relocation be one and the same.

The Commissioner had not issued his decision in these grievances by 31 March 1994.

Mortgage Default Insurance

G-92 A member was relocated. His old-post residence was debt-free but he and his wife had a number of personal loans outstanding. In order to qualify for an insured mortgage at his new post, he was required to lower his debt ratio. He was advised by the Financial Services and Supply Branch (FSSB) in his old division that the Force would reimburse his mortgage default insurance (MDI) premium. The member used part of the equity from the sale of his old-post residence to clear his personal debts, transferred the remainder to his new-post residence and obtained MDI. He claimed reimbursement of the MDI premium. This was refused by the new-post FSSB on the grounds that MDI premiums can only be reimbursed if a member transfers all the equity from an old-post residence and that if this had occurred, the member would not have needed MDI.

Rather than grieving immediately, the member sought a review of his request, which was denied, and then an additional review, which was also denied; the member then grieved. The Level I adjudicator denied the grievance on the grounds that there was no evidence the member had been misled by the old-post FSSB's information.

The Committee first considered the issue of time limits. It reiterated the view expressed in other files that members must present their grievances

within 30 days of the decision they are grieving. However it noted that in another file (G-91, discussed below at p. 27) it had held that refusals to review decisions could also be grieved. However, it was obvious from the grievor's arguments that he was grieving the original decision, and not the refusals to review the decision. Consequently the Committee recommended that the grievance be denied. It noted, however, that there appeared to be a number of mathematical errors in the information on which the Force based its determination that the member would not have needed MDI if he had transferred all the equity from his old-post residence to the new-post residence. It felt that this information was sufficient to justify a further review and recommended that such a review be conducted. The Committee also noted that the member seemed to have been provided with different information by the old-post FSSB and the new-post FSSB. The Committee had previously recommended that steps be taken to ensure that the division that pays relocation expenses be the division that provides information about reimburseable expenses; this would not appear to have happened in this matter. The Committee reiterated its earlier comments.

The Commissioner agreed with the Committee on the time-limits issue as well as on the need for an additional review of the calculations.

G-93 A newly-engaged member was relocated from Training Academy to his first posting. The member bought a residence but required MDI. The member sought reimbursement of his MDI premiums; this was refused on the grounds that MDI premiums incurred by newly-engaged members cannot be reimbursed.

The member grieved, arguing that MDI premiums were part of the legal fees he had to pay to obtain title to his house and that newly-engaged members had been reimbursed MDI premiums in the past. The Level I adjudicator held that the Relocation Directive in effect at the time the grievor relocated clearly treated MDI premiums separately from legal fees and only the latter could be reimbursed to newly-engaged members. Consequently the grievance was denied.

The Committee carefully considered the Relocation Directive and came to the conclusion that MDI premiums are not considered to be legal fees for the purpose of the directive and cannot be reimbursed to newly-engaged members. In the past, the Force had incorrectly interpreted MDI premiums as being legal fees; this interpretation had been rescinded some nine months before the grievor relocated and, while the grievor might have been entitled to some special consideration if he had been misled by the Force, he was under an obligation to inform himself about the appropriate provisions of policy and there was no evidence he had been misled in this case. Consequently the Committee recommended that the grievance be denied. The Commissioner upheld the Committee's recommendation.

Relocation vs. Travel

G-90 During the mid 1980s special programs were instituted within the RCMP to enable Special Constables to be reclassified as regular Constables. Special Constables attended regular recruit training programs at the RCMP

Training Academy (then known as "Depot") in Regina; these programs lasted six months. In March 1988, a new Special Constable conversion program was implemented and Special Constables no longer attended the regular recruit-training program and the length of time they spent at Depot varied. Persons who took the six-month course had amounts deducted from their salaries for meals and accommodation; persons who took the new, shorter courses did not.

Two members, who had attended the six-month courses, became aware of the change in policy in early 1989. They claimed that as Special Constables they were regular members of the RCMP, not recruits, and, in accordance with the policy applicable to regular members sent on training, deductions from their salaries should not have been made. When their claims were denied, the members grieved.

The members were successful before the Level I adjudicator; however this did not end the matter. A significant amount of correspondence was exchanged within the Force up to and including the Deputy Commissioner level. The result of this was a decision that the Level I adjudicator's decision would not be implemented. The members filed a new grievance against this decision. They reiterated their claim that they had not been treated in accordance with policy. This grievance was denied by the new Level I adjudicator.

The Committee agreed with the grievors' basic premises: that at all relevant times they were regular members of the Force, not recruits, and that they were entitled to be dealt with according to Treasury Board approved policy. However, the Committee did not agree that it was the Treasury Board approved travel policy that applied to the members; by all indications the members had been relocated to Depot and so were covered by the Treasury Board approved relocation policy. As a result, given that their residence was considered to be Depot, it was entirely reasonable that meal and accommodation charges should have been deducted from their salaries.

