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# ANNUAL REPORT

1988-1989

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R O Y A L  
C A N A D I A N  
M O U N T E D  
P O L I C E

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EXTERNAL  
REVIEW  
COMMITTEE

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3

**One governs with the head.**

**Chamfort**

*Life holds no solutions. Latent possibilities are everywhere; actualize them and solutions will follow.*

*St. Exupéry*

*To think is to put idle contemplation to rout.*

*Jean Rostand*

*Every action requires some spark of enthusiasm to carry it out.*

*Voltaire*

*It is harder to lead men by persuasion than to lead them by force.*

*Paul Claudel*

*The art of persuasion lies as much in welcoming the truths spoken by another as in convincing him of your own.*

*Blaise Pascal*

*It is easier to make laws than to carry them out.*

*Napoléon*

The dictates of one's own reasoning overrule those of any master.  
Pascal

**We are born to act.**  
Montaigne

Wait to find out what a man has done before you judge him.  
Rousseau

The best way of getting the public to wait patiently  
is to tell it that you will begin immediately.  
Hugo

Time passes, what we looked  
forward to does eventually  
come to pass.  
Jalous

Human action can be modified to some extent, but human  
nature cannot be changed.  
Abraham Lincoln

Society is always taken by surprise at any new example of  
common sense.  
Ralph Waldo Emerson

Few things help an individual more than to place  
responsibility upon him, and to let him know that you trust  
him.

Booker T. Washington

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**A summary of this report is  
available**

**Third Annual Report 1988-1989  
Royal Canadian Mounted Police  
External Review Committee,  
P.O. Box 1159, Station "B"  
Ottawa, Ontario  
K1P 5R2**

**Catalogue Number JS74-1/1989  
ISBN 0-662-56778-1**

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Royal Canadian Mounted Police  
External Review Committee



Comité externe d'examen de la  
Gendarmerie royale du Canada

CANADA

Chairman Président

June 16, 1989

The Honourable Pierre Blais, P.C., M.P.  
Solicitor General of Canada  
340 Laurier Avenue West  
Sir Wilfrid Laurier Building  
Ottawa, Ontario  
K1A 0P8

Mr. Minister:

Pursuant to Section 30 of the Royal Canadian Mounted Police Act, I hereby transmit to you for tabling in Parliament, the Annual Report of the Royal Canadian Mounted Police External Review Committee for fiscal year 1988-89.

Faithfully yours,

A handwritten signature in black ink, appearing to read "René J. Marin", with a horizontal line underneath.

Hon. René J. Marin

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# COMMITTEE MEMBERS

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*Chairman*

The Honourable René J. Marin

*Vice-Chairman*

F. Jennifer Lynch

*Members*

Joanne McLeod

William Millar

Mary Saunders

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# I INTRODUCTION

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## SOME GENERAL OBSERVATIONS

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This report deals with the Committee's activities for the period ending March 31, 1989.

Proclamation of the *RCMP Act* (1986), enabling the Committee to become fully operative, took place on June 30, 1988. The Committee, now in its second full year, is steadily gaining the stability and confidence that time and experience provide.

The Committee's review responsibilities regarding certain types of grievances and appeals of formal discipline, discharge and demotion of members of the RCMP ensure that the rights of these members are respected and protected just as they are for public service employees.

Accountability to Parliament, through annual reports submitted through the Solicitor General of

Canada, enables the views of the Committee to be fully aired and contrary views, if any, to be expressed and discussed.

This approach has been criticized by some who would prefer a more private dialogue regarding these matters. Parliament, however, intended the Committee to exercise its mandate fully, including its responsibility to inform the Force of areas of concern in a "public way".

The model of review adopted by Parliament and recommended by the Commission of Inquiry relating to public complaints, internal discipline and grievance procedure within the RCMP does not provide for binding decision-making authority on the part of the Committee in its review of matters referred. Some have criticized this model. This matter is still contested across Canada.



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## II NATURE AND JURISDICTION OF THE COMMITTEE

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### ROLE OF OMBUDSMAN

The powers and functions of the External Review Committee under the *RCMP Act* are to a large extent those of an Ombudsman acting in relation to RCMP human resource management. Like an Ombudsman, the Committee has broad access to information, either in reviewing documentation or in the course of hearings. The Committee has powers of recommendation and encourages mediation when possible. There is valid justification for assigning to the Committee Ombudsman-like powers rather than opting for judicial review where decisions are binding.

While judicial review is ultimately concerned with ensuring compliance with the law, the Ombudsman is concerned primarily with equity and fairness. The Ombudsman interprets laws with justice in mind. This may require the application of extra-legal principles in order to breathe life into the spirit of the legislation, to allow the law to deal with individual cases wherein a strict application of the law might result in unfairness. The Ombudsman is thus engaged in a process of redress of mere law, where mere law fails due to its universality. Likewise, the Committee in reviewing individual cases

ensures that fairness has prevailed; in that sense its review is broader than a mere verification that procedural and legal requirements have been met.

