Royal Canadian Mounted Police
External Review Committee

Annual Report 2004-2005

Canada

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Royal Canadian Mounted Police
External Review Committee

Comité externe d'examen
de la Gendarmerie royale du Canada

Chair/Président

June 13, 2005

The Honourable Anne McLellan, P.C., M.P.
Minister, Public Safety and Emergency Preparedness Canada
Sir Wilfrid Laurier Building
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Minister:

In accordance with Section 30 of the *Royal Canadian Mounted Police Act*, I am pleased to submit to you the annual report of the RCMP External Review Committee for fiscal year 2004-2005, so that it may be tabled in the House of Commons and in the Senate.

Yours very truly,

Catherine Ebbs
Chair (Acting)

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PART I:
Message from the Acting Chair

The end of this fiscal year brought the announcement that Philippe Rabot, the Chair of the RCMP External Review Committee (the "Committee") for close to seven years, was leaving effective April, 2005. Mr. Rabot has been appointed Commissioner of Review Tribunals for the Canada Pension Plan (CPP) and Old Age Security (OAS).

As Chair, Mr. Rabot played a central role in the continued evolution of the work of the Committee. He was committed to ensuring an independent and arms length review of all cases referred to the Committee. He was tireless in his dedication to providing thoughtful and comprehensive findings and recommendations in each case. Although the Committee will miss him, we congratulate him on his new appointment. I have been appointed Acting Chair for the interim period, and a selection process is underway for the filling of the position.

The Committee is a small independent tribunal that reviews certain labour relations matters within the RCMP. In addition to our primary function of conducting case reviews, we prepare and maintain up-to-date communication tools to share information with the public and our stakeholders about the Committee, its findings and recommendations, and relevant legal principles. The Committee website, its quarterly publication (the *Communiqué*), as well as its training mandate are key to its success in this area. Also, we are committed to meeting all of our corporate responsibilities in accordance with the principles of openness, efficiency and accountability.

Over the last three years, the Committee has observed a marked increase in both its operational and corporate responsibilities. As will be discussed in this report, the number of cases referred to the Committee has remained somewhat constant over the last three years, but this year there was an increase in the referral of disciplinary appeals. In the corporate area we developed a performance measurement plan and adapted our reporting structure to meet the new guidelines issued by Treasury Board. As well, we prepared to meet the requirements of the new *Public Service Modernization Act*, a major portion of which came into effect on April 1, 2005.

This year's annual report addresses a variety of issues that the Committee examined in the case reviews that it conducted in the 2004-2005 year. This annual report is available on our web site, along with our quarterly *Communiqués* and case summaries, and our performance and planning reports.

Catherine Ebbs
Acting Chair

PART II:
This Year in Review

A. Mandate, Role and Responsibilities of the RCMP External Review Committee

Overview

The Committee is a quasi-judicial tribunal established by the *RCMP Act*. Its members are appointed by the Governor in Council for a term not exceeding five years. At this time the Committee has only one member who is both the Chair and Chief Executive Officer.

The Committee makes recommendations to the Commissioner of the RCMP, who has decision-making authority on all matters that have been referred to the Committee. These decisions may be subject to review by the Federal Court of Canada.

The overall objective of the work of the Committee is to positively influence labour relations within the RCMP. The mandate of the Committee is to review grievance, disciplinary and discharge and demotion cases referred to it. It then provides findings and recommendations that will assist the Commissioner of the RCMP in making decisions that are fair and well informed. The Committee's review of cases before it is intended to ensure transparency, fairness, impartiality and independence in the internal RCMP labour relations process.

The Committee's statutory mandate arises out of the *RCMP Act*, Parts II, III, IV and V. Part II of the *RCMP Act* establishes the RCMP External Review Committee, its duties, and its rule-making authority. Part III discusses the grievance procedure and the review process at the Committee level. Parts IV and V address disciplinary and discharge appeals respectively and describe the role and responsibilities of the Committee in those areas.

Grievances

Part III of the *RCMP Act* gives members the right to submit grievances. Initially these are reviewed by an RCMP officer designated as an adjudicator, and the decision is based on written submissions. If a member is dissatisfied with the decision made by a Level I Adjudicator, and wishes to appeal, then the member files a Level II Grievance. The law provides that certain grievances must be referred to the Committee. In the rare occurrence where the grievor may ask that the case not be referred, the Commissioner has the discretion not to do so. In grievances referable to the Committee, the Commissioner is the final decision-maker and he refers each grievance to the Committee for recommendations before making his decision.

Section 36 of the *RCMP Regulations* sets out 5 categories of grievances that are referred to the Committee for review: interpretation and application of government wide policies that apply to members of the RCMP; stoppage of pay during suspension of a member; interpretation and application of the Isolated Posts Directive; interpretation and application of the Relocation Directive; Administrative Discharge on grounds of physical or mental disability, abandonment of post, or irregular appointment.

Discipline

All members must follow the RCMP *Code of Conduct* (found in ss. 38-58.7 of the *RCMP Regulations*, 1988). Part IV of the *RCMP Act* describes disciplinary processes and sanctions for members of the RCMP, and it sets out the accountability mechanisms for members who are found to be in violation of the *Code of Conduct*. Violations of the *Code* may be addressed informally, but in more serious cases will be addressed through formal measures. Where formal discipline is initiated, the matter is referred to an adjudication board (the "Board"), comprised of three officers of the RCMP. A hearing is held and the Board determines if the member has violated the *Code of Conduct*. If so, another hearing is held to determine the appropriate sanction to be imposed. To come to this determination, the Board will consider all relevant circumstances, as well as both the aggravating and mitigating factors.

Under Part IV of the *RCMP Act*, the officer who initiated the disciplinary hearing or the member may appeal the Board's decision to the Commissioner. Only the member who has allegedly violated the *Code of Conduct* has the right to appeal the sanction ordered. Appeal submissions are made in writing. Unless the member requests otherwise, the Commissioner refers all disciplinary appeals to the Committee for its findings and recommendations.

Discharge and Demotion

Under Part V of the *RCMP Act*, a member may be subject to discharge or demotion proceedings for failing to perform his or her duties in a satisfactory manner, after having been given *"reasonable assistance, guidance and supervision in an attempt to improve the performance of those duties."* These proceedings are initiated by the Commanding Officer serving the member with a Notice of Intention to discharge or demotion. The member has the right to examine the material in support of the Notice of Intention and to request that a discharge and demotion board, consisting of three officers of the Force, be convened.

Either the member or the Appropriate Officer may appeal the decision of an RCMP discharge and demotion board. Appeal submissions are made in writing and the appeal is then referred to the Committee. There have only been four appeals of discharge and demotion board decisions before the Committee, one of these having been reviewed in the last year.

The Review Process at the Committee level

In all grievance, discipline and discharge and demotion matters referred to it, the Committee bases its review on the entire record before it. This includes all of the original documents, the decision made, and the submissions of the parties. Where the review involves the appeal of a disciplinary

or discharge and demotion decision, the transcript of the Board hearing is also before the Committee, as well as any exhibits entered at the hearing. The Chair may request that the parties provide additional information or submissions. If this is done, the other party is given the chance to respond. The Committee has the option of holding a hearing, but this is rarely ordered.

After consideration of all the issues, the Chair of the Committee provides findings and recommendations to the Commissioner and these are also provided to the parties. The Commissioner is not obliged to accept or follow the Committee recommendations. However, if the Commissioner decides not to follow the recommendations of the Committee, the law requires that in his reasons, he give an explanation for not doing so.

In its thorough review of cases over the years, the Committee has contributed to the resolution of a number of work related issues within the RCMP and often makes recommendations that go to the heart of improving the application of RCMP policies and practices to its membership. The Level II grievances, and disciplinary and discharge and demotion appeals involve disputes that were not resolved through the initial stages of dispute resolution. Typically, the issues referred to the Committee involve complex, challenging and sensitive issues that require in depth analysis. The Committee must balance a variety of interests before it, including those of the member, those of the RCMP, and those of the public.