The Committee noted that the decision to place members in travel status rather than relocate them was a managerial one subject to applicable Treasury Board policy. The policy in effect at the time the grievors attended their courses provided that members were to be in travel status for periods of less than two months; for periods between two and four months they were to be in extended travel status; and for periods of more than four months the general rule was to effect a short-term relocation, although extended travel status could be approved if a short-term relocation was impractical. In this light, and in the absence of any indications to the contrary, the Force's decision to relocate the grievors to Depot was felt to be reasonable. This policy also explained the fact that members who attended the shorter courses did not make meal and accommodation payments, as they were not relocated to Depot. Consequently the Committee recommended that the grievance be denied.

The Committee also commented on the procedure adopted by the Force in dealing with the original Level I adjudication. The Committee noted that there was nothing in legislation or policy addressing this issue and it had not been

seriously discussed by the parties. The Committee felt that under the circumstances the Force's actions were defensible, although they could only be resorted to in exceptional circumstances. The Committee noted, though, that such action could only be defensible to the extent it preserved grievors' rights to have their grievances considered at Level II.

The Commissioner agreed with the Committee's analysis and recommendation, denied the grievance and instructed the appropriate policy centre to consider further the question of non-implementation of Level I decisions, which, he felt, would occur only in rare circumstances.

G-106 Another member who also attended the Special Constable training course sought reimbursement of the amounts deducted from his salary for accommodation and meals. He based his claim on largely the same reasons as the grievors in the previous matter. His claim was also denied, again for largely the same reasons as the previous grievors' claim. The Level I adjudicator denied the member's grievance.

The Committee found that the grievor had presented his grievance within the 30-day period of the denial of his request for reimbursement. It also reiterated its conclusion in the previous matter that the member's entitlements depended on whether or not he had been relocated to Depot when he attended the course. Unlike the previous matter where the Committee was of the view that the members had been relocated, the Committee was unable to come to a conclusion in this matter: there were elements that were consistent with his having been relocated, but there were also elements consistent with his having been in travel status. Although the Committee could have resolved this aspect on the basis that the burden of proof in grievance matters is on the grievor, it felt that the distinction between travel and relocation had not been adequately understood at earlier stages of the grievance process and it would be unfair to hold this against the grievor. Consequently, it recommended that the matter be returned to the initial decision-making centre for a determination whether the member had been relocated to Depot or was in travel status.

The Committee also noted that the member had alleged that married members were treated differently from single members, in violation of applicable policy and the *Canadian Charter of Rights and Freedoms*. While the Committee acknowledged that single members may have been more likely to have deductions from their salary for accommodation and meals, this was a result of the fact that they were more likely to have been relocated than married members: one of the criteria that management must consider when determining whether to relocate someone for a short period of time is the cost of relocating that person's family as well.

The Commissioner had not issued his decision in this matter by 31 March 1994.

Two-Year Limit

G-94 A member was relocated to a new division. Because he expected to be relocated back to his previous division within 3-5 years, he rented accommodation at the new post. Five

years after his relocation, the member transferred to a new section and thought that the expected relocation back to his old division was unlikely in the foreseeable future. Consequently he sought an extension of the two-year limit on reimbursement of legal fees associated with the purchase of a residence at a new post. The request was denied and the member made several attempts to resolve the matter informally; these were unsuccessful so, five months after the denial, he grieved.

The Level I adjudicator denied the grievance on the grounds that it was presented after the expiry of the 30-day time period provided by s. 31(2) of the *RCMP Act*. The member argued that it was not until he received the last reply to his attempts to resolve the matter informally that he was satisfied that the Force was going to require him to use the grievance process.

The Committee noted that it was highly commendable to attempt to resolve a matter informally; however it reiterated its previously stated views that informal resolution attempts do not extend the 30-day period provided in the *RCMP Act*. Consequently it recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendations.

G-100 A member's operational capacities were limited due to medical reasons. Consequently he was relocated to fill office vacancies on a Surplus-to-Establishment (STE) basis. After being in such a situation for more than two years, the member requested an extension of the two-year limit on reimbursement of legal fees associated with the purchase of a residence at a new post, on the grounds that, as his employment status had been uncertain, it would not have been reasonable for him to purchase a residence at the new post. The request was denied on the grounds that he had not sought an extension of the two-year period before its expiry. The member grieved and the Level I adjudicator denied the grievance on the same grounds.

The Committee noted that members' legal fees associated with the purchase of a residence at a new post can only be reimbursed within two years of their relocation, unless an extension is granted. Extensions are available in exceptional circumstances. The grievor had not demonstrated that he was unable to seek an extension prior to the expiry of the two-year period, nor that he was unaware of the alleged exceptional circumstances during that time frame. The Committee was of the view that the Force had made no error in refusing to grant an extension and recommended that the grievance be denied.