The Ombudsman role of the Committee in fact is necessary because, in labour relations as in many other fields, unfairness does not always permit a legal remedy. The Committee must be able to promote a fair and equitable resolution of matters over which it has jurisdiction, even if the administrative action was not such as to justify intervention by the courts. The Ombudsman role is important because, unlike law and legality, equity and fairness do not necessarily constitute legal claims.

Were the Committee limited to a role of judicial review it would not have such broad access to information. The mere review of individual cases in a judicial hearing does not provide sufficient information to a tribunal on the internal administration of a program to allow the tribunal to make recommendations for reform or improvement of administrative practice. Tribunals are also limited to correcting mistakes; they cannot order good judgment or the effective carrying-out of legislative policy.

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This is precisely where the Committee's Ombudsman role is most helpful. The Committee does not examine administrative practice merely through the snapshots provided by individual cases. The Committee, through its research, the regular contact it has with Force personnel, and through cases referred to it, can obtain an overview of administrative practice within the Force on matters of grievances, discipline, discharge and demotion. The Committee is thus able to make credible recommendations, from an informed position, on ways to improve the delivery of such programs. It is important to note that the Committee as an informed observer is also in a position to support administrative practice where it does achieve goals of fairness and equity. As stated by Dickson J. in *B.C. Development Corporation et al v. Friedmann, Ombudsman et al* [1984] 2 S.C.R. 447 at p. 461:

[The Ombudsman] may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.

In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.

The public accountability role of the Committee is also similar to that of an Ombudsman. In reviewing Force activity in matters coming under its jurisdiction the Committee is not

only ensuring that the interests of members are protected vis-à-vis the Force; it is also balancing the interests of the Force and its members with those of the public. The Force exists to serve and protect the public, and the public has a right to expect that the Force will account for the way in which it provides this service. The Committee is, in effect, the public eye peering into the grievance, discipline and discharge and demotion systems in the RCMP. It is thus not sufficient that administrative practices be satisfactory to the Force and its members; this third dimension of the public interest must also be considered by the Committee. In that context it is to be noted that, regrettably, the Committee does not have the power to monitor the processing by the RCMP of all grievances, discipline, discharge and demotion, thus depriving the Committee of the last dimension required to complete its full supervisory role.

It can be seen from the above that the Ombudsman role of the Committee enhances its ability to make effective and credible recommendations pursuant to the *RCMP Act*. A judicial review role might not have achieved that purpose as effectively.

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#### JURISDICTIONAL ISSUES

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Current RCMP Regulations give an exhaustive and restricted list of grievances which are referred to the Committee for review. While the list in paragraph 36 is restricted, its meaning and scope are very much subject

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to interpretation particularly as to its first sub-paragraph. Of special concern to the Committee is that, unlike the situation in other jurisdictions, the *Act* and the Regulations are such that the Force, a party whose action is to be reviewed, controls the referral process. Not only is the Committee not determining whether a matter falls within its jurisdiction, in most cases it will not even be aware of the type and number of cases which have been deemed by the Force not to be referable.

The Committee Secretariat has received many comments regarding these inadequacies. The Committee may not interpret the provisions of sub-paragraph 36(a) in a manner consistent with the interpretation of the Force. It would seem preferable that the body interested in protecting and balancing all interests concerned ought to have the authority to determine whether it has jurisdiction over a given matter. The Committee is not able to comment upon the reasons why this system was adopted. It must be mentioned here that the Committee was not included in the official consultations leading to the Regulatory Impact Assessment Statement prepared in the regulation-making process. It is thus still open to the Committee to question the adequacy of the Regulations should the evolving practice of referral warrant such a step.

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#### RELATIONSHIP WITH THE PUBLIC COMPLAINTS COMMISSION

Part VII of the *RCMP Act*, which deals with public complaints, was proclaimed on September 30, 1988. On that date, the RCMP Public Complaints Commission obtained jurisdiction to deal with public complaints against the RCMP.

Although the Committee and the Public Complaints Commission have different mandates, the possibility of an overlap in jurisdiction exists. When the RCMP imposes formal disciplinary measures on a member following a public complaint, the Committee may have to review such sanctions in light of the circumstances surrounding the complaint.

The Committee and the Public Complaints Commission have established a dialogue in areas of mutual interest. As part of that dialogue, the Committee was represented, in November 1988, at a seminar organized by the Public Complaints Commission. This dialogue is important in that it allows the Committee to be kept aware of the orientation of the Public Complaints Commission with respect to its mandate.

The Committee wishes to continue this dialogue. It cannot however disregard the legislative policy set out in the *RCMP Act*, establishing two agencies, one dealing with public complaints, the other with grievances, formal discipline and discharge and demotion. The Committee recognizes and will carry out this policy when dealing with matters within its jurisdiction.



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# III THE COMMITTEE'S ACTIVITIES

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## CASE REVIEW

### a) Formal Discipline

#### *Appeal No. 1*

The first disciplinary matter referred to the Committee by the RCMP was received on December 12, 1988. A member of the Force had been charged in November 1987 with the service offence of disgraceful conduct pursuant to subsection 25(o) of the *RCMP Act*. The charge laid against the member resulted from the member's involvement, on June 8, 1987, in an alleged criminal act. The member was also charged with a criminal offence for the same incident.