The Committee's Communication Role

The Committee also plays an important role in communication with its various stakeholders. Committee staff prepare and distribute information on its role and mandate, as well as on its findings in cases before it, and relevant legal principles. The Committee's *Communiqué*, published on a quarterly basis, includes summaries of all the Committee's recommendations, as well as summaries of the Commissioner's decisions pertaining to those matters and articles of interest. Last year, articles published dealt with issues such as the grievance process as well as the *Canadian Charter of Rights and Freedoms* and the adjudication of grievances and disciplinary appeals. The *Communique* is distributed throughout the RCMP without charge, and is also available on the Committee's website.

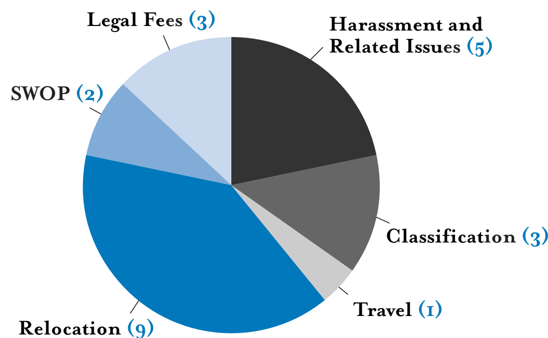
The Committee also contributes to training programs, requests for information and meetings and consultation. This year, Committee staff completed a training manual on discipline appeals as well as comprehensive training material on the grievance process. Staff contributed to a training program for new RCMP adjudicators, staff representatives and analysts in the area of grievances. In addition, the Committee met with a variety of stakeholders to discuss issues of common concern. For example, the staff met with new RCMP staff representatives in the fall of 2004 and responded to requests for information from RCMP members, other government agencies and the public.

B. Statistics

Over the last three years, the total number of cases referred to the Committee has remained about the same. In the 2004-2005 year, fewer grievances were referred to the Committee: a total of 30, compared to 36 in the previous year and 42 in 2002-2003. On the other hand, it is significant that 11 disciplinary decisions were referred to the Committee during the 2004-2005 year, a marked increase from the previous three years. No discharge appeals were referred to the Committee in the 2004-2005 year.

This year, the Committee issued 23 grievance recommendations, compared to 37 in 2003-2004 and 17 in 2002-2003. One grievance was withdrawn. The subject matter of this year's recommendations fell into the following general categories:

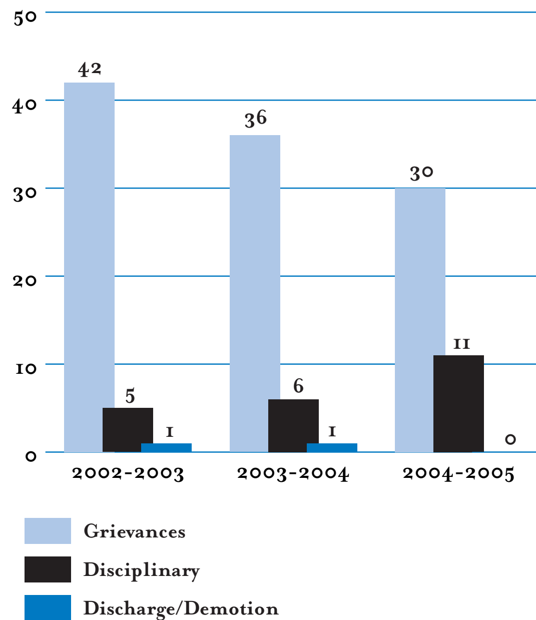
Grievances
General Categories



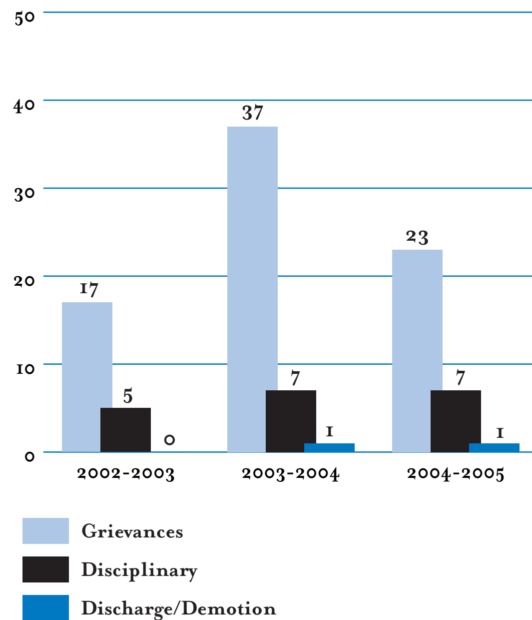
In 2004-2005, the Committee issued seven recommendations on disciplinary appeals, similar to last year. Historically, most disciplinary appeals before the Committee are initiated by the member. In the last two years, the Committee has observed an increase in the proportion of appeals by the officer who initiated the disciplinary process. This year, three of the cases involved Appropriate Officer led appeals and four appeals were initiated by the member. Of the seven disciplinary cases appealed, three involved a sanction of an order to resign within 14 days, failing which the member would be dismissed.

In addition, the Committee issued one recommendation on an appeal of a decision from an RCMP discharge and demotion board, the fourth to be reviewed in the history of the Committee.

Number of cases received



Number of cases completed



In conclusion, a total of 41 cases were referred to the Committee this year, and findings and recommendations were issued in 31 cases, including several outstanding cases from previous years. At year end, 46 active cases remained before the Committee, including 39 grievances. The number of files completed by the Committee from year to year may vary, depending on the complexity of the issues raised, and on whether the Committee must request further information.

A number of interesting and challenging issues were reviewed by the Committee in 2004-2005. Several of these issues will be discussed in the next section of the Report.

PART III: Issues of Particular Interest

A. Grievance Issues

A.1 Standing and the Right to Grieve

Overview

In order to submit a grievance, a member must have standing. Standing, or the right to grieve, is defined by section 31(1) of the *RCMP Act*:

> *31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.*

This provision places specific conditions on standing and is often a subject of debate in cases before the Committee. The Committee has endorsed a broad and liberal interpretation of section 31 to support the objectives of the legislation. In 2004-2005, Committee recommendations raised the issue of standing in several contexts, including the right of retired members to grieve; adverse effect and standing; the effect of an alternative process; standing and decisions, acts or omissions in the administration of the Force; and the meaning of being *"aggrieved"*.

Retired Members

Section 31 of the *RCMP Act* states that only *"members"* can grieve. Over the last two years, the Committee has been called upon to address whether a retired RCMP member is included in the definition of "member" and has standing to bring a grievance. The Committee issued recommendations in this area in 2004-2005 in *G-321*, *G-324*, and *G-332*.

In *G-321*, a job classification was disputed, leading to a lengthy grievance process and subsequent court proceedings that resulted in a new evaluation being ordered. The member had retired by the time that he grieved this second job evaluation. The Level I adjudicator held that the grievor was no longer a member of the RCMP, and therefore did not have standing. The Committee disagreed. It was of the view that the legislation should be given a fair, large and liberal construction to best meet its objectives. The Committee noted that the decision being grieved pertained to the classification of the position at the time the incumbent held it. The *RCMP Act* required only that the decision challenged pertain to the rights of a person as a member of the RCMP. It was not necessary for the person to still be a member of the RCMP when the grievance was presented. The Commissioner agreed that the grievor had standing.

In *G-324*, a retired member grieved a harassment decision arising from a complaint he had made prior to his retirement. The Committee found that the grievor had standing because he was a member of the Force at the time that he initiated the harassment complaint. The Committee again cautioned that a literal interpretation of the *RCMP Act* would not result in the effect that Parliament intended. The wording in s. 31(1) merely requires that the subject of the grievance pertain to the employer-employee relationship. It is sufficiently broad to capture instances where a member has retired between the time that a decision was sought and the time that the decision was finally issued. The Chair commented that waiting until after the member has retired would shield decisions from scrutiny through the grievance process. An important level of accountability could therefore be bypassed. He also referred to three Federal Court judgments that have addressed the rights of former public servants to use the grievance process and that lend support to the position that the grievor's retirement from the Force did not necessarily affect his right to use the grievance process.