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

Other Relocation Issues

G-87 A member was transferred to a nearby detachment; she retained her residence at the old post and commuted to the new post. Several months later, for personal reasons, she decided to move to the vicinity of the new post and, prior to moving, asked for reimbursement for moving expenses. The Force denied her request on the grounds that her transfer had been a "no cost" one.

The grievor moved and sought reimbursement of her expenses, claiming that she had not been advised her transfer was a "no cost" one, that her move was acceptable under policy and that the refusal to reimburse her claim was based on lingering resentment of earlier difficulties related to her move from government-owned quarters in another detachment. The Level I adjudicator denied the grievance on the grounds that the grievor was well aware, before incurring any expenses, that she would not be reimbursed and that the move was made for personal, not operational reasons.

The Committee noted that there may be time limits problems with the grievance but felt that the merits were serious enough to be addressed in any event. It found that the relevant question to be answered was not whether the grievor had been transferred for operational reasons, but whether she had been authorized to relocate, because a transfer does not necessarily require a relocation. There was no evidence on file that the grievor had ever been authorized to relocate, or that authorization had been denied or withheld for inappropriate reasons. Hence, the grievor's relocation was not a consequence of her employment, it was the result of a personal decision. The Committee recommended that the grievance be denied.

The Commissioner denied the grievance on time limits, but concurred with the Committee on the substantive issue.

G-88 A member was transferred, authorized to relocate and provided with Temporary Dual Residence Assistance (TDRA). He sought, and was granted, several extensions to the six-month period for which TDRA is normally granted. He sought an additional extension because he was still unable to sell his house at the old post. This request was refused on the grounds that the asking price for his old-post residence was too high.

The member grieved this refusal and the Level I adjudicator found that he had made no positive efforts to sell his old-post residence, other than keep it on the market. Consequently he denied the grievance. The Committee reviewed the grievor's claim and noted that he had received TDRA for more than two years. While having sympathy for the grievor's difficulties, it felt that under the circumstances, and particularly in view of the existence of other policies designed to deal with difficulties associated with selling residences, the grievor had not demonstrated that he ought to receive an additional extension of TDRA. Consequently the Committee recommended that the grievance be denied.

The Commissioner was also sympathetic to the grievor but agreed with the Committee's recommendation.

G-89 A member who was about to retire sought authority to go on a House-Hunting Trip (HHT) to assess the option of disposing of a residence he already owned in the city where he planned to retire. The request was denied on the ground that he already owned a house there. The member grieved the refusal. He argued that he had saved the Force money by retaining his residence at his retirement location; if he had not retained the residence he would be entitled to an

HHT. The Level I adjudicator denied the grievance on the grounds that there was nothing in policy permitting an HHT under the circumstances.

The Committee was of the view that the underlying intent behind HHTs is to permit members to find residences when they are relocated to a new location. In this instance the grievor already owned a residence in the city to which he was retiring. Once he advised the Force of his intention to retire to that location, his entitlement to an HHT and assistance with the cost of buying a new residence was extinguished. The only exception to this would be if the choice of residence had somehow been limited by the Force; as there was no evidence of such a limitation, the exception did not apply. Consequently the Committee recommended that the grievance be denied.

The Commissioner upheld the Committee's recommendation.

G-98 A newly-engaged member was relocated from Training Academy to a detachment. The move of her household effects (HHE) was delayed and actually occurred while she was on vacation. When the HHE arrived at her new post, the moving company telephoned her residence to arrange delivery and was advised that she was on vacation. Rather than attempt to deliver the goods, the company sought and obtained approval from the Force to store the goods. Upon the member's return she was advised that storage had been approved for 30 days and, as she was about to move, she left the goods in storage until after her move. The Force billed the member for the cost of storage of her HHE, arguing that it was her responsibility to be present, or have someone present when her HHE were delivered. The member submitted that her roommates were ready to accept delivery but it was not attempted. As the matter could not be resolved, the member grieved.

The Level I adjudicator was of the view that the member was under an obligation to be present or make appropriate arrangements for the arrival of her HHE. He concluded that she had not left clear instructions with her roommates prior to going on vacation and had compounded the problem by not removing her HHE from storage immediately upon her return. He denied the grievance.

The Committee noted that primary responsibility for moving members and their effects rests with the RCMP. The fact that moving the grievor's HHE was delayed and then effected while she was on vacation put even greater responsibility on the Force. While the arrangements the grievor had made were not ideal, they satisfied the requirements of policy which simply encourages members to "try" to be present for packing and delivery of HHE. The Force made no independent attempt to verify that delivery could not be effected, relying instead on information provided by the moving company. With regard to the period after the grievor's return from vacation, it would appear that neither the Force nor the moving company advised her that there would be additional charges and she should not be penalized for this lack of information. Consequently the Committee recommended that the grievance be upheld.

The Commissioner agreed with the Committee's recommendation as he felt

the grievor had acted in good faith throughout.