On April 12, 1988, the member appeared before an RCMP Service Court and pleaded guilty to the charge. On July 22, 1988, the Trial Officer presiding imposed a fine of \$500.00 and recommended the member's dismissal. On September 22, 1988, the member appealed the sentence and recommendation for dismissal to the Commissioner.

The member had joined the Force seven years previously and had received good performance evaluations. The evidence showed however that the member had previously committed acts similar to the one for which the disgraceful conduct charge was laid.

On February 3, 1989, the Chairman issued his findings and recommendations. Considering that the conduct of the member had harmed the RCMP's reputation, that it would render the member unable to perform police duties satisfactorily, that it could lead to the refusal of other members to work with the member and that it would thus hamper the RCMP from efficiently managing its work force, the Chairman endorsed the recommendation for dismissal. The Chairman recommended however that a written reprimand be imposed in lieu of the \$500.00 fine.

On February 16, 1989, the member resigned from the Force; the resignation was accepted by the member's Commanding Officer and it became effective on March 10, 1989.

On March 9, 1989, the Commissioner, in his decision on the appeal, cancelled the \$500.00 fine and substituted a reprimand. The member having resigned, the Commissioner did not rule on the appeal of the recommendation for dismissal.

#### *Appeal No. 2*

This matter was referred by the RCMP to the Committee on December 15, 1988. On January 21, 1988, a member of the Force had been charged with the service offence of disgraceful

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conduct pursuant to subsection 25(o) of the *RCMP Act* for an incident which had happened on September 18, 1987. The member was also charged, in relation with the same event, with a *Criminal Code* offence.

On June 21, 22 and 23, 1988, the member appeared before an RCMP Service Court and was convicted as charged. Following the verdict, the Trial Officer imposed a reprimand and a fine of \$500.00 and recommended the member's dismissal. The member appealed the conviction, the penalty and the recommendation for dismissal.

The member had joined the RCMP in 1978 and had served at different postings. In 1986, the member suffered an injury while on duty. The injury was serious enough to cause the member's Commanding Officer to request, in June 1987, that a medical board be convened to provide him with a recommendation regarding the medical discharge of the member.

During that same period, several unfortunate events affected the member's life. Some of these events were related to employment in the Force; others were of a personal nature.

During the Service Court proceedings, the Force's own psychologist testified that the member was not likely to commit other offences. Evidence also showed that the member had been a trusted member of the Force and had consistently been honest.

With regard to the charge laid pursuant to the *Criminal Code*, a stay of proceedings was entered by a Crown prosecutor after the member

voluntarily participated in a diversion program, performed 40 hours of community work service and sent letters of apology to the victim and to the Force. No criminal conviction was recorded against the member.

On February 3, 1989, the Chairman issued his findings and recommendations. The Chairman noted that the Federal Court of Canada, Appellate Division, had decided in *Fedoruk v. Canada (Commissioner of the RCMP)*, F.C.A., 21 October 1988, that the Commissioner had the duty, when considering the dismissal of a member, to examine the particular circumstances of the offence and that a tribunal entrusted with a discretion must not, by adopting a fixed rule of policy, disable itself from exercising its discretion in individual cases.

In light of the mitigating factors referred to above, the Chairman stated that he did not support the recommendation for dismissal. He further recommended that a reprimand and a 10-day forfeiture of pay be imposed in lieu of the earlier disposition.

On April 6, 1989, the Commissioner accepted the Chairman's recommendation to set aside the recommendation for dismissal made by the Trial Officer. He confirmed, however, the Trial Officer's decision to impose a reprimand and a \$500.00 fine.

### *Appeal No. 3*

This matter was referred to the Committee by the RCMP on January 25, 1989. A member of the Force had

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been charged on May 24, 1988, with the service offence of disgraceful conduct pursuant to subsection 25(o) of the *RCMP Act*. The charge laid against the member had resulted from events surrounding a criminal investigation that the member had been ordered to perform. The charge alleged that the member had misrepresented the result of the investigation.

On July 27, 28 and 29, 1988, and on September 20 and 21, 1988, the member appeared before an RCMP Service Court and was found guilty of the offence as charged. The Trial Officer presiding at the Service Court imposed a written reprimand and a 10-day suspension of pay. The member appealed the conviction and the suspension.

On March 3, 1989, the Chairman issued his findings and recommendations. He stated that the prosecution had failed to establish the facts alleged in the charge and that there was no evidence that the member had attempted deliberately to mislead superiors in conducting the investigation. The evidence introduced at the Service Court proceedings revealed that the member's superior had not given sufficient clarifications about the conduct of the investigation.

The Chairman recommended that the appeal be allowed and that the verdict of the Service Court be set aside.

On April 21, 1989, the Commissioner accepted the Chairman's recommendation to set aside the verdict of the Trial Officer.

#### *Appeal No. 4*

This matter was referred to the Committee on January 25, 1989. On February 24, 1989, the Chairman of the Committee instituted a hearing to inquire into this matter. The hearing is to be held at a date to be determined.

#### *Appeal No. 5*

This matter was referred to the Committee by the RCMP on February 27, 1989.