Similarly, in *G-332*, the Committee found that a retired member had standing to present a grievance related to his retirement benefits. The grievor first received the commitment regarding retirement benefits while serving as a member of the Force and the grievance process was the appropriate recourse.

To date, the Commissioner has not issued decisions in either *G-324* or *G-332*.

Adverse Effect and Standing

A member is not entitled to grieve a decision, act or omission unless the member is personally *"aggrieved"*, i.e. unless the decision, act or omission has some effect on the member personally. In three cases this year, the Committee examined the issue of when a member is aggrieved. It emphasized that to grieve a decision, the member does not have to show that the grievance will succeed, but only that the matter being grieved has had some direct impact. Once the grievance is accepted, it is up to the Level 1 Adjudicator to decide on the merits of the arguments presented whether or not to allow the grievance.

In *G-322* and *G-323*, the grievor complained of harassment against two individuals for comments allegedly made about him. In *G-334*, the grievor had been denied a meal claim which included payment for meals that had been provided on site without charge. The Committee found that in all 3 cases, the Level I adjudicator had denied standing because he had found that the grievor had not proved his case. The Committee found that the grievors had standing because the matters being complained of affected them directly. However, as to the merits of the grievances, the Committee recommended denial. In *G-322* and *G-323*, the Commissioner agreed with the Committee's analysis on the issue of standing and on the merits and denied the grievances. The grievance in *G-334* was still before the Commissioner at year-end.

The Effect of an Alternate Process

Subsection 31(1) requires that there be, in respect of the decision, act or omission at issue, *"no other process for redress ... provided by this Act, the regulations or the Commissioner's Standing Orders"*. Where there is an alternate method for redress, a grievance cannot be brought under subsection 31(1).

In *G-326*, the Level I adjudicator ruled that a harassment grievance was inadmissible because the grievor had access to a harassment complaint process under RCMP policy. The Committee found that the process developed under policy did not prevent the grievor from submitting a grievance to address the same issue, because it was not a process for redress provided by an act, regulation or Commissioner's Standing Order, as stipulated in the *RCMP Act*. The Committee also found that the grievance was out of time and unsupported by the evidence and recommended its denial.

The Commissioner agreed with the findings and recommendations of the Committee and denied the grievance, but did not comment specifically on the issue of standing.

Standing and decisions, acts or omissions in the administration of the affairs of the Force

If aggrieved, a member may challenge any *"decision, act or omission"*, as long as the decision, act or omission was made *"in the administration of the affairs of the Force"*.

In *G-335*, the member filed a grievance to challenge a decision made by an employee of Treasury Board Secretariat to decline to declare the community he resided in a *"depressed housing market"*. This had a direct bearing on the member because with this declaration, he would have been fully compensated for losses he incurred on the sale of his home after being transferred. The Level I adjudicator ruled that he did not have jurisdiction to hear the grievance as the decision in question had not been made by the RCMP. At Level II, the grievor argued that a relevant consideration was the fact that he *"received documentation for this Depressed Market Application as a member of the RCMP with [his] RCMP relocation information"*. He also argued that the decision on his application was based on advice received from the RCMP.

The Committee found that the grievor lacked standing. Grievances that pertain to a member's entitlement to benefits provided by a Treasury Board policy or directive are only grievable when the authority to make a decision rests within the RCMP. The grievance process could not be used to challenge advice that the RCMP provides to another department because Treasury Board Secretariat was ultimately free to reject it. This grievance was still before the Commissioner at year-end.

In *G-339*, part of the Committee recommendation included a finding that the grievor could not grieve the decision to deny his request for a criminal investigation concerning a person who is not employed by the RCMP. The Committee found that that particular decision was not a matter within *"the administration of the affairs of the Force"* as required by s. 31(1) of the *RCMP Act.* The grievance process was designed to address the manner in which the employee-employer relationship was managed only. The Commissioner has yet to render a decision on this matter.

Standing and the Meaning of "aggrieved"

In *G-340*, the Committee discussed the meaning of the term *"aggrieved"* and determined that the grievor did not have standing. In his capacity as a Divisional Staff Relations Representative, the grievor wanted to intervene in proceedings filed by another member before the Federal Court of Canada. He requested authorization to be represented by a lawyer paid for by the RCMP and was denied. Nevertheless, the grievor presented his application for leave to intervene before the Court through a lawyer and again requested that his legal costs be covered by the RCMP. This request was also denied. This resulted in the first grievance. The Force's subsequent refusal to pay the two bills of costs from the grievor's lawyer led to two more grievances. All three grievances were denied at Level I on the ground that the request for legal representation did not meet the criteria set out in the Policy on the Provision of Legal Assistance to Crown Servants.

The Committee found that all three grievances were inadmissible since the grievor was not *"aggrieved"* as required by section 31(1) of the *RCMP Act*. The Committee stated that to be aggrieved required some level of personal impact. In this case, the grievor was seeking the payment of legal fees to advance his professional work as a Divisional Staff Relations Representative, which was an inappropriate use of the grievance process. The Commissioner has yet to render a decision in this matter.

A.2 Mandatory Retirement

For the first time in its history, the Committee has issued a recommendation in a grievance with respect to mandatory retirement in the Force. The Committee has provided the Commissioner with extensive reasoning on this issue and the potential shortcomings of the current regulatory provisions.

In *G-325*, the grievor applied for an extension of his term of service shortly before his mandatory retirement age of 60. Section 26 of the *Royal Canadian Mounted Police Superannuation Regulation* imposes mandatory retirement ages on various ranks of the RCMP, but subsection 6 allows for an extension of these time limits *"in the interest of the good government of the Force and where an operational requirement exists"*. The grievor based his request mostly on his outstanding service record, but it was rejected on the basis that *"exemplary service does not meet the test of good governance or operational need"*.

The grievor was then discharged on his 60th birthday. He filed a grievance arguing that the denial of the opportunity to continue his career was discriminatory on the basis of age. The RCMP relied on s.15(1)*(c)* of the *Canadian Human Rights Act*, which provides that it is not a discriminatory practice if an individual's employment is terminated at the normal age of retirement for employees working in similar positions. The grievor questioned the setting of a mandatory retirement age and argued that other police services either had a mandatory retirement age of 65 or none at all.

The Level I adjudicator allowed the grievance because of a procedural error. The request for extension had been denied by the respondent, instead of being referred to the Commissioner for review and recommendation as required by law. Nevertheless, the Level I adjudicator also stated that, had the correct process been followed, the decision would have likely been the same.

The Committee recommended allowing the grievance, and agreed that the respondent lacked the legal authority to deny the request for an extension to the terms of service. But the Committee disagreed with the Level I adjudicator as to whether the result would have been the same had the correct process been followed. The Committee endorsed a liberal interpretation of "*good government... and operational requirement*" such that personal factors related to education, experience, past performance and motivation may be taken into account in deciding on requests for extensions to terms of service. It found that the procedural error resulted in the unfair denial of the opportunity for the grievor to continue his career in the Force beyond his 60th birthday.