G-104 A member was relocated within the same division. While on his House-Hunting Trip (HHT), he ascertained that there were no suitable residences for himself and his family in the area to which he was to be posted. Consequently he purchased a residence a significant distance away from his posting and made arrangements to occupy a small residence within the posting area while on duty. The member was advised that he would not be reimbursed any monies associated with the purchase of his residence, or expenses involved in finding the residence and the costs of moving his HHE would be limited to the costs of moving them to the new detachment area.

Over the next several months there was an ongoing exchange of correspondence regarding the member's case. At one point Headquarters advised that it was reviewing the Force's residency policy and FSSB put matters on hold pending the outcome of this review. One year later, a lawyer acting on behalf of the member was advised that FSSB would not be considering the matter further and that if the member was not satisfied, he should have filed a grievance nearly 18 months earlier. The member grieved.

The Level I adjudicator allowed the grievance in part. He noted that the HHT expenses would have been incurred in any event and so allowed their reimbursement. With regard to the expenses for the purchase of the house, he noted that if the member had informed the Force of his intentions earlier, as he was required to do under policy, the Force could have advised him of the difficulties with his prospective purchase and the expenses would not have been incurred.

The Committee considered this matter in light of its detailed analysis of time limits in another file (see G-91, p. 27, below). The Committee found that the original decisions denying the member reimbursement were communicated to the grievor some 17 and 15 months prior to his grievance. He failed to grieve these decisions within the 30-day period provided by the *RCMP Act*. The member did, however, grieve within 30 days of the Force's refusal to review the original decisions. In order to successfully grieve a refusal to review, the member must demonstrate that he provided new information that put the original decision in a "whole new light" such that a reasonably prudent decision-maker would conclude that the original decision needed to be reviewed. The Committee found that no such information was provided by the grievor, consequently it recommended that the grievance be denied.

The Commissioner agreed with the Committee's recommendation and its analysis of the time limits issues expressed in this matter and in G-91 (see p. 27, below).

G-105 A member was relocated within a division. Because his wife was not able to secure employment immediately upon their arrival at the new post, they were not able to obtain mortgage financing to purchase a new residence. The member applied for, and was granted, a sum of money for advance rent. Some time after their arrival at the

new post, the member's wife secured employment and they were able to obtain financing on a residence. The member applied for reimbursement of his legal fees associated with the purchase. Based on the Relocation Directive, the Force reimbursed the member the difference between his legal fees and the amount already provided for advance rent. The member grieved the failure to reimburse him the full amount of his legal fees.

The Level I adjudicator held that the Relocation Directive provided that only the greater of legal fees or advance rent could be reimbursed unless there was no viable housing market at the new post. He found that the member's inability to purchase a new house was a result of his personal financial situation, not the absence of a viable housing market. Consequently he denied the grievance.

The Committee considered the appropriate sections of the Relocation Directive and concluded that, in order to be reimbursed both advance rent and legal fees, members must demonstrate that there was no viable housing market and there was no suitable housing at the new post. In this matter, while the grievor had demonstrated that there was no suitable housing, given his financial situation, he had not succeeded in convincing the Committee that there was not a viable housing market; indeed while he alleged this to be the case, he had made no effort to counter the convincing arguments to the contrary presented by the Force. Consequently the Committee recommended that the grievance be denied.

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

v) *Civilian Member Classification*

G-91 A civilian member's position was classified at a particular level. One year later the member's Officer-in-charge (OIC) asked that the classification be revised and upgraded. The request was denied by the appropriate branch, which felt the classification was correct. Five months later a further review was requested by the OIC on the grounds that there had been errors in the classification process. This request was also refused. The member grieved the failure to reclassify his position.

The officer responsible for the classification section argued that the grievance was out of time as it had not been commenced within 30 days of the original classification. The Level I adjudicator, prior to determining this issue, asked that a Technical Evaluation Committee (TEC) be convened to review the classification; the grievor was not advised of this until he received a copy of the TEC's report finding that the position was correctly classified. The Level I adjudicator found that the grievance was out of time, not because it was submitted more than 30 days after the original classification, but because it was submitted more than 30 days after the first refusal to reconsider the classification.

The Committee once again considered the "thorny" issue of time limits under s. 31(2) of the *RCMP Act* and gave a detailed analysis of this section of the *Act*. It noted that members have the right to grieve "any decision, act or omission in the administration of the affairs of the Force [emphasis added]". It found that, while original decisions were obviously grievable, the refusal to review decisions could also be

grievable, to the extent that they could be seen to be substantively different from the original decision. Where a decision maker refuses to conduct a review, it is only the refusal to conduct the review that can be grieved, not the original decision. Members are only entitled to a review if they present new information that puts the original decision in "a whole new light". A grievance against a refusal to conduct a review would only be successful if the grievor could show that a reasonably prudent decision-maker would conclude that the original decision ought to be reviewed.