On May 30, 1988, a member of the Force had been charged with the service offence of disgraceful conduct pursuant to subsection 25(o) of the *RCMP Act* for an incident which had happened on February 26, 1988. The member was also charged, in relation with the same event, with a *Criminal Code* offence. That charge was later withdrawn by a Crown prosecutor.

On September 12 and 13, 1988, the member appeared before an RCMP Service Court and pleaded guilty to the charge. After accepting the plea and convicting the member, the Trial Officer imposed a reprimand and a fine of \$500.00. He also recommended the member's dismissal although it had not been sought by the member's Commanding Officer. The member appealed the sentence and the recommendation for dismissal.

The member had joined the RCMP in 1985 and had served at different postings. The member had a good record for both discipline and performance. Indeed, at the Service Court proceedings, the Commanding

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Officer stated through his representative that the member still had potential in the Force. At the trial, evidence was presented that the member was experiencing personal and family difficulties at the time of the incident giving rise to the charge of disgraceful conduct.

In his findings and recommendations, the Chairman considered that there were few mitigating factors, but decided that the Commanding Officer's decision not to seek dismissal was a major mitigating factor. Because of the important role of the Commanding Officer in managing human resources, his submission deserved to be given weight. The matter could have been resolved differently while safeguarding the interests of the Force and of the public. The Chairman therefore recommended that the recommendation for dismissal be set aside but that the reprimand and the fine of \$500.00 remain.

#### *General Statement*

The Chairman's review of the disciplinary matters referred in 1988-89 has allowed the highlighting of some principles to be considered in disciplinary matters. They are by no means the only applicable principles. They are the following:

- 1) The particular circumstances of each case must be taken into consideration before coming to a decision. A tribunal entrusted with a discretion must not abandon that discretion by adopting a fixed rule of policy: *Fedortuk v. Canada (Commissioner of*

*the RCMP)*, F.C.A. October 21, 1988.

- 2) The conduct of an individual, **away from the place of work**, may justify dismissal if the employer shows that one of the following criteria has been met:
  - a) the conduct of the employee harms the employer's reputation or product;
  - b) the employee's behaviour renders him or her unable to perform his or her duties satisfactorily;
  - c) the employee's behaviour leads to refusal, reluctance or inability of the other employees to work with him or her;
  - d) the employee has been guilty of a serious breach of the *Criminal Code* and it renders his or her conduct injurious to the general reputation of the employer and its employees;
  - e) the employee's conduct places difficulty in the way of the employer properly carrying out its function of efficiently managing its work and efficiently directing its working forces.

*Flewelling and Adjudication Board* (1986), 24 D.L.R. (4th) 274, where the Federal Court of Appeal adopts the so-called "Millhaven test".

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b) Grievance

The first grievance referred to the Committee by the RCMP was received on February 7, 1989. On May 17, 1988, a member grieved the decision of the Force not to pay what the member deemed to be relocation expenses under the *RCMP Relocation Directive*, Administrative Manual Appendix VI-2-1 (sections 4.4.1. and 4.5.1.).

A Grievance Advisory Board unanimously recommended on June 10, 1988, that the member's grievance be denied. On June 16, 1988, the member's Commanding Officer agreed with that recommendation. On July 5, 1988, the member requested that the grievance be reviewed by the next level (the Commissioner) and that the grievance be forwarded to the Committee in accordance with the *RCMP Act*.

The evidence presented to the Committee revealed that the member transferred from detachment A to detachment B in 1981 while keeping a residence at detachment A. Three years later the member transferred to detachment C. Finally the member transferred to a detachment close to detachment A in 1986, moving back into the principal residence maintained since 1981. After having lived in that residence for 18 months, the member sold it in 1988 and bought another one in the same area. The member claimed the reimbursement of real estate and legal fees and other expenses for the sale and purchase of these residences, on the basis of transfer and moving expenses.

The Chairman issued his findings and recommendations on March 3, 1989. He qualified the *RCMP Reloca-*

*tion Directive* as an administrative tool setting out the Force's policy on that subject. As such, and in accordance with Administrative Law principles, the member seeking to enjoy the benefits it provides must establish compliance with its provisions. Taking into account the intent of the Directive, the Chairman recommended that the member's grievance be denied because the expenses claimed were not expenses incurred due to a relocation requested by the Force. As to the seven-month delay in referring the matter to the Committee, once it had been presented to the Commissioner, the Chairman stated that such a delay was unacceptable.

On April 6, 1989, the Commissioner accepted the Chairman's recommendation to deny the member's grievance.

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#### RESEARCH PROGRAM

In its last Annual Report, the Committee outlined the consultations which had taken place with the Deputy Attorney General or Deputy Solicitor General of each province and the territories, the RCMP, the Canadian Association of Chiefs of Police, the Canadian Police Association, the Public Service Commission, the heads of a number of large Canadian corporations and other interested individuals. This consultation process provided valuable information regarding contemporary human resource management issues and in particular those issues which were likely to be referred to the Committee as grievance or appeal matters.