Reviewing both case law and the relevant provisions of the *Canadian Human Rights Act*, the Committee considered whether it was lawful for the RCMP to compel its officers to retire at age 60. In 1990, the Supreme Court had ruled that a mandatory retirement age of 65 for university professors did not violate the *Canadian Charter of Rights and Freedoms* (*McKinney v. University of Guelph* [1990] 3 S.C.R. 229). The Committee noted that thinking has changed since that time. Specifically, the Committee referred to a more recent case from the British Columbia Court of Appeal (*GVRD Employees' Union v. GVRD*, 2001 BCCA 435) which suggested that the reasoning in McKinney might be due for reconsideration given changes in workplace demographics and new thinking on age discrimination, other equality rights and the mobility of the workforce. The Court concluded:

> *[t]he social and legislative facts now available may well cast doubt on the extent to which the courts should defer to legislative decisions made over a decade ago. The issue is certainly one of national importance.*

The Committee also referred to the Supreme Court of Canada's decision in *'Meiorin'* (*British Columbia (Public Service Employee Relations Committee) v. BCGSEU* [1999] 3 S.C.R.3) which imposed a more rigorous test on the employer to meet its human rights obligations to accommodate an employee. Here, the Force had not shown that it would have experienced an undue hardship had it retained the grievor as a member beyond his 60th birthday.

As well, the Committee discussed whether s.15(1)*(b)* of the *Canadian Human Rights Act* was applicable. This section allows an employer to regulate a mandatory retirement age. However, the Committee noted that in the case of the RCMP, this section may not apply because the regulation applicable to the RCMP was not established specially for the purpose of complying with s.15(1)*(b)*. Finally, the Committee stated that more evidence would be needed to determine whether the RCMP's mandatory retirement age complied with s.15(1)*(c)* of the *Canadian Human Rights Act*, which allows for mandatory retirement at the *"normal age of retirement for employees working in positions similar to the position"* of the individual in question.

This grievance was still before the Commissioner at year-end.

A.3 Stoppage of Pay and Allowances

In 2004-2005, the Committee issued findings and recommendations on the issue of stoppage of pay and allowances (*G-328*, *G-342*) . Level II decisions on the previous year's three stoppage of pay grievances (*G-318*, *G-319*, *G-320*) were also rendered by the Commissioner.

In the previous year's cases, the Committee had recommended that all three grievances be allowed. In the Committee's view , the Treasury Board regulation on stoppage of pay and allowances was invalid, because it was not detailed enough, and it left the substance of when a members' pay and allowances may be stopped to internal RCMP policy, contrary to the *RCMP Act*. This meant that the RCMP policy in this area was also invalid. In all three cases, the Commissioner declined to adopt the Committee's conclusion that the Treasury Board regulation and the RCMP internal policy on stoppage of pay and allowances were invalid. He stated that he lacked the legal authority to do so.

The Committee had also called into question whether the facts of the three grievances genuinely represented examples of *"extreme circumstances when it would be inappropriate to pay a member"*, as required by the Force policy and whether one of the decisions to stop pay and allowances was made in a timely manner. In *G-318*, the Commissioner found that the grievance was moot due to the fact that the

grievor and the Force had negotiated a mutually acceptable reinstatement. In *G-319*, he allowed the grievance on the issue of timeliness, concurring with the Committee that the stoppage of pay order must be made in a timely manner. In *G-320*, the Commissioner reinstated the grievor's pay effective on the date of the original stoppage of pay order because an adjudication board had found that the allegations giving rise to the stoppage order had not been made out.

The recommendations issued by the Committee in the current year (*G-328, G-342*) are consistent with its previous findings and recommendations, particularly on the issue of the invalidity of the Treasury Board regulation and RCMP policy on stoppage of pay and allowances.

In *G-328*, the grievor was suspended for refusing to take a medical exam. After a five-month investigation, the division Commanding Officer requested the stoppage of the grievor's pay and allowances, and this request was accepted. The Level I Adjudicator upheld the stoppage, stating that, the grievor's conduct *"seriously affected his ability to perform his duties as a member of the RCMP"* and could have *"a significant negative impact on the public's confidence in the ability of the police service to protect the community if police officers could follow some orders but disregard others".*

The Committee found that the Commanding Officer could not justify the five month delay in initiating the stoppage of pay process. It stated that both the respondent and the Level I Adjudicator exaggerated the seriousness of the conduct and that their decisions did not give enough weight to the grievor's reasons for not wishing to submit to a medical exam. For example, the grievor had received a legal opinion that the order he was given was in violation of the *Canadian Charter of Rights and Freedoms.* The Commissioner concluded that the grievance did have not any practical interest since the pay and benefits had already been re-instated to the grievor following his decision in the disciplinary matter.

In *G-342*, the grievor was subject to a disciplinary investigation for allegedly creating or passing fraudulent transfer documents for a vehicle which had been involved in an accident, in an attempt to prove the vehicle was properly insured. No criminal charges were laid, but the grievor was charged with an offence under British Columbia's *Insurance Act.* The grievor was suspended pending the investigation. Seven weeks later his Commanding Officer initiated the process to stop his pay and allowances. The grievor maintained that the initiation of the process to stop his pay was not timely and that the conditions for the suspension of pay under Force policy had not been met. These arguments were rejected and his pay and allowances were stopped on the basis that *"the totality of the behaviour of this*

member, as demonstrated in the material presented in support of the allegation, is considered to be outrageous and affects the integrity of the RCMP in terms of the professional image we must portray to members of our community."

In the Committee's view, the initiation of the process to stop the grievor's pay and allowances was timely, but the decision failed to take into account the fact that the Force's own policy excluded stoppage of pay and allowances for violations of provincial statutes. The Committee therefore recommended that the grievance be allowed.

In both *G-328* and *G-342*, the Committee reiterated the concern expressed in the previous three stoppage of pay grievances, namely that the Treasury Board regulation was invalid. In *G-342*, the Committee commented on the position taken by the Commissioner in the previous three grievances that he was without legal authority to pronounce on the validity of the regulation in question. It referred to the Supreme Court of Canada decision in *Nova Scotia (Workers' Compensation Board) v. Martin*; *Nova Scotia (Workers' Compensation Board) v. Laseur* ([2003] 2 S.C.R. 504) which stated that the matter of whether an administrative tribunal has jurisdiction to decide questions of law can be implied from the enabling legislation and does not need to be expressly stated. The Committee stated that the Commissioner's implied jurisdiction to determine questions of law is supported by section 32(3) of the *RCMP Act*, which provides the Commissioner with jurisdiction to rescind or amend any decision made *"with respect to the finding of any fact or the interpretation of any law"*.

The grievance in *G-342* was still before the Commissioner at year-end.

B. Disciplinary Issues

B.1 Sanction where there have been prior disciplinary measures

If an adjudication board finds that the allegations against the member are founded, it must decide on the appropriate sanction. It does this by weighing a number of factors. The relevance of a member's prior discipline on appropriate sanction was considered this past year by the Committee *D-092*. In that case, an RCMP member was approached by a former police officer who worked with a private investigation firm and asked for confidential information regarding certain vehicles and their owners. The member had known the former police officer for many years and provided the information by accessing police databanks. He believed that the information being sought was in relation to executing seizure orders that had been issued by the courts. The investigation firm could have obtained much of the information, but not all of it, by paying a $10 application fee to the province. The member was also offered money by the firm to seize two vehicles and secure them in the detachment compound. He initially accepted these offers but changed his mind several days later.

Before an RCMP adjudication board, the member admitted his misconduct and expressed remorse. At the sanction hearing that followed, evidence was introduced that the member had been reprimanded six years prior to the latest incidents for another unauthorized disclosure of personal information obtained by accessing police data banks. Based largely on that evidence and its assessment that the member had been motivated by personal gain, the Board concluded that he should be ordered to resign from the Force. The fact that he had once again disclosed personal information after having been previously disciplined for the same misconduct was an indication that the risk of recurrence remained high.

In his appeal of the sanction imposed by the Board, the member argued that he was being treated more harshly than other members for similar misconduct. He disputed the Board's assessment that there was a risk of recurrence, noting that former supervisors and colleagues who had appeared as character witnesses testified that they considered him to be highly trustworthy.