Based on the material before the Committee, the grievor could have challenged the original decision, the first refusal to review or the second refusal to review. He did not challenge either of the first two within the 30-day period allowed by the *RCMP Act*, therefore his grievance was only in time to the extent that it was directed at the second refusal to review. Most of the grievor's arguments related to the original decision, and were not applicable to the second refusal. Those arguments that were applicable to the second refusal did not demonstrate that the refusal was based on inappropriate grounds or was clearly wrong. Consequently the Committee recommended that the grievance be denied. The Committee also noted that it was inappropriate not to have informed the grievor of the creation of the TEC before it was convened.

The Commissioner denied the grievance both on time frames and on the merits, as he found that there was no evidence the classification process was not properly done or that information was ignored.

G-99 A civilian unit was transferred from one branch to another. Shortly afterwards one of the members in the unit requested that position classifications be upgraded. New job descriptions were prepared with an effective date corresponding to the change in reporting structure. The reclassifications were eventually processed nearly four years later and were made retroactive for a period of six months from the date of the re-classification. Two of the members affected grieved the limited retroactivity period and requested that the reclassification be backdated to the date of the organizational change. Although the Force did agree to extend the retroactivity period somewhat, it was not prepared to backdate the reclassifications to the date of the organizational change.

In the absence of errors of fact or process, the Level I adjudicator felt bound by the provisions of a Commissioner's Standing Order (CSO) limiting retroactivity to six months from the date of a reclassification. Finding no errors, he denied the grievance.

The Committee accepted, for the purposes of this grievance, the Force's right to limit the retroactive effect to be given to reclassifications. It was of the view, though, that the limitation in the CSO does not limit retroactivity where delays are the result of Force errors of fact or process. The Committee then examined in detail the process that had been followed and concluded that an additional 104 weeks of the delay, over and above that already recognized by the Force, was directly attributable to Force errors. It recommended that the grievors receive at least an additional 104 weeks of retroactive pay and that the overall policy be reviewed to ensure that it was

not depriving members of their right to full pay for work recognized as having been requested and performed. In the event that policy is changed, the Committee recommended that the grievors receive the full benefit of any change.

The Commissioner agreed with the Committee's recommendation and awarded the grievors an additional 104 weeks of retroactive pay; he also ordered a review of the policy limiting the period of retroactive reclassifications to six months.

vi) *Occupational Health and Safety*

G-107 At the request of Force management, and understanding that he would be reimbursed the cost, a civilian member purchased safety footwear. Subsequently, the Force determined that it would purchase safety footwear and make it available to members, and authorized a payment of approximately 20% of the cost of the footwear to the member. The member filed a grievance against the Force's failure to provide safety footwear and its failure to reimburse him the full cost of the footwear he had purchased. The Force subsequently reimbursed the full cost of his footwear and the grievor withdrew the part of the grievance relating to the failure to reimburse him the full cost.

The Level I adjudicator denied the remainder of the member's grievance on the grounds that policy did not require the Force to purchase and stock safety footwear for the member's use.

The Committee was unable to see how the member was aggrieved by the Force's actions: he was asking that the Force stock safety footwear and lend it out to him on an as-required basis, yet he had been reimbursed the full cost of his own safety footwear. Consequently the Committee recommended that the grievance be denied.

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

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

i) *Disgraceful Conduct: Taking Items From a Store*

D-25 A member was shopping while off duty. Upon entering the store he picked up some sports cards, as he was a collector. As he continued through the store he placed two of the packages of the cards in his pockets while adding other items to his grocery basket. At the checkout, he did not pay for the cards in his pockets, although he did pay for other cards in his grocery basket. He was stopped outside the store. He was arrested and charged with "shoplifting". Formal disciplinary proceedings were instituted against him, the Force alleging that he had been engaged in disgraceful conduct bringing discredit on the RCMP in contravention of the *Code of Conduct* found in the *RCMP Regulations*.

The member admitted that he had left the store without paying for the items in question but claimed not to have intended to steal them: he submitted that he had intended to return the cards in his pockets to the display rack, but by the time he reached the checkout, he had forgotten that he had the cards in his pockets.

At the Adjudication Board, the member led evidence that he was pressed for time while shopping and expert evidence on the effect of such pressures on short-term memory and on the issue

of intent versus innocent mistake. He also led evidence of his general good character.

The Adjudication Board found that it was not necessary for the Force to establish the member intended not to pay for the items, but that intent or lack of it was a relevant factor to consider. It did not accept the member's version of the incidents leading up to his arrest or the expert witness' conclusions based on that version of the incidents. Consequently it concluded that the member had conducted himself in a disgraceful manner and compromised his position as a police officer to the extent that he was unsuitable to remain within the RCMP. The Board ordered the member to resign or be discharged from the Force.