The Committee's Research Program, which is based in part on the result of the above consultation process, includes the production of a series of discussion papers. The first of these papers, entitled "**Suspensions — A Balanced View**", reviewed significant issues relevant to the impact of a suspension on the employer and the employee. It reviewed a variety of employers and their approach to suspensions. The strengths and weaknesses of five suspension models were reviewed, namely:

- a) temporary reassignment;
- b) suspension without pay;
- c) suspension with pay with statutory limit;
- d) suspension with partial pay or benefits;
- e) suspension with full pay.

The discussion paper was distributed to interested parties for consultation purposes. The Committee consulted the Attorneys General and Solicitors General of the provinces and territories, the Commissioner of the RCMP and the National Executive of divisional staff relations representatives of the RCMP.

The Canadian Association of Chiefs of Police and the Canadian Police Association helped the Committee draw up a representative list of organizations from their membership to be consulted. In addition, the Committee consulted the Public Service Commission, the Treasury Board Secretariat and specific major Canadian corporations. In all, 84 groups were contacted.

The purpose of these consultations was to verify the accuracy of data, gather feedback on the form and content of the discussion paper, pick up models or options the Committee may have overlooked and complete the comparative analysis.

The Committee received replies from law enforcement agencies representing 63 per cent of all police officers in Canada.

Response figures were as follows:

Organization	Per Cent Responding
Government	
—Federal	66.6
—Provincial	30.7
Police	
—Commissions	20.0
—Forces	34.2
—Members' associations	12.5
Private Sector	33.3

Comments received were published in a Consultation Report. They indicated support for the concept of suspension with partial pay and suspension with pay for a statutory period.

The Research Directorate produced a second discussion paper entitled "**Relocations — A Painless Process?**". This paper raises significant and current issues regarding relocations and reviews a number of employee relocation assistance programs. The paper also outlines major aspects of the challenge facing employers in developing relocation policies and programs.

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Consultation regarding this paper is nearing completion and comments received will be produced in a second consultation report.

A third discussion paper on medical discharge is in the final stages of production.

This research has proved useful to the Committee. A significant number of police managers and members have also commented both verbally and in writing on the value of the Committee's published research in their own dealings with these issues.

The Committee received requests for copies of its discussion papers from agencies outside the country. These include the New South Wales Police Department (Australia), the Ombudsman of New South Wales, the Ombudsman of Western Australia, and the Police and Prisoner Officer's Complaints Commissioner (Israel).

The Committee has reviewed its research requirements for 1989-90 and placed priority on research in the areas of disciplinary discharge, post-complaint discipline and employee assistance programs.

The first of these projects, disciplinary discharge, will examine what constitutes misconduct by a police member. It will look at the criteria, policies and practices regarding employee misconduct of a number of employers including the RCMP, provincial and municipal police forces.

Research on post-complaint discipline will focus on discipline of a police member following a complaint by the public. The circumstances and criteria leading to the decision to discipline the member as well as the

nature of the discipline will be considered. Organizations with decision-making authority regarding post-complaint discipline in Canada, the United States and abroad, will be canvassed in the course of this research. The impact of such decisions may be reviewed. This information is intended to facilitate the identification of standards regarding disciplinary matters.

The Research Directorate will also canvass the RCMP, municipal and provincial police forces, as well as public and private sector employers regarding existing employee assistance programs.

The purpose of this research will be to identify the strengths and weaknesses of various programs and models and their impact, if any, on employee conduct leading to disciplinary action by the employer.

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#### SEMINAR, CONFERENCES, SPEECHES AND VISITS

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In March, the Committee conducted a seminar in Ottawa on police human resource management. The comments received from the participants and guests invited to the Committee's first briefing and development session as well as from police managers consulted during the past year stressed the importance and usefulness of such a forum for discussing current human resource management issues relating to the police.

Human resources account for as much as 89 per cent of some police budgets. Chiefs of various police

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forces were consulted regarding a choice of topics for the seminar. The majority expressed an interest in the Canadian Charter of Rights and Freedoms and its impact on the management of police force personnel and in the suspension of police officers.

The Committee limited the attendance at this seminar to allow attendees the opportunity to participate and provide individual views.

Jack Marks, the President of the Canadian Association of Chiefs of Police and Chief of Police of the Metropolitan Toronto Police Force, opened the seminar. He welcomed participants from more than 20 police forces across Canada, and representatives of government organizations.

William F. Pentney, Professor of Law at the University of Ottawa, presented a paper dealing with the effects of the Charter on police human resource management. A panel discussion followed, chaired by the Honourable Keith A. Flanagan. Panelists were Colin D. McKinnon, Q.C., and Michael D. Edelson, two senior counsel.

The Deputy Solicitor General, Joseph S. Stanford, Q.C., spoke on the role and importance of the Committee.

At the afternoon session, Clifford Shearing, Professor of Criminology at the University of Toronto, presented a paper on suspensions. A panel discussion followed, chaired by John E. Hall, Q.C., senior counsel of the British Columbia Bar.

Panelists were Staff Inspector John Addison from the Metropolitan Toronto Police Force and Deputy

Chief (now Chief) Thomas G. Flanagan, S.C. of the Ottawa Police Force.

Marc Cousineau, Professor of Law at the University of Ottawa and research consultant on the third research paper of the Committee on medical discharge, outlined the major issues encountered by organizations and their employees in the field of medical discharge.