The Committee stated the member's previous discipline for similar misconduct was given too much weight, even though it was appropriate for the Board to consider this as an aggravating factor. First, the prior discipline was dated, having been administered six years prior to the latest incidents. Secondly, the previous discipline consisted of an informal reprimand and was at the lower end of severity. These two factors had to be considered in combination with other factors. For example, there was evidence of eighteen months of psychotherapy yielding positive results. It was not entirely clear that the member had appreciated that he was violating anyone's rights when he provided information. Rather, it appears as though the information about individuals whose vehicles were going to be seized had been sought from the member out of a safety concern for the employees of the private investigation firm. Finally, the misconduct in this case was an error in judgment, and did not reflect a fundamental lack of morality.

The Committee found that termination of the member's career with the Force on this second occurrence was excessive and recommended that the sanction imposed by the Board be replaced by a forfeiture of pay for ten days and a reprimand. The Commissioner has yet to render a decision in this matter.

B.2 Discipline and time limits

Overview

Formal disciplinary proceedings must be initiated within twelve months from the time the contravention and the identity of the member became known to the Commanding Officer of the Division. The requirement for a Commanding Officer to initiate disciplinary proceedings within a year raises a number of important questions. When would a Commanding Officer be considered to have sufficient knowledge of misconduct? If a Commanding Officer is being replaced temporarily, can the acting Commanding Officer become responsible for initiating disciplinary proceedings? If a matter is known to other senior officers within the Division for a significant period of time, is that considered knowledge of that Division's Commanding Officer, even if it is not brought to the Commanding Officer's attention? Where the Force is advised of member misconduct after that member has been transferred from one Division to another, which Division Commanding Officer is ultimately responsible for initiating disciplinary proceedings within a year? These questions were discussed in an appeal before the Committee and an application for judicial review heard in Federal Court this year.

Thériault v. Canada

In *Thériault*, a criminal operations officer became aware of the allegations involving the member. This same officer served as acting Commanding Officer of the Division. No action was taken against the member until some time later, after the actual Commanding Officer was informed of the allegations.

The member had argued that the disciplinary hearing had not been initiated in time. He submitted that the one-year time limit started to run when the criminal operations officer became acting Commanding Officer. The Adjudication Board decided that the time began to run only when the Commanding Officer received the required knowledge. What the criminal operations officer had known before he served as acting Commanding Officer was irrelevant – the time limit started to run only when the person in the position of Commanding Officer received the information in their capacity as Commanding Officer.

The Committee (*D-082*) recommended that the appeal be dismissed, but for different reasons than those of the Adjudication Board. The Committee found that since the criminal operations officer was in the acting Commanding Officer position only temporarily and for short periods, his prior knowledge did not transfer to the Commanding Officer position. The Commissioner dismissed the appeal as recommended by the Committee. He stated that the proceedings were initiated within the one year limitation period. He adopted the Board's analysis as to the statutory time requirement and the position of an the acting Commanding Officer.

An application to the Federal Court for judicial review by the member was dismissed (*Thériault v. Canada* [2004] FC 1506). In its reasons, the Court stated that it does not matter whether a member is permanently Commanding Officer, or holds that title on a temporary basis when determining whether the time limit has been met. The significant issue is whether the member occupying the position of Commanding Officer, in whatever capacity that may be, has acquired sufficient knowledge of a contravention to the *Code of Conduct* for the one year time period to be triggered.

The Court highlighted the purpose of the limitation provision, which is to *"strike a balance between promptness and equity in the treatment of disciplinary justice"*. The *RCMP Act* requires an internal investigation to be held where it appears that the *Code of Conduct* has been contravened. This investigation allows a Commanding Officer to assess the seriousness of the contravention and the evidence available, and to determine whether formal discipline is warranted. With this in mind, the Court found that the knowledge of a Commanding Officer would have to go *"beyond mere unsubstantiated allegations"* and would refer rather to *"the results of an investigation performed internally".* The Court stated that the CROP did not have the level of knowledge

required to trigger the limitation period, when he was serving as an acting Commanding Officer. Information that would have triggered the need to initiate a disciplinary proceeding became known to the Commanding Officer at a later date. The Court concluded that the time limit had not expired. The Federal Court's decision in *Thériault* is presently under appeal to the Federal Court of Appeal.

D-090

Following the Federal Court's decision in *Thériault*, the Committee considered a disciplinary appeal in which a senior officer had known of alleged misconduct by a former member of the Division for a significant period of time, but had not brought it to the Commanding Officer's attention. In *D-090*, disciplinary proceedings were initiated against a member for allegedly defrauding an elderly woman who was later diagnosed as suffering from dementia. The member had been transferred to another Division not long before a complaint was made to his former Division by a member of the public. Both a criminal and a disciplinary investigation concerning the incident took place in the member's original Division. It was not until 18 months later, upon completion of the disciplinary investigation, that the member's current Division Commanding Officer was informed of the allegations. The disciplinary proceedings were initiated by this Division Commanding Officer on the following day.

The Board concluded that the time limit had not been respected because the member's original Commanding Officer should have been informed of the allegations at the outset of the criminal investigation. According to the Board, the delay in making that Commanding Officer aware of the investigation brought the administration of justice into disrepute. The Commanding Officer appealed the Board's decision.

The Committee recommended that the appeal be allowed. The Committee noted that Parliament made a deliberate choice in the wording of the provision on time limitations for initiating disciplinary proceedings. The *RCMP Act* does not provide direction as to when a Commanding Officer must be made aware of alleged misconduct, however long that may take. The Committee stated that there is a legitimate reason as to why Parliament made that choice: RCMP members should not be able to succeed in protecting each other by concealing information of wrongdoing until after the time that a limitation period might expire.

The Committee also stated that the Board ought not to have disregarded the certificate signed by the Commanding Officer and his evidence as to when he became aware of the allegations of misconduct. The certificate constitutes proof of the date the Commanding Officer became aware of an allegation of misconduct, so long as there is no evidence to the

contrary. Furthermore, while the Board suggested that it was inappropriate that information would not be shared until after the *Code of Conduct* investigation had been completed, that is precisely what was contemplated by the recent Federal Court decision in *Theriault v. Canada* (now under appeal).

The Committee also disagreed with the Board's suggestion that the administration of justice was brought into disrepute by the 18-month delay in alerting the Commanding Officer to the specific nature of the allegations against the member. It was unlikely that the delay prevented the member from defending himself. The 18-month time span between the receipt of a public complaint and the initiation of disciplinary proceedings was not out of line with how long it would normally take for such processes to unfold. The Committee also considered the issue of abuse of process, independent of the question of whether the disciplinary time lines under the *RCMP Act* had been met. The Committee stated that it would be hard-pressed to find that the proceedings ought to be struck down on that basis, although ideally, the investigation of such matters ought to be completed expeditiously.

The Committee emphasized that a member can only have one Commanding Officer for the purposes of interpreting the time lines for initiating disciplinary proceedings. In this case, information about the alleged misconduct had only come to the attention of the Force after the member was transferred to the new Division, resulting in the Commanding Officer of that Division being the only authority able to initiate disciplinary proceedings against the member. The Commissioner has not yet rendered his decision.

B.3 Excessive Force, update from prior Committee recommendations

During the past year, the Commissioner considered two recommendations of the Committee (*D-083*, *D-084*) on excessive force, following one recommendation (*D-084*) and disagreeing with the other (*D-083*). In *D-083*, the main issue addressed by the Commissioner was whether the basis for the Board's findings of disgraceful conduct was sufficiently described in the particulars provided to the member in a Notice of Hearing. The *RCMP Act* states that the particulars must contain information which allows the member to properly prepare a defence. In *D-084*, the Commissioner's reasons spoke mainly to the issue of whether a member's conduct, in using force, could be considered disgraceful even though expert evidence at the Board hearing suggested it met Force guidelines.