The member appealed the Board's findings of misconduct and the sanction imposed on him. He argued that the Board had failed to assess his credibility and that of his witnesses; that the Board did not use the test of *mens rea* (the legal test whether a person intended to commit a criminal act); that adequate weight was not given to the member's expert witness; and that greater weight should have been given to the member's own testimony. With regard to the sanction, the member argued that it did not reflect the current trend in professional discipline.

The Committee agreed with the Adjudication Board's finding of misconduct. It noted that the Board had considered the evidence before it and had ample evidence before it to prefer the Appropriate Officer's version of the incident to the member's. The Board was correct in not using the legal notion of *mens rea*; this is a legal test used in criminal law and it is not appropriate in disciplinary proceedings. While it is not necessary for the Appropriate Officer to establish a member's intent, it is a relevant factor to be considered; this the Board did. The Board was not bound to accept the member's expert witness' testimony. The Board is the trier of fact, it must decide what happened and, having rejected the member's version, it was open to the Board to reject the expert witness' conclusions based on the member's version. The Board preferred the Appropriate Officer's witnesses' version of the incident to the member's and the Committee did not find any patent error in this.

The Committee was of the view that the Board erred in the way in which it approached the question of sanction. The correct approach is to identify the appropriate range of sanctions for the misconduct, then to consider any mitigating or aggravating circumstances and finally chose the sanction which best reflects the severity of the misconduct in context and the nexus or link with employment in the Force. The Board appeared to have proceeded on the assumption that a particular type of misconduct warranted a specific sanction; the Committee rejected this approach. In the Committee's view the member's misconduct was serious and warranted a sanction in the upper range. Given the low value of the cards (approximately $5.00) and sanctions in other cases involving police officers, the Committee recommended that the member be demoted rather than ordered to resign.

The Commissioner agreed with the Committee's finding that the allegation against the member was established. However he noted that the Force imposes high standards on its members and most

members manage to live up to those standards. He believed that honesty is a fundamental quality for a peace officer and did not feel that the mitigating circumstances sufficiently diminished the seriousness of the misconduct to vary the sanction imposed by the Adjudication Board. Consequently he dismissed the member's appeal.

D-28 A member was alleged to have engaged in disgraceful conduct bringing discredit on the Force in that she removed articles worth less than $100 from a store without paying for them and identified herself as an RCMP member. The member admitted that she had left the store without paying for the items and had identified herself as an RCMP member after being arrested; however she did not admit that, in all the circumstances, her conduct was disgraceful.

The Adjudication Board found that the allegation of disgraceful conduct was not established. It determined that due to a combination of pre-menstrual symptoms, work stress, marital stress, anxiety from an anniversary of a vehicle accident in which she had been involved, discomfort from injuries due to the accident, and other factors, the member had been in an impaired mental state at the time of the incident and was not aware of what she was doing; this impaired mental state continued after her arrest. The Board made this finding on the basis of the member's testimony, which it found credible, the evidence of a psychiatrist and a psychologist who testified on behalf of the member, and other evidence, including evidence that the member had made no effort to conceal the items when taking them and accounts of the member's unusual behaviour after her arrest.

The Board also found that the member had not engaged in the alleged disgraceful conduct of asking for a special favour due to her position. The Board considered that self-identification as a police officer and a request not to be charged did not necessarily amount to a request for a special favour and that, in view of the evidence in this case, no request for a special favour was established.

The Appropriate Officer appealed, arguing that the Board had not correctly assessed evidence of the member's words and conduct at the time of the incident and had not correctly assessed the expert evidence. The Appropriate Officer also maintained that the Board had made certain other errors, including incorrectly considering the member's current inability to recollect certain events and fettering its discretion with respect to the expert evidence.

In the Committee's view, the Appropriate Officer had misconstrued the Board's reasoning. It had not, as alleged, used the member's inability to remember what had happened to lessen the effect of what she had said and done, rather it found that her inability to recall was the result of her mental state when the incident occurred and evaluated the evidence against her in light of her mental state at the time.

With regard to the expert evidence, The Committee noted that it would be incorrect for the Board to accept the evidence of an expert just because no expert had testified for the opposite party, but that this was not what had happened. The Board found that the expert witnesses' testimony was based on

what had really happened, consequently their evidence could be accepted and, although they were cross-examined, their evidence was essentially unchallenged. The Committee saw nothing wrong, in the circumstances, with the Board's reasoning.

With regard to assessment of the evidence, the Committee considered a number of precedents in legal matters generally and labour arbitration in particular and reiterated its long-standing views that it would not lightly interfere with findings of fact by an Adjudication Board. In each of the several instances where the Appropriate Officer invited the Committee to substitute its appreciation of the evidence for that of the Adjudication Board, including on the issue whether the member's identification of herself as a member of the RCMP was inappropriate, the Committee was of the view that there was sufficient grounds on which the Board could come to its conclusions and, so, declined to interfere.

Consequently, the Committee recommended that the Appropriate Officer's appeal be denied.