The Committee is grateful to all those who contributed to and participated at this seminar.

Comments received following the seminar indicated strong support for further such events. Participants also recommended extending the seminar to provide more time for discussion. The panel approach was well received.

The Committee was represented at a conference in Montreal of the International Association for Civilian Oversight of Law Enforcement. The Chairman, at that conference, was moderator of a panel on the effects of civilian oversight on police. The Executive Director attended the 83rd Annual Conference of the Canadian Association of Chiefs of Police in Vancouver.

During the reporting period, the Chairman accepted a number of speaking engagements. Audiences included the following:

- The Prairie Police Chiefs
- The Atlantic Association of Chiefs of Police
- The Swift Current RCMP Regimental Dinner
- The Inter-departmental Committee on Law Enforcement Management

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The Ontario Association of Chiefs  
of Police

The Inspectors' Orientation and  
Development Course  
No. 17-2 (RCMP)

The Vice-Chairman participated  
on a panel on administrative tribunals  
held at the University of Ottawa.

Committee personnel also  
accepted invitations to other speaking  
engagements.

During the year the Committee  
was honoured by the official visit of  
Commissioner John K. Avery and  
Chief Superintendent Jeffrey T. Jar-  
ratt, both members of the New South  
Wales Police Department. In a sepa-  
rate visit Chief Superintendent Col  
Cole, Chief of Staff to the Commis-  
sioner of the New South Wales Police  
Department, spent some time with  
the Chairman and Committee person-  
nel and expressed an interest in  
receiving the Committee's research  
papers.

Visits to the Institut de Police du  
Québec, in Nicolet, and to the Police  
Academy of the Justice Institute of  
British Columbia in Vancouver were  
also made during the reporting year  
to examine the methodology used in  
training police officers.

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#### ADMINISTRATION

The Committee has now had a period  
of nine months' experience, fully  
operative in both the review of griev-  
ances and appeals, and research.

The Committee recognizes and is  
grateful for the dedication of its per-  
sonnel in dealing not only with the  
challenge of the volume of work but  
also that of the diversity of tasks  
required.

The Committee's resources for  
fiscal year 1988/89 comprised eleven  
(11) person-years and an operating  
budget of \$355,000.00.



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## IV                    RELATIONSHIP WITH THE                             FORCE DURING THE YEAR                             UNDER REVIEW

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The relationship between the Committee and the Force has evolved and matured during the year under review. As with any newly established agency, there were initial misunderstandings and in some cases misinterpretation of the Committee's mandate and its role. Expectations of some fell far short of parliamentary intent while others saw the Committee as circumspect and at times burdensome.

When the Committee began to deal with cases, some of the misconceptions began to disappear. Misunderstandings are not abnormal, although on occasion they may have a significant impact on the relationship between the Force and the Committee and perhaps preclude recourse to the Committee by members of the Force, a recourse which is theirs by law.

The Force in the last 12 months has taken some positive steps in the field of human resource management. Two of them deserve to be mentioned. The Chairman is pleased to note that grievances with respect to promotion and transfer will no longer be an obstacle in the effective promotion and transfer of a member. The Commissioner has on one hand protected the interest of the person promoted or transferred and on the other hand offered a personal guarantee that the griever will, if successful, be given a comparable advantage.

The personal undertaking of the Commissioner, made before the Act was proclaimed, has assisted the Committee in establishing a smooth and orderly transition of those matters within its competence which were pending at the time of proclamation and which therefore did not clearly come within the jurisdiction of the Committee. Successful negotiations and constructive discussion have enabled the Commissioner and the Committee to agree that all those matters would be referred to the Committee. At the time of the writing of this report, six referrals had been made under this agreement and the Chairman is pleased to note the cooperation of the Commissioner in resolving this issue without recourse to the judicial process.

The RCMP has responded to requests for assistance from the Committee in making the Committee's role known to Force members. On at least one occasion, however, the information was not accurate. In August, 1988 the Pony Express, the Staff Relations Branch Newsletter of the RCMP, erroneously described the process of referral to the Committee. The Force examined at length the concern of the Committee and amended its previous release three months later. The fact that the erroneous information was circulated is

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unfortunate and should not have occurred.

While the Committee is still young, there is a profound desire by the Committee and its members that the relationship be one of trust and understanding. The perception of the Committee with respect to its role is that it can only be an asset in providing outside assistance, independent counsel and sound recommendations to the Force. During the year under review, many provincial bodies with jurisdiction similar to the Committee have felt it necessary to insist that their recommendation be binding on police forces. The Chairman has always maintained he was able to support the fact that police accountability and the Commissioner's accountability ought not to be fettered in such a way.

The Commissioner ought to have full autonomy to act within the law, subject to certain safeguards. The Committee, as it discharges its obligations, can only strengthen these safeguards.

If the relationship with the Force can continue to improve to the level that the Committee is seen as constructive, helpful and dispensing wise advice which the Force is prepared to consider, then the Committee's role can be defined so that the Force does not feel that its autonomy is threatened. Should circumstances not support this initial position, legislative recourse to make the Committee's recommendations binding is always possible.