In *D-083*, four allegations of misconduct were presented against the member. The member admitted to the conduct set out in the first allegation and the Board found the remaining three allegations to be established. The Board based its findings on the second and fourth allegations on evidence raised at the hearing, which had not been specifically referred to in the Notice of Hearing. For example, although the second allegation in the Notice of Hearing was that the member had been unprofessional towards a motorist after his arrest, the Board concluded that the member had conducted himself disgracefully because he damaged the motorist's vehicle before the arrest and then used excessive force in making the arrest. Similarly, the fourth allegation in the Notice of Hearing referred to a member assaulting an individual after taking him into custody and securing him in a police car, but the Board found that the allegation had been established based on evidence that the member had punched the individual without justification before placing him in the vehicle.

The Committee examined the argument that the second and fourth allegations had not been established, given that the basis for the Board findings differed from the information conveyed to the member in the Notice of Hearing. Noting that the member might have called specific witnesses to justify his conduct had he known the facts that would have supported the Board findings, the Committee recommended that the findings on the second and fourth allegations be set aside.

The Commissioner disagreed with the Committee's findings on the second and fourth allegations. In his view, an allegation must be very broad and general for it to be rejected because of a lack of specificity. In this case, the charges contained sufficient particulars to allow the member a fair opportunity to answer the charges against him and prepare his defence, in that they identified the specific offences and the conduct that constituted a breach of professional standards. The Commissioner confirmed the Board's sanction, noting that the member's conduct showed a pattern of anger and violence that violated core Force values of trustworthiness and integrity. An application for judicial review has been filed with the Federal Court.

In *D-084* one allegation of misconduct had been presented against the member for striking a prisoner in the face. This event occurred after a series of events had led to the prisoner being pushed into a small room; where an unsuccessful attempt was made to search him. The member had kicked the prisoner in the knee and struck him four times in the head with a closed fist and twice with an elbow. A videotape of the incident presented to the Board showed the member uttering the words, *"I don't think you quite understand"* as he was striking the prisoner. At the Board hearing, the member stated that he had been concerned that the prisoner was going to become violent and took what he had thought were necessary measures to subdue him. Two expert witnesses defended the member's use

of force in these circumstances because the prisoner was displaying threatening and aggressive behaviour.

Two of the three Board members concluded that the member's conduct was not disgraceful because, as the experts had said, the prisoner's actions represented *"threat cues"* and the member acted within the parameters of use of force procedures in responding to these cues. In a dissenting opinion, the Board's Chair stated that he considered the member's conduct disgraceful, in part because he believed that the comment made by the member to the prisoner as he was striking him indicated that he was trying to teach him a lesson, and in part because the prisoner was impaired and had not been provided with clear verbal direction.

The Committee recommended that the appeal be allowed. It stated that the Board needed to go further than establishing whether the member had breached established police procedures in determining whether a member's conduct is disgraceful. The Board was required to consider the perspective of a *"reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular"*. Additional relevant factors included the member's motivation for striking the prisoner, whether the member's own behaviour may have contributed to making the prisoner more agitated and the extent to which the member considered other options such as verbal intervention. The fact that the prisoner was highly intoxicated and the effect this may have had on his behaviour was also relevant.

The Commissioner agreed with the findings and recommendation of the Committee. In his view, the experts had given too much weight to the prisoner's threat cues in justifying the member's actions. He highlighted the member's failure to give clear direction to the prisoner about what was going to occur and what was expected of him. This was necessary given the prisoner's condition and the likelihood that he was not thinking clearly. Instead of defusing the situation, the member's actions led to an escalation requiring physical intervention. The Commissioner acknowledged that members are not required to *"take the first punch,"* but added that there must be sufficient justification for physical intervention. The Commissioner recognized that he was looking at the incident in hindsight, and expressed his belief that the member *"was trying to do the right thing"*. Although he ordered a new hearing into the allegation, as the *RCMP Act* required him to do, he encouraged the parties to settle the matter if possible.

C. Discharge

In the history of the Committee, there have only been four referrals of discharge and demotion appeals. The Committee issued its recommendations in two of these, *R-003* and *R-004*, in 2003-2004 and 2004-2005 respectively. Both examined the issue of performance shortcomings of members and whether the assistance, guidance and supervision provided to them for improvement was adequate.

In *R-003*, the Committee recommended discharge from the Force. The Commissioner agreed with the Committee's recommendation. The Commissioner's decision in *R-003* is the subject of an application for judicial review to the Federal Court of Canada.

In *R-004*, the Committee recommended dismissal of an appeal brought by the Commanding Officer against the discharge and demotion board's conclusion that the member's unsuitability had not been established. The Board heard evidence that the member had repeatedly failed to meet performance expectations over the span of several years, but concluded that the member was not provided with reasonable assistance and could therefore not be discharged from the Force. The Board was critical of the member's supervisor for not doing much beyond documenting the member's errors and suggested that he should have adopted a more hands-on approach to the management of her performance. It also concluded that the supervisor was biassed towards the member because he resented the fact that she had made a harassment complaint against him. The Board also determined that the member should have been transferred because the detachment where she had been posted was a poisoned work environment.

The Commanding Officer appealed the Board decision and argued that the Board had inappropriately drawn on its own opinion as to what measures should have been taken, when it assessed whether reasonable assistance had been provided to the member. The Commanding Officer also disputed the finding that the supervisor was biassed and that the work environment was poisoned. The Commanding Officer maintained that the member displayed an unwillingness to cooperate with her supervisor's efforts to improve her job performance and that the Board should have attached greater weight to the member's conduct.

The Committee found that the *RCMP Act* specifically requires that the Board determine whether reasonable assistance was provided to the member. This means that it must assess the measures taken by management to bring about an improvement in performance. The evidence showed that the supervisor had a deep distrust of the member and was far more interested in laying the groundwork for eventual discharge proceedings than in improving her performance. It is for that reason that the member should have been provided with a different supervisor. The member's working environment was not conducive to improvements in her job performance as she faced hostility from several of her colleagues. Noting that the member had performed well during a five-month period that she was posted to another detachment, the Committee stated that a transfer should have been considered. In addition, the member's inability to maintain a consistent level of performance could be attributed to serious family and health issues that she was confronting at the time. Other factors suggested that she had the basic skills to carry out policing work.

The Committee also underscored significant factual differences between *R-003* and *R-004*. The Chair emphasized that the supervisor in *R-003* had regularly arranged meetings with the member to discuss issues, and had displayed a genuine interest in assisting him. Despite these efforts, his performance had not improved and it was apparent that the member lacked the basic skills required for police work. The member could not be expected to perform any better at another detachment. This differed from the situation for the member in *R-004*, where it was clear that she was capable of performing her duties. The Committee recommended that the appeal be dismissed. The Commissioner has yet to render a decision in this matter.

Part IV: Federal Court

A. Decisions rendered by the Federal Court

Thériault v. Canada ([2004] FC 1506)

In 2004-2005 the Federal Court of Canada dismissed an application for judicial review, with costs, in *Thériault v. Canada* ([2004] FC 1506). A summary of the *Theriault* decision is provided in the annual report in Section III – Issues of Particular Interest, Discipline and Time Limits (subsection B.2)

This is the first Federal Court decision to specifically interpret section 43(8) of the *RCMP Act* and the issue of time limits for the initiation of disciplinary proceedings. An appeal of the decision was filed with the Federal Court of Appeal on November 29, 2004. The appeal has yet to be heard.

B. Applications for Judicial Review Filed in 2004-2005

G-284, G-285

Both of these grievances concerned a change made to the grievor's medical profile. The Committee found that both grievances were valid, in that the Force's process was inconsistent with the requirements of recent case law from the Supreme Court of Canada which addressed an employer's obligation to make reasonable efforts to accommodate employees with disabilities. The Committee recommended that the grievances be allowed. The Commissioner denied both grievances, finding that one was out of time and one was premature. The grievor filed an application for judicial review on April 28, 2004. A Notice of Discontinuance was filed on October 26, 2004.