The Commissioner had not issued his decision by 31 March 1994.

ii) *Disgraceful Conduct and Disobeying a Lawful Order: Driving an RCMP Vehicle*

D-29 A member was authorized to drive a Force cruiser home in order to attend a meeting the following day. Before leaving office, he stopped in the mess and consumed a quantity of alcohol. On the way home he skidded at an intersection and struck a fire hydrant, causing minor damage. He did not report the incident to the local police.

Some civilian witnesses did call the local police, who contacted the RCMP and the next morning the member's supervisor called to inquire whether he had been in an accident. The member responded that he had hit a curb and was not aware of any damage. He then checked the police car and discovered the damage. The member was charged under the provincial Highway Traffic Act with leaving the scene of an accident and pleaded guilty. He was fined and reimbursed the cost of repairs to the fire hydrant and the cruiser. The Force decided to initiate formal disciplinary proceedings and alleged that he had acted in a disgraceful manner bringing discredit on the Force and that he had failed to obey a lawful order: a Commissioner's Standing Order (CSO) in the Force's Administration Manual provides that RCMP cruisers can only be used by members on duty and acting in pursuit of their duty and a Divisional policy states that members attending the mess must provide private transportation.

The member and the Appropriate Officer presented an Agreed Statement of Fact and the member admitted the two allegations. The Board agreed that the member had acted in a disgraceful manner; however it was of the Board's view that neither the CSO nor the divisional policy were lawful orders for the purposes of the RCMP Code of Conduct and so it held the second allegation was not established. It did, however, impose the penalty requested by the Appropriate Officer and agreed to by the member: a reprimand and forfeiture of two days pay.

The Appropriate Officer challenged the Board's findings. He argued that when the Board came to the conclusion

that the second allegation (failure to follow a lawful order) was not established, the Board should have reconvened and given him an opportunity to lead additional evidence to establish the allegation. He also challenged the Board's conclusion that CSOs were not lawful orders and submitted a numbers of cases from the Federal Court where CSOs had been held to have a legal effect.

The Committee reviewed a number of administrative law precedents and came to the conclusion that the Appropriate Officer had no general right to reopen his case once it was closed, and in this case the Agreed Statement of Facts constituted the Appropriate Officer's case. Consequently the Board was under no obligation to give the Appropriate Officer an opportunity to lead additional evidence once it had decided that the second allegation was not established.

The Committee then considered whether the CSO in question was a lawful order. It noted that the precedents cited to it were either based on the pre-1986 *RCMP Act* or had not adequately considered the effect of the new *RCMP Act*. Under the old *RCMP Act*, breaching a CSO was a minor service offence while failing to follow a lawful order was a major service offence. The Committee noted that under the new *RCMP Act*, the Commissioner could adopt CSOs in a much larger number of circumstances and that many of these were administrative in nature. Many CSOs were, in fact, administrative policy. It found that Parliament did not intend to widen the scope of CSOs and then increase the penalty for failing to follow them, hence it concluded that breaching a CSO did not automatically constitute a breach of the *Code of Conduct*. It felt that in order for a breach of a CSO to attract disciplinary consequences the CSO had actually to "order" someone to do or not to do something. The Committee was of the view that neither the CSO nor the divisional policy met this test and so concluded that the Board was correct in not upholding the second allegation.

Although recommending that the Appropriate Officer's appeal be denied, the Committee commented that drinking and driving were serious problems in society and the Force. The Committee observed that it had difficulty reconciling the grave view our society takes towards such conduct with the disciplinary treatment this conduct has sometimes received within the Force. There was nothing to stop the Commissioner adopting clear Commissioner's Standing Orders forbidding members from driving, whether on or off duty, while under the influence of alcohol.

The Commissioner had not issued his decision by 31 March 1994.

D-26 Another file raised many of the same issues as D-29 and the Committee issued similar findings and recommendations at the same time. The Commissioner had not issued his decision in this matter by 31 March 1994.

iii) *Disgraceful Conduct: Old Act and New Act*

D-27 Shortly before the new *RCMP Act* came into force, a member was suspended because he was suspected of having been involved in disgraceful conduct under the old *RCMP Act*. Nearly a year later, a report was

presented to the Commissioner who ordered that the member be charged under the old *RCMP Act*. Six months later, he was charged with four counts of disgraceful conduct. Proceedings before the Trial Officer (old-*RCMP Act* proceedings) actually took place three years later and the member was found guilty of two of the four counts of disgraceful conduct. He appealed.

When the matter was submitted to the Committee, the member and the Appropriate Officer agreed that the appeal procedures were governed by the new *RCMP Act* but the Appropriate Officer objected to the appeal and asked that it be dismissed as the member had failed to complete all the appropriate steps in a timely manner.

The first issue was whether the delay was valid given that the member had sought an extension of time limits (prior to expiry of the time limit) but that the extension was granted after the time limit had expired. The Committee agreed with an earlier decision of the Commissioner that a member should not be penalized for delays caused within the administration of the Force. It also noted that the new *RCMP Act* gives the Commissioner the power to extend time limits of his own motion and that this power clearly contemplates a time limit being extended after it has expired. The Committee recommended that this objection be rejected.

The second issue was whether the member's failure to serve a copy of his appeal on the Appropriate Officer was fatal. The Committee was of the view that the provisions of the new *RCMP Act* were designed to ensure that the parties to an appeal were aware of what was happening and were not taken by surprise, nor deprived of the opportunity of making submissions. In this case the Appropriate Officer was not disadvantaged by the failure to provide him with a copy of the appeal and so the Committee recommended that this objection be rejected.

The third issue, and the one raised by the member, was whether the disciplinary process itself was valid, given that it followed the old *RCMP Act* several years after the new *RCMP Act* came into effect.

Under the new *RCMP Act*, formal disciplinary proceedings can only be commenced within a year of the Appropriate Officer learning of the alleged breach of the *Code of Conduct* and the identity of the member; there was no similar limitation under the old *RCMP Act*. The Committee considered provisions of the *Interpretation Act*, as well as legal text books and concluded that Parliament intended that the new *RCMP Act* govern matters that had not been formally commenced under the old *RCMP Act*. Consequently, once the new *RCMP Act* came into effect, a new limitation period of one year came into effect for all disciplinary matters not already commenced.

The Committee also considered whether this matter had been started within the one-year limitation period. It noted that under the procedures followed by the Force, the member was not served with the charges against him until 16 months after the new *RCMP Act* came into effect and at least 17½ months after the appropriate officer became aware of the details of the member's alleged contravention. The Committee was convinced that such a delay was clearly well beyond Parliament's intentions,

consequently it recommended that the members appeal be granted.

The Commissioner had not issued his decision by 31 March 1994.

C) *DISCHARGE AND DEMOTION— PART V OF THE RCMP ACT*

R-01 A member experienced severe difficulty in meeting deadlines and properly documenting files. Her work was extremely poorly organized in general at a particular detachment. There was an indication though that she had been able to perform adequately at other detachments. The Force decided to initiate discharge proceedings under Part V of the *RCMP Act*.

The Discharge and Demotion Board reviewed the member's performance appraisals as well as a number of files she had worked on. In addition, it heard evidence from the member and witnesses testifying on her behalf. It concluded that the correct test to apply was whether the member was able to function at an acceptable standard as a member at her detachment. It found that her performance was inadequate and that there was no evidence she would be able to perform any better elsewhere. Consequently the Discharge and Demotion Board ordered that the member be discharged from the Force.

The member appealed the finding of the Discharge and Demotion Board. She alleged that there had been procedural errors before the Board; that evidence before the Board was inadmissible; that the evidence was incorrectly assessed; that the Board had applied an incorrect test to determine whether she should be discharged; and that she had been discriminated against.

As this was the first Discharge and Demotion matter arising under the *RCMP Act*, the Committee carefully considered all aspects of the matter. It concluded that while there may have been minor procedural errors, these did not prejudice the member and did not invalidate the proceedings. Written statements from the member's supervisors were admissible before the Board because copies had been provided to the member prior to the Board hearing, as required by the *Act*. Additional evidence the member sought to submit to the Committee was admissible because it was new, pertinent, and could not have been obtained prior to the matter being submitted to the Committee.

The Committee found that the member occupied a position described in a Force-wide job description and, as a result, the Board was incorrect in considering her ability to do her job at the particular detachment where she was posted; it ought to have considered her ability to do her job elsewhere. The Committee concluded that the Force had not justified discharging the member because there was evidence that she had been able to perform her job in other detachments. She had been placed in a very demanding situation and had suffered a depression at the time, but was recovering. There were indications that she could perform satisfactorily at another detachment. Consequently the Committee felt, and recommended, that a transfer to another detachment would be beneficial to the Force and the member.

The Commissioner agreed with the Committee regarding the procedural and evidentiary issues. He also agreed that the member should be evaluated against

her ability to perform her job elsewhere, not just at her detachment. He disagreed, though, with the Committee's view that she could perform elsewhere. He was of the view that if she was not able to perform at the detachment to which she was posted there was little reason to suspect she would be able to perform adequately elsewhere. Consequently he ordered that she resign or be discharged.

The member applied to the Federal Court of Canada for judicial review of the Commissioner's decision. In upholding the Commissioner's decision, the Court agreed with the Committee's Findings and Recommendations on the procedural and evidentiary points. It also agreed with the Committee's view that the relevant test was whether the member could perform her job elsewhere rather than whether she could perform her job at the detachment to which she was posted. It did not disagree, though, with the Commissioner's decision that the member was unable to perform her job elsewhere. As of 31 March 1994, the member had commenced proceedings to appeal the Federal Court's decision to the Federal Court of Appeal.