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### INTRODUCTION

The Office of Ombudsman has gained popularity because it offers a credible solution to the seemingly contradictory notions of effective oversight and management accountability. Because the Ombudsman's power is limited to influencing rather than altering decisions, administrators retain the authority to make decisions for which they are accountable. The greater visibility of the system resulting from such oversight and accountability increases confidence in the practices and procedures followed by an organization.

There are Ombudsmen at both the federal and provincial levels. It is important to note that their success has been directly related to the degree to which their recommendations are implemented by the administration they monitor. Some Ombudsmen have commented on the advantages of making enforceable decisions rather than recommendations, thus leading to more timely and complete implementation. There has been a move toward such a system in certain jurisdictions in the past year. This is a significant departure from the traditional role of the Ombudsman; only time will indicate whether there will be a need to amend the *RCMP Act* along those lines.

The system recommended in the 1976 Report of the Commission of Inquiry relating to public complaints, internal discipline and grievance

procedure within the RCMP recognized five main principles, two of which stand out in this context:

- a) The Commissioner should retain responsibility for the control and management of the Force; and
- b) An Office of Federal Police Ombudsman should ensure that a remedial, fair and thorough approach is taken in connection with personnel administration in the Force.

The Ombudsman role was intended to ensure that the entire system would be more visible and thereby accountable to Parliament, the Canadian public, the Force and its members. The accountability of the proposed system was to be safeguarded through the provision to the Ombudsman of "... all information concerning public complaints and their disposition". As well, "... all complaints should be recorded". The recommendations recognized the need to establish "... a reporting and recording system for grievances similar to that which has been recommended for public complaints".

The legislation ultimately enacted did not create an Office of Federal Police Ombudsman although it did adopt a similar system.

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### ACCOUNTABILITY

The Ombudsman model established by the 1986 amendments to the *RCMP Act* resulted in the creation of

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two separate offices: the External Review Committee and the Public Complaints Commission. The reporting and recording requirement, common to both aspects in the 1976 Report, was partly lost in the transition.

Within Part VII (Public Complaints) of the *RCMP Act (1986)* section 45.47 requires that a "record" be established and maintained of all complaints received by the Force. That information is available to the Public Complaints Commission on request. This is consistent with the recommendations of the Commission of Inquiry.

There is no requirement, however, that a similar record be maintained in relation to grievances, discipline or discharge and demotion cases that are dealt with by the Force. In the absence of such a record there is no reference point from which the accountability of an organization can be measured. The processing of cases by the RCMP remains secure from public scrutiny except for those cases referred for review under the *Act*. Short of legislative action, it would be expected that the Force would be anxious to provide such information to preclude speculation about the effectiveness of its internal processes.

Concerns about accountability were not alleviated by a Special Edition of the RCMP's Staff Relations Branch Newsletter, the Pony Express, in November 1988. There the Commissioner commented upon his accountability to the Minister for the management of the Force and made the following statement:

To be accountable, however, I must be kept informed about and be involved in all issues relevant to good management of the organization. I, therefore, feel I must insist that any staff relations issue involving or touching upon members of the Force *must first be brought to my personal attention before going to any agency external to the RCMP* or to our Minister. (emphasis added)

Such a direction, if it includes specific cases of grievance, discipline or discharge and demotion, is inconsistent with the requirement of the *Act* that these matters be referred to the Committee before being considered by the Commissioner. It is hoped that the statement in the Pony Express was not intended to alter the processes of statutory referral to the Committee contained in the *Act*. This is an issue that the Committee will monitor closely in the coming months with a view to assessing its impact upon the public accountability role of the Committee.

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#### GRIEVANCES

The Chairman has expressed concerns in the past regarding the restricted jurisdiction of the Committee in relation to the referral of grievances. When such restrictions exist, combined with the fact that there is no "record" of the types and total number of grievances in the Force, the fairness, effectiveness and accountability of the system could be severely hampered.

A grievance process must be open, simple and accountable. Currently it is not entirely clear which

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types of grievances are to be referred to the Committee.

A member may grieve a "... 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 Commissioner's standing orders." (Section 31, *RCMP Act*)

The Committee's grievance jurisdiction was further restricted by the provision of many such alternate processes, examples of which follow:

**- Commissioner's Standing Orders:**

Grievances related to members' performance evaluations, transfers or promotions are to be dealt with through a separate process.

**- Regulations:**

Paragraph 35 of the RCMP Regulations (SOR/88-361) specifies those positions, appointment to which cannot be grieved.

The referral of grievances was also restricted by the specification of the "types" of grievances that are to be referred to the Committee. The Governor in Council has specified those grievances in paragraph 36 of the RCMP Regulations which reads:

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 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 *RCMP Relocation Directive*; and
- (e) administrative discharge for grounds specified in paragraphs 19(a), (f) or (i).

While sub-paragraphs 36(b) through (e) are more specific, sub-paragraph 36(a) is not. Whether or not a matter is referable under sub-paragraph 36(a) requires an interpretation in each case. That interpretation is made by the Force which is free to interpret those provisions as it sees fit. The Committee is not informed of the decisions that are made in relation to the application of sub-paragraph 36(a) of the *Act*. The *Act* or Regulations do not empower the Committee to be privy to such decisions, which are, out of necessity, made by officers of the RCMP other than the Commissioner. Since there is no formal record of these decisions which can be reviewed by the Committee, the system at this juncture is not open to public scrutiny. This in turn jeopardizes its accountability.