G-219, G-321

In these grievances, the grievor objected to a refusal to reclassify his position. The ERC recommended that the grievance be allowed but the RCMP Commissioner did not accept this recommendation. The decision was overturned by the Federal Court in 2001, who ordered a new evaluation. This evaluation resulted in another refusal to reclassify the position. A second grievance was sent to the Committee, who again recommended that the grievance be allowed. The Commissioner disagreed and denied the grievance. The grievor filed a second application for judicial review on November 15, 2004. A hearing date has yet to be set in this matter.

R-003

In *R-003*, the Appellant appealed the decision of a Discharge and Demotion Board which directed that he be discharged from the Force for repeatedly failing to meet the requirements of his position, despite having been provided with reasonable assistance, guidance and supervision. The Committee recommended that the appeal be dismissed and the Commissioner agreed. A subsequent reconsideration under subsection 45.26(7) of the *RCMP Act* resulted in the Commissioner confirming the dismissal of the appeal. The Appellant filed an application for judicial review on June 18, 2004. A hearing date has yet to be set in this matter.

D-083

D-083 involved four allegations of misconduct, all relating to incidents that the member had allegedly abused his authority when interacting with the public. This case is discussed in Section III, Issues of Particular Interest, Excessive Force (subsection B.3). The Committee recommended that the appeal of the Board's finding on the allegations of misconduct be allowed for the second and fourth allegations and that the Board's decision on sanction for the third allegation be replaced with a forfeiture of pay and a reprimand. The Commissioner dismissed the appeal on all allegations and the appeal regarding sanction. The Appellant filed an application for judicial review on June 30, 2004. A hearing date has yet to be set.

C. Applications for Judicial Review Filed before the 2004-2005 year

D-081

In this case, an adjudication board found that the member had engaged in disgraceful conduct by removing documents from files after being removed from the investigation, disclosing these documents improperly and disobeying an order not to disclose documents and was ordered dismissed from the Force. The Committee recommended allowing the appeal on the finding of misconduct. The Commissioner disagreed and upheld the finding of the Board. The Appellant filed an application for judicial review February 20, 2004. A hearing into the matter was held April 18-20, 2005. Judgment was reserved.

G-287 to *G-292*

In *G-287*, *G-288*, *G-289*, *G-290*, *G-291*, *G-292*, the member grieved a decision that found that an allegation of harassment against him had been established. The member also filed harassment complaints against his superiors and against the investigator of his complaints. At Level I, the grievances were ruled inadmissible. The Committee found that the grievance of the decision regarding the harassment complaint against the grievor was admissible because this decision affected his reputation and should be allowed. The quality of the investigation had significant shortcomings and therefore, the decision should be revoked. The Committee recommended that the other grievances should be found to be inadmissible. The Commissioner agreed with the Committee's analysis and accepted its findings and recommendations. The grievor filed an application for judicial review on January 6, 2004, and this application was withdrawn on March 14, 2005.

PART V: Appendices

Appendix 1: About the Committee

Established in early 1987, the Committee was one of two entities created as civilian oversight agencies for the RCMP, the other being the Commission for Public Complaints Against the RCMP. The first Chair of the Committee was the Honourable Mr. Justice René Marin, who from 1974 to 1976 had chaired the Commission of Inquiry relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police. In 1992, the Vice-Chair, F. Jennifer Lynch, Q.C., became Acting Chair of the Committee, a position which she held until 1998. Philippe Rabot then assumed the position on an acting basis and, on July 16, 2001, he was appointed Chair of the Committee. Upon Philippe Rabot's departure in April, 2004, Catherine Ebbs has assumed the role of Acting Chair of the Committee, pending the competition process for a full time Chair. A lawyer of the Bar of Saskatchewan, Catherine Ebbs spent sixteen years as Board member for the National Parole Board, the last ten as Vice-Chair in charge of the Appeal Division of the Board. Ms Ebbs joined the Committee in 2003 and prior to becoming Acting Chair, served as Legal Counsel and Executive Director and Senior Counsel.

Appendix 2: The Committee and its staff in 2004-2005

Virginia Adamson, Counsel

Catherine Ebbs, Executive Director and Senior Counsel (Acting)

Lorraine Grandmaitre, Manager, Administrative Services and Systems

Martin Griffin, Counsel

Monica Phillips, Counsel

Philippe Rabot, Chair

Claudia Veas, Administrative Assistant

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Appendix 3: Legislative Provisions

PART II of the *Royal Canadian Mounted Police Act*

ROYAL CANADIAN MOUNTED POLICE EXTERNAL REVIEW COMMITTEE

Establishment and Organization of Committee

25. (1) There is hereby established a committee, to be known as the Royal Canadian Mounted Police External Review Committee, consisting of a Chairman, a Vice-Chairman and not more than three other members, to be appointed by order of the Governor in Council.

(2) The Committee Chairman is a full-time member of the Committee and the other members may be appointed as full-time or part-time members of the Committee.

(3) Each member of the Committee shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed for cause at any time by order of the Governor in Council.

(4) A member of the Committee is eligible for re-appointment on the expiration of the member's term of office.

(5) No member of the Force is eligible to be appointed or to continue as a member of the Committee.

(6) Each full-time member of the Committee is entitled to be paid such salary in connection with the work of the Committee as may be approved by order of the Governor in Council.

(7) Each part-time member of the Committee is entitled to be paid such fees in connection with the work of the Committee as may be approved by order of the Governor in Council.

(8) Each member of the Committee is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the Committee.

(9) The full-time members of the Committee are deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

R.S., 1985, c. R-10, s. 25; R.S., 1985, c. 8 (2nd Supp.), s. 16.

26. (1) The Committee Chairman is the chief executive officer of the Committee and has supervision over and direction of the work and staff of the Committee.

(2) In the event of the absence or incapacity of the Committee Chairman or if the office of Committee Chairman is vacant, the Minister may authorize the Vice-Chairman to exercise the powers and perform the duties and functions of the Committee Chairman.

(3) The Committee Chairman may delegate to the Vice-Chairman any of the Committee Chairman's powers, duties or functions under this Act, except the power to delegate under this subsection and the duty under section 30.

R.S., 1985, c. R-10, s. 26; R.S., 1985, c. 8 (2nd Supp.), s. 16.

27. (1) The head office of the Committee shall be at such place in Canada as the Governor in Council may, by order, designate.

(2) Such officers and employees as are necessary for the proper conduct of the work of the Committee shall be appointed in accordance with the *Public Service Employment Act.*

(3) The Committee may, with the approval of the Treasury Board,

(a) engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Committee to advise and assist the Committee in the exercise or performance of its powers, duties and functions under this Act; and

(b) fix and pay the remuneration and expenses of persons engaged pursuant to paragraph (a).

R.S., 1985, c. R-10, s. 27; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Duties

28. (1) The Committee shall carry out such functions and duties as are assigned to it by this Act.

(2) The Committee Chairman shall carry out such functions and duties as are assigned to the Committee Chairman by this Act.

R.S., 1985, c. R-10, s. 28; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Rules

29. Subject to this Act, the Committee may make rules respecting

(a) the sittings of the Committee;

(b) the manner of dealing with matters and business before the Committee generally, including the practice and procedure before the Committee;

(c) the apportionment of the work of the Committee among its members and the assignment of members to review grievances or cases referred to the Committee; and

(d) the performance of the duties and functions of the Committee under this Act generally.

R.S., 1985, c. R-10, s. 29; R.S., 1985, c. 8 (2nd Supp.), s. 16.

Annual Report

30. The Committee Chairman shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the Committee during that year and its recommendations, if any, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it.

R.S., 1985, c. R-10, s. 30; R.S., 1985, c. 8 (2nd Supp.), s. 16.

PART III of the *Royal Canadian Mounted Police Act*

Grievances

Presentation of Grievances

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

…

32. (1) The Commissioner constitutes the final level in the grievance process and the Commissioner's decision in respect of any grievance is final and binding and, except for judicial review under the *Federal Court Act*, is not subject to appeal to or review by any court.

(2) The Commissioner is not bound to act on any findings or recommendations set out in a report with respect to a grievance referred to the Committee under section 33, but if the Commissioner does not so act, the Commissioner shall include in the decision on the disposition of the grievance the reasons for not so acting.

(3) Notwithstanding subsection (1), the Commissioner may rescind or amend the Commissioner's decision in respect of a grievance under this Part on the presentation to the Commissioner of new facts or where, with respect to the finding of any fact or the interpretation of any law, the Commissioner determines that an error was made in reaching the decision.

R.S., 1985, c. R-10, s. 32; R.S., 1985, c. 8 (2nd Supp.), s. 16; 1990, c. 8, s. 65.

Reference to the Committee

33. (1) Before the Commissioner considers a grievance of a type prescribed pursuant to subsection (4), the Commissioner shall refer the grievance to the Committee.

(2) Notwithstanding subsection (1), a member presenting a grievance to the Commissioner may request the Commissioner not to refer the grievance to the Committee and, on such a request, the Commissioner may either not refer the grievance to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the grievance to the Committee.

(3) Where the Commissioner refers a grievance to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with a copy of

(a) the written submissions made at each level in the grievance process by the member presenting the grievance;

(b) the decisions rendered at each level in the grievance process in respect of the grievance; and

(c) the written or documentary information under the control of the Force and relevant to the grievance.

(4) The Governor in Council may make regulations prescribing for the purposes of subsection (1) the types of grievances that are to be referred to the Committee.

R.S., 1985, c. R-10, s. 33; R.S., 1985, c. 8 (2nd Supp.), s. 16.

34. (1) The Committee Chairman shall review every grievance referred to the Committee pursuant to section 33.

(2) Where, after reviewing a grievance, the Committee Chairman is satisfied with the disposition of the grievance by the Force, the Committee Chairman shall prepare and send a report in writing to that effect to the Commissioner and the member presenting the grievance.

(3) Where, after reviewing a grievance, the Committee Chairman is not satisfied with the disposition of the grievance by the Force or considers that further inquiry is warranted, the Committee Chairman may

(a) prepare and send to the Commissioner and the member presenting the grievance a report in writing setting out such findings and recommendations with respect to the grievance as the Committee Chairman sees fit; or

(b) institute a hearing to inquire into the grievance.

(4) Where the Committee Chairman decides to institute a hearing to inquire into a grievance, the Committee Chairman shall assign the member or members of the Committee to conduct the hearing and shall send a notice in writing of the decision to the Commissioner and the member presenting the grievance.

R.S., 1985, c. R-10, s. 34; R.S., 1985, c. 8 (2nd Supp.), s. 16.

PART IV of the *Royal Canadian Mounted Police Act*

Discipline

Appeal

45.14 (1) Subject to this section, a party to a hearing before an adjudication board may appeal the decision of the board to the Commissioner in respect of

(a) any finding by the board that an allegation of contravention of the *Code of Conduct* by the member is established or not established; or

(b) any sanction imposed or action taken by the board in consequence of a finding by the board that an allegation referred to in paragraph (a) is established.

(2) For the purposes of this section, any dismissal of an allegation by an adjudication board pursuant to subsection 45.1(6) or on any other ground without a finding by the board that the allegation is established or not established is deemed to be a finding by the board that the allegation is not established.

(3) An appeal lies to the Commissioner on any ground of appeal, except that an appeal lies to the Commissioner by an appropriate officer in respect of a sanction or an action referred to in paragraph (1)(b) only on the ground of appeal that the sanction or action is not one provided for by this Act.

…

45.15 (1) Before the Commissioner considers an appeal under section 45.14, the Commissioner shall refer the case to the Committee.

(2) Subsection (1) does not apply in respect of an appeal if each allegation that is subject of the appeal was found by the adjudication board to have been established and only one or more of the informal disciplinary actions referred to in paragraphs 41(1)(a) to (g) have been taken by the board in consequence of the finding.

(3) Notwithstanding subsection (1), the member whose case is appealed to the Commissioner may request the Commissioner not to refer the case to the Committee and, on such a request, the Commissioner may either not refer the case to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the case to the Committee.

(4) Where the Commissioner refers a case to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with the materials referred to in paragraphs 45.16(1)(a) to (c).

(5) Sections 34 and 35 apply, with such modifications as the circumstances require, with respect to a case referred to the Committee pursuant to this section as though the case were a grievance referred to the Committee pursuant to section 33.

R.S., 1985, c. 8 (2nd Supp.), s.16

45.16 (1) The Commissioner shall consider an appeal under section 45.14 on the basis of

(a) the record of the hearing before the adjudication board whose decision is being appealed,

(b) the statement of appeal, and

(c) any written submissions made to the Commissioner,

and the Commissioner shall also take into consideration the findings or recommendations set out in the report, if any, of the Committee or the Committee Chairman in respect of the case.

...

(6) The Commissioner is not bound to act on any findings or recommendations set out in a report with respect to a case referred to the Committee under section 45.15, but if the Commissioner does not so act, the Commissioner shall include in the decision on the appeal the reasons for not so acting.

...

PART V of the *Royal Canadian Mounted Police Act*

Discharge and Demotion

45.24 (1) A party to a review by a discharge and demotion board may appeal the decision of the board to the Commissioner, but no appeal may be instituted under this section after the expiration of fourteen days from the later of

(a) the day the decision is served on that party, and

(b) if that party requested a transcript pursuant to subsection 45.23(6), the day that party receives the transcript.

(2) An appeal lies to the Commissioner on any ground of appeal.

...

Reference to the Committee

45.25 (1) Before the Commissioner considers an appeal under section 45.24, the Commissioner shall refer the case to the Committee.

(2) Notwithstanding subsection (1), the officer or other member whose case is appealed to the Commissioner may request the Commissioner not to refer the case to the Committee and, on such a request, the Commissioner may either not refer the case to the Committee or, if the Commissioner considers that a reference to the Committee is appropriate notwithstanding the request, refer the case to the Committee.

(3) Where the Commissioner refers a case to the Committee pursuant to this section, the Commissioner shall furnish the Committee Chairman with the materials referred to in paragraphs 45.26(1)(a) to (e).

(4) Sections 34 and 35 apply, with such modifications as the circumstances require, with respect to a case referred to the Committee pursuant to this section as though the case were a grievance referred to the Committee pursuant to section 33.

45.26 (1) The Commissioner shall consider an appeal under section 45.24 on the basis of

(a) the material that the officer or other member was given an opportunity to examine pursuant to subsection 45.19(3),

(b) the transcript of any hearing before the discharge and demotion board whose decision is being appealed,

(c) the statement of appeal,

(d) any written submissions made to the Commissioner, and

(e) the decision of the discharge and demotion board being appealed,

and the Commissioner shall also take into consideration the findings or recommendations set out in the report, if any, of the Committee or the Committee Chairman in respect of the case.

...

(4) The Commissioner shall as soon as possible render a decision in writing on an appeal, including reasons for the decision, and serve each of the parties to the review by the discharge and demotion board and, if the case has been referred to the Committee pursuant to section 45.25, the Committee Chairman with a copy of the decision.

(5) The Commissioner is not bound to act on any findings or recommendations set out in a report with respect to a case referred to the Committee under section 45.25, but if the Commissioner does not so act, the Commissioner shall include in the decision on the appeal the reasons for not so acting.

...

EXCERPT FROM THE RCMP REGULATIONS (1988)

(Section 36: grievances that can be referred to the Committee)

36. For the purposes of subsection 33(4) of the Act, the types of grievances that are to be referred to the External Review Committee of the Force are the following, namely,

    (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 the pay and allowances of members made pursuant to subsection 22(3) of the Act;

    (c) the Force's interpretation and application of the *Isolated Posts Directive*;

    (d) the Force's interpretation and application of the *R.C.M.P. Relocation Directive*; and

    (e) administrative discharge for grounds specified in paragraph 19(a), (f) or (I).