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The Chairman has discussed these issues with the Commissioner of the RCMP, who has satisfied the Chairman that he will be addressing his concerns in the coming year. It is hoped that a more open and accountable grievance process will evolve as a result of the continuing dialogue with the Commissioner.

The Committee has also been seized with an increasing expression of concern from members of the Force on the matter of grievances. These concerns deal with the imprecision in paragraph 36 of RCMP Regulations, the delays to which referable matters are subject and the perceived interference resulting from a referral. The validity of these concerns cannot be verified; the Committee does not have information on such matters. Their number and consistency however is disturbing.

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#### DELAYS

Every case referred to the Committee during the reporting period arose prior to June 30, 1988; a final decision had not, however, been made prior to that date. With the concurrence of the Commissioner these cases were referred to the Committee for review in accordance with the provisions of the *Interpretation Act*, R.S.C. 1985 c. I-21 and the amendments to the *Act*, S.C. 1986 c. 11, where applicable.

The cases reviewed by the Committee are summarized in Part III of this Report. There is one aspect, however, that must be highlighted here. The overall time required by the

Force for the internal processing of cases is approaching questionable limits. It took an average of four months from the date of the occurrence before a disciplinary charge was laid. It then took an additional eleven months on average before the matter was referred to the Committee. An average of fifteen months thus elapsed between the occurrence and the referral.

The system established by the *Act* promotes a quick resolution of grievances. It took seven months from the date the request for referral was made before it was received by the Committee. Grievances must be resolved quickly. The Committee was reminded on numerous occasions and from several quarters that this was recognized by the Commissioner of the RCMP who testified before the Legislative Committee on Bill C-65 in 1985.

In response to a proposal that a 90-day time limit be imposed for the Commissioner's decision, the Commissioner said:

I do not see the need to put that in. I can assure you these things get attention as quickly as they can be attended to. (House of Commons, *Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-65*, December 10, 1985, Issue No. 11, p. 98)

This response terminated the debate on that proposed amendment.

If an organization's internal personnel administration process is to be effective, it must facilitate quick resolution at every stage, not introduce delay. The statistical data given above speak for themselves. The Chairman

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and the Commissioner of the RCMP have discussed the internal delays within the Force. There is mutual agreement that they must be reduced under the new provisions of the *Act*, and the Commissioner has indicated he will address this matter as well in the next reporting year.



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# VI ANNEXES

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1. List of Committee's Publications
2. External Review Committee's Operational Chart



**List of the Committee's Publications**

Annual Report 1986-1987

Annex to Annual Report 1986-1987

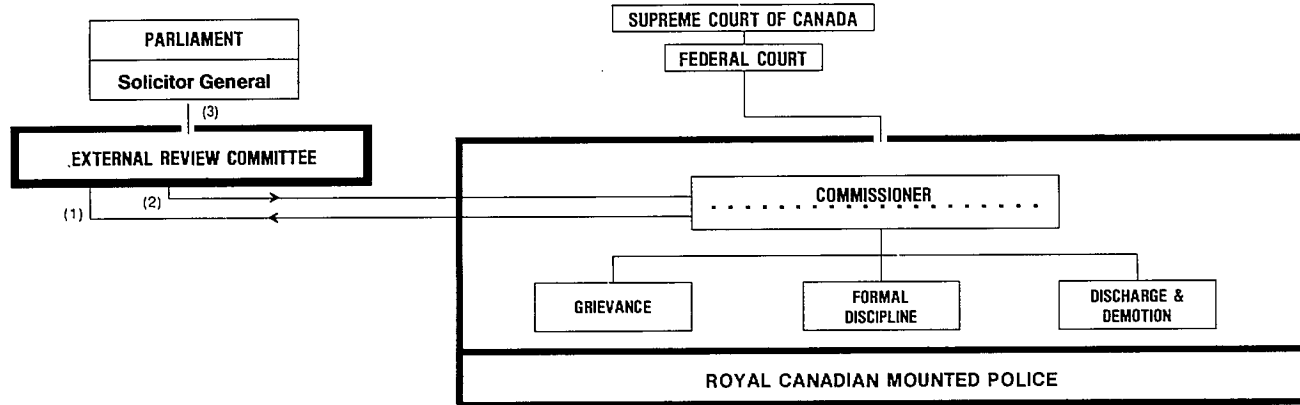
Annual Report 1987-1988

Suspensions — A Balanced View

Suspensions — Consultation Report

Relocation — A Painless Process?

## EXTERNAL REVIEW COMMITTEE'S OPERATIONAL CHART



(1) The Commissioner shall refer any prescribed issue to the Committee.

(2) The Chairman or the Committee shall send a report in writing to the Commissioner and all parties.

(3) The Chairman shall submit to the Minister for transmission to Parliament a report of the activities of the Committee during that year and its recommendations.

# NOTES